

Recording Requested By
and When Recorded Mail to:

University of California
Real Estate Services Group
1111 Franklin St., 6th floor
Oakland, CA 94607

GRANT OF SEWER EASEMENT AND AGREEMENT

No recording fee pursuant to Government Code §6103

THIS AGREEMENT, made this _____ day of April, 2005, by and between The City of Albany, hereinafter referred to as “Grantor”, and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, hereinafter referred to as “Grantee”.

WHEREAS, Grantee desires to acquire a certain easement (“Easement”) in a portion of Grantor’s property commonly known as Ocean View Park, (the “Land”); and whereas the easement is located on a portion of the Land described in Exhibit “A” and depicted on Exhibit “B”, attached hereto (“Easement Area”); and whereas Easement generally provides for a sewer line from the Grantee’s University Village property, north to the City of Albany’s main sewer line that parallels and lies just south of Buchanan Street.

NOW, THEREFORE,

1. Grantor hereby grants to Grantee a nonexclusive easement across the Land located as described in Exhibits A and B for so long as the Easement Area is used exclusively for the purpose(s) of installation, alteration, operation, maintenance and repair of an underground sanitary sewer line consisting of pipeline, manholes, and all necessary appurtenances. Grantor expressly reserves for itself, its successors and its assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such use does not unreasonably interfere with the rights herein granted.

2. Grantee shall maintain any improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area. The operation and maintenance of such improvements and of the Easement Area shall be at Grantee's sole cost and expense.

3. Grantee shall continue to allow Grantor to discharge sanitary sewage from Grantor's existing or future building(s) on the land to the Grantee's sanitary sewer at no cost to Grantor.

4. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Land, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Easement or the Easement Area.

5. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.

6. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Easement Area or on any other real property of Grantor adjacent to the Easement Area.

7. If in the opinion of Grantor, the Easement unreasonably interferes with the present or future use by Grantor of Grantor's land, Grantee shall relocate easement improvements to a substitute Easement Area reasonably suited to Grantee's needs and acceptable to Grantor. The relocation costs shall be equally shared by the Grantee and Grantor.

8. Grantee shall not materially interfere with the use by and operation and activities of Grantor on its property, and Grantee shall use such routes and follow such procedures on Grantor's property as result in the least damage and inconvenience to Grantor.

9. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil

erosion, subsidence or damage resulting there from. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, buildings and fences that may be altered, damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.

10. This Grant of Easement is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of Grantee's, agents', officers', employees', invitees' (including contractors), or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area or of the improvements or personal property of Grantee thereto or thereon, including any liability for injury or death to the person or property of Grantee, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of Grantee. Grantee hereby covenants and agrees to defend and indemnify Grantor, its officers, employees, agents, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the Easement or use of the Easement Area by Grantee, however occurring, other than those caused solely by the willful or negligent acts or omissions of Grantor.

11. Grantor may terminate this Easement and all of the rights granted herein any time after one (1) year of continuous non-use of the Easement or the Easement Area by Grantee. In the event of such termination, the Easement shall be quitclaimed from Grantee to Grantor, without expense to Grantor, and any and all interest in Grantor's Land conveyed in this Easement shall automatically revert to Grantor or its assigns and successors, without the necessity of any further action to effect said reversion. On demand by Grantor, Grantee shall promptly remove any and all improvements it installed in, on, under or above the Easement Area. At the option of Grantor, all such improvements shall become the personal property of Grantor at no cost to Grantor.

12. Grantee alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Grantee's interest in the Easement Area, or against any of Grantor's real property as a result of the Easement herein granted. Grantee shall not cause liens of any kind to be placed against the Easement Area or any of Grantor's real property.

13. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

14. This instrument shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

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

GRANTOR: THE CITY OF ALBANY

By _____

Its _____

GRANTEE: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____

Helen Levay

Its UC Berkeley, Real Estate Services Manager

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF _____)

On _____ before me, _____, a notary public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

Rev. 9/29/99

(Signature of Notary Public)

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF _____)

On _____ before me, _____, a notary public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

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Exhibit A – Legal Description

Exhibit B – Plat