

**AGREEMENT FOR SALE OF
SURPLUS CITY-OWNED REAL PROPERTY TO
STEVE NGUYEN**

THIS AGREEMENT is made and entered into by and between the CITY OF SAN JOSE (hereinafter "CITY") and Steve Nguyen, (hereinafter "BUYER") upon execution by CITY (hereinafter "Effective Date").

WITNESSETH:

WHEREAS, BUYER is the owner in fee simple of real property which is adjacent to CITY-owned property located in San José, California, which CITY-owned property is described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"** attached hereto and incorporated herein; and

WHEREAS, the City Council has found and determined that CITY-owned property, described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"**, is not needed for, nor adaptable to, municipal purposes and is Surplus Property, and that the public interest and necessity will be served by its sale; and

WHEREAS, Section 4.20.050 of the San José Municipal Code authorizes the sale of surplus CITY-owned real property to the owner or owners of property adjacent to such Surplus Property at private sale at the fair market value thereof without notice, subject to such terms and conditions as the City Council of CITY may, in its discretion, provide, and the City Council desires to sell such Surplus Property to BUYER pursuant to such Section 4.20.050.

NOW, THEREFORE, in consideration of their mutual promises, covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this Agreement, CITY shall transfer and convey to BUYER by Quitclaim Deed, and BUYER shall purchase and take from CITY, all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"**, attached hereto, and made a part hereof, and hereinafter referred to as "Surplus Property."

2. Purchase Price.

BUYER shall pay to CITY, in consideration of CITY's conveyance to BUYER of said Surplus Property the sum of **Twenty Thousand and NO/100 DOLLARS (\$20,000.00)**. Said funds shall be in the form of a Cashier's Check made payable to the **CITY OF SAN JOSE**. Said sum shall hereinafter be referred to as the "Purchase Price".

3. Tender and Acceptance of Payment.

BUYER shall deposit the full Purchase Price with the CITY's General Services, Real Estate Services and Asset Management Division at 1661 Senter Road, San Jose, CA 95112. By its execution of this Agreement, CITY accepts said deposit as full compensation for the Surplus Property.

4. Delivery and Recording of Deed and Real Property Taxes.

No later than thirty (30) days from the date of the execution of this Agreement by the CITY, CITY shall record a Quitclaim Deed conveying title to COUNTY of said Surplus Property in the office of the Santa Clara County Recorder. The Santa Clara County Recorder's Office shall mail said Quitclaim Deed to COUNTY after its recordation.

Real property taxes shall be payable by BUYER from and after the date of recordation of the Quitclaim Deed.

5. Buyer's Sole Remedy for Failure to Convey.

In the event that CITY shall, for any reason, be unable to convey title to said Surplus Property, BUYER shall have the right to rescind the sale thereof, but shall have no other right of action against CITY and shall not be entitled to recover any damages from CITY, and all parties hereby shall return to status quo ante.

6. Condition of Title.

The title to be delivered by CITY hereunder shall be subject to all exceptions, encumbrances, liens and restrictions of records and not of record, as of the date of the execution of Quitclaim Deed.

7. Condition of Property.

BUYER is purchasing the Surplus Property and any improvements "as is" and in reliance on BUYER's own investigation, and no representations or warranties of any kind whatsoever, express or implied, have been made by CITY. BUYER further acknowledges that BUYER is aware of all zoning regulations, other governmental requirements, site and physical conditions and other matters affecting the use and condition of the property, and agrees to purchase the Surplus Property in the condition that it is in at the time of the execution of the Quitclaim Deed. BUYER further agrees to take the steps necessary to complete a lot line adjustment incorporating the Surplus Property into BUYER's existing lot.

8. Indemnification and Hold Harmless.

BUYER agrees to protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "claims") of any kind whatsoever paid, incurred, suffered or asserted, or related to, on or after delivery of the Quitclaim Deed directly or indirectly arising from or attributable to conditions on or BUYER's use of the Surplus Property (including BUYER's use of the Surplus Property before the Effective Date), including any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the Surplus Property, regardless of whether undertaken due to governmental action. To the fullest extent permitted by law, the foregoing hold harmless and indemnification provision shall apply except where such claim is the result of sole active negligence or willful misconduct of CITY, its officers, agents or employees. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an Agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless CITY for any liability pursuant to such sections. CITY and BUYER agree that for purposes of this Agreement, the term "Hazardous Substance" shall have the definition set forth in **EXHIBIT "C"**, which is attached to this Agreement and incorporated by reference. BUYER, for itself, its legal representatives and assigns,

releases CITY from any and all claims and causes of action that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use of, or conditions on, the Surplus Property (including uses of or conditions on the property undertaken or caused by BUYER prior to the effective date).

9. General Release.

BUYER acknowledges that it has read and understood the following statutory language of Civil Code Section 1542:

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

Having been so apprised, BUYER, elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this release, and BUYER knowingly and voluntarily expressly release the CITY from all liability, unknown or unsuspected, arising out of any use of, or conditions on, the Surplus Property; except where such claim is of the sole active negligence or misconduct of the CITY. The provisions of this Paragraph shall survive the expiration or earlier termination of this Agreement.

10. Binding on Successors.

This Agreement inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors and assigns.

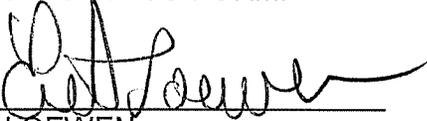
11. Merger; Entire Agreement.

This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between CITY and BUYER relating to the subject matter hereof. No subsequent agreement,

representation, or promise made by either party hereto, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. The terms of this Agreement shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

WITNESS THE EXECUTION HEREOF on the date of execution by CITY as written below:

APPROVED AS TO FORM:



EVET LOEWEN
Chief Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a municipal corporation

By: _____
LEE PRICE, MMC
City Clerk

Date of Execution: _____

“BUYER”

STEVE NGUYEN



EXHIBIT "A"

Legal Description

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

All of Lot 2, Block 19, as shown on that certain map entitled, "Plat of Blocks and Fractional Blocks Nos. 5, 6, 7, 11, 12, 13, 17, 18, 19, 24, 25, 30, 31, 68, 69 and 70 of the Reed Addition to the City of San Jose; surveyed and subdivided for C. Freyschlag," filed in the office of the County Recorder, Santa Clara County, California, on February 4, 1888 in book C of Maps, at Page 53.

Excepting therefrom that portion of Lot 2, Block 19, as shown upon that certain aforesaid "Map of the Reed Addition to the City of San Jose," to be used for a Public Street, described as follows:

A strip of land 30 feet in width, the northerly line of said strip being described as follows:

BEGINNING at the point of intersection of the southerly line of Keyes Street, 90 feet wide, as said streets are shown on that certain map entitled "Plat of Blocks and Fractions Blocks Nos. 5, 6, 7, 11, 12, 13, 17, 18, 19, 24, 25, 30, 31, 68, 69 and 70 of the Reed Addition to the City of San Jose, surveyed and subdivided for C. Freyschlag," filed in the office of the County Recorder, Santa Clara County, California, on February 4, 1888 in Book C of Maps, at Page 53; thence northeasterly along the southerly line of Keyes Street, a distance of 137.84 feet, said strip also being a portion of Lot 2, Block 19, are shown on the aforesaid map entitled "Map of the Reed Addition to the City of San Jose."

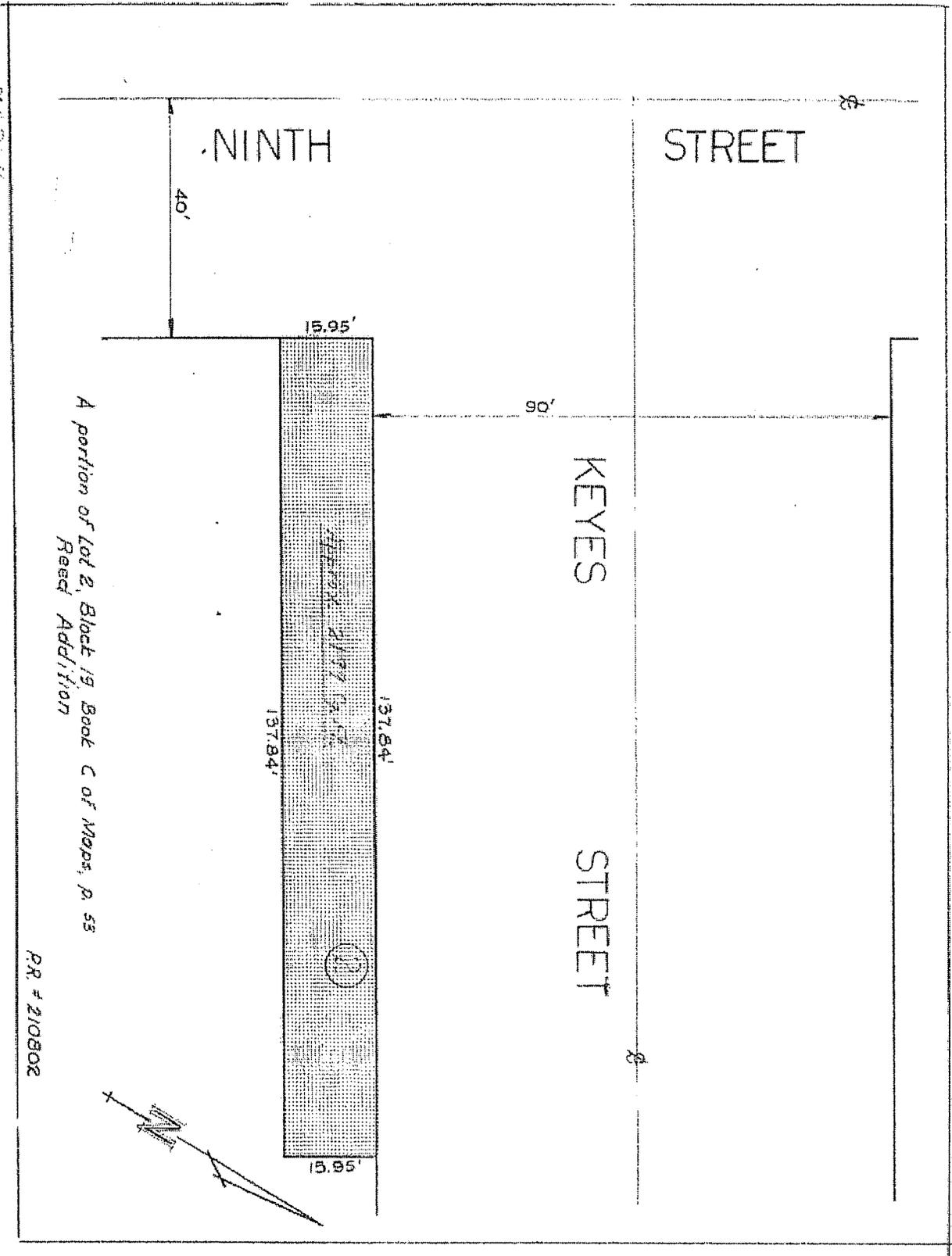


EXHIBIT "B"

Plat of Property

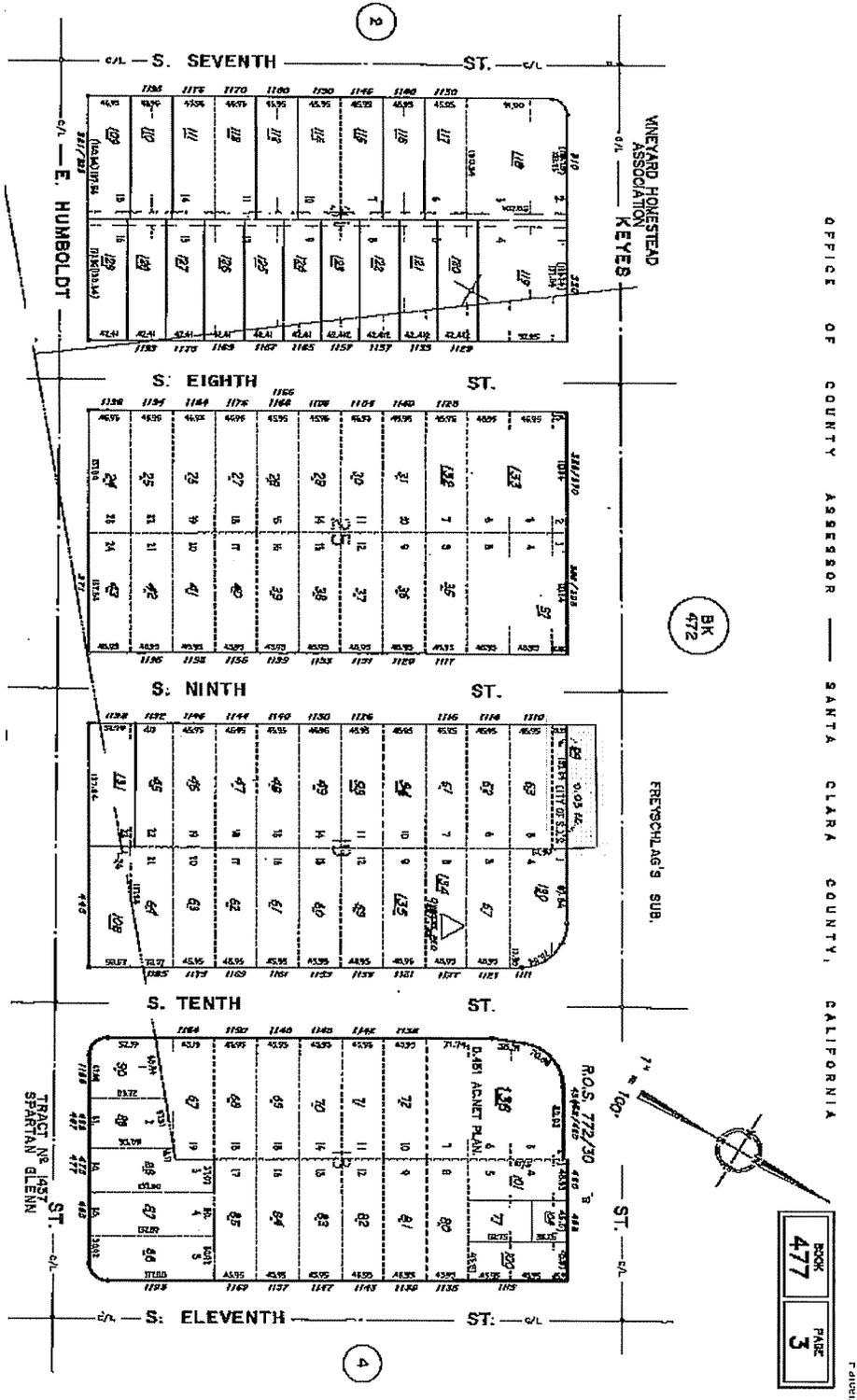


EXHIBIT "C"
Hazardous Substances.

For the purpose of this Agreement, "**HAZARDOUS MATERIALS**" shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, "**ENVIRONMENTAL LAWS**" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up.