

DRAFT

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Escrow Instructions ("**Agreement**") is entered into as of this ___ day of _____, 2011 ("**Effective Date**"), between Licking Enterprises, a corporation authorized to do business in the State of California ("**Seller**") and the City of San Jose, a municipal corporation and charter city of the State of California ("**City**" or "**Buyer**").

RECITALS

A. Seller is the owner of certain real property located at 1157 East Taylor Street, San Jose, California, as more particularly described on the attached **Exhibit "1"** ("**Real Property**").

B. The Real Property is improved with an approximately 3990 square foot dwelling structure, as well as a carport and accessory structures. ("**Buildings**"). By this Purchase and Sale Agreement, the City acquires no title or ownership interest in the Buildings, title to which shall remain with Seller.

C. Buyer desires to purchase the Real Property for the development of future transportation infrastructure, and Seller desires to sell the Real Property to Buyer on the terms and conditions contained in this Agreement.

D. Buyer and Seller are parties to that certain Settlement Agreement and Release dated _____, and this Agreement is entered into pursuant to that Settlement Agreement.

DRAFT

NOW, THEREFORE, for valuable consideration, and subject to all the terms and conditions of this Agreement, Buyer and Seller agree as follows:

AGREEMENT

1. **PURCHASE AND SALE.** Pursuant to the terms and conditions contained in this Agreement, Seller agrees to sell the Real Property to Buyer and Buyer agrees to purchase the Real Property from Seller.

2. **PURCHASE PRICE.** The purchase price for the Real Property shall be \$2,023,000.00 ("**Purchase Price**"), payable by Buyer to Seller at close of escrow.

3. **ESCROW.**

A. **Opening of Escrow.** Buyer shall open an escrow at the offices of

Old Republic Title Company
1900 The Alameda
San José, CA 95126
(408) 557-8400

Upon mutual execution of this Agreement, Buyer and Seller shall deliver a fully executed copy of this Agreement to Title Company.

B. **Closing Date.** Escrow shall close ("**Close of Escrow**") within 30-days following the signing of this Agreement. For purposes of this Agreement, the closing date ("**Closing Date**") shall mean the date on which a grant deed conveying the Real Property to Buyer is recorded in the Santa Clara County Recorder's Office, and a Ground Lease between the parties is duly executed and also recorded in the Santa Clara County Recorder's Office.

DRAFT

4. **CONDITIONS TO CLOSING.**

A. **Buyer's Conditions to Closing.** Close of Escrow and Buyer's obligation to purchase the Real Property pursuant to this Agreement are subject to the satisfaction of the following conditions on or before the Closing Date:

(i) **Title.** At the Close of Escrow, Seller shall deliver fee title to the Real Property to City subject exclusively to exceptions _____ (**"Approved Title Exceptions"**) set forth in the _____ Preliminary Title Report dated _____ (**"Title Report"**), attached hereto as **Exhibit 2.**

(ii) **Condition of Real Property.** Buyer's approval and satisfaction with any other reports, tests or inspections conducted by Buyer that Buyer deems necessary and desirable, including but not limited to any reports, tests, or inspections pertaining to Hazardous Materials as defined in Section 5 (B) (1) below. Seller grants Buyer a right of entry to conduct such inspections, tests, or data gathering as Buyer determines necessary to complete the purchase of the Real Property, upon twenty-four (24) hours advance written notice to Seller.

(iii) **Delivery of Deed.** Seller shall have executed and deposited into Escrow, for delivery to the City, a standard Title Company form grant deed (**"Grant Deed"**) subject exclusively to the Approved Title Exceptions.

(iv) **Delivery of Executed Ground Lease of the Premises.** Seller shall have executed and deposited into Escrow, for delivery to the City, the Ground Lease Agreement for a Lease-back of the Real Property deeded to City as set forth in the Settlement Agreement

DRAFT

(v) Accuracy of Seller's Representations and Warranties. Seller's representations and warranties as set forth in Section 5 are true and correct as of the Close of Escrow.

If any of the conditions to Buyer's obligations set forth above fail to occur on or before the Closing Date through no fault of Buyer, then Buyer may cancel the Escrow, terminate this Agreement, and recover any amounts paid by Buyer to the Title Company toward the Purchase Price.

B. Seller's Condition to Closing. Close of Escrow and Seller's obligation to sell the Real Property pursuant to this Agreement, are subject to the performance by Buyer of Buyer's obligations under this Agreement, including, but not limited to, Buyer's obligation to deliver the Purchase Price in installments into Escrow on or before the Closing Date. If Buyer has failed to fulfill its obligations under this Agreement on or before the Closing Date through no fault of Seller, then Seller may cancel the Escrow, terminate this Agreement, and recover any documents delivered to the Title Company pursuant to this Agreement.

5. SELLER'S REPRESENTATIONS AND WARRANTIES.

A. Authority. Seller represents and warrants to Buyer that (i) it is the Owner of the Real Property and has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement; (ii) all requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with the entering into of this Agreement and the instruments referenced in this Agreement, and the consummation of the transactions contemplated in this Agreement; and (iii) no consent of any other party is required. Prior to the payment of the first installment of the Purchase Price, Seller shall deliver to Buyer certified copies of its articles of

DRAFT

incorporation, by-laws and relevant documents approving this Agreement and the transactions contemplated in this Agreement.

B. No Hazardous Materials.

1. Representation and Warranty. Seller represents and warrants that (i) Seller has not released any Hazardous Materials on the Real Property; (ii) to the best of Seller's knowledge there have been no release(s) of Hazardous Materials (as defined below) on the Real Property; (iii) to the best of Seller's knowledge there have been no Hazardous Materials on the Real Property; and (iv) Seller has not received any notice of any violation of any law, ordinance, rule, regulation or order of any governmental authority pertaining to the Hazardous Materials on the Real Property. For purposes of this Agreement, the term "**Hazardous Materials**" shall mean any substance or material which is capable of posing a risk of injury to health, safety or Real Property, including, but not limited to, all of those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including, but not limited to, all of those materials and substances defined as "Toxic Materials" in Section 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

2. Indemnification. (a) Seller shall, to the maximum extent permitted by law, save, defend, indemnify and hold harmless the City of San Jose and its officers, employees and agents, successors and assigns and each of them and their respective heirs, successors, assigns, and personal representatives (collectively called "**Indemnified Parties**") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, actual damages, fines, punitive damages, losses, costs, liabilities, interest, attorneys fees (including any such fees and expenses

DRAFT

incurred enforcing this indemnity), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively called “**Damages**”) resulting from, arising out of or in any way connected with injury to or the death of any person (including, without limitation, any Indemnified Party) or physical damage to property of any kind wherever located and by whomever owned (including, without limitation, that of any Indemnified Party) arising out of or in any way connected with the release or storage of any Hazardous Materials in, on or under the Real Property during Seller’s ownership of the Real Property. This indemnification shall survive the Close of Escrow on the Real Property and shall terminate on termination date of the Ground Lease or June 30, 2015, whichever is later.

(b) Exception to Indemnification – Release of Seller. City and the California Department of Toxics Substances Control have entered into a Voluntary Cleanup Agreement, Docket No. HSA-A 05/06-100 and dated January 30, 2006, pertaining to the cleanup of burn ash at Watson Park (the “Cleanup Agreement”). The Real Property being sold to City is not within the Watson Park Cleanup Site as specified in the Cleanup Agreement, and at present neither party is aware of any burn ash on the Real Property. Nonetheless, the parties agree that the foregoing indemnification by Seller does not extend to burn ash, if any, that might be located on the Real Property, and to the extent that burn ash of the type, kind, and levels found on the Watson Park Cleanup Site and subject to the Cleanup Agreement is located on the Real Property, the City hereby releases and forever discharges Seller, its successors, assigns, heirs, executors, administrators, officers, attorneys, shareholders and directors from any and all claims, demands, benefits, damages, actions, or suits, known and unknown, arising from or in anyway related to the burn ash of the type, kind, and levels found on the Watson Park Cleanup Site.

C. **Encumbrances.** Seller represents and warrants to Buyer that (i) other than the Ground Lease between the parties hereto, there are no leases, commitments options to purchase, rights of first refusal or contracts for lease or sale of

DRAFT

the Real Property; and (ii) there are no existing or threatened lawsuits, liens or claims against the Real Property.

D. Compliance with Law and Codes. Seller represents and warrants to Buyer that, to the best of Seller's Knowledge: (i) all material defects in the structural, mechanical, electrical and plumbing systems serving the Real Property are set forth on the attached **Exhibit "3"** and (ii) all operation and use of the Real Property which does not conform fully with all applicable federal, state and local laws, codes, rules and regulations is disclosed on the attached **Exhibit "4"**.

6. BUYER'S REPRESENTATIONS AND WARRANTIES.

Buyer represents and warrants to Seller that (i) it has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement; (ii) all requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with the entering into of this Agreement and the instruments referenced in this Agreement, and the consummation of the transactions contemplated in this Agreement; and (iii) no consent of any other party is required.

7. CLOSE OF ESCROW.

A. Delivery of Documents and Payment. Prior to the Close of Escrow, Seller shall deposit into Escrow the Grant Deed, properly executed and acknowledged by Seller, containing the legal description of the Real Property and subject exclusively to the Approved Title Exceptions. Prior to the Close of Escrow, Buyer shall deposit into Escrow (i) a Request for Cancellation of Taxes by a Public Agency; and (ii) the second installment of the Purchase Price. At or prior to the Close of Escrow, Buyer and Seller shall have each deposited into Escrow any supplemental escrow instructions necessary

DRAFT

to close this Escrow. Title Company shall deliver to Seller the Purchase Price, when (i) Title Company holds, and is able to record, the Grant Deed, (ii) Title Company is irrevocably prepared to issue to Buyer a final Title Policy, and (iii) the conditions specified in Section 4 have been satisfied or waived.

B. Title Insurance. At the Close of Escrow, Buyer shall obtain from Title Company an American Land Title Association (“**ALTA**”) standard owner’s form policy of title insurance in the amount of the Purchase Price insuring title to the Real Property in the name of the City subject exclusively to the Approved Title Exceptions and the standard printed exclusions from coverage of an ALTA standard title policy (“**Title Policy**”).

C. Recordation and Delivery. At the Close of Escrow, Title Company shall be instructed to record the Grant Deed and the Ground Lease, and to deliver the Title Policy to Buyer at the address set forth in Section 10 below.

8. REAL PROPERTY TAXES. Taxes and any penalties and costs on the Real Property for the current fiscal year and any and all previous fiscal years shall be paid by Seller through Escrow at Close of Escrow. Taxes for the current fiscal year shall be paid by Seller in accordance with the provisions of California Revenue and Tax Code (“**Code**”) Section 5086. The Buyer shall have no responsibility to reimburse Seller for any taxes Seller paid which are allocable to that part of the fiscal year, which begins on the date of apportionment determined pursuant to Code Section 5082. Seller shall be solely responsible for seeking any refund, for which Seller may be eligible, under Code Section 5096.7.

9. CLOSING COSTS.

Buyer agrees to pay all recording fees and half of the City of San Jose (“**City**”) documentary transfer tax, the Title Policy, and escrow fees. Seller agrees to

DRAFT

pay the cost of Santa Clara County ("**County**") documentary transfer tax and half of the City documentary transfer tax. All other closing costs shall be borne by the buyer.

10. **NOTICES**. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered, sent by national overnight courier service, sent by facsimile transmission, if also sent by one of the other methods provided in this Section, or sent by registered or certified mail, first class postage prepaid, return receipt requested, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice, (ii) the date of the facsimile transmission, or (iii) three (3) business days after the date of posting with the United States Postal Service at the following addresses:

To Seller: Dr. John Licking
Licking Enterprises, Inc.
1249 Robbia Ct
Sunnyvale, CA 94087

With a Copy to: Jivaka Candappa
Law Office of Jivaka Candappa
180 Grand Avenue, #700
Oakland, CA 94612

To Buyer: City of San Jose
Real Estate Services
200 East Santa Clara Street, 4th Floor
San Jose, CA 95113
Telephone: [408] 975-7400
Fax: [408] 971-4690

DRAFT

With a Copy To: Cliff Greenberg, Sr. Deputy City Attorney
San Jose City Attorney's Office
200 E. Santa Clara St.
San Jose, CA 95113
Telephone: (408) 535-1910
Fax: (408) 998-3131

To Title Company: Old Republic Title Company
1900 The Alameda
San José, CA 95126
(408) 557-8400

Notice will be effective or deemed effective on the date of delivery, if personally delivered or sent by facsimile or courier service, or if mailed, three (3) days after deposit with the United States Postal Service. Any party to this Agreement may change its address for receipt of notices by giving notice of such change to the other party in the manner set forth in this Section. Neither the rejection of a notice by the addressee or the inability to deliver a notice because of a change of address for which no change of address notice was received, shall affect the date on which such notice is deemed received.

11. **MISCELLANEOUS.**

A. **Time.** Time is of the essence of this Agreement with respect to each and every provision in which time is a factor.

B. **Entire Agreement.** This Agreement, including the attached Exhibits, contains the entire agreement between the parties pertaining to the subject matter of the transaction contemplated in this Agreement and fully supersedes any and all prior agreements and understandings between the parties. No change in, modification of or amendment to this Agreement shall be valid unless set forth in writing and signed by all of the parties subsequent to the execution of this Agreement.

DRAFT

C. Further Assurances. Each of the parties agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to the Closing Date, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

D. Successors. Subject to the provisions of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties, and their respective heirs, executors, representatives, successors and assigns.

E. Severability. In the event any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall be effective only to the extent of such determination and shall not prohibit or otherwise render ineffective any other provision of this Agreement.

F. Exhibits. The attached exhibits are incorporated by reference:

- Exhibit "1" - Legal Description and Plat
- Exhibit "2" - Preliminary Title Report
- Exhibit "3" - Real Property Condition Disclosures
- Exhibit "4" - Non-conforming Use and Operations

G. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

H. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the applicable laws of the State of California. In the

DRAFT

event that suit shall be brought by either party to the Settlement Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, California, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

I. Destruction or Damage. Before the Close of Escrow, risk of loss with regard to the Real Property shall be borne exclusively by Seller. If before the Close of Escrow, all or any portion of the Real Property is destroyed or damaged, to any extent whatsoever, Buyer may, in Buyer's sole discretion, either (1) terminate this Agreement and neither party shall have any further rights or obligations under this Agreement, or (2) proceed with the Close of Escrow. Any insurance recovery by the Seller consequent to such destruction or damage to the Real Property shall inure to the benefit and remain the property of the Seller.

J. Survival of Representations and Warranties. All warranties, representations and indemnities of Buyer and Seller set forth in this Agreement shall survive the Close of Escrow.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the effective date.

DRAFT

BUYER

APPROVED AS TO FORM:

THE CITY OF SAN JOSE

Assistant City Attorney

By: _____
Title: _____
Date: _____

SELLER

By: _____
Its: _____

DRAFT

EXHIBIT 1

REAL PROPERTY DESCRIPTION

The land referred to is situated in the County of Santa Clara, City of San José, State of California, and is described as follows:

PARCEL ONE:

All of Lots 13, 14, 15 and 16, in Block 1, as shown upon that certain Map entitled, "Map of the Property of the San José Pioneer Homestead Association", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on May 24, 1869 in Book "C" of Miscellaneous Records, Page 342.

EXCEPTING FROM said Lots 14, 15 and 16 all that portion thereof lying Northeasterly of the Southwesterly line of the Bayshore Highway as said line was established in the Deed from Carlo Bianchi, et ux, dated August 10, 1939, recorded October 14, 1939 in Book 949 of Official Records, Page 342.

ALSO EXCEPTING THEREFROM the following described parcel of land:

Commencing at the Westerly corner of said Lot 13, being on the property line common to the lands, now formerly of Carlo Bianchi, and of Hazel Marianelli, et al; thence along said common property line North $51^{\circ} 07' 26''$ East 79.78 feet to the Southerly line of the existing State Highway in Santa Clara County, Road IV-SCI-68SJS; thence along said Southerly line from a tangent that bears South $71^{\circ} 54' 39.8''$ East along a curve to the right with a radius of 5574.72 feet, through an angle of $2^{\circ} 12' 23.1''$ an arc length of 214.68 feet, thence South $39^{\circ} 50' 12''$ West 198.43 feet to the property line common to the lands, now or formerly of Carlo Bianchi and Silvio De Mattei; thence along last said common property line North $38^{\circ} 32' 41''$ West 221.02 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed to the State of California by State Deed No. 14081, recorded August 1, 1955 in Book 3240 of Official Records, Page 105, of Santa Clara County, said portion being described as follows:

Commencing at the most Easterly corner of said parcel of land; thence along the Southeasterly line of said Parcel South $51^{\circ} 27' 19''$ West, 231.36 feet to that certain course described as "South $38^{\circ} 32' 41''$ East, 99.31 feet", in Parcel 11 of Relinquishment No. 22157 to the City of San José, recorded June 5, 1961 in Book 5188, at Page 240, Official Records, of Santa Clara County; thence along said course North $38^{\circ} 32' 41''$ West, 19.31 feet to the Northeasterly terminus of the course described in said Parcel 11 with the length of 71.53 feet; thence along the Northeasterly prolongation of last said course North $39^{\circ} 50' 12''$ East, 236.20 feet to the Northeasterly line of said Parcel (3240 OR 105); thence along said line South $38^{\circ} 32' 41''$ East, 66.87 feet to the point of commencement.

APN: 249-21-006

DRAFT

EXHIBIT 2

PRELIMINARY TITLE REPORT

[ATTACHED]



OLD REPUBLIC
TITLE COMPANY

1900 The Alameda
San Jose, CA 95126
(408) 557-8400 Fax: (408) 249-2314

PRELIMINARY REPORT

Our Order Number 0616006906-SL

CITY OF SAN JOSE
200 E. SANTA CLARA ST.
SAN JOSE, CA 95113

Attention: LISA RICE

When Replying Please Contact:

Sharon LaFountain
SLaFountain@ortc.com
(408) 557-8400

Property Address:

1157 East Taylor Street, San Jose, CA 95112

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY 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 therein 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 Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. 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 hereto) 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 February 15, 2011, at 7:30 AM

OLD REPUBLIC TITLE COMPANY

For Exceptions Shown or Referred to, See Attached

Page 1 of 7 Pages

ORT 3

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

OLD REPUBLIC TITLE COMPANY
ORDER NO. 0616006906-SL

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Policy -1990; AND ALTA Loan Policy - 2006. A specific request should be made if another form or additional coverage is desired.

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

Fee

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

Licking Enterprises, LLC

The land referred to in this Report is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

PARCEL ONE:

All of Lots 13, 14, 15 and 16, in Block 1, as shown upon that certain Map entitled, "Map of the Property of the San Jose Pioneer Homestead Association", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on May 24, 1869 in Book "C" of Miscellaneous Records, Page 342.

EXCEPTING FROM said Lots 14, 15 and 16 all that portion thereof lying Northeasterly of the Southwesterly line of the Bayshore Highway as said line was established in the Deed from Carlo Bianchi, et ux, dated August 10, 1939, recorded October 14, 1939 in Book 949 of Official Records, Page 342.

ALSO EXCEPTING THEREFROM the following described parcel of land:

Commencing at the Westerly corner of said Lot 13, being on the property line common to the lands, now formerly of Carlo Bianchi, and of Hazel Marianelli, et al; thence along said common property line North 51° 07' 26" East 79.78 feet to the Southerly line of the existing State Highway in Santa Clara County, Road IV-SCI-68SJS; thence along said Southerly line from a tangent that bears South 71° 54' 39.8" East along a curve to the right with a radius of 5574.72 feet, through an angle of 2° 12' 23.1" an arc length of 214.68 feet, thence South 39° 50' 12" West 198.43 feet to the property line common to the lands, now or formerly of Carlo Bianchi and Silvio De Mattei; thence along last said common property line North 38° 32' 41" West 221.02 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed to the State of California by State Deed No. 14081, recorded August 1, 1955 in Book 3240 of Official Records, Page 105, of Santa Clara County, said portion being described as follows:

Commencing at the most Easterly corner of said parcel of land; thence along the Southeasterly line of said Parcel South 51° 27' 19" West, 231.36 feet to that certain course described as "South 38° 32' 41" East, 99.31 feet", in Parcel 11 of Relinquishment No. 22157 to the City of San Jose, recorded June 5, 1961 in Book 5188, at Page 240, Official Records, of Santa Clara County; thence along said course North 38° 32' 41" West, 19.31 feet to the Northeasterly terminus of the course described in said Parcel 11 with the length of 71.53 feet; thence along the Northeasterly prolongation of last said course North 39° 50' 12" East, 236.20 feet to the

OLD REPUBLIC TITLE COMPANY
ORDER NO. 0616006906-SL

Northeasterly line of said Parcel (3240 OR 105); thence along said line South 38° 32' 41" East, 66.87 feet to the point of commencement.

APN: 249-21-006

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes and assessments, general and special, for the fiscal year 2011 - 2012, a lien, but not yet due or payable.

2. Taxes and assessments, general and special, for the fiscal year 2010 - 2011, as follows:

Assessor's Parcel No	:	249-21-006	
Code No.	:	17-194	
1st Installment	:	\$5,954.32	Marked Paid
2nd Installment	:	\$5,954.32	NOT Marked Paid
Land Value	:	\$408,337.00	
Imp. Value	:	\$511,345.00	

3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

4. Release and relinquishment of abutter's or access rights to and from Bayshore Highway, upon which premises abuts, together with waiver of damages by reason of construction or maintenance of a freeway, as follows:

Instrument Entitled	:	Deed
To	:	State of California
Recorded	:	October 14, 1939 in Book 949 of Official Records, Page 342

5. Release and relinquishment of abutter's or access rights to and from freeway adjacent to the Northeasterly and Northwesterly lines of said property, upon which premises abuts, as follows:

Instrument	:	Deed
To	:	State of California
Recorded	:	December 7, 1955 in Book 3354 of Official Records, Page 9

6. Recital as contained in the Deed from the State of California:

Recorded : November 15, 1977, in Book D278 of Official Records, Page 98, under
Recorder's Serial Number 5844049
Affects : Parcel Two

"There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent State Freeway.

7. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$1,050,000.00
Trustor/Borrower : John Licking and Betty Licking, husband and wife
Trustee : Greenhead Investments, Inc., a California Corporation
Beneficiary/Lender : 1st National Lending Services
Dated : January 5, 2007
Recorded : January 29, 2007 in Official Records under Recorder's Serial
Number 19282432
Loan No. : 0000440316

8. Any unrecorded and subsisting leases.

9. Rights and claims of parties in possession.

10. Prior to the issuance of any policy of title insurance, the Company will require the following with respect to Licking Enterprises, LLC, a California Limited Liability Company:

1. A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC.
2. A certified copy of its Articles of Organization (LLC-1), any Certificate of Correction (LLC-11), Certificate of Amendment (LLC-2), or Restatement of Articles of Organization (LLC-10).
3. Recording a Certified copy of said LLC-1 and any "amendments thereto".

----- **Informational Notes** -----

A. The applicable rate(s) for the policy(s) being offered by this report or commitment appears to be section(s) 1.1 and 2.1.

B. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument
Entitled : Grant Deed
By/From : John R. Licking and Betty R. Licking
To : Licking Enterprises, LLC
Dated : March 8, 2007
Recorded : March 8, 2007 in Official Records under Recorder's Serial Number 19333442

Disclosure to Consumer of Available Discounts

Section 2355.3 in Title 10 of the California Code of Regulation necessitates that Old Republic Title Company provide a disclosure of each discount available under the rates that it, or its underwriter Old Republic National Title Insurance Company, have filed with the California Department of Insurance that are applicable to transactions involving property improved with a one to four family residential dwelling.

You may be entitled to a discount under Old Republic Title Company's escrow charges if you are an employee or retired employee of Old Republic Title Company including its subsidiary or affiliated companies. You may also be entitled to a discount if you are a member in the California Public Employees Retirement System "CalPERS" or the California State Teachers Retirement System "CalSTRS" and if you are obtaining a loan to purchase or refinance your principal residence from a lender that is participating in your respective retirement system's Home Loan Program or if you are a member of either retirement system and you are selling your principal residence.

If you are an employee or retired employee of Old Republic National Title Insurance Company, or its subsidiary or affiliated companies, you may be entitled to a discounted title policy premium.

Please ask your escrow or title officer for the terms and conditions that apply to these discounts.

A complete copy of the Schedule of Escrow Fees and Service Fees for Old Republic Title Company and the Schedule of Fees and Charges for Old Republic National Title Insurance Company are available for your inspection at any Old Republic Title Company office.

RBM/dmu

OLD REPUBLIC TITLE COMPANY

ORDER NO. 0616006906-SL

If you anticipate having funds wired to Old Republic Title Company, our wiring information is as follows: Comerica Bank, 275 Battery Street, San Francisco CA 94111, credit to the account of: Old Republic Title Company Account Number 1892529965, ABA Number 121137522.

When instructing the financial institution to wire funds, it is very important that you reference Old Republic Title's Escrow Number 0616006906.

Note: Automated Clearing House (ACH) transfers are not accepted in lieu of wired funds, except when received from a governmental agency.

Funds deposited directly into an account of Old Republic Title Company at a Comerica Bank branch are subject to verification and may cause a delay in closing.

Should you have any questions in this regard, please contact your Escrow or Title Officer immediately.

**CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE**

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.-

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

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

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

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

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

**AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY OF TITLE INSURANCE - 2006
EXCLUSIONS FROM COVERAGE**

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

EXCEPTIONS FROM COVERAGE – SCHEDULE B, PART 1, SECTION ONE

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

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

Old Republic Title Company

Privacy Policy Notice

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of **Old Republic Title Company**.

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms.
- Information about your transactions we secure from our files, or from [our affiliates or] others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

ORT 287-C 5/07/01

DRAFT

EXHIBIT 3

REAL PROPERTY CONDITION DISCLOSURES

There is an old well on the property which predated Plaintiff's purchase of the Subject Property. The Subject Property includes water rights. To the best of Plaintiff's knowledge the well is not connected to a power source and Plaintiff and Life Choices have never used it or even explored the possibility of using and therefore do not have any further information about the well. Plaintiff is informed and believes that the well was built along with the original house on the property, which was built presumably about 100 years ago. When the original house burned down a new house was built to code about 8 years before Plaintiff purchased the Subject Property.

Plaintiff does not believe that there are any structural or foundation issues. However, the last time Plaintiff engaged in negotiations with the City relating to the sale of the Subject Property, the City sent out to a team of building inspectors to inspect the property. During that inspection, the City said that the foundation of the house that was built with permits about 8 years before Plaintiff purchased the Subject Property was inadequate and that Plaintiff would have to redo/shore up the foundation. Plaintiff is informed and believes that the City prepared a report consequent to its inspection, which has not been disclosed to Plaintiff. To the best of Plaintiff's knowledge the house that was built about 8 years before Plaintiff purchased the Subject Property was built in compliance with all building codes and inspected, approved, and signed off by the City when it was built. There were no additions or changes to the structure which should have materially changed the compliance requirements relating to zoning or other code issues.

DRAFT

EXHIBIT 4

NON-CONFORMING USE AND OPERATIONS

To the best of Plaintiff's knowledge all operations and uses conform with all laws, rules, codes, and regulations. In the past there have been times when Plaintiff or Life Choices rented a temporary construction trailer and placed it on the property for use as a temporary office space. As the trailer was temporary it was removed after it was no longer needed. Life Choices or Licking Enterprises plan on renting another temporary construction trailer to use as office space in the near future. No one will be living in it and it will be exclusively used for office space.