City of Palo Alto

Cubberley Community Center
Background Information

September 1, 2011
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CUBBERLEY SITE DISCUSSION

June 16, 2010
CITY/PAUSD
School Site Chronology

- Cubberley School Site Built: 1955
- Cubberley site closed due to declining enrollment. PAUSD leases site to various tenants, including Foothill College: 1979
- City acquires Terman School site through 20 yr lease to purchase agreement: 1981
- City enters into interim lease for Jordan School: 1988
- City enters into Covenant not to Develop and Lease of Cubberley School: 1989
- PAUSD requests to purchase back remaining Terman School Site from City: 1999
- Four-Party MOU approved by Council for Terman – (including swap of Cubberley/Terman 7.93 acres): 2001

FOOTHILL OFFER TO PURCHASE:

- Foothill/DeAnza:
  - 1st Request: 2007
  - 2nd Request letter of intent: 11/3/09
Charleston Shopping Center

Charleston Terrace Neighborhood

Green Meadow Neighborhood

8 Acres

Cubberley Community Center

Not a Part of Lease

Nelson Drive

Middlefield Road

Charleston Road

Mitchell Park

Hoover Elementary

San Antonio Ave

School
CITY/PAUSD
Lease History

Terman Middle School
1981- Leased by City with Option to Purchase

Jordan Middle School
1988- Interim Lease by City

Cubberley High School
1989- City Leased all 35 Acres from PAUSD

Owned 8 Acres
Cubberley High School
27 Acres Leased

2001- City Swaps Terman for Ownership of 8 Acres at Cubberley
Cubberley Statistics

- 35 Total Acres
  - 27 Acres School District
  - 8 Acres City
- 175,540 sq.ft. Building
  - 94,402 School District
  - 76,138 City
- 750 Parking Spaces
  - 620 School District
  - 130 City
Community Groups and Tenants
Not including hourly renters

- **Foothill**
  - **Artist Studios (23)**

- **Dance Studios (3)**
  - Dance Action, Dance Connection, Zohar

- **Schools (2)**
  - Acme Education, Palo Alto Preparatory

- **Childcare (2)**
  - Childrens Preschool Center, Good Neighbor Montessori

- **Nonprofit Community Organizations (4)**
  - Hua Kuang Reading Room, Adolescent Counseling Services, Wildlife Rescue, Friends of the Palo Alto Library
### Lease Terms and Options

- **Initial Term**: 15 Years (1989-2004)
- **1st Option**: 10 Years (2004-2014) *
- **2nd Option**: 5 Years (2014-2019)
- **3rd Option**: 5 Years (2019-2024)

*Notice to Extend due to District by 12/31/2013*
City Financial Constraints

- Multi-year budget gaps
- Restricted revenue growth
- Challenge on city raising new revenues (Business License tax ballot measure defeated in 2009)
- Rising expenditures
- Significant infrastructure funding deficit
Cubberley Capital Improvement and Investment Requirements

- FY 1996-2009 $6,750,000

Minimum Maintenance:
- FY 2010 – 2015 $8,000,000

(Since 1989, City has paid $113 million in Lease & Covenant payments)
CUBBERLEY SITE DISCUSSION

June 27, 2011
CITY/PAUSD
School Site Chronology

- Cubberley School Site Built 1955
- Cubberley site closed leased including FHDA 1979
- City acquires Terman School (20 yr lease to purchase) 1981
- Covenant not to Develop and Cubberley lease 1989
- PAUSD requests to purchase Terman from City 1999
- Council Approves Cubberley swap (7.93 acres) 2001
- Foothill Offer to Purchase
  - 1st Request 2007
  - 2nd Request 2009
  - Request for Offers 2011
CITY/PAUSD
Lease History

Terman Middle School
1981- Leased by City with Option to Purchase

Jordan Middle School
1988- Interim Lease by City

Cubberley High School
1989- City Leased all 35 Acres from PAUSD

<table>
<thead>
<tr>
<th>Owned 8 Acres</th>
<th>Cubberley High School</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>27 Acres Leased</td>
</tr>
</tbody>
</table>

2001- City Swaps Terman for Ownership of 8 Acres at Cubberley
CITY OWNED 8 ACRES - TENANTS

Total Annual Rental Revenue (Foothill $933K)
$423,402.00
FOOTHILL SQUARE FOOTAGE USE

21,170 SQ.FT./PAUSD OWNED

18,493 SQ.FT./CITY OWNED
Cubberley Statistics

- 35 Total Acres
  - 27 Acres PAUSD
  - 8 Acres City
- 175,540 sq.ft. Building
  - 94,402 (FH occupies 21,170) 27 ac
  - 76,138 (FH occupies 18,493) 8 ac
- 750 Parking Spaces
  - 620 School District
  - 130 City
Community Groups and Tenants
Not including hourly renters

- **Foothill**
- **Artist Studios (22)**
- **Dance Studios (3)**
  Dance Action, Dance Connection, Zohar
- **Schools (2)**
  Acme Education, Palo Alto Preparatory
- **Childcare (2)**
  Childrens Preschool Center, Good Neighbor Montessori
- **Nonprofit Community Organizations (4)**
  Hua Kuang Reading Room, Wildlife Rescue, Friends of the Palo Alto Library
## Cubberley Tenants

<table>
<thead>
<tr>
<th>USE</th>
<th>SQ. FT</th>
<th>RENT/SQ</th>
<th>RENT ANNUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foothill</td>
<td>39,672</td>
<td>$1.96</td>
<td>$933 K</td>
</tr>
<tr>
<td><strong>Non Profit</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FOPAL</td>
<td>1,700</td>
<td>$0.65</td>
<td>$13K</td>
</tr>
<tr>
<td>Hua Kuang</td>
<td>672</td>
<td>$1.11</td>
<td>$8,900</td>
</tr>
<tr>
<td>PA Prep</td>
<td>2,496</td>
<td>$1.79</td>
<td>$54K</td>
</tr>
<tr>
<td>Wildlife Rescue</td>
<td>1,565</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Preschool</td>
<td>8,772</td>
<td>$0.24</td>
<td>$26K</td>
</tr>
<tr>
<td>Dance Visions</td>
<td>3,130</td>
<td>$1.11</td>
<td>$41K</td>
</tr>
<tr>
<td>Zohar</td>
<td>3,740</td>
<td>$1.16</td>
<td>$52K</td>
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### Cubberley Tenants (cont)

<table>
<thead>
<tr>
<th>USE</th>
<th>SQ. FT</th>
<th>RENT/SQ</th>
<th>RENT ANNUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For Profit</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACME Ed.</td>
<td>3,910</td>
<td>$1.72</td>
<td>$81K</td>
</tr>
<tr>
<td>Cal Law Rev.</td>
<td>800</td>
<td>$2.08</td>
<td>$20K</td>
</tr>
<tr>
<td>Dance Connection</td>
<td>3,060</td>
<td>$1.69</td>
<td>$62K</td>
</tr>
<tr>
<td>Montessori</td>
<td>3,010</td>
<td>$1.78</td>
<td>$64K</td>
</tr>
<tr>
<td>Artists</td>
<td>12,395</td>
<td>PA Resident $0.67 Non Res $0.72</td>
<td>$94K</td>
</tr>
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</table>
## Revenue Summary

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foothill- DeAnza</td>
<td>$0.93M</td>
</tr>
<tr>
<td>Property Rental (Artists/ Non Profits, etc)</td>
<td>$0.52M</td>
</tr>
<tr>
<td>($0.42M from City’s 8ac excluding FH)</td>
<td></td>
</tr>
<tr>
<td>Hourly Rental (Events, etc)</td>
<td>$1.02M</td>
</tr>
<tr>
<td>City Office Rental</td>
<td>$0.07M</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>$2.54M</strong></td>
</tr>
</tbody>
</table>
# Expense Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Management and Maintenance</td>
<td>$0.44M</td>
</tr>
<tr>
<td>Non Maintenance Operating Expenses</td>
<td>$1.77M</td>
</tr>
<tr>
<td>Total City Annual Expenses</td>
<td>$2.21M</td>
</tr>
</tbody>
</table>
Cubberley Capital Improvements and Annual Maintenance

- Planned CIP’s and Deferred Maintenance
  - 2012-2016: $10,200,000
  - 2017-2036: $6,500,000
  - Total: $16,700,000

- Annual Routine Maintenance: $332,000
Lease Terms and Options

- 15 Years (1989-2004) - Initial Term
- 10 Years (2004-2014) - 1st Option
- 5 Years (2014-2019) - 2nd Option
- 5 Years (2019-2024) - 3rd Option

*Notice to Extend due to District by 12/31/2013
# 2011 Projected Payments to PAUSD

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cubberley Lease</td>
<td>$4.48M</td>
</tr>
<tr>
<td>Covenant</td>
<td>$1.73M</td>
</tr>
<tr>
<td>Child Care Sites</td>
<td>$0.60M</td>
</tr>
<tr>
<td>Utilities</td>
<td>$0.52M</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7.33M</strong></td>
</tr>
</tbody>
</table>
Key Issues

- Sell or Lease? Maintain maximum flexibility
- Relocation Issues
- Parking—on-site Phase 1/shared Phase 2
- Foothill as a service provider and synergy with other educational and community services
- Loss in Foothill revenue and substantial infrastructure obligations
- Status of community uses if Lease is not extended
- Foothill Schedule including construction
- Zoning—agreement to City land use oversight
Questions/ Comments
Foothill-De Anza College Letter of Interest
November 3, 2009

Ms. Martha Miller, Director of Real Property
Real Estate Division
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94303

Re: Letter of Interest - 4000 Middlefield Road, Palo Alto

Pursuant to our discussions this is a non-binding Letter of Interest ("LOI") that reflects certain essential terms to which the Foothill-De Anza Community College District ("FHDA") would agree to purchase the real property known as 4000 Middlefield Road, Palo Alto ("the property"). If the City is interested in selling the property to FHDA subject to these essential terms, we suggest that each side appoint a set of negotiators to reach agreement on an acceptable price and any other necessary terms.

The essential terms FHDA would require include the following:

1. FHDA to purchase a fee-simple ownership in the property.

2. The property is owned in fee by the City and encompasses a land area totaling approximately 8 acres.

3. FHDA has previously prepared a Facilities program, and schematic plan depicting a development of approximately 100,000 square feet. This represents the theoretical maximum build-out of the site. The development would be phased contingent on funding availability and enrollment demand.

4. Under the Civic Center Act, the above mentioned facilities would be made available for community use. However, FHDA's educational program and associated facility usage will in all cases have primacy over such community uses.

5. FHDA must have a permanent reciprocal use agreement to share presently existing surface parking on the remainder of the City owned or controlled site to insure adequate parking for the projected student population and FHDA uses. To the extent necessary to accomplish FHDA's purposes the City will use best efforts to facilitate a reciprocal parking use agreement with the Palo Alto Unified School District.

6. The City and FHDA jointly commissioned an appraisal of the site in 2008. The appraiser shall be re-commissioned and the outcome of this updated report shall become the basis for negotiations.
7. Off-site improvements:
   a. The City shall be and remain responsible for bringing adequate City owned utilities to the building site to include water, sewer, electrical and gas consistent with FHDA's projected needs.
   b. The City shall be responsible for any offsite modifications necessary to provide vehicular and pedestrian direct access to the FHDA facilities from Middlefield Road.

8. The City will be responsible for relocation of its other tenants to facilitate FHDA's needs including the primacy of FHDA educational programs at the site.

The parties agree that (1) this LOI is intended as an outline of certain essential business terms which will serve as a basis to prepare the Purchase and Sale Agreement; and (2) this letter is not binding on the parties, and neither party shall have any binding contractual obligations to the other with respect to the matters referred to herein unless and until a formal Purchase and Sale Agreement has been prepared and has been fully executed and delivered by the parties. This letter does not constitute a contract and is intended solely as a preliminary expression of general intentions.

Best Regards,

[Signature]

[Name]
Vice Chancellor
Business Services

C: Mike Brandy
Charles Allen
Judy Miner
John Shupe
Cubberley Community Center Lease and Covenant Not To Develop
CITY OF PALO ALTO
Memorandum

TO: CITY COUNCIL
FROM: CITY MANAGER
DATE: JUNE 16, 2010
DEPARTMENT: CITY MANAGER

SUBJECT: Special Joint Meeting with Foothill/DeAnza Community College Trustees, Palo Alto Unified School District Board and Palo Alto City Council

In preparation for the Special Joint Meeting with Palo Alto City Council, Foothill/DeAnza Community College Trustees and Palo Alto Unified School District Board we are providing the following background information:

- Lease and 1989 Covenant not to develop with corresponding amendments 1 and 2
- 1997 Sublease Agreement between City of Palo Alto and Foothill/DeAnza District and Corresponding Amendments 1-3

STEVE EMSLIE
Deputy City Manager
LEASE AND COVENANT NOT TO DEVELOP

This Lease and Covenant Not To Develop ("Lease") dated September 1, 1989, for reference purposes only, is made and entered into by and between the Palo Alto Unified School District ("District") and the City of Palo Alto ("City"), a municipal corporation.

1.0 DEFINITIONS AND PREVIOUS AGREEMENTS

1.1 Definitions

1.1.1 City. The term "City" means the City of Palo Alto, a charter city and municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of California.

1.1.2 District. The term "District" means the Palo Alto Unified School District, a unified school district organized and existing pursuant to the laws of the State of California.

1.1.3 District Purposes. The term "District purposes" means the District's using a Site for any District purpose, including but not limited to classrooms, administrative offices, and training centers for District personnel, but not for the purpose, either direct or indirect, of selling the Site or any other District school site or leasing that Site or any other District school site for non-district uses.

1.1.4 Sites. The term "Sites" means all of that certain real property situated in the city described in Exhibits A through G, attached hereto.

1.1.5 Leased Site - Cubberley Site. The term "Leased Site" means all of that certain real property situated in the City described in Exhibit A attached hereto and made a part hereof, and all improvements thereon as of the date of execution hereof.

1.1.6 Jordan Site. The term "Jordan Site" means all of that certain real property situated in the City described in Exhibit B attached hereto and made a part hereof.

1.1.7 Jane Lathrop Stanford Site. The term "Jane Lathrop Stanford Site" means all of that certain real property situated in the City described in Exhibit C attached hereto and made a part hereof.

1.1.8 Covenanted Sites. The term "Covenanted Sites" means all of that certain real property situated in the City described in Exhibits B, C, D, E, F and G attached hereto and made a part hereof.

1.1.9 Ohlone Site. The term "Ohlone Site" means all of that certain real property, commonly known as the "Old Ohlone Site", situated in the City described in Exhibit D attached hereto and made a part hereof.
1.1.10 **Garland Site.** The term "Garland Site" means all of that certain real property situated in the City described in Exhibit E attached hereto and made a part hereof.

1.1.11 **Greendell Site.** The term "Greendell Site" means all of that certain real property situated in the City described in Exhibit F attached hereto and made a part hereof.

1.1.12 **Jordan Turf Site.** The term "Jordan Turf Site" means all of that certain real property situated in the City described in Exhibit G attached hereto and made a part hereof.

1.1.13 **Extended Day Care.** Extended Day Care means 1) childcare services provided during the school year to grade school students for the periods a) 6:30 am and the scheduled start of school and b) the earliest scheduled end of school and 6:30 pm Monday through Friday. 2) childcare services provided on non-school days from 6:30 am to 6:30 pm Monday through Friday, or as City deems appropriate.

1.2 **Previous Agreements**

1.2.1 The District and City have previously entered into the following agreements:


(b) Interim Lease for the Jordan School dated March 29, 1988 and amended on January 24, 1989.

(c) Jordan Turf and Outdoor Recreation Area Lease dated April 8, 1986.

(d) Cubberley Turf and Outdoor Recreation Area Lease dated January 17, 1985.


(f) Garland Turf and Outdoor Recreation Area Lease dated April 8, 1986.

1.2.2 All of the above listed agreements between the City and the District shall terminate on December 31, 1989 provided, however, the City's and District's obligations shall remain in full force regarding installation of back flow preventers, refurbishing playing fields and installation of sprinkler system as specified in Section 6.8 of that certain document titled "Amendment No. 2 to the Lease and Covenant Not to Develop dated January 24, 1989".
2.0 PAYMENT

2.1 Base Payment for Leased Site. City shall pay to District for each calendar year of the term of this Lease, a base payment (the "base payment") of $2,700,000 dollars to be paid in twelve monthly installments for lease of the Cubberley Site more fully described in Section 3.0 of this agreement.

2.2 Payment for Covenanted Sites. The City shall pay annually to District the following amounts for the Covenant Not to Develop, more fully described in Section 4.0 of this agreement.

<table>
<thead>
<tr>
<th>Site</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohlone</td>
<td>$204,742</td>
</tr>
<tr>
<td>Garland</td>
<td>$182,804</td>
</tr>
<tr>
<td>Greendell</td>
<td>$182,804</td>
</tr>
<tr>
<td>Jane Lathrop Stanford</td>
<td>$236,000</td>
</tr>
<tr>
<td>Jordan</td>
<td>$164,000</td>
</tr>
</tbody>
</table>

2.3 Payment for Extended Day Care Spaces. As consideration, for use of the eleven spaces pursuant to Section 5.0 of this agreement, City shall pay annually to District the sum of $300,000 or $27,273 per space. All payments to District by City shall be made in twelve (12) equal installments payable monthly commencing on January 31, 1990.

Payment for additional spaces shall be at the adjusted rate for child care space as provided for in Sections 2.3 and 2.7 of this agreement.

2.4 Covenant to Budget and Appropriate. Subject to Section 6.5.2(a), City covenants to take such action as may be necessary to include Lease payments due hereunder in its annual budget and annually to appropriate an amount necessary to make such Lease payments.

2.5 Manner of Payment. District shall annually invoice the City for the monthly payments to be made to the District during the following year provided, however, the failure of the District to provide City with such invoice shall not relieve the City of its responsibility to make full and appropriate payments to District. Payment shall be payable in lawful money of the United States to the order of the District at 25 Churchill Avenue, Palo Alto, CA 94306, Attention: Business Manager, or such other place as the City and the District shall mutually agree. City's obligation to make payments for any partial month shall be prorated on the basis of a thirty (30) day month.

2.6 Late Payment Charge. If any installment of payment or any other sum due from City is not received by District within fifteen (15) days after the due date, City shall pay to District an additional sum equal to a half percent (1/2%) of the amount overdue for each month the payment is delinquent.

2.7 Payment Adjustment.
2.7.1  "Payment" means all payments due from City to District pursuant to this Lease.

2.7.2  There shall be three types of payment adjustments. They shall be called:

1. the annual payment adjustment
2. the five year payment adjustment
3. the last year payment adjustment

2.7.3  Determining the Annual Payment Adjustment. The Payment shall be adjusted annually on the anniversary of the commencement date of this Lease in the following manner: The most recently published monthly Consumer Price Index (All Urban Consumers 1982-84 = 100) for the San Francisco-Oakland-San Jose Metropolitan Area published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), for the month preceding anniversary date of the commencement date of this Lease ("New Index"), shall be compared with the Index published in the same month of the previous year ("Current Index"). If the New Index is greater than the Current Index, the Payment shall be adjusted by multiplying the current annual Payment by a number comprised of 1 + a fraction, the numerator of which is the New Index minus the Current Index and the denominator of which is the Current Index. If the New Index is less than the Current Index, the Payment shall remain the same as the previous year, but the percentage decrease shall be applied to offset subsequent annual Payment increases, if any, or used to calculate the Five-Year Payment Adjustment provided in Section 2.7.4.

Adjustment is illustrated by the following formula (for example calculations, see Exhibit H):

\[ R = \frac{P \left[ 1 + \left( \frac{A-B}{B} \right) \right]}{B} \]

- \( R \) = Annual Payment for upcoming lease year (New payment)
- \( P \) = Current annual Payment
- \( A \) = New Index: the most recently published Index prior to the month in which the adjustment is to become effective.
- \( B \) = Current Index: the Index published for the same month as the Index used in "A" prior to the commencement of the previous lease year.

If the quotient of the New Index minus the Current Index divided by the Current Index \((A-B)/B\)

is greater than 7.5%, the difference between the quotient and 7.5% shall be divided by two and added to 7.5%, but in no event shall the new annual Payment exceed
108% of the current annual Payment for the years 1991 and 1992. After 1992, the new annual Payment shall not exceed 110% of the current annual Payment in each succeeding year unless the City elects to apply the full adjustment instead of accumulating the Index change in excess of the adjustment caps as provided in the next section for the Five Year Payment Adjustments. Both the maximum adjustments of one-half the increase over 7.5% up to the respective 108% and 110% maximums and the 108% and 110% limits themselves are referred to as "adjustment caps".

After 1992, to the extent that there is an increase in the Index that is not incorporated in the annual Payment because it exceeds the adjustment cap, and the City does not elect to pay the full increase in the year in which it is due, such increase in excess of the adjustment cap shall be added to the subsequent annual revision in the Index, provided the adjustment cap is not exceeded for that year.

There shall not be a decrease in the annual Payment if the new Index is less than the Current Index; however, if in any given year or years after 1992 the New Index is less than the Current Index, the resulting decrease shall be applied against subsequent annual Index increases in making the annual Payment adjustment.

2.7.4 Determining the Five-Year Payment Adjustments. Notwithstanding the limitation imposed by the adjustment caps and limitation imposed on applying Index decreases, both of which limitations are provided in Section 2.7.3, the actual change in the Index, expressed as a percentage increase or percentage decrease and which change is not incorporated in an adjustment of the annual Payment in any given year, at the election of the City, shall accrue as an aggregate percentage, whether or not such percentage is greater than 10% or represents a decrease in the Index over time. This aggregate percentage may be referred to as a "bank". The ending annual Payment in the 5th, 10th, 15th, and 20th years shall be adjusted by the aggregate percentage in the "bank" at that time without regard to any limitations (except limitations which occur in 1991 or 1992) in order to arrive at the annual Payment for the sixth, eleventh, sixteenth and twenty-first years of the Lease.

The annual Payment for the final year in any five year period shall be multiplied by a number comprised of 1 + the accrued balance of the "bank" at the end of the five year period regardless of the fact that this balance may exceed 1.10 or be less than 1.0.

That recalculted fifth year annual Payment shall serve as the base annual Payment which shall be adjusted by the change in the Consumer Price Index between the fifth and sixth years, the tenth and eleventh years, the fifteenth and sixteenth years and the twentieth and twenty-first years of this Lease according to the methodology described in Section 2.7.3.

To the extent that there is an increase or decrease not incorporated in annual Payment after calculating the annual adjustment for the 6th, 11th, 16th, and 21st years, such increase or decrease shall accrue in the "bank" to be
reconciled at the end of the next five year period.

The recalculation of the payment at the commencement of each new 5-year period shall incorporate all the provisions contained in paragraph 1 of this Section and Section 2.7.3.

Each 5-year Adjustment is illustrated by the following formula (for example calculations, see Exhibit H):

\[
R_6 = \frac{[R_5 (1 + Y)] x (1 + (A_6 - B_6)]}{B_6}
\]

\[
R_6 = 6^{th} year annual Payment
\]

\[
R_5 = 5^{th} year annual Payment
\]

\[
Y = "Bank" balance of aggregated Index changes as yet unadjusted according to the formula or at the election of City and expressed as a percentage (a three place decimal)
\]

\[
A_6 = \text{New Index: the most recently published Index prior to the month in which the adjustment is to become effective in year 6.}
\]

\[
B_6 = \text{Current Index: the Index published for the same month as the new Index prior to the commencement of the previous lease year (A_5).}
\]

Subsequent five year Payment adjustments (R_{11}, R_{16}, R_{21}, and R_f where f = the annual Payment in the final year of the Lease) shall be made according to the same formula.

2.7.5 **Determining the Last Year Payment Adjustment.** This adjustment occurs at whatever point the lease terminates.

The annual Payment for the final year shall be adjusted in the manner provided for the Five Year Payment Adjustment in Section 2.3.4, except that the recalculation of what the annual Payment would have been without adjustment caps or the limitation on the application of Index decreases shall be performed with respect to the year immediately preceding the year of termination.

3.0 **CUBBERLEY LEASE**

District hereby leases to City and City hereby leases from District for the term, at the rental, and upon all the conditions set forth herein, the Leased Site commonly known as "Cubberley School" situated in the City of Palo Alto described in Exhibit A attached hereto and made a part hereof and all improvements thereon. The total acreage of the Leased Site is approximately 35 acres of which 11.8 acres is outdoor recreation area; the remaining 24.2 acres is comprised of parking lot area, walkways, and approximately 180,000 square feet of buildings;
however, it is understood that such acreage and square footage figures are only approximate and have not been precisely determined.

3.1 **Condition, Possession, and Surrender of Leased Site**

3.1.1 **No Representation Regarding Leased Site.** District has made no representations or warranties with respect to the Leased Site and no rights, easements or licenses are acquired by City by implication or otherwise except as are expressly set forth herein. District shall not be responsible for any latent defect or change in the condition of the Leased Site, except as set forth in Section 3.3 hereto, and the payments due hereunder shall in no case be withheld or diminished on account of any defect in the Leased Site nor for any change of condition, nor for any damage occurring thereto, nor because of any violation of law.

3.1.2 **Condition of Leased Site.** City does hereby represent and warrant to District that City is fully acquainted with the nature and condition, in all respects, except with respect to underground tanks or toxic materials as set forth in Section 3.3 hereto, of the Leased Site, including, but not limited to, the title of District, the soil and geology of the land, and the condition of the improvements. City agrees that the Leased Site is adequate and suitable for its purposes and accepts the Leased Site in its existing condition "as is", except as set forth in Section 3.3 hereto.

3.1.3 **Acceptance and Surrender of Leased Site.** Prior to entry of the Leased Site hereunder, District shall disclose in writing all defects in the structures on the Leased Site known to the District and any law that the District knows is not currently being complied with. Notwithstanding the preceding sentence, District shall not be required to conduct any inspections or review any applicable law, but shall only be required to disclose information regarding defects or laws which it has on hand or in its files. City and District shall inspect the Leased Site and City and District agree that the Leased Site is in the condition as described in Exhibit I hereto.

3.1.4 District shall surrender the Leased Site to City at the commencement of this Lease free of any tenant obligations, except as set forth on Exhibit J, and the City shall likewise surrender the Leased Site at the termination of this Lease free of any tenant obligations.

City understands that a portion of the Leased Site is presently subject to the leases set forth on Exhibit J and agrees to an assignment of said leases from District to City. District shall, upon execution of this Lease, assign its rights as Lessor under the leases set forth in Exhibit J to City.

3.1.5 **Delay in Delivery of Possession.** The District shall deliver possession of the Leased Site to City on the commencement date. If District does not deliver possession on commencement date, then City, at its option, may terminate the Lease by written notice delivered to District within ten (10) days of scheduled commencement date, in which event neither party shall have any
further obligation or liability to the other, unless delay is caused by acts of God, strikes, war, governmental bodies other than the City, weather, destruction and any delays beyond District’s reasonable control.

3.1.6 Early Occupancy. If City is permitted by District to occupy the Leased Site prior to the Commencement Date for the purposes of repairing or installing fixtures or for any other purpose permitted by District, all of the terms and provisions hereof shall be applicable as of the date of such occupancy, except for the obligation to pay rent which shall commence on the Commencement Date.

3.2 Uses of Leased Site

3.2.1 Permitted Uses. The Leased Site shall be used and occupied for any lawful purpose.

3.3 Toxic Materials

3.3.1 "Toxic Materials" for the purposes of this Section are defined as any hazardous, toxic, or radioactive materials, including, but not limited to those materials identified in Sections 66680 and 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30, as amended from time to time.

3.3.2 City shall indemnify and hold District harmless from any and all costs, claims, judgments, including District’s attorneys’ fees and court costs, relating to the storage, placement or use of Toxic Materials by City on or about the Leased Site. City shall reimburse District for (i) all costs of cleanup or other alterations to the Leased Site necessitated by City’s use, storage, or disposal of Toxic Materials; and (ii) any diminution in the fair market value of the Leased Site caused by City’s use, storage, or disposal of Toxic Materials. The obligations of City under this Section 3.3.2 shall survive the expiration of the Lease term.

3.3.3 In the event of an emergency, City may act without District approval to cure or eliminate any dangerous condition which may give rise to a claim against the City. An emergency shall be defined as an unforeseen combination of circumstances or resulting state that calls for immediate action.

3.3.4 District has provided City with an asbestos report on the Leased Site attached hereto as Exhibit K. To District’s knowledge, no other asbestos conditions exist on the Leased Site. City accepts the Leased Site subject to its existing conditions and shall bear any costs associated with encapsulation and/or removal of asbestos. City shall also be responsible for compliance with the Asbestos Hazard Emergency Response Act and any other state or federal regulations, existing or subsequently enacted, relating to asbestos conditions on the Leased Site.

3.3.5 District shall indemnify and hold City harmless from any and all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including City’s attorneys’ fees and court costs, relating to the storage, placement or use of Toxic Materials or underground tanks existing on or
about the Leased Site before the commencement of this lease, whether or not the parties are aware of the existence of any such underground tanks or any such use of Toxic Materials. District shall pro rata reduce rent and reimburse City for (i) losses in or reductions to rental income or City's use of the Leased Site resulting from District's use, storage or disposal of Toxic Materials or underground tanks, and (ii) if required by law to clean up the Leased Site, all costs of clean-up or other altertions to the Leased Site necessitated by District's use, storage or disposal of Toxic Materials or underground tanks. If not required by law to so clean up the Leased Site and if District elects not to clean up said site, City shall have the right to terminate this lease as to the Leased Site upon sixty (60) days notice to the District and the lease payment shall be adjusted accordingly. The obligations of District under this Section 3.3.5 shall survive the expiration of the lease term.

3.3.6 In the event that money has become available from the State of California for the cleanup of asbestos, District shall attempt in good faith to obtain a share of such funds to be applied to necessary cleanup work at the Cubberley Site.

3.4 Utilities and Maintenance

3.4.1 City Responsibility. It shall be the responsibility of City to provide and pay the cost of all maintenance and repair on the Leased Site including, but not limited to, all interior and exterior work on the Buildings on the Leased Site and all plumbing, fire sprinkler, sewage, heating, ventilation, air conditioning, roof repair and replacement, electrical and lighting facilities, irrigation systems, tennis courts, fences, athletic equipment, attendant landscaping, litter collection and removal. Such maintenance shall be in accord with standards acceptable to the City and such standards shall be, at a minimum, those of the District in maintaining school sites not being used for classroom purposes as of June 30, 1989.

City shall, at City's expense, promptly comply with the requirements of every applicable law with respect to the condition, maintenance, use or occupation of the Leased Site including the making of any alteration or addition to, or any structure upon, connected with, or pertinent to the land, whether or not such alteration be structural, or be required on account of any particular use to which the Leased Site or any part thereof, may be or is now put, and whether or not such law be of a kind now within the contemplation of the parties hereto, except as set forth in Section 3.3 hereto; and shall likewise comply with any applicable regulation or order of any applicable Board of Fire Underwriters or other body having similar functions, or of any liability or fire insurance company by which City may be insured. However, City and District agree to renegotiate this Lease if any new law or regulation necessitates the City's expending, in any calendar year, $250,000 or more.

3.4.2 District Responsibility. District shall not be required or obligated to make any changes, alterations, additions, improvements or repairs in, on, or about the Leased Site, or any part thereof, during the term of this Lease, except as set forth in Section 3.3 hereto except to the extent District may have
obligations and responsibilities as a Lessee.

3.4.3 Utility Costs. City shall pay all costs of utility and scavenger services delivered to the Leased Site.

3.4.4 Notice. The person to whom the District may report any maintenance problems associated with the Leased Site is the City's Manager, Real Property.

3.5 Alterations and Improvements

3.5.1 City may make such alterations, additions, improvements, or structural changes of whatever nature it deems necessary for its effective use of the Leased Site without District approval. The cost of any alteration, addition, improvement, or structural change shall be borne by City, unless otherwise agreed in writing by District. City shall give District thirty (30) days prior notice before making any improvement, demolition or reconstruction estimated to cost more than $100,000 for the purpose of providing an opportunity for District comment. At the termination of this Lease, at its cost, City shall:

(a) Restore those portions of the Leased Site improved by City or Subtenants to a condition equal to or better than then applicable requirements of the State Architect or other appropriate State agency for school buildings unless otherwise agreed by District in writing; and

(b) Notwithstanding the fact that the buildings on the Leased Site contain 180,000 sf+, return Leased Site to District containing a minimum of 150,000 square feet of buildings unless otherwise agreed by District in writing.

3.5.2 In the event of an emergency, City may act without notice to District to cure or eliminate any dangerous condition which may give rise to a claim against the City. An emergency shall be defined as an unforeseen combination of circumstances or resulting state that calls for immediate action.

3.5.3 The improvements, including the additions and alterations, when completed, shall comply with all applicable laws and shall likewise comply with any applicable regulations or order of the applicable Board of Fire Underwriters or other agency having similar functions, or of any liability or fire insurance company by which City may be insured. District will, upon thirty days prior written notice from City, execute any documents required to be signed on its part to obtain any necessary final inspection report (except that District shall not be obligated to incur any obligation or liability thereby.)

3.5.4 The parties recognize that under current law, including the California Law of Mechanics Liens, a lien cannot attach to publicly owned property. However, if at any time such laws have changed, thereby permitting any lien, charge or encumbrance upon the Leased Site, neither City nor District shall permit to remain, and shall promptly discharge, at the appropriate party's
expense, all stop notices, liens, encumbrances or charges upon the Leased Site or any part thereof. Neither party shall permit any mechanic's or materialmen's liens or any other claims or demands of any nature, arising from any work by such party of construction, repair, restoration, or removal as herein provided, to be foreclosed against the Leased Site or any part thereof. In the event either party permits any mechanic's or materialmen's liens to be levied upon the Leased Site, the failure of such party to remove said liens within 90 days thereafter, shall be a material default hereunder.

3.6 Operating Expenses. City shall pay all Operating Expenses for the Leased Site. The term "Operating Expenses" shall mean all costs and disbursements which City shall pay or become obligated to pay in connection with the maintenance, repair and operation of the Leased Site.

3.7 Taxes

3.7.1 Real and Personal Property Taxes. City shall pay, prior to delinquency, any taxes, fees, assessments or public charges, assessed to District or City, including but not limited to, assessments for public improvements or benefits, which shall be imposed upon the Leased Site, City's estate in this Lease or City's leasehold improvements, trade fixtures, furnishings, equipment and other personal property of City located on the Leased Sites.

3.7.2 Possessory Interest. In the event a possessory interest tax accrues to the Leased Site, it is understood that City shall pay all such tax in its entirety prior to delinquency. City shall be responsible for filing any required possessory interest forms for the Leased Site with the County of Santa Clara.

3.7.3 Nonuse Tax. City and District shall divide equally any nonuse taxes for the Leased Site, as required by Education Code Section 39015, or successor legislation.

3.8 Insurance

3.8.1 City's Liability Insurance. City shall keep in force during the term hereof, at City's expense, and City shall cause District to be named as "additional insured" thereunder, liability insurance for coverage up to $5 million per person and $5 million per accident, and property damage of $1 million combined single limit. The City's insurance shall be primary and any coverage maintained by the District shall be excess to the coverage required to be provided by the City and not contributive to City's insurance. Copies of said policies or certificates thereof shall be deposited with District and the City shall obtain the written agreement of insurers to notify the District in writing 30 days prior to any termination or nonrenewal of insurance. City may satisfy such insurance requirements by endorsement to existing policies. Should the City choose not to purchase insurance, coverage will be provided by either the City's self-insuring for the required amounts or the City's entering into a pooling program with applicable coverage. Coverage in excess of the City's $1 million self-insured retention may be provided by the City's participation within the ACCEL Joint
Powers Agreement. Coverage by ACCEL must be approved by said board of directors. City shall inform District within thirty (30) days of any change relating to specific lines of coverage.

3.8.2 City's Property Insurance. City shall keep in force during the term hereof, at City's expense, property insurance against loss or damage to the improvements on the Leased Site by fire, vandalism, malicious mischief, and all hazards included in all risk coverage, excluding asbestos and earthquake coverage, in such amounts as may be sufficient at all times to prevent District or City from becoming co-insurers under the provisions of applicable policies and insurance, but in any event in an amount not less than 100% of the replacement cost of the improvements. In determining the replacement cost of the improvements, foundation shall be excluded unless the insurer or insurers shall require the inclusion of same in their determination of such replacement costs.

City shall also keep in force during the term hereof, at City's expense, adequate boiler and pressure vessel insurance policies in the limits of at least $500,000 per occurrence, insuring the District against any and all liability resulting from the operation of any of the heating plants and/or pressure vessels located on the Leased Sites provided that the boilers and machinery on the Leased Sites have been certified by a state certified Boiler and Machinery Inspector.

The parties recognize that the insurance practices of a municipality may differ from that of private parties and may change from time to time. Accordingly, during any period of time in which the city maintains insurance as a regular practice on the buildings and structures it owns, City shall maintain the insurance required by this Section. During any period of time in which City as a regular practice has not maintained insurance but rather self insures, or participates in a Joint Power Agreement with other governmental entities, its buildings and structures, City may insure the Leased Site in this manner, and City shall be liable for any casualty or injury.

3.9 Damage or Destruction

3.9.1 In the event of damage or destruction on the Leased Site, City shall, at no cost or expense to District, whether or not any particular casualty is covered by insurance, either promptly repair or rebuild the same so as to make the building at least equal in value to the building existing immediately prior to such occurrence and as nearly similar to it in character as shall be practicable and reasonable, or it may choose to terminate this Lease as to the Cubberley Site only and pay to District all insurance proceeds payable to City as a result of such casualty, provided that if District intends not to rebuild the building(s) (excluding accessory buildings) where the casualty occurred, within two years of the casualty, District and City shall divide equally the insurance proceeds. In the event the City self insures pursuant to Section 3.8.2, City shall pay to District an amount equal to the full replacement cost of the improvements if it terminates the Lease pursuant to this Section.

3.9.2 City's obligation to make payments and to perform all its
covenants and conditions shall not be affected by any damage or destruction of the improvements, and City hereby waives the provisions of any law now or hereafter in effect contrary to such obligations of City, as herein set forth, or which relieves City therefrom. Without limiting the generality of the foregoing, City hereby waives the provisions of Section 1932 of the California Civil Code with respect to putting the property in good condition or repairing it.

3.10 Condemnation or Possession. If any part of the Leased Site shall be taken for any public, or quasi-public use, under any statute or by right of eminent domain or purchase in lieu thereof, or if any part of the Leased Site is possessed (excluding lease-backs) by the District, this Lease shall be re-negotiated. If the parties in good faith cannot reach agreement on amended terms of the Lease, the Lease shall terminate. All compensation awarded upon any taking or repossession hereunder shall be divided as the interest of the parties may appear.

3.11 Assignment and Sublease

3.11.1 The City, with the written consent of the District, which consent shall not be unreasonably withheld, may at any time and from time to time pledge, assign, or otherwise transfer this Lease or any interest of the City herein. City without the consent of the District may at any time and from time to time sublease the Leased Site or any improvements thereon on any part thereof. The City shall at all times remain liable for the performance of the covenants and conditions on its part to be performed hereunder notwithstanding any such assigning, transferring or subletting which may be made. Any sublease, assignment or transfer shall be coterminous in every respect with this Lease.

3.11.2 Any transfer, assignment or encumbrance of this Lease or the Leased Site, in whole or in part, which is contrary to or not provided for in Section 3.11.1 is void.

3.12 Option to Purchase and Restriction on Sale

3.12.1 Provided this lease is still in effect, if the District wishes to sell its fee interest in the Cubberley Site during the first 25 years of this Lease, District shall give written notice of such intention to the City. City shall have the option to acquire the Site on the following terms:

(a) The portion of the Site subject to the Naylor Act as set forth in Exhibit M – 25% of fair market value.

(b) The portion of Site not subject to the Naylor Act – 80% of fair market value.

(c) If the parties are unable to agree on fair market value, it shall be determined by the average of two appraisals, one prepared by a qualified independent appraiser appointed by the District and one appointed by the City.

(d) Written notice of the City's intention to exercise its option
must be given to District within ninety (90) days of District’s notice to City.

(e) Upon receipt of the notice of the City’s intention to exercise its option, escrow shall be opened immediately and City shall deposit into escrow all necessary documents and money to close escrow within ninety (90) days of the date of the written notice of the City’s intention to exercise its option. If delay occurs beyond control of City, escrow shall be extended an additional thirty (30) days.

3.12.2 Provided this lease is still in effect, if the District wishes to sell its fee interest in the Cubberley Site during years 26 through 35 of this Lease and for an additional two (2) years after termination, District shall give written notice of such intention to the City. City shall have the option to acquire the Site on the following terms.

(a) The portion of the Site subject to the Naylor Act as set forth in Exhibit M -- 25% of fair market value.

(b) The portion of Site not subject to the Naylor Act -- 90% of fair market value.

(c) If the parties are unable to agree on fair market value, it shall be determined by the average of two appraisals, one prepared by a qualified independent appraiser appointed by the District and one appointed by the City.

(d) Written notice of the City’s intentions to exercise its option must be given to District within ninety (90) days of District’s notice to City.

(e) Upon receipt of the notice of the City’s intention to exercise its option, escrow shall be opened immediately and shall close within ninety (90) days of the date of the written notice of the City’s intention to exercise its option. If delay occurs beyond control of City, escrow shall be extended an additional thirty (30) days.

3.12.3 In the event the Naylor Act is no longer in effect on the date the written notice referred to in Sections 3.12.1 and 3.12.2 is given, the provisions of Section 3.12.1(a) and 3.12.2(a) shall not be applicable and the entire Cubberley Site shall be priced in accordance with Section 3.12.1(b) or 3.12.2(b) as appropriate.

3.12.4 For a two (2) year period following the termination of this Lease, District shall not sell the Cubberley Site to any party other than the City.

3.13 Quiet Enjoyment. The parties hereto mutually covenant that the City, by keeping and performing the agreements and covenants herein contained, shall, at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Leased Site without suit, trouble or hindrance from the District.

3.14 Hold Harmless
3.14.1 City shall indemnify, defend and hold District harmless from any liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of, or in any way connected with, City’s and any sub-lessees’ or assignees’ operations on, possession, use, management, improvement, alteration or control of the Leased Site, except for sole negligence of District, its officers, employees or agents, and except for the liability borne by District as set forth in Section 3.3.5.

3.14.2 In addition to the liability borne by District as set forth in Section 3.3.5, District shall indemnify and hold City harmless from any liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of, or in any way connected with District’s operations on, possession, use, management, improvement, alteration or control of the Leased Site except for any claims or liability, or portions thereof, arising from the sole negligence of City, its officers, employees or agents, sublessees or assignees.

4.0 COVENANT NOT TO DEVELOP

4.1 District hereby covenants with City and City hereby covenants with District that, in order to prevent a further burden on the City’s infrastructure and in order to preserve a substantial amount of the City’s remaining open space, which contributes to the welfare of the City’s residents, the Covenanted Sites situated in the City of Palo Alto and described in Exhibits B, C, D, E, F and G attached hereto and made a part hereof, shall not be (1) subdivided, (2) sold or (3) developed with additional square footage to be used for non-school district purposes for the term of this Lease, for the consideration and upon all the conditions set forth herein, provided that the District may add portable non-permanent structures totalling no more than 2,000 square feet per Covenanted Site. If the District adds such square footage on any Covenanted Site it shall give written notice to the City within 30 days of such addition.

Upon the expiration or earlier termination of this Lease, except as provided in Section 4.2, the City shall execute and deliver to District a quitclaim deed for the Covenanted Sites, unless otherwise agreed to by the parties.

4.2 In the event the District closes either Jordan or Jane Lathrop Stanford, or both, as an operating school(s) during the term of this Lease, the District shall not subdivide, sell or develop the Site(s) for a period of seven (7) years after the closure of the school(s). The City’s obligation to pay District for the closed Site(s) under Section 2.2 shall cease as of the date of closure. During the period from the closure until the end of the seven (7) years, the District may lease the Site(s) subject to applicable City zoning regulations.

5.0 EXTENDED DAY CARE SPACES

5.1 Space Provided

5.1.1 During the term of this agreement, District agrees to provide and City agrees to accept eleven (11) spaces at various elementary school sites to
be used for the purpose of providing City-operated extended day child care services. Said sites are listed on *Exhibit L*.

Additional child care spaces may be added in the event District opens additional elementary school sites including the Covenanted Sites.

5.1.2 District may, with the agreement of City, consolidate two child care spaces at one site. In no event shall more than three such consolidations occur.

It is understood the District shall bear the cost of transporting students in the event of such consolidation of spaces and City shall still compensate District for each and every space pursuant to Sections 2.3 and 5.1.1.

5.1.3 District may, with the agreement of City, substitute a portable for conventional classroom space.

5.1.4 In the event City and District cannot agree on the issue of consolidation contained in Section 5.1.2 or on the issue of substitution contained in Section 5.1.3 the matter shall be resolved by a three member arbitration panel. City and District shall each promptly appoint their representative to the panel and the two representatives shall select the third panel member. The decision of the panel shall be final and binding on both parties.

5.1.5 The space provided shall include appropriate access to designated rest rooms and other ancillary facilities such as playground equipment where appropriate, and shall be available to City 24 hours a day, 7 days a week.

5.1.6 The space provided shall meet appropriate State standards for at least twenty-five students and shall have all utility connections in place except for telephone. Specifically, the rooms shall have shelving and closets in place, however no furniture, toys or other equipment shall be provided by District.

5.1.7 Portables and conventional classroom space provided shall also conform to State standards for toxic materials as defined in Section 3.3.1. District shall be responsible for compliance with the Asbestos Hazard Emergency Response Act and any other State or Federal regulations, existing or subsequently enacted, relating to asbestos conditions for the extended day care space provided.

5.2 *City Responsibilities*

5.2.1 If City determines, at its sole discretion, to operate an extended day child care program in the spaces provided by District, it shall be the sole responsibility of the City to provide such services in the District designated spaces to persons desiring such services. The hours for such services shall be as set forth in Section 1.1.13.

5.2.2 City shall bear cost of utilities to the space including
telephone. Unless separate meters are provided, the cost shall be prorated on a square footage basis (square footage of City space to total square footage of buildings on entire Site).

5.2.3 City shall, at City's own expense, provide for minor maintenance to the space including but not necessarily limited to: electrical (ex. ballasts and switches), plumbing fixtures (ex. leaky faucets and pipes), wall and floor coverings and windows.

5.2.4 City shall, at City's own expense, provide for custodial services.

5.2.5 City shall be responsible for security of the leased space at all times and security of the rest rooms outside the customary hours of school operation. Security shall mean locking all windows and doors and turning off lights.

5.3 District Responsibilities

5.3.1 District shall maintain fire and extended coverage insurance on the structures housing the child care programs with limits of full replacement value. In the event of damage or destruction to the premises, District shall promptly restore the premises to their pre-existing condition.

5.3.2 District, at District's own expense, shall be responsible for major maintenance to the child care premises including roof, sewer and electrical hook-ups, heating, and air-conditioning and removal of toxic material where applicable.

5.4 Delay in Delivery of Possession. If the District, for any reason whatsoever, cannot deliver possession of eleven spaces to City on the commencement date, this agreement shall not be void or voidable, nor shall District be liable to City for any loss or damage resulting therefrom. In such event, City shall be relieved of its obligation to pay for a child care space in the amount equivalent to the unit value of each space not delivered. For the first year of this agreement the unit value of one child care space is $27,273 per year.

5.5 Hold Harmless

5.5.1 District shall indemnify and hold City harmless from any and all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including City's attorneys' fees and court costs, relating to the storage, placement or use of Toxic Materials on or about the space or spaces for extended day care, whether or not the parties are aware of the existence of or any such use of Toxic Materials. District shall pro rata reduce rent and reimburse City for all costs of clean-up required by law or other alterations to the spaces necessitated by District's use, storage or disposal of Toxic Materials. If not required by law to so clean up a space or spaces, City shall have the right to terminate the Lease as to the specific space or spaces upon thirty (30) days notice.
and the Lease payment shall be adjusted accordingly. The obligations of District under this Section 5.5.1 shall survive the expiration of the Lease term. "Toxic Materials" shall have the same meaning as in Section 3.3.1 of this Lease.

5.5.2 City shall indemnify and hold District harmless from any and all costs, claims, judgments, including District's attorneys' fees and court costs, relating to the storage, placement or use of Toxic Materials by City on or about the space or spaces for extended day care. City shall reimburse District for (i) all costs of cleanup or other alterations to the space or spaces for extended day care necessitated by City's use, storage, or disposal of Toxic Materials; and (ii) any diminution in the fair market value of the space or spaces for extended day care caused by City's use, storage, or disposal of Toxic Materials. The obligations of City under this Section 5.5.2 shall survive the expiration of the Lease term.

5.5.3 City shall indemnify, defend and hold District harmless from any liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of, or in any way connected with, City's and any sublessees', or assignees' operations on, possession, use, management, improvement, alteration or control of the Extended Day Care spaces except for any claims or liability, or portions thereof, arising from the sole negligence of District, its officers, employees or agents, and except for the liability borne by District as set forth in Section 5.5.1.

5.5.4 In addition to the liability borne by District as set forth in Section 5.5.1, District shall indemnify and hold City harmless from any liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of, or in any way connected with, District's and/or any sublessees' or assignees' other than City, operations on, possession, use, management, improvement, alteration or control of the Extended Day Care spaces except for any claims or liability, or portions thereof, arising from the sole negligence of City, its officers, employees, agents, sublessees or assignees.

6.0 GENERAL CONDITIONS

6.1 Term

6.1.1 The term of this Lease shall be for fifteen (15) years, commencing on January 1, 1990 (the "Commencement Date"), and ending on December 31, 2004, (the "Expiration Date"), unless sooner terminated or extended pursuant to the provisions hereof.

6.1.2 The City shall have the right to extend the term of this Lease for an additional ten (10) years by giving written notice to the District not later than December 31, 2003.

6.1.3 Upon mutual agreement of City and District, the term of this Lease may be extended beyond December 31, 2013 for 2 additional periods of five (5) years each.
6.1.4 City and District agree that fifteen (15) years is the length of time necessary to secure the benefit of the District’s covenant not to develop set forth in Section 4.0; provided that such agreement in no way limits the parties’ rights to terminate this Lease pursuant to Section 6.5 hereof.

6.2 Breach

6.2.1 If the City shall fail to pay any payment payable hereunder when the same becomes due and payable, or the City shall fail to keep or perform any other material term covenant or condition contained herein to be kept or performed by the City for a period of 25 days after written notice thereof from the District, the City shall be deemed to be in default hereunder and the District, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(a) To terminate this Lease in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Leased Site and/or Extended Day Care space as hereinafter provided for in subparagraph (b) hereof, and to re-enter the Leased Site and/or Extended Day Care space and remove all persons in possession thereof and all personal property whatsoever situated upon the Leased Site and/or Extended Day Care space. In the event of such termination, the City agrees to surrender immediately possession of the Leased Site and Extended Day Care space, without hindrance, and to pay the District all damages recoverable by law that the District may incur by reason of default by the City.

(b) Without terminating this Lease, (i) to collect each installment of payment as it becomes due and enforce any other material term, covenant or condition contained herein to be kept or performed by the City which failure to keep or perform by the City would have a material adverse effect on the interests of the District under this Lease or (ii) to exercise any and all rights of entry and re-entry upon the Leased Site and Extended Day Care space. In the event the District does not elect to terminate this Lease in the manner provided for in subparagraph (a) hereof, the City shall remain liable and agrees to keep or perform all terms, covenants and conditions herein contained to be kept or performed by the City and, if the Leased Site and/or Extended Day Care space is not re-let, to pay the full amount of the payment to the end of the term of this Lease or, in the event that the Leased Site and/or Extended Day Care space is re-let, to pay any deficiency in payment that results therefrom; and further agrees to make said payment and/or payment deficiency punctually at the same time and in the same manner as hereinabove provided, and if the District receives payments therefrom in any payment period in excess of the payment provided for in Section 2.0 hereof for such period, the District shall pay such excess (after expenses incurred in connection with such re-letting) to the City on the last day of said payment period. Should the District elect to re-enter as herein provided, the City hereby irrevocably appoints the District as the agent and attorney-in-fact of the City to re-let the Leased Site and/or Extended Day Care space, or any part thereof, from time to time, either in the District’s name or otherwise, upon such terms and conditions and for such use and period as the District may deem advisable.
and to remove all persons in possession thereof and all personal property
whatsoever situated upon the Leased Site and/or Extended Day Care space. The
City agrees that the terms of this Lease constitute full and sufficient notice of the
right of the District to re-let the Leased Site and/or Extended Day Care space in the
event of such re-entry without effecting a surrender of this Lease, and further
agrees that no acts of the District in effecting such re-letting shall constitute a
surrender or termination of this Lease irrespective of the use or the term for
which such re-letting is made or the terms and conditions of such re-letting, or
otherwise, but that, on the contrary, in the event of such default by the City, the
right to terminate this Lease shall vest in the District to be effected in the sole and
exclusive manner provided for in subparagraph (a) hereof.

Each and all of the remedies given to the District hereunder or by any law
now existing or hereafter enacted are cumulative, and the exercise of any one
right or remedy shall not impair the right of the District to any or all other
remedies.

6.2.2 In the event that City shall default in the performance of any
of the agreements, conditions, covenants or terms herein contained, which event
of default remains uncured after notice given as herein provided, District may
immediately, or at any time thereafter, perform the same for the account of the
City, and any amount paid, or any expense or liability incurred, by the District in
the performance of the same shall be repaid to District, in addition to base
payments by the City within 30 days after demand hereunder together with
interest from the date, the cost or expenses incurred at an amount equal to the
lesser of 12 percent per annum or the maximum lawful rate of interest then in
effect under the laws of the State of California; and the District shall have the
right to enter (by force or otherwise) the Leased Site and/or Extended Day Care
space for the purpose of correcting or remediying such default and to remain
therein until the same shall have been corrected or remedied.

No performance by District of any of the obligations on City’s part to be
performed hereunder shall be, or be deemed to be, a waiver of the City’s default in
or failure to perform the same, nor shall the performance thereof by District
release or relieve City from any obligations on its part to the performed under this
Lease.

6.2.3 If the District shall fail to keep or perform any obligation,
covenant, agreement or provision contained herein to be observed or performed by
the District for a period of 25 days after written notice thereof from the City, the
District shall be deemed to be in default hereunder, and the City may take
whatever action, at law or in equity, may appear necessary or desirable to enforce
the observance or performance of any such obligation, covenant, agreement or
provision including termination of this Lease.

6.2.4 In the event of a breach, or threatened breach, by either party
of any of the agreements, conditions, covenants, or terms herein, the other party
shall have the right of injunction to restrain the same, and the right to invoke any
remedy allowed by law, or in equity, as if specific remedies, indemnity or
reimbursements were not herein provided for. All rights and remedies herein
given to either party shall be cumulative to each other and to any other legal or
 equitable remedy or right which the party might otherwise have in the event of
any breach by the other party.

6.3 Surrender and Title to Property

6.3.1 On the last day of the term of this Lease, or any sooner
termination, City shall surrender the Leased Site and Extended Day Care space to
the District, in reasonably the same condition as City received the Leased Site and
Extended Day Care space, ordinary wear and tear and any permitted approved
and lawful changes, alterations, additions and improvements thereto excepted,
except as otherwise required by Section 3.5.2. City, upon the expiration or sooner
termination of this Lease, shall repair any damage to the Leased Site and
Extended Day Care space occasioned by the removal of City's fixtures,
furnishings, equipment and other personal property. All of City's property which
is removable pursuant to the provisions of this Lease shall be removed by City on
or before the last day of the term of the earlier termination of this Lease, and all
property not so removed shall be deemed abandoned by City, and District shall
have the right either to require City to remove said property from the land or
dispose of the property pursuant to Section 6.5.3 as set forth below.

6.3.2 Title to the Leased Site and Extended Day Care space shall
remain in the District during the term of this Lease. All improvements placed
upon the Leased Site and Extended Day Care space by City at City's expense shall
be and remain the property of City for and during the term of this Lease. Upon
expiration or sooner termination of this Lease, such improvements shall belong to
and become the property of District, free from any rights, claims and liens of City
or any person, agency, political subdivision, firm or corporation claiming under
City, without any compensation therefore from District to City or to any other
person, agency, political subdivision, firm or corporation, unless otherwise
agreed to by the parties at the time the improvement is made. At the expiration or
sooner termination of this Lease, such improvements shall be surrendered to
District, excepting that movable furniture, personal property and trade fixtures
may be removed by City at or before the expiration or sooner termination of this
Lease, provided, however, that the removal of any of the property so excepted will
not structurally injure the improvements or necessitate any changes or
alterations in the improvements or render the improvements or any part thereof
unfit for use and occupancy. City shall pay the cost of restoration of, or repairing
any damage to, the Leased Site and Extended Day Care space arising from the
removal of the property so excepted.

6.4 Naylor Bill Allocations. As previously stipulated by the parties in
previous agreements, the portions of the Sites subject to the Naylor Bill (Education
Code Section 39390 et seq.) are shown in Exhibit M hereto. Nothing in this Lease
shall be deemed to expand, diminish, waive or otherwise limit the applicability of
the Naylor Bill to said portions of the Site, including the obligation of the City to
maintain the property, as shown in Exhibit M, for recreational open space
purposes and the right of the District to re-acquire said property pursuant to
Education Code Section 39398 or its successor legislation. In the event the
provisions of the Naylor Bill terminate, the applicability of "Naylor" to portions of
sites contained in Exhibit M also ceases.

6.5 Termination. In addition to the rights of termination for breach
found in Section 6.2, this Lease may be terminated as set forth in Sections 6.5.1
and 6.5.2.

6.5.1 City Termination

(a) Debt Limitation. In the event the Council of the City does
not appropriate funds for payment of the payments due under this Lease in any
year, this Lease shall terminate upon 90 days written notice.

(b) Gann Limit. The city may terminate this Lease in any
fiscal year in which the City is not authorized by the Palo Alto electorate to exceed
the expenditure limitation imposed by the California Constitution and any other
State or Federal legislative act, commencing with the fiscal year 1991-1992. In
that event, the City may terminate this Lease upon six (6) months written notice
which must be given within 30 days of an unsuccessful election seeking such
authorization.

(c) Restriction on Taxing Power. If State or Federal law is
enacted, an initiative measure passed or a court decision rendered which reduces
the City's general fund revenue or restricts the City's authority to collect or levy
general fund taxes which the City has the right to collect or levy as of the
Commencement Date of this Lease, the City may terminate this Lease, in whole
or in part as hereafter set forth, by giving six (6) months written notice to District,
after such law, measure or decision becomes effective; provided, however, there
shall be no right of termination unless the effect of such law, measure or decision
is to reduce the City's general fund revenue or taxing authority by $1,500,000, in
comparison with the previous fiscal year.

The amount set forth in this Section shall be adjusted annually by the
Consumer Price Index on the commencement anniversary date of the Lease in
the manner set forth in Section 2.7 hereof.

6.5.2 District Termination. The District may terminate this Lease
in part on the following conditions:

(a) Notwithstanding the provision of Section 4.1., in the
event District general fund revenues decline 10% from one District fiscal year to
the next, the District may terminate this Lease with regard to one of the
Covenanted Sites described in Exhibits B, C, D, E, F, and G upon one year's
written notice, solely for the purpose of selling that Site. District shall give City
the right of first refusal to purchase such Site, subject to the following provisions:

(i) One year after said written notice, District shall
establish the price and terms upon which it is willing to sell the Site and shall
give written notice thereof to the City.

(ii) For sixty (60) days from the date of delivery of the notice, City shall have the right to notify District it will exercise its right to purchase such Site at the price and on the terms and conditions stated in the notice; provided that the price shall be reduced by any previous agreements still in force between City and District regarding the price of such Site and by any state or federal law, including but not limited to the Naylor Act (Education Code Section 39890 et seq.), affecting the price of such Site.

(iii) If within said sixty (60) day period the City notifies District that it will exercise its right to purchase such Site, escrow on the Site shall be opened immediately and shall close within ninety (90) days of the notice by City to District that it is exercising its right to purchase.

(iv) If the City notifies District it will not exercise its right to purchase such Site, or does not notify District it will exercise its right to purchase such Site within 60 days of receiving notice from the District, the District may sell such Site at a price not less than the price and on the terms and conditions specified in the notice.

(b) Notwithstanding the provisions of Sections 4.1, in the event the District wishes to reopen, as an operating school, any of the Covenanted Sites described in Exhibits D, E and F, it may do so upon written notice to City provided, however, in such event, City and District shall amend this agreement to include within the Covenant Not to Develop set forth in Section 4.1, two operating elementary school sites of the District within the City limits of the City of Palo Alto. The City's payment obligations to District as set forth in Section 2.2 shall not be reduced by reason of the reopening of one of the Covenanted Sites provided that the District includes within the Covenant Not to Develop two operating elementary schools.

(c) Reduction in Payment. If the District partially terminates this Lease with regard to a Covenanted Site under Section 6.5.3, the Payment due under this Lease shall be reduced according to the proportion of payment allocated to such Site as set forth in Section 2.2.

6.5.3 Surrender Upon Termination. Upon occurrence of any termination event, this Lease will terminate, or partially terminate as set forth herein, and all City’s rights, title and interest in the Leased Site (Exhibit A) or Extended Day Care spaces (Exhibit L) shall terminate. City shall surrender and vacate the said Site and spaces in reasonably the same condition as City received them, reasonable wear and tear excepted, and subject to the provision contained in Section 3.5.1. District shall have the right to re-enter and take possession of said Site and/or spaces and remove all persons therefrom and remove City’s property and place that property in storage in a public warehouse, or store the same elsewhere, all at the expense of City, or sell the same as provided by law for the purpose of recovering any money due and unpaid hereunder by City to District, including District’s storage costs. Upon termination of this Lease,
District shall have the right to recover from City all damages caused by any breach hereof by City, together with any payment due hereunder and unpaid, including all reasonable attorneys' fees and court costs which may be incurred in recovering possession of said Site and/or spaces and in collecting such damages or such payments.

6.5.4 Future Development. Upon the expiration or earlier termination of this Lease, the District shall be free to sell, lease or otherwise dispose of the Sites described in Exhibits A-G and Exhibit L which are the subject of this Lease. However, it is understood by the parties that (a) the District shall have all the same rights and obligations with respect to the development of the Sites as any other developer, and (b) the City shall have the same rights and responsibilities as it would normally have in reviewing and considering any development project that would come before it.

6.5.5 Inconsistencies with Other Agreements. If any provision regarding termination set forth in Section 6.5 hereof is inconsistent with any provision regarding termination set forth in any other agreement between City and District regarding any Site subject to this Lease, the provision in this Lease shall prevail.

6.6 Notices. Any demand or notice which either party shall be required, or may desire, to make upon or give to the other, shall be in writing and shall be delivered personally upon the other, or sent by prepaid registered or certified mail addressed to the respective parties as follows:

DISTRICT: Palo Alto Unified School District
25 Churchill Avenue
Palo Alto, CA 94306
Attention: Superintendent of Schools

CITY: City Clerk
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301
Attention: Manager, Real Property

Notice sent by registered or certified mail in accordance with this Section shall be deemed delivered 72 hours from the date of mailing.

6.7 Attorneys' Fees. If any action or proceeding at law or in equity, or an arbitration proceeding, shall be brought to enforce or interpret any of the terms, covenants or conditions of this Lease, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees. "Prevailing party" within the meaning of this paragraph shall include, without limitation, a party who brings an action against the other after the other is in breach or default, if such action is dismissed upon the other's payment of the sums allegedly due for performance of the covenants allegedly breached, or if the party commencing such action or proceeding obtains substantially the relief sought by it in such
action, whether or not such action proceeds to a final judgment or determination.

6.8 Holding Over. This Lease shall terminate without further notice at the expiration of the Lease term. Any holding over on the Leased Site and Extended Day Care spaces after the expiration of the Lease term, with the express written consent of District, shall be construed to be a tenancy from month to month, at a monthly rental of the last applicable base payment, and shall otherwise be on the terms and conditions herein specified.

6.9 Validity and Severability. If for any reason any portion of this Lease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the District or by the City, or if for any reason it is held by such a court that any of the covenants and conditions of the City or District hereunder, including the covenant to make payments hereunder, is unenforceable for the full term hereof, then and in such event, this Lease is and shall be deemed to be a lease from year to year under which the rentals are to be paid by the City annually in consideration of the right of the City to possess, occupy and use the Leased Site and Extended Day Care space, and all other terms, provisions and conditions of this Lease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

6.10 Waiver. The waiver by either party hereto of any breach by the other party of any agreement, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other agreement, covenant or condition hereof. The receipt by District of any payments with knowledge of any default on the part of City in the observance or performance of any of the provisions of this Lease shall not be deemed to be a waiver of the provisions of this Lease.

6.11 Successors and Assigns. This Lease shall inure to the benefit of and shall be binding upon the District, the City and their respective successors and assigns, subject to the provisions of Section 3.11.

6.12 Agreement Represents Complete Agreement. This Lease represents the entire contract between the parties and supersedes and cancels any and all previous leases, negotiations, arrangements, representations, agreements and understandings between the District and the City concerning the Sites and matters covered hereby, except that the Lease previously entered into between City and District regarding the Ohlone Turf shall not be affected by this Lease.

6.13 Law Governing. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

6.14 Changes in State Law. In the event that changes in state law occur whereby District is not permitted, in whole or in part, to retain payments due it from any source, other than the City, because of provisions of this lease, District shall promptly notify City, and District and City agree to renegotiate terms of this
Lease. Such negotiations shall be directed to assuring that payments due under this Lease will not directly or indirectly replace, or stand in lieu of, payments due District from any other source.

6.15 Amendment. No amendment to this Lease shall be made except in writing and executed by both the District and the City.

6.16 Memorandum of Lease. Upon execution hereof the City shall record in the County Recorder's Office a Memorandum of Lease referencing this Lease.

IN WITNESS WHEREOF, The District and the City have caused this Lease to be executed by their respective officers as of the day and year first above written.

ATTEST:  CITY OF PALO ALTO, Lessee

City Clerk  Mayor

APPROVED AS TO FORM:  PALO ALTO UNIFIED SCHOOL DISTRICT, Lessor

City Attorney  President, Board of Education

APPROVED:  APPROVED:

City Manager  Superintendent of Schools
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AMENDMENT NO. 1
TO LEASE AND COVENANT NOT TO DEVELOP BETWEEN
THE CITY OF PALO ALTO AND
THE PALO ALTO UNIFIED SCHOOL DISTRICT

THIS AMENDMENT to the Lease and Covenant Not to Develop ("Lease") between the City of Palo Alto ("City") and the Palo Alto Unified School District ("District"), dated September 1, 1989, is made and entered into by City and District this 28th day of July, 1998.

RECITALS:

A. Pursuant to Section 4.1 of the Lease, District covenants with City and City covenants with District that, in order to prevent further burden on City’s infrastructure and preserve a substantial amount of City’s remaining open space, certain school sites shall not be subdivided, sold or developed with additional square footage to be used for non-school district purposes.

B. The “Covenanted Sites” are described in Exhibits B, C, D, E, F and G, which are made a part of the Lease by reference. One of the Covenanted Sites is the Ohlone site, commonly known as “old” Ohlone, and more recently renamed “Hoover School.”

C. Section 6.5.2(b) of the Lease provides that in the event District wishes to reopen, as an operating school, any of the Covenanted Sites described in Exhibits D, E, and F, it may do so upon written notice to City, provided that in such event, City and District shall amend the Lease to include within the Covenant Not to Develop two operating elementary school sites of District within the city limits of the City of Palo Alto.

D. District has resolved to reopen the Ohlone site and to designate the Walter Hays site and the Juana Briones site, both sites being within the city limits of the City of Palo Alto, as the two operating school sites to be substituted for the Ohlone site.

E. Pursuant to Section 5 of the Lease, City has operated extended day care services at eleven school sites described in Exhibit L; and City, at its sole discretion, may agree to operate an extended day child care program at additional elementary school sites.

F. City believes that the public interest will be served by operating an additional extended day care program, at the Ohlone site, and therefore, agrees to do so.
E. City and District desire to amend the Lease to provide for the reopening of the Ohlone site and the substitution of the Walter Hays site and the Juana Briones site within the Covenant Not to Develop, and to provide for City’s operation of an extended day care program at the Ohlone site.

NOW, THEREFORE, in consideration of their mutual covenants and agreements, the parties hereto agree to amend the Lease as follows:

SECTION 1. Paragraph 1.1.8 is hereby amended to read as follows:

"1.1.8  Covenanted Sites.  The term "Covenanted Sites" means all of that certain property situated in the City described in Exhibits B, C, D-1, D-2, E, F and G attached hereto and made a part hereof."

SECTION 2. Paragraph 1.1.9 is hereby deleted.

SECTION 3. Paragraphs 1.1.9.1 and 1.1.9.2, respectively, are hereby added to read as follows:

"1.1.9.1 Walter Hays Site. The term ‘Walter Hays Site’ means all of that certain real property situated in the City described in Exhibit D-1 attached hereto and made a part hereof.

"1.1.9.2 Juana Briones Site. The term ‘Juana Briones Site’ means all of that certain real property situated in the City described in Exhibit D-2 attached hereto and made a part hereof."

SECTION 4. Paragraph 2.2 is hereby amended to read as follows:

“Walter Hays
Juana Briones $204,742 (this amount attributable to both school sites together)
Garland $182,804
Greendell $182,804
Jane Lathrop Stanford $236,000
Jordan $164,000"

SECTION 5. Paragraph 2.3 is hereby amended to read as follows:

"2.3  Payment for Extended Day Care Spaces.  As consideration for use of the eleven spaces pursuant to Section 5.0 of this agreement, City shall pay
annually to District the sum of $300,000 or $27,273 per space. All payments to District by City shall be made in twelve (12) equal installments payable monthly commencing on January 31, 1990.

"As of September 1, 1990, City's annual payment to District shall be increased by the sum of $34,792 to reflect the operation by City of an extended day care program at the "old" Ohlone (now Hoover) school site.

"Payment for additional spaces shall be at the adjusted rate for child care space as provided for in Sections 2.3 and 2.7 of this agreement."

SECTION 6. Section 4.1 is hereby amended to read as follows:

"4.1 District hereby covenants with City and City hereby covenants with District that, in order to prevent a further burden on the City's infrastructure and in order to preserve a substantial amount of the City's remaining open space, which contributes to the welfare of the City's residents, the Covenanted Sites situated in the City of Palo Alto and described in Exhibits B, C, D-1, D-2, E, F and G attached hereto and made a part hereof, shall not be (1) subdivided, (2) sold or (3) developed with additional square footage to be used for non-school district purposes for the term of this Lease, for the consideration and upon all the conditions set forth herein, provided that the district may add portable non-permanent structures totaling no more than 2,000 square feet per Covenanted Site. If the District adds such square footage on any Covenanted Site, it shall give written notice to the City within 30 days of such addition.

Upon the expiration or earlier termination of this Lease, except as provided in Section 4.2, the City shall execute and deliver to District a quitclaim deed for the Covenanted Sites, unless otherwise agreed to by the parties."

SECTION 7. Exhibit D to the Lease is deleted and replaced with Exhibits D-1 and Exhibits D-2, respectively; and the Summary of Exhibits is amended accordingly.

SECTION 8. As amended herein, the Lease dated September 1, 1989 remains in full force and effect. In case of any conflict
between any of the amendments made in this Amendment No. 1 and the remaining provisions of the Lease as entered into September 1, 1989, the Lease shall be interpreted so as to give effect to the provisions of this Amendment No. 1.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed by their respective officers as of the day and year first above written.

ATTEST:

[Signature]
City Clerk

CITY OF PALO ALTO, Lessee

[Signature]
Mayor

APPROVED AS TO FORM:

[Signature]
Senior Asst. City Attorney

PALO ALTO UNIFIED SCHOOL DISTRICT, Lessor

[Signature]
President, Board of Education

APPROVED:

[Signature]
Assistant City Manager

Superintendent of Schools
AMENDMENT NO. 2 TO LEASE AND COVENANT NOT TO DEVELOP BETWEEN THE CITY OF PALO ALTO AND THE PALO ALTO UNIFIED SCHOOL DISTRICT

This Amendment No. 2 to Lease and Covenant Not to Develop is entered into this 13th day of April, 2002 by and between the Palo Alto Unified School District ("District") and the City of Palo Alto, a municipal Corporation ("City").

RECITALS

A. The City and the District entered into that certain Lease and Covenant Not to Develop on September 1, 1989 ("Lease") which provides in part that the City leases from the District certain property commonly referred to as the Cubberley Site. The parties entered into the Amendment No. 1 to Lease and Covenant Not to Develop on July 20, 1998.

B. The City and the District have now entered into a property exchange agreement whereby the City will convey to the District a portion of a site known as the Terman site in exchange for the District conveying fee title to the City of 7.97 acres of the Cubberley Site. The City will continue to lease from the District the remaining portion of the Cubberley Site.

C. Pursuant to Section 4.1 of the Lease, District covenants with City and City covenants with District that, in order to prevent further burden on City's infrastructure and preserve a substantial amount of City's remaining open space, certain school sites shall not be subdivided, sold or developed with additional square footage to be used for non-school district purposes.

D. Section 6.5.2(b) of the Lease provides that in the event District wishes to reopen, as an operating school, any of the Covenanted Sites described in Exhibits D, E, and F, it may do so upon written notice to City, provided that in such event, City and District shall amend the Lease to include within the Covenant Not to Develop two operating elementary school sites of District within the city limits of the City of Palo Alto. Amendment No. 1 to the Lease and Covenant Not to Develop
7. Cubberley Lease. Section 3.0 of the Lease is hereby amended in its entirety to read as follows:

"3.0 Cubberley Lease. District hereby leases to City and City hereby leases from District for the term, at the rental, and upon all of the conditions set forth herein, the Leased Site commonly known as 'Cubberley School' situated in the City of Palo Alto described in Exhibit A attached hereto and made a part hereof and all improvements thereon. As of September 1, 2002, the total acreage of the Leased Site is approximately 27.48 acres of which 15.94 acres is outdoor recreation area; the remaining 11.54 acres is comprised of parking lot area, walkways, and approximately 80,150 square feet of buildings; however, it is understood that such acreage and square footage figures are only approximate and have not been precisely determined.

8. Covenant Not to Develop. Section 4.1 of the Lease is hereby amended in its entirety to read as follows:

"4.1 District hereby covenants with City and City hereby covenants with District that, in order to prevent a further burden on the City’s infrastructure and in order to preserve a substantial amount of the City’s remaining open space, which contributes to the welfare of the City’s residents, the Covenanted Sites situated in the City of Palo Alto and described in Exhibits B, C, D-1, D-2, E-1, E-2, F and G attached hereto and made a part hereof, shall not be (1) subdivided, (2) sold or (3) developed with additional square footage to be used for non-school district purposes for the term of this Lease, for the consideration and upon all the conditions set forth herein, provided that the district may add portable non-permanent structures totaling no more than 2,000 square feet per Covenanted Site. If the District adds such square footage on any Covenanted Site, it shall give written notice to the City within 30 days of such addition. Provided, City hereby agrees that placement of up to nine portable class rooms and one portable bathroom, each consisting of approximately 960 square feet, on the Greendell Site, to be used by the JCC as
an interim relocation site for childhood development programs for not more than eight years, shall not be a violation of this Covenant. City acknowledges that location and use of such facilities by District itself for school-district purposes is not a violation of the Covenant and does not require City consent. JCC may not place or use portable facilities on the Greendell Site prior to obtaining a conditional use permit from City.

Upon the expiration or earlier termination of this Lease, except as provided in Section 4.2, the City shall execute and deliver to District a quitclaim deed for the Covenanted Sites, unless otherwise agreed to by the parties."

9. Exhibit E to the Lease is deleted and replaced with Exhibits E-1 and Exhibits E-2, respectively; and the Summary of Exhibits is amended accordingly.

10. District Option to Open Compact High School. Notwithstanding any other provision of the Lease, after the JCC has removed its programs from the City-owned property at the former Cubberley School and from the Leased Site, District may terminate the Lease with respect to all or a portion of the Leased Site so that it may operate a compact high school at Cubberley. District must provide twenty-four (24) months written notice to City of such termination or partial termination. If the District elects a partial termination, the notice shall include a map and legal description specifying the new Leased Site, and the City's payment for the Leased Site, shall be reduced in proportion to the reduction in the land area of the Leased Site. Further, if the District elects a complete or partial termination of the Lease under this Section 10, the District and City shall enter into a joint use agreement regarding the gym, cafeteria, theatre and fields. The Covenant Not to Develop shall remain in effect.

11. Effect of Amendment No. 2.

(a) As amended herein, the Lease dated September 1, 1989 and Amendment No. 1 remain in full force and effect. In case of any conflict between any of the amendments made in this Amendment No. 2 and the remaining provisions of the Lease as entered into September 1, 1989 and Amendment No. 1, the
Lease and Amendment No. 1 shall be interpreted so as to give effect to the provisions of this Amendment No. 2.

(b) This Amendment No. 2 shall be effective upon the date first written above. By separate agreement, parties have agreed that prior to September 1, 2002, District shall transfer to City fee title to that portion of the Cubberley Site removed from the leasehold by Section 7 of this Amendment No. 2. If, pursuant to that agreement, the transfer of Cubberley property to City and the release of City's interest in the reduction in City rent will be accelerated to coordinate with that closing, and the transfer to the District of the City's right to receive rental income for the Terman Site from the JCC.

IN WITNESS WHEREOF, the District and the City have caused this Amendment No. 2 to be executed by their respective officers as of the day and year first above written.

ATTEST:  
\[Signature\]  
City Clerk

CITY OF PALO ALTO  
[Signature]  
Mayor

APPROVED AS TO FORM:  
\[Signature\]  
Senior Asst. City Attorney

PALO ALTO UNIFIED SCHOOL DISTRICT: Lessor  
\[Signature\]  
President, Board of Education

APPROVED:  
\[Signature\]  
City Manager

APPROVED:  
\[Signature\]  
Superintendent of Schools

Exhibit E-1  Addison Site  (Legal Description and Map)  
Exhibit E-2  El Carmelo Site  (Legal Description and Map)
A portion of real property situated in the City of Palo Alto, County of Santa Clara, State of California more particularly described as follows:

ALL of Lots 1, 2, 3 and 4 of Block 81 as shown on the map titled "ORIGINAL MAP SHOWING SUBDIVISION OF UNIVERSITY PARK, SANTA CLARA CO, CALIFORNIA" and recorded in the office of the County Recorder of said Santa Clara County on February 27, 1889 in Book "D" of maps, at page 69.

Parcel contains 200,000 square feet or 4.5913 acres more or less.

Parcel is shown on attached map EXHIBIT E-1 and made a part hereof.

END OF DESCRIPTION

expires 6-30-03
JAMES DAVID KIEHL  P.L.S. 7152
PREPARED BY / APPROVED

LEGAL: 1200610.Word
PLAT: 1200610.DWG
TITLE REPORT: #56901-52990147-PRT

REVISION (1) 34-24-2002

This description are based upon information from record data and said title Report
EXHIBIT E2
EL CARMELO SITE
PROPERTY DESCRIPTION

A portion of real property situated in the City of Palo Alto, County of Santa Clara, State of California more particularly described as follows;

(Grant Deed Book 2126 page 525, dated July 2, 1951)
ALL of Block 20 as laid down designated and delineated upon that certain map entitle, "Map No. 1 Map of Stanford City, Santa Clara County, California " recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. "M" of Maps, page 97 records of said County and

(Resolution and order proclaiming the Abandonment of a County Road Book 2140 page 146, dated January 22, 2951)
El Capitan Road from its intersection with Ramona Street to its intersection with Bryant Street, as the same is delineated and designated upon that certain Map entitled “Map No. 1 Map of Stanford City, Santa Clara County, California “ recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. “M" of Maps, page 97 records of said County and

(Corporation Grant Deed Book 2143 page 235, dated January 30, 1951)
Lots 1 to 18 inclusive in Block 21 as laid down, designated and delineated upon that certain Map entitled, “Map No. 1 Map of Stanford City, Santa Clara County, California “ recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. “M" of Maps, page 97 records of said County and excepting therefrom:

(Grant Deed Book 2455 page 584, dated February 13, 1952)
Beginning at a point on the northwesterly line of Loma Verda Avenue, formerly called College Avenue, distant northeasterly upon said line 10.78 feet from the most southerly corner of Lot 14, Block 21 Map No. 1 Map of Stanford City, Santa Clara County, California “ recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. “M" of Maps, page 97, records of Santa Clara County, California:

thence southwesterly along a curve to the right, having a radius of 370 feet and a central angle of 18° 12’, an arc distance of 117.53 feet;

thence South 56° 42’ West 4.82 feet;

thence southwesterly along a curve to the right, having a radius of 20.00 feet and a central angle of 36° 48’ 34”, an arc distance of 12.84 feet to a point on the southwesterly line of Lot 18 of said Block;

thence South 51° 30’ East 27.56 feet to the most southerly corner of said Lot 18,
thence North 38° 30' East along said line of Loma Verda Avenue 130.28 feet to the point of beginning, being a part of Lots 14, 15, 16, 17 and 18 of said Block 21 and contain 0.025 acres, more or less.

Parcel contains 189,963 square feet or 4.3609 acres more or less.

Parcel is shown on attached map Exhibit "E2" and made a part hereof.

END OF DESCRIPTION

Requested by: Bill Fellman
Check by: Jay Remley
Check by: James Bourquin

Expires 6-30-03

JAMES DAVID KIEHL P.L.S. 7152
PREPARED BY / APPROVED

LEGAL: 13204834.Word
PLAT: 13204834.DWG
This description is based upon information from record data and said title report.
LEASE AMENDMENT AND LAND EXCHANGE AGREEMENT

This Lease Amendment and Land Exchange Agreement is entered into this 13th day of August, 2002 by and between the Palo Alto Unified School District ("District") and the City of Palo Alto, a municipal corporation ("City").

RECITALS

A. The District is the owner of the certain property as described and shown in Exhibit A attached hereto and commonly referred to as the Cubberley Site.

B. The District and the City have entered into a Lease and Covenant Not to Develop dated September 1, 1989 whereby the District leased to the City the Cubberley Site.

C. The District is the legal owner of certain property as shown in Exhibit B attached hereto and commonly referred to as the Terman Site.

D. In 1981, the District entered into a Lease to Purchase Agreement (the "Teman Lease Purchase Agreement") with the City whereby the City leased the Terman Site, including both the New Terman School Site and the adjacent Terman Park, from the District for 20 years with the right to acquire the Terman Site on November 1, 2000. The City exercised its option under the lease in a timely fashion, but with the consent of City, the District has not yet delivered title to the Terman Site to the City, and the City has remained in possession of the Terman Site.

E. The District has determined that in order to provide a quality education experience the desired range of school size for middle schools is 600 to 900 students. The District currently operates two middle schools, one of which has an enrollment of 1,076 students and the other of which has an enrollment of 1,179 students. In order to ensure that middle school students in the District receive the best education possible, the District has determined that it is necessary to open a third middle school in order to reduce the enrollments at the middle schools to the range of 600 to 900 students.

F. The District has conducted an extensive search for a site of the new middle school. Based on the residences of
the current middle school population, the District has determined that a portion of the Terman Site, as shown in Exhibit C attached hereto and incorporated herein ("the New Terman School Site") is the most appropriate location for the middle school.

G. In order to permit the District to reopen a middle school at the New Terman School Site the City has agreed to exchange its right to acquire the New Terman School Site for a fee interest in a portion of the Cubberley School Site which portion is of equal size to the New Terman School Site.

H. The City, with the consent of the District, and the Albert L. Schultz Jewish Community Center ("the JCC") entered into a sublease for a portion of the New Terman School Site ("the JCC Sublease") in 1982. The JCC Sublease has not expired. Under the terms of a Lease Termination and Mutual Release Agreement approved by the City Council on September 10, 2001 between the City and the JCC and a separate Settlement and Relocation Agreement between the District and the JCC, the sublease between the City and the JCC will continue in effect after transfer of title to the New Terman School Site.

I. The City and the District recognize and acknowledge that if the parties did not enter into this Agreement, and the parties and the JCC had not entered into the Lease Termination and Mutual Release Agreement and the Settlement and Relocation Agreement, the District would consider instituting eminent domain action to acquire the New Terman School Site and there would likely be opposition to such eminent domain action.

NOW, THEREFORE, for good and valuable consideration, the City and the District agree as follow:

1. Terman Site

The Terman Lease currently provides that upon expiration of the Lease Term, which expiration occurred on November 9, 2000, the District was to have conveyed to the City fee title to the "Terman Site". Due to the District's determination that a portion of the Terman Site, namely the New Terman School Site, is the most appropriate place to open a middle school that is needed to serve the community, the City and the District hereby agree to amend the Terman Lease as follows:
(a) The Term of the Terman Lease is hereby extended to September 1, 2002.

(b) The City shall make no further rental payments.

(c) Notwithstanding anything to the contrary in the Terman Lease, the District agrees that on or before September 1, 2002, the District shall convey to the City by grant deed fee title to that portion of the Terman Site identified in Exhibit D attached hereto and incorporated herein as Terman Park, subject to those exceptions shown on the Preliminary Report attached hereto as Exhibit E. The City shall choose the escrow company and title company to be used and shall pay all costs of escrow and title insurance; the District shall sign and deliver a grant deed and such other documents as are reasonably required to close escrow within thirty days after they are presented to District for signature.

(d) Notwithstanding anything to the contrary in the Terman Lease, the City agrees that on or before September 1, 2002, the City shall execute a quitclaim deed or such other document as the District may request relinquishing any leasehold rights or rights of ownership the City has to the New Terman School Site, as shown in Exhibit C.

(e) The City and the District agree to execute and record in the Official Records of the County of Santa Clara a termination of lease terminating the Terman Lease effective as of September 1, 2002.

(f) The City shall convey its interest in the New Terman School Site subject to the sublease to the JCC.

(g) The City and the District shall enter into a joint use agreement regarding Terman Site in substantially the form attached hereto as Exhibit F.

2. Cubberley Property

(a) The District in consideration for the City relinquishing control of the New Terman School Site hereby agrees to convey fee title by way of a grant deed a portion of the Cubberley Site ("Cubberley Conveyance Property") as set forth in Exhibit G attached hereto and incorporated herein.
simultaneously with City's relinquishments of its rights to the New Terman School Site subject to those exceptions shown on the Preliminary Report attached hereto as Exhibit H. The City shall chose the escrow company and title company to be used and shall pay all costs of escrow and title insurance; the District shall sign and deliver a grant deed and such other documents as are reasonably required to close escrow within thirty days after they are presented to District for signature.

(b) Prior to the conveyance of the Cubberley Conveyance Property, the City and the District will agree on the legal description and surveyor's map describing the Cubberley Conveyance Property, which legal description and map shall generally conform to the property lines set forth in Exhibit G. At the time the Cubberley Conveyance Property is conveyed to the City, the City and the District shall execute the Amendment No. 2 to Lease and Covenant Not to Develop attached hereto and incorporated herein as Exhibit I.

3. District Right to Acquire

If the City wishes to sell its fee interest in the Cubberley Conveyance Property any time prior to September 1, 2022, the City shall give written notice of such intention to the District. The District shall have the option to acquire the Cubberley Conveyance Property for fair market value. If the City and the District are unable to agree on fair market value, the purchase price for the Cubberley Conveyance Property shall be determined as follows: The fair market value of the property shall be determined by a state-certified appraiser acceptable to City and District with the cost of the appraisal to be shared by City and District equally. Should City and PAUSD not agree upon a State certified designated appraiser, one shall be appointed by the presiding judge of the Superior Court of Santa Clara County. The district must provide the City with written notice of its intent to acquire the Cubberley Conveyance Property within ninety (90) days of receiving notice from the City of its intent to sell the Cubberley Conveyance Property.

4. City Right to Acquire

If the District wishes to sell its fee interest in the New Terman School Site any time prior to September 1, 2022, the District shall give written notice of such intention to the City. The City shall have the option to acquire the New Terman School Site for fair market value. If the District and the City are unable to agree on fair market value, the purchase
price for the District Portion of the Terman Site shall be determined as follows: The fair market value of the property shall be determined by a state-certified appraiser acceptable to City and District with the cost of the appraisal to be shared by City and District equally. Should City and PAUSD not agree upon a State certified appraiser, one shall be appointed by the presiding judge of the Superior Court of Santa Clara County. The City must provide the District with written notice of its intent to acquire the New Terman School Site within ninety (90) days of receiving notice from the District City of its intent to sell the new Terman School Site.

5. **Settlement of Potential Litigation**

The City and the District acknowledge that this Agreement is being entered into in order to settle potential litigation regarding the possession of the New Terman School Site. The Parties agree that no part of this Agreement will be admissible as evidence in a court of law in the event the District institutes eminent domain actions to acquire possession of the New Terman School Site and that this Settlement Agreement shall be subject to the applicable California Evidence Code Section related to the inadmissibility of settlement discussions.

6. **Mutual Release**

Upon performance of the parties' obligations under this Agreement, and in consideration for the conveyance of the Cubberley Conveyance Property, and other consideration set forth herein, the City hereby releases and forever discharges, on behalf of the City, and its successors, assigns, heirs, executors and administrators, the District and its board members, officers, directors, employees, agents, contractors and affiliates from any and all demands, claims or causes of action against the District, including without limitation all claims, demands or causes of action arising out of or pertaining to any occurrence, event, circumstances or matter of any kind or nature arising out of, directly or indirectly, the acquisition of the New Terman School Site by the District, including, but not limited, to any claims for compensation for leasehold value, fixtures and equipment, loss of business goodwill, severance damages, interest, litigation expenses, attorneys' fees and costs (including, but not limited to, costs incurred to negotiate this Agreement), loss or damages for inverse condemnation, unreasonable precondemnation delay, unreasonable precondemnation activities and statutory relocation benefits.
Upon performance of the parties’ obligations under this Agreement, and in consideration for the City relinquishing its rights to the New Terman School Site and other consideration herein set forth, the District hereby releases and forever discharges, on behalf of the District, its successors, assigns, heirs, executors and administrators, the City and its council members, officers, directors, employees, agents, contractors and affiliates from any and all demands, claims or causes of action against the City relating to the City's occupancy of the New Terman School Site including attorneys' fees and costs (including costs to negotiate this Agreement).

In giving this release, the City and the District expressly waive the protection of Civil Code Section 1542, which statute provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with debtor."

District  
City  

7. **Headings**

The title and headings of the various Section of this Agreement are intended for means of reference and are not intended to place any construction on the provisions of this Agreement.

8. **Invalidity**

If any provisions of this Agreement shall be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. **Entire Agreement**

The terms of this Agreement are intended by the Parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. No provision of this Agreement may be amended except
by an agreement in writing signed by the Parties hereto or their respective successors in interest. The Parties were represented by attorneys with regard to the drafting of this Agreement, and neither party shall be deemed to be the drafter of this Agreement.

10. **Successors**

   This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

11. **Governing Law**

   This Agreement shall be governed by the laws of the State of California.

12. **Execution**

   This Agreement may be executed in multiple counterpart originals.

13. **Attorneys' Fees**

   In the event of a breach of this Agreement, the non-breaching party shall recovery all attorneys' fees and litigation expenses incurred as a result of such breach and/or to enforce this Agreement, including without limitation costs of appeal.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on or as of the date first above written.

ATTEST:

[Signature]
City Clerk

CITY OF PALO ALTO, Lessee

[Signature]
Mayor

APPROVED AS TO FORM:

[Signature]
Senior Asst. City Attorney

PALO ALTO UNIFIED SCHOOL DISTRICT, Lessee

[Signature]
President, Board of Education

APPROVED:

[Signature]
City Manager

APPROVED:

[Signature]
Superintendent of Schools

EXHIBITS:
Exhibit A: Legal Description and Map of entire Cubberley Site
Exhibit B: Map of the Terman Site, (including both New Terman School Site and Terman Park, both of which are identified on Exhibit B.)
Exhibit C: Map of New Terman School Site, (which City will quitclaim to District.)
Exhibit D: Map of Terman Park
Exhibit E: Preliminary Report on Terman Park
Exhibit F: Joint Use Agreement for Terman Site
Exhibit G: Map of Cubberley Conveyance Property
Exhibit H: Preliminary Report on Cubberley Conveyance Property
Exhibit I: Amendment No. 2 to Lease and Covenant Not to Develop
EXHIBIT A

CUBBERLEY SITE
Legal Description

PARCEL 1 (continued)

Beginning at a point on the Southwesterly line of Middlefield Road at the most Northerly corner of that certain parcel of land conveyed by Ralph Grebmeier, et ux, to Rolf Grebmeier, a married man, by Deed dated August 14, 1954 and recorded October 15, 1954 in Book 2983 of Official Records, Page 211; thence leaving said line of Middlefield Road and running along the Northwesterly line of said Grebmeier parcel, South 57° 42' 46" West 221.83 feet; thence leaving said Northwesterly line of said Grebmeier parcel and running North 32° 04' 46" East 200.00 feet to a point on the Southwesterly line of Middlefield Road; thence along said line of Middlefield Road, South 57° 55' 14" East 95.97 feet to the point of beginning and being a portion of the Rancho Rincon de San Francisquito.

PARCEL 2

Beginning at the most Southerly corner of Lot 11 in Block 1, as shown on the Map of Tract 1310, Greenmeadow, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on July 7, 1954 in Book 50 of Maps, Pages 50 and 51; thence along Southwesterly line of said Lot 11, North 33° 33' 18" West 40.00 feet; thence along a Southeasterly line of Lots 11 and 12, block 1, as shown on the Map hereinafore referred to, South 56° 26' 42" West 50.00 feet; thence along a Northeasterly line of said Lot 12, South 33° 33' 18" East 40.00 feet; thence along the Northeasterly prolongation of the most Southerly line of said Lot 12, North 56° 26' 42" East 50.00 feet to the point of beginning, and being a portion of the Santa Rita Rancho.

PARCEL 3

Beginning at a point on the Northwesterly line of that certain parcel of land conveyed by Ralph Grebmeier, et ux, to Rolf Grebmeier, a married man by Deed dated August 14, 1954 and recorded October 15, 1954 in Book 2983 of Official Records, Page 211, distant thereon, South 57° 42' 46" West 221.83 feet from the point of intersection of said Northwesterly line with the Southwesterly line of Middlefield Road; thence along the Northwesterly line of said Grebmeier parcel, South 57° 42' 46" West 221.83 feet to the most Westerly corner thereof; thence along the Southwesterly line of said Grebmeier parcel and parallel with said line of Middlefield Road, South 57° 55' 14" East 95.97 feet; thence leaving the Southwesterly line of said Grebmeier parcel and running North 32° 04' 46" East 200.00 feet to the point of beginning and being a portion of the Rancho Rincon de San Francisquito.

EXCEPTION

Excepting therefrom a portion of Parcel 1 and Parcel 3 described as follows:

Beginning at the most Southerly corner of the above described Parcel 3; thence North 57° 55' 14" West 95.97 feet; thence South 57° 42' 46" West 17.41 feet; thence North 32° 04' 46" East 53.19 feet; thence South 57° 55' 14" East 103.50 feet; thence South 32° 04' 46" West 37.50 feet to the point of beginning.

Containing 0.0905 acres.
February 8, 2000

CITY OF PALO ALTO
250 HAMILTON AVENUE
PALO ALTO, CALIFORNIA 94301
ATTN: ELAINA CHAN

PROPERTY ADDRESS
NO SITUS GIVEN

Exhibit E

Preliminary Report

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE,

North American Title Company, Inc.

HEREBY REPORTS THAT IT IS PREPARED TO ISSUE, OR CAUSE TO BE ISSUED, AS OF THE DATE HEREOF, A POLICY OR POLICIES OF TITLE INSURANCE, DESCRIBING THE LAND AND THE ESTATE OR INTEREST HEREINAFTER SET FORTH, INSURING AGAINST LOSS WHICH MAY BE SUSTAINED BY REASON OF ANY DEFECT, LIEN, OR ENCUMBRANCE NOT SHOWN OR REFERRED TO AS AN EXCEPTION BELOW OR NOT EXCLUDED FROM COVERAGE PURSUANT TO THE PRINTED SCHEDULES, CONDITIONS AND STIPULATIONS OF SAID POLICY FORMS.

THE PRINTED EXCEPTIONS AND EXCLUSION FROM THE COVERAGE OF SAID POLICY OR POLICIES ARE SET FORTH ON THE ATTACHED COVER, COPIES OF THE POLICY FORMS SHOULD BE READ, THEY ARE AVAILABLE FROM THE OFFICE WHICH IssUED THIS REPORT.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN EXHIBIT A OF THIS REPORT CAREFULLY. THE EXCEPTIONS AND EXCLUSIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS THERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF POLICY TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

Dated as of JANUARY 28, 2000 at 7:30 A.M.

DONNA HARNDEN
Title Officer

419 S. SAN ANTONIO ROAD #106, LOS ALTOS, CA 94022 (650)917-5699 FAX (650)917-8607
The form of policy of title insurance contemplated by this report is:

ALTA Loan Policy - Form 1 (10-17-92) and/or CLTA Standard Coverage Policy - 1990

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

A FEE

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

PALO ALTO UNIFIED SCHOOL DISTRICT
Description: The land referred to herein is situated in the State of California, County of SANTA CLARA, CITY OF PALO ALTO, and is described as follows:

PARCELS A AND C AS SHOWN ON PARCEL MAP FILED 12/5/83 IN BOOK 521 OF MAPS AT PAGES 52 AND 53; AND

PARCEL 1 AS SHOWN ON PARCEL MAP FILED 7/13/83 IN BOOK 514 OF MAPS AT PAGES 49 AND 50.

ASSESSOR'S PARCEL NO.: 167-05-003, 028, 030, 031
At the date hereof exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

2. Any adverse claim based upon the assertion that:

   A) Some portion of said land has been created by artificial means, or has accreted to such portion so created

   B) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of ADOBE CREEK, or has been formed by accretion to any such portion.

   Said matter affects: PARCEL C

3. An easement affecting the portion of said land and for the purpose stated herein, and incidental purposes.

   In favor of: CITY OF PALO ALTO

   No representation is made as to the present ownership of said easement.

   For: PEDESTRIAN AND BICYCLE RIGHT OF WAY, PUBLIC UTILITIES

   Recorded: OCTOBER 17, 1974

   Book: B135

   Page: 351

   Affects: SOUTHEAST CORNER OF PARCEL C, AS SHOWN ON MAP
4. An easement affecting the portion of said land and for the purpose stated herein, and incidental purposes.

In favor of: CITY OF PALO ALTO

No representation is made as to the present ownership of said easement.

For: RIGHT OF WAY FOR BICYCLE, PEDESTRIAN AND PUBLIC UTILITY

Recorded: MAY 9, 1975

Book: B402

Page: 297

Affects: SOUTHEAST CORNER OF PARCEL C, AS SHOWN ON MAP

5. A Lease executed by and between the parties named herein, for the term and upon the terms, covenants and conditions therein provided.

Type of Lease: MASTER LEASE

Dated: NOVEMBER 1, 1981

Lessor: PALO ALTO UNIFIED SCHOOL DISTRICT

Lessees: CITY OF PALO ALTO

Term: JANUARY 12, 1982 - NOVEMBER 9, 2000

Recorded: JANUARY 12, 1982

Instrument No.: 7257350

Book: G549

Page: 536

Among other things, said Lease provides for:

OPTION TO PURCHASE

The present ownership of the Leasehold created by said Lease and other matters affecting the interest of the Lessee are not shown herein.

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes, shown or dedicated by the map of:

Subdivision: PARCEL MAP

Book: 514 M

Page: 49-50

For: EMERGENCY ACCESS ROAD EASEMENT & EASEMENT FOR STREET PURPOSES

Affects: PORTION OF PARCEL 1, AS SHOWN ON MAP
7. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes, shown or dedicated by the map of:

Subdivision: PARCEL MAP
Book: 521 M
Page: 52-53
For: COMMON ACCESS ROAD AND COMMON AREAS
Affects: PORTION OF PARCEL A, AS SHOWN ON MAP

8. The unrecorded Lease by and between the parties named herein, for the term and upon the Terms, Covenants and Conditions therein provided:

Disclosed by: MEMORANDUM OF LEASE
Type of Lease: SUB LEASE
Dated: JULY 1, 1982
Lessor: CITY OF PALO ALTO, A MUNICIPAL CORPORATION
Lessees: UNITED JEWISH COMMUNITY CENTERS, A NON-PROFIT CORPORATION
Term:
Recorded: DECEMBER 19, 1983
Instrument No.: 7922983
Book: 1160
Page: 111

The present ownership of the Leasehold created by said Lease and other matters affecting the interest of the Lessee are not shown herein.

Said matter affects: PARCEL 1

9. REQUIRE RESOLUTION OF BOARD OF TRUSTEES OF SCHOOL DISTRICT AUTHORIZING THIS TRANSACTION.

END OF EXCEPTIONS
"THE INFORMATION ON THIS PLAT IS PROVIDED FOR YOUR CONVENIENCE AS A GUIDE TO THE GENERAL LOCATION OF THE SUBJECT PROPERTY. THE ACCURACY OF THIS PLAT IS NOT GUARANTEED, NOR IS IT A PART OF ANY POLICY, REPORT OR GUARANTEE TO WHICH IT MAY BE ATTACHED."
EXHIBIT F

AGREEMENT FOR
JOINT USE OF TERMAN SITE

This AGREEMENT FOR JOINT USE OF TERMAN SITE, entered into this ____ day of ____________, 2001, by and between City of Palo Alto and Palo Alto Unified School District, hereinafter referred to as “City” and “School District”.

RECITALS

1. The City and School District have entered into a property exchange agreement in which the City obtains fee title to approximately eight (8) acres of land at the Cubberley Community Center and the School District obtains fee title to an equivalent area at the Terman Site. At the Terman Site, the City will own a dedicated public park, Terman Park, which includes playing fields and tennis courts. The School District will own the Terman Middle School, developed with school buildings, including a gymnasium, a parking lot, and a swimming pool. A map showing the Terman Site, Terman Park, and the Terman Middle School is attached as Exhibit A. As part of the land exchange agreement, the City and the School District have agreed to enter into this joint use agreement for the Terman Site. The purpose of the agreement is to cooperatively use the Terman Site so that both educational and community services can be provided to those living in the City and the School District.

2. The City and the School District also have power to assist each other under Education Code Sections 17051(a) and 35275 and Government Code Section 6500 et seq. of the State of California, which authorize and empower public school districts and municipalities to cooperate with each other and to that end enter into agreements with each other for the purpose of organizing, promoting and conducting such programs of community recreation and education for children and adults of the state.

3. The School District has need of the Terman Park playing fields for its middle school, and the City has need of a portion of the Terman Middle School buildings for its library and related activities. Both City and School District wish to have the City provide recreational programs for middle school children and others that will make use of both the Park and the Middle School. Terman Park is a dedicated park and use of the Park by the School District must be consistent with that designation; Terman Middle School will be a public school.
facility, and its use as a middle school will have priority over all other uses.

NOW, THEREFORE, the City and School District mutually covenant and agree with each other as follows:

A. **Principles**

1. The City and School District shall cooperate in the use of the Terman Site.

2. The City shall control use of the Terman Park and the School District shall control use of the Terman Middle School, in a manner that is consistent with this Joint Use Agreement.

B. **Joint Use of the Terman Site.**

1. The School District shall make Terman Middle School facilities and equipment available to the City as described in Attachment 1. The School District shall also make such facilities and equipment available upon application of the City provided that their use for City purposes does not interfere with the School District's use of such facilities and equipment for Terman Middle School or constitute a violation of provisions of the California Education or Government Codes. No charges shall be made for such use other than those specifically described in this Agreement.

2. The City shall make Terman Park facilities available to the School District as described in Attachment 2. The City shall also make such facilities and equipment available upon application of the School District, provided that their use for School District purposes does not interfere with the use of the facilities or equipment by the City in connection with its stated purposes or with City Charter provisions and ordinances regulating the use of dedicated park land. No charges shall be made for such use other than those specifically described in this Agreement.

3. The City Manager and the Superintendent of Schools do hereby delegate the responsibility for establishing schedules for facilities and equipment use to the City Director of Community Services and the School District Business Manager.

4. Each party using facilities or equipment owned by the other pursuant to this agreement shall furnish qualified personnel for the proper conduct and supervision of the use.
5. The party using facilities or equipment of the other under this agreement shall repair, or cause to be repaired, or will reimburse the owner for the actual cost of repairing damage done to the facilities or equipment during the period of such use, excluding damage attributed to ordinary wear and tear.

C. Scheduling and Supervision

1. Subject to the limitations in Section A above and to the specific commitments set forth in Attachment 1, in scheduling the use of Terman Middle School, Terman Middle School events and programs shall have first priority and City recreation programs and City co-sponsored programs shall have second priority. In cases of emergencies or errors in scheduling, the Terman Middle School events and programs shall have first priority for use. Every reasonable attempt will be made to avoid such conflict. City activities shall not be scheduled on Terman Middle School facilities between the hours of seven thirty a.m. and three-thirty p.m. on days when school is in session without the permission of the school principal.

2. Subject to the limitations in Section A above and to the specific commitments set forth in Attachment 2 below, in scheduling the use of Terman Park, City recreation programs and City co-sponsored programs shall have first priority. Terman Middle School events and programs shall have second priority. In cases of emergencies or errors in scheduling, the City programs and events shall have first priority for use. Every reasonable attempt will be made to avoid such conflict. School activities shall not be scheduled before seven thirty a.m. or after three-thirty p.m.

3. The City will have a responsible adult representative present at all times at any City event held on the Terman Middle School. That representative may be a volunteer or a paid City employee responsible to see that School District rules and regulations are observed and complied with and that the facilities and grounds are returned to existing condition upon completion of the activity. The City will have a City employee on call at all times that a City-sponsored or scheduled activity is occurring in the Terman Middle School in order to respond and investigate any questions or improper action at such activities and events.

4. The School District will have a responsible adult representative present at all times at a School District
activity or event is held in Terman Park. That representative may be a volunteer or a paid School District employee responsible to see that City rules and regulations are observed and complied with and that the facilities and grounds are returned to existing condition upon completion of the activity. The School District will have a School District employee on call at all times that a School District-sponsored or scheduled activity is occurring in Terman Park in order to respond and investigate any questions or improper action at such activities and events.

5. The City and School District shall submit to each other written use requests in advance. Requests for advance scheduling shall be submitted annually according to the following schedule:

July 1st for the School Year

February 1st for the summer months

The Terman Site Joint Use Committee shall approve a master calendar for each of these periods within thirty (30) days of the submittal of the requests for advance scheduling. Each schedule will be arranged so as to avoid any conflict between the School District’s and City’s uses of the facilities and equipment. The City or the School District shall not schedule other uses until first and second priorities are set as prescribed herein.

D. Maintenance of Terman Site Facilities.

1. Basic Standard. Facilities jointly used shall be adequately maintained to insure appropriate and safe use, appearance and longevity.

2. Basic Responsibility. Except as may otherwise be specified herein, the responsibility for maintenance, repair and renovation of facilities shall be the responsibility of the owner of the real property on which the facility is situated.

E. Maintenance of Athletic Fields.

1. Turf Areas and Tennis Courts on Terman Site.

a. The City will continue its existing maintenance program for turf areas of the Terman Site. These areas are shown on Attachment 3. Pursuant to that Master
Maintenance Agreement, the City will mow, trim, fertilize and irrigate and perform other maintenance work of a general nature at the fields at the frequencies and times in accordance with the field maintenance standards adopted by the City. The School District will pay one half of the City's actual cost to maintain the fields.

b. The City will also maintain the drainage and irrigation systems of the fields under the terms and conditions described in the Master Maintenance Agreement between the City and the District. If these systems need repair or replacement, the City will consult with the School District on the scope of work and estimated cost to perform it, and the School District shall confirm its approval of the scope of work. The School District shall pay one half of the City's actual costs for such approved repair or replacement work.

c. The City will continue its existing maintenance program for tennis courts in Terman Park. The City will wash and air blow the surfaces of the courts, repair and/or replace, as reasonably necessary, the tennis nets and screens, and perform other maintenance work of a general nature at the frequencies and times in accordance with the maintenance standards adopted by the City. The City will also resurface and restripe the courts. Such resurfacing and restriping will be scheduled to match the City's existing tennis court resurfacing program at an approximate five year interval for such work. The School District shall pay one half of the City's actual cost of maintaining and resurfacing the courts.

d. Money owed by the School District to the City under this Agreement will first be credited against any monthly lease payments due and payable by the City under its lease agreement with the District entitled "Lease and Covenant Not to Develop," as amended from time to time. If the sums owed under this agreement exceed those payments, the City shall bill the School District and the School District shall pay the City within forty-five days after receipt of its invoice.

2. Custodial Services. The School District shall provide all custodial services for the Terman Middle School. If the Terman Middle School is used by the City at a time when custodial staff is not regularly on duty, or when a custodian is required to open a facility, the City shall pay the cost of the custodial time to the School. Alternatively, the City may arrange with the School District to open and close a facility itself.
F. Library Facilities.

City will continue its existing library at the Terman Middle School until such time as the District gives it notice that all or a portion of those facilities are needed for district purposes. Upon six months written notice that all or a portion of the facilities are needed for district purposes, the City shall vacate the identified portions of the premises.

G. Restrooms at Terman Middle School.

1. The restroom facilities located at Terman Middle School shall be available for public use while City programs are scheduled at either Terman Middle School or Terman Park, and while the Terman Library is open to the public. They shall also be available to library staff during their working hours.

2. The School District shall perform custodial maintenance of the restrooms on a daily basis when its custodians are on duty. On days when its custodians are not on duty, the School district shall make arrangements in advance, as part of the scheduling agreements, to provide supplies to the City on site so that is may restock the restrooms on those days.

H. Establishment of City and School District Joint Use Committee.

The City Manager and the Superintendent shall each designate two staff members to the Terman Joint Use Committee which is hereby established. The Committee shall meet at least three times a year, but may meet additional times each year as necessary to administer this agreement. The Committee shall be responsible for administering this joint use agreement.

I. Term of Agreement.

This agreement shall commence upon the date first entered above and shall end upon termination of the Cubberley Lease between the City and the School District unless otherwise terminated by consent of the parties.

J. Indemnification.

The City shall investigate, defend and indemnify the School District from any and all claims, demands, actions or damages arising out of the City’s use of School District Facilities to which the School District may be subjected as a direct consequence of this agreement except for those claims,
demands, actions or damages resulting solely from the negligence of the School District, its officers, agents and employees.

The School District shall investigate, defend and indemnify the City from any and all claims, demands, actions or damages arising out of the School District’s use of City Facilities to which the City may be subjected as a direct consequence of this agreement except for those claims, demands, actions or damages resulting solely from the negligence of the City, its officers, agents and employees.

K. Complete Understanding and Amendments.

This agreement and the attached exhibits set forth the complete agreement and understanding of the parties; any modification must be in writing executed by both parties.

L. Notices.

If at any time after the execution of this agreement, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the United States mail, return receipt requested, first class postage prepaid and (1) if intended for City shall be addressed to:

City Clerk
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94301

with a copy to:

Director of Community Services
Department
P.O. Box 10250
Palo Alto, CA 94301

and (2) if intended for PALO ALTO UNIFIED SCHOOL SCHOOL DISTRICT shall be addressed to:

Palo Alto Unified School District
25 Churchill Avenue
Palo Alto, CA 94306

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or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

IN WITNESS WHEREOF, the parties have executed this agreement on the date and year first above written.

CITY OF PALO ALTO
A municipal corporation

Palo Alto Unified School District

__________________________________
Frank Benest
City Manager

__________________________________
Robert Golton
Acting Superintendent

ATTEST:

__________________________________
City Clerk

APPROVED AS TO FORM:
Ariel Pierre Calonne, City Attorney

By________________________

APPROVED AS TO CONTENT:
Paul Thiltgen, Parks and Recreation Director

By________________________
ATTACHMENT 1

CITY USE OF TERMAN MIDDLE SCHOOL

ATTACHMENT 1

The JCC shall have priority over the City for use of the pool and the gymnasium for its programs year round until it relocates to its permanent facilities or until August 31, 2009, whichever is earlier. All exceptions to this can be found in Attachment 1A.

The City's use of the Terman site following August 2003 will include:

1. Swimming Pool
   a. School year- After school, evening and weekends for instructional programs and lap swimming.
   b. Summer- Seven-day and night uses for instructional programs, recreational swimming and lap swimming.

2. Gymnasium
   a. School Year- After school for middle school athletics, youth and teen programs evenings; Weeknights for youth and adult programs; Weekend and night use for youth, teen and adult programs.
   b. Summer- Seven-day and night uses for youth, teen and adult programming.

3. Library Wing

Use of that wing as a neighborhood library subject to section F of this agreement. This use may be converted to City/School joint library services at some time in the future.
December 5, 2001

Mr. Sandy Bluvad
Albert Schultz Jewish Community Center
655 Arastadero Road
Palo Alto, CA 94306

Dear Sandy:

The intention of this document is to pave the way to allow the Jewish Community Center interim use of Gym A at the Cubberley Community Center. In this regard, the JCC will have exclusive use of Gym A at the Cubberley Community Center, throughout the year, with the exception of Fridays, 6:30 p.m. to 10:30 p.m., and Saturdays, 8:30 a.m. to noon, starting August 1, 2003. In order to extend such use of Gym A to the JCC all of the recreational programs that presently exist in Gym A must be transferred to the Terman gym. Should the City change its programming activities in the future, the JCC would have first right of use of the Terman Gym. Additionally, the City will be flexible in its programming of the Terman Gym, and, whenever possible, collaborate with the JCC on programs.

The conditions of this document are subject to the successful approval of a sublease between the JCC and the City of Palo Alto for the interim use of the Cubberley Community Center site, and cannot be relied upon by any third party (including the PAUSD) until such approval. This letter will become an addendum to the City of Palo Alto/Palo Alto Unified School District Agreement for Joint Use of the Terman Site.

Conditions at Terman Middle School gymnasium:

* The use of the Terman gym, outside of PAUSD use, will be scheduled first by the JCC. The City can schedule all other times not used by the JCC and PAUSD. Exceptions to this policy are as follows:

* Beginning in September 2003, the Palo Alto Recreation Division will have use of the Terman Gym Monday through Friday, September through June, from 3:30 p.m. to 10:30 p.m. and Saturday and Sundays, 8:30 a.m. through 10:30 p.m.
• Beginning in 2003, YMCA Basketball will use the Terman Gym January through March of each year, 8:30 a.m. through 6:00 p.m. on Saturdays.

• The JCC has informed the City of its intention to continue sponsorship of summer camps at the Terman Gym, as it has for the last 20 years. If the JCC does not sponsor summer camp activities in the Terman gym, the City of Palo Alto requests the space to program camps from June through August, beginning in 2003 from 8:00 a.m. through 3:00 p.m., Monday through Friday.

The above conditions are understood and approved by:

\[\text{Signature}\] Date: 12-5-01
For the Albert Schlitz Jewish Community Center

\[\text{Signature}\] Date: 12-5-01
For the City of Palo Alto
ATTACHMENT 2

SCHOOL DISTRICT USE OF TERMAN PARK

School District shall be entitled to the issuance of a City permit under Chapter 22 of the Palo Alto Municipal Code for use of portions of Terman Park during certain hours. School District shall not be required to pay for such permit, and in any case where there is a contradiction between the terms of the permit and the terms of this Agreement, this Agreement shall govern.

1. Terman Tennis Courts

a. Terman Middle School shall have first call on the tennis courts between the hours of 7:30 a.m. and 3:30 p.m. on days when Terman Middle School is in regular session.

b. School District shall pick up all litter and leave courts in good condition at end of every day of use.

2. Terman Playfields.

a. Terman Middle School shall have first call on the playing fields between the hours of 7:30 a.m. and 3:30 p.m. on days when Terman Middle School is in regular session. School District will not have the right to routinely exclude members of the public from any dedicated playing field or parkland. School District will have the right to take reasonable actions to protect both its first call on the playing fields and the safety of the students. No permanent fence or other barriers to public access will be constructed.

b. School District shall pick up all litter and leave fields in good condition at end of every day of use.

The public will have unrestricted access to those portions of Terman Park not being used by the Terman Middle School.
Exhibit H

Property Address:
4000 Middlefield Road
Palo Alto, California

Preliminary Report

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE,

North American Title Company, Inc.

HEREBY REPORTS THAT IS PREPARED TO ISSUE, OR CAUSE TO BE ISSUED, AS OF THE DATE HEREOF, A POLICY OR POLICIES OF TITLE INSURANCE, DESCRIBING THE LAND AND THE ESTATE OR INTEREST HEREIN AFTER SET FORTH, INSURING AGAINST LOSS WHICH MAY BE SUSTAINED BY REASON OF ANY DEFECT, LIEN, OR ENCUMBRANCE NOT SHOWN OR REFERRED TO AS AN EXCEPTION BELOW OR NOT EXCLUDED FROM COVERAGE PURSUANT TO THE PRINTED SCHEDULES, CONDITIONS AND STIPULATIONS OF SAID POLICY FORMS.

THE PRINTED EXCEPTIONS AND EXCLUSION FROM THE COVERAGE OF SAID POLICY OR POLICIES ARE SET FORTH ON THE ATTACHED COVER, COPIES OF THE POLICY FORMS SHOULD BE READ, THEY ARE AVAILABLE FROM THE OFFICE WHICH ISSUED THIS REPORT.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN EXHIBIT A OF THIS REPORT CAREFULLY. THE EXCEPTIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS THERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

Dated as of October 15, 2001
at 07:30 am

Pam Thompson/pu
Title Officer/Examiner

4255 Hopyard Road, Suite 1, Pleasanton, CA 94588
Phone No.: (925) 399-3000 Fax No.: (925) 399-3028
The form of policy of title insurance contemplated by this report is:

Preliminary Report Only

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

A fee

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

Palo Alto Unified School District aka Palo Alto Unified School District of Santa Clara County
The land referred to herein is situated in the State of California, County of Santa Clara, City of Palo Alto, and is described as follows:

BEGINNING AT THE MOST WESTERLY CORNER OF THE PARCEL OF LAND CONTAINING 42.27 ACRES DESCRIBED IN THE DEED OF DISTRIBUTION MADE IN THE ESTATE OF JOHN MILLER, RECORDED OCTOBER 7, 1937 IN BOOK 849 OF OFFICIAL RECORDS, AT PAGE 61, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE FROM SAID POINT OF BEGINNING NORTH 57° 42' 46" EAST ALONG THE NORTHWESTERLY LINE OF SAID 42.27 ACRE PARCEL 327.41 FEET TO THE POINT OF INTERSECTION THEREOF WITH A LINE DRAWN PARALLEL WITH AND DISTANT 400 FEET, SOUTHWESTERLY AT A RIGHT ANGLE, FROM THE SOUTHWESTERLY LINE OF MIDDLEFIELD ROAD 60 FEET IN WIDTH; THENCE SOUTH 57° 55' 14" EAST PARALLEL WITH AND DISTANT 400 FEET SOUTHWESTERLY AT A RIGHT ANGLE FROM SAID SOUTHWESTERLY LINE OF MIDDLEFIELD ROAD 572.04 FEET; THENCE AT RIGHT ANGLES TO THE LAST COURSE SOUTH 32° 04' 46" WEST 373.77 FEET TO THE SOUTHWESTERLY LINE OF THE 42.27 ACRE PARCEL; THENCE NORTH 51° 38' 17" WEST 717.99 FEET ALONG SAID LINE TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT ON THE CENTERLINE OF MIDDLEFIELD ROAD AT THE MOST SOUTHERLY CORNER OF TRACT 870 CHARLESTON GARDENS UNIT NO. 1 AS SHOWN ON A MAP THEREOF WHICH WAS FILED IN BOOK 33 OF MAPS AT PAGES 26 AND 27 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA; THENCE FROM SAID POINT OF BEGINNING SOUTH 57° 42' 46" WEST 804.35 FEET TO AN IRON PIPE ON THE NORTHEASTERLY LINE OF LAND FORMERLY OF D.L. SLOAN; THENCE SOUTH 51° 37' 17" EAST 224.14 FEET TO A POST MARKED P.S. 7 AT THE MOST NORTHERLY CORNER OF LOT 11 OF THE J. J. MORRIS REAL ESTATE CO'S SUBDIVISION OF THE LOUOKS TRACT, A MAP OF WHICH IS OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF THE SANTA CLARA, STATE OF CALIFORNIA, IN BOOK "L" OF MAPS, PAGE 35 RECORDS OF SANTA CLARA; THENCE ALONG THE NORTHERLY LINE OF LOTS 10 AND 11 OF SAID SUBDIVISION SOUTH 38° 23' 31" WEST 657.32 FEET TO A POINT WHICH IS DISTANT ALONG THE NORTHERLY LINE OF LOTS 9 AND 10 OF SAID SUBDIVISION NORTH 38° 23' 31" EAST 520.00 FEET FROM THE MOST EASTERLY CORNER OF LOT 6 OF SAID SUBDIVISION; THENCE PARALLEL WITH AND DISTANT NORTHEASTERLY 520 FEET FROM THE NORTHEASTERLY LIEN OF LOTS 4, 5 AND 6 NORTH 51° 36' 25" WEST 941.59 FEET TO A POINT WHICH IS DISTANT NORTHEASTERLY, MEASURED AT RIGHT ANGLES, 260 FEET FROM THE NORTHEASTERLY, BANK OF ADOBE CREEK; THENCE PARALLEL WITH AND DISTANT NORTH EASTERLY 260 FEET FROM SAID CREEK NORTH 14° 12' WEST 501.67 FEET TO A POINT WHICH IS DISTANT 657 FEET SOUTHEASTERLY MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF CHARLESTON ROAD; THENCE PARALLEL WITH AND DISTANT 657 FEET SOUTHEASTERLY FROM THE CENTER LINE OF CHARLESTON ROAD NORTH 56° 26' 42" EAST 340.00 FEET TO A POINT ON THE CENTERLINE OF A 10 FOOT EASEMENT GRANTED TO THE PACIFIC GAS & ELECTRIC COMPANY BY DEED DATED NOVEMBER 21, 1935 AND RECORDED DECEMBER 11, 1935 IN BOOK 748 OF OFFICIAL RECORDS, PAGE 487; THENCE NORTH 43° 26' 42" EAST 170.00 FEET TO A POINT WHICH BEARS SOUTH 57° 55' 14" EAST 70.00 FEET; SOUTH 32° 04' 46" WEST 235.00 FEET AND SOUTH 56° 26' 42" WEST 265.00 FEET FROM A POINT ON THE CENTERLINE OF MIDDLEFIELD ROAD AT THE MOST WESTERLY CORNER OF THE ABOVE MENTIONED CHARLESTON GARDENS UNIT NO. 1; THENCE NORTH 56° 26' 42" EAST 265.00 FEET; THENCE NORTH 32° 04' 46" EAST 235.00 FEET TO THE CENTERLINE OF MIDDLEFIELD ROAD; THENCE ALONG THE CENTERLINE OF MIDDLEFIELD ROAD SOUTH 52° 55' 14" EAST 1212.79 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION CONVEYED TO ROLF GRABMEIER BY DEED RECORDED APRIL 8, 1955, 3138-82

PARCEL THREE:
BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND
CONVEYED BY RALPH GROBMEIER, ET UX, TO ROLF GROBMEIER, A MARRIED MAN BY DEED
DATED AUGUST 14, 1954 AND RECORDED OCTOBER 15, 1954 IN BOOK 2983 OF OFFICIAL
RECORDS, PAGE 211, DISTANT THEREON, S. 57 DEG. 42' 46" W. 221.83 FEET, FROM THE POINT
OF INTERSECTION OF SAID NORTHWESTERLY LINE WITH THE SOUTHWESTERLY LINE OF
MIDDLEFIELD ROAD; THENCE ALONG THE NORTHWESTERLY LINE OF SAID GROBMEIER
PARCEL, S. 57 DEG. 42' 46" W. 221.83 FEET TO THE MOST WESTERLY CORNER THEREOF;
THENCE ALONG THE SOUTHWESTERLY LINE OF SAID GROBMEIER PARCEL AND PARALLEL
WITH SAID LINE OF MIDDLEFIELD ROAD, S. 57 DEG. 55' 14" E. 95.97 FEET; THENCE LEAVING THE
SOUTHWESTERLY LINE OF SAID GROBMEIER PARCEL AND RUNNING, N. 32 DEG. 04' 46" E.
200.00 FEET TO THE POINT OF BEGINNING AND BEING A PORTION OF THE RANCHO RINCONDE
SAN FRANCISQUITO.

PARCEL FOUR:

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 11 IN BLOCK 1, AS SHOWN ON THE
MAP OF TRACT 1310, GREENMEADOW, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE
OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 7,
1954, IN BOOK 50 OF MAPS, PAGES 50 AND 51; THENCE ALONG A SOUTHWESTERLY LINE OF
SAID LOT 11, N. 33° 33' 18" W., 40.00 FEET; THENCE ALONG A SOUTHEASTERLY LINE OF LOTS
11 AND LOT 12, IN BLOCK 1, AS SHOWN ON THE MAP HEREINABOVE REFERRED TO, S. 56° 26'
42" W., 50.00 FEET; THENCE ALONG A NORTHEASTERLY LINE OF SAID LOT 12, S. 33° 33' 18" E.,
40.00 FEET; THENCE ALONG THE NORTHEASTERLY PROLONGATION OF THE MOST
SOUTHERLY LINE OF SAID LOT 12, N. 56° 26' 42" E., 50.00 FEET TO THE POINT OF BEGINNING,
AND BEING A PORTION OF THE SANTA RITA RANCHO.

ASSESSOR'S PARCEL NUMBER: 147-08-003
At the date hereof exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

2. Rights of the public, county and/or city in that portion lying within the street as it now exists: Middlefield Road.

3. An easement affecting the portion of said land and for the purpose stated herein, and incidental purposes.

   In Favor of: Pacific Gas and Electric Company, a California corporation

   No representation is made as to the present ownership of said easement.

   Purpose: Gas pipeline
   Recorded: December 11, 1935
   Book: 748
   Page: 487
   Affects: As therein described

4. An easement affecting the portion of said land and for the purpose stated herein, and incidental purposes.

   In Favor of: City of Palo Alto

   No representation is made as to the present ownership of said easement.

   Purpose: Public street
   Recorded: July 22, 1954
   Book: 2920
   Page: 557
   Affects: The Southwesterly boundary of Parcel Two, as therein described

5. Any rights of parties in possession of said land, based on any unrecorded lease or leases, as disclosed by an inspection of said land and/or inquiry.

   Note: Please submit copies of leases for review.

6. Matters which may be disclosed by an inspection or survey of said land or by inquiry of the parties in possession thereof.

   Note: An inspection of said land should be ordered prior to close of escrow and upon its completion, we will advise you of our findings.
INFORMATIONAL NOTES:

A. There is located on said land a commercial structure known as 4000 Middlefield Road, Palo Alto, California.

B. There are no conveyances affecting said land recorded within twenty-four (24) months of the date of this report.

C. This charge for a policy of title insurance, if issued through this title order, will be based on the basic insurance rate.

D. General/Special Property Taxes for fiscal year 2001 - 2002 and possible prior years were not assessed.

E. In addition to the county transfer tax of $0.55 per $500.00 the land herein also subject to a City of Palo Alto conveyance tax in the amount of $1.65 per $500.00 valuation. This city tax is figured on the full value of the land with no credits for existing loans or bonds.
EXHIBIT I

AMENDMENT NO. 2 TO LEASE AND
COVENANT NOT TO DEVELOP BETWEEN
THE CITY OF PALO ALTO AND
THE PALO ALTO UNIFIED SCHOOL DISTRICT

This Amendment No. 2 to Lease and Covenant Not to Develop is entered into this ___ day of __________, 200__ by and between the Palo Alto Unified School District ("District") and the City of Palo Alto, a municipal Corporation ("City").

RECITALS

A. The City and the District entered into that certain Lease and Covenant Not to Develop on September 1, 1989 ("Lease") which provides in part that the City leases from the District certain property commonly referred to as the Cubberley Site. The parties entered into the Amendment No. 1 to Lease and Covenant Not to Develop on July 20, 1998.

B. The City and the District have now entered into a property exchange agreement whereby the City will convey to the District a portion of a site known as the Terman site in exchange for the District conveying fee title to the City of 7.97 acres of the Cubberley Site. The City will continue to lease from the District the remaining portion of the Cubberley Site.

C. Pursuant to Section 4.1 of the Lease, District covenants with City and City covenants with District that, in order to prevent further burden on City’s infrastructure and preserve a substantial amount of City’s remaining open space, certain school sites shall not be subdivided, sold or developed with additional square footage to be used for non-school district purposes.

D. Section 6.5.2(b) of the Lease provides that in the event District wishes to reopen, as an operating school, any of the Covenanted Sites described in Exhibits D, E, and F, it may do so upon written notice to City, provided that in such event, City and District shall amend the Lease to include within the Covenant Not to Develop two operating elementary school sites of District within the city limits of the City of Palo Alto. Amendment No. 1 to the Lease and Covenant Not to Develop
substituted the Walter Hays Site and Juana Briones Site as replacements for the "old" Ohlone site which has been renamed "Hoover School."

E. The District has now re-opened the Garland Site and wishes to designate Addison and El Carmelo as the two operating school sites to be substituted for the Garland Site.

F. Section 4.1 of the Lease limits additional development on any Covenanted Site for non-school district purposes to 2,000 square feet. As part of the re-opening of the Terman Middle School, the District will grant a license to use the Greendell Site to the Albert L. Schultz Jewish Community Center ("JCC") for interim childhood development programs. The JCC wishes to use nine (9) portable classrooms and one portable bathroom, each with an area of approximately 960 square feet, on the Greendell Site. City is willing to amend the Lease to permit the installation and use of these portable facilities by the JCC without additional consideration; however, the installation and use of such portable facilities requires a conditional use permit from the City.

G. City and District wish to amend the Lease and Covenant Not to Develop to provide for the reduction in area of the Cubberley Site and reduction in rent; the reopening of the Garland Site and the substitution of the Addison site and the El Carmelo site within the Covenant Not to Develop; to permit the interim use of portable buildings at the Greendell Site; and to grant to District the right to open a compact high school at Cubberley after the JCC has ceased relocated its operations from Cubberley.

NOW, THEREFORE, for consideration, receipt of which is acknowledged, the parties agree as follows:

1. Site Description. Section 1.1.5 of the Lease is hereby amended in its entirety to read as follows:

"1.1.5 Leased Site—Cubberley Site. Effective September 1, 2002, the term 'Leased Site' means all of that certain real property situated in the City described in Exhibit A attached hereto and made a part hereof, and all improvements thereon as of September 1, 2002."
2. **Covenanted Sites.** Paragraph 1.1.8 is hereby amended to read as follows:

"1.1.8 Covenanted Sites. The term 'Covenanted Sites' means all that certain property situated in the City described in Exhibits B, C, D-1, D-2, E-1, E-2, F, and G attached hereto and made a part hereof."

3. **Reopening of Garland Site.** Paragraph 1.1.10 is hereby deleted.

4. **Substitution of Addison and El Carmelo.** Paragraphs 1.1.10.1 and 1.1.10.2 are, respectively, are hereby added to read as follows:

"1.1.10.1 Addison Site. The term 'Addison Site' means all that certain real property situated in the City described in Exhibit E-1 attached hereto and made a part hereof.

1.1.10.2 El Carmelo Site. The term 'El Carmelo Site' means all that certain real property situated in the City described in Exhibit E-2 hereto and made a part hereof."

5. **Covenant Payments.** Section 2.2 is hereby amended to read as follows:

- Walter Hayes/Juana Briones $204,742
- Addison/El Carmelo $182,804
- Greendell $182,804
- Jane Lathrop Stanford $236,000
- Jordan $164,000

6. **Lease Payments.** Section 2.8 is added to the Lease and Covenant Not to Develop to read as follows:

"2.8 Reduction in Rent. City obligation to pay rent to the District for the Cubberley Site shall be reduced, commencing September 1, 2002, by an amount equal to $23,490 per month, ('the Offset Amount.') Whenever the Payment is adjusted pursuant to Section 2.7, the Offset Amount shall be adjusted by the same method."
7. Cubberley Lease. Section 3.0 of the Lease is hereby amended in its entirety to read as follows:

"3.0 Cubberley Lease. District hereby leases to City and City hereby leases from District for the term, at the rental, and upon all of the conditions set forth herein, the Leased Site commonly known as 'Cubberley School' situated in the City of Palo Alto described in Exhibit A attached hereto and made a part hereof and all improvements thereon. As of September 1, 2002, the total acreage of the Leased Site is approximately 27.48 acres of which 15.94 acres is outdoor recreation area; the remaining 11.54 acres is comprised of parking lot area, walkways, and approximately 80,150 square feet of buildings; however, it is understood that such acreage and square footage figures are only approximate and have not been precisely determined.

8. Covenant Not to Develop. Section 4.1 of the Lease is hereby amended in its entirety to read as follows:

"4.1 District hereby covenants with City and City hereby covenants with District that, in order to prevent a further burden on the City's infrastructure and in order to preserve a substantial amount of the City's remaining open space, which contributes to the welfare of the City's residents, the Covenanted Sites situated in the City of Palo Alto and described in Exhibits B, C, D-1, D-2, E-1, E-2, F and G attached hereto and made a part hereof, shall not be (1) subdivided, (2) sold or (3) developed with additional square footage to be used for non-school district purposes for the term of this Lease, for the consideration and upon all the conditions set forth herein, provided that the district may add portable non-permanent structures totaling no more than 2,000 square feet per Covenanted Site. If the District adds such square footage on any Covenanted Site, it shall give written notice to the City within 30 days of such addition. Provided, City hereby agrees that placement of up to nine portable class rooms and one portable bathroom, each consisting of approximately 960 square feet, on the Greendell Site, to be used by the JCC as
an interim relocation site for childhood development programs for not more than eight years, shall not be a violation of this Covenant. City acknowledges that location and use of such facilities by District itself for school-district purposes is not a violation of the Covenant and does not require City consent. JCC may not place or use portable facilities on the Greendell Site prior to obtaining a conditional use permit from City.

Upon the expiration or earlier termination of this Lease, except as provided in Section 4.2, the City shall execute and deliver to District a quitclaim deed for the Covenanted Sites, unless otherwise agreed to by the parties."

9. Exhibit E to the Lease is deleted and replaced with Exhibits E-1 and Exhibits E-2, respectively; and the Summary of Exhibits is amended accordingly.

10. **District Option to Open Compact High School.** Not withstanding any other provision of the Lease, after the JCC has removed its programs from the City-owned property at the former Cubberley School and from the Leased Site, District may terminate the Lease with respect to all or a portion of the Leased Site so that it may operate a compact high school at Cubberley. District must provide twenty-four (24) months written notice to City of such termination or partial termination. If the District elects a partial termination, the notice shall include a map and legal description specifying the new Leased Site, and the City's payment for the Leased Site, shall be reduced in proportion to the reduction in the land area of the Leased Site. Further, if the District elects a complete or partial termination of the Lease under this Section 10, the District and City shall enter into a joint use agreement regarding the gym, cafeteria, theatre and fields. The Covenant Not to Develop shall remain in effect.

11. **Effect of Amendment No. 2.**

(a) As amended herein, the Lease dated September 1, 1989 and Amendment No. 1 remain in full force and effect. In case of any conflict between any of the amendments made in this Amendment No. 2 and the remaining provisions of the Lease as entered into September 1, 1989 and Amendment No. 1, the
Lease and Amendment No. 1 shall be interpreted so as to give effect to the provisions of this Amendment No. 2.

(b) This Amendment No. 2 shall be effective upon the date first written above. By separate agreement, parties have agreed that prior to September 1, 2002, District shall transfer to City fee title to that portion of the Cubberley Site removed from the leasehold by Section 7 of this Amendment No. 2. If, pursuant to that agreement, the transfer of Cubberley property to City and the release of City’s interest in the reduction in City rent will be accelerated to coordinate with that closing, and the transfer to the District of the City’s right to receive rental income for the Terman Site from the JCC.

IN WITNESS WHEREOF, the District and the City have caused this Amendment No. 2 to be executed by their respective officers as of the day and year first above written.

ATTEST: CITY OF PALO ALTO

City Clerk Mayor

APPROVED AS TO FORM: PALO ALTO UNIFIED SCHOOL
DISTRICT, Lessor

Senior Asst. City Attorney President, Board of Education

APPROVED:

City Manager Superintendent of Schools

Exhibit E-1 Addison Site (Legal Description and Map)
Exhibit E-2 El Carmelo Site (Legal Description and Map)
EXHIBIT E1
ADDISON SITE
PROPERTY DESCRIPTION

A portion of real property situated in the City of Palo Alto, County of Santa Clara, State of California more particularly described as follows:

ALL of Lots 1, 2, 3 and 4 of Block 81 as shown on the map titled "ORIGINAL MAP SHOWING SUBDIVISION OF UNIVERSITY PARK, SANTA CLARA CO, CALIFORNIA" and recorded in the office of the County Recorder of said Santa Clara County on February 27, 1889 in Book "D" of maps, at page 69

Parcel contains 200,000 square feet or 4.5913 acres more or less.

Parcel is shown on attached map EXHIBIT E-1 and made a part hereof.

END OF DESCRIPTION

expires 6-30-03

JAMES DAVID KIEHL P.L.S. 7152
PREPARED BY / APPROVED

LEGAL: 1200610.Word
PLAT: 1200610.DWG
TITLE REPORT: #56901-52990147-PRT

This description are based upon information from record data and said title Report
EXHIBIT E2
EL CARMELO SITE
PROPERTY DESCRIPTION

A portion of real property situated in the City of Palo Alto, County of Santa Clara, State of California more particularly described as follows;

(Grant Deed Book 2126 page 525, dated July 2, 1951)
ALL of Block 20 as laid down designated and delineated upon that certain map entitle, "Map No. 1 Map of Stanford City, Santa Clara County, California " recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. "M" of Maps, page 97 records of said County and

(Resolution and order proclaiming the Abandonment of a County Road Book 2140 page 146, dated January 22, 2951)
El Capitan Road from its intersection with Ramona Street to its intersection with Bryant Street, as the same is delineated and designated upon that certain Map entitled "Map No. 1 Map of Stanford City, Santa Clara County, California " recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. "M" of Maps, page 97 records of said County and

(Corporation Grant Deed Book 2143 page 235, dated January 30, 1951)
Lots 1 to 18 inclusive in Block 21 as laid down, designated and delineated upon that certain Map entitled, "Map No. 1 Map of Stanford City, Santa Clara County, California " recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. "M" of Maps, page 97 records of said County and excepting therefrom:

(Grant Deed Book 2455 page 584, dated February 13, 1952)
Beginning at a point on the northwesterly line of Loma Verda Avenue, formerly called College Avenue, distant northeasterly upon said line 10.78 feet from the most southerly corner of Lot 14, Block 21 Map No. 1 Map of Stanford City, Santa Clara County, California " recorded May 3, 1910 in the office of the Recorder of the County of Santa Clara, State of California, in Vol. "M" of Maps, page 97, records of Santa Clara County, California:

thence southwesterly along a curve to the right, having a radius of 370 feet and a central angle of 18° 12', an arc distance of 117.53 feet;

thence South 56° 42' West 4.82 feet;

thence southwesterly along a curve to the right, having a radius of 20.00 feet and a central angle of 36° 48' 34", an arc distance of 12.84 feet to a point on the southwesterly line of Lot 18 of said Block;

thence South 51° 30' East 27.56 feet to the most southerly corner of said Lot 18,
thence North 38° 30' East along said line of Loma Verda Avenue 130.28 feet to the point of beginning, being a part of Lots 14, 15, 16, 17 and 18 of said Block 21 and contain 0.025 acres, more or less.

Parcel contains 189,963 square feet or 4.3609 acres more or less.

Parcel is shown on attached map Exhibit "E2" and made a part hereof.

END OF DESCRIPTION

Requested by: Bill Fellman
Check by: Jay Remley
Check by: James Bourquin

Expires 6-30-03
JAMES DAVID KIEHL P.L.S. 7152
PREPARED BY / APPROVED

LEGAL: 13204834.Word
PLAT: 13204834.DWG
This description is based upon information from record data and said title report.
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The Palo Alto Unified School District

Does hereby GRANT to the CITY OF PALO ALTO, a municipal corporation, that certain property in the City of Palo Alto, County of Santa Clara, State of California, described in Exhibit A and shown in Exhibit B attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed.

GRANTOR
Palo Alto Unified School District

Dated: 1/23/02

John Barton
President, Board of Education

APPROVED:
Mary Frances Callan
Superintendent
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the City of Palo Alto, a municipal corporation, is hereby accepted by the undersigned officer or agent on behalf of the Council of the City of Palo Alto, pursuant to authority conferred by resolution of the said Council adopted on March 15, 1971, and the City of Palo Alto consents to recordation thereof by its duly authorized officer.

Dated 8/14/02

By: [Signature]
Assistant City Manager

Approved as to Form/
City Attorney

By: [Signature]

ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA  )
COUNTY OF SANTA CLARA )

On August 14, 2000, before me,

WILLIAM W. FELLMAN

NOTARY

personally appeared

EMILY HARRISON

A person personally known to me -or- proved to me on the basis of satisfactory evidence to be the person(s) whose name 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.

WILLIAM W. FELLMAN
Commission # 1259802
Notary Public - California
Santa Clara County
My Comm. Expires Apr 22, 2004

Notary Public
SUBLEASE

THIS SUBLEASE is made this 14th day of November, 1997 by and between the City of Palo Alto, a municipal corporation, (CITY) and Foothill-DeAnza Community College District (SUBTENANT).

RECITALS

A. CITY, under a Lease and Covenant Not to Develop (Lease), dated September 1, 1989, by and between the Palo Alto Unified School District (DISTRICT) and the City of Palo Alto (CITY), is leasing the former Cubberley High School site at 4000 Middlefield Road (Cubberley Site).

B. CITY desires to develop the Cubberley site into a community facility and sublease a portion of it for educational services.

C. SUBTENANT proposes to lease a portion of the Site to provide community and educational services.

NOW THEREFORE, in consideration of these premises, the parties hereto mutually agree as follows:

I. PREMISES (RL 3.0) S

Subject to the terms and conditions set forth in this agreement, CITY SUBLEASES to SUBTENANT that certain property (PREMISES) described and shown in "EXHIBIT B". EXHIBIT B is attached to, and by this reference, made a part of this SUBLEASE. Approximately 39,675 square feet, identified as buildings B, C, I, J, P, classrooms A4, A5, D3, D5, D6, D7 and the Pavilion Offices, Weight Room and Aerospace Room. Additionally, SUBTENANT shall be provided part-time exclusive use of approximately 18,485 square feet, identified as GYM-A from 5:00 PM to 10:00 PM, Monday through Thursday of each week and exclusive use of the Pavilion 24 hours per day, Monday through Thursday of each week. The GYM-A and Pavilion locker/shower rooms shall be accessible during
the hours of exclusive use as well as up-to 2:00 PM on Fridays. SUBTENANT accepts the PREMISES "as-is" on the date of this SUBLEASE subject to the provisions of paragraph XI of this agreement.

SUBTENANT or CITY, upon 120 day prior written notice to either party, and upon mutual agreement and acceptance, may amend the PREMISES' description. CITY reserves the right to rent the aforementioned PREMISES to other groups outside the days and times not granted to SUBTENANT.

II. PURPOSE (RL 4.0) S

The purpose of this SUBLEASE is to provide for the use of the PREMISES solely for the purpose of providing instruction and related City authorized support services required to support the educational programs conducted under the auspices of the Foothill-DeAnza Community College District.

III. REQUIRED AND OPTIONAL SERVICES AND USES (RL 5.0) S

In furtherance of the purposes stated above, the following required and optional services and uses shall be provided, permitted or prohibited:

A. Required Services and Uses. Throughout the term of this SUBLEASE, SUBTENANT shall provide the following services and activities:

To provide public educational instruction and related City authorized support services, in compliance with all laws and regulations.

B. Optional Services and Uses. Subject to the prior written approval of the City Manager, SUBTENANT may also use the PREMISES to provide additional services and uses which are ancillary to and compatible with the required services and uses stated above and not in conflict with the required uses.

Approval of optional services and uses shall be within the sole discretion of the City Manager.

C. Restricted Uses. SUBTENANT agrees not to use the PREMISES for any
other purpose nor to engage in, or permit, any other business activity within or from the PREMISES, not previously approved by CITY and not in support of the instructional and related authorized support services required to support the educational programs of the Foothill-DeAnza Community College District.

D. Prohibited Uses. The following uses are prohibited: 1) The serving and/or sale of alcoholic beverages; 2) conducting games of chance on the premises.

IV. TERM (RL 6.0) NS

The term of this SUBLEASE shall be five (5) years, commencing July 1, 1997 and terminating on June 30, 2002. SUBTENANT may terminate this SUBLEASE, upon one hundred twenty (120) days prior written notice, and upon agreement and acceptance by CITY. CITY shall not withhold acceptance without reasonable cause.

V. CONSIDERATION RENT (RL 7.0) NS

As consideration for SUBTENANT'S use of the PREMISES in accordance with the terms and conditions of this SUBLEASE, SUBTENANT agrees to pay to CITY forty four thousand five hundred thirty-four dollars ($44,534.00/mo) per month for all exclusive use space and ten thousand three hundred and seventy-four dollars ($10,374.00/mo) per month for all part-time exclusive use space, for a total of fifty four thousand nine hundred and eight dollars ($54,908.00/mo) per month due and payable in accordance with Clause VIII (RENT PAYMENT PROCEDURE).

VI. REVISION OF RENTALS (RL 7.3) S

The rental specified in Clause V (CONSIDERATION/RENT) shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index, All Urban Consumers, (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose CMSA published by the U.S. Department of Labor, Bureau of Labor Statistics or any replacement index published by said Bureau.

The automatic adjustment shall be effective on each anniversary of the
commencement date of this SUBLEASE and shall be calculated in accordance with the following formula:

\[ X = A \times \frac{B}{C} \]

Where:

\[ X = \text{Adjusted rental.} \]
\[ A = \text{Rental at the Commencement of the SUBLEASE.} \]
\[ B = \text{Average monthly index for the 12 calendar months ending with and including the index published just prior to the month in which each rental rate adjustment is to become effective.} \]
\[ C = \text{Average monthly index for the 12 calendar months ending with and including the index published just prior to commencement of this SUBLEASE.} \]

VII. RENT PAYMENT PROCEDURE (RL 10.0) S

A. On or before the first day of each month, SUBTENANT shall pay to CITY rent as set forth in Clause V (CONSIDERATION/RENT).

B. Should this SUBLEASE commence on a date other than the first of any month, rent for the first and last month of this SUBLEASE shall be prorated assuming a 30-day month.

C. Rental payments shall be delivered to the Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated place of payment may be changed at any time by CITY upon ten (10) days written notice to SUBTENANT. Rental payments may be made by check made payable to the City of Palo Alto, however, SUBTENANT assumes all risk of loss if payments are made by mail.

D. Acceptance of Late or Incorrect Rent: SUBTENANT specifically agrees that acceptance of any late or incorrect rentals submitted by SUBTENANT shall not constitute an acquiescence or waiver by CITY and shall not prevent CITY from enforcing Clause XIII (CHARGE FOR LATE PAYMENT) or any other remedy provided in this SUBLEASE.

VIII. CHARGE FOR LATE PAYMENT (RL 11.1) S
If any payment of rent as specified in Clause V (CONSIDERATION/RENT) or of any other sum due CITY is delinquent more than two consecutive months, a late charge equal to one percent (1%) of the payment due and unpaid shall be added to the payment, and the total sum shall become immediately due and payable to CITY.

IX. SECURITY DEPOSIT (RL 13.0) S

A security deposit in the sum of seventy five thousand dollars ($75,000.00) shall be provided to CITY by SUBTENANT. The security deposit shall take one of the forms set out below and shall guarantee SUBTENANT'S full and faithful performance of all the terms, covenants, and conditions of this SUBLEASE.

A. Cash.

B. The assignment to CITY of a savings deposit held in a financial institution in Santa Clara or San Mateo County acceptable to CITY. At a minimum, such assignment shall be evidenced by the delivery to CITY of the original passbook reflecting the savings deposit and a written assignment of said deposit to CITY in a form approved by the Real Property Manager.

C. A Time Certificate of Deposit from a financial institution in Santa Clara or San Mateo County wherein the principal sum is made payable to CITY or order. Both the financial institution and the form of the certificate must be approved by the Real Property Manager.

D. A Letter of Credit or other instrument of credit from a financial institution, subject to regulation by the state or federal government, pledging that fund necessary to secure performance of the SUBLEASE terms, covenants, and conditions, are on deposit and guaranteed for payment, and agreeing that the funds shall be trust funds securing SUBTENANT'S performance and that all or any part shall be paid to CITY or order upon demand by CITY. Both the financial institution(s) and the form of the instrument(s) must be approved by the Real Property Manager.

Regardless of the form in which SUBTENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this
SUBLEASE incurred by CITY as a result of the failure by SUBTENANT, its successors or assigns, to faithfully perform all of the terms, covenants, and conditions of this SUBLEASE. Should SUBTENANT elect to provide a Time Certificate of Deposit, Letter of Credit, or other instrument of credit, hereinafter collectively referred to as "INSTRUMENT", to fulfill the security deposit requirements of this SUBLEASE, the INSTRUMENT shall contain a provision whereby the institution issuing the INSTRUMENT agrees to provide CITY with written notice of its intent not to renew the INSTRUMENT at least thirty (30) days prior to expiration or termination of the INSTRUMENT. If SUBTENANT has not provided CITY with an acceptable alternate form of security deposit at least ten (10) days prior to expiration or termination of the INSTRUMENT, CITY may demand and obtain from the institution issuing the INSTRUMENT, the amount secured by the INSTRUMENT as satisfaction of the security deposit provision of this SUBLEASE.

Should SUBTENANT elect to assign the savings deposit to CITY, or provide an alternate INSTRUMENT, to fulfill the security deposit requirements of this SUBLEASE, the assignment, or issuance of the INSTRUMENT shall have the effect of releasing the depositor or creditor therein from liability on account of the payment of any or all of the principal sum to CITY or order upon demand of CITY. The agreement entered into by SUBTENANT with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above, may allow the payment of interest accruing on account of the deposit to SUBTENANT, or order.

SUBTENANT shall maintain the required security deposit throughout the SUBLEASE term. Failure to do so shall be deemed a default and may be grounds for immediate termination of this SUBLEASE. The security deposit shall be rebated, reassigned, released, or endorsed to SUBTENANT or order, as applicable, at the end of the SUBLEASE term, provided SUBTENANT has fully and faithfully performed each and every term, covenant, and condition of this SUBLEASE.

X. MAINTENANCE AND REPAIR (RL 14.3) NS

CITY shall be responsible for exterior maintenance and repair of the structure and main support systems, including roof repair, heating, air conditioning and ventilation repair, main electrical systems, water, sewer systems repair, exterior painting and structural repairs
and maintain sidewalks, driveways, parking areas in a condition suitable to satisfy the purpose of the SUBLEASE. In addition, the CITY shall be solely responsible for rekeying locks and issuing new or additional keys (cost for rekeying and keys shall be billed to SUBTENANT at cost of materials and labor, and if done by CITY an additional 15% overhead shall be added to cost) and lock repair. However in the event that the estimated cost of repair exceeds fifty percent (50%) of the expected remaining future income to CITY under this SUBLEASE, CITY may decide not to make such repairs. In the event CITY decides not to make such repairs, and if SUBTENANT chooses not to make such necessary repairs, this agreement shall immediately terminate and SUBTENANT shall vacate the PREMISES by a mutually agreed upon period.

SUBTENANT expressly agrees to maintain the PREMISES in a safe, clean, wholesome, and sanitary condition and in substantial repair to the complete satisfaction of CITY and in compliance with all applicable laws. SUBTENANT shall secure the SUBLEASED PREMISES, provide for interior painting, light bulb and ballast replacement, electrical outlets, floor and ceiling tiles (except when damaged results from leaking roof), window glass replacement (if breakage is determined to have been caused by SUBTENANT), and cleaning of carpets, floors, windows and draperies if required more frequently than provided in Clause XI (JANITORIAL SERVICE). SUBTENANT further agrees to provide approved interior containers for trash and garbage and to keep the interior of the PREMISES free and clear of rubbish and litter. CITY shall have the right to enter upon and inspect the PREMISES at any time for cleanliness and safety. Notwithstanding the above provisions, SUBTENANT shall be responsible for damage or repair to PREMISES or any of its support systems resulting from SUBTENANT'S use of the PREMISES and not occasioned by normal wear and tear.

In areas that are shared with other tenants, the CITY is responsible for interior painting, light bulb and ballast replacements, etc. SUBTENANT shall designate in writing to CITY an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

If SUBTENANT fails to maintain or make repairs or replacements as required herein, CITY may notify SUBTENANT in writing of each failure. Should SUBTENANT fail to correct the situation within a reasonable time thereafter, as established by the City Manager, the Real Property Manager may make, or cause to be made, the necessary corrections and
the cost thereof, including but not limited to the cost of labor, materials, and equipment and a fifteen percent (15%) charge for administration and overhead, shall be paid by SUBTENANT within ten (10) days of receipt of a statement of the cost from the Real Property Manager. CITY may, at its option, choose other remedies available herein, or available by law.

If CITY fails to maintain or make repairs or replacements as required herein, SUBTENANT may notify CITY in writing of each failure. Should CITY fail to correct the situation within a reasonable time thereafter, as established by the SUBTENANT'S Director of Maintenance and Plant Operations, the SUBTENANT as to evidence legal remedy, may make, or cause to be made, the necessary financial retribution by the CITY for the cost thereof, including but not limited to the cost of labor, materials, and equipment and a fifteen percent (15%) charge for administration and overhead, shall be paid by CITY within ten (10) days of receipt of a statement of the cost from the Director. Any interior damage that is caused by CITY'S failure to maintain the exterior facility will be repaired at the expense of the CITY. SUBTENANT may, at its option, choose other remedies available herein, or available by law.

XI. JANITORIAL SERVICE NS

CITY will provide janitorial service to the PREMISES, as described in Exhibit C., attached to, and by this reference made a part of this SUBLEASE. Any future facilities added to the PREMISES, (eg. snackbar services), shall not be included in Janitorial Services provided by CITY, unless previously negotiated and approved by CITY.

XII. CONSTRUCTION AND/OR ALTERATION BY SUBTENANT (RL 15.1) NS

A. CITY'S Consent. No structures, improvements, or facilities shall be constructed, erected, altered, or made within the PREMISES without the prior written consent of City Council if required by City of Palo Alto procedures or ordinances, or otherwise by the City Manager. Major revisions will also require prior written approval by the Palo Alto Unified School District and/or State Architect. Any conditions relating to the manner, method, design, and construction of the structures, improvements, or facilities established by CITY, District and State Architect shall
be conditions of this clause as though originally stated herein. SUBTENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by CITY, provided such fixtures and installation have been reviewed and approved by the City Manager.

B. Strict Compliance with Plans and Specifications. All improvements constructed by SUBTENANT within the PREMISES shall be constructed in an efficient and professional manner and in strict compliance with detailed plans and specifications approved by the City Council if required by City of Palo Alto procedures or ordinances or otherwise by the City Manager, or designee, or DISTRICT designee, and applicable City of Palo Alto codes and ordinances.

C. Certificate of Inspection. Upon completion of construction of any building, SUBTENANT shall submit to the Real Property Manager, a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

All improvements constructed, erected or installed upon the PREMISES must be free and clear of all liens, claims, or liability for labor or material. CITY may at its option require SUBTENANT to remove subtenant-constructed interior walls upon termination of SUBLEASE.

Title to all equipment, furniture, furnishings and trade fixtures placed by SUBTENANT upon the PREMISES shall remain in SUBTENANT, and replacements, substitutions and modifications thereof may be made by SUBTENANT throughout the term of this SUBLEASE. SUBTENANT may remove such fixtures and furnishings upon termination of this SUBLEASE, provided that SUBTENANT shall repair to the satisfaction of the CITY any damage to the PREMISES and improvements caused by such removal and; provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the PREMISES upon termination of this SUBLEASE.

D. Prior to commencement of any work, SUBTENANT shall pay the amount of any increase in premiums on insurance policies provided for herein because of endorsements to be made covering the risk during the course of work. The SUBTENANT shall have the option of
providing its own construction insurance for the added risk during the course of the work. In addition, if the estimated cost of work shall exceed One Thousand Dollars ($1,000.00), SUBTENANT shall, without cost to DISTRICT or CITY, furnish DISTRICT with a performance bond written by a surety acceptable to DISTRICT and CITY in an amount equal to the estimated cost of the work, guaranteeing the completion of work, free and clear of liens, encumbrances, and security interest, according to the approved plans and specifications.

XIII. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (RL 15.4) S

A. Total Destruction. In the event the PREMISES or a substantial portion thereof are destroyed by any cause that renders the PREMISES unfit for the purposes designated in Clause III (REQUIRED & OPTIONAL USES) and if the PREMISES are so badly damaged that they cannot be repaired within ninety (90) days from the date of such damage, either party may terminate this SUBLEASE by giving to the other party written notice within thirty (30) days of the occurrence of such damage. After such notice of termination has been given, rental (excepting percentage rental, if any) shall be prorated to the date SUBTENANT actually vacates the PREMISES which shall be no later than thirty (30) days from the giving of the notice of termination.

B. Insured Partial Destruction. If the PREMISES are partially destroyed by any cause insurable under fire insurance with a standard extended coverage casualty endorsement and the destroyed portion can be rebuilt or repaired within ninety (90) days from the date of destruction, CITY shall repair the damage or destruction with reasonable diligence. In such event, this SUBLEASE shall remain in full force and effect; however, until the destroyed PREMISES are repaired, rental (excepting percentage rental, if any) paid by SUBTENANT to CITY shall be reduced in the same proportion that SUBTENANT's square footage is reduced by such destruction. However there shall be no rent abatement or offset should the damage or destruction be caused by SUBTENANT, its employees, agents or contractors.

C. Non-Insured Partial Destruction. If the PREMISES are partially destroyed by any cause not insurable by fire insurance with an extended coverage casualty endorsement but the PREMISES can still
be used for the purposes designated in Clause III (REQUIRED & OPTIONAL USES), SUBTENTANT may, at its option, terminate this SUBLEASE unless CITY commences rebuilding or repair of the destroyed portion of the PREMISES within 90 days from the date of destruction. However, there shall be no rent abatement or offset should the damage or destruction be caused by SUBTENTANT, its employees, agents or contractors.

Such termination by SUBTENTANT shall be accomplished by giving CITY written notice of termination not sooner than ninety (90) days nor later than one hundred (100) days after the occurrence of such damage or destruction. This SUBLEASE shall terminate on the date such notice of termination is given to CITY. If CITY accomplishes such repair or if SUBTENTANT fails to exercise its option to terminate, this SUBLEASE shall remain in full force and effect, however, until the destroyed PREMISES are repaired, rental paid by SUBTENTANT to CITY (excepting percentage rent, if any) shall be reduced in the same proportion that SUBTENTANT's SUBLEASED square footage is reduced by such destruction. However, there shall be no rent abatement or offset should the damage or destruction be caused by SUBTENTANT, its employees, agents or contractors.

Glass breakage shall not be deemed a partial destruction within the meaning of this clause.

XIV. AS BUILT PLANS (RL 15.5) S

Upon completion of any major SUBTENTANT-constructed improvements, SUBTENTANT shall provide the Real Property Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the PREMISES. SUBTENTANT shall also provide the Real Property Manager with a statement signed by SUBTENTANT under penalty of perjury certified as to accuracy of actual construction costs for all such improvements.

XV. UTILITIES (RL 17.1) NS

SUBTENTANT shall provide and pay for any and all telephone equipment or services to the PREMISES specified in this Contract.
XVI. INSURANCE (RL 18.0) S

SUBTENANT shall maintain insurance acceptable to CITY in full force and effect throughout the term of this SUBLEASE. The policy or policies of insurance maintained by SUBTENANT shall provide the following limits and coverages:

<table>
<thead>
<tr>
<th>POLICY</th>
<th>MINIMUM LIMITS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) WORKERS' COMPENSATION</td>
<td>Statutory</td>
</tr>
<tr>
<td>(2) COMPREHENSIVE AUTOMOBILE LIABILITY</td>
<td>Bodily Injury $1,000,000 ea. person</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 ea. occurrence</td>
</tr>
<tr>
<td>including owned, hired, and non-owned</td>
<td>Property Damage $1,000,000 ea. occurrence</td>
</tr>
<tr>
<td>automobiles</td>
<td></td>
</tr>
<tr>
<td>(3) COMPREHENSIVE GENERAL LIABILITY</td>
<td>Bodily Injury $3,000,000 ea. person</td>
</tr>
<tr>
<td>including products and completed operations</td>
<td>$3,000,000 ea. occurrence</td>
</tr>
<tr>
<td></td>
<td>$3,000,000 aggregate</td>
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<tr>
<td></td>
<td>Property Damage $3,000,000 ea. occurrence</td>
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<td></td>
<td>Personal Injury $3,000,000 ea. occurrence</td>
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<tr>
<td>(4) FIRE LEGAL LIABILITY</td>
<td>$1,000,000 This sum represents the estimated cost of the improvements and fixtures within the care, custody and control of SUBTENANT. This sum shall be subject to annual review by Risk Manager to ensure that coverage is adequate to cover changes in the replacement cost of improvements and fixtures within the care, custody and control of SUBTENANT.</td>
</tr>
</tbody>
</table>

Insurance shall be in full force and effect commencing on the first day of the term of this SUBLEASE. Each insurance policy required by this SUBLEASE shall contain the following clauses:
1. "This insurance shall not be canceled, limited in scope of coverage or nonrenewed until after thirty (30) days written notice has been given to the: CITY OF PALO ALTO/Real Estate Division, PO Box 10250, Palo Alto, CA 94303".

2. "All rights of subrogation are hereby waived against the CITY OF PALO ALTO, the members of the City Council and elective or appointive officers or employees, and the Palo Alto Unified School District when acting within the scope of their employment or appointment."

3. "The CITY OF PALO ALTO and the PALO ALTO UNIFIED SCHOOL DISTRICT are added as additional insureds as respects operations of the named insured at or from the premises SUBLEASED from the CITY OF PALO ALTO."

4. "It is agreed that any insurance maintained by the CITY OF PALO ALTO will apply in excess of, and not contribute to insurance provided by this policy."

XVII. INSURANCE (RL 18.2)

SUBLETANT agrees to deposit with the Real Property Manager, on or before the effective date of this SUBLEASE, certificates of insurance necessary to satisfy CITY that the insurance provisions of this SUBLEASE have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with CITY during the entire term of this SUBLEASE. Should SUBLETANT not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, CITY may purchase such insurance, on behalf of and at the expense of SUBLETANT to provide six months of coverage.

CITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Risk Manager, the insurance provisions in this SUBLEASE do not provide adequate protection for CITY and for members of the public using the PREMISES, the Real Property Manager may require SUBLETANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. CITY'S requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk which
exists at the time a change in insurance is required.

The Real Property Manager shall notify SUBTENANT in writing of changes in the insurance requirements. If SUBTENANT does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, or in the event SUBTENANT fails to maintain in effect any required insurance coverage, SUBTENANT shall be in default under this SUBLEASE without further notice to SUBTENANT. Such failure shall constitute a material breach and shall be grounds for immediate termination of this SUBLEASE at the option of CITY.

The procuring of such required policy or policies of insurance shall not be construed to limit SUBTENANT'S liability hereunder nor to fulfill the indemnification provision and requirements of this SUBLEASE. Notwithstanding the policy or policies of insurance, SUBTENANT shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this SUBLEASE or with use or occupancy of the PREMISES.

XVIII. ASSIGNING AND ENCUMBERING PROHIBITED (RL 19.1) NS

Since CITY has relied on the specific background and capabilities of SUBTENANT in awarding this SUBLEASE, any mortgage, pledge, hypothecation, encumbrance, sublease (in excess of six months), transfer, or assignment (collectively referred to as ENCUMBRANCE) of SUBTENANT'S interest in the PREMISES, or any part or portion thereof, is prohibited. Any attempted ENCUMBRANCE shall be null and void and shall confer no right, title, or interest in or to this SUBLEASE.

XIX. SUBLETTING (SHORT-TERM) NS

SUBTENANT may sublease (for periods not to exceed six months, including hourly rentals) the PREMISES upon first receiving written approval by the City Manager. Failure to obtain CITY'S required written approval of a sublease will render such sublease void. Occupancy of the PREMISES by a prospective sub-sublessee before approval of such sub-sublease by CITY shall constitute a breach of this SUBLEASE.

SUBTENANT shall first direct all inquiries for rentals, both hourly
and long-term, to the Manager, Real Property. After CITY has determined that space is not available to adequately meet the needs of the prospective user(s), SUBTENANT may proceed with negotiating the short term use of their PREMISES and shall proceed with obtaining CITY's written approval as described herein. All rates and rents charged by SUBTENANT shall conform to CITY's hourly and short term lease rates.

Should CITY consent to any sublease, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this SUBLEASE. Such terms, covenants, or conditions shall apply to each and every sublease hereunder and shall be severally binding upon each and every subtenant. Any document to sub-sublet the PREMISES or any part thereof shall incorporate directly or by reference all the provisions of this SUBLEASE.

XX. DEFAULT IN TERMS OF THE SUBLEASE BY SUBTENANT (RL 20.0) S

Should SUBTENANT default in the performance of any covenant, condition, or agreement contained in this SUBLEASE and such default is not corrected within thirty (30) days of receipt of a notice of default from CITY, CITY may:

A. Terminate this SUBLEASE and all rights of SUBTENANT and those who claim under SUBTENANT, stemming from this SUBLEASE, shall end at the time of such termination;

B. At CITY'S sole option, cure any such default by performance of any act, including payment of money, and the cost thereof, plus reasonable administrative cost, shall become immediately due and payable by SUBTENANT to CITY;

C. Seek an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of CITY;

D. Seek a mandamus or other suit, action of proceeding at law or in equity to enforce its rights against SUBTENANT and any of its officers, agents, and employees and its assigns, and to compel it to perform and carry out its duties and obligations under the law and its covenants and agreements with CITY as provided herein; or
E. Pursue any other remedy available by law or specifically provided in other clauses of this SUBLEASE.

However, in the event of a default which cannot reasonably be cured within thirty (30) days, SUBTENANT shall have a reasonable period of time (as determined by the City Manager) to cure the default. Each and all of the remedies given to CITY hereunder or by any law now or hereafter enacted, are cumulative and the exercise of one right or remedy shall not impair the right to CITY to exercise any or all other remedies. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, then, and in every such case, CITY and SUBTENANT shall be restored to its and their former position and rights and remedies as if no such suit, action or proceedings had been brought or taken.

In addition to a violation or breach of any other provision of this SUBLEASE, SUBTENANT shall be considered to be in default under this SUBLEASE should SUBTENANT:

A. voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law;

B. be adjudicated a bankrupt; or

C. attempt to make a general assignment for the benefit of its creditors.

XXI. LIMITATION OF THE LEASEHOLD (RL 22.0) S

This SUBLEASE and the rights and privileges granted SUBTENANT in and to the PREMISES are subject to all covenants, conditions, restrictions, and physical or legal encumbrances, including those which are set out in the September 1, 1989 LEASE by and between CITY AND DISTRICT. (A copy of the Agreement is on file at 250 Hamilton Avenue, City Hall, Real Estate Division, for your review.) Nothing contained in this SUBLEASE or in any document related hereto shall be construed to imply the conveyance to SUBTENANT of rights in the PREMISES which exceed those owned by CITY.

XXII. NOTICES (RL 23.0) S
All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by either party to the other, shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by United States Certified mail, postage, prepaid, (3) sent by express delivery service, or (4) in the case of a facsimile, if sent to the telephone number(s) set forth below during normal business hours of the receiving party and followed within 48 hours by delivery of hard copy of the material sent by facsimile, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery service and service by facsimile transmission. Delivery of notices properly addressed shall be deemed complete when the notice is physically delivered to the Real Property Manager.

All notices pursuant to this SUBLEASE shall be addressed as set forth below or as either party may subsequently designate by written notice.

TO: CITY
Real Property Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (415) 329-2468

with a copy to:
City Clerk
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (415) 329-2646

and

TO: SUBTENANT
Director of Operations
Foothill DeAnza Community College
District
12345 El Monte Road

with a copy to:
Dean, Off Campus Programs
Foothill College
4000 Middlefield Road
Palo Alto, CA 94303
FAX: (415) 493-7492

Los Altos Hills, CA 94022
FAX: (415) 948-5194

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XXIII. REPRESENTATIONS REGARDING HAZARDOUS MATERIALS (NS)

With respect to the existence or use of "Hazardous Materials" as defined in 30(A) of the General Conditions, CITY represents to SUBTENANT to the best of CITY's knowledge as of the date of execution of this SUBLEASE and based on no other inquiry than (i) information received from the Palo Alto Unified School District, the master landlord of the subleased premises, and (ii) the making and examination of a study of the subleased premises undertaken by Dynamac Corporation with respect to the existence or non-existence of friable and non-friable asbestos and asbestos-containing construction materials, that the subleased premises is in compliance with all laws regulating the handling, transportation, storage, treatment, use and disposition of Hazardous Materials, including asbestos and asbestos-containing construction materials.

XXIV. ATTACHMENT TO SUBLEASE (RL 24.0) S

This SUBLEASE includes the following exhibits, which are attached hereto and by this reference incorporated into this SUBLEASE:

   Exhibit A - General Conditions
   Exhibit B - Description of SUBLEASED Premises
   Exhibit C - Description of Janitorial Services

The inclusion of clauses in Exhibit A (GENERAL CONDITIONS) is not in any way intended to lessen the importance of these clauses, but is merely done to enhance the organization of various clauses and this SUBLEASE.
IN WITNESS WHEREOF, the parties have executed this SUBLEASE the day and year first above written.

CITY:

CITY OF PALO ALTO (CITY)

BY: [Signature]

City Manager

[Title]

APPROVED AS TO FORM:

By: [Signature]

Sr. Assistant City Attorney

RECOMMENDED AS TO FORM:

By: [Signature]

Manager, Real Property

RECOMMENDED FOR APPROVAL:

By: [Signature]

Director, Community Services

SUBTENANT:

BY: [Signature]

James Keller
Vice Chancellor, Business Services
Foothill/DeAnza Community College District
GENERAL CONDITIONS

1. DEFINITIONS (RL 27.1) S

CITY shall mean the City Council of the City of Palo Alto, a municipal corporation.

The City Manager is hereby authorized to take any actions under this SUBLEASE on behalf of CITY except for termination of this SUBLEASE.

Clauses in this SUBLEASE refer to specific officers or employees of CITY. Should these positions be eliminated or the title changes, it is understood and agreed that such references shall be considered to be to the new title for renamed positions or to the replacement official designated with the responsibilities of any eliminated position. Any reference to a City officer or employee includes a reference to the officer's or employee's designated representative.

2. TIME (RL 27.3) S

Time is of the essence of this SUBLEASE.

3. ACCESS TO PREMISES NS

SUBTENANT agrees not to obstruct the sidewalks, entry passages, or halls and will use the same only as a means of passage from its respective areas. SUBTENANT and its employees and invitees shall have the right, in common with other persons, to use driveways and parking areas located on the property provided that such use shall be subject to such reasonable rules and regulations as may from time to time be adopted by CITY.

4. PARKING NS

CITY designates, for use by SUBTENANT, fifteen (15) parking spaces marked "reserved for users of "P" building during the hours of 8:00 am to 5:00 pm Monday through Thursday" and twenty-seven (27) parking

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spaces located directly behind "I" building, marked "reserved for staff between the hours of 4:00 pm to 10:00 pm Monday through Thursday". CITY may, at its discretion, reassign said spaces should parking lot area(s) be redesigned, spaces behind P building shall remain those located closest to the P building. Signage for said spaces shall be provided and maintained by SUBTENANT.

5. SIGNS (RL 27.4) NS

SUBTENANT agrees not to construct, maintain, or allow any sign to be placed upon the PREMISES except as may be approved in writing by CITY. Unapproved signs, banners, etc., may be removed by CITY. All signs to be placed upon the PREMISES, must conform to the Cubberley Master Sign Program.

CITY will consult with SUBTENANT, prior to installing any signs upon the portion of PREMISES subleased by SUBTENANT, or common areas which would directly influence SUBTENANT'S use of PREMISES in accordance with Clause III (Required and Optional Services and Uses).

6. PERMITS AND LICENSES (RL 27.5) S

SUBTENANT shall be required to obtain any and all permits and/or licenses which may be required in connection with the operation of, and any approved SUBTENANT construction upon, the PREMISES as set forth in this SUBLEASE.

7. MECHANICS LIENS (RL 27.6) S

SUBTENANT shall at all times indemnify and save CITY harmless from all claims for labor or materials supplied in connection with construction, repair, alteration, or installation of structures; improvements, equipment, or facilities within the PREMISES, and from the cost of defending against such claims, including attorney fees. SUBTENANT shall provide CITY with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics lien or stop notice. CITY reserves the right to enter upon PREMISES for the purposes of posting Notices of Non-Responsibility.
In the event a lien is imposed upon the PREMISES as a result of such construction, repair, alteration, or installation, SUBTENANT shall either:

A. Record a valid Release of Lien; or

B. Deposit sufficient cash with CITY to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

C. Procure and-record a bond in accordance with Section 3143 of the Civil Code, which releases the PREMISES from the claim of the lien from any action brought to foreclose the lien.

Should SUBTENANT fail to accomplish one of the three optional actions within fifteen (15) days after the filing of such a lien, the SUBLEASE shall be in default and may be subject to immediate termination.

8. SUBLEASE ORGANIZATION AND RULES OF CONSTRUCTION (RL 27.7) S

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this agreement, refer to this agreement.

All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein, and to sustain the validity hereof.

The titles and headings of the sections of this agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms of provisions hereof or be considered or given any effect in construing this agreement or any provision hereof in ascertaining

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intent, if any question of intent shall arise.

9. AMENDMENTS (RL 27.8) S

This SUBLEASE sets forth all of the agreements and understandings of the parties and any modifications must be written and properly executed by both parties.

10. UNLAWFUL USE (RL 27.9) S

SUBTENANT agrees that no improvements shall be erected, placed upon, operated, nor maintained within the PREMISES, nor any business conducted or carried on therein or therefrom, in violation of the terms of this SUBLEASE, or of any regulation, order of law, statute, or ordinance of a governmental agency having jurisdiction over SUBTENANT'S use of the PREMISES.

11. NONDISCRIMINATION (RL 27.10) S

SUBTENANT and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, national origin or physical handicap. SUBTENANT shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin or physical handicap. SUBTENANT covenants to meet all requirements of the Palo Alto Municipal Code pertaining to nondiscrimination in employment. If SUBTENANT is found in violation of the nondiscrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this SUBLEASE by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default under this SUBLEASE, and such default shall constitute a material breach of this SUBLEASE. CITY shall then have the power to cancel or suspend this SUBLEASE in whole or in part.

12. INSPECTION (RL 27.11) S

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CITY'S employees and agents shall have the right at all reasonable times to inspect the PREMISES to determine if the provisions of this SUBLEASE are being complied with.

13. HOLD HARMLESS (RL 27.12) NS

SUBTENANT hereby waives all claims, liability and recourse against CITY, including the right of contribution for loss or damage of or to persons or property arising from, growing out of or in any way connected with or related to this agreement. SUBTENANT hereby agrees to indemnify, hold harmless and defend CITY, its officers, agents, and employees against any and all claims, liability, demands, damages, cost, expenses or attorneys' fees arising out of the operation or maintenance of the property described herein or SUBTENANT'S performance or non-performance of the terms of this SUBLEASE. SUBTENANT shall have the right to decide and determine whether and when any such action or proceeding shall be compromised, resisted, defended, tried or appealed.

CITY agrees to indemnify, hold harmless and defend SUBTENANT, its officers, agents and employees against any and all claims, liability demands, cost, expenses or attorneys' fees arising out of CITY'S performance or non-performance of the terms of this SUBLEASE.

14. TAXES AND ASSESSMENTS (RL 27.13) NS

This SUBLEASE may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to the possessory interest tax) which become due and payable upon the PREMISES or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of SUBTENANT and SUBTENANT shall pay the taxes and assessments prior to delinquency. Should the County levy personal property taxes for the use of the PREMISES, the CITY shall notify SUBTENANT, if CITY is notified of such taxes, and SUBTENANT shall be responsible for filing the appropriate exemption certificate.

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15. SUCCESSORS IN INTEREST (RL 27.14) S

Unless otherwise provided in this SUBLEASE, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

16. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (FORCE MAJEURE) (RL 27.15) S

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

17. PARTIAL INVALIDITY (RL 27.16) S

If any term, covenant, condition, or provision of this SUBLEASE is determined to be invalid, void, or unenforceable, by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

18. WAIVER OF RIGHTS (RL 27.17) S

The failure of CITY or SUBTENANT to insist upon strict performance of any of the terms, covenants, or conditions of this SUBLEASE shall not be deemed a waiver of any right or remedy that CITY or SUBTENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the SUBLEASE thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the SUBLEASE.
19. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT (RL 27.18) NS

In the event either CITY or SUBTENANT commences legal action against the other claiming a breach or default of this SUBLEASE, the prevailing party in such litigation shall be entitled to recover from the other reasonable cost of sustaining such action, including reasonable attorney fees, as may be fixed by the Court.

20. RESERVATIONS TO CITY (RL 27.19) S

The PREMISES are accepted "as is" (as defined by the terms of paragraph IB) and "where is" by SUBTENANT subject to any and all existing easements, and encumbrances. CITY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the PREMISES or any part thereof, and to enter the PREMISES for any and all such purposes. CITY also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the PREMISES. No right reserved by CITY in this clause shall be so exercised as to interfere unreasonably with SUBTENANT'S operation hereunder.

CITY agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to the original condition upon the completion of any construction.

21. HOLDING OVER (RL 27.20) S

In the event SUBTENANT shall continue in possession of the PREMISES after the term of the SUBLEASE, such possession shall not be considered a renewal of this SUBLEASE but a tenancy from month to month and shall be governed by the conditions, and covenants contained in this SUBLEASE.

22. CONDITION OF PREMISES AT THE TIME OF SUBLEASE (NS)
At the commencement of the SUBLEASE, SUBLESSEE shall accept the buildings and improvements and any equipment in their existing condition and state of repair, and SUBLESSEE agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of CITY in respect thereto except as contained in the provisions of this sublease, and CITY shall in no event be liable for any latent defects.

23. CONDITION OF PREMISES UPON TERMINATION (RL 27.21) NS

Upon termination of this SUBLEASE, except as otherwise agreed to herein, SUBTENANT shall redeliver possession of the PREMISES to CITY in substantially the same condition that existed immediately prior to SUBTENANT'S occupancy, reasonable wear and tear, flood, earthquake, war, and any act of war excepted. Upon termination of this SUBLEASE, CITY may require SUBTENANT to remove interior structures/modifications constructed by SUBTENANT.

24. DISPOSITION OF ABANDONED PERSONAL PROPERTY (RL 27.22) S

If SUBTENANT abandons the PREMISES or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to SUBTENANT and left on the PREMISES forty-five (45) days after such abandonment or dispossession shall be deemed to have been transferred to CITY. CITY shall have the right to remove and to dispose of such property without liability therefor to SUBTENANT or to any person claiming under SUBTENANT, and shall have no need to account therefor.

25. CITY'S RIGHT TO RE-ENTER (RL 27.24) S

SUBTENANT agrees to yield and peaceably deliver possession of the PREMISES to CITY on the date of termination of this SUBLEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to SUBTENANT, CITY shall have the right to re-enter and take possession of the PREMISES on the date such termination becomes effective without further notice of any kind and without institution of regular legal proceedings. Termination of the SUBLEASE and re-entry of the PREMISES by CITY

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shall in no way alter or diminish any obligation of SUBTENANT under the SUBLEASE terms and shall constitute an acceptance or surrender.

SUBTENANT waives any and all rights of redemption under any existing or future law or statute in the event of eviction from or dispossession of the PREMISES for any reason or in the event CITY re-enters and lawfully re-takes possession of the PREMISES.

26. CONFLICT OF INTEREST (RL 27.25) S

SUBTENANT warrants and covenants that no official or employee of CITY nor any business entity in which any official or employee of CITY is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to CITY. In the event that CITY determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of CITY, SUBTENANT upon request of CITY shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this SUBLEASE and CITY may terminate this SUBLEASE as a result of such violation.

27. EMINENT DOMAIN (RL 27.26) S

In the event the whole or any part of the PREMISES are condemned by a public entity in the lawful exercise of its power of eminent domain, this SUBLEASE shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the PREMISES by the condemning public entity.

If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this SUBLEASE, SUBTENANT shall continue to be bound by the terms, covenants and conditions of this SUBLEASE. However, the then current minimum annual rent shall be reduced in proportion to the relationship that the compensation paid by the condemning public entity for the portion condemned bears to the value of the entire PREMISES as of the date of possession of the part condemned. If the condemnation of a part of the PREMISES

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substantially impairs the capacity of the remainder to be used for
the purposes required by this SUBLEASE, SUBTENANT may:

A. Terminate this SUBLEASE and thereby be absolved of obligations
under this SUBLEASE which have not accrued as of the date of
possession by the condemning public entity; or

B. Continue to occupy the remaining PREMISES and thereby continue
to be bound by the terms, covenants and conditions of this
SUBLEASE. If SUBTENANT elects to continue in possession of the
remainder of the PREMISES, the then current annual minimum
rental shall be reduced in proportion to the relationship that
the compensation paid by the condemning public entity for the
part condemned bears to the value of the entire SUBLEASED
PREMISES as of the date of possession by the condemning public
entity.

SUBTENANT shall provide CITY with written notice advising CITY of
SUBTENANT'S choice within thirty (30) days of possession of the part
condemned by the condemning public entity.

CITY shall be entitled to and shall receive all compensation related
to the condemnation of all or part of the PREMISES by the exercise of
eminent domain except that SUBTENANT shall be entitled to that
portion of the compensation which represents the value of the
SUBTENANT constructed improvements for the remainder of the SUBLEASE
term. The amount to which SUBTENANT shall be entitled shall not
exceed the actual cost of improvements constructed by SUBTENANT
reduced in proportion to the relationship of the remaining SUBLEASE
term to the original SUBLEASE term, using a straight line approach.

28. CHANGES IN PRICE INDICES (RL 27.27) S

Clauses contained in this SUBLEASE may provide for adjustment based
on the Consumer Price Index, component indices, or other indices.
Should these indices be changed, altered or cease to be published,
the following conditions shall apply:

A. If the subject index is changed so that the base year differs
from that used as of the month in which the term commences, the
subject index shall be converted in accordance with the
conversion factor published by the publisher of that index;

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B. If the subject index is discontinued or revised during the SUBLEASE term, such index shall be replaced by another government index or computation which will obtain substantially the same result as would be obtained if the subject index had not been discontinued or revised.

29. HAZARDOUS SUBSTANCES (RL 27.29) NS

A. Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health and Human Services, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, as the same may be amended from time to time.

B. SUBTENANT'S Use of PREMISES. During the term of this SUBLEASE, SUBTENANT shall abide and be bound by all of the following requirements:

i. SUBTENANT shall comply with all laws now or hereafter in effect relating to the use of Hazardous Materials on, under or about the PREMISES, and SUBTENANT shall not contaminate the PREMISES, or its subsurfaces, with any Hazardous Materials when such release or releases are caused by or result from SUBTENANT'S acts or omissions on the PREMISES.

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ii. SUBTENANT shall restrict its use of Hazardous Materials at the PREMISES to those kinds of materials that are normally used in constructing the Project. Disposal of any Hazardous Materials at the Premises are strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be approved by CITY'S Fire Chief in accordance with all laws.

iii. SUBTENANT shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from SUBTENANT'S activities on the PREMISES. SUBTENANT shall immediately inform CITY of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.

iv. SUBTENANT shall be solely and fully responsible and liable for such releases at the Premises, or into CITY'S sewage or storm drainage systems. SUBTENANT shall take all necessary precautions to prevent any of its Hazardous Materials from entering into any storm or sewage drain system or from being released on the Premises. SUBTENANT shall remove releases of its Hazardous Materials in accordance with all laws. In addition to all other rights and remedies of CITY hereunder, if the release of Hazardous Materials caused by SUBTENANT is not removed by SUBTENANT within ninety (90) days after discovery by SUBTENANT, CITY or any other third party, CITY may pay to have the same removed and SUBTENANT shall reimburse CITY for such costs within five (5) days of CITY'S demand for payment.

v. SUBTENANT shall protect, defend, indemnify and hold harmless CITY from and against all loss, damage, or liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which CITY may sustain as a result of the presence or cleanup of Hazardous Materials on the
PREMISES, that result from SUBTENANT's use or release of Hazardous Materials.

vi. SUBTENANT'S obligation under this Clause shall survive the expiration or earlier termination of this SUBLEASE.

30. ALL COVENANTS ARE CONDITIONS (RL 27.30) S

All provisions of the SUBLEASE are expressly made conditions.

31. PARTIES OF INTEREST (RL 27.31) S

Nothing in this agreement, expressed or implied, is intended to, or shall be construed to, confer upon or to give to any person or party other than CITY and SUBTENANT the covenants, condition or stipulations hereof. All covenants, stipulations, promises and agreements in this SUBLEASE shall be for the sole and exclusive benefit of CITY and SUBTENANT.

32. RECORDATION OF SUBLEASE (RL 27.32) S

Neither CITY nor SUBTENANT shall record this SUBLEASE; however, a short-form memorandum of SUBLEASE may be recorded at CITY'S request.
EXHIBIT C

CITY shall provide the following janitorial service to the PREMISES:

Daily

a) Empty and clean all trash containers, dispose of trash and replenish liners, as needed.
b) Clean blackboards, trays, chairs and table tops.
c) Clean and maintain restrooms in a sanitary and odor-free condition; including all floors, mirrors, sinks, toilet bowls and urinals.
d) Furnish and replenish all restroom supplies.
e) Straighten up tables and chairs in classrooms.
f) Sweep or dust mop all hard surface floors including stairways and halls.
g) Vacuum all carpets.
h) Remove finger marks and smudges from all glass entrance doors, mirrors, walls and doors.
i) Specifically check, and if needed, dust tops of counters, and furniture (which is free of interfering objects).
j) Secure all windows and doors; and turn off lights (weekdays only).
k) Sweep exterior walkways.
l) Remove graffiti as soon as possible, upon discovery.

Weekly

a) Mop hard surface floor areas as needed.
b) Dust for cobwebs, window sills and blinds.

Once per year

a) Strip and wax floors.
b) Wash windows inside and out.
c) Shampoo carpets.
AMENDMENT NO. 1
TO SUBLEASE BETWEEN CITY OF PALO ALTO
AND FOOTHILL-DEANZA COMMUNITY COLLEGE DISTRICT

This Amendment No. 1 Between the City of Palo Alto and Foothill-DeAnza Community College District (hereinafter referred to as the "Sublease"), is made and entered into this _____ day of August, 1999, by and between the CITY OF PALO ALTO, a California municipal corporation of the State of California, hereinafter referred to as "CITY," and FOOTHILL-DEANZA COMMUNITY COLLEGE DISTRICT, hereinafter referred to as "SUBTENANT."

RECITALS

WHEREAS, Sections V and VI of the Sublease require a monthly rent of $54,908, subject to automatic annual adjustments in proportion to changes in the Consumer Price Index; and

WHEREAS, Section X of the Sublease requires CITY to be responsible for, among other items, roof repair, exterior painting and painting of interior ceiling tiles (when the result of a leaking roof) of the subleased facility located at 4000 Middlefield Road, Palo Alto; and

WHEREAS, CITY and SUBTENANT agree that the exterior buildings and some interior ceilings (as the result of leaking roofs which have now been repaired) are in serious need of paint and that CITY, due to the priority of other projects, does not have the resources to complete the painting in a timely fashion; and

WHEREAS, CITY and SUBTENANT agree it is appropriate that SUBTENANT complete the required painting, the documented cost of which would be credited against SUBTENANT’s required monthly rent.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

SECTION I. Section V of the sublease is hereby amended to read as follows:

“V. CONSIDERATION RENT (RL 7.0) NS

As consideration for SUBTENANT’S use of the PREMISES in accordance with the terms and conditions of this SUBLEASE, SUBTENANT agrees to pay to CITY forty-four thousand five hundred thirty-four dollars ($44,534.00/mo) per month for all exclusive use space and ten thousand three hundred and seventy-four dollars ($10,374.00/mo) per month for all part-time exclusive use space, for a total of fifty-four thousand nine hundred and eight dollars ($54,908.00/mo) per month due and payable in accordance with Clause VIII (RENT PAYMENT PROCEDURE).
CITY agrees to allow SUBTENANT a one-time credit up to a maximum of $128,000 against the required monthly rent for the cost of painting the building exterior and interior ceiling tiles damaged due to a leaking roof. SUBTENANT agrees to use a licensed painting contractor and to use the color scheme approved by CITY's Architectural Review Board. CITY agrees to apply the rent credit following completion of the painting and upon receipt by the Real Property Manager of appropriate documentation of actual painting costs. The work shall be completed and this credit shall expire and be of no further effect after August 31, 2000."

SECTION 2. Except as herein modified, all other provisions of and exhibits to the Option shall remain in full force and effect.

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

CITY OF PALO ALTO

[Signature]
City Manager

APPROVED AS TO FORM:

[Signature]
Senior Assistant City Attorney

APPROVED:

[Signature]
Assistant City Manager

[Signature]
Director of Administrative Services

[Signature]
Director of Public Works

[Signature]
Manager, Real Property

FOOTHILL-DEANZA COMMUNITY COLLEGE DISTRICT

[Signature]
By:
Vice Chancellor

[Signature]
In:
AMENDMENT NO. 2
TO SUBLEASE BETWEEN CITY OF PALO ALTO AND
FOOTHILL DEANZA COMMUNITY COLLEGE DISTRICT

This Amendment No. 2 to the Sublease dated July 1, 1997, between the City of Palo Alto and Foothill-DeAnza Community College District (hereinafter referred to as the "Sublease"), is made and entered into this \( \text{Juy 1, 2002} \) day of \( \text{Juy 1, 2002} \), by and between the City of Palo Alto, a California municipal corporation of the State of California herein referred to as "CITY", and Foothill DeAnza Community College District, hereinafter referred to as "SUBTENANT".

RECITALS

WHEREAS, the Sublease was a five (5) year term which is due to terminate on June 30, 2002;

WHEREAS, the Sublease was amended (Amendment No. 1), by the CITY and SUBTENANT on August 2, 1999, for the agreement that Subtenant complete required painting, the documented cost of which would be credited against Subtenant’s required monthly rent;

WHEREAS, the parties now desire to amend the Sublease to provide for an extension of the Sublease term and for conditions of termination;

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

SECTION I. Section IV of the Sublease is hereby amended to read as follows:

"IV. TERM (RL 7.0) NS

The term of this SUBLEASE shall be five (5) years, commencing July 1, 2002 and terminating on June 30, 2007. SUBTENANT may terminate this SUBLEASE, upon one hundred twenty (120) days prior written notice, and upon agreement and acceptance by CITY. CITY shall not withhold acceptance without reasonable cause.

CITY may terminate this SUBLEASE, upon twenty two (22) months prior written notice, and upon twenty four (24) months written notice to City from the Palo Alto Unified School District of termination or partial termination of the Lease and Covenant Not to Develop (Lease), dated September 1, 1989, as amended by and between the Palo Alto Unified School District “DISTRICT” and the CITY."
ON 2. Except as herein modified, all other provisions of and exhibits to the Sublease shall remain in full force and effect.

WITNESS WHEREOF, the parties have by their duly authorized representatives executed an Amendment on the date first above written.

CITY

[Signature]
Assistant City Manager

SUBTENANT
FOOTHILL DEANZA COMMUNITY COLLEGE DISTRICT

[Signature]
James Keller
By: Vice Chancellor of Business Services

APPROVED AS TO FORM:

[Signature]
Senior Asst. City Attorney
AMENDMENT NO. 3
TO SUBLEASE BETWEEN CITY OF PALO ALTO AND
FOOTHILL DEANZA COMMUNITY COLLEGE DISTRICT

This Amendment No. 3 to the Sublease dated July 1, 1997, between the City of Palo Alto and Foothill-DeAnza Community College District (hereinafter referred to as the "Sublease"), is made and entered into this 6th day of January, 2003, by and between the City of Palo Alto, a California municipal corporation of the State of California herein referred to as "CITY", and Foothill-DeAnza Community College District, hereinafter referred to as "SUBTENANT".

RECITALS

WHEREAS, the Sublease was a five (5) year term which was due to terminate on June 30, 2002;

WHEREAS, the Sublease was amended (Amendment No. 1), by the CITY and SUBTENANT on August 2, 1999, for the agreement that Subtenant complete required painting, the documented cost of which would be credited against Subtenant’s required monthly rent;

WHEREAS, the Sublease was amended (Amendment No. 2), by the CITY and SUBTENANT on July 1, 2002, to provide for an additional five (5) year term which is due to terminate on June 30, 2007, and for conditions of termination;

WHEREAS, the parties now desire to amend the Sublease to reduce the exclusive leased premises from the current 39,675 square feet to 38,985 square feet, and to reduce the monthly rent accordingly.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

SECTION I. Effective September 1, 2002, the following clauses shall be amended to read as follows:

"I. PREMISES (RL 3.0) S

Subject to the terms and conditions set forth in this agreement, CITY SUBLEASES to SUBTENANT that certain property (PREMISES) described and shown in "EXHIBIT B". EXHIBIT B is attached to, and by this reference, made a part of this SUBLEASE. Approximately 38,985 square feet, identified as buildings B, C, I, J, P, classrooms A4, A5, D5, D6, D7 & and the Pavilion Offices, Weight Room and Aerospace Room. Additionally, SUBTENANT shall be provided part-time exclusive use of approximately 18,485 square feet,
identified as GYM-A from 5:00 PM to 10:00 PM, Monday through Thursday of each week and exclusive use of Pavilion 24 hours per day, Monday through Thursday of each week. The GYM-A and Pavilion locker/shower rooms shall be accessible during the hours of exclusive use as well as up-to 2:00 PM on Fridays. SUBTENANT accepts the PREMISES “as-is” on the date of this SUBLEASE subject to the provisions of paragraph XI of this agreement.

SUBTENANT or CITY, upon 120 day prior written notice to either party, and upon mutual agreement and acceptance, may amend the PREMISES’ description. CITY reserves the right to rent the aforementioned PREMISES to other groups outside the days and times not granted to SUBTENANT.

“V. CONSIDERATION RENT (RL 7.0) NS

As consideration for SUBTENANT’S use of the PREMISES in accordance with the terms and conditions of the SUBLEASE, SUBTENANT agrees to pay to CITY fifty three thousand three hundred forty-one dollars ($53,341.00/mo) per month for all exclusive use space and twelve thousand six hundred thirty-three dollars ($12,633.00/mo) per month for all part-time exclusive use space, for a total of sixty five thousand nine hundred seventy-four dollars ($65,974.00/mo) per month due and payable in accordance with Clause VIII (RENT PAYMENT PROCEDURE).

SECTION 2. Except as herein modified, all other provisions of and exhibits to the Sublease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives executed this Amendment on the date first above written.

CITY

[Signature]
Assistant City Manager

SUBTENANT
FOOTHILL-DEANZA COMMUNITY COLLEGE DISTRICT

[Signature]
BY: Acting Vice Chancellor, Business Services

APPROVED AS TO FORM:

[Signature]
Senior Asst. City Attorney