

February 21, 2024

307994

Submitted Via E-Filing

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
February 21, 2024
Part of
Public Record

Re: *Peninsula Corridor Joint Powers Board – Acquisition Exemption – San Mateo County
Transit District, STB FD No. 36756*

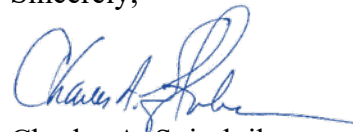
Dear Ms. Brown:

I am attaching for e-filing the Verified Petition for Exemption of Peninsula Corridor Joint Powers Board, in the above-referenced proceeding.

Please note that pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, the filing fee of \$16,600 has been paid via pay.gov. The Pay.gov Tracking ID is 27C3AE4G.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,



Charles A. Spitulnik

Attachment

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36756

**PENINSULA CORRIDOR JOINT POWERS BOARD– ACQUISITION EXEMPTION –
SAN MATEO COUNTY TRANSIT DISTRICT**

VERIFIED PETITION FOR EXEMPTION

Communications with respect to this pleading should
be addressed to:

Charles A. Spitulnik
Ayelet Hirschhorn
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com

*Counsel for the Peninsula Corridor Joint Powers
Board*

Dated: February 21, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36756

**PENINSULA CORRIDOR JOINT POWERS BOARD– ACQUISITION EXEMPTION –
SAN MATEO COUNTY TRANSIT DISTRICT**

VERIFIED PETITION FOR EXEMPTION

INTRODUCTION

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, the Peninsula Corridor Joint Powers Board (“JPB”), a joint powers agency created by Title 1, Division 7, Chapter 5, Article I (§ 6500 *et seq.*) of the California Government Code, hereby files this Verified Petition for Exemption requesting that the Board issue an order exempting JPB from the formal requirements of 49 U.S.C. § 11323-24, for the JPB to acquire all the rights, title and interest of the San Mateo County Transit District (“SamTrans”) in a line of railroad and related right-of-way currently owned by SamTrans as tenant-in common with the JPB (the “Transaction”). In 1991, the JPB acquired a full ownership interest in the 51.3 miles of rail line known as the Peninsula Corridor from the Southern Pacific Transportation Company (“SP”)¹, with the exception of an undivided one-half tenant-in-common interest for that portion of the rail line from M.P. 5.2 to M.P. 29.7 in the County of San Mateo, California (the “Line”), which was acquired by SamTrans.² ICC Finance Docket No. 31980, *Peninsula Corridor Joint Powers Board and San Mateo County Transit District –*

¹ With the exception of SamTrans’ tenant-in-common interest in the Line, the JPB acquired all right-of-way, trackage, stations, structures, parking lots and grade separations owned by the SP from M.P. .0147 to M.P. 51.4 in the Counties of San Francisco, Santa Clara and San Mateo, California.

² SamTrans, the Santa Clara Valley Transportation Authority, and the City and County of San Francisco are the member agencies comprising the JPB.

Acquisition Exemption – Southern Pacific Transportation Co, 57 Fed. Reg. 2114 (published January 17, 1992) (the “1992 Notice”).

SamTrans is the managing agency responsible for the management and operations of passenger rail services along the Line.³ Both JPB and SamTrans are subject to the jurisdiction of this Board as a result of the acquisition of rights and obligations described in the *1992 Notice*.⁴ The Transaction will give JPB a 100% interest in the Line, including any track, right-of-way and related properties. A map of the Line is included as **Exhibit A**.

The rail operations on the Line and the rights and obligations of the owners and the freight and passenger operators are governed by three key agreements. The first is the Purchase and Sale Agreement entered into with SP for the Peninsula Corridor, which includes the Line. A copy of the Purchase and Sale Agreement with SP is attached as **Exhibit B**. The second is a Real Property Ownership Agreement, as amended (“RPOA”), which establishes the ownership rights with respect to the Line and various other properties along the Peninsula Corridor among the JPB, SamTrans and the JPB’s other member agencies. Pursuant to Sections 4.1 and 7.8 of the RPOA, SamTrans will transfer its tenant-in-common interest in the Line to the JPB upon the fulfillment of certain financial conditions. A copy of the RPOA and its amendment are attached as **Exhibits C** and **C-1**. The third agreement, the Joint Powers Agreement between the JPB and its member agencies (“JPA”), defines the governance structure for the JPB and the relationships between the JPB and its member agencies. Section 6 of the JPA delegates management and operations of the

³ SamTrans is the managing agency of the JPB, which operates the Caltrain commuter rail service.

⁴ JPB is submitting this Petition for Exemption rather than filing a Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(3) because neither JPB nor SamTrans are corporate entities, nor are they partners to the Line. The regulation at § 1180.2(d)(3) does not allow for a Notice of Exemption for transfer of ownership between entities that are not part of the same corporate family. SamTrans is the managing agency for Caltrain, the Line’s operator. The JPB is not a member of a “corporate family” but an entity created pursuant to a statute that allows public agencies in the State of California to contractually form a separate entity to exercise their common powers.

Line to SamTrans. A copy of the JPA is attached as **Exhibit D**. Finally, and pursuant to a Memorandum of Understanding dated August 5, 2022, the JPB will now acquire all of the ownership interest in the Line as the conditions established in the RPOA and its amendment are satisfied. A copy of the Memorandum of Understanding is attached as **Exhibit E**. Upon the consummation of the Transaction, the JPB will have 100% interest in the Line with SamTrans remaining the managing agency for the management and operations of the Line.

Because (a) the transfer of SamTrans' tenant-in-common ownership interest to JPB is consistent with the transportation policy described in 49 U.S.C. § 10101, (b) the transaction is limited in scope, and (c) the transaction will not result in an abuse of market power, JPB is seeking an exemption from the requirements of Sections 11323-24 pursuant to 49 U.S.C. § 10502 for its acquisition of a 100% ownership interest in the Line.

ARGUMENT

The circumstances of the Transaction justify granting this Petition for Exemption. The JPB will acquire SamTrans's tenant-in-common interest in the Line. There will be no change in operators on the Line, and no impact on freight traffic volumes or service. Granting the exemption will be consistent with the National Transportation Policy, as described herein.

A. Board Precedent Supports Granting the Exemption.

Recent Board precedent supports the approval of exemptions pursuant to Section 10502 in circumstances such as those present here. For example, in December 2020, the Board granted Canadian Pacific Railway Company ("CP") an exemption from the requirements of Sections 11323-24. In that case, CP filed a petition for exemption to allow CP and its wholly-owned non-carrier subsidiary, DRTP Holdings ULC, to acquire ownership interests from Borealis Transportation Infrastructure Trust in the Detroit River Tunnel, which is a two-bore rail tunnel that

connects Windsor, Ontario with Detroit, Michigan. As in the current case, CP did not intend to make any operational changes after acquiring a controlling ownership interest in the tunnel. Also, as in this case, the transaction would create no anti-competitive effects and no shippers would be adversely affected by the transaction. The Board granted the petition on the grounds that an exemption would be “consistent with the standards of § 10502.” See *Canadian Pacific Ry. Co. – Control Exemption – Detroit River Tunnel Co.*, STB Finance Docket No. 36448, slip op. at 2 (Service Date December 2, 2020). The Board should similarly approve the Transaction.

B. An Exemption from the Requirements of Section 11323 is Appropriate.

Pursuant to 49 U.S.C. § 10502, the Board will grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (“RTP”) of 49 U.S.C. § 10101, and (2) either the transaction is limited in scope, or regulation is not needed to protect shippers from the abuse of market power. The Interstate Commerce Commission (“ICC”), this Board’s predecessor agency, held:

In determining whether regulation of a transaction proposed for exemption under § 10505 [now § 10502] is necessary to carry out the RTP, our analysis generally focuses on the criteria relating to the underlying statute from which exemption is sought. We need not extend our analysis beyond what we would address in an application proceeding itself. See Finance Docket No. 31493, *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp., Et al.* (not printed), served July 5, 1989, at 2. Section 10505 provides a shortcut analysis to see if regulation – in this case under § 11344(d) [now § 11324(d)] – is necessary. If § 11344(d) does not require review of particular issues, neither does the § 10505 process.

Indiana R.R. Co.—Acq. & Oper.—Illinois Central R.R. Co., Line Between Sullivan, IN and Browns, IL, et al., 6 ICC 2d 1004, 1006-07 (1990), *aff’d sub nom., Village of Palestine v. ICC*, 936 F. 2d 1335 (D.C. Cir. 1991).

1. The Application of Section 11323 is Not Necessary to Carry Out the Transportation Policy of Section 10101.

Board oversight of this transaction is not necessary to carry out the rail transportation policy set forth in 49 U.S.C § 10101. In fact, granting the exemption will serve the goals of the RTP and fulfill the intent of the RPOA. The parties to the RPOA contemplated that SamTrans' ownership interest was temporary and that upon "full reimbursement of the Additional Contribution to SamTrans...SamTrans shall reconvey to the JPB all of its interest in title" to the Line. See RPOA § 4.01. Concentrating the ownership interests and approving the Transaction will ensure that JPB will be able to sufficiently govern the Line as was originally intended when the JPB purchased the Line from SP. Moreover, the Transaction will not have any operational impacts on passenger or common carrier service. SamTrans will remain the managing agency overseeing the operation of passenger rail service and no freight or commuter rail common carrier interests will be affected by the transfer of SamTrans' ownership interest to the JPB. Finally, the Transaction is an interagency transfer which will have no effect on interstate commerce, will "promote a safe and efficient rail transportation system" (49 U.S.C. § 10101(3)), "ensure the development of a sound rail transportation system" (49 U.S.C. § 10101(4)), "foster sound economic conditions in transportation" (49 U.S.C. § 10101(5)), and "encourage efficient management of railroads" (49 U.S.C. § 10101(9)). Granting an exemption will "reduce the regulatory barriers to entry into and exit from the industry" (49 U.S.C. § 10101(7)) and "provide for expeditious handling and resolution of all proceedings" (49 U.S.C. § 10101(15)). The Board should exempt the JPB's acquisition of SamTrans' tenant-in-common interest in the Line from the requirements of Section 11323.

2. The Transaction is Limited in Scope.

This Petition addresses the proposed acquisition of certain ownership rights in connection with the Line. The Line is approximately 24.5 miles in length and is only a portion of the Peninsula Corridor. Other than the change in controlling ownership of the Line, no other existing rail operations, either along the Line or on the Peninsula Corridor will be affected. Moreover, because the proposed acquisition of SamTrans' tenant-in-common ownership interest affects a limited geographic area that is within the Board's jurisdiction and will not have any impact on the existing national freight rail network, the transaction is limited in scope and the Board should exempt it from the requirements of Section 11323.

3. The Application of Section 11323, et seq., is Not Needed to Protect Shippers from Abuse of Market Power.

The proposed Transaction would do no more than transfer a tenant-in-common ownership interest to an entity with the remaining ownership interest in the Line. No change in operations will occur, no interests of the freight railroads operation on the corridor will be impacted, and no shippers will be adversely affected by the Transaction. The Board should, therefore, exempt the Transaction from the requirements of Section 11323, et seq.

ADDITIONAL INFORMATION

Any questions regarding the Transaction should be directed to:

Charles A. Spitulnik
 Ayelet Hirschhorn
 Kaplan, Kirsch & Rockwell LLP
 1634 I Street NW, Suite 300
 Washington, D.C. 20006
 (202) 955-5600
 email: cspitulnik@kaplankirsch.com
 ahirschhorn@kaplankirsch.com

EMPLOYEE PROTECTION

The JPB recognizes that under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, the proposed transaction is subject to the employee protection conditions in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

ENVIRONMENTAL AND HISTORIC REPORTS

Pursuant to 49 C.F.R. § 1105.6(c), the JPB's acquisition of SamTrans' tenant-in-common interest does not require an environmental report. The Transaction will not result in significant changes in carrier operations, *i.e.*, changes which exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4), (5), or (6)). Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition by the JPB is also exempt from historic preservation reporting requirements. The JPB has no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

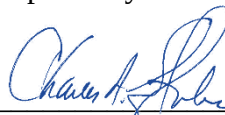
CONCLUSION

The Transaction is consistent with prior Board decisions allowing for the transfer of ownership or control of railroad assets to another party. Furthermore, because regulation of the transaction is not necessary to carry out rail transportation policy, the transaction is of limited scope and will not subject shippers to an abuse of market power, the Board should grant this Petition.

WHEREFORE, for the reasons set forth above, the JPB respectfully requests that the Board grant this Petition, permit the JPB to acquire the remaining ownership stake in the Line, and exempt the acquisition from the requirements of 49 U.S.C. § 11323-24.

Dated: February 21, 2024

Respectfully submitted,



Charles A. Spitulnik
Ayelet Hirschhorn
Kaplan, Kirsch & Rockwell, LLP
1634 I (Eye) Street NW
Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com

VERIFICATION

I, James Harrison, counsel for the Peninsula Corridor Joint Powers Board, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Petition for Exemption.

Executed on this 21 day of February, 2024.


James Harrison

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February 2024, I caused the foregoing Petition for Exemption for the Peninsula Corridor Joint Powers Board to be served on the following parties by email:

Michael Conneran
Hanson Bridgett LLP
1676 N. California Blvd
Suite 620
Walnut Creek, CA 94596
mconneran@hansonbridgett.com

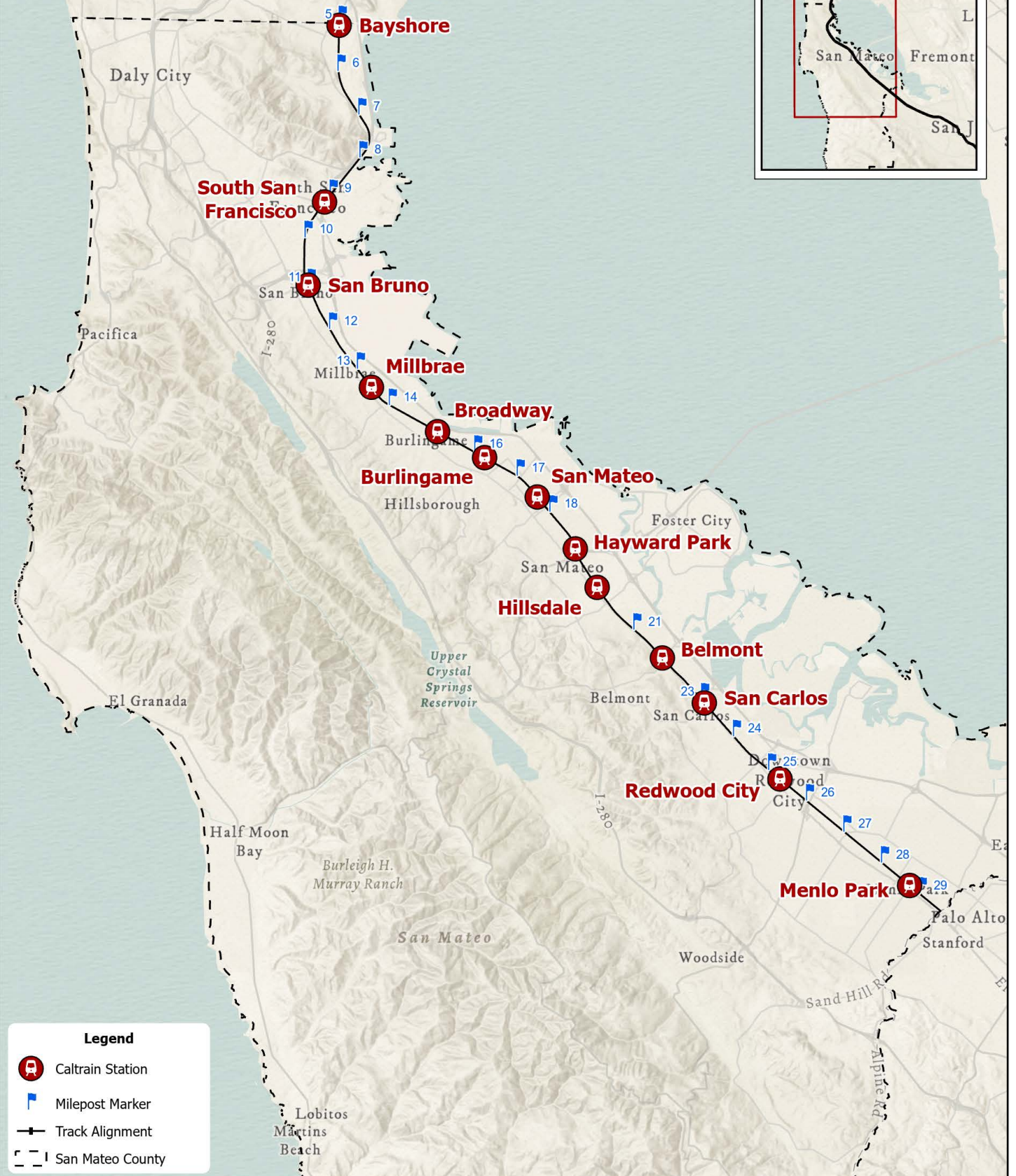

Charles A. Spitulnik

Dated: February 21, 2024

Exhibit A: Map

Caltrain Corridor within San Mateo County

Overview Map



Basemap Service Credits:
 California State Parks, Esri, TomTom, Garmin, FAO, NOAA, USGS, Bureau of Land Management, EPA, NPS, USFWS, Esri, NASA, NGA, USGS, California State Parks, Esri, TomTom, Garmin, SafeGraph, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA, USFWS, Esri, USGS

0 0.9 1.8 2.7 3.6 4.5 Miles

NAD 1983 2011 StatePlane California III FIPS 0403 Ft US



Peninsula Corridor Joint Powers Board
 1250 San Carlos Ave
 San Carlos, CA 94070
www.Caltrain.com



Exhibit B: Purchase and Sale Agreement

PURCHASE, SALE AND OPTION AGREEMENT

**PENINSULA MAIN LINE, SANTA CLARA/LICK LINE, DUMBARTON BRANCH,
VASONA BRANCH I, SAN BRUNO BRANCH,
VASONA BRANCH II, LICK/GILROY LINE,
THE MOFFETT DRILL TRACK AND THE
GRADE SEPARATION AND PARKING LOT OPTION PARCELS**

Dated November 22, 1991

between

Southern Pacific Transportation Company, as Seller

and

Peninsula Corridor Joint Powers Board, as Purchaser

and

San Mateo County Transit District

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PURCHASE, SALE AND OPTION AGREEMENT

**Peninsula Main Line, Santa Clara/Lick Line, Dumbarton Branch,
Vasona Branch I, San Bruno Branch,
Vasona Branch II, Lick/Gilroy Line,
the Moffett Drill Track and the
Grade Separation and Parking Lot Option Parcels**

THIS AGREEMENT, dated November __, 1991, is by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Seller"), and PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law ("Purchaser") and San Mateo County Transit District, a public agency ("SAMTRANS").

RECITALS

A. Seller owns certain land, improvements and tangible personal property comprising certain lines of railroad known as the Peninsula Main Line, Santa Clara/Lick Line, Dumbarton Branch, Vasona Branch I, San Bruno Branch, Vasona Branch II, Lick/Gilroy Line, the Moffett Drill Track and the Grade Separation and Parking Lot Option Parcels located in San Francisco County, San Mateo County, Alameda County and Santa Clara County, California, and further described in Articles 1 and 3 of this Agreement.

B. Seller desires to sell such property and Purchaser desires to purchase some of such property and to obtain an option on the balance of such property from Seller, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, Seller and Purchaser hereby agree as follows:

ARTICLE 1: PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller shall sell and convey, and Purchaser shall purchase and pay for, the following described property (all of which is referred to herein collectively as the "Property"):

(a) Excepting and reserving to Seller the rights and interests described in Article 7 of this Agreement and in any agreements entered into pursuant to this Agreement (the "Retained Rights"), the following real property (the "Real Estate"):

(i) Peninsula Main Line. All Seller's right, title and interest in the right-of-way, trackage, and structures (including tracks, rails, ties, switches, crossings, tunnels, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, railroad communications systems, and poles) ("Right-of-Way") that are situated on or adjacent to Seller's main line extending from milepost 0.147 at or near 4th and Townsend Streets in San Francisco to milepost 44.0 at Santa Clara Junction all as more particularly described on Exhibit A, but excluding the Retained Personalty;

(ii) Santa Clara Junction - Lick Line. All Seller's right, title and interest in the Right-of-Way between milepost 44.0 at or near Santa Clara Junction and milepost 51.4 at or near Lick as shown on Exhibit A, but excluding the Retained Personality;

(b) All Seller's interest in all buildings, structures and fixtures now owned by Seller to the extent located on the Real Estate, except the Retained Personality (the "Improvements");

(c) Seller's interest in the leases that have been disclosed to Purchaser pursuant to this Agreement and have not been objected to pursuant to section 2.1 below, affecting all or any portion of the Real Estate, to the extent such leases affect the Real Estate, except such leases as relate primarily to Seller's freight rail operations or intercity passenger operations (the "Leases");

(d) Except as otherwise provided in the agreements to be entered into pursuant to section 6.2 hereof, Seller's interest in any prepaid rents for periods occurring after the Closing Date and security deposits made by tenants under the Leases and transferable deposits with utility companies, if any, arising out of the operation and maintenance of the Real Estate and Improvements;

(e) Seller's interest in assignable service contracts relating to the operation and maintenance of the

Real Estate and Improvements that Purchaser elects to assume, except such service contracts as relate primarily to Seller's freight rail operations or intercity passenger operations (the "Service Contracts"); and

(f) All Seller's right, title and interest in property rights not identified above but which relate primarily to the Property. However, Seller shall not be required by this subsection 1.1(f) to convey any real property not included in Exhibit A or any other property right which Seller is entitled to retain in connection with Seller's Retained Rights.

1.2 Purchase Price.

(a) The purchase price for the Property (the "Purchase Price" or the "Balance Due") is TWO HUNDRED ELEVEN MILLION NINE HUNDRED TWELVE THOUSAND DOLLARS which, after credit for the adjustments set forth in section 1.3, Purchaser shall pay to Seller in the following manner:

(i) NINETY-ONE MILLION NINE HUNDRED TWELVE THOUSAND DOLLARS by wire transfer of funds or other immediately available funds, at Closing as provided in Article 6; and

(ii) the balance by execution and delivery to Seller at Closing of a promissory note (the "Purchase Price Note"), in the form of Exhibit C-I hereto, which note shall be non-interest-bearing and nonrecourse (except to the extent

Purchaser receives certain funds, as set forth in the Purchase Price Note).

(b) In addition, Purchaser shall pay to Seller Eight Million Dollars upon execution and delivery of the Trackage Rights Agreement (Lick/Gilroy Line) referred to in section 6.3 hereof, as follows:

(i) FOUR MILLION DOLLARS by wire transfer of funds or other immediately available funds; and

(ii) the balance by execution and delivery to Seller of a promissory note (the "Lick/Gilroy Note"), in the form of Exhibit C-II hereto, which note shall be non-interest-bearing and nonrecourse (except to the extent Purchaser receives certain funds, as set forth in the Lick/Gilroy Note.)

1.3 Conventional Adjustments and Costs.

(a) \$10,000,000 shall be paid by Seller to Purchaser when requested by Purchaser for the purpose of constructing a maintenance facility at or near Lick, California.

(b) Property taxes and special assessments shall be prorated with respect to the date or dates of recording falling within the July 1 - June 30 tax year. Property taxes and special assessments attributable to interests, if any, in the Land retained by Seller shall be borne entirely by Seller. Seller shall report to the State

Board of Equalization any assessable interest in the Land retained by it. Purchaser shall request the cancellation of all applicable property taxes and special assessments as required by California Revenue & Taxation Code §§4986 and 5082.1, at the earliest possible date. Seller shall be entitled to receive any refunds or credits of taxes previously paid.

(c) All rents, common area maintenance charges, other amounts paid or payable by a tenant of the Property and the Option Property (collectively, the "Land"), and other income from the Property (excluding the Property covered by the Management Agreement) attributable to periods prior to the Closing for such property, shall be credited to Seller, and all such income attributable to periods subsequent to the Closing for such property shall be credited to Purchaser. Purchaser shall have no obligation to collect any rents or other charges due but uncollected prior to such Closing. If Purchaser collects any such delinquent rents or charges, it shall pay to Seller such amounts as it shall collect; provided, however, that all rents collected by Purchaser shall first be applied to all current amounts then due to Purchaser. If rents or charges remain due to Seller and unpaid 120 days after the Closing, Seller shall be free to commence an action for the collection of such delinquencies and Purchaser agrees to cooperate in such efforts in all reasonable respects;

however, Purchaser shall not be required to terminate any Lease on account of a default occurring prior to the Closing. All tenant security deposits shall be transferred to Purchaser on the Closing for such property, and Purchaser shall execute a document acknowledging receipt of such deposits and agreeing to hold them in accordance with the terms in the applicable leases.

(d) Except as otherwise provided in the agreements to be entered into pursuant to sections 6.2, 6.3 and 6.4 hereof, Seller shall pay all insurance and utility charges and other operating expenses for the Land accrued for the period through the Closing for such property. Insurance policies shall not be assigned to Purchaser, and Seller may cancel the coverage provided thereby at Closing. Except as otherwise provided in the agreements to be entered into pursuant to sections 6.2, 6.3 and 6.4 hereof, all accounts for water, sewer, gas, electrical, telephone and other public utilities payable by Seller shall be transferred to Purchaser's name effective as of the Closing. All transferable utility deposits shall be transferred to Purchaser on the Closing for such property.

(e) Except as otherwise provided in the agreements executed and delivered pursuant to sections 6.2, 6.3 and 6.4 hereof and in subsection 1.3(i) below, all income and expenses attributable to the operation of the Land shall

be apportioned between Seller and Purchaser as of the Closing for such property.

(f) Purchaser and Seller shall each pay one - half the costs of the Title Reports and owner's CLTA title insurance policies as described in section 2.5. Purchaser shall pay the extra cost of any endorsements requested by Purchaser and the cost of all Option Policies and Lender's Policies.

(g) Purchaser and Seller shall each pay one - half of the escrow or other fees of the Title Company for participating in the Closing.

(h) All recording, filing, documentary and similar fees and taxes payable in connection with the transactions contemplated by this Agreement shall be prorated between the parties in accordance with the customary practice in northern California.

(i) Seller and Purchaser shall each pay any costs and expenses (such as attorneys' and consultants' costs and expenses) incurred by such party in connection with the transactions contemplated by this Agreement not adjusted or allocated as set forth in this section 1.3 or otherwise provided for in this Agreement.

(j) The foregoing provisions of this section 1.3 are not intended to prorate revenues or expenses from any rail operations occurring prior to the Closing for the applicable property.

ARTICLE 2: TITLE

2.1 Permitted Exceptions. For purposes of this Agreement "Permitted Exceptions" shall mean:

- (a) A lien for real property taxes and assessments for the current year, not yet due and payable;
- (b) Exceptions to title approved by Purchaser (other than mortgages, deeds of trust, mechanics' liens and other monetary liens, which shall be paid or otherwise provided for by Seller to the reasonable satisfaction of Purchaser at Closing) listed on the title reports covering the Land issued by Fidelity National Title Insurance Company (the "Title Company") as listed on Exhibit D attached hereto (the "Title Reports"), copies of which have been delivered to Purchaser for the Real Estate (Title Reports for the Option Real Estate will be delivered to Purchaser within a reasonable time following Purchaser's written request. Seller and Purchaser shall each pay one - half of the cost of obtaining such Title Reports);
- (c) Any matter which would be disclosed by survey;
- (d) All of the Leases and Option Leases and other licenses, permits, easements and agreements related to the Land that have been disclosed to Purchaser pursuant to this Agreement and which have not been objected to pursuant to the provisions set forth below ("Other Agreements");

- (e) The Retained Rights;
- (f) Liens or encumbrances arising out of any activity of Purchaser with respect to the Land; and
- (g) Matters affecting the San Bruno Branch listed on Exhibit E.

Purchaser shall have until (a) 10 days after the date of this Agreement or 10 days prior to the Closing Date, whichever is later, or (b) 60 days after receipt of the Title Reports for any Option Property (the "Objection Deadline") to notify Seller in writing of any exceptions to title listed on the Title Reports or referred to in subsections (c) or (d) above, that are not acceptable to Purchaser. If Seller receives written notice of Purchaser's objections on or before the Objection Deadline, such objection shall be treated as notice of a "Defect of Title" for purposes of section 2.3. In the event that Seller does not receive written notice from Purchaser on or before the Objection Deadline as to any, or all of the exceptions listed on the Title Reports or referred to in subsections (c) or (d) above, Purchaser shall be deemed to have waived its right to object to such items and they shall be deemed to be Permitted Exceptions.

2.2 Review of Legal Descriptions. Purchaser shall have until the later of (a) 60 days after receipt of the Title Report for any portion of the Land, or (b) 15 days after receipt of any revised legal description, to notify Seller in

writing of any objections Purchaser may have to a legal description. If Seller receives written notice of Purchaser's objections within such time period, Seller, Purchaser and the Title Company shall then use their best efforts to promptly agree on a revised legal description for such Title Report, which agreement shall not be unreasonably withheld. If those parties are unable to reach agreement on the legal description for any portion of the Land on or before the date three days prior to the Closing for such property, Purchaser shall have the option, by delivery of written notice to Seller prior to Closing, (a) to terminate its obligation to purchase such property, or (b) to submit the matter for determination by the Title Company and Brian Kangas Foulk or other mutually agreeable, licensed, local land surveyor (the "Surveyor") or, if the Surveyor is unwilling to serve, some other surveyor licensed in the State of California selected by the chief judge for the United States District Court for the Northern District of California. Such submittal shall be made by written notice to Seller and to the Title Company identifying the surveyor selected. Each party shall cooperate to expedite the final determination of any contested legal description, and the Closing shall be postponed until the third business day following such final determination. Nothing herein shall preclude post-closing revisions of legal descriptions pursuant to section 15.9.

2.3 Title Review. If prior to any Closing, Purchaser discovers that title to the property being conveyed is subject to matters other than Permitted Exceptions that, in the reasonable judgment of Purchaser, materially and adversely interfere with Purchaser's contemplated use of such property for rail passenger commuter operations and related activities (including, but not limited to, parking), then Purchaser may inform Seller in writing of any such matter which is not acceptable to Purchaser ("a Defect of Title"). If Purchaser objects to any Defect of Title, and Seller is unable or unwilling to remove or otherwise cure such objection prior to Closing for such property, Purchaser shall have the option, by delivery of written notice to Seller prior to Closing, (a) to terminate its obligation to purchase a portion of the Property affected by the Defect of Title (as reasonably designated by Purchaser, e.g., if the continuity of the rail corridor is affected, Purchaser may reasonably terminate this entire Agreement), in which case the Purchase Price shall be reduced by an equitable amount, or (b) to cause Seller to remedy such defect; however, Seller shall not be required to remedy any defect if the cost thereof exceeds \$100,000. If requested by Purchaser, Seller shall promptly commence and diligently proceed to cure any Defect of Title, the cost of which would not exceed \$100,000, and the Closing shall be postponed until the business day following the date Seller notifies Purchaser

that the Defect of Title has been cured (which notice shall identify the manner in which the cure was effected).

Notwithstanding the foregoing, Purchaser shall not be required to notify Seller with respect to any monetary liens burdening the Property, all of which shall be paid or otherwise provided for as set forth in section 2.1(b).

2.4 Title Conveyed. Seller shall convey and Purchaser shall accept title to the Land subject only to Permitted Exceptions. The Land shall be conveyed to Purchaser by grant deeds (for the fee and easement parcels) and quitclaim deeds (for parcels held under color of title). Purchaser has been fully advised that Seller holds title to some parcels of the Land (designated as "limited fee" or "defeasible fee interests") subject to restrictions for railroad use only. Purchaser hereby covenants not to use the Land in any manner which would cause a defeasance of title, and agrees to indemnify Seller and hold Seller harmless from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of any changes in use by Purchaser which cause or are alleged to cause a defeasance of title.

2.5 Title Policy. As soon as practicable after the Closing for any portion of the Land, Seller shall deliver to Purchaser CLTA title insurance policies covering the portions of the Land for which a Title Report has been delivered to

Purchaser (the "Title Policy"), insuring the validity and priority of the Options (the "Option Policies") and insuring the liens of the deeds of trust, showing no monetary liens other than the lien of taxes not yet due (the "Lender's Policies").

2.6 Title Warranty.

(a) Seller acknowledges that Purchaser is relying on the Title Policy and the warranties of Seller set forth in this section 2.6, the Maps which have been delivered to Purchaser by Seller, and the copies of the instruments delivered or to be delivered to Purchaser by Seller evidencing the Defeasible Fee Interests, the Easement Interests and the Leases. In connection therewith, Seller warrants that:

(i) it has good and marketable title to the Fee Interests, the Defeasible Fee Interests, the Easement Interests and the Improvements free and clear of all liens, interests and other encumbrances other than Permitted Exceptions;

(ii) the Land is the same land as is depicted on the Maps, and forms a continuous corridor broken only by public rights of way, by the crossing of the Union Pacific Railroad line and by the matters disclosed on Exhibit E; however, except with respect to the portions of the San Bruno Line identified on Exhibit E, even giving due consideration to the fact

that the continuity of the corridor is broken as herein stated, and that the Permitted Exceptions encumber the Property, Purchaser shall have the unimpaired right, which right shall be perpetual (subject only to Purchaser's covenant under section 2.4 hereof not to use the Land in any manner which would cause a defeasance of title) to conduct its rail passenger commuter operations (including, but not limited to parking, rapid rail, light rail and commuter rail) between Mileposts .147 and 80.7 on the main line, and between the Mileposts shown on the Maps as the beginning and end points of the various branch lines; and, pursuant to subsection 2.7 (a) below, Seller shall defend, indemnify and hold Purchaser harmless from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of any breach or alleged breach of this subsection 2.6(a)(ii);

(iii) Seller will assign to Purchaser, at the Closing, all Leases, Option Leases and all Other Agreements affecting title to, or the use and benefit of, the Property (or all such Leases, Option Leases and Other Agreements affecting title to, or the use and benefit of, the portion of the Land conveyed at the Closing), except as otherwise provided in Article 7;

(iv) there are no Defeasible Fee Interests included in the Real Estate or the Option Real Estate other than those as may be set forth in the Title Reports or as Seller has otherwise disclosed to Purchaser in writing;

(v) Seller has no knowledge of any recordation of any notice of intent to preserve a Power of Termination pursuant to the Marketable Record Title Act or otherwise, other than as may be set forth in the Title Reports;

(vi) Seller has no knowledge of any exercise of any Power of Termination pursuant to the Marketable Record Title Act or otherwise; and

(vii) the Leases do not encumber any Operating Land which is within 10 feet of any track presently used for rail passenger commuter operations.

(b) The warranty set forth in section 2.6(a) hereof is for the benefit of Purchaser and its successors and assigns only and shall not inure by right of subrogation or assignment to the benefit of any title insurer under any Title Policy or any other party.

2.7 Breach of Warranties.

(a) If the warranty of title set forth in section 2.6(a) is breached or if there is a claim by any third party which, if true, would create such a breach, and if such claim or breach creates any rights under any Title Policy, Purchaser shall promptly take all actions necessary to tender its claim under such Title Policy. If, however, (i) the claim or breach of warranty does not create any claims under any Title Policy, or (ii) the Title Company refuses to accept responsibility for the claim or breach and Purchaser's rail passenger commuter operations will be adversely affected if Purchaser only pursued its rights against the Title Company, Purchaser may, in addition to any other rights it may have at law or in equity (including without limitation, any action for breach of warranty), tender the claim or breach to Seller under the indemnification set forth in such subsection.

(b) If Seller successfully defends against the claim or cures the breach, Seller shall be subrogated to all of Purchaser's rights against the Title Company. Purchaser shall cooperate with Seller in all reasonable respects to obtain full recovery from the Title Company for any title matter covered by a Title Policy.

(c) In the event that Seller shall desire to use either Seller's or Purchaser's power of eminent domain to cure any breach of its warranties, Purchaser shall cooperate in such use if it is legal so to do.

(d) Seller's warranties under sections 2.6, 5.1, Article 11, section 13.5 and Exhibit J shall be secured by deeds of trust on the Option Property, which shall be executed and delivered at the Closing.

2.8 Expiration of Warranty. Seller's obligations under section 2.7 above shall be of no further force or effect after the earlier of (i) the third anniversary of the date Purchaser knew of an adverse claim which would result in a breach of the warranty in section 2.6, or (ii) the tenth anniversary of the date Seller conveyed to Purchaser the portion of the Land with respect to which such obligations are asserted.

ARTICLE 3: OPTION TO PURCHASE

3.1 Grant of Option. Seller hereby grants to Purchaser an option (the "Option") to purchase the following described property (all of which is referred to herein collectively as the "Option Property" and individually as a "Segment"):

(a) The following real property, excepting and reserving to Seller, however, the Retained Rights (the "Option Real Estate"):

(i) Dumbarton Branch. All Seller's right, title and interest in the Right-of-Way

consisting of that portion of the Dumbarton Branch (the Tracy Line) extending from the Main Line (at or near milepost 26.2) (including the south leg of the wye track at Redwood City) to milepost 36.9 (which is the westerly wye track switch at Newark) as shown on Exhibit A, but excluding the Retained Personalty;

(ii) Vasona Branch I. All Seller's right, title and interest in the Right-of-Way consisting of that portion of the Vasona Branch extending from the Main Line to Vasona Junction at the crossing of Winchester Blvd. at milepost 53.0 as shown on Exhibit A, but excluding the Retained Personalty;

(iii) San Bruno Branch. All Seller's right, title and interest in the Right-of-Way known as the San Bruno Branch as further described on Exhibit A, but excluding the Retained Personalty. Subject to agreement between the parties on apportionment of the value of this Segment, Purchaser may exercise its option to acquire this Segment in two parcels at different times, provided that the first parcel to be exercised upon is the furthest from the Peninsula Main Line;

(iv) Moffett Drill Track. All Seller's right, title and interest in the Right-of-Way known as the Moffett Drill Track as further described on Exhibit A, but excluding the Retained Personalty;

(v) Vasona Branch II. All Seller's right, title and interest in a strip of the Vasona Branch II comprising one-half of the width of such Right-of-Way, extending from Vasona Junction at or near milepost 53.0 to Monte Vista at the Stevens Creek Channel at or near milepost 39.89 as further described on Exhibit A, but excluding the Retained Personalty. In addition, at any location where the portion of the Vasona Branch II to be acquired by Purchaser is less than 40 feet wide, Seller shall provide Purchaser with any additional property owned by Seller or other rights reasonably sufficient to insure that Purchaser can conduct bi-directional rail passenger commute operations along with Seller's transportation operations over the applicable portion of this branch line;

(vi) Lick/Gilroy Line. All Seller's right, title and interest in a strip of the Lick/Gilroy Line comprising one-half of the width of such Right-of-Way between milepost 51.4 at Lick and milepost 80.7 at Gilroy as further described on Exhibit A, but excluding the Retained Personalty. On or before the earlier of (A) six months after the date hereof or (B) 10 days after Purchaser exercises its Option with respect to the Lick/Gilroy Line,

Seller shall submit to Purchaser a legal description for the portion of the Lick/Gilroy Line subject to the Option (the "Revised Legal"). Within 30 days after receipt of the Revised Legal, Purchaser shall deliver written notice to Seller of Purchaser's approval or disapproval of the Revised Legal. If Seller has not received such notice within such 30-day period, Purchaser shall be conclusively deemed to have approved the Revised Legal. Purchaser agrees not to unreasonably withhold its approval.

If Purchaser disapproves of the Revised Legal, Purchaser's notice shall set forth in reasonable detail the reasons for such disapproval and the parties shall diligently negotiate in good faith to reach agreement on the Revised Legal. If Purchaser and Seller are unable to reach agreement on the Revised Legal on or before the earlier of (A) 30 days after the receipt by Seller of Purchaser's notice of disapproval or (B) three days prior to the Closing for the Lick/Gilroy Line Segment, Purchaser and Seller shall submit the matter for determination by Fidelity National Title Insurance Company and Brian Kangas Foulk or other mutually agreeable, licensed, local land surveyor (the "Surveyor") or, if the Surveyor is unwilling to serve, some other

surveyor licensed in the State of California selected by the chief judge for the United States District Court for the Northern District of California. Each party shall cooperate to expedite the final determination of the Revised Legal, and, if applicable, the closing of the Lick/Gilroy Line Segment shall be postponed until the third business day following such final determination; and

(vii) Grade Separation and Parking Lot Option Parcels. All Seller's right, title and interest in the property described on Exhibit A as the Grade Separation and Parking Lot Option Parcels (each of which shall be deemed to be a separate Segment), but excluding the Retained Personalty, and Seller agrees to deliver legal descriptions to Purchaser for the portions of such Segments highlighted in red on the Maps, and to assign values for such portions on a prorata basis, within 90 days after the Closing Date, and at such time, each such portion shall be deemed to be a separate Segment and the parties shall revise Exhibit A accordingly;

(b) All Seller's interest in all buildings, structures and fixtures now owned by Seller and located on the Option Property, except the Retained Option Personalty (the "Option Improvements");

(c) Seller's interest in the leases that have been disclosed to Purchaser pursuant to this Agreement and have not been objected to pursuant to section 2.1, affecting all or any portion of the Option Property, to the extent such leases affect the Option Property (the "Option Leases");

(d) Except as otherwise provided in the agreements to be entered into pursuant to sections 6.2, 6.3 and 6.4 hereof, Seller's interest in any prepaid rents and security deposits, if any, for periods occurring after the Closing of any Segment of the Option Property and security deposits made by tenants under such Option Leases and transferable deposits with utility companies, if any, arising out of the operation and maintenance of the Option Property and Option Improvements (defined below);

(e) Seller's interest in assignable service contracts relating to the operation and maintenance of any Segment of the Option Property and Option Improvements that Purchaser elects to assume; and

(f) All Seller's right, title and interest in property rights not identified above but which relate primarily to the Option Property. However, Seller shall not be required by this subsection 3.1(f) to convey any real property not included in Exhibit A or any other property right which Seller is entitled to retain in connection with Seller's Retained Rights.

3.2 Option.

(a) The Option for the Dumbarton Branch, the Vasona Branch I and the Grade Separation and Parking Lot Option Parcels must be exercised, if at all, between the Closing Date and the third anniversary thereof, but in any event no later than December 31, 1994, and for any other Segment of the Option Property identified in section 3.1, the Option must be exercised, if at all, between the Closing Date and the fifth anniversary thereof, but in any event no later than December 31, 1996. At Seller's option, the Option may not be exercised if Purchaser is in default in making any material payment due to Seller under this Agreement or any agreement executed in connection therewith, and such default has continued for more than 30 days after written notice to Purchaser. The Option shall be exercised by written notice to Seller given in the manner provided in section 13.4 of this Agreement.

(b) Subject to the terms and conditions of this Article 3, Purchaser may exercise its Option to acquire the Grade Separation and Parking Lot Option Parcels at different times within the three-year option period for the separately designated parcels.

3.3 Option Price. (a) The purchase price for the Option Properties (the "Option Price") shall be as follows:

(i) Dumbarton Branch - 12,700,000;

- (ii) Vasona Branch I - 5,000,000;
- (iii) San Bruno Branch - \$15,000,000;
- (iv) Moffett Drill Track - \$5,000,000;
- (v) Vasona Branch II - \$30,000,000;
- (vi) Lick/Gilroy Line - \$20,000,000,
provided that, the \$8,000,000 paid by
Purchaser upon execution of the
Trackage Rights Agreement -
Lick/Gilroy Line (pursuant to section
6.3 hereof) shall be credited toward
the Option Price for the Lick/Gilroy
Line; and
- (vii) Grade Separation and Parking Lot
Option Parcels - for each such
parcel, the Option Price shall be the
price listed on Exhibit A attached
hereto. However, if Purchaser
exercises its option on all of the
Grade Separation and Parking Lot
Option Parcels prior to the Closing
Date, and closes on all of such
Segments prior to or simultaneously
with its purchase of the Property,
the Option Price shall be reduced by
\$10,000,000.00.

The Option Price for any Segment shall be adjusted as set forth in section 1.3. The balance, after adjustment, shall be paid to Seller by wire transfer of funds or other immediately available funds at the closing of each Segment of the Option Properties.

(b) If Purchaser exercises its option to acquire the Vasona Branch II prior to the third anniversary of the Closing Date, the Option Price for such property will be reduced by the amount equal to \$250,000 times the difference between the number of months after the Closing Date that the acquisition of such property is closed (with month number one commencing on the day after the Closing Date) and thirty-six.

(c) (i) The Option Prices for the Dumbarton Branch and Vasona Branch I will be increased on the date of purchase, if the Option is exercised after the first anniversary of the Closing date, by a factor equal to the average cost of capital for the Purchaser member agency (e.g., the San Mateo County Transit District or the Santa Clara County Transit District) in whose jurisdiction such Segment is situated, plus one percent applied on a per annum basis from the Closing Date to the date of purchase;

(ii) The Option Prices for the San Bruno Branch, Vasona Branch II and the Lick/Gilroy Line will be increased on the date of purchase, if the

Option is exercised after the third anniversary of the Closing Date, by a factor equal to the average cost of capital for the Purchaser member agency (e.g., the San Mateo County Transit District or the Santa Clara County Transit District) in whose jurisdiction such Segment is situated, plus one percent applied on a per annum basis from the Closing Date to the date of purchase;

(iii) The Option Price for the Moffett Drill Track will be increased on the date of purchase, if the Option is exercised after the third anniversary of the Closing Date, by the average cost of capital for the Santa Clara County Transit District plus one percent applied on a per annum basis from the commencement of the fourth year from the Closing Date to the date of purchase; and

(iv) The Option Prices will be payable upon acquisition of the applicable Segments and if such Segments are not acquired during the option period, the Options not exercised will lapse.

3.4 Right of First Refusal - Vasona Branch II. If Purchaser does not exercise its Option on the Vasona Branch II Segment prior to the expiration of the option period, Purchaser shall have continuing right of first refusal on such Segment, should Seller decide to offer to sell any portion of

such Segment to a third party prior to December 31, 2010. Any such sale must be for cash (or cash equivalents such as a promissory note secured by a deed of trust). This right of first refusal shall be subject to and subordinate to any regulatory, administrative or other governmental requirements that may require Seller to offer all or any portion of the Segment to another party prior to offering it to Purchaser. Within 30 days after receipt of written notice from Seller that Seller intends to offer all or any portion of such Segment to a third party for cash (or cash equivalents, such as a promissory note secured by a deed of trust), Purchaser may exercise this right of first refusal by delivering written notice to Seller that it agrees to acquire the specified portion of the Segment for the same price for cash, or at Purchaser's option, for the cash equivalents specified in the notice, if any, and upon the same terms and conditions as Seller has specified in its notice to Purchaser. If Purchaser has not exercised its right of first refusal for a proposed transaction, and Seller decides to reduce the purchase price for such transaction by more than 10%, Seller shall first provide Purchaser with notice of the intended price reduction and with a renewed opportunity to exercise its right of first refusal for such portion of the Segment. Purchaser shall have a continuing right of first refusal until September 30, 2015, on the entire Segment or the entire remaining portion thereof

should Seller decide to offer the Segment to a third party at any time thereafter.

3.5 Closing Dates. The Closing for each Segment shall be held on the first business day which is at least 30 calendar days after the date on which Purchaser gives Seller written notice of its exercise of the Option for such Segment. Each Closing shall be held substantially in accordance with the provisions of Article 6 of this Agreement.

3.6 Security for Options. Seller's obligations under section 3.1 through 3.5 shall be secured by deeds of trust on the Option Property, which shall be executed and delivered at the Closing.

3.7. Fiber Optic Option. At anytime within four years after the closing of any property upon which any fiber optic or other communication equipment is installed at the time of such closing, Purchaser may give written notice to Seller requesting that Seller assign to Purchaser all of Seller's right, title and interest to any cash payments required to be paid to Purchaser in connection with any communications equipment located on such property, including but not limited to payments required from AT&T Corporation, US Sprint Corporation, MCI Corporation, WTG Corporation or Southern Pacific Telecommunications Company. Within 30 days after receiving such notice, Seller shall execute and deliver to Purchaser an assignment in form and substance reasonably

satisfactory to Purchaser, assigning to Purchaser, all of its right, title and interest to cash considerations from such communications carriers. Such assignment, however, shall not grant, convey or transfer to Purchaser any right which Seller might own, to utilize communications facilities provided by any such communications carrier located on such property. As a condition to such assignment, Purchaser shall execute and deliver to Seller, a document in form and substance reasonably satisfactory to Seller under which Purchaser assumes all responsibility and liability for payment of any costs which might have been imposed on Seller in connection with the relocation of any fiber optics or communications facilities on such property, and indemnifying Seller and holding it harmless from any and all such expenses.

**ARTICLE 4: PRE-CLOSING INSPECTION,
TERMINATION AND EXTENSION RIGHTS**

4.1 Books and Records.

(a) Within a reasonable time after the date of this Agreement, Seller shall deliver to Purchaser:

(i) a true and correct copy of all Leases, Other Agreements, Maps and Title Reports in effect for or applicable to the Real Estate as of the date of this Agreement, and all amendments and/or supplements thereto, and, if reasonably requested by Purchaser, a true and correct copy of each instrument

creating or evidencing any Defeasible Fee Interest or Easement Interest in the Real Estate; and

(ii) all material environmental studies and reports in the possession or under the control of Seller relating to the Real Estate (the "Environmental Reports").

(b) Within 60 days after receipt of a written request by Purchaser, Seller shall provide Purchaser with all of the information required by section 4.1(a) in effect for or applicable to any Segment of the Option Property.

(c) All information obtained by Purchaser pursuant to this Agreement shall, subject to applicable laws, be kept confidential by Purchaser until after Closing. Unless required by law, Purchaser shall not disclose any information regarding environmental matters affecting any property retained by Seller.

4.2 Inspection of the Land.

(a) Upon not less than forty-eight hours' advance written notice to Seller, Purchaser and Purchaser's agents may enter onto the Land at all reasonable times during the Due Diligence Period to make tests, surveys, studies and inspections in connection with the purchase of the Land by Purchaser, provided that prior to any exercise of such right and continuing up to the Closing, Purchaser shall (i) arrange for and keep and maintain in full force and effect a policy of

comprehensive general liability insurance, with broad form liability endorsement, having a combined single limit of not less than two million dollars per occurrence, and (ii) furnish to Seller a certificate of such insurance which names Seller as an additional insured and provides that such policy shall not be cancelled or amended without thirty days' prior written notice to Seller. Seller or Seller's agents or employees shall be entitled to accompany Purchaser and Purchaser's agents during any entry made by Purchaser or Purchaser's agents onto the Land pursuant to this section 4.2. Any entry by Purchaser or Purchaser's agents pursuant to this section 4.2 shall be subject to the terms of the Leases, the Option Leases, Other Agreements and other Permitted Exceptions, and shall be made in a manner which results in the least interference with the use of the Property by Seller or any third party. Purchaser shall indemnify and defend Seller against, and hold Seller and the Land harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens, encumbrances and charges arising out of or in any way related to any entry by Purchaser or Purchaser's agents upon the Land, unless such matters arise from the sole and active negligence, willful misconduct or omission of Seller. The foregoing obligation of Purchaser shall survive the Closing or the termination of this Agreement. Purchaser shall repair any

damage to the Land as a result of or caused by the entry by Purchaser or Purchaser's agents onto the Land and restore the Land to the condition existing on the date immediately prior to Purchaser's entry onto the Land.

(b) Except as otherwise set forth in the Letter Agreement, all costs incurred in connection with tests, surveys, studies, inspections, reviews, approvals, determinations and applications made by or on behalf of Purchaser under this Agreement or in connection with Purchaser's proposed use of the Property shall be the sole responsibility of and be paid by Purchaser. In the event of the recordation of any claim of lien against the Land for materials supplied or labor or professional services performed on behalf of Purchaser, Purchaser shall promptly satisfy and discharge such lien at Purchaser's sole cost and expense upon demand therefor by Seller.

(c) At Seller's reasonable request, in addition to Purchaser's obligations under section 4.2(a) above, Purchaser shall promptly provide to Seller a copy of each report, study, regulation or ordinance obtained by Purchaser in connection with its investigation of the Land, at no cost to Seller. In addition, if the transaction contemplated by this Agreement is not consummated for any reason with respect to any portion of the Land, Purchaser shall deliver to Seller free of charge all of the engineering, architectural,

financial and other studies, drawings, reports, surveys and similar materials prepared by or on behalf of Purchaser with respect to such property and Purchaser's proposed project to the extent Purchaser is not otherwise prohibited by law from doing so. Notwithstanding the foregoing, Purchaser shall not be required to provide Seller with copies of any such materials that concern matters reasonably considered confidential by Purchaser.

(d) In order to determine the existence or presence of any hazardous materials in or about the Land or Improvements, Purchaser shall have the right, during the Due Diligence Period, to conduct such studies, evaluations, audits or surveys as Purchaser deems appropriate (collectively, the "Environmental Surveys"), subject to this section 4.2.

(e) Purchaser's termination of this Agreement shall not relieve Purchaser from any liability for any damages incurred by Seller by reason of a breach by Purchaser of any of the terms of this section 4.2.

4.3 Termination Rights.

(a) Purchaser shall conduct such due diligence as it deems appropriate with respect to the Land during a period from the date hereof through the date that is three days prior to the Closing for such property (the "Due Diligence Period"), provided that in no event shall any Due Diligence Period end less than 30 days after the date Seller

has delivered to Purchaser the items Seller is required to deliver to Purchaser pursuant to section 4.1(a) above.

Purchaser shall have until the expiration of the Due Diligence Period to elect (i) to terminate its obligation to purchase a portion of the Land (as reasonably designated by Purchaser) under this section 4.3(a) if information obtained during the Due Diligence Period identifies the existence of Hazardous Materials on such portion of the Land, which may have a material and adverse effect on Purchaser's valuation of such portion of the Land, or (ii) to require that the Environmental Indemnity Agreement specifically requires Seller to remediate such Hazardous Materials, or (iii) to require Seller to convey only an easement to Purchaser. In the event that Purchaser elects either (i) or (iii) above, the Purchase Price shall be reduced by an equitable amount.

(b) At any time prior to the Closing, Purchaser shall have the right to terminate this Agreement with respect to any portion of the Land in the event that Seller fails to comply in any material way with any of its covenants or obligations hereunder relating to such portion, and such noncompliance continues for more than 30 days after written notice from Purchaser to Seller. In the event Purchaser delivers such written notice of noncompliance to Seller, the Closing shall be postponed until the third business day following the date Seller notifies Purchaser that the

noncompliance has been cured (which notice shall identify the manner in which the cure was effected). In the event Seller does not timely cure such noncompliance and Purchaser elects to terminate this Agreement, such termination shall be effected by delivery of written notice to Seller stating the reason for termination in reasonable detail.

(c) Upon termination of this Agreement with respect to any portion of the Land, Purchaser shall, to the extent permitted by applicable law, (i) return to Seller all copies of all documents provided to Purchaser by Seller with respect to such portion of the property, (ii) provide to Seller copies of all reports, studies, surveys, maps and other documents prepared by or on behalf of Purchaser in connection with its inspection or development of such portion of the Property, and (iii) hold all information with respect to such portion of the Property and the terminated transaction in confidence to the extent practicable.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

5.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) Seller has taken all corporate action necessary to authorize the execution and delivery of this Agreement by it and the performance of its obligations hereunder.

(c) This Agreement and all documents contemplated hereby have been or will be duly authorized and executed (and acknowledged where necessary) on behalf of Seller, and all other necessary actions have been taken, so that this Agreement and all documents contemplated herein shall constitute legal, valid and binding obligations of Seller enforceable in accordance with their terms.

(d) The execution and performance of this Agreement and the documents contemplated hereby do not violate and are not restricted by any other agreement, contractual obligation, court order or law to which Seller is a party or by which Seller is bound.

(e) Seller has not received any notice of any existing or threatened condemnation, material violation of law (including environmental law), or other legal action of any kind involving the Land to any material and adverse extent, except as set forth on Exhibit F.

(f) There is no pending or, to the best knowledge of Seller, threatened, litigation, administrative action, governmental investigation or examination, claim, or demand (including, but not limited to, environmental

investigations, examinations, claims and demands) whatsoever relating to the Land which materially and adversely would affect Purchaser's contemplated use thereof, except as set forth on Exhibit G.

(g) There are no tenancy or other agreements that materially and adversely affect Seller's current use or Purchaser's intended use of the Land other than the Leases, the Option Leases and the Other Agreements Seller shall deliver to Purchaser in accordance with the terms of this Agreement. All of the Leases and Option Leases are in full force and effect. Except as disclosed on Exhibit H, each of the Leases and Option Leases (i) was entered into by Seller in the ordinary course of its business, (ii) will not impose any material financial obligations on Purchaser upon Purchaser's assumption thereof, and (iii) affects only the Land.

(h) Except as disclosed on Exhibit H, each of the Other Agreements (i) was entered into by Seller in the ordinary course of its business, (ii) will not impose any material financial obligations on Purchaser upon Purchaser's assumption thereof, and (iii) grants to the other party thereto only the right to cross the Land for private drives, roadways, drainage channels and other facilities, or relates to intercity passenger or freight rail operations, or to electrical, communications, pipeline or other utility purposes.

(i) Except as Seller may notify Purchaser in writing at least 20 days prior to any Closing, (a) none of the Leases, Option Leases or the Other Agreements individually or in the aggregate will materially and adversely affect Purchaser's presently contemplated rail passenger commuter operations on the Property or materially impair the rights to use the Land (or any portion thereof) for rail passenger commuter operations, and (b) no material violation by any party under any Lease, Option Lease or Other Agreement affecting the Land to be conveyed at such Closing has occurred. In the event of any such material violation of any Lease, Option Lease or Other Agreement, Seller shall use reasonable efforts to cause such violation to be corrected prior to the Closing, and shall have the right to extend the Closing for up to 30 days in order to do so. If, however, Seller is unable to cause such violation to be corrected to Purchaser's reasonable satisfaction, Purchaser may elect, in addition to any other remedy it may have at law or in equity, to terminate this Agreement with respect to such portion of the Land at any time prior to the Closing.

In the event Purchaser shall elect to terminate its obligation to purchase the affected portion of the Land, Purchaser shall give written notice (the "Purchaser Notice") to Seller prior to the applicable Closing, stating (i) the reason for such election in reasonable detail and

(ii) Purchaser's good faith estimate of the dollar amount by which such material violation of any Lease, Option Lease or Other Agreement adversely affects Purchaser's valuation of such portion of the Property (the "Valuation Reduction Amount").

Seller shall, within 10 days after receipt of the Purchaser Notice from Purchaser, notify Purchaser in writing (the "Seller Notice") whether Seller will (A) agree to reduce the Purchase Price and the Purchase Price Allocation for such portion of the Land by the Valuation Reduction Amount, or (B) not agree to such price reduction.

In the event Seller shall notify Purchaser in the Seller Notice as set forth (i) in clause (A) of the preceding sentence, Purchaser's election to terminate shall be rescinded and the Closing shall occur with respect to the applicable portion of the Land at the reduced Purchase Price and Purchase Price Allocation (and Seller shall be released from any further liability in connection with the matter(s) set forth in the Purchaser Notice); or (ii) as set forth in clause (B) of the preceding sentence (or if Seller shall fail to deliver the Seller Notice to Purchaser within 10 days as set forth in the preceding sentence), this Agreement shall terminate with respect to the applicable portion of the Land. In the event this Agreement terminates with respect to any portion of the

Land, the provisions of section 4.3(c) shall be applicable thereto, and the Purchase Price shall be reduced by an equitable amount.

(j) Except for those contracts which are included within the Other Agreements, all of the Service Contracts may be terminated on not more than 30 days' notice and can be assigned without the consent of any party except as Seller may otherwise notify Purchaser in writing at least 20 days prior to Closing. All amounts due and owing under the Service Contracts shall be paid in full as of the Closing.

(k) To Seller's best knowledge, no tenant or other third party has any agreement or right to purchase all or any part of the Land, or to lease all or any part of the Land on other than a month-to-month basis except as set forth on Exhibit H.

(l) To Seller's knowledge, none of the Improvements owned by Seller, except the Del Monte Building in Sunnyvale, are entitled to be listed on the National Register of Historic Places or any comparable California list.

(m) All labor and materials pertaining to any work or improvement with respect to the Land shall be paid in full prior to the Closing of such property, except with respect to certain ongoing capital projects as provided in the Trackage Rights Agreement.

(n) Seller shall promptly notify Purchaser in writing if any of the foregoing representations and warranties becomes untrue in any material respect prior to the Closing Date. In such event, Purchaser may (i) terminate this Agreement, or (ii) purchase the Property and enforce any remedy it may have at law or in equity against Seller.

5.2 Purchaser's Representations and Warranties. As of the date of this Agreement and as of the Closing, Purchaser represents and warrants as follows:

(a) Purchaser has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) Purchaser has taken all action necessary to authorize the execution and delivery of this Agreement by it and the performance of its obligations hereunder.

(c) This Agreement and all documents contemplated hereby have been or will be duly authorized and executed (and acknowledged where necessary) on behalf of Purchaser, and all other necessary actions have been taken, so that this Agreement and all documents contemplated herein shall constitute legal, valid and binding obligations of Purchaser, enforceable in accordance with their terms.

(d) The execution and performance of this Agreement and the documents contemplated hereby do not violate and are not restricted by any other agreement, contractual

obligation, court order or law to which Purchaser is a party or by which Purchaser is bound.

(e) This transaction is exempt from the provisions of the Subdivision Map Act division of the California Government Code because it constitutes a conveyance to a governmental agency or public entity, and no showing has been made under section 66428 of such Act that public policy necessitates that a parcel map be filed in connection with this transaction.

5.3 Pre-Closing Covenants of Seller. Following the execution of this Agreement, Seller shall: (a) promptly commence and diligently pursue the removal of all debris located on the Property which is identified in the Baseline Study (if requested by either party on at least 24 hours' prior written notice, a representative of Purchaser shall accompany Seller's work force to observe the removal of such debris and verify that such removal has been performed) and, if requested by Purchaser, Seller shall enter into an agreement with Purchaser regarding when the debris cleanup will be conducted; (b) upon Purchaser's written request, promptly commence and diligently pursue the removal of any underground storage tanks located on the Property that are not currently in use; (c) conduct its business involving the Property in the ordinary course consistent with past operations of the Property; (d) maintain in effect the

insurance policies insuring the Property; (e) maintain the Property in accordance with Seller's existing standards; (f) not materially alter any of the Improvements or remove any material personal property unless replaced by an item of equivalent value; (g) except as otherwise provided in the Management Agreement described in section 6.2 hereof, not cancel, terminate or modify any existing Lease in any material way adverse to the lessor's interest (except in accordance with and as required by the provisions of any such Lease) without Purchaser's prior written consent, which shall not be unreasonably withheld, nor enter into new leases without Purchaser's prior written consent, which shall not be unreasonably withheld, unless such leases are for month-to-month tenants and are on terms equivalent to or better than (from the lessor's perspective) existing leases of similar space; not accept prepaid rents for more than one month in advance; and continue to perform the lessor's obligations under the Leases; (h) pay all taxes and assessments affecting the Property prior to the date such taxes and assessments are legally due; (i) comply with all material terms, conditions and provisions of all agreements affecting the Property (including, without limitation, Permitted Exceptions) of which Seller has knowledge, and make all payments due thereunder and suffer no default thereunder; (j) not encumber or permit to be encumbered any part of the

Property, or otherwise impair the state of title to the Property, except as may be required in connection with the Bank of America refinancing (on condition that Seller pay or otherwise provide for such liens to the reasonable satisfaction of Purchaser at the closing of such portions of the Land); and (k) if Seller is reasonably satisfied that the Closing will occur, at Purchaser's request, send notices of termination to any tenants under Leases not covered by the Management Agreement whose Leases can be terminated with the giving of notice by the lessor thereunder, provided that if any such notice is given by Seller at Purchaser's request in accordance with the terms of a particular Lease and the tenant thereunder nevertheless asserts a claim against Seller arising out of the giving of such notice by Seller at Purchaser's direction, Purchaser shall indemnify and hold Seller harmless from any and all loss, liability, cost or expense sustained by Seller as a result thereof, including reasonable attorneys' fees. Seller shall also comply with the terms of subsections (c) thru (k) of this section 5.3 with respect to the Option Property during the Option Period, and upon Seller's receipt of Purchaser's notice exercising its Option for any Segment, Seller shall comply with the terms of subsections (a) and (b) of this section 5.3 with respect to such Segment.

5.4 Pre-Closing Covenant of Purchaser and Seller.

Purchaser shall use its best efforts to obtain funds sufficient to perform its obligations hereunder in a timely manner and shall keep Seller informed with respect to such matters on a frequent basis. To the extent necessary or desirable, Seller agrees to cooperate and assist Purchaser in such efforts.

5.5 Post-Closing Covenant. If Purchaser reasonably determines that temporary access over or use of any of Seller's adjacent property is necessary for construction of a grade separation, Purchaser may request a revocable license for such use in writing. Seller shall reasonably cooperate with Purchaser in granting such a license, without compensation therefor, on terms reasonably satisfactory to Seller and Purchaser, and on the following conditions: (a) that such adjacent property is not then being used for any purpose which, in Seller's reasonable determination, would be adversely affected by Purchaser's use, (b) that the license shall be subject to any and all then existing leases, agreements and other matters and encumbrances affecting such property, (c) that the license shall not continue in effect for longer than one year, unless a longer period is required for completion of the grade separation project and Purchaser is diligently pursuing such completion, (d) that Purchaser shall use such property at its sole cost and expense, and (e)

that Purchaser shall restore the property to its original condition upon termination of the license.

ARTICLE 6: CLOSING

6.1 Closing. The closing(s) of the transactions contemplated by this Agreement (each, a "Closing") shall occur at the offices of Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, Suite 2300, San Francisco, California 94105-2173, at 10:00 a.m. The Closing of the Property shall occur on December 3, 1991 (the "Closing Date") and the Closings for the Option Properties shall proceed in accordance with Article 3 above.

6.2 Conditions Precedent to Closing - Property.

Neither party shall have any obligation to close on the Property unless each of the following conditions has occurred on or before the Closing Date:

(a) Seller shall have delivered to Purchaser (i) a copy of each Lease, Map, Title Report and Environmental Report affecting the Property, (ii) a true and correct copy of each instrument reasonably requested by Purchaser creating or evidencing any Defeasible Fee Interest or Easement Interest that is part of such Property, (iii) a true and correct copy of each Other Agreement that may have a material effect on Purchaser's ability to use such Property for rail passenger commuter operations;

(b) Purchaser shall have secured sufficient funds to perform its obligations hereunder;

(c) Seller and Purchaser shall have entered into the Trackage Rights Agreement -- Peninsula Main Line and Santa Clara/Lick Line and the Agreement for Paired Track Operations Between Santa Clara Junction and Lick, California, relating to the Property, generally as set forth in paragraphs 3(e) and 5-8 and Appendix A of the Letter Agreement, dated December 28, 1990, between the parties, as amended by the letter agreement, dated June 28, 1991 (as amended, the "Letter Agreement");

(d) Seller and Purchaser shall have entered into a Management Agreement, substantially in the form of Exhibit I;

(e) In connection with the Santa Clara/Lick Line, Seller and Purchaser shall have entered into a Lease Agreement whereby Seller leases to Purchaser, for a maximum term of five years, a portion of the triangular parcel on the easterly side of the JPB Commute Corridor and north of Lenzen Avenue containing Seller's locomotive, fueling, sanding, servicing, and turntable facilities, on terms satisfactory to both parties, providing that Purchaser shall compensate Seller for all costs and liabilities associated with Purchaser's use of the property, but not to include any component for real estate rental;

(f) Timely filings with the ICC shall have been made to permit the Closing and (i) either (A) the ICC shall have approved or exempted Purchaser's acquisition of the Property, or (B) the time period specified in the applicable statute and regulations for determining the effective date of a Notice of Exemption shall have elapsed without any objection or petition to revoke being filed by or at the ICC, and the ICC shall not have revoked any such exemption, and (ii) no stay order with respect to the proposed transaction shall have been issued by the ICC or any court with proper jurisdiction;

(g) Purchaser shall be reasonably satisfied that the Title Company is committed to issuing the Title Policy, the Option Policies and the Lender's Policies;

(h) Seller shall be reasonably satisfied that the Note is valid, binding and enforceable according to its terms and will be paid on or prior to the Maturity Date, and Bank of America, as agent for various other banks, has agreed to release its deed of trust on the Property;

(i) All monetary liens on the Option Property shall be paid or otherwise provided for by Seller to the reasonable satisfaction of Purchaser;

(j) Purchaser shall be reasonably satisfied that adequate arrangements for interim passenger commute service (for the period following Closing and prior to commencement of service by the new operator retained by

Purchaser) have been made, which may include, but not be limited to, an agreement between the State of California and Seller to continue the existing Master Agreement for passenger commute service, an agreement between the State of California and Purchaser providing for the transfer of the State's rolling stock, station property and other assets for Peninsula Commute Service, and an agreement between the State of California and Purchaser, whereby the State shall be authorized to license or assign use of the Property to Seller for the interim passenger commute service;

(k) Purchaser's member agencies shall have entered into a Real Property Ownership Agreement providing for how title will be held and for the allocation of responsibilities for management and operation of the Property; and

(l) Purchaser shall be reasonably satisfied that the representations made by Purchaser in the Note are true and correct as of Closing.

6.3 Trackage Rights Agreement - Lick/Gilroy Line.

Upon Purchaser's request at any time at or subsequent to the Closing Date, or, if Seller is reasonably certain that the Closing will occur, upon Purchaser's request at any time prior to the Closing Date, Seller and Purchaser shall enter into the Trackage Rights Agreement - Lick/Gilroy Line, generally as set forth in the Letter Agreement. Upon execution of such

Trackage Rights Agreement, Purchaser shall pay \$8,000,000 to Seller, pursuant to section 1.2(b) hereof, and Seller shall deliver the Trackage Rights Agreement to Purchaser.

6.4 Conditions Precedent to Closing - Option Properties. Neither party shall have any obligation to close on the Option Properties unless each of the following conditions has occurred on or before the Closing for such property:

(a) Seller shall have delivered to Purchaser (i) a copy of each Option Lease, Map, Title Report and Environmental Report affecting the Segment to be conveyed at the Closing; (ii) a true and correct copy of each instrument reasonably requested by Purchaser creating or evidencing any Defeasible Fee Interest or Easement Interest that is part of such Option Property; (iii) a true and correct copy of each Other Agreement that may have a material effect on Purchaser's ability to use such Option Property for rail passenger commuter service;

(b) Purchaser shall have secured sufficient funds to perform its obligations hereunder;

(c) Prior to closing on the Dumbarton Branch, the Vasona Branch I, the San Bruno Branch or the Moffett Drill Track, Seller and Purchaser shall have entered into a Trackage Rights Agreement relating to such Segment, generally as set forth in the Letter Agreement;

(d) At Purchaser's written request, prior to the closing on the Vasona Branch II, Seller and Purchaser shall have entered into an Access Agreement governing Purchaser's access over such Segment prior to Purchaser's exercise of its option to purchase such Segment, and the parties hereby agree to use their best efforts to enter into such agreement within 60 days after Purchaser's written request for such agreement;

(e) Prior to closing on the Vasona Branch II, if requested by Purchaser, Seller and Purchaser shall have entered into a Trackage Rights Agreement for such Segment, generally as set forth in the Letter Agreement; and

(f) On the closing date for each Segment, Seller and Purchaser shall have entered into an Environmental Indemnity Agreement in the form of Exhibit J hereto, with respect to such Segment.

6.5 Closing Obligations of the Parties. The following events shall occur at Closing, each being a condition precedent to the others but all being deemed to have occurred simultaneously (and all documents shall be in form and substance reasonably acceptable to Seller and Purchaser):

(a) Seller shall execute and deliver to Purchaser the following:

(i) grant deeds with warranties of title as set forth in section 2.4 (except with respect to

the San Bruno Branch) conveying to Purchaser title to the portion of the Land currently held by Seller in fee simple (as identified in the Title Reports), and the portion of the Land held by right of easement (as identified in the Title Reports), subject to the Permitted Exceptions and reserving to Seller the Retained Rights;

(ii) a sublease agreement, covering Seller's subleasehold estate in certain property located in the City of Palo Alto, subject to the Permitted Exceptions and reserving to Seller the Retained Rights;

(iii) quitclaim deeds, quitclaiming to Purchaser all of Seller's right, title and interest to the portion of the Land currently held by Seller under color of title, subject to the Permitted Exceptions and reserving to Seller the Retained Rights;

(iv) an assignment agreement, assigning to Purchaser a nonexclusive interest in the Environmental Indemnity Agreement (Brisbane), dated December 28, 1989, among Seller, Tuntex (U.S.A.) Inc. and Oyster Point Properties, Inc.;

(v) assignment and assumption agreements, conveying to Purchaser all of Seller's interests in

and to the Leases, Option Leases and Other Agreements (except insofar as the Other Agreements pertain to the Retained Rights) and indemnifying and holding harmless Purchaser from and against any and all claims from any tenants or parties to the Other Agreements arising prior to the Closing, and requiring Purchaser to indemnify and hold harmless Seller from and against any such claims arising after the Closing;

(vi) the original Leases or Option Leases, Other Agreements and any assignments thereof, and any security deposits and prepaid rents made by tenants under the Leases or Option Leases for periods occurring after the Closing;

(vii) the agreements described in section 6.2, 6.3 or 6.4 above, as applicable;

(viii) an assignment of all warranties, guaranties and similar documents, whenever dated, relating to any personal property of which Seller has knowledge and which are transferable;

(ix) a rent roll in form reasonably satisfactory to Purchaser updated to within 10 days of the Closing and certified as true and complete by the Seller, together with copies of all notices of

material default sent (or received) by Seller as lessor under the Leases or Option Leases which remain uncured;

(x) deeds of trust on the Option Property, pursuant to sections 2.7 and 3.6 hereof, in form and substance reasonably satisfactory to Seller and Purchaser;

(xi) a certificate of the Secretary of State of Delaware, dated not earlier than 60 days prior to the Closing, showing that the Seller is a validly existing corporation and in good standing under the laws of such state;

(xii) a certificate setting forth the officer(s) of Seller authorized to execute and deliver the closing documents certified by Seller's secretary;

(xiii) notices to all tenants under the Leases or Option Leases of the transfer of ownership of the Land being conveyed;

(xiv) an affidavit of Seller stating that Seller is not a foreign person in compliance with the requirements pursuant to Section 1445 of the Internal Revenue Code;

(xv) an opinion of Seller's legal counsel that the documents to be delivered by Seller pursuant

to this Agreement have been duly authorized by Seller, that this Agreement and such documents are the valid, binding and enforceable obligations of Seller and as to such other matters as Purchaser may reasonably request;

(xvi) an Environmental Indemnity Agreement in the form of Exhibit J;

(xvii) a Memorandum Agreement in a form suitable for recording, evidencing Purchaser's rights in the Option Properties and Seller's rights to certain reconveyances, pursuant to the Management Agreement; and

(xviii) such documents as Seller may reasonably request to support Seller's filings with appropriate taxing authorities; and

(xix) such affidavits and other documents as may be required or reasonably requested to effect the consummation of the transactions contemplated hereby.

(b) Purchaser and, as applicable, SAMTRANS, shall execute and deliver to Seller the following:

(i) instruments necessary to provide the Purchase Price or Option Price by wire transfer of funds or other immediately available funds, adjusted pursuant to section 1.3;

(ii) executed acceptances of the deeds;

(iii) a countersigned copy of the sublease agreement;

(iv) countersigned copies of the assignment and assumption agreements described in section 6.5(a)(iv) and (v) and the Memorandum Agreement described in section 6.5(a)(xvii);

(v) countersigned copies of the agreements described in section 6.2, 6.3 or 6.4 above, as applicable;

(vi) a countersigned copy of the Environmental Indemnity Agreement;

(vii) opinions of Purchaser's and SAMTRANS' legal counsel that the documents to be delivered by Purchaser and SAMTRANS pursuant to this Agreement have been duly authorized by such party, that this Agreement and such documents are the valid, binding and enforceable obligations of such party and as to such other matters as Seller may reasonably request;

(viii) documents to support Seller's filings with taxing authorities, as described in section 6.5(a)(xviii) above;

(ix) change of ownership report(s); and
(x) such affidavits and other documents
as may be required or reasonably requested to effect
the consummation of the transactions contemplated
hereby.

(c) Purchaser and Seller shall each execute
settlement statements showing adjustments to the Purchase
Price or Option Price and payments of the costs of Closing.

(d) Seller shall surrender possession of the
portion of the Land conveyed at the Closing to Purchaser
except as provided in section 7 or any agreement entered into
pursuant to section 6.2, 6.3 or 6.4.

ARTICLE 7: RESERVATIONS FROM CONVEYANCE

7.1 SPTC Easements.

(a) Fiber Optics Easement. Seller shall also
reserve to itself in the documents conveying the Land a
perpetual, nonexclusive easement (the "Fiber Optic Easement"),
for the purposes of owning, operating, installing and
maintaining fiber optic communications systems, and necessary
related facilities on, through, across, under and over the
Fiber Optics Easement.

The Fiber Optics Easement shall be reserved by
Seller in the documents conveying the Land in substantially
the following form:

Seller excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, nonexclusive easement (the "Fiber Optics Easement") five feet in width (the "Fiber Optic Easement Property") (located 2.5 feet on either side of the centerline of the existing fiber optic communications facilities, the general location of which shall be verified for Purchaser by certified as-built drawings provided by Seller and by markers located on the Property), together with necessary rights of access for the easement purposes authorized hereunder in, on, over and across the Property within five feet of each side of the centerline of the Fiber Optics Easement Property. Seller and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over and across the Fiber Optic Easement Property:

(a) to own, reconstruct, maintain, repair, operate, use, relocate and/or remove existing fiber optic communication systems, lines and facilities consisting of all existing fiber optic facilities, and the existing communications facilities installed by Western Union Telegraph Company and all rights related thereto as set forth in the Other Agreements (collectively, the "Existing Fiber Optics Improvements"), provided that any such relocation or reconstruction shall be constructed underground if reasonably practicable and subject to the terms and conditions set forth below in subparagraphs (c)-(f) below; and

(b) to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove future fiber optic communications systems, lines and facilities and all rights related thereto (collectively, "Future Fiber Optics Improvements"), provided that such Future Fiber Optics Improvements shall be constructed and owned by Seller or by Southern Pacific Telecommunications Company ("SP Telecom"), shall be constructed underground and within existing duct structures whenever reasonably practicable, and in such a manner so as not to materially interfere with Purchaser's commuter rail

passenger service, and shall be subject to the terms and conditions set forth in paragraphs (c)-(f) below.

(c) Any modifications to the Existing Fiber Optics Improvements and all Future Fiber Optics Improvements (collectively, "Fiber Optics Improvements") shall be constructed, operated and maintained in accordance with plans, specifications and procedures approved by Purchaser, in its reasonable discretion, in advance of construction, operation and maintenance and shall be constructed, operated and maintained in good and workerlike manner in accordance with all requirements of any governmental agency having jurisdiction thereover and at no cost or expense to Purchaser. Purchaser shall not unreasonably withhold or delay its approval of any plans, specifications and procedures submitted by Seller. Any disapproval shall specify the reasons therefor in reasonable detail. Purchaser covenants that it will not construct any improvements on the Property within five feet on each side of the centerline of the Fiber Optics Easement Property in such a manner as to materially interfere with Seller's use of the Fiber Optics Easement for the purposes authorized hereunder.

All necessary permits for such construction shall be obtained by the Seller at the Seller's sole expense. Seller shall install and maintain monuments and markers in form and size reasonably approved by Purchaser marking the location of the Fiber Optics Improvements, changes in direction of such improvements, and on each side of the grade crossings, at the Seller's sole cost and expense. All work upon or in connection with constructing Fiber Optics Improvements on the Fiber Optics Easement Property shall be done at such times and in such manner as not to interfere in any material manner with the railroad operations of Purchaser or any person operating under the authority of Purchaser, any fiber optic or other communications systems and related facilities owned by Purchaser or any person operating under the authority of Purchaser, or any pipelines and related facilities owned by Purchaser, or any person operating under the authority of

Purchaser. Except in case of emergency (in which case Seller shall attempt to give telephonic notice to Purchaser), Seller shall give Purchaser five business days' prior written notice before entry upon the Fiber Optics Easement Property by Seller or its designated contractors, agents or by any necessary or incidental vehicles, work equipment, machinery and other movable structures for purposes in connection with the easements reserved in the Fiber Optics Easement Property, and prior to the commencement of any work on the Fiber Optics Easement Property, and shall comply with all reasonable rules and regulations promulgated by Purchaser with respect to such construction activities.

Access over, upon, to, from and across the Fiber Optics Easement Property and exercise of the Fiber Optics Easement shall be at the sole risk and expense of Seller, its designated contractors, lessees, sublessees, licensees, agents, and employees. Seller shall hold harmless, indemnify and defend Purchaser from and against (i) any claim by or liability to any person or entity arising out of or in connection with exercise of the Fiber Optics Easement by Seller, its designated contractors, lessees, sublessees, licensees, agents, and employees, and (ii) any loss or or damage to property arising out of or in connection with exercise of the Fiber Optics Easement by Seller, its designated contractors, lessees, sublessees, licensees, agents, and employees, except for claims, liabilities, loss or damage caused by Purchaser's negligence or willful misconduct.

(d) Except as provided in the Trackage Rights Agreements, Purchaser shall have no liability to Seller, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns for (i) any claim by or liability to any such person or entity arising out of, or in connection with the use of, or activities upon, the Property by Purchaser, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns or (ii) any loss of or damage to the property of Seller, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns

including, without limitation, the Fiber Optics Improvements, arising out of, or in connection with the use of, or activities upon, the Property by Purchaser, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns except in each case of such claim, liability, loss or damage is the result of the negligence or willful misconduct of Purchaser, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns. In no case shall Purchaser, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns be liable to Seller, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns for consequential, special, indirect or incidental damages even if Purchaser, its designated contractors, lessees, sublessees, licensees, agents, employees, successors or assigns are or have been advised of the possibility of the same.

(e) Prior to exercising any rights to construct additional Fiber Optics Improvements, Seller shall obtain or extend at its sole expense general liability insurance naming Purchaser as an additional insured with respect to and to the extent of the exercise of such rights and upon such terms and in such amounts as are reasonable and customary and issued by companies reasonably approved by Purchaser. Purchaser shall be furnished with a certificate of each policy required to be provided by Seller.

(f) If Purchaser reasonably desires to have any communications improvements relocated in order to utilize any portion of the Fiber Optics Easement Property for rail passenger commuter service, including without limitation, grade separations, electrification of the system, or other improvements, Purchaser shall notify Seller or SP Telecom (whichever owns such fiber optic facilities) of such desire in writing, specifying in reasonable detail (i) the nature and extent of the proposed use; (ii) the legal description of the portion of the Fiber Optics Easement Property on which relocation of communication improvements is

being requested; (iii) the date upon which Purchaser desires the relocation of such communication improvements to be completed; (iv) the legal description of a proposed alternate easement (the "Alternative Easement") that will provide Seller the ability to maintain continuous communications and/or utility connections, as applicable, across the Land which are not substantially less convenient than is provided by the existing easement, and the portion of the Land to be encumbered by the Alternative Easement (the "Alternative Easement Property"); (v) evidence establishing that Purchaser has the legal right to convey the Alternative Easement to Seller over the Alternative Easement Property; (vi) a draft instrument in form and substance reasonably satisfactory to Seller granting the Alternative Easement to Seller over the Alternative Easement Property; and (vii) a copy of the latest plans and specifications for the project proposed by Purchaser which requires such relocation of the communications improvements.

Within four months after receiving the notice and documents specified above, Seller or SP Telecom shall relocate any communications improvements located on the specified portion of the Fiber Optics Easement Property owned by it to the Alternative Easement Property, and shall quitclaim to Purchaser all of its right, title and interest in the portion of the Fiber Optics Easement Property from which such communications improvements have been relocated.

Any relocation requested by Purchaser necessitated by Purchaser's use of the Property for rail passenger commuter service, including without limitation, grade separations, electrification of the system, or other improvements, shall be made at Seller's sole cost and expense; provided, that Seller's obligation for costs and expenses with respect to the relocation of fiber optic facilities installed after the Closing shall be limited to one relocation at Purchaser's request per any one location. Seller shall not be responsible for the cost and expense of relocations requested by Purchaser, whether affecting the same portion of the Fiber Optics Easement Property or a different portion, unrelated to

Purchaser's use of the Property for commuter rail passenger service. Notwithstanding the foregoing, until such time as Purchaser may exercise its option under section 3.7 of the Purchase, Sale and Option Agreement, dated November __, 1991, between Seller and Purchaser, Seller shall remain liable for any and all relocation costs for which Seller would otherwise be liable under the terms of the existing agreements between Seller and the communications companies, regardless of the number of times such relocation obligations are incurred.

(g) The easement reserved in subsection (a) herein shall allow Seller to honor its grant and fulfill its other obligations and exercise its rights under all existing agreements for such facilities. All communications improvements presently existing on or hereafter constructed on the Fiber Optics Easement Property shall remain the personal property of the Seller or the communications company to which they belong. Seller shall be entitled to all revenues and consideration derived from all current and future agreements, to which Seller is a party, affecting the Fiber Optics Easement Property, subject to Purchaser's rights under section 3.7 hereof.

(b) SPTC Railroad Easement. Seller shall also reserve to itself in the documents conveying the Land a perpetual, exclusive easement and trackage rights over the Land (except where rail operations have previously been abandoned by Seller) for Seller's present and future rail freight operations and intercity passenger operations (the "SPTC Railroad Easement"). The SPTC Railroad Easement shall be reserved in substantially the form of Exhibit K attached hereto. The documents conveying the Land shall specifically provide that Purchaser shall not use the Land for freight or intercity passenger operations.

(c) SPTC Access and Parking Easements. Seller shall also reserve to itself in the deeds covering the Land perpetual vehicular and pedestrian access and parking easements, located on, through and across the Land at the following locations: (i) near 25th and Pennsylvania Streets (shown on Map No. 43820, Sheet 4), (ii) near Sunnydale Avenue (shown on Map No. 43820, Sheet 8), (iii) commencing near the intersection of Santa Clara Street and Tunnel Avenue (shown on Map No. 43820, Sheet 10), (iv) near Oyster Point Boulevard (shown on Map No. 43820, Sheet 11), and (v) on the south leg of the wye (shown on Map No. 43820, Sheet 22), all for the benefit of property adjacent to the Land that is owned by Seller. These easements shall be in substantially the form of Exhibit L attached hereto.

(d) Easement for Building. Seller shall also reserve to itself in the deed conveying the Land described in Exhibit M an exclusive easement for the location, operation and maintenance of the existing building located at 741 Auzerais Avenue in San Jose. The easement shall be substantially in the form of Exhibit M attached hereto.

7.2 Seller's Rights with Respect to Amtrak. Purchaser recognizes that Amtrak also operates over a portion of the Land and that Seller may enter into new agreements or amend its present agreements with Amtrak relating to operations over the Land to the extent permitted by the terms

of the Trackage Rights Agreements entered into pursuant to this Agreement.

ARTICLE 8: CONDITION OF THE PROPERTY

8.1 Toxic Wastes. Purchaser acknowledges that it is being afforded extensive access to the Land and to information relating to the Land. Purchaser will continue to have the right to examine documents relating to the Property as provided in section 4.1 and to make an on-site inspection of the Land as provided in section 4.2, and will otherwise investigate the Land to Purchaser's satisfaction. Purchaser hereby releases Seller and Seller's shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition, valuation or utility of the Land other than that arising out of Seller's obligations expressly and specifically set forth in this Agreement and the agreements and documents to be executed and delivered pursuant to Article 6.

8.2 No Other Warranties by Seller. Purchaser expressly acknowledges that Purchaser is buying the Land in an "as is" condition, that, except as set forth in section 2.6, Seller is not warranting title to the quitclaim parcels, and that Purchaser has not relied on any warranties, promises, understandings or representations, express or implied, of Seller or any agent of Seller relating to the Land, any Lease, Option Lease or any other document relating to the Land,

except as otherwise set forth in this Agreement and the agreements and documents to be executed and delivered pursuant to Article 6. Purchaser acknowledges that any and all feasibility or marketing reports, Environmental Reports, engineering studies and other information of any type that Purchaser has received or may receive from Seller or its agents are furnished on the express condition that Purchaser shall make an independent verification of the accuracy of any and all such information, all such information being furnished without any warranty whatsoever. Purchaser releases Seller and Seller's shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition, valuation or utility of the Land other than that arising out of Seller's obligations expressly and specifically set forth in this Agreement and the agreements to be executed and delivered pursuant to Article 6.

ARTICLE 9: RISK OF LOSS

If, between the date of this Agreement (or, for the Option Property, the date on which Purchaser exercises its Option for such Segment) and the Closing for any portion of the Land, any material part of the Land is materially damaged or destroyed by fire or other casualty in the reasonable judgment of Purchaser, or if any part of the Land is taken in condemnation or under the right of eminent domain (other than by Purchaser

or any member agency of Purchaser), whether material or not, or proceedings for such taking shall be pending or threatened, Purchaser shall have the right to terminate this Agreement with respect to the property so damaged or condemned by notice given to Seller within 10 days after receiving notice thereof. Seller shall promptly notify Purchaser of each occurrence of the kind specified above and shall give Purchaser such information relating thereto as Purchaser may thereafter reasonably request. Alternatively, Purchaser may elect to purchase the property so damaged or condemned notwithstanding the damage or taking, (a) without any abatement or diminution of the Purchase Price in the case of a condemnation, in which case Seller shall, on the Closing, deliver to Purchaser any condemnation awards received by Seller or to which Seller may be entitled as a result of any occurrence specified herein, or (b) with an equitable price reduction in the case of damage or destruction of the Land. Seller shall cooperate with and assist Purchaser in collecting any such proceeds or awards.

ARTICLE 10: DEFAULT AND REMEDIES

10.1 **Remedies.** In the event that Purchaser or Seller fails to perform or comply with any of its obligations or the terms contained in this Agreement, the injured party shall have all rights and remedies available at law or in equity, including damages, specific performance and

termination of this Agreement, which remedies shall be cumulative and not exclusive, except for circumstances where an exclusive remedy is specified elsewhere in this Agreement.

10.2 Costs of Enforcement. In any action to enforce this Agreement, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, the prevailing party shall also be entitled to collect all its costs in such action, including the costs of investigation, settlement, expert witnesses and reasonable attorneys' fees, together with all additional costs incurred in enforcing or collecting any judgment rendered.

ARTICLE 11: LABOR PROTECTION

Seller shall assume labor protection responsibility arising under federal or state law or pursuant to contracts to which Seller is bound covering services on or over the Land, and shall provide appropriate indemnity protection to the Purchaser and the State of California in connection therewith, provided that Seller shall not be responsible for incremental labor protection arising solely and exclusively out of any passenger service increases that may be authorized subsequent to July 1, 1990 and provided further that Purchaser will cooperate generally to minimize labor protection costs and specifically to require that its operator give first consideration for available employment first to those persons currently employed by Seller in any functions related to

peninsula corridor commute operations and its maintenance and administration pursuant to terms and conditions of employment established by the operator of the service.

ARTICLE 12: SALE AND ABANDONMENT

12.1 Sale by Purchaser. In the event that Purchaser contracts to sell all or substantially all of the Land to a third party (other than those parties described in 13.3(a)(i) through (iv)), Purchaser may, at its sole cost and expense, file for permission from the ICC to abandon any freight operations over the portion of the SPTC Railroad Easement that is to be sold. While Seller shall not object to such a filing, it shall be allowed to participate in the abandonment proceedings.

12.2 Construction of Facilities Incompatible with Double Track. In the event that Purchaser intends with reasonable certainty to commence construction of facilities on all or substantially all of the length of the SPTC Railroad Easement that are incompatible with the double mainline track freight operations, Seller shall consent to such a diminished easement, provided that Purchaser shall have completed, at its sole cost and expense, the modification (whose plans and specifications have been approved by Seller) of the remaining single track (together with side track passing tracks and spur

tracks) to be reasonably suitable for the volume and speed of existing rail freight service. Upon completion of such construction, Seller shall execute such documents as are reasonably necessary to extinguish the portion of the SPTC Railroad Easement no longer required for rail freight service.

12.3 Change in Purchaser's Transportation System. In the event that Purchaser demonstrates a reasonably certain need to commence construction, on all or substantially all of the length of the SPTC Railroad Easement, a transportation system that is a significant change in the method of delivery of passenger service which would be incompatible with rail freight operations on the SPTC Railroad Easement, Purchaser may, at its sole cost and expense, file no sooner than nine months prior to the commencement of such construction for permission from the ICC to abandon the freight operations over the portion of the SPTC Railroad Easement upon which the construction is to occur. Seller shall not object to or oppose such a filing; however, it shall be allowed to participate in the abandonment proceedings.

12.4 Cessation of Rail Passenger Service. In the event that (i) Purchaser notifies Seller in writing that it has permanently ceased to provide rail passenger transportation on all or substantially all of the SPTC Railroad Easement and within six months after such notice, no other public or private entity has evidenced a willingness to provide such

passenger or commute service, and (ii) if Purchaser has not filed an ICC application to abandon under subsection 12.1 above, and (iii) Seller desires to continue to provide rail freight service over such portion, then, within one year after Purchaser's notice, Seller shall purchase, and Purchaser shall sell, all of the trackage and structures at net liquidation value and Purchaser's interest in the underlying real property at the mileage pro rata share of the Purchase Price attributable to the portion of the Land being purchased. Should the parties be unable to agree on the sale price within after sixty days after Purchaser has advised Seller of its proposed sale price, either party may submit the matter to binding arbitration under the Trackage Rights Agreement - Peninsula Main Line and Santa Clara/Lick Line. If neither party submits the matter to arbitration by the thirtieth day after such sixty-day period, Purchaser's contractual right to require Seller to purchase hereunder shall lapse.

ARTICLE 13: MISCELLANEOUS MATTERS

13.1 Brokers. Seller and Purchaser each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fees arising from the execution of this Agreement or the closing of the purchase and sale hereunder alleged to be payable because of any act, omission or statement of the indemnifying party.

13.2 Recording. Neither party shall record this Agreement or any memorandum of it, and such recording shall be a material default hereunder, except that the parties agree to record on the Closing Date a short form memorandum regarding Purchaser's option to acquire the Option Properties and Purchaser's contingent obligation to reconvey the Grade Separation II Properties to Seller.

13.3 Assignment and Vesting of SAMTRANS.

(a) The qualifications and reputation of Purchaser are material inducements to Seller in entering into this Agreement. Therefore, Purchaser may not assign its rights or delegate its duties under this Agreement without the prior written consent of Seller. Seller's consent hereunder shall not be unreasonably withheld provided that Seller reasonably determines that such assignment will not result in undue delays or confusion at the Closing. Notwithstanding the foregoing, Purchaser may assign this Agreement in whole or in part (i) to any one or more of Purchaser's member entities, (ii) to the Peninsula Rail District, (iii) to the State of California Department of Transportation or (iv) to an existing or to be formed public, quasi-public or nonprofit entity, formed or authorized to own the Land, if within ten days after such assignment, such assignee executes and delivers to Seller a written instrument assuming all of Purchaser's obligations hereunder, and an opinion of such assignee's counsel stating

that such assignee is entitled to perform all of Purchaser's obligations under this Agreement.

(b) At Closing, SAMTRANS will be vested in title as a tenant in common with Purchaser as to the real property conveyed hereunder located in San Mateo County. SAMTRANS is entitled to all benefits, including without limitation, all indemnities relating to the real property conveyed hereunder located in San Mateo County, but assumes no obligations under this Agreement other than as provided in the documents to be executed by SAMTRANS pursuant to section 6.5(b) above; provided that Purchaser shall not be released from any of its obligations hereunder.

13.4 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Seller:

Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105
Attention: Mr. Robert F. Starzel
Phone No.: 415-541-1474
Telecopy No.: 415-541-2098

and

Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105
Attention: C.Y. Harvey, Esq., General Counsel
Phone No.: 415-541-1781
Telecopy No.: 415-495-5436

with a copy to:

Holme Roberts & Owen
1700 Lincoln, Suite 4100
Denver, CO 80203
Attention: G. Kevin Conwick
Phone No.: 303-861-7000
Telecopy No.: 303-866-0200

To Purchaser:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh
Phone No.: 415-508-6221
Telecopy No.: 415-508-6281

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attn: David J. Miller
Phone No.: 415-777-3200
Telecopy No.: 415-541-9474

13.5 General Indemnity. Except as otherwise set forth in this Agreement, any document executed pursuant hereto or any other agreement relating to the Land, including but not limited to, the Agreement to Provide Passenger Rail Service, dated July 1, 1980, between Seller and the State of California Department of Transportation, Seller agrees to defend,

indemnify and hold Purchaser and, with respect to the Land located in San Mateo County, SAMTRANS (together with the officers, directors, employees and representatives of Purchaser and SAMTRANS), harmless from and against all third party claims, demands, liabilities, causes of action, actions, judgments, settlements, damages, cost and expenses (including, without limitation, reasonable attorneys' fees and court costs) which relate to actions or omissions by Seller relating to the Land, accruing, arising, or occurring on or before the Closing with respect to any such portion of the Land.

ARTICLE 14: DEFINITIONS

The following capitalized terms are used in this Agreement with the following meanings:

"Balance Due" shall have the meaning set forth in section 1.2(a) of this Agreement.

"Baseline Study" shall mean the Preliminary Environmental Survey of San Francisco/San Jose Railroad Right-of-Way, dated May 31, 1990, by Wahler Associates, as subsequently supplemented and amended.

"Closing" shall have the meaning set forth in section 6.1 of this Agreement.

"Closing Date" shall have the meaning set forth in section 6.1 of this Agreement.

"Commute" or "commuter" used in connection with passenger operations are intended to distinguish such operations from intercity passenger operations. The term is not intended to limit such "commuter" operations to any time of the day or night.

"Defeasible Fee Interests" shall mean those interests in the Land which are subject to a power of termination (as defined in the Marketable Record Title Act), without regard to whether such power of termination is currently enforceable under the Marketable Record Title Act.

"Defect in Title" shall have the meaning set forth in section 2.3 of this Agreement.

"Due Diligence Period" shall have the meaning set forth in section 4.3(a) of this Agreement.

"Easement Interests" shall mean that portion of the Land owned by Seller as an easement.

"Environmental Reports" shall have the meaning set forth in section 4.1(a)(ii) of this Agreement.

"Environmental Surveys" shall have the meanings set forth in section 4.2(d) of this Agreement.

"Fee Interests" shall mean that portion of the Land owned by Seller in fee.

"Fiber Optic Easement" shall have the meaning set forth in section 7.1(a) of this Agreement.

"Grade Separation Parcels" shall mean all of the Grade Separation I and Grade Separation II Option Parcels identified on Exhibit A.

"Hazardous Materials" shall have the meaning set forth in section 2.1.1 of Exhibit J.

"Improvements" shall have the meaning set forth in section 1.1(b) of this Agreement.

"Land" shall have the meaning set forth in section 1.3(c) of this Agreement.

"Leases" shall have the meaning set forth in section 1.1(c) of this Agreement.

"Letter Agreement" shall have the meaning set forth in section 6.2(c) of this Agreement.

"Lick/Gilroy Note" shall have the meaning set forth in section 1.2(b) of this Agreement.

"Limited Fee" shall have the same meaning as "Defeasible Fee Interests" hereunder.

"Management Agreement" shall have the meaning set forth in section 6.2(d) of this Agreement.

"Maps" shall mean the maps of the Real Estate and the Option Properties, referenced in Exhibit A hereto and to be delivered by Seller to Purchaser in accordance with this Agreement.

"Objection Deadline" shall have the meaning set forth in section 2.1 of this Agreement.

"Operating Land" shall mean all of the Land used primarily for the purpose of operating a railroad thereon.

"Option" shall have the meanings set forth in Article 3 of this Agreement.

"Option Improvements" shall mean the Improvements located on the Option Properties.

"Option Leases" shall have the meaning set forth in section 3.1(c) of this Agreement.

"Option Price" shall have the meaning set forth in section 3.3 of this Agreement.

"Option Property" shall have the meaning set forth in section 3.1 of this Agreement.

"Option Real Estate" shall have the meaning set forth in section 3.1 of this Agreement.

"Other Agreements" shall have the meaning set forth in section 2.1(d) of this Agreement.

"Parking Lot Option Parcels" shall mean all of the parking lot option parcels identified on Exhibit A.

"Permitted Exceptions" shall have the meaning set forth in section 2.1 of this Agreement.

"Property" shall have the meaning set forth in section 1.1 of this Agreement.

"Purchase Price" shall have the meaning set forth in section 1.2(a) of this Agreement.

"Purchase Price Note" shall have the meaning set forth in section 1.2(a) of this Agreement.

"Purchaser" shall mean the Peninsula Corridor Joint Powers Board, a joint powers agency created under California law.

"Purchaser Notice" shall have the meaning set forth in section 5.1(i) of this Agreement.

"Real Estate" shall have the meaning set forth in section 1.1(a) of this Agreement.

"Retained Option Personalty" shall mean the Retained Personalty relating to the Option Properties.

"Retained Personalty" shall mean cars, trucks and other motor vehicles owned by Seller, and railroad tracks, ties, signals and other railroad equipment described on Exhibit B.

"Retained Rights" shall have the meaning set forth in section 1.1 of this Agreement.

"Revised Legal" shall have the meaning set forth in section 3.1(a)(vi) of this Agreement.

"Right-of-Way" shall have the meaning set forth in section 1.1(a)(i) of this Agreement.

"Segment" shall have the meaning set forth in section 3.1 of this Agreement.

"Seller" shall mean Southern Pacific Transportation Company, a Delaware corporation.

"Seller Notice" shall have the meaning set forth in section 5.1(i) of this Agreement.

"Service Contracts" shall have the meaning set forth in section 1.1(e) of this Agreement.

"SPTC Railroad Easement" shall have the meaning set forth in section 7.1(b) of this Agreement.

"Title Company" shall mean Fidelity National Title Insurance Company.

"Title Policy" shall have the meaning set forth in section 2.5 of this Agreement.

"Title Reports" shall have the meaning set forth in section 2.1(b) of this Agreement.

"Trackage Rights Agreements" shall mean the Trackage Rights Agreement -- Peninsula Main Line and Santa Clara/Lick Line, the Agreement for Paired Track Operations Between Santa Clara Junction and Lick, California and the Trackage Rights Agreement - Lick/Gilroy Line, as described in sections 6.2(c) and 6.3 of this Agreement, and the Trackage Rights Agreements described in section 6.4(c) of this Agreement.

"Valuation Reduction Amount" shall have the meaning set forth in section 5.1(i) of this Agreement.

ARTICLE 15: INTERPRETATION OF AGREEMENT

15.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15.2 Headings. The article and section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

15.3 Saturdays, Sundays and Holidays. If any payment or delivery of any document is required pursuant to any term of this Agreement to be made on a date which falls on a Saturday, Sunday or legal holiday in the State of California, such payment or delivery shall be made on the first business day following such Saturday, Sunday or legal holiday.

15.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.5 Effect of Agreement. All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incor-

porated in this Agreement. This instrument sets forth the entire agreement between the parties. No provision of this Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such amendment, revocation or waiver. Subject to the provisions of section 13.3, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

15.6 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

15.7 Survival. The following provisions shall survive the closing: Articles 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 15.

15.8 Time. Time is of the essence of this Agreement. If any of the conditions or obligations in this Agreement are not timely met by Purchaser or Seller (including but not limited to tendering funds and signing of closing documents on or before the Closing Date), then Purchaser or Seller, as the case may be, shall be deemed to be in default hereunder, and the non-defaulting party may, at its option, exercise its rights under Article 10.

15.9 Further Assurances; Boundary Modifications.

From time to time after each Closing (and, if reasonably required, prior to any Closing), each of Seller and Purchaser shall execute and deliver such instruments of conveyance, assignment and transfer, in addition to those expressly provided for herein, and shall take such other actions, including revisions of legal descriptions, as the other party reasonably may request in order more effectively to transfer, convey, assign and deliver to Purchaser any of the Land or to implement the reservations provided for in Article 7. Each of Seller and Purchaser also shall provide such cooperation and furnish such information to the other party as that party reasonably may request for purposes of necessary and voluntary filings, related to the transactions contemplated hereby, with any governmental entity, including, without limitation, the ICC and the Internal Revenue Service. At Purchaser's request, Seller shall deliver to Purchaser copies, or permit Purchaser to make copies, of as-built plans and drawings in Seller's possession relating to any Right-of-Way.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it as of this day and year first above written.

SELLER:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation

By: [Signature]

Title: Vice Chairman

PURCHASER:

PENINSULA CORRIDOR JOINT
POWERS BOARD, a joint powers agency
created under California law

By: Tom Nolan

Title: Board Chair

By: Diana Puding

Title: Board Secretary

APPROVED AS TO FORM:

David J. Miller

SAMTRANS:

SAN MATEO COUNTY TRANSIT DISTRICT,
a public agency

By: John Asmus

Title: Board Chair

By: Christine A. Dale

Title: Board Secretary

APPROVED AS TO FORM:

David J. Miller

EXHIBIT A

THE LAND

I. PROPERTY:

PENINSULA MAIN LINE (San Francisco to Milepost 44)

All of those parcels highlighted in yellow on sheets 1, 2, 4 through 10, 12 through 20, 23 through 29 and 31 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on August 12, 1991, on sheets 11, 22 and 30 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on September 9, 1991, and on sheets 3, 3A and 21 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on November 1, 1991, lying within those parcels on SPT Valuation Map V-75, Sheets 1 and 2; Valuation Section V-2, Sheets ST-1A, 1 through 5, ST-6, 6, ST-7, and 8 through 12; and Valuation Section V-74, Sheets 1 through 18, beginning near 4th and Townsend at Milepost 00.147 to Milepost 44.0 at Santa Clara Junction.

All of those parking lot parcels highlighted in pink on sheet 20 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on August 12, 1991.

SANTA CLARA - LICK LINE

All of those parcels highlighted in yellow on sheets 33, 34 and 36 through 40 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on August 12, 1991, and sheets 32 and 35 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on September 9, 1991, lying within those parcels on SPT Valuation Section V-74, Sheet 18 and Valuation V-73, Sheets 1 through 8, beginning at Santa Clara Junction at Milepost 44.00 to Milepost 51.40 near Lick.

II. OPTION PROPERTY:

DUMBARTON BRANCH

All of those parcels highlighted in yellow on sheets 1 through 4 on SPT Drawing No. C.E. 44590 dated and initialled by the representatives of the parties hereto on August 12, 1991, lying within those parcels on SPT Valuation Map V-107, Sheets 1, S-1, 2 and 3; Valuation Section V-23, Sheet 5a, beginning near Milepost 26.2 on the main line, including the south leg of the wye track at Redwood City shown on sheet 1, extending to Milepost 36.99 at the westerly wye track switch at Newark near Elm Street.

VASONA BRANCH I

All of those parcels highlighted in yellow on sheets 5, 6 and 7 on SPT Drawing No. C.E. 44590 dated and initialled by the representatives of the parties hereto on August 12, 1991, lying within those parcels on SPT Valuation Map V-22, Sheets 2, 3 and 4, extending from the junction with the San Francisco-Gilroy Main Line to Vasona Junction at Milepost 53.0, at the crossing of Winchester Boulevard, excluding parcels 59, 60 and 61 on Sheet 2 and Parcel 8 on Sheet 3 of Valuation Map.

SAN BRUNO BRANCH

All of those parcels highlighted in yellow on sheets 8 through 12 on SPT Drawing No. C.E. 44590 dated and initialled by the representatives of the parties hereto on August 12, 1991, lying within those parcels on the San Bruno Branch as shown on SPT Valuation Map V-74b, Sheets 5 through 8, extending northward from the junction with the JPB Commuter Corridor at Milepost 13.643 near San Bruno, including Parcel No. 6 on SPT Valuation Map V-74, Sheet 1 northwest of San Bruno Station on the westerly side of the JPB Commuter Corridor along Huntington Avenue.

MOFFETT DRILL TRACK

All of those parcels highlighted in yellow (excluding Parcels No. 15 and 18) on sheet 13 on SPT Drawing No. C.E. 44590 dated and initialled by the representatives of the parties hereto on August 12, 1991, lying within those parcels on SPT Valuation Section V-74, Sheet 14a, from the junction of the San Francisco-San Jose Main Line to Moffett Field.

VASONA BRANCH II

All of those parcels highlighted in yellow on sheets 14 through 18 on SPT Drawing No. C.E. 44590 dated and initialled by the representatives of the parties hereto on September 9, 1991, lying within those parcels on SPT Valuation Map No. V-15, Sheets 5 through 9, extending from Vasona Junction, at or near Milepost 53.0, at the crossing of Winchester Boulevard to Monte Vista at the Stevens Creek Channel, at or near Milepost 39.58.

LICK/GILROY LINE

All of those parcels highlighted in yellow on sheets 19 through 28 on SPT Drawing No. C.E. 44590 dated and initialled by the representatives of the parties hereto on September 9, 1991, lying within those parcels on SPT Valuation Map No. V-73, Sheets 8 through 11 and Valuation Section V-70, Sheets 1 through 6, between Lick at or near Milepost 51.4 to about Milepost 80.7 at Gilroy Station.

GRADE SEPARATION AND PARKING LOT OPTION PARCELS

Those parcels highlighted in pink, blue, orange and red on sheets 1, 2, 4 through 10, 12 through 20, 23 through 29, 31, 33, 34 and 36 through 40 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on August 12, 1991, on sheets 11, 22, 30, 32 and 35 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on September 9, 1991, and on sheets 3, 3A and 21 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on November 1, 1991, lying within those parcels on SPT Valuation Map V-75, Sheets 1 and 2; Valuation Section V-2, Sheets ST-1A, 1 through 5, ST-6, 6, ST-7, and 8 through 12; Valuation Section V-74, Sheets 1 through 18; and Valuation Section V-73, Sheets 1 through 8, beginning near 4th and Townsend at Milepost 00.147 to Milepost 51.40 at Lick as are generally described on the attached sheet titled Grade Separation and Parking Lot Option Parcels,

EXCEPTING THEREFROM, all of those parcels highlighted in pink on sheet 20 on SPT Drawing No. C.E. 43820 dated and initialled by the representatives of the parties hereto on August 12, 1991.

GRADE SEPARATION AND PARKING LOT OPTION PARCELS

CITY	LOCATION	GROSS ACRES	NET ACRES	VALUE PER SQ. FT.	OPTION PRICE
<u>PARKING LOT OPTION PARCELS:</u>					
SAN FRANCISCO	22ND STREET	0.680	0.680	17.50	\$ 518,000
SAN FRANCISCO	BAYSHORE	0.826	0.826	10.00	360,000
SOUTH SAN FRANCISCO	SO. S.F. STATION	1.171	1.171	18.00	918,000
SAN MATEO	HILLSDALE STATION	1.722	1.722	20.00	1,500,000
SAN CARLOS	SAN CARLOS STATION	2.365	2.365	30.00	3,090,000
PALO ALTO	PALO ALTO STATION	0.507	0.507	25.00	551,000
MOUNTAIN VIEW	MOUNTAIN VIEW STATION	4.020	4.020	20.00	3,500,000
SUNNYVALE	SUNNYVALE STATION	0.916	0.863	20.00	752,000
SUNNYVALE	LAWRENCE STATION	0.230	0.230	16.00	160,000
<u>GRADE SEPARATION OPTION PARCELS:</u>					
MILBRAE	CENTER STREET	2.498	1.553	11.50	778,000
BURLINGAME	BROADWAY STATION	0.517	0.517	15.50	350,000
BURLINGAME	HOWARD AVENUE	0.858	0.858	25.00	935,000
BURLINGAME	PENINSULA AVENUE	1.167	1.167	10.00	508,000
SAN MATEO	FIFTH AVENUE	2.247	1.988	20.00	1,732,000
SAN MATEO	NINTH AVENUE	1.806	1.806	6.00	472,000
SAN MATEO	TWENTY-FIFTH AVENUE	4.695	4.603	15.00	3,007,000
BELMONT	RALSTON AVENUE	2.581	1.975	30.00	2,581,000
BELMONT	HARBOR BOULEVARD	2.599	2.489	15.00	1,626,000
SAN CARLOS	HOLLY STREET	1.654	1.640	30.00	2,143,000
REDWOOD CITY	WHIPPLE AVENUE	6.545	4.190	22.50	4,106,000
REDWOOD CITY	BREWSTER AVENUE	0.856	0.856	20.00	745,000
REDWOOD CITY	MAPLE STREET	0.129	0.129	10.00	56,000
TOTAL		40.589	36.155		\$30,388,000

EXHIBIT B

RETAINED PERSONALTY

The following personal property which is currently owned by Seller:

I. Applicable to All of the Land.

1. All rolling stock, including but not limited to engines, tenders, freight cars, flatbed cars, container cars and highrail cars and retired and scrap rolling stock;
2. All spare parts, replacement parts and equipment stored on the Property, including but not limited to inventories of track, ties and ballast;
3. All tools and equipment stored on the Property, including but not limited to rail saws, rail drills, bolt machines, welders, cranes, hoists, pulleys, generators, power tools, hand tools, bolts, braces, nails, lugs and the like;
4. Motor vehicles including but not limited to motor cars and trucks;
5. All radios and radio channels and frequencies, except for the following two frequencies:

AAR Channel 25, Frequency 160.485 and
AAR Channel 47, Frequency 160.815,

which will be transferred to Purchaser after the new operator for Purchaser's rail passenger commuter service is selected, subject to Purchaser's obtaining the approval of the Association of American Railroads and the Federal Communications Commission;
6. All shipper contracts;
7. All Industrial Track Agreements, Third Party Track Agreements and similar agreements;
8. All accounts, both receivable and payable, relating to Seller's freight operations;
9. All personal property owned by Tenants;
10. All office equipment including but not limited to desks, chairs, tables, credenzas, telephones,

answering machines, calculators, computers, computer terminals, typewriters, data processing equipment, stationary and supplies, pens, pencils, drafting equipment, ice containers, production equipment, printers, stoves, refrigerators, icemakers and the like;

11. All fiber optic lines and facilities and all other non-railroad communications facilities currently existing on the Property;

II. Pertaining to the Santa Clara/Lick Line.

1. The existing Number 1 track between Santa Clara Junction and the southern end of the yard in front of the San Jose passenger station at Cahill Street ("Cahill Yard") at or near Milepost 47.1;
2. The existing single main track between Cahill Yard and Lick;
3. All existing trackage magnetic east of the trackage described in 1 and 2 above;
4. Signals, signal systems, rail communication systems, rails and fastenings, switches, frogs, bumpers, ties, poles and ballasts associated with the trackage described in 1, 2 and 3 above.

III. Pertaining to the Vasona Branch II and the Lick/Gilroy Line.

All tracks, rails, ties, switches, crossings, signals, crossing protection devices, railroad communication systems or poles existing on such property.

IV. Pertaining to the Peninsula Main Line.

The police trailer at 7th and King Street.

EXHIBIT C-I

PROMISSORY NOTE

\$120,000,000

_____, 1991

FOR VALUE RECEIVED, PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law ("Borrower"), promises to pay to the order of SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Payee"), on or before the earlier of (i) three days after receipt of CTC Funding (as hereinafter defined) or (ii) _____ (the "Maturity Date"), the principal sum of \$120,000,000. No interest shall accrue or be payable with respect to such amount unless Borrower defaults on any obligation set forth herein, in which case interest will be paid as set forth below.

All payments made hereunder shall be made at Payee's offices at One Market Plaza, San Francisco, California 94105, or at such other place as the holder of this Note shall have designated to Borrower in writing.

This Note may be prepaid, either in whole or in part at any time without notice, premium or penalty and without the prior consent of the holder hereof.

Time is of the essence hereof. In the event of any default in any payment of the principal of this Note when due and payable, the entire principal amount of this Note, plus unpaid accrued interest thereon at the rate of 12 percent per annum from the date of default, shall, at the option of the holder of this Note, become immediately due and payable without notice or demand, and the holder of this Note shall have and may exercise any or all of the rights and remedies provided herein, as the same may be amended, modified or supplemented from time to time.

If Borrower fails to pay any amount due under this Note and Payee has to take any action to collect the amount due, Borrower agrees to pay on demand all costs and expenses of any such proceeding, or any appeal of any such proceeding, incurred by Payee, including but not limited to the fees and disbursements of Payee's attorneys and their staff.

Except as set forth in the following paragraphs,
(a) the holder of this Note shall have no recourse for payment hereof against Borrower or any of its constituent members,
(b) Borrower and its constituent members shall have no personal liability for the payment of principal, interest and

any other sums evidenced by this Note and (c) the holder of this Note agrees that: (i) no attachment, execution, writ or other process shall be initiated by or on behalf of the holder of this Note against Borrower or any of its constituent members as a result of breach or default under this Note unless such attachment, execution, writ or judicial proceeding shall be necessary to enforce any of the rights, remedies or recourses of the holder of this Note against or with reference to certain funds received or which Borrower is entitled to receive from the California Transportation Commission ("CTC") or the State of California (the "State") as defined below (the "CTC Funding"), and (ii) if any suit is brought under this Note for payment of principal, interest or other sums payable pursuant to this Note or performance of any terms and conditions set forth in this Note, whether before or after maturity of this Note by acceleration, passage of time or otherwise, any judgment obtained in or as a result of such suit shall be enforceable and/or enforced, except as set forth below, solely against the CTC Funding or any proceeds thereof.

For purposes of this Note, the "CTC Funding" shall mean the bond proceeds from the sale of \$120,000,000 of Clean Air and Transportation Bonds authorized by Section 99636(d) of the California Public Utilities Code, pursuant to the Clean Air and Transportation Improvement Act of 1990 ("Proposition 116").

The CTC Funding will be made available to Borrower or its constituent members from either CTC or the State in order to pay for the acquisition of railroad rights-of-way by Borrower from Payee. Borrower and its constituent members hereby agree that any CTC Funding received by any of them from CTC or the State after the date hereof shall, within three days after receipt, be paid to Payee. Borrower further agrees to use its continuous best efforts (including payment of reasonable expenses) to cause CTC and the State to provide it or any of its constituent members with all funds necessary to pay this Note in full as early as possible and in no event later than the Maturity Date. Borrower hereby represents and believes, it has made full and complete application to CTC for \$120,000,000 of Clean Air and Transportation Bond Funds to be used to pay this Note, (b) that on October 18, 1991, CTC approved such application, (c) that on November __, 1991, CTC allocated \$120,000,000 for the acquisition of railroad rights-of-way by Borrower from Payee, (d) that to the best of its knowledge and belief, CTC has formally requested the Transportation Improvement Finance Committee created under Proposition 116 to cause the issuance of \$120,000,000 of bonds authorized by Section 99636(d) of Proposition 116 (the "Bonds"), in order to pay the entire amount due hereunder to

Borrower, (e) that, to the best of its knowledge and belief, all legal requirements imposed by the State on Purchaser and the CTC as a condition to the issuance and sale of the Bonds have been satisfied, (f) that to the best of its knowledge and belief the Bonds are scheduled to be sold in February 1992, and (g) that it believes that the Bonds will be sold and the entire proceeds paid to Payee during February 1992. Borrower shall keep Payee fully informed as to any and all matters pertaining to the transactions identified in this paragraph. Any CTC Funding received by Borrower or any of its constituent members shall be held in trust by such party for the benefit of Payee and shall not be disbursed or paid to any other party. In case of payment of any CTC Funding to any other party by Borrower or any of its constituent members, Borrower or any constituent member making such improper payment shall be personally liable to Payee to the extent of such payment. In addition, Payee shall be entitled to recover such funds from such other party whether or not such other party had actual or constructive notice of such trust. Upon request of Payee at any time after March 1, 1992, and to the extent that it can legally do so, Borrower shall assign to Payee all rights which it now has or later acquires against CTC or the State with respect to the CTC Funding including but not limited to all rights to require the State to issue sufficient Bonds to pay this Note in full.

Borrower and each of its constituent members shall invest any CTC Funding in accordance with such party's existing investment policies, and all interest received by Borrower or any of its constituent members shall be paid to Payee in addition to the principal on this Note.

Anything to the contrary contained herein notwithstanding, Payee shall not be in default hereunder solely because the State of California does not issue the Bonds authorized by Section 99636(d) of Proposition 116, or because the CTC Funding is not available to Payee or its constituent members upon request, by the Maturity Date. If such Bonds are not issued, or if the CTC Funding is not available to Payee or its constituent members upon request, by the Maturity Date, Payee may commence suit against the State of California for failure to issue such Bonds.

Until this Note is paid in full Payee shall have no obligation to perform its obligations to Borrower or any other party under any Options granted to Borrower in the Purchase, Sale and Option Agreement between Borrower and Payee, other than its obligations under the Option to purchase the Grade Separation and Parking Lot Option Properties.

Borrower waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extension of time with respect to any payment due under this Note and to the addition or release of any party. No waiver of any payment or other right under this Note shall operate as a waiver of any other payment or right.

No delay or failure of the holder of this Note in the exercise of any right or remedy provided for hereunder shall be deemed a waiver of such right by the holder hereof, and no exercise of any right or remedy shall be deemed a waiver of any other right or remedy that the holder may have.

All notices to Borrower given hereunder shall be in writing, shall be given either by hand delivery or by certified mail, return receipt requested, and, if mailed, shall be deemed received two business days after having been deposited in the United States mail, postage prepaid, addressed as follows:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attn: David J. Miller

This Note is to be governed by and construed according to the laws of the State of California.

PENINSULA CORRIDOR JOINT
POWERS BOARD, a joint powers
agency created under California
law, for itself and for its constituent members

By: _____
Name:
Title:

GKCD/cd2

EXHIBIT C-II

\$4,000,000

_____, 1991

FOR VALUE RECEIVED, PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law ("Borrower"), promises to pay to the order of SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Payee"), on or before the earlier of (i) three days after receipt of CTC Funding (as hereinafter defined) or (ii) _____ (the "Maturity Date"), the principal sum of \$4,000,000. No interest shall accrue or be payable with respect to such amount unless Borrower defaults on any obligation set forth herein, in which case interest will be paid as set forth below.

All payments made hereunder shall be made at Payee's offices at One Market Plaza, San Francisco, California 94105, or at such other place as the holder of this Note shall have designated to Borrower in writing.

This Note may be prepaid, either in whole or in part at any time without notice, premium or penalty and without the prior consent of the holder hereof.

Time is of the essence hereof. In the event of any default in any payment of the principal of this Note when due and payable, the entire principal amount of this Note, plus unpaid accrued interest thereon at the rate of 12 percent per annum from the date of default, shall, at the option of the holder of this Note, become immediately due and payable without notice or demand, and the holder of this Note shall have and may exercise any or all of the rights and remedies provided herein, as the same may be amended, modified or supplemented from time to time.

If Borrower fails to pay any amount due under this Note and Payee has to take any action to collect the amount due, Borrower agrees to pay on demand all costs and expenses of any such proceeding, or any appeal of any such proceeding, incurred by Payee, including but not limited to the fees and disbursements of Payee's attorneys and their staff.

Except as set forth in the following paragraphs,
(a) the holder of this Note shall have no recourse for payment hereof against Borrower or any of its constituent members,
(b) Borrower and its constituent members shall have no personal liability for the payment of principal, interest and any other sums evidenced by this Note and (c) the holder of this Note agrees that: (i) no attachment, execution, writ or

other process shall be initiated by or on behalf of the holder of this Note against Borrower or any of its constituent members as a result of breach or default under this Note unless such attachment, execution, writ or judicial proceeding shall be necessary to enforce any of the rights, remedies or recourses of the holder of this Note against or with reference to certain funds received or which Borrower is entitled to receive from the California Transportation Commission ("CTC") or the State of California (the "State") as defined below (the "CTC Funding"), and (ii) if any suit is brought under this Note for payment of principal, interest or other sums payable pursuant to this Note or performance of any terms and conditions set forth in this Note, whether before or after maturity of this Note by acceleration, passage of time or otherwise, any judgment obtained in or as a result of such suit shall be enforceable and/or enforced, except as set forth below, solely against the CTC Funding or any proceeds thereof.

For purposes of this Note, the "CTC Funding" shall mean the bond proceeds from the sale of \$4,000,000 of the Clean Air and Transportation Bonds authorized by Section 99636(c)(2) of the California Public Utilities Code, pursuant to the Clean Air and Transportation Improvement Act of 1990 ("Proposition 116").

The CTC Funding will be made available to Borrower or its constituent members from either CTC or the State in order to pay for the acquisition of railroad rights-of-way by Borrower from Payee. Borrower and its constituent members hereby agree that any CTC Funding received by any of them from CTC or the State after the date hereof shall, within three days after receipt, be paid to Payee. Borrower further agrees to use its continuous best efforts (including payment of reasonable expenses) to cause CTC and the State to provide it or any of its constituent members with all funds necessary to pay this Note in full as early as possible and in no event later than the Maturity Date. Borrower hereby represents and warrants to Payee (a) that to the best of its knowledge and belief, it has made full and complete application to CTC for \$4,000,000 of Clean Air and Transportation Bond Funds to be used to pay this Note, (b) that on October 18, 1991, CTC approved such application, (c) that on November ____, 1991, CTC allocated \$4,000,000 for the acquisition of railroad rights-of-way by Borrower from Payee, (d) that to the best of its knowledge and belief, CTC has formally requested the Transportation Improvement Finance Committee created under Proposition 116 to cause the issuance of \$4,000,000 of bonds authorized by Section 99636(c)(2) of Proposition 116 (the "Bonds"), in order to pay the entire amount due hereunder to Borrower, (e) that, to the best of its knowledge and belief, all legal requirements imposed by the State on Purchaser and

the CTC as a condition to the issuance and sale of the Bonds have been satisfied, (f) that to the best of its knowledge and belief the Bonds are scheduled to be sold in February 1992, and (g) that it believes that the Bonds will be sold and the entire proceeds paid to Payee during February 1992. Borrower shall keep Payee fully informed as to any and all matters pertaining to the transactions identified in this paragraph. Any CTC Funding received by Borrower or any of its constituent members shall be held in trust by such party for the benefit of Payee and shall not be disbursed or paid to any other party. In case of payment of any CTC Funding to any other party by Borrower or any of its constituent members, Borrower or any constituent member making such improper payment shall be personally liable to Payee to the extent of such payment. In addition, Payee shall be entitled to recover such funds from such other party whether or not such other party had actual or constructive notice of such trust. Upon request of Payee at any time after March 1, 1992, and to the extent it can legally do so, Borrower shall assign to Payee all rights which it now has or later acquires against CTC or the State with respect to the CTC Funding including but not limited to all rights to require the State to issue sufficient Bonds to pay this Note in full.

Borrower and each of its constituent members shall invest any CTC Funding in accordance with such party's existing investment policies, and all interest received by Borrower or any of its constituent members shall be paid to Payee in addition to the principal on this Note.

Anything to the contrary contained herein notwithstanding, Payee shall not be in default hereunder solely because the State of California does not issue the Bonds authorized by Section 99636(d) of Proposition 116, or because the CTC Funding is not available to Payee or its constituent members upon request, by the Maturity Date. If such Bonds are not issued, or if the CTC Funding is not available to Payee or its constituent members upon request, by the Maturity Date, Payee may commence suit against the State of California for failure to issue such Bonds.

Until this Note is paid in full Payee shall have no obligation to perform its obligations to Borrower or any other party under any Options granted to Borrower in the Purchase, Sale and Option Agreement between Borrower and Payee, other than its obligations under the Option to purchase the Grade Separation and Parking Lot Option Properties.

Borrower waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extension of time with respect to any payment due under this

Note and to the addition or release of any party. No waiver of any payment or other right under this Note shall operate as a waiver of any other payment or right.

No delay or failure of the holder of this Note in the exercise of any right or remedy provided for hereunder shall be deemed a waiver of such right by the holder hereof, and no exercise of any right or remedy shall be deemed a waiver of any other right or remedy that the holder may have.

All notices to Borrower given hereunder shall be in writing, shall be given either by hand delivery or by certified mail, return receipt requested, and, if mailed, shall be deemed received two business days after having been deposited in the United States mail, postage prepaid, addressed as follows:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attn: David J. Miller

This Note is to be governed by and construed according to the laws of the State of California.

PENINSULA CORRIDOR JOINT
POWERS BOARD, a joint powers
agency created under California
law, for itself and for its
constituent members

By: _____
Name:
Title:

GKCD/cd5

EXHIBIT D

TITLE REPORTS

SF-1	SF-52	SM-22-1	SM-67	SM-97-2
SF-2	SF-53	SM-22-2	SM-67A	SM-97A
SF-3	SF-54	SM-22A	SM-68	SM-98
SF-4	SF-55	SM-23	SM-69	SM-98A
SF-5	SF-56	SM-24	SM-70-1	SM-99
SF-6	SF-57	SM-26	SM-70-2	SM-99A
SF-7	SF-58	SM-29	SM-70A	SM-100
SF-9	SF-59	SM-32	SM-71	SM-101
SF-10	SF-60	SM-33-1	SM-71A	SM-102
SF-11	SF-61	SM-34	SM-71B	SM-103
SF-12	SF-62	SM-35	SM-72	SM-104
SF-13	SF-63	SM-36	SM-72A	SM-115
SF-14	SF-63A	SM-37	SM-74	SM-116
SF-15-1	SF-66	SM-37A	SM-74A	SM-123
SF-15-2	SF-67	SM-38	SM-75	SM-124
SF-16	SF-68	SM-39	SM-75A	SM-125
SF-17	SF-70	SM-40	SM-77	SM-126
SF-18	SF-72	SM-41	SM-79A	SM-127
SF-19	SF-73	SM-42	SM-80	SM-128
SF-20	SF-74	SM-43	SM-80A	SM-130
SF-21	SF-75	SM-43A	SM-82	SM-133
SF-22	SF-76	SM-44	SM-83	SM-134
SF-23	SF-77	SM-45	SM-84	SM-135
SF-24	SF-78	SM-46	SM-84A	SM-136
SF-25	SF-79	SM-47	SM-85	SM-136-2A
SF-26	SF-80	SM-48	SM-85A	SM-136-2B
SF-28	SF-81	SM-49	SM-86	SM-140
SF-31	SF-82-1	SM-50	SM-86A	SM-141
SF-32	SF-82-2	SM-51	SM-87	SM-142
SF-33	SF-84	SM-52	SM-87A	SM-144
SF-34	SF-88	SM-53	SM-88A	SM-147
SF-35	SF-89	SM-54	SM-89	SM-148
SF-36	SF-90	SM-55	SM-89A	SM-150
SF-37	SF-91	SM-56	SM-90	SM-151
SF-38		SM-57	SM-90A	SM-152
SF-40		SM-61	SM-91	SM-153
SF-42	SM-03	SM-62	SM-91A	SM-154
SF-43	SM-8	SM-63	SM-92	SM-155-1
SF-44	SM-12	SM-63A	SM-93-1	SM-155-2
SF-47	SM-17A	SM-64	SM-93-2	SM-156
SF-48	SM-18A	SM-64A	SM-95	SM-157-1
SF-49	SM-19	SM-65A	SM-96	SM-157-2
SF-50	SM-20	SM-66	SM-96A	SM-158
SF-51	SM-21	SM-66A	SM-97-1	SM-159

SM-160	SM-213-2	SM-268	SC-46	SC-103
SM-161-1	SM-214	SM-269	SC-47	SC-104
SM-161-2	SM-215		SC-48	SC-105
SM-162	SM-216		SC-49	SC-106
SM-163	SM-218-1	SC-01-1	SC-50	SC-107
SM-164	SM-218-2	SC-01-2	SC-51	SC-108
SM-168	SM-219	SC-02	SC-52	SC-110
SM-169	SM-220	SC-03	SC-53	SC-111
SM-170	SM-221	SC-04-1	SC-54	SC-112
SM-171	SM-222	SC-04-2	SC-55	SC-113
SM-172	SM-223	SC-05-1	SC-56	SC-114
SM-173	SM-224	SC-06	SC-57	SC-115
SM-175	SM-225	SC-07	SC-58	SC-116
SM-176	SM-226	SC-08	SC-59	SC-117
SM-177	SM-227	SC-09	SC-60	SC-119
SM-178	SM-228	SC-10	SC-61	SC-140
SM-179-1	SM-229	SC-11	SC-64	SC-141
SM-179-2	SM-230	SC-12	SC-65	SC-142
SM-180	SM-231	SC-13	SC-66	SC-143
SM-181	SM-232	SC-14	SC-67	SC-144
SM-182	SM-233	SC-15	SC-68	
SM-183	SM-234	SC-16	SC-69	
SM-184	SM-235	SC-17	SC-70	L-01
SM-185	SM-236	SC-18	SC-71	L-02
SM-187	SM-237	SC-19	SC-72	L-03
SM-188	SM-238	SC-20	SC-73	L-04
SM-189	SM-239	SC-21	SC-74	L-05
SM-190	SM-241	SC-22	SC-75	L-06
SM-191	SM-242	SC-23	SC-76	L-07
SM-192	SM-243	SC-24	SC-77	L-08
SM-193	SM-244	SC-25	SC-78	L-09
SM-194	SM-245	SC-26	SC-79	L-10
SM-195	SM-247	SC-27	SC-80	L-11
SM-196	SM-248	SC-30	SC-81	L-12
SM-197	SM-249	SC-31	SC-82	L-13
SM-198	SM-250	SC-32	SC-83	L-14
SM-200	SM-251	SC-33	SC-84	L-15
SM-201	SM-252	SC-34	SC-85	L-16
SM-203	SM-253	SC-35	SC-86	L-17
SM-204	SM-254	SC-36	SC-87	L-18
SM-205	SM-255	SC-37	SC-88	L-19
SM-206	SM-256	SC-38	SC-90	L-20
SM-207	SM-257	SC-39	SC-91	L-21
SM-208	SM-258	SC-40-1	SC-92	L-22
SM-209	SM-260	SC-40-2	SC-94	L-23
SM-210	SM-261	SC-41	SC-95	L-25
SM-211-1	SM-262	SC-42	SC-96	L-26
SM-211-2	SM-265	SC-43	SC-97	L-27
SM-212	SM-266	SC-44	SC-100A	L-28
SM-213-1	SM-267	SC-45	SC-102	L-28A

L-29	L-78	L-128	L-181	V-23
L-30	L-79	L-129	L-182	V-24
L-31	L-80	L-130	L-185	V-25
L-32	L-81	L-131		V-26
L-33	L-82	L-132	990317/1	V-27
L-34	L-83	L-133	990317/2	V-28
L-35	L-84	L-134	990317/3	V-30
L-36	L-85	L-135	990317/4	V-31
L-37	L-86	L-136	990317/5	V-32
L-38	L-87	L-137	990317/6	V-33
L-38A	L-88	L-138	990317/7	V-34
L-39	L-89	L-139	990317/8	
L-40	L-90	L-140	990317/9	
L-41	L-91	L-141	990317/10	
L-42	L-92	L-142	990317/11	
L-43	L-93	L-143	990317/12	
L-44	L-94	L-144	990317/13	
L-45	L-95	L-145	990317/14	
L-46	L-96	L-146	990317/15	
L-47	L-97	L-147	990317/16	
L-48	L-98	L-148	990317/17	
L-49	L-99	L-149	990317/18	
L-50	L-100	L-150	990317/19	
L-51	L-101	L-151	990317/20	
L-52	L-102	L-152	990317/21	
L-53	L-103	L-153	990317/22	
L-54	L-104	L-154	990317/23	
L-55	L-105	L-155		
L-56	L-106	L-156		
L-57	L-107	L-157	V-2	
L-58	L-108	L-158	V-3	
L-59	L-109	L-159	V-4	
L-60	L-110	L-160	V-5	
L-61	L-111	L-161	V-6	
L-62	L-112	L-162	V-7	
L-63	L-113	L-163	V-8	
L-64	L-114	L-164	V-9	
L-65	L-115	L-165	V-10	
L-66	L-116	L-166	V-11	
L-67	L-117	L-167	V-12	
L-68	L-118	L-168	V-13	
L-69	L-119	L-169	V-14	
L-70	L-120	L-170	V-15	
L-71	L-121	L-171	V-16	
L-72	L-122	L-172	V-17	
L-73	L-123	L-173	V-18	
L-74	L-124	L-174	V-19	
L-75	L-125	L-175	V-20	
L-76	L-126	L-179	V-21	
L-77	L-127	L-180	V-22	

EXHIBIT E

PORTION OF SAN BRUNO BRANCH
WITH POSSIBLE TITLE DEFECTS

2.1(g) Matters Affecting the San Bruno Branch:

(a) On March 29, 1988, Southern Pacific quitclaimed the 1.78 acres of land, shown as a portion of Parcel No. 1 on Southern Pacific Val Sec Map V74b/6, in favor of Cypress Abbey Company. Southern Pacific was granted a .295 acre easement over Parcel No. 5 for communication line purposes, which easement is described in preliminary title reports DC-03 and DC-05.

(b) On June 22, 1988, Southern Pacific quitclaimed the 2.029 acres of land, shown as a portion of Parcel No. 1 and depicted by letter "F" on Southern Pacific Val Sec Map V74b/6, in favor of the Congregation Emanu-el. Southern Pacific was granted a .338 acre easement for communication line purposes, which easement is described in preliminary title report DC-06.

(c) On February 13, 1987, Southern Pacific quitclaimed the .177 acre portion of Parcel No. 1, depicted by letter "D" on Southern Pacific Val Sec Map 74b/6, in favor of the Congregation Emanu-el. Southern Pacific retained no interest in such portion.

(d) See Exhibit G for matters relating to Holy Cross Cemetery and Sanai Memorial Chapel.

The above are also shown on Map No. 44590, Sheet No. 9.

EXHIBIT F

NOTICES OF CONDEMNATIONS,
VIOLATIONS, ZONING CHANGES OR
OTHER LEGAL ACTIONS

[A 5.1(e) Notices of state or federal condemnations,
violations of law or other legal actions:

The following projects may involve the initiation of
condemnation actions against portions of the Property:

(a) San Francisco - Proposed major sewer outfall
line to be constructed by the City on Southern Pacific right
of way south of Army Street.

(b) South San Francisco - Caltrans proposes to
construct new grade separation structure across right of way
north of present Oyster Point Boulevard grade crossing.

(c) Millbrae - Proposed grade separation by City at
Millbrae Avenue crossing E-13.7.

(d) Redwood City - Proposed grade separation by City
at Fifth Avenue crossing E-27.2 B.

(e) Palo Alto - Proposed taking by the City of Palo
Alto for sidewalks and grade crossing improvements at Meadow
and Charleston Streets.

(f) San Martin - Proposed taking by Santa Clara
County Transit District for a park and ride lot.

(g) Gilroy - Proposed taking by Santa Clara County
Transit District of the station grounds for a park and ride
lot.

(h) Champagne Fountain - Proposed relocation by
Caltrans of a portion of Vasona II right of way in connection
with Highway 85.

EXHIBIT G

PENDING LITIGATION

5.1(f) Pending or threatened litigation, administrative action, governmental investigation or examination, claim or demand:

(a) On June 11, 1991, Southern Pacific received notice of a claim from Holy Cross Cemetery in Colma, California relating to certain property shown on Map No. 44590, Sheet No. 2, a copy of which has been provided to Purchaser.

(b) On December 12, 1990 and September 24, 1991, Southern Pacific received notices of a claim from Sanai Memorial Chapel in Colma, California relating to certain property shown on Map No. 44590, Sheet No. 2, copies of which have been provided to Purchaser.

EXHIBIT H

5.1(i) Leases on other than a month to month basis:

<u>Lease No.</u>	<u>Tenant</u>	<u>Effective Date</u>
193171	Southern Pacific Communications Co.	5/1/81
184269	Redwood City B.K., Inc.	11/1/78
207894	Arton, Inc.	1/1/88
160098	Roy Shimek & F.M. Tautenhahn	5/1/69
186951	Salto Corporation	11/1/78
193114	Schlage Lock Company	1/1/81
173454	Southern Pacific Pipelines	1/1/89
145013	Bohannon Development	5/1/64
118036	David Bohannon Organization	1/1/83
194812	Marcus Corporation	9/22/81
208436	CABO Investments	1/1/85
159409	Ford Leasing Development Co.	4/15/69
NWP 4591	Raiser Construction Company	7/1/72
178481	Dowling, Cronan, Smith	11/1/75
184749	Ross Tire Service	4/1/78
185087	San Bruno Lumber Co.	5/16/78
194779	Arthur D. Hird, Jr. and Linda Marie Hird	8/1/78
209120	Alfonso A. Pulido and Carmen Pulido	10/1/88
185096	Detroit Motors, Inc.	2/1/78
207875	Zyama Blyumberg	11/1/87
184087	Simon Azar	1/1/87
188734	Morey Barde and Ruby Barde	7/1/84
207429	Fred Lichaa and Jacqueline Lichaa	10/28/87
190852	Ron Price Volkswagon	3/1/80

5.1(g) Leases other than those affecting only the Land:

<u>Lease No.</u>	<u>Tenant</u>	<u>Effective Date</u>
173454	Southern Pacific Pipelines	1/1/89
196190	DeMattei	6/1/82
193114	Schlage Lock Company	1/1/81
189392	Magnussen	6/15/80
159409	Ford Leasing Development Co.	4/15/69
NWP4591	Raiser Construction Company	7/1/72
160098	Roy Shimek and F.M. Tautenhahn	5/1/69
172615	Steele	8/1/89
209140	Gainsford Corporation	11/5/88

<u>Lease No.</u>	<u>Tenant</u>	<u>Effective Date</u>
184749	Ross Tire Service	4/1/78
185087	San Bruno Lumber Co.	5/16/78
120761	Bruce Bayer Lumber Company	2/15/70
162002	Robert L. Heyer	10/1/69
183551	James Jacks	9/1/77
209120	Alfonso A. Pulido and Carmen Pulido	10/1/88
190197	William J. Burley	2/1/80
209418	Sandy's Swimming Pool Supply, Inc.	2/1/81
210537	Richard L. Meinhold	7/1/89
091758	Ethel M. Kraemer	12/1/48
185096	Detroit Motors, Inc.	2/1/78
113973	Thor Madsen	5/1/58
170134	Anthony Piazza & Catherine T. Piazza	9/1/72
207875	Zyma Blyumberg	11/1/87
184087	Simon Azar	1/1/87
188734	Morey Barde & Ruby Barde	7/1/84

EXHIBIT I

PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement is made as of this _____ day of _____, 1991, between PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law ("Owner") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Manager").

Recitals

A. Owner and Manager are parties to a Purchase, Sale and Option Agreement dated _____, 1991 (the "Purchase Agreement").

B. In Section 6.2(d) of the Purchase Agreement, Owner and Manager agreed that Manager would retain the right (i) to manage, operate and control certain of the property conveyed to Owner pursuant to the Purchase Agreement and (ii) to retain all of the rents, income, receipts, revenues, issues and profits derived therefrom, in accordance with the provisions of this Agreement, as partial consideration under the Purchase Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Manager and Owner hereby agree as follows:

1. ENGAGEMENT. Owner hereby engages Manager, and Manager hereby accepts such engagement, to rent, lease, operate, manage and control the Property on behalf of the Owner, in accordance with the provisions of this Agreement. For purposes of this Agreement, "Property" shall mean the properties highlighted in pink and red in Exhibit A hereto (individually, a "Parking Lot Property" and collectively, the "Parking Lot Properties"), highlighted in blue and red in Exhibit B hereto (individually, a "Grade Separation I Property" and collectively, the "Grade Separation I Properties"), and highlighted in orange and red in Exhibit C hereto (individually, a "Grade Separation II Property" and collectively the "Grade Separation II Properties") and the property covered by the San Bruno Lease described in section 12 below.

permanent buildings on the Property, (iii) require that Owner be named as an additional insured on all policies of insurance required to be provided by tenant, (iv) require that Owner be an indemnitee under all tenant indemnification provisions, and (v) contain a provision in the form of Exhibit D attached hereto;

(c) execute all lease documents, collect rents, security deposits, utility payments and other monies due or to become due from the Property or its use or possession;

(d) terminate tenancies and sign and serve in the name of the Owner such notices to tenants as are deemed necessary or appropriate by Manager;

(e) provided that Manager shall first have received written consent from Owner, which consent shall not be unreasonably withheld or delayed, institute and prosecute actions, in the name of the Owner to evict tenants as Manager deems necessary or appropriate;

(f) provided that Manager shall first have received written consent from Owner, which consent shall not be unreasonably withheld or delayed, sue, in the name of the Owner, to recover rents and other sums due, and otherwise to enforce the rights of the Owner with respect to the Property;

(g) provided that Manager shall first have received written consent from Owner, which consent shall not be unreasonably withheld or delayed, settle, compromise and release claims or legal proceedings for rent and other income;

(h) make or cause to be made all repairs, replacements, alterations, additions, improvements, decorations and maintenance (hereinafter collectively called "Repairs") on the Property, including Repairs to any personal property located thereon;

(i) review from time to time the property taxes assessed on the Property, and if appropriate recommend contesting the same and/or retaining a property tax consultant;

(j) cause the Property to be supplied with all goods and services necessary for the proper operation of the Property, and execute such service contracts in connection therewith as may be required, including, without limitation, contracts for electricity, gas, fuel, water, telephone, window cleaning, trash or rubbish hauling; provided that any such contract shall have a term not exceeding one year in duration,

which term shall be terminable by the Owner upon no more than 30 days' notice to the other party.

5. MANAGER'S OBLIGATIONS. Manager hereby agrees that it shall, during the Term of this Agreement:

(a) except to the extent they are payable by a tenant under any lease affecting the Property, pay when due all real and personal property taxes, including without limitation, any possessory interest taxes, payable with respect to the Property and the improvements located thereon unless Manager is contesting the same in good faith by appropriate proceedings;

(b) keep adequate books and records detailing amounts received from tenants and, upon termination of this Agreement, deliver such records to Owner with respect to any leases then in effect, together with any security deposits in Manager's possession (on the condition that Owner agrees to hold the deposit in accordance with the terms of the applicable lease and indemnifies Manager for any claims relating thereto); and

(c) provide Owner with copies of all leases affecting the Property and any extensions thereof or amendments thereto.

6. INSURANCE. Manager shall have no obligation to obtain insurance of any kind for or on behalf of Owner. However, if either Owner or Manager elects to obtain insurance on its own behalf relating to the Property, such party shall cause the other party to be named as an additional insured on any and all such policies.

7. MANAGER'S RIGHT TO ALL INCOME. Manager shall receive and be entitled to all of the rents, income, receipts, revenues, issues and profits derived from the Property that have accrued during the Term of this Agreement.

8. EXCLUSIVITY. The right of Manager to rent, lease, operate, manage and control the Property as provided in this Agreement shall be exclusive of Owner and all other parties. Except as provided in sections 9(b) and 10(c) below, Owner agrees not to enter upon or otherwise exercise any rights with respect to the Property or any leases thereof without the prior written consent of Manager. Owner shall have no right to replace Manager as the manager of the Property absent breach or negligence by Manager in the management or operation of the Property and the failure of Manager to cure any such breach within ten days after written notice thereof from Owner, or if such breach is not reasonably

susceptible of being cured within such ten-day period, Manager shall have a reasonable period of time after Owner's notice to effect such cure, provided that Manager continuously and diligently pursues such remedy at all times until such breach is cured. Notwithstanding any replacement of Manager, Manager shall continue to be entitled to all of the rents, income, receipts, revenues and profits derived from the Property (without reduction for any management fee payable to any third party) and to all notices and approval rights provided under this Agreement.

9. PARKING FACILITIES AND GRADE SEPARATION I PROJECTS.

(a) Delivery of Notice.

(i) Construction of Facilities. Owner shall deliver a written notice (the "90-Day Notice") to Manager at least 90 days prior to the commencement of construction of any parking facility or grade separation project on a Parking Lot Property or a Grade Separation I Property. The 90-Day Notice shall (A) identify the Parking Lot Property or Grade Separation I Property on which the parking facility or grade separation project is to be constructed, (B) state the date on which construction of such parking facility or grade separation project is to commence, and (C) request Manager to terminate any and all leases affecting such Parking Lot Property or Grade Separation I Property prior to the commencement date set forth in the 90-Day Notice.

(ii) Other Termination Requests. If Owner desires to have any lease covering a Parking Lot Property or Grade Separation I Property terminated, even though Owner is not yet prepared to commence construction on such property, Owner may deliver a written notice to Manager at least 90 days prior to the requested termination date, identifying the specific lease to be terminated and requesting Manager to terminate such lease. Such notice shall also be referred to hereinafter as a "90-Day Notice."

(b) Termination of Leases.

(i) Month-to-month Leases. Provided that Owner has timely delivered the 90-Day Notice, at least 30 days prior to the date of commencement of construction or termination date indicated in the 90-Day Notice, Manager shall deliver, as applicable, either notices of termination of any and all month-to-month leases affecting such Parking Lot Property or Grade Separation I Property, or a notice of termination of the lease specified in the 90-Day Notice delivered pursuant to subsection 9(a)(ii) above, as the agent of and on behalf of

Owner. All other actions, costs or expenses (including without limitation any relocation costs) relating to the termination of any such leases, or the eviction of any tenant therefrom, shall be the responsibility of Owner. Upon Owner's written request, Manager, at Manager's own expense, shall reasonably cooperate with Owner in such proceedings, but Manager shall not otherwise be obligated to participate in any actions, proceedings or negotiations relating to any such termination or eviction, and Owner shall indemnify, defend and hold Manager harmless from and against any and all actions, damages, losses, costs and expenses (including, without limitation, attorneys' fees) arising out of or relating thereto.

(ii) Long Term Leases. Manager shall not be obligated to take any action whatsoever with respect to the termination and/or condemnation of any leases affecting the Parking Lot Property or Grade Separation I Property that cannot be terminated upon 30 days' notice. Owner shall be solely responsible for all negotiations, proceedings, actions, costs and expenses (including without limitation any relocation costs) relating to the purchase or condemnation of any and all such leasehold interests, the eviction of any tenants and the removal of any improvements therefrom. Manager shall not be obligated to participate in any such actions, proceedings or negotiations, and Owner shall indemnify, defend and hold Manager harmless from and against any and all actions, damages, losses, costs and expenses (including, without limitation, attorneys' fees) arising out of or relating thereto.

(iii) Interpretation.

(A) To the extent that any leases referred to in subsections (i) and (ii) above cover areas that extend beyond the Parking Lot Property or Grade Separation I Property to include adjacent property owned by Manager, Owner agrees that the negotiations, proceedings, actions, costs and expenses relating to the termination, purchase or condemnation of such leases and the removal of any improvements therefrom, and Owner's obligations and indemnities with respect thereto, shall cover the entire leasehold, and not only that portion covering the Parking Lot Property or Grade Separation I Property. Manager acknowledges that the resolution of such negotiations or proceedings may divide the leasehold area, and Owner acknowledges that, despite any such division, its indemnification of Manager set forth above shall cover the entire leasehold area so that Manager shall be protected against any claim arising out of such division made by any tenant or person claiming by, through or under such tenant.

(B) Except as otherwise set forth herein, the indemnifications contained in this subsection 9(b) shall not be construed to grant Manager any right to assert any claim against Owner pertaining to any alleged diminution in value of Manager's adjacent property, or to any loss of future rents, or to share in any damages or awards that may be collected by the tenant, in connection with any such actions, proceedings or negotiations.

(c) Payment by Owner.

(i) Failure to Construct. If Owner fails to commence construction within 60 days after the date specified in the 90-Day Notice delivered pursuant to subsection 9(a)(i) above, Owner shall pay to Manager, monthly, in advance, an amount equal to the amount of rental then provided for in any and all leases terminated pursuant to the 90-Day Notice until the date of expiration of this Agreement with respect to such Parking Lot Property or Grade Separation I Property. Acts of God, injunctions, unusually extreme weather conditions and labor strikes, however, shall be excluded in calculating the 60-day period.

(ii) Other Termination Requests. If Owner requests Manager to terminate any lease pursuant to subsection 9(a)(ii) above, Owner shall pay to Manager, monthly, in advance, an amount equal to the amount of rental then provided for in such terminated lease until the date of expiration of this Agreement with respect to such property.

10. GRADE SEPARATION II PROJECTS.

(a) Delivery of Notice.

(i) Construction of Facilities. Owner shall deliver a written notice (the "Notice of Construction of Grade Separation II Project") to Manager at least 120 days prior to the commencement of construction of any grade separation project on a Grade Separation II Property. The Notice of Construction of Grade Separation II Project shall (A) identify the Grade Separation II Property on which the grade separation project is to be constructed, (B) state the date on which construction of such grade separation project is to commence, and (C) request Manager to terminate any and all leases affecting such Grade Separation II Property (or the portion thereof being used for the grade separation project). The Notice of Construction of a Grade Separation II Project shall be accompanied by (x) a legal description of the portion of the Grade Separation II Property to be used for the grade separation project if less than all of a Grade Separation II

Property, and (y) copies of the most recent plans and specifications for the grade separation project.

(ii) Other Termination Requests. If Owner desires to have any lease covering a Grade Separation II Property terminated, even though Owner is not yet prepared to commence construction on such property, Owner may deliver a written notice to Manager (the "Termination Notice") at least 90 days prior to the requested termination date, identifying the specific lease to be terminated and requesting Manager to terminate such lease.

(b) Termination of Leases.

(i) Month-to-month Leases. Provided that Owner has timely delivered the Notice of Construction of Grade Separation II Property or the Termination Notice, at least 30 days prior to the date of commencement of construction indicated in an approved Notice of Construction of Grade Separation II Project or the termination date in the Termination Notice, Manager shall deliver, as applicable, either notices of termination of any and all month-to-month leases affecting the Grade Separation II Property (or the portion thereof being used for the grade separation project), or a notice of termination of the lease specified in the Termination Notice, as the agent of and on behalf of Owner. All other actions, costs or expenses (including without limitation any relocation costs) relating to the termination of any leases affecting the Grade Separation II Property, or the eviction of any tenant therefrom, shall be the responsibility of Owner. Upon Owner's written request, Manager, at Manager's own expense, shall reasonably cooperate with Owner in such proceedings, but Manager shall not otherwise be obligated to participate in any actions, proceedings or negotiations relating to any such termination or eviction, and Owner shall indemnify, defend and hold Manager harmless from and against any and all actions, damages, losses, costs and expenses (including, without limitation, attorneys' fees) arising out of or relating thereto.

(ii) Long Term Leases. Manager shall not be obligated to take any action whatsoever with respect to the termination and/or condemnation of any leases affecting the Grade Separation II Property that cannot be terminated upon 30 days' notice. Owner shall be solely responsible for all negotiations, proceedings, actions, costs and expenses (including without limitation any relocation costs) relating to the purchase or condemnation of any and all such leasehold interests, the eviction of any tenants and the removal of any improvements therefrom. Manager shall not be obligated to

participate in any such actions, proceedings or negotiations, and Owner shall indemnify, defend and hold Manager harmless from and against any and all actions, damages, losses, costs and expenses (including, without limitation, attorneys' fees) arising out of or relating thereto.

(iii) Interpretation.

(A) To the extent that any leases referred to in subsections (i) and (ii) above cover areas that extend beyond the Grade Separation II Property (or the portion thereof being used for the grade separation project) to include adjacent property owned by Manager (or property to be reconveyed to Manager pursuant to Section 3 above), Owner agrees that the negotiations, proceedings, actions, costs and expenses relating to the termination, purchase or condemnation of such leases and the removal of any improvements therefrom, and Owner's obligations and indemnities with respect thereto, shall cover the entire leasehold, and not only that portion covering the Grade Separation II Property (or the portion thereof being used for the grade separation project). Manager acknowledges that the resolution of such negotiations or proceedings may divide the leasehold area, and Owner acknowledges that despite any such division, its indemnification of Manager set forth above shall cover the entire leasehold area so that Manager shall be protected against any claim arising out of such division made by any tenant or person claiming by, through or under such tenant.

(B) Except as otherwise set forth herein, the indemnifications contained in this subsection 10(b) shall not be construed to grant Manager any right to assert any claim against Owner pertaining to any alleged diminution in value of Manager's adjacent property, or to any loss of future rents, or to share in any damages or awards that may be collected by the tenant, in connection with any such actions, proceedings or negotiations.

(d) Payment by Owner.

(i) Failure to Construct. If Owner fails to commence construction within 60 days after the date specified in the Notice of Construction of Grade Separation II Project, Owner shall pay to Manager, monthly, in advance, an amount equal to the amount of rental then provided for in any and all leases terminated pursuant to the Notice of Construction of Grade Separation II Project until the date of expiration of this Agreement with respect to such Grade Separation II Property. Acts of God, injunctions, unusually extreme weather conditions and labor strikes, however, shall be excluded in calculating the 60-day period.

(ii) Other Termination Requests. If Owner delivers a Termination Notice to Manager with respect to any lease, Owner shall pay to Manager, monthly, in advance, an amount equal to the amount of rental then provided for in such terminated lease until the date of expiration of this Agreement with respect to such property.

(e) Survey of Unused Property. Upon the reconveyance of a portion of any Grade Separation II Property pursuant to Section 3 above, Owner shall deliver to Manager a boundary survey and legal description of such portion of the Grade Separation II Property. The survey and legal description shall be reasonably satisfactory to Manager.

11. SPECIAL PROVISIONS RELATING TO SCHLAGE LEASE.

With respect to the lease with Schlage Lock Company (the "Schlage Lease"), which lease covers certain property conveyed to Owner pursuant to the Purchase Agreement in addition to the Property, Owner and Manager agree that all rent under the Schlage Lease shall be paid by the tenant directly to Manager and Manager shall pay to Owner 8.6% of the rent actually received by Manager, less Owner's proportionate share of any costs or expenses incurred by Manager in connection with the Schlage Lease. The rights and obligations of Manager under this Agreement shall extend to the entire area covered by the Schlage Lease that is owned by Owner and the Term of this Agreement with respect to such property shall extend until the earlier of (a) expiration of the Schlage Lease (or the expiration of the Option Period if the tenant exercises its extension option) or (b) the transfer by Manager of all of its remaining interest in the property covered by the Schlage Lease.

12. SPECIAL PROVISIONS RELATING TO SAN BRUNO LUMBER LEASE. With respect to the lease with Pacific Fir Company (doing business as San Bruno Lumber Co.) (the "San Bruno Lease"), which lease covers certain property (described in Exhibit E hereto) conveyed to Owner pursuant to the Purchase Agreement in addition to property retained by Manager, Owner agrees that it shall not request that Manager terminate the San Bruno Lease prior to the fifth anniversary of this Agreement. In the event Owner desires to terminate the San Bruno Lease after such five-year period, Owner shall deliver written notice to Manager at least 90 days prior to the requested termination date, and Manager shall be solely responsible for all negotiations, proceedings, actions, costs and expenses relating to the termination of such lease. Notwithstanding the foregoing, Manager shall not be liable for any expenses that may be assessed against Owner pursuant to the Relocation Assistance Act, including without limitation, Government Code §§ 7262(a), 7267.1(b) and 7267.2(a).

The Term of this Agreement with respect to the property covered by the San Bruno Lease shall extend until the expiration of the San Bruno Lease.

13. INDEMNIFICATION BY MANAGER. Except as otherwise provided in this Agreement, and except as caused by Owner's negligence, Manager shall indemnify, defend and hold Owner harmless from and against any and all demands, claims, causes of action or judgments, and all reasonable expenses (including without limitation, reasonable attorneys' fees) arising out of this Agreement.

14. POWER OF ATTORNEY. Owner hereby irrevocably makes, constitutes and appoints Manager its true and lawful attorney in Owner's name, place and stead to make, execute, acknowledge and deliver such leases, contracts, agreements and other documents or instruments of any kind, to assert, defend, compromise, acquire or dispose of any claim relating to the Property or any part thereof, and to take such other action as Manager deems necessary or desirable in the exercise of the rights and powers granted Manager in this Agreement. The foregoing power of attorney shall be a special power of attorney coupled with an interest in favor of Manager, and as such shall be irrevocable.

15. ARBITRATION. If at any time a question or controversy shall arise between the parties hereto dealing with the construction of any part of this Agreement or concerning the observance or performance of any of the conditions herein contained or the rights or obligations of either party under this Agreement, either party shall submit such question or controversy to arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Such question or controversy shall be submitted to a single, competent disinterested arbitrator if the parties are able to agree upon such arbitrator within twenty days after the party desiring such arbitration shall notify in writing the other party. If such single arbitrator cannot be agreed upon before the expiration of the twenty days, and either party wishes to pursue arbitration of the matter, such party may submit the matter to a neutral arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association as then in force. The parties agree to share all costs of said arbitrator equally.

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing.

The award of such arbitrator shall be final and binding upon the parties. The parties agree that the arbitrator's award may be entered with any Court having jurisdiction and the award may then be enforced as between the parties, without further evidentiary proceedings, the same as if entered by the Court at the conclusion of a judicial proceeding in which no appeal was taken. Arbitration shall be the sole remedy for defaults under this Agreement, except for such injunctive relief as may be necessary or appropriate hereunder.

16. AMENDMENTS. This Agreement may be modified or amended only by the mutual written consent of the Owner and the Manager.

17. NOTICES. Any notices, demands or other communications required or permitted by any provision of this Agreement to be given by either party to the other party shall be given in writing personally to an officer or authorized agent of such party, or by deposit with the United States Postal Service, registered or certified mail, postage prepaid, return receipt requested, in either case delivered or addressed to such party at the address specified below, or at such other address as such party may from time to time designate to the other by written notice in accordance herewith:

To Owner:

Peninsula Corridor Study Joint Powers Board
1250 San Carlos Avenue
San Carlos, California 94070-1306
Attention: Gerald T. Haugh

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, California 94105-2173
Attention: David J. Miller

To Manager:

Southern Pacific Transportation Company
One Market Plaza, Suite 912
San Francisco, California 94105
Attention: Regional Director, Real Estate

with a copy to:

Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105
Attention: General Counsel

Any notice given in accordance herewith shall be deemed given, delivered, and received upon such personal delivery or on the date of delivery shown on such return receipt.

18. EXHIBITS. Each of the exhibits referred to herein and attached hereto is incorporated herein by this reference.

19. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon Owner and Manager, and the successors and assigns of each of them, and shall inure to the benefit of Owner, Manager and their respective successors and assigns.

20. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. ATTORNEYS' FEES. If either party to this Agreement brings any judicial action or proceeding to enforce its rights hereunder, the prevailing party shall be entitled, in addition to any other remedy, to recover from the other party, regardless of whether such action or proceeding is prosecuted to judgment, all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred therein by the prevailing party.

22. WAIVER. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver in one instance be deemed to be a continuing waiver in any other instance.

23. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties hereto, and each of them, with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, discussions and understandings relating to the subject matter hereof.

24. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. FURTHER ASSURANCES. Each party agrees to take such further actions and to execute such further documents and instruments as the other party may reasonably request in order to carry out and accomplish the purposes of this Agreement.

26. SECTION HEADINGS. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

27. DEFINITIONS. Terms defined in any part of this Agreement shall have the defined meanings whenever capitalized herein. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain gender shall be deemed to comprehend either or both of the other genders. As used in this Agreement, the terms "herein," "hereof," and the like refer to this Agreement in its entirety and are not limited to any specific section.

28. SEVERABILITY. If any of the provisions of this Agreement shall be held to be invalid or unenforceable, the invalidity or unenforceability of any such provision shall not effect the validity or enforceability of any other provision of this Agreement.

29. INDEPENDENT CONTRACTOR. In performing its obligations and enforcing its rights hereunder, the Manager shall have the status of, and act as, an independent contractor with respect to the Owner.

30. QUITCLAIM BY MANAGER. Upon the expiration of the Term with respect to any parcel of the Property, Manager shall, at the request of Owner, execute, acknowledge and deliver to Owner a quitclaim deed of such parcel.

IN WITNESS WHEREOF, the parties hereto have affixed their respective signatures as of the day and year first above written.

MANAGER:

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
a Delaware corporation

By: _____

Title: _____

OWNER:

PENINSULA CORRIDOR JOINT POWERS
BOARD, a joint powers agency created
under California law

By: _____

Title: _____

By: _____

Title: _____

APPROVED AS TO FORM:

The undersigned hereby agrees that with respect to the Property located in San Mateo County, California, the term Owner shall include the undersigned as a tenant-in-common with the Peninsula Corridor Joint Powers Board (the "JPB"). However, the JPB is hereby authorized to act as agent for and on behalf of the undersigned with respect to all of the rights and obligations of Owner hereunder.

SAN MATEO COUNTY TRANSIT DISTRICT,
a public agency

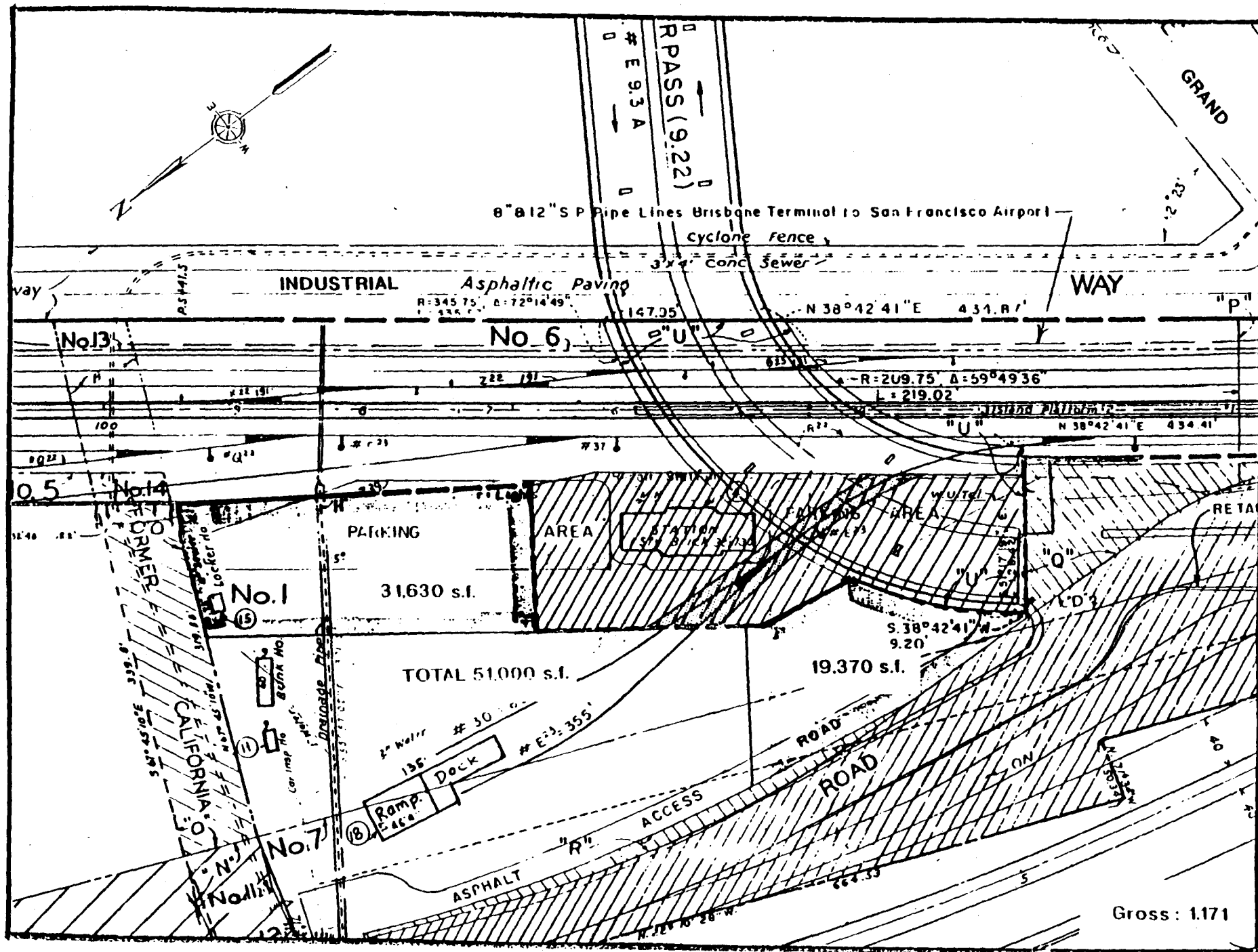
By: _____

Title: _____

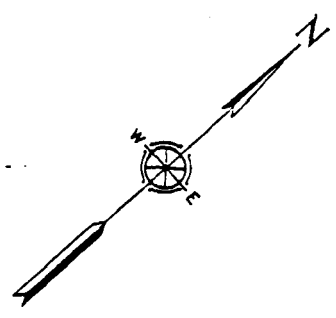
By: _____

Title: _____

APPROVED AS TO FORM:



MARINE VIEW AVE
 Joe S. Costa
 9+772, 24" C.I. Pipe 51' 10" 21.58



Bo' No 4

201+77.12 E.C.

ATCH MARK FOR SHT. 20 B

STATE HIGHWAY

(WALNUT AVE.) STATE HIGHWAY JOHNSON

Lot 13

MIDDLE

ROAD

D E

100+90.0 E.C. S.B.
 8+764 24" C.I. Pipe 48' 10" 21

T.C. 0° 35'

105+60.0 S.C. 0° 12' 12" E.B.

CYPRESS

SUB

GORDON

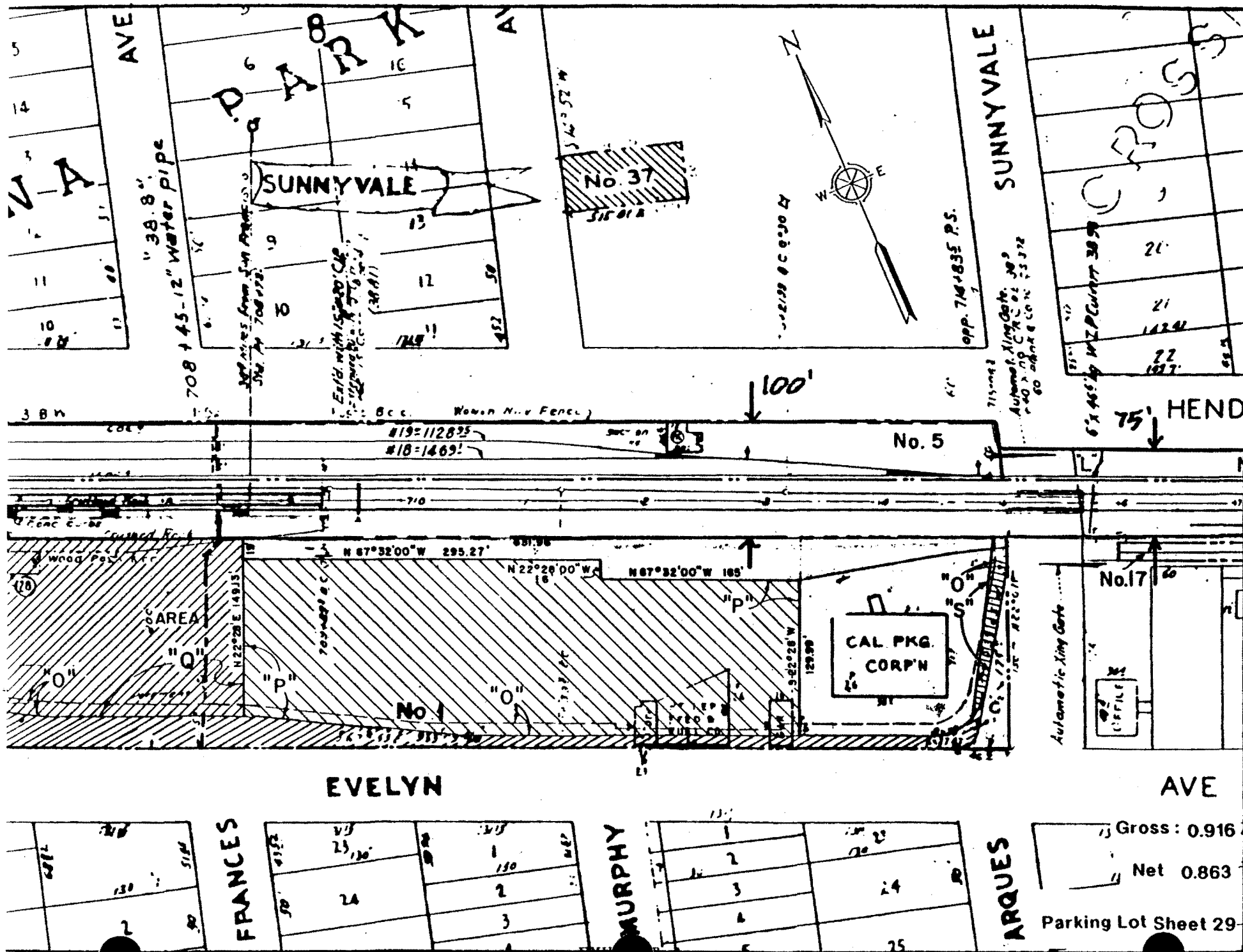
AVE.

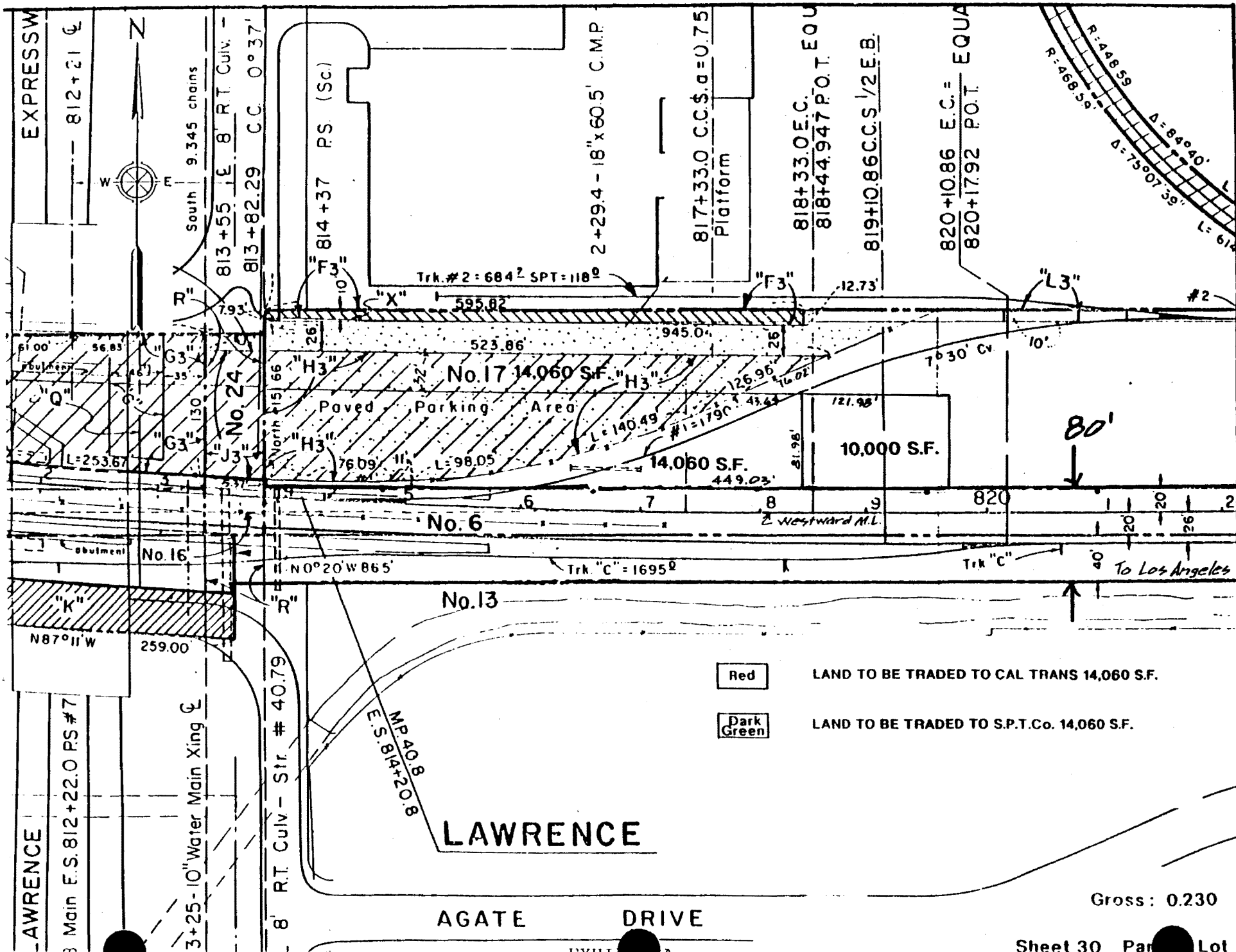
RANCH

Mile 2

EXHIBIT A

Sheet 20





Red

LAND TO BE TRADED TO CAL TRANS 14,060 S.F.

Dark Green

LAND TO BE TRADED TO S.P.T.Co. 14,060 S.F.

Gross: 0.230

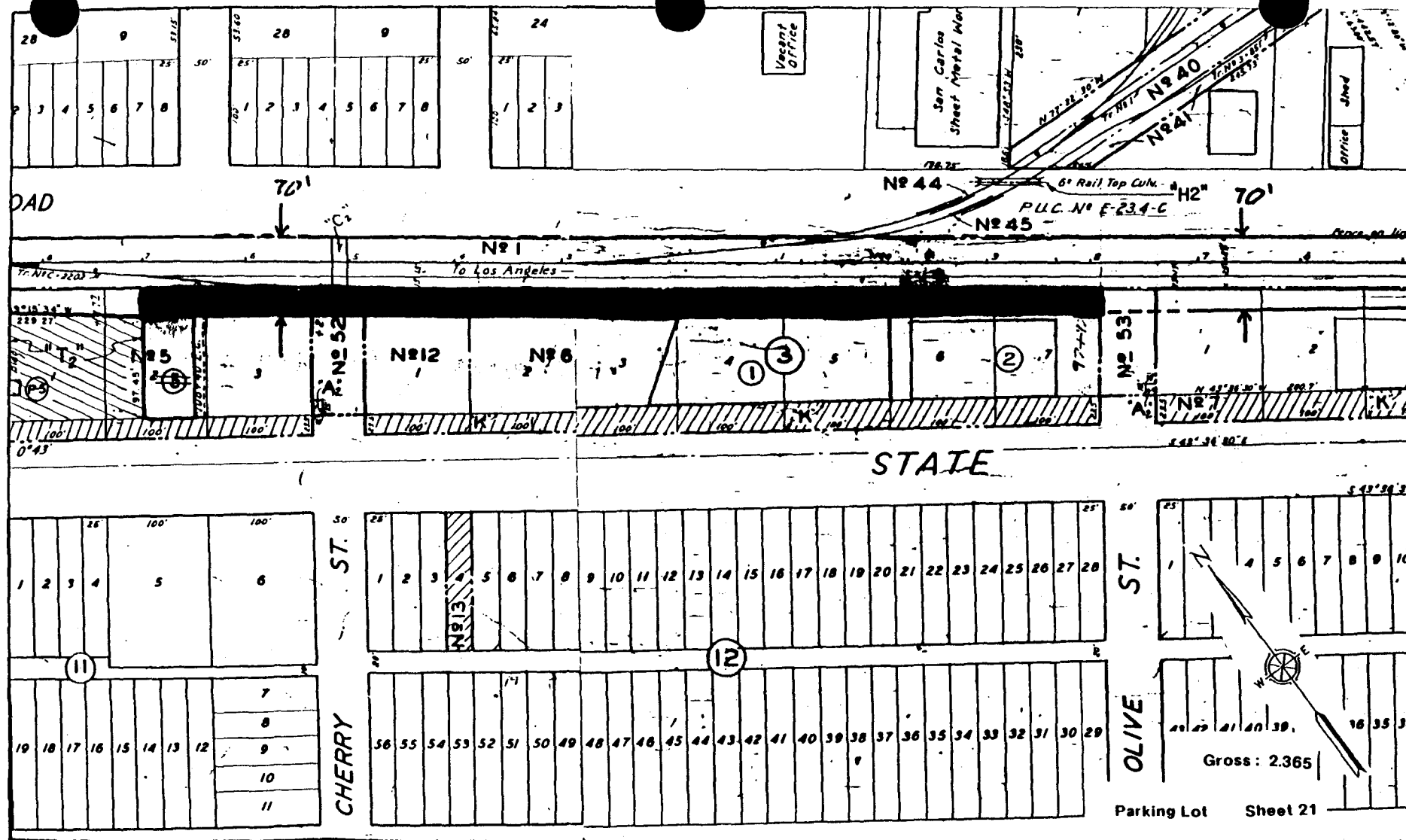
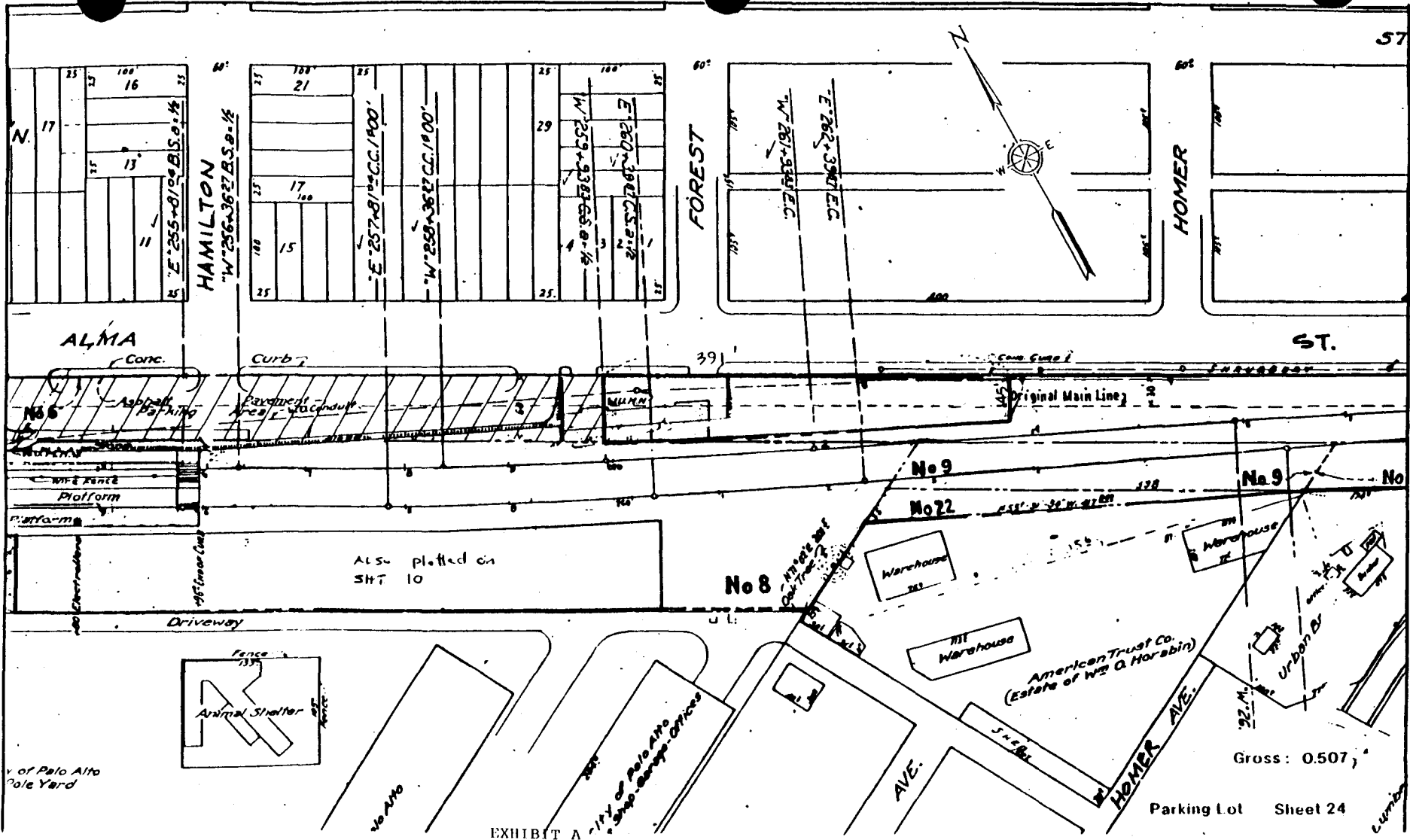


EXHIBIT A



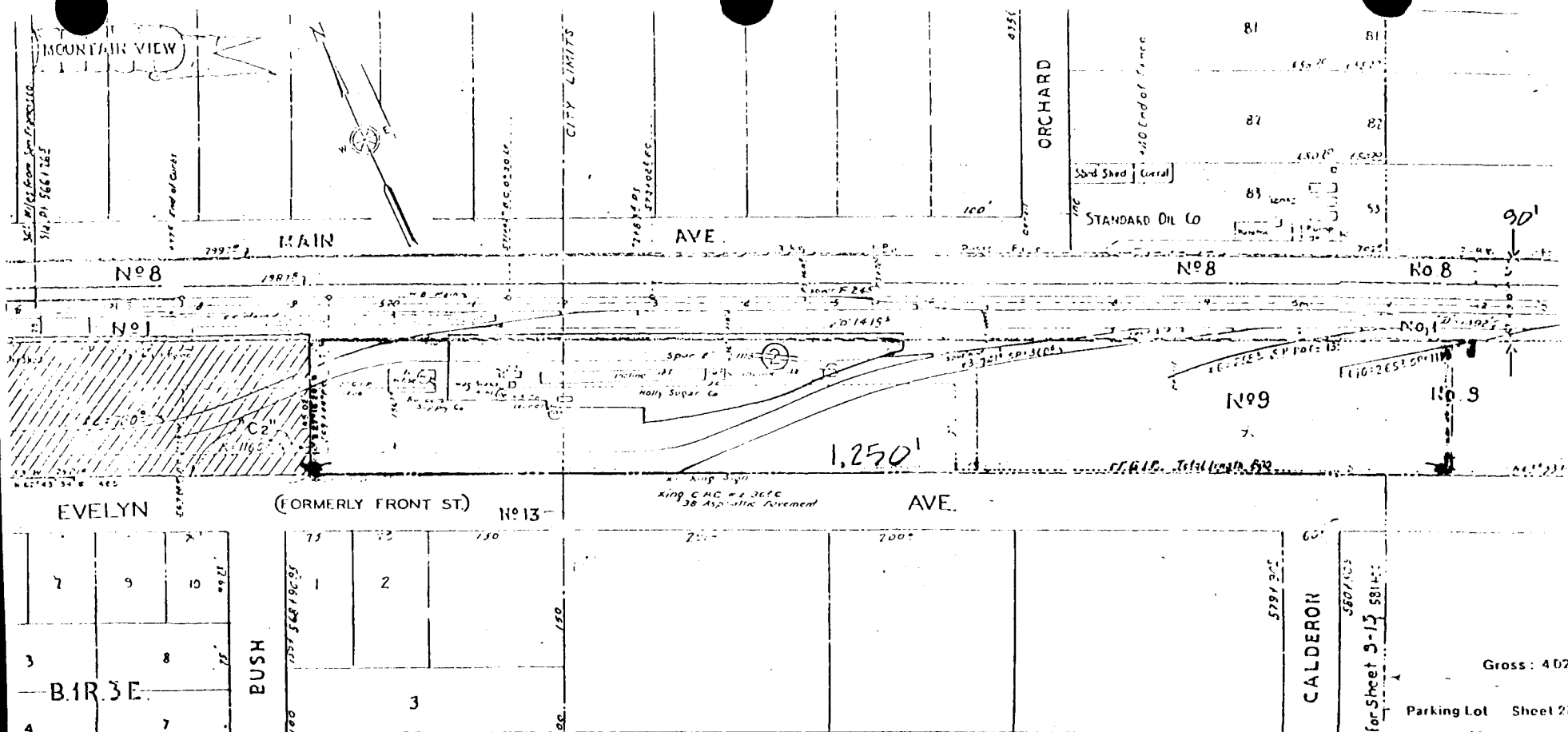
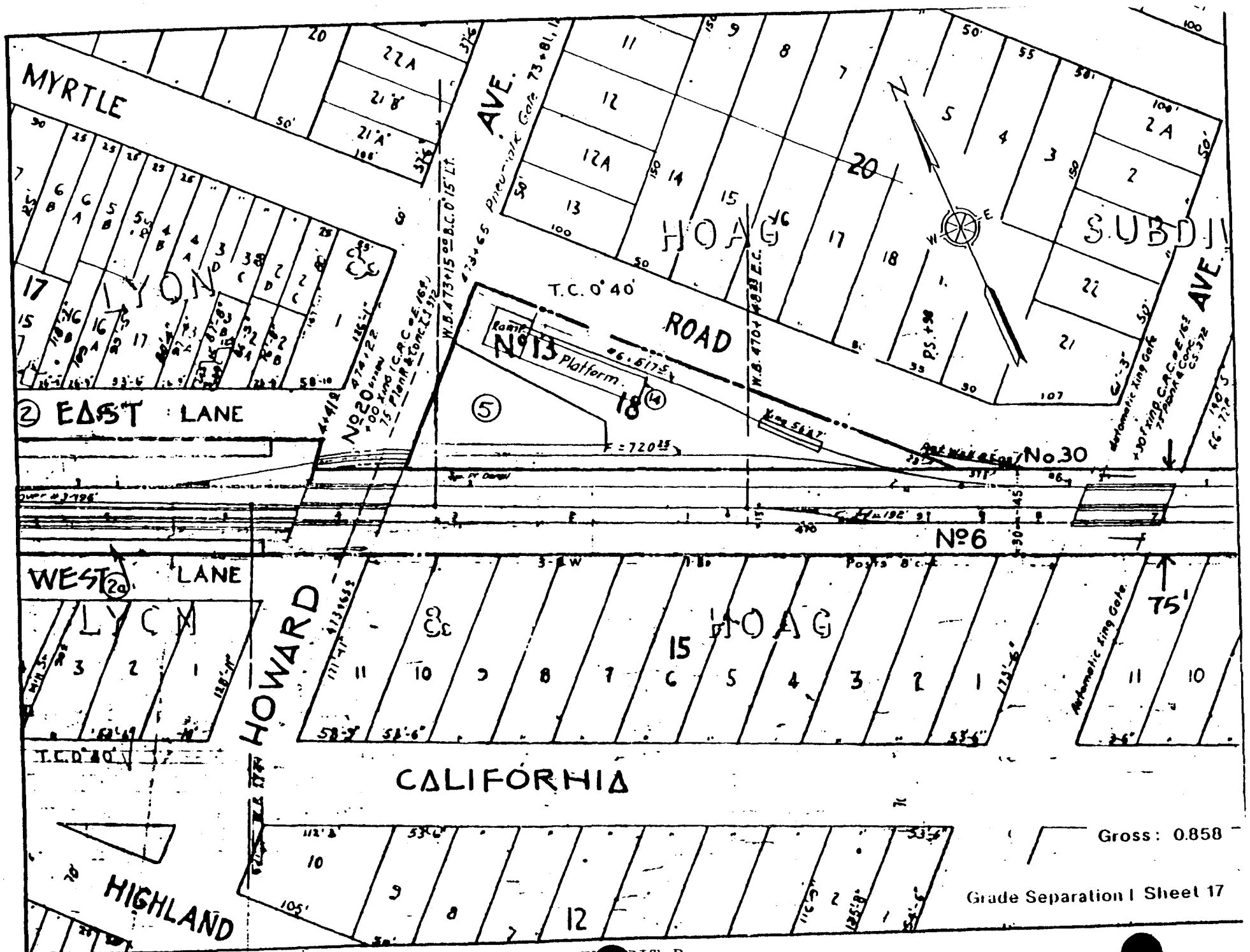
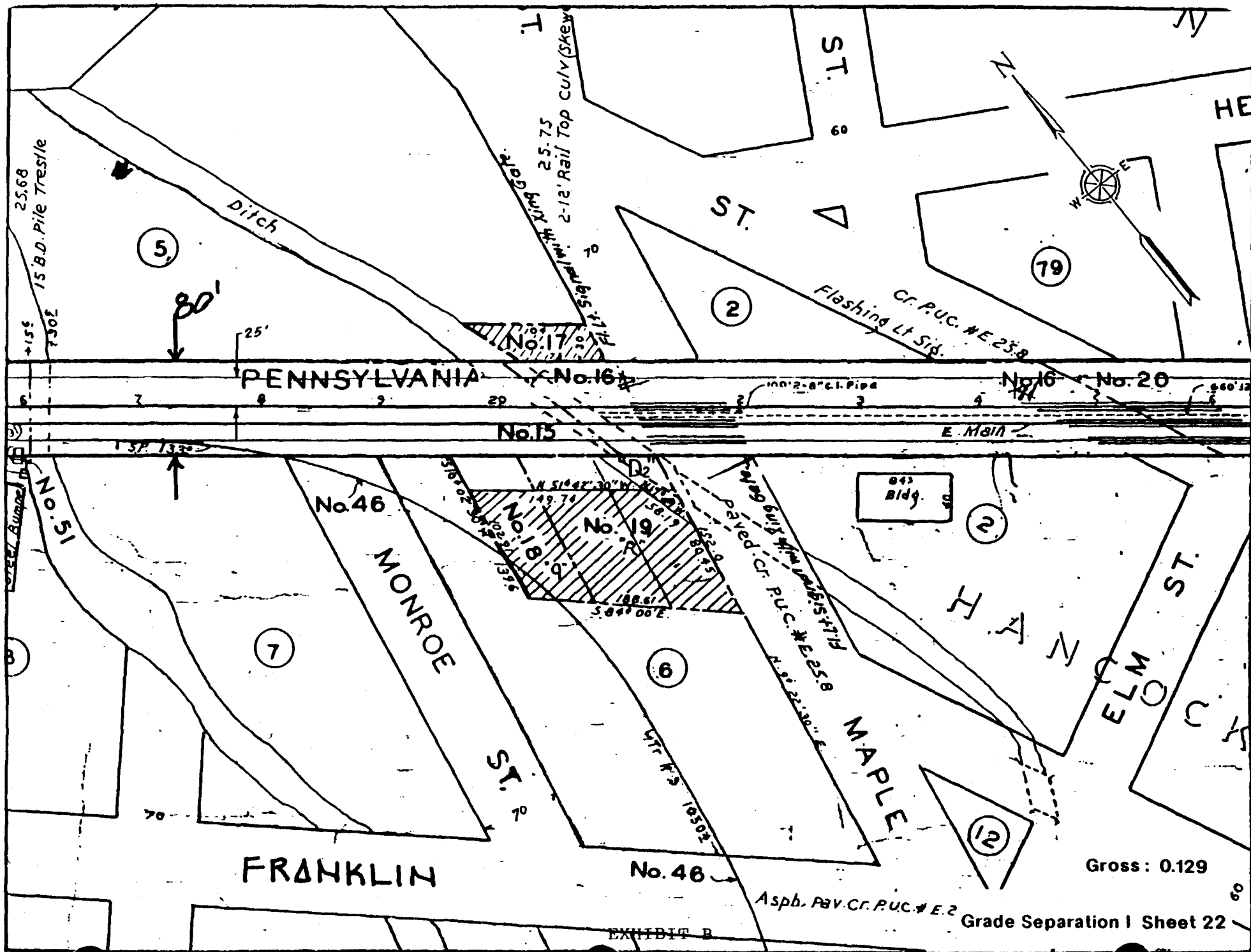


EXHIBIT A





ARGUELLO

E

50'

No. 1

No. 4

No. 41

Fiber Optic

20'

17

N 51° 40' W 256.6

No. 42

S 47° 22' W 167.12

N 47° 32' E 208.74

S 47° 28' E 253.3

EL CAMINO

REAL

Gross: 0.856

3

Grade Separation I Sheet 22

(FORMER 8TH ST)

BREWSTER

HOPKINS

Match Mark sheet 8

Flashing Lt. Sig
Pipe xing E S
Paved C
2 AUG 67

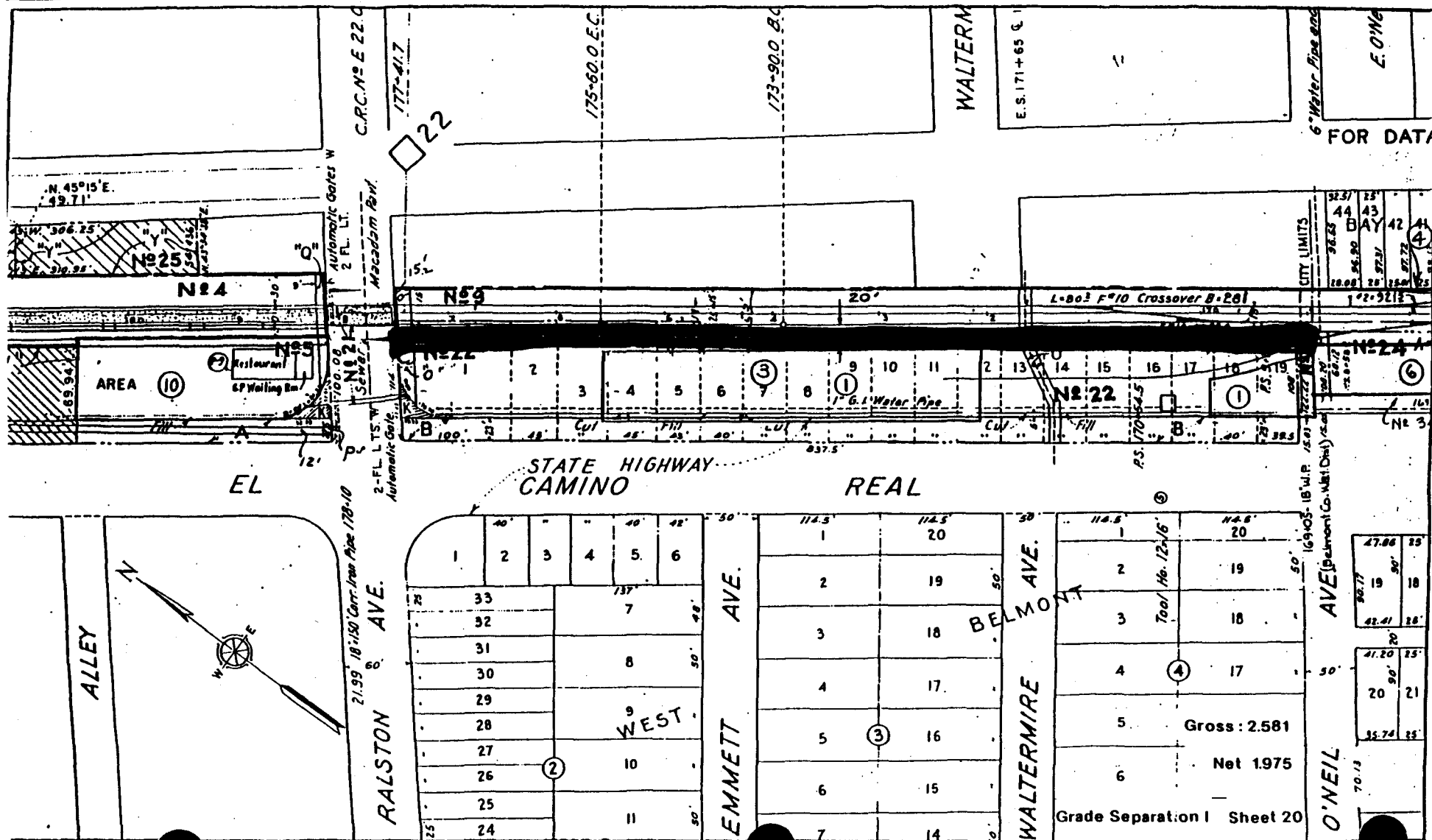
Flashing Lt. Sig

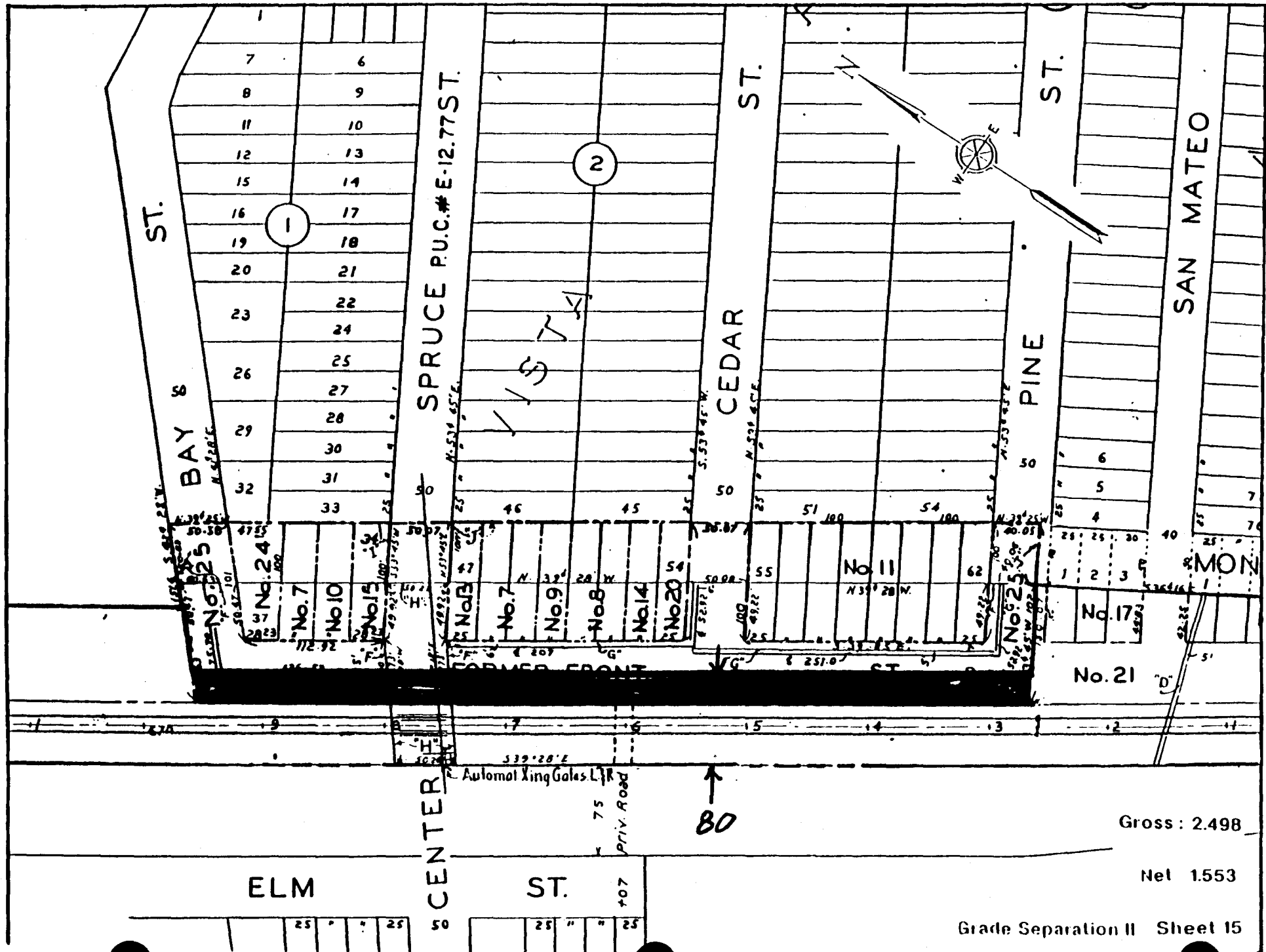
167' 10" x 24"

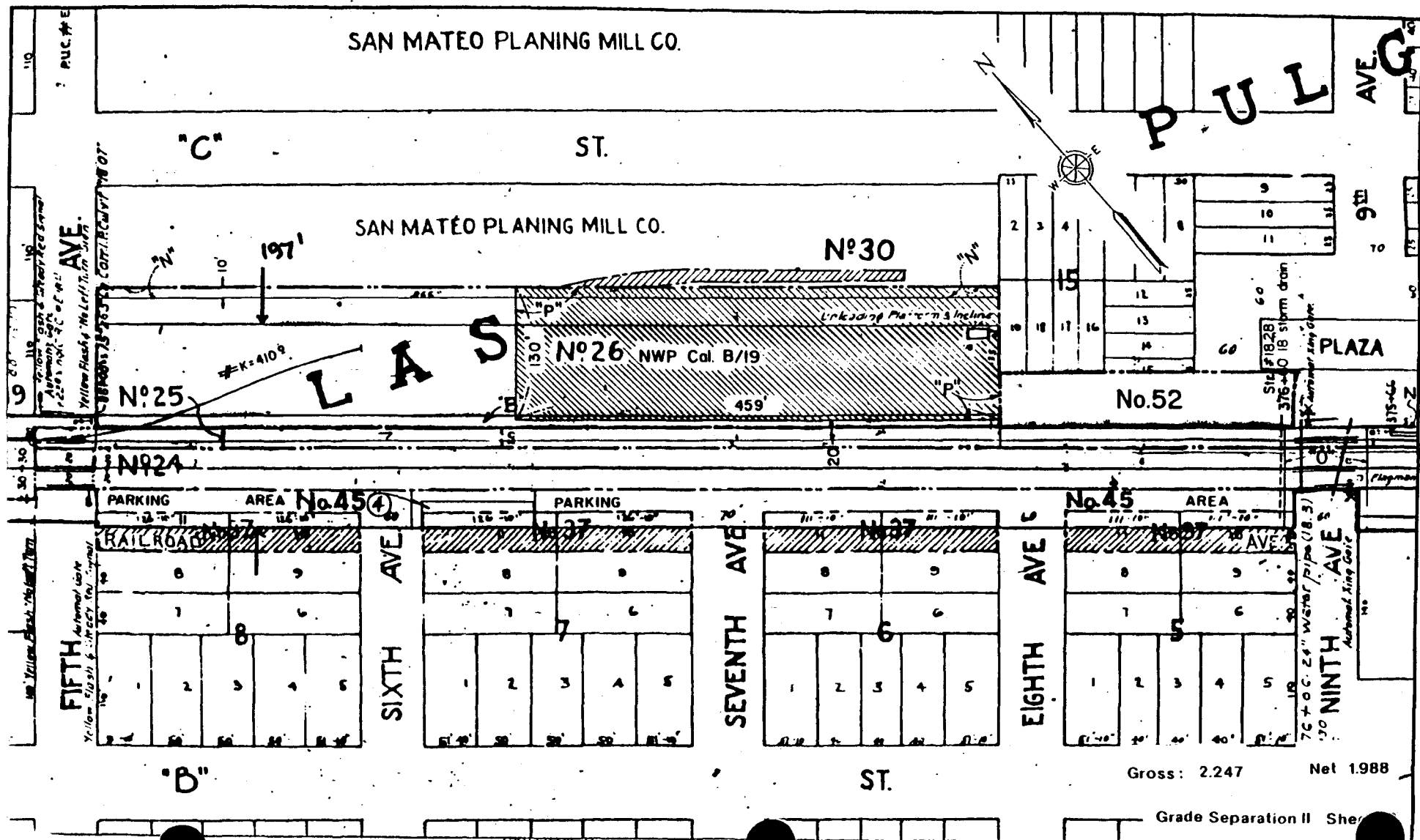
25.28

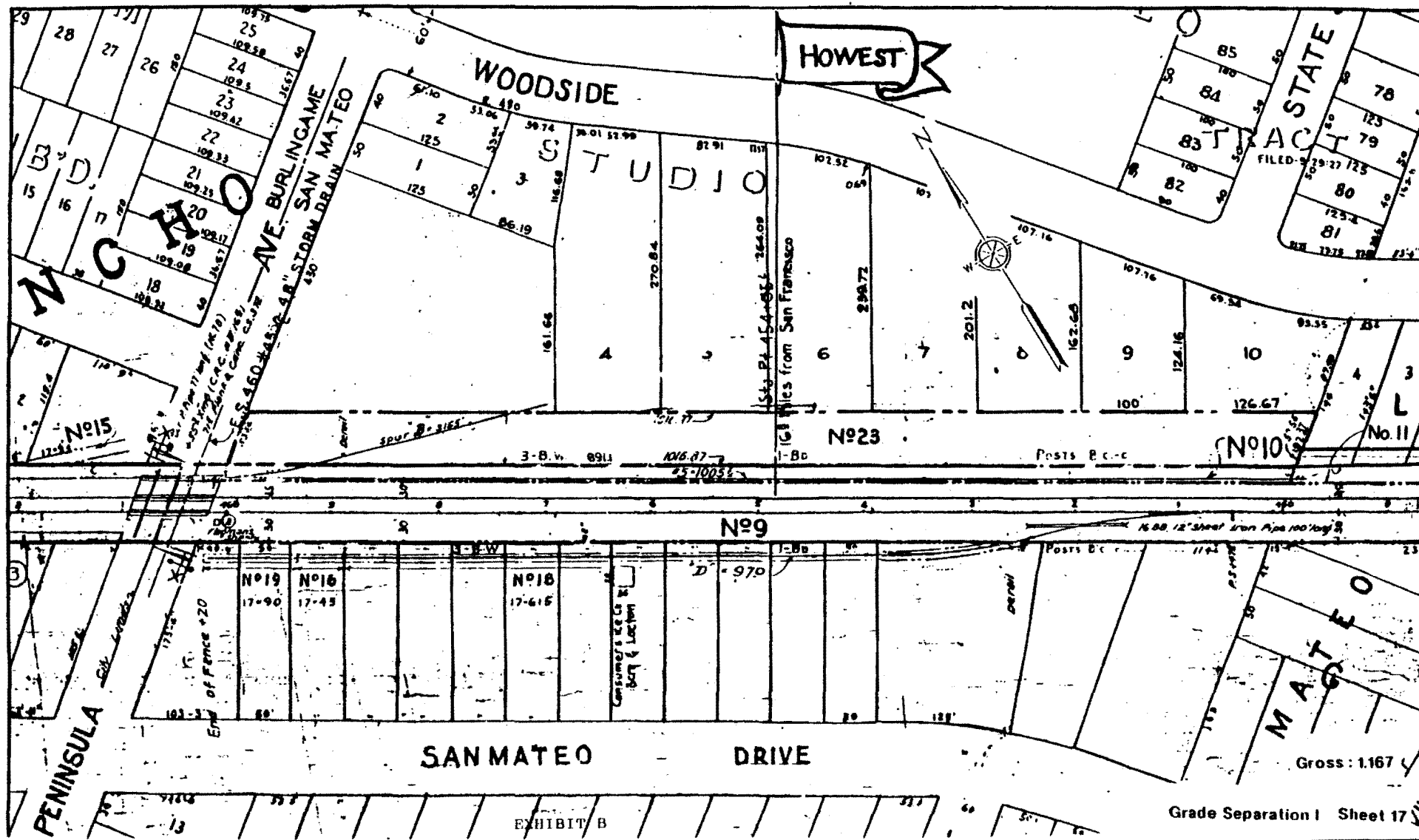
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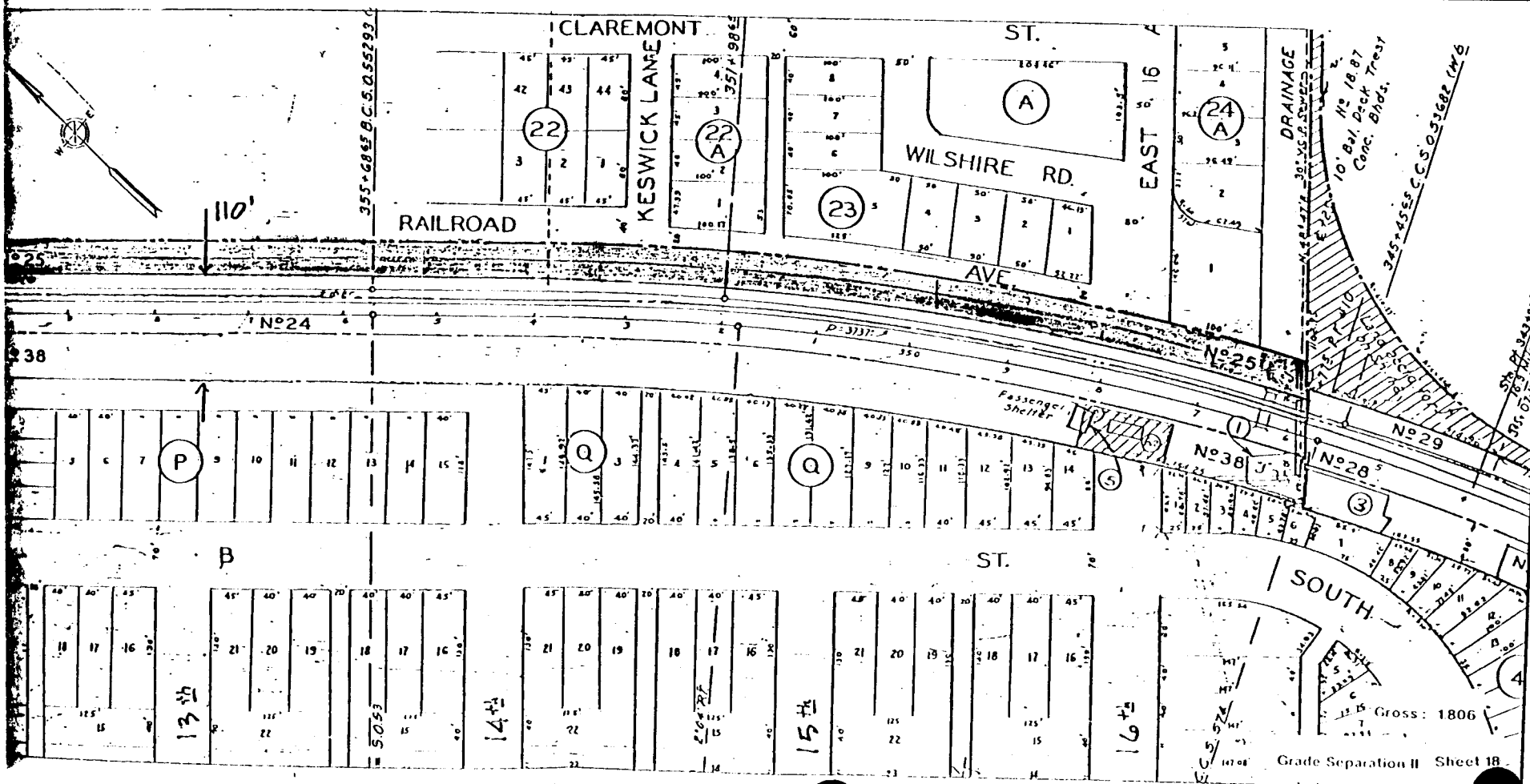
EXHIBIT B











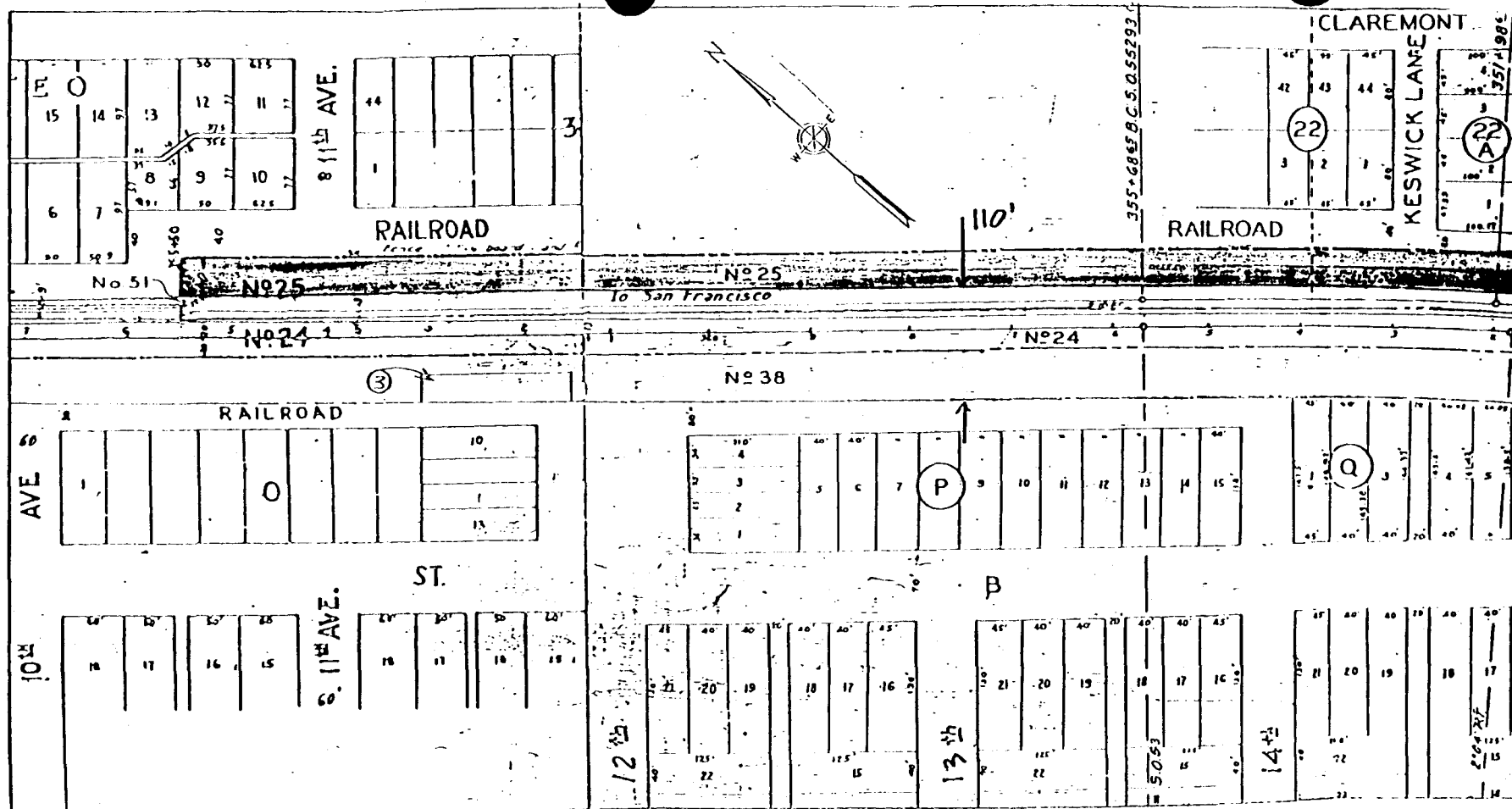
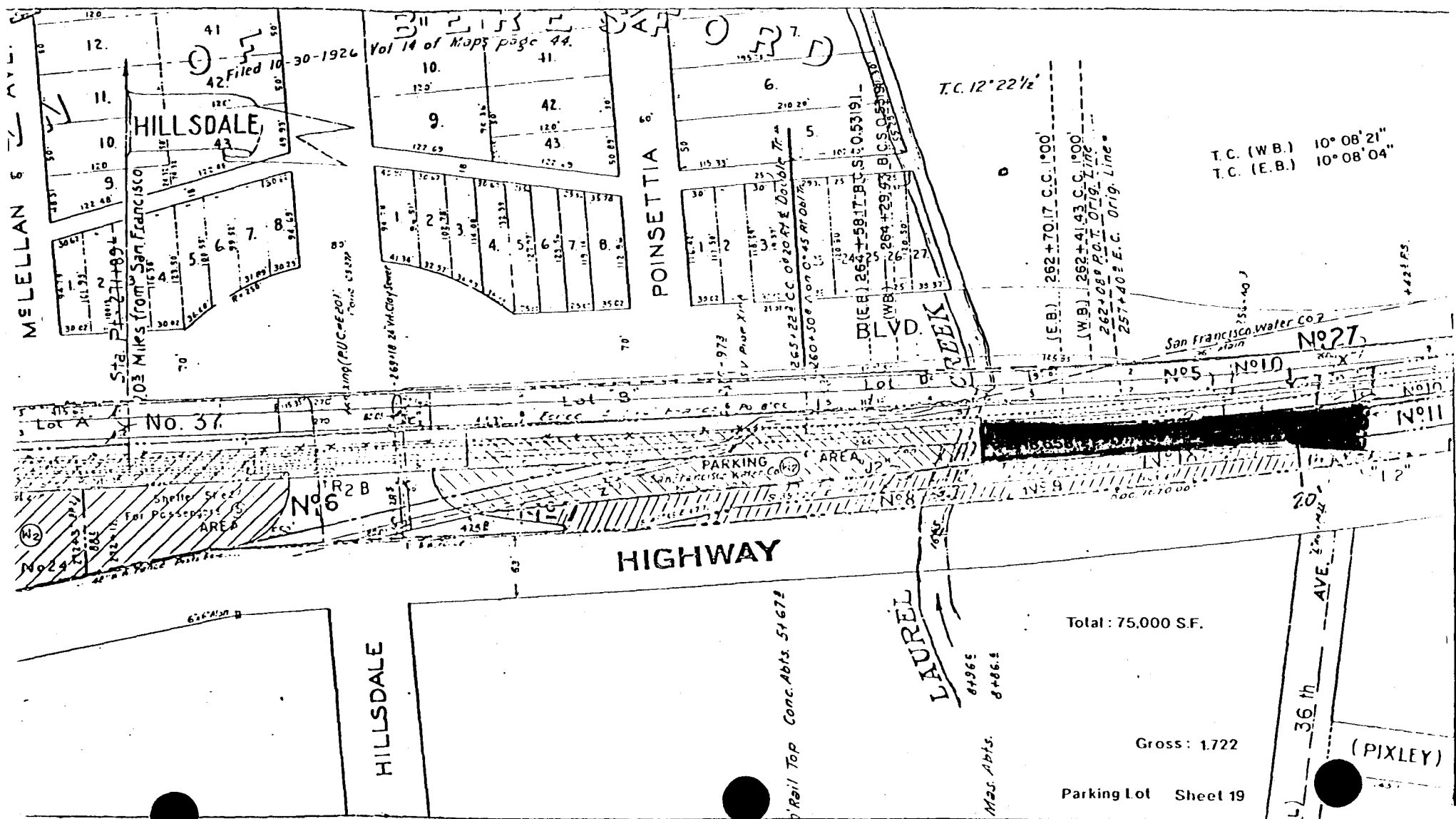
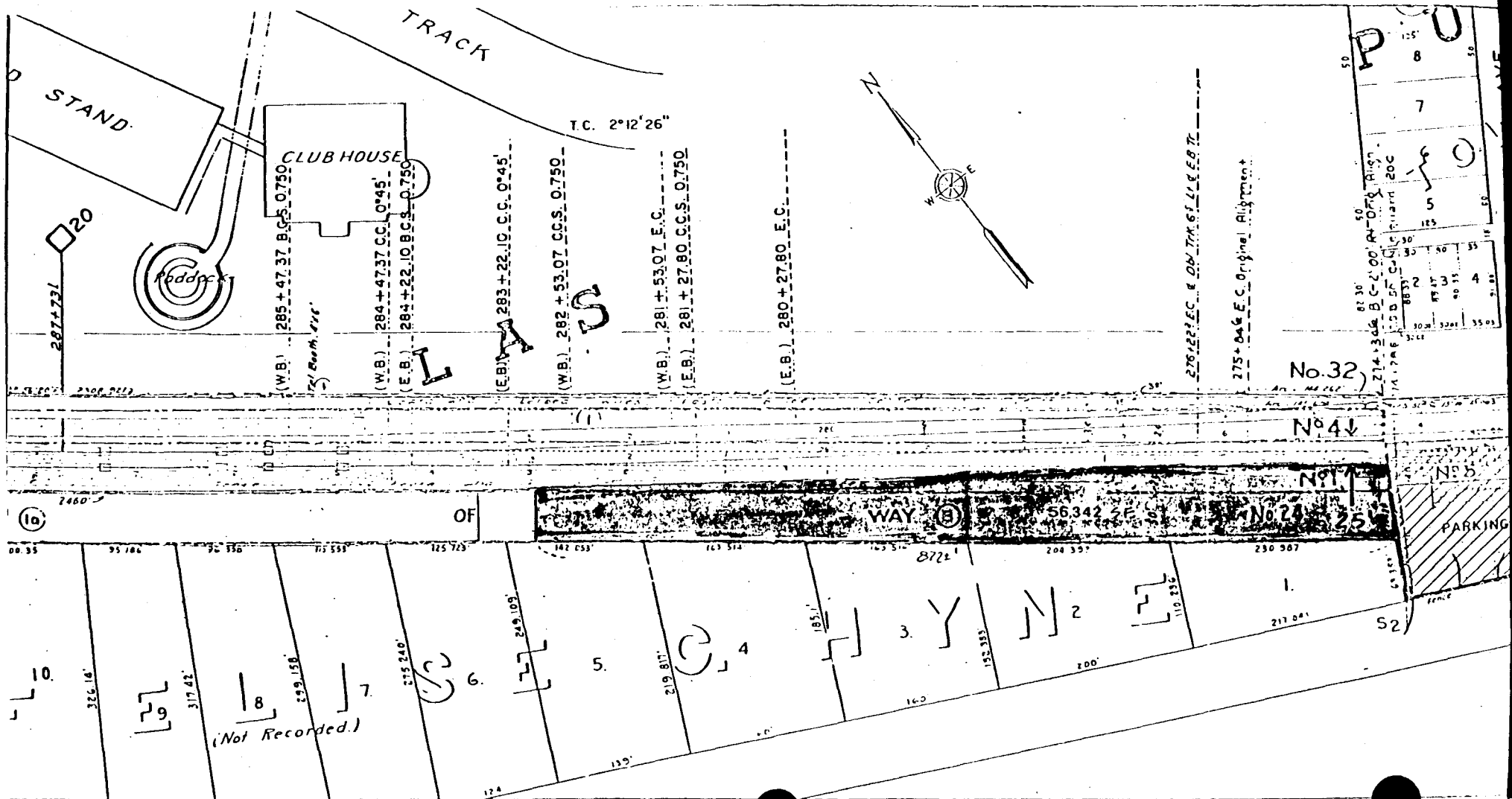


EXHIBIT C

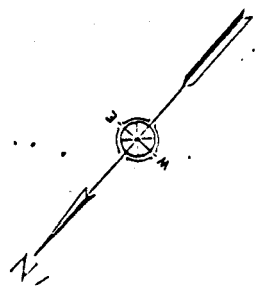




Sta. Pt. 303+57.1

ROMAC

Mile 19.7



T.C. 2°12'26"

(WB) 281+53.07 = E.C.
(WB) 282+53.07 = C.C.S. 0.750
(WB) 283+22.10 = C.C. 0.45
(WB) 284+47.37 = C.C. 0.45
(WB) 284+22.10 = E.C.S. 0.750
(WB) 285+47.37 = B.C.S. 0.750

20

287+73.1

PACIFIC

No. 32

(No. 47)

No. 32
301+17.4 R.S.

301+17.4 R.S.

303+57.1

No. 32

E. 25TH (FORMER BELL SE) AVE
305+92.4 Rd. Xing

Hyers Detail

2A

BLVD

222

Sta Pt. 271+891
HILLSDALE
Mile 203

TC = 12'22 1/2"

T.C. (W.B.) 10°08'21"
T.C. (E.B.) 08'04"

257+181 B.C. 200' R.O.T. ALI
MATCH MARK FOR SH. 18A

EB) 280+27.80 E.C.

276+222 E.C. Double Track 65' H.I. 4' E.B. 7'

275+84 E.C. Original Align.

274+33 E.C. 27'00' R.O.T. ALI

No. 37

BLVD., HILLSDALE UNDERPASS

269+507 E.C. 0'155' R.O.T. ALI
268+222 E.C. 10' R.O.T. ALI
Double Track

EB) 264+58.17 B.C.S. 0'53191
WB) 264+29.43 B.C.S. 0'53191

EB) 262+70.17 C.C. 1'00'
WB) 262+41.43 C.C. 1'00'

257+181 C.C. 200' R.O.T. ALI

No. 37

HIGHWAY

STATE

REAL

L. CAMINO

PARKING TOTAL 75,000 s.f.

HILLSDALE (FORMER BROADWAY)

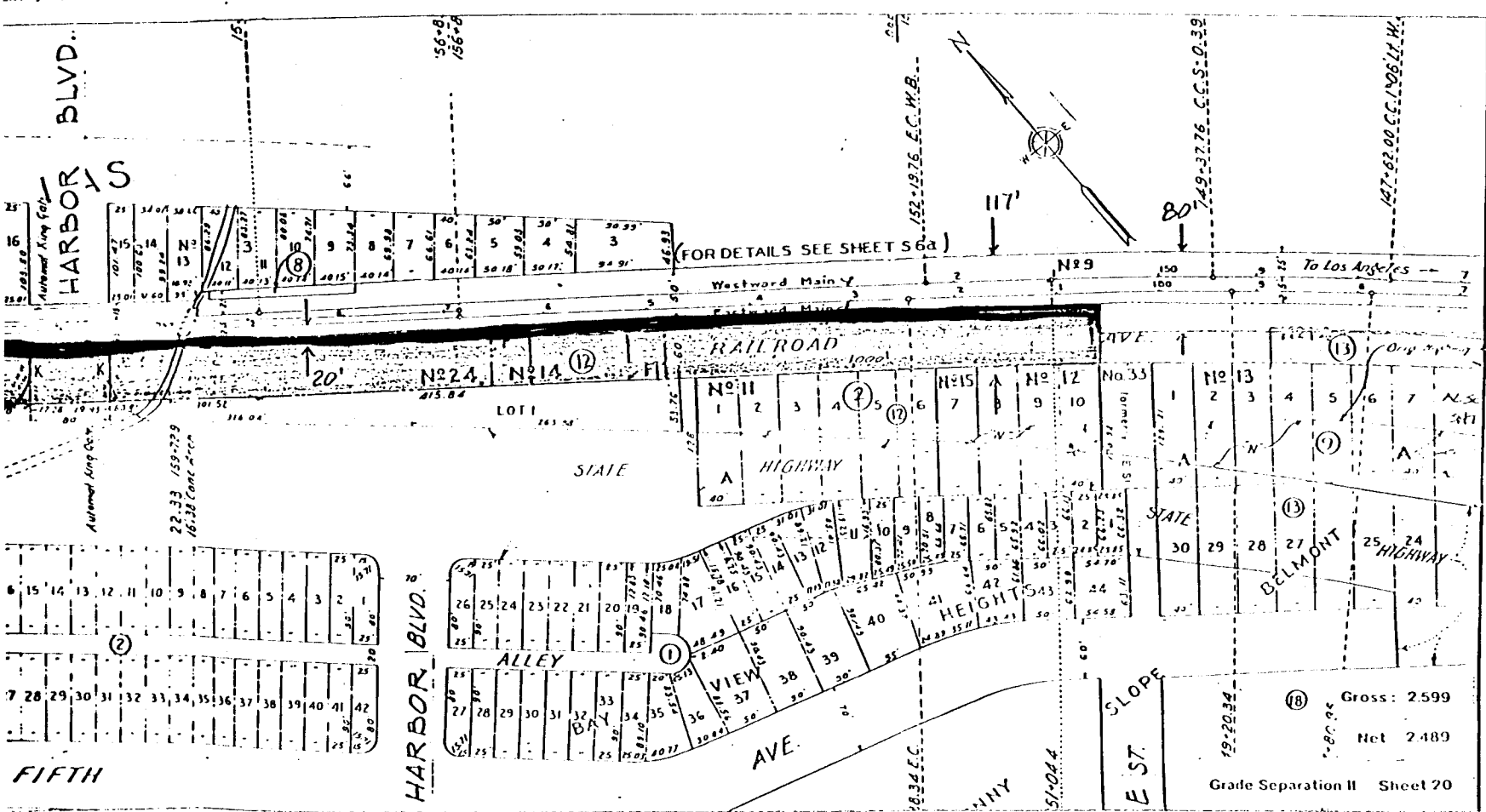
REL CREEK

36th AVE

(PIXLEY)

Gross: 4.695

Net 4.603



H. R. F.

FOR DATA ON PROPERTY IN THIS VIC. SEE SHEET S-6a A
COUNTY ROAD

Autumn King Fair
HARBOR
BLVD.

156-8
156-95.

FOR DEY

[illegible]

STATE HIGHWAY

STATE

O'NEIL	30.	AVE 132.1m
--------	-----	------------

47
19
507

PS-167+326

③ ALLEY

BROADWAY

HEIGHTS
22 23 24 25

FIFTH

HARBOR BLVD.

ALLEY
T.T.T.T

①

VIEW
= 37

EXHIBIT C

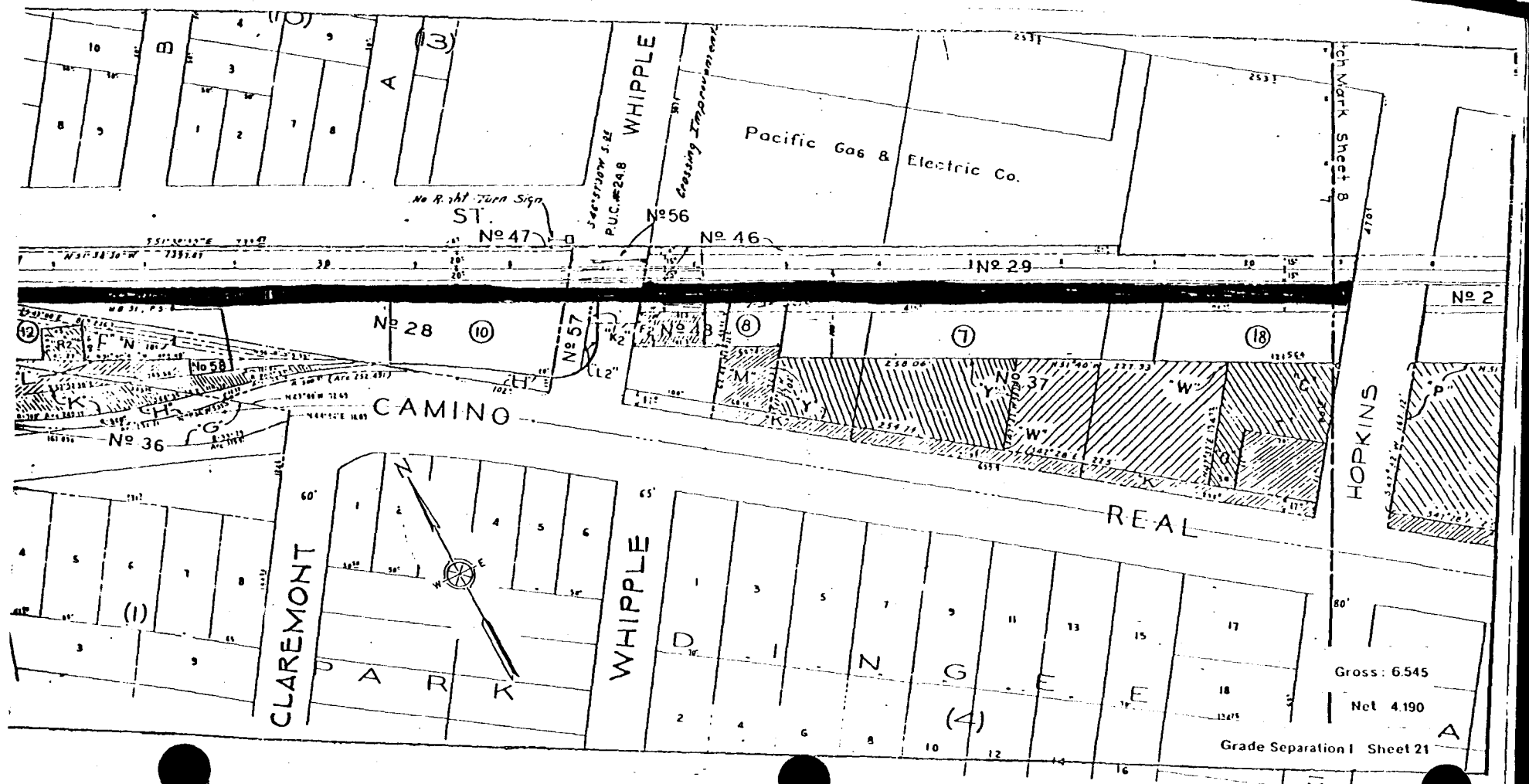


EXHIBIT D

(Attached to and forming part of Property Management Agreement dated _____, 1991, between Southern Pacific Transportation Company and Peninsula Corridor Joint Powers Board)

Waiver of Relocation Assistance Act. Lessee acknowledges that the termination of a lease by a public agency under certain circumstances will entitle a tenant to reimbursement for certain moving and relocation expenses. Lessor enters into this Lease on the sole condition that Lessee waives any rights it may have to receive such moving and relocation expenses in the event that this Lease is terminated in accordance with the terms hereof. Accordingly, Lessee hereby freely and willingly waives all provisions of the Relocation Assistance Act including specifically, but without limitation, Government Code §§ 7262(a), 7267.1(b) and 7267.2(a), and understands that no such moving or relocation expenses will be payable upon the termination or expiration of the Lease.

EXHIBIT J

Environmental Indemnity Agreement

THIS ENVIRONMENTAL INDEMNITY AGREEMENT is dated _____, 1991 and is between Southern Pacific Transportation Company, a Delaware corporation ("SPT"), and Peninsula Corridor Study Joint Powers Board, a _____ ("Purchaser").

ARTICLE I. RECITALS

1.1. On _____, 1991, SPT and Purchaser entered into a Purchase, Sale and Option Agreement (the "Agreement") under which SPT agreed to sell to Purchaser and Purchaser agreed to purchase from SPT certain real property as described in the Agreement. Pursuant to such Agreement, Purchaser has on this day purchased from SPT property in San Francisco, San Mateo and Santa Clara Counties, State of California, known as _____ and more specifically identified in _____ of the Agreement (the "Property").

1.2. In order to induce Purchaser to purchase the Property, and as required by the Agreement, SPT and Purchaser are executing this Environmental Indemnity Agreement ("Indemnity Agreement") as of the date first set forth above.

1.3. By this Indemnity Agreement, the parties intend to create an efficient and responsive mechanism for addressing any contamination of the Property by Hazardous Materials, as herein defined. To accomplish that goal, the parties agree that the prompt response and remediation of such contamination shall take precedence over the prosecution of any legal challenge respecting SPT's obligation to provide a defense and indemnity. Therefore, upon a tender of the defense and indemnity, SPT shall first diligently defend Purchaser and discharge its indemnity and remediation obligations described herein, unless and until a court of competent jurisdiction or Private Judge, as hereafter defined, has relieved it of that duty.

ARTICLE II. DEFINITIONS

2.1. Except as otherwise set forth herein, all capitalized terms used in this Indemnity Agreement shall have the definitions specified in Article XIII of the Agreement. For purposes of this Indemnity Agreement, the following definitions shall apply.

2.1.1. The term "Hazardous Material" shall mean:
(a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances, " "hazardous materials, " "hazardous wastes, " "toxic waste, " "pollutant" or "toxic

substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("CERCLA"); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.5, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 U.S.C. §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments to such enumerated statutes or acts; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated as of the Environmental Indemnity Date under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products.

2.1.2. The term "Hazardous Release" shall have the same meaning as the term "release" under CERCLA [42 U.S.C. §9601(22)] as it applies to a release of any Hazardous Materials: (a) due to the operations, acts or omissions of SPT, its agents, representatives, employees, lessees, joint venturers, invitees, affiliates, contractors and co-owners prior to the Environmental Indemnity Date; or (b) into, from, through or upon the Property,

including without limit, (i) the air, soils or any improvements located thereon; (ii) surface water or ground water on or under the Property; or (iii) the sewer, septic system or waste treatment, storage or disposal system servicing any part of the Property. The term shall also include the presence of asbestos or other Hazardous Materials in, on or above the Property, if the same existed in such quantities or quality as to be subject to regulatory enforcement proceedings under the Environmental Laws; or otherwise subjects Purchaser to Environmental Claims or Environmental Expenses.

2.1.3. For purposes of this Indemnity, the term "Environmental Claim" shall mean any actual or threatened (a) complaint, demand for information, legal action or administrative proceeding, lien, order, directive, claim, citation or notice by any governmental authority, including, without limit, any and all enforcement, clean-up, removal or other governmental regulatory action initiated, completed, pending or threatened, which arises out of a Hazardous Release, including, without limit, any remedial or enforcement actions of any kind; or (b) complaint, order, judgment, legal action or administrative proceeding, lien, directive, claim, demand, citation or notice by any person or entity, including, without limit, any and all claims made, threatened or prosecuted by any third party, arising out of or relating in any way to any Hazardous Release, including, without

limitation, any proceeding for the recovery of damages, indemnification, contribution, cost recovery, compensation, loss or injury.

2.1.4. The term "Environmental Laws" shall mean all federal, state and local laws, ordinances, regulations, orders and directives of every kind and nature whatsoever which identify or regulate the use, disposal, transportation, remediation, investigation, storage or treatment of Hazardous Materials or which otherwise pertain to Hazardous Materials in, at, on or under the Property or any portion thereof, including, without limit, those laws identified in subsection 2.1.1, above.

2.1.5. The term "Environmental Expenses" shall mean all costs and expenses reasonably incurred by Purchaser or SPT in response to (a) a Hazardous Release; (b) an Environmental Claim; or (c) due to the requirements of the Environmental Laws, in investigating, characterizing, responding to, removing or remediating Hazardous Materials existing or allegedly existing in, on or over the Property. By way of example, and not limitation, it includes reasonable consulting and investigation fees, feasibility studies, repair, detoxification, closure or other clean-up costs, reasonable attorney's fees incurred (including, without limit, fees incurred in evaluating, reviewing and supervising the response, removal and remediation measures

and in negotiating, litigating, satisfying or settling the Environmental Claims), and a reasonable recovery for actual administrative overhead costs incurred in having in-house personnel provide engineering, administrative and other support functions in responding to Environmental Claims or the occurrence of a Hazardous Release on the Property. Subject to the limitations set out in this section 2.1.5, such costs and expenses shall, without limit, be at least coextensive with the types and categories of reimbursable costs and expenses and administrative overhead recoverable by the United States Government in its cost recovery actions under CERCLA (without regard to whether the clean-up and remediation efforts were consistent with the National Contingency Plan).

2.1.6. The term "Purchaser" shall include:

(a) the Peninsula Corridor Study Joint Powers Board (the "JPB"); (b) any of the JPB's member agencies or entities; (c) the Peninsula Rail District; (d) the California Transportation Commission; (e) the State of California; (f) any person or entity which derives its interest in the Property from the entities identified in (a), (b), or (c) of this section 2.1.6 above for the use or operation of the Property primarily for railroad, transportation or communication purposes (i.e. the incidental use of the Property for other purposes shall not affect the entity's

status as a "Purchaser"); (g) any person or entity financing the initial acquisition of the Property; (h) any subsequent financing of the use or operation of the Property primarily for transportation, railroad or communication purposes; and (i) all officers, directors, employees, members, agents and representatives of each of the entities identified in (a) through (h), above. Neither the leasing nor any other transfer by any Purchaser of an interest in the Property shall affect that entity's status as a "Purchaser" hereunder, nor limit or otherwise affect that Purchaser's right to a defense and indemnity hereunder. A private for-profit organization holding an interest in the Property and which thereafter engages in purely commercial activities on the Property, whether or not it involves the operation of a transportation or communication business, shall not be a "Purchaser" under this agreement.

2.1.7. The term "Environmental Indemnity Date" shall mean _____, 199_.

2.1.8. The term "PRP" shall mean "potentially responsible party" and shall mean third parties (including without limitation, tenants or former tenants of the Property or owners of other properties) who may be held legally responsible under the Environmental Laws for the response to, and the removal and remediation of, the Hazardous Materials described herein.

2.1.9. The term "Agency" shall mean any governmental agency having jurisdiction over any Hazardous Materials located in, on, above, or under the Property.

ARTICLE III. INDEMNITY

3.1. Subject only to the provisions of section 3.4., below, SPT hereby unconditionally agrees at its sole cost to indemnify, protect and to hold Purchaser harmless from, and to defend Purchaser (with counsel selected by SPT and approved by Purchaser in its reasonable discretion) against, any and all (a) Environmental Claims; (b) Environmental Expenses; and (c) liabilities, losses, damages, fines, penalties, charges, orders, judgments or liens; to the extent any of them arise, directly or indirectly, in whole or in part out of: (i) a Hazardous Release on or before the Environmental Indemnity Date; or (ii) any act or omission by SPT in discharge of its obligations under this Indemnity Agreement, including without limit, the handling, investigation, treatment, storage, decontamination, remediation, removal, transport or disposal of any Hazardous Materials. Subject to the provisions of section 3.4, below, SPT's liability hereunder is absolute and does not depend on whether it resulted from any act or omission of SPT, or if so caused, whether SPT's acts or omissions were legal, negligent, or within its control.

3.2. Purchaser's rights to the indemnity and defense, identified herein, and the obligations undertaken by SPT herein to provide such indemnity and defense, shall supersede all other agreements between the parties as of the Environmental Indemnity Date which are in conflict with these provisions, and shall not be affected or diminished in any manner by any other obligations assumed or undertaken by Purchaser under the terms of the Agreement (e.g. as lessor under an assigned leasehold interest). Furthermore, to the extent they conflict with the rights and obligations of the parties hereunder, any contrary rights SPT or Purchaser, may have at common law or by statute are waived by SPT and Purchaser respectively. No inspection, nor any failure by Purchaser to inspect the Property, nor any failure to exact any particular form of representation or warranty from SPT shall be construed to modify, eliminate or diminish the indemnity obligations of SPT hereunder, nor to increase, eliminate or modify any legal duty of SPT to disclose to Purchaser any information known by SPT about the environmental condition of the Property. Nothing in this agreement is meant to affect the rights of any third party or governmental agency to proceed against either party under any federal, state or local law.

3.3. If Purchaser suffers an Environmental Claim, incurs an Environmental Expense, or identifies a Hazardous Release, and

Purchaser, in good faith, believes itself entitled to the benefits of the indemnity herein granted, Purchaser shall give SPT prompt notice of its claim of indemnity and defense under this

Indemnity Agreement (herein the "Indemnity Claim"), stating, to the extent known, the nature of the Hazardous Release or Hazardous Materials involved, and its general location, the Agency or private party asserting the Environmental Claim, if any, respecting such release, a copy of the claim, if any, and the basis for the Indemnity Claim. Purchaser shall thereafter reasonably cooperate with SPT in identifying the location, nature and extent of the contamination, and providing reasonable access to SPT for investigation of the affected area, and cooperatively handling Agency inquiries. Purchaser's costs of such cooperation, if any, shall be treated as Environmental Expenses.

3.4. The indemnity specified in section 3.1., above shall not apply

(a) if SPT establishes by a final judgment from a court of competent jurisdiction, or by the unappealed decision from a Private Judge (selected pursuant to ¶3.5(c) and (d) below), that either:

(i) the Hazardous Materials came to be on, under or in the Property after the Environmental Indemnity Date, and such condition was not caused directly or indirectly by SPT or its licensees, lessees, tenants, agents, employees, successors or assigns (other than Purchaser); if such condition was caused or contributed to by SPT or such affiliated third party entities, the indemnity shall be equitably adjusted to the extent of the fault or contribution of SPT or such affiliated third parties; or

(ii) if the Hazardous Release occurred before the Environmental Indemnity Date, that as of the Environmental Indemnity Date, for the particular Hazardous Release, Hazardous Materials, or Environmental Claim identified in the Indemnity Claim, SPT would not have (X) been legally obligated to take responsive action, remove or remediate the Hazardous Material under the Environmental Laws; (Y) incurred any Environmental Expenses; nor (Z) been liable under the Environmental Claim so identified; or

(iii) the Hazardous Materials or Hazardous Release was limited to a chemical release, caused by the chemical treatment by creosote (or other legal chemical treatment) of railroad ties which are located on and form a part of the Property's improvements.

It is understood that SPT may cease to provide a defense or indemnity following the entry of an appealable order or judgment in its favor, i.e., upon a finding that SPT is not liable under one of the provisions of Section 3.4(a), above. Should such a determination be reversed and a final judgment thereafter be entered adjudging SPT liable under this indemnity agreement, any failure by SPT to provide the defense and indemnity between the time it was adjudged exonerated and the final judgment reversing such a decision and holding SPT liable, shall not give rise to a claim of punitive damages, and any interest on the loss, costs or damages suffered by Purchaser during such interim period shall be limited to ten percent (10%) per annum.

(b) for any Indemnity Claim received by SPT more than seventeen and a half (17.5) years after the Environmental Indemnity Date (the "Limitation Date"), unless it related to a Hazardous Release which was the subject of an Indemnity Claim made prior to the Limitation Date, or it was known to exist by SPT prior to the Limitation Date, but was not revealed by SPT to Purchaser by such date. Nothing contained in this Agreement shall be construed to limit the period of indemnity either party is obligated to provide to the other under the terms of the Trackage Rights Agreement between them dated _____, 1991.

(c) for any Environmental Expenses relating to actual administrative overhead costs incurred by Purchaser if incurred during the period prior to SPT's Response, as defined below, and SPT does not thereafter default under this agreement.

(d) for any consequential damages suffered by Purchaser. (This limitation shall not be construed to extend to and limit Purchaser's indemnification rights and remedies hereunder in the event of any claim against Purchaser by a third party for consequential damages.)

3.5. (a) As soon as diligence allows and in any event not later than forty-five (45) days after receipt of the Indemnity Claim, SPT shall respond in writing to the tender of the Indemnity Claim ("SPT's Response") by either: (a) accepting the tender and waiving any reservation of rights to thereafter contest the Purchaser's right to an indemnity and defense for the specified Indemnity Claim; or (b) accepting the tender with a reservation of such rights as to all or a part of the Indemnity Claim, and providing an explanation to Purchaser of the basis for any such reservation of rights in such detail as a reasonably diligent investigation of the facts will permit. SPT shall thereafter advise Purchaser of any new basis for any reservation of rights as soon as reasonably practicable after the discovery of the relevant facts would permit.

(b) It shall be the obligation of SPT to accept the tender and to promptly provide a defense and indemnity, and to undertake all necessary investigative, responsive and remedial activities for the Indemnity Claim mandated by the Environmental Laws, and to otherwise discharge all of its obligations hereunder, until and unless a court of competent jurisdiction or Private Judge under §3.5(d), below, has entered a judgment or appealable order relieving SPT of these obligations or finds that SPT is not responsible for the particular indemnity obligation claimed by Purchaser. Any legal challenge by SPT to the Indemnity Claim shall be limited to the rights of reservation enumerated by SPT within the time periods specified by section 3.5, above, for its response to the Indemnity Claim.

(c) For any Indemnity Claim for which notice is given six years or more after the Environmental Indemnity Date, (i) SPT shall not be liable for the first One Thousand Dollars (\$1,000.00) of Environmental Expenses incurred by Purchaser for any Indemnity Claim (all notices from Purchaser to SPT relating to contamination arising out of the same Hazardous Release incident causing the claim shall be considered part of the same Indemnity Claim) and (ii) either party may elect to proceed by the alternative dispute resolution process ("ADR") set out in §3.5(d), below, provided the election is made in writing not later than (X) ninety (90) days after a written demand for the

election has been given by either party to the other or (Y) ninety (90) days after SPT's Response has been given, whichever is later; otherwise, it shall be deemed waived.

(d) Upon timely and due written election by either party, SPT's defenses to its obligation to provide the defense and indemnity set forth in this agreement shall be heard and determined by binding adjudication before a neutral private judge ("Private Judge"), mutually agreed upon by the parties, and if no such agreement can be reached, then by appointment by the President of the California Bar Association. The selection or appointment shall be made within thirty (30) days after the date notice of the election to proceed by arbitration is given by either party. The hearing on the matter shall be scheduled before the Private Judge within one hundred and eighty (180) days after the election to proceed by arbitration is given, unless the parties mutually agree to extend that time period. The matters so submitted to the Private Judge for hearing shall be limited to the determination of whether and to what extent any of the defenses set forth in ¶3.4, above, are established by SPT and exonerate SPT from its obligation to provide the defense and indemnity herein specified. The hearing shall be governed by the applicable rules of substantive law and Federal Rules of Civil Procedure, except to the extent the parties mutually agree to modify the same.

As soon as appointed or selected, the Private Judge shall establish a discovery schedule and hear all matters concerning discovery and any pre-hearing procedure relating to the dispute. Discovery shall be liberally allowed to the extent practicable in the reasonable discretion of the Private Judge. Each party recognizes that the expedited hearing may prevent a thorough investigation of all salient facts respecting the claims of the parties before the scheduled hearing date, and each recognizes that the constrained timetable may work some prejudice on a party's ability to prepare for the hearing. Nevertheless, such a hearing will proceed within the specified 180 days, except as otherwise provided in this subparagraph 3.5(d) above, or where the Private Judge determines that either party has acted to materially prejudice the opportunity of the other party to prepare for the scheduled hearing, in which event the judge may either (i) impose sanctions on 15 days' notice and hearing; (ii) postpone the hearing to mitigate the prejudice; or (iii) make such other orders or determinations as the judge reasonably determines are required to restore the equities and permit the aggrieved party to prepare for trial.

The decision of the Private Judge on SPT's defense and indemnity obligation shall be made within thirty (30) days of the last date of the hearing, and shall include findings of fact and conclusions of law if requested by a party at the hearing.

Either party shall have the right, at its expense, to prepare a complete transcript of the proceedings. In any arbitration where the amount in controversy exceeds \$500,000, the determination of the matter in controversy may be tried de novo in a court of appropriate jurisdiction in a county where the Property is located by filing an action within thirty (30) days of receipt of the Private Judge's decision. If the complaint is not timely filed for retrial of the controverted issue, the Private Judge's determination may be enforced by entry of a non-appealable judgment in accordance with the law governing enforcement of arbitration awards generally.

(e) In the event SPT successfully challenges the Indemnity Claim, it shall be entitled to recover its Environmental Expenses, plus interest thereon at the rate of ten percent (10%) per annum, to the extent the Environmental Expenses were incurred on matters which are adjudged to be outside the scope of SPT's defense and indemnity obligations herein. If a court of competent jurisdiction or the Private Judge finds that Purchaser did not tender an Indemnity Claim in good faith, the interest recoverable by SPT on the resulting Environmental Expenses shall bear interest at the maximum rate allowed by law without limiting SPT's other remedies. Similarly, where it is found that SPT has failed to perform its obligations hereunder in good faith, Purchaser shall recover interest on its Environmental

Expenses at the maximum rate allowed by law, without limiting Purchaser's other remedies. Furthermore, in any such litigation, the prevailing party shall be entitled to recover its reasonable attorney's fees, as provided for in ¶4.12 below.

(f) If SPT fails to timely remit SPT's Response to the Indemnity Claim in the manner required by ¶3.5(a), above, and perform its indemnification obligations (subject to any reservation or rights enumerated by SPT), after default notice by Purchaser under section 5.01 and SPT's failure to cure, Purchaser shall have the sole right, but not the obligation, to investigate, report, respond, remove and remediate any Hazardous Material on the Property, and to prosecute, defend, compromise, settle, agree to remediation workplans and mandates from any Agency, pay and otherwise perform in accordance with any order, directive, judgment or settlement relating to an Environmental Claim or Environmental Release, all as Purchaser reasonably deems appropriate. The exercise of such control shall not in any manner waive or affect any of Purchaser's rights or remedies hereunder, or under statutory or common law (to the extent these rights have not otherwise been waived pursuant to ¶3.2, above). In the event Purchaser exercises the right to such exclusive control, and a court of competent jurisdiction or the Private Judge subsequently finds that SPT was legally responsible for providing the defense and indemnity for the Indemnity Claim, SPT

shall be liable for all Environmental Expenses incurred by Purchaser in good faith and in its reasonable judgment, from the date incurred, together with interest at the maximum rate allowed by law.

3.6. If SPT timely accepts the tender without any reservations, and so long as it does not thereafter breach its obligations to Purchaser under this Indemnity, Purchaser agrees that: (a) SPT shall be relieved of all liability for any Environmental Expenses incurred by Purchaser after the date the written notice of SPT's acceptance of the Indemnity Claim is received by Purchaser (except to the extent additional Environmental Expenses are thereafter incurred based on Purchaser's response to requests for cooperation, due to emergency circumstances, or such expenses cannot be reasonably avoided immediately on receipt of such acceptance notice); (b) Purchaser shall permit SPT to have reasonable access to the Property and to relevant non-privileged information in its possession and control concerning the Indemnity Claim; (c) Purchaser shall not take any action (whether by compliance, compromise, settlement, contest or otherwise) respecting the Hazardous Release without SPT's prior written consent, which shall not be unreasonably withheld or delayed; and (d) SPT shall be the lead party in all contacts with the Agencies, but shall advise Purchaser respecting all material actions, proposals,

settlements with the Agency, or other administration of the Indemnity Claim. Purchaser shall have the absolute right at any time to request, and shall promptly receive, copies of all communication between SPT and any other party respecting SPT's response to the Indemnity Claim, except to the extent such communication is privileged under law.

3.7. If SPT accepts the tender of the Indemnity Claim (a) and either then or thereafter asserts a reservation of its rights to subsequently establish that it was not liable under this indemnity or was entitled to recover its excess indemnity, and (b) if SPT is then adjudged to be legally obligated to provide the indemnity and defense demanded, then so long as such reservation of rights was maintained by SPT, it shall be responsible for all Environmental Expenses reasonably incurred by Purchaser (i) in monitoring SPT's activities and response to the Indemnity Claim; (ii) in obtaining legal counsel to represent Purchaser's interests respecting the rights of challenge reserved by SPT; and (iii) in taking such steps which are reasonable and believed in good faith to be necessary to protect Purchaser from liability for the Hazardous Release, Hazardous Materials, or Environmental Claim identified in the Indemnity Claim.

3.8. Upon receiving notice of an Indemnity Claim, SPT shall promptly commence and diligently pursue all appropriate

actions to investigate, respond to, and remediate the Hazardous Release or the Hazardous Materials identified in the Indemnity Claim to the point of closure, all as required by applicable Environmental Laws, and as otherwise required by this Indemnity Agreement. SPT shall promptly pay all costs and expenses incurred in response to such Indemnity Claims. Purchaser agrees that during the period leading up to SPT's Response, as referred to in ¶3.5, above, it shall exercise good faith efforts to limit its Environmental Expenses.

Without limiting the scope of SPT's indemnity and defense obligations under section 3.1, in the event of an Environmental Claim against Purchaser, SPT shall undertake the defense of such action by legal counsel selected by SPT and reasonably satisfactory to Purchaser. Such legal counsel may also defend SPT (if named in such action) unless in the reasonable judgment of Purchaser, representation of both Purchaser and SPT would cause a conflict of interest which would render such joint representation inappropriate. If such joint representation is deemed inappropriate by Purchaser, Purchaser shall be defended by alternate counsel selected by Purchaser and reasonably satisfactory to SPT. Each party shall cooperate with counsel in all reasonable respects with regard to such legal action; however, the resulting costs shall then be recoverable as Environmental Expenses.

3.9. Promptly after completing the required remediation, SPT shall submit to Purchaser evidence reasonably satisfactory to Purchaser establishing that the remediation and closure of any Hazardous Release has been completed to the satisfaction of the Environmental Laws.

3.10. Purchaser hereby grants to SPT, its employees, contractors and agents a license to enter onto that portion of the Property affected by Hazardous Materials as identified by the Indemnity Claim. Entry under such license shall be upon reasonable notice to Purchaser and at reasonable times, from time to time as is reasonably necessary or appropriate to perform the environmental investigation, response, removal and remediation of the Hazardous Materials, and to take such other actions as are reasonably necessary or appropriate to clean up debris or remediate any Hazardous Materials or Environmental Release identified in the Indemnity Claim. Subject to such limitations, this license shall continue in full force and effect unless (a) SPT breaches its obligations hereunder; or (b) SPT no longer has any obligations under this Indemnity Agreement with respect to an Indemnity Claim which formed the basis for SPT's need for access. SPT shall provide reasonable advance notice and advise Purchaser of all contemplated activities on the Property pursuant to this Indemnity Agreement (excepting incidental spot inspections); SPT shall not allow such activities to unreasonably interfere with

any activities of Purchaser on the Property. Except to the extent caused by Purchaser, its employees, agents or invitees, SPT shall indemnify Purchaser and hold it harmless from and against all claims, liabilities, costs (including all attorney's fees), losses, damages, fees and expenses arising out of the entry onto the Property by SPT, its employees, contractors, invitees or agents as herein provided.

3.11. To the extent SPT incurs any Environmental Expenses in performing its obligations hereunder, and the right to recover, or to receive reimbursement, from PRPs for such expenses nevertheless requires Purchaser's assignment of such right, Purchaser hereby assigns to SPT Purchaser's present and future rights to recover for these expenses by such PRPs. However, if SPT is in default hereunder at the time such rights to recover or be reimbursed accrue, or at any time thereafter, then so long as the default remains uncured Purchaser (i) shall have a lien on the proceeds of any recovery under such assignment to the extent of any damages suffered by Purchaser as a result of such default, (ii) such assignment shall be conditioned on the execution and filing or recording of documentation to evidence and perfect such lien in substantially the form attached hereto as Exhibit "A" and otherwise reasonably acceptable to Purchaser, and (iii) if SPT has not instituted proceedings to effectuate such recovery from the PRPs within ninety (90) days of the filing

or recording of the lien documents, as applicable, or within thirty (30) days after written notice to do so from Purchaser, whichever is later, Purchaser shall have the right to institute such action or proceeding in the name and on behalf of SPT against such PRPs without prejudice to any other rights or remedies it may have hereunder.

Provided SPT is not in default hereunder, SPT shall also have the right, in Purchaser's name, but at its sole risk, to cause any and all of such PRPs to remediate the Hazardous Materials or Hazardous Release. At no cost to Purchaser, Purchaser agrees to cooperate fully with SPT in SPT's attempts to cause such PRPs to undertake the remediation actions contemplated hereunder. Purchaser's costs of such cooperation shall be reimbursed by SPT as Environmental Expenses within 60 days of receiving an accounting thereof.

ARTICLE IV: SECURITY

4.01 Security: As security for the due performance of its obligations hereunder, SPT shall execute and deliver to Purchaser deeds of trust in recordable form on each of the parcels of real property described in Exhibit "B," attached hereto, and in the general form as shown in Exhibit "C," attached hereto, for the purpose of securing the due performance of SPT's indemnity obligations as herein set forth. Upon default by SPT under this

agreement, Purchaser shall have the unconditional right to exercise any and all remedies permitted under the trust deeds or by law in enforcing Purchaser's remedies for damages it incurs due to SPT's default.

ARTICLE V: DEFAULT AND REMEDIES

5.01 Default: SPT shall be in breach of this agreement if it:

(a) fails to cure any default in the performance of any obligation to be performed by that party, within ten (10) calendar days of the giving of notice, except that: (i) a failure to timely deliver an SPT Response shall be a breach without further notice, and (ii) for any default in the performance of an obligation which by its nature cannot be cured within ten (10) calendar days of the giving of notice, the period to cure shall be not more than a reasonable time to cure using best efforts and due diligence to do so;

(b) suffers or permits the appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of SPT, or files a petition in bankruptcy or participates in any other insolvency proceeding or assignment for the benefit of creditors, or admits in writing of its inability to pay its debts as they become due.

5.02 Remedies: Without limiting the remedies set forth elsewhere in this Indemnity Agreement, SPT or Purchaser may enforce the terms of this agreement by any other remedy allowed at law or in equity.

ARTICLE VI. MISCELLANEOUS

6.1. Notices. All notices and other communications under this Indemnity Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (b) on receipt, if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To SPT:

Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105
Attention: Mr. Robert F. Starzel
Phone No.: 415-541-1474
Telecopy No.: 415-541-2098

and

Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105
Attention: C.Y. Harvey, Esq., General Counsel
Phone No.: 415-541-1781

Telecopy No.: 415-495-5436

with a copy to:

Holme Roberts & Owen
1700 Lincoln, Suite 4100
Denver, CO 80203
Attention: G. Kevin Conwick
Phone No.: 303-861-7000
Telecopy No.: 303-866-0200

To Purchaser:

Peninsula Corridor Study Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh
Phone No.: 415-508-6269
Telecopy No.: 415-508-6281

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, California 94105-2173
Attn: David J. Miller
Phone No.: 415-777-3200
Telecopy No.: 415-541-9474

6.2. Governing Law. This Indemnity Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.3. Headings. The article and section headings in this Indemnity Agreement are for convenience only and shall not be used in its interpretation or considered part of this Indemnity Agreement.

6.4. Saturdays, Sundays and Holidays. If any payment or delivery of any document is required pursuant to any term of this Indemnity Agreement to be made on a date which falls on a Saturday, Sunday or legal holiday in the State of California, such payment or delivery shall be made on the first business day following such Saturday, Sunday or legal holiday.

6.5. Counterparts. This Indemnity Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.6. Effect of Indemnity Agreement. This instrument sets forth the entire agreement between the parties concerning its subject matter. All negotiations relative to the matters contemplated by this Indemnity Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Indemnity Agreement. No provision of this Indemnity Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such amendment, revocation or waiver. Subject to the provisions of Section 6.13, this Indemnity Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6.7. Severability. If any clause or provision of this Indemnity Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Indemnity Agreement shall not be affected but shall remain in full force and effect.

6.8. Payment; Interest. All payment obligations of SPT to Purchaser (or vice versa) hereunder shall be payable immediately upon demand. If not paid within sixty (60) days after demand, they shall bear interest at ten percent (10%) per annum, unless otherwise specified herein. Where the specified interest rate exceeds the maximum rate allowed by law, the rate shall be deemed restated at the maximum legal rate.

6.9. Survival. Regardless of any other provision of this Indemnity Agreement or any provision contained in the Agreement to the contrary, SPT hereby acknowledges and agrees that the obligations of SPT under this Indemnity Agreement shall survive any transfer of title to the Property.

6.10. Independent Obligations. SPT's obligations hereunder are independent of all of its other obligations to Purchaser, and Purchaser may enforce any of its rights hereunder independently of any other right or remedy that it may at any time hold.

6.11. Cumulative Remedies; No Waiver. The rights, powers and remedies of Purchaser hereunder are cumulative and not exclusive of any other right, power or remedy that Purchaser may otherwise have. No failure or delay on the part of Purchaser in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor shall any single or partial exercise of any right, power or remedy preclude the further exercise thereof or the exercise of any other right, power or remedy. Any change in the rights and remedies of Purchaser shall be by written agreement, executed by Purchaser; it shall not arise by conduct or implication.

6.12. Attorney's Fees. If any attorney is engaged by either party to enforce or defend any provision of this Indemnity Agreement, regardless of whether any legal action or proceeding is filed, the prevailing party shall recover its reasonable attorney's fees and costs incurred. If either party brings any action pertaining to this Indemnity Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs as the court or Private Judge may determine.

6.13. Binding Agreement; Assignment; Amendment. This Indemnity Agreement and the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of SPT and their respective successors and assigns, except that SPT shall

not be permitted to transfer, convey or assign this Indemnity Agreement or any right or obligation hereunder without the prior written consent of Purchaser (and any attempt to do so shall be void). Neither this Indemnity Agreement nor any provision hereof may be amended, modified, waived or terminated except by an instrument in writing duly signed by SPT and Purchaser.

6.14 Third Party Beneficiaries. The parties hereby expressly acknowledge and agree that this Indemnity Agreement is made and entered into for the express protection and benefit of Purchaser, as herein defined, and SPT, and no other party or entity whatsoever, and there are no other third party beneficiaries to this contract.

6.15. Jurisdiction. SPT and Purchaser hereby expressly consent to, and will not contest, the exercise of jurisdiction by a competent court of the State of California.

6.16. Construction. Whenever the context requires, all terms used herein in the singular shall be construed in the plural and vice versa, and each gender shall include each other gender. Section headings in this Indemnity Agreement are included for convenience of reference only, and are not a part of this Indemnity Agreement for any other purpose.

6.17. No Party Deemed Drafter. Each party participated in the preparation of this Indemnity Agreement personally and with the benefit of counsel. If this Indemnity Agreement is ever construed by a court of law or equity, such court shall not construe this Indemnity or any provision hereof more harshly against any party by virtue of its role as drafter.

6.18. Time is of the Essence. Each party recognizes that time is of the essence in the performance of this Indemnity Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity to be duly executed as of the date first above written.

SPT:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation

By: _____
Its: _____

PENINSULA CORRIDOR STUDY JOINT
POWERS BOARD

By: _____
Its: _____

By: _____
Its: _____

Exhibit A

[Security Agreement in re: Lien for
Environmental Expenses, UCC-1]

Exhibit B

[Property Subject to Security Interest]

Exhibit C
[Deed of Trust]

EXHIBIT K

SPTC RAILROAD EASEMENT

Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns, the following:

(a) General Rail Operations.

A perpetual, exclusive easement in, on, under, over and through the Property, in which areas Grantor and its lessees, sublessees, licensees, successors and assigns ("Grantor") shall have the right, in accordance with the terms of the Trackage Rights Agreements of even date herewith between the parties, to construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities, and transportation systems necessary for and related to Grantor's freight rail operations and intercity passenger operations. Grantor shall use this easement for freight rail operations and intercity passenger operations only, and Grantee shall be prohibited from using all or any portion of the Property for freight rail operations or intercity passenger operations.

Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting freight rail operations or intercity passenger operations.

Notwithstanding the foregoing, Purchaser will have the exclusive use and control for rail passenger commute operations of its double main track from Santa Clara Junction to Cahill Yard, the passenger yard tracks at Cahill Yard, the westerly main track from Cahill Yard to Auzerais Street at Milepost 47.5 and all new trackage which Purchaser may construct between Auzerais Street and Lick at Milepost 51.4.

(b) Construction near Bayshore.

A perpetual, exclusive easement in, on, under, over and through the property described on Schedule I attached hereto, in which areas Grantor shall, subject to the other provisions hereof, have the right to construct, reconstruct, maintain, repair, use, relocate and/or remove, such additional support trackage and other facilities as may be necessary or convenient in connection with Grantor's freight

operations. Such improvements may include but are not limited to: (i) two storage tracks and turnouts between Bayshore at Milepost 4.9 and Brisbane at Milepost 7.1, on the westerly side of and no less than 20 feet from Grantee's eastward main track and trackage necessary to construct the wye and tail tracks at Brisbane and Bayshore (however, the 20 foot space shall not be used for motor vehicles); (ii) a gauntlet track from the north end of Tunnel No. 3 (at Milepost 3.1) to the south end of Tunnel No. 4 (at Milepost 5.3) along with an interlocking signal protection system; and (iii) four new power operated crossovers between Grantor's main tracks in connection with the construction of (i) and (ii) above.

Prior to commencing construction of any improvements on the property described on Schedule I, Grantor shall submit to Grantee for its approval, reasonably detailed plans and specifications for such improvements, together with proposed dates upon which Grantor expects to begin and end such construction. Grantee shall not unreasonably withhold its consent to such plans and specifications, or construction dates, and shall be deemed to have consented thereto unless Grantor is given written notice disapproving the plans or specifications, or construction dates, within 30 days after such matters have been submitted to Grantee. Any disapproval shall set forth in reasonable detail the reasons therefor.

All construction undertaken hereunder shall be at the sole cost and expense of Grantor, and shall be accomplished substantially in accordance with the approved plans and specifications and timetable. All work undertaken by Grantor hereunder, and Grantor's use of the constructed improvements, shall be accomplished in a manner which does not interfere in any material way with Grantee's passenger commute service, and shall not result in any degradation of the existing track and signal system and shall be conducted in accordance with such reasonable rules and regulations as may be promulgated by Grantee.

(c) South San Francisco Yard Operations.

A perpetual, exclusive easement in, on, under, over and through the South San Francisco Yard (as further described on Schedule II attached hereto), in which area Grantor, at its own expense, shall, subject to the other provisions hereof, have the right to construct, reconstruct, maintain, repair, use, relocate and/or remove, such support trackage and other facilities as may be necessary or convenient in connection with Grantor's freight operations. Notwithstanding the foregoing, Grantor shall allow Grantee to use such portions of the South San Francisco Yard as are not needed by Grantor from time to time to support its freight operations. Such use by

Grantee shall be subject to such reasonable rules and regulations as may from time to time be established by Grantor. Grantee shall pay Grantor reasonable charges for any use by Grantee of the South San Francisco Yard.

Prior to commencing construction of any improvements on the South San Francisco Yard, Grantor shall submit to Grantee for its approval, reasonably detailed plans and specifications for such improvements, together with proposed dates upon which Grantor expects to begin and end such construction. Grantee shall not unreasonably withhold its consent to such plans and specifications, or construction dates, and shall be deemed to have consented thereto unless Grantor is given written notice disapproving the plans or specifications, or construction dates, within 30 days after such matters have been submitted to Grantee. Any disapproval shall set forth in reasonable detail the reasons therefor.

All construction undertaken hereunder shall be accomplished substantially in accordance with the approved plans and specifications and timetable. All work undertaken by Grantor hereunder shall be accomplished in a manner which does not interfere in any material way with Grantee's passenger commute service, and shall not result in any degradation of the existing track and signal system.

(d) General Provisions. The following provisions shall apply to this railroad easement:

(i) Grantor may assign this railroad easement, in whole or in part, without the consent of Grantee, to any successor or affiliate of Grantor, to any other Class I railroad or, in connection with the railroad easement from Santa Clara Junction to Gilroy, to any operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience. Grantor may also assign this railroad easement, in whole or in part, with the consent of Grantee (which shall not be unreasonably withheld), to any other person and, in connection with all Property other than the rail line from Santa Clara Junction to Gilroy, to any operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience.

(ii) Grantor's use of this railroad easement shall be governed by the terms of the Trackage Rights Agreements, of even date herewith, covering the Property.

(iii) Upon Grantor's abandonment of this easement over any portion of the Property, this railroad

easement shall terminate automatically as to the portion so abandoned. For purposes of this subparagraph (d)(iii), Grantor's abandonment of this easement shall be deemed to occur on the date that is the effective date of an order by which the Interstate Commerce Commission grants authority for Grantor to abandon all of its rail services on a rail line or any portion thereof or, with respect to any rail line or portion thereof over which the ICC has no jurisdiction or authority, the date on which the parties agree, in the exercise of good faith, that Grantor has no further need to use such line for freight rail operations and intercity passenger operations.

Schedule I

Construction Easement Property:

That portion of the Land commencing at Oakdale Avenue near milepost 3.1 as shown on Map No. 43820, Sheet 5, and extending southerly to Brisbane at or near milepost 7.1 on Sheet 10.

Schedule II

South San Francisco Yard:

All of those parcels of the Land highlighted in yellow on Sheets 11, 12, and 13 on SPT Drawing No. C.E. 43820 dated and initialed by the representatives of the parties on August 12, 1991, beginning at Milepost 8.6 (approximately 600 feet north of Oyster Point Blvd. crossing) to Milepost 9.8 (approximately 1100 feet south of the Bayshore Highway Overpass). Excepting therefrom a strip of land 34 feet in width, 17 feet on each side of the centerline between the existing main line tracks, as shown on said drawings C.E. 43820, Sheets 11, 12, and 13.

EXHIBIT L

[Parking and] Access Easement Reservation

Grantor excepts from the Property hereby conveyed and reserves unto itself, its lessees, sublessees, licensees, successors and assigns ("Grantor"), a perpetual, nonexclusive [only applies to 25th and Pennsylvania and to Oyster Point easements: exclusive] easement (the "Easement") on, across and through the property described on Schedule I attached hereto, for [only applies to 25th and Pennsylvania: the parking of vehicles and] vehicular and pedestrian ingress to and egress from [the adjacent property owned by Grantor/the property described on Schedule II attached hereto] (the "Benefitted Property"). Grantor, at its own cost and expense, shall construct and maintain any improvements necessary or convenient to facilitate Grantor's use of this Easement (the "Improvements"). Grantor and its employees, agents and contractors shall also have the right to use the Easement for the purpose of construction and maintenance of the Improvements; provided, however, that Grantor shall give Grantee at least ten days' advance written notice of any intended entry upon the Easement for construction or maintenance purposes and Grantor shall in any event conduct such construction and maintenance so as to avoid any unnecessary interference with Grantee's activities on the Easement. The Easement shall be for the use by the owners of the Benefitted Property from time to time, and their respective employees, contractors, lessees, licensees, invitees and guests, and shall run with and benefit the Benefitted Property.

Grantor shall provide notice to Grantee at least 60 days prior to the commencement of construction of any substantial Improvements on the easement property, and Grantee shall have a period of 45 days after receipt of such notice in which to approve or disapprove the same. Grantee's approval shall not be unreasonably withheld. If Grantee does not respond within such 45-day period, Grantee shall be deemed to have approved the construction specified in the notice. If Grantee does not approve, it shall deliver a written notice to Grantor setting forth in reasonable detail the reasons for its disapproval. If the parties are unable to reach agreement on the construction plans, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association as then in effect. Each party shall request that one arbitrator be an independent California-licensed civil engineer, and each party shall pay one-half of the fees and expenses of the arbitration.

Grantor shall indemnify, defend and hold Grantee harmless from and against any and all demands, claims, causes of action or judgments, and all reasonable expenses (including without limitation, reasonable attorneys' fees) incurred in connection with any injury to person, loss of life or damage to property arising out of the use of the Easement, except as caused by Grantee's negligence.

Upon Grantor's abandonment of this easement, Grantor shall execute a quitclaim deed in favor of Grantee, quitclaiming all of Grantor's right, title and interest in and to this easement.

With respect to the easement reserved near Oyster Point Boulevard (shown on Map No. 43820, Sheet 11), the following paragraphs shall also be included in the reservation:

Grantee shall have the right to relocate the Easement onto other property located adjacent to the Easement of the same width as the Easement and which, in Grantor's reasonable judgment, provides access generally equivalent to that provided by the Easement (the "Alternative Easement"). Grantee shall give Grantor at least 120 days prior written notice of Grantee's desire to relocate the Easement and of the legal description of the Alternative Easement. Grantee shall, at its sole cost and expense, construct any improvements onto the Alternative Easement necessary to conform it to a reasonable equivalent of the existing condition of the Easement and shall provide Grantor with title insurance insuring title to the Alternative Easement in Grantor. Such title insurance policy shall be in an amount and with a title insurance company reasonably satisfactory to Grantor and shall insure title without any exceptions other than those reasonably acceptable to Grantor. Upon (1) execution, acknowledgment and recording of a document in form and substance reasonably satisfactory to Grantor granting the Alternative Easement to Grantor, (2) completion by Grantee of the improvements on the Alternative Easement and (3) delivery to Grantor of the title insurance policy as described above, Grantor shall execute, acknowledge and record a document terminating the existing Easement.

Notwithstanding the foregoing, if Grantee is able to obtain for Grantor, at no expense to Grantor, a perpetual, exclusive easement, for vehicular and pedestrian access on, across and through the private roadway on the westerly side of the Benefitted Property, adjacent and parallel to the Property, that is presently owned by the State of California Department of Transportation, Grantor shall accept such access as the Alternative Easement, provided that Grantee shall

provide Grantor with title insurance insuring title to the Alternative Easement in Grantor. Such title insurance policy shall be in an amount and with a title insurance company reasonably satisfactory to Grantor and shall insure title without any exceptions other than those reasonably acceptable to Grantor. Upon (1) execution, acknowledgment and recording of a document in form and substance reasonably satisfactory to Grantor granting the Alternative Easement to Grantor, (2) completion by Grantee of the improvements on the Alternative Easement and (3) delivery to Grantor of the title insurance policy as described above, Grantor shall execute, acknowledge and record a document terminating the existing Easement.

SCHEDULE I
"The Easements"

(i) a triangular parcel located at the northwesterly corner of 25th and Pennsylvania Streets in the city and county of San Francisco, California, and being over the southeasterly corners of parcels 26, 27 and 28, as shown on C.E. Drawing 43820 Sheet No. 4. [See attached legal description]

(ii) a twenty foot wide easement located within and along the easterly boundary of the 36,000 square foot parking lot located on railroad parcel No. 1 and extending southerly through parcel numbers 17, 8, 23, 15, 27, 28, 29, 57, 16 and 51 in Sunnydale Avenue (formerly Tobin Street) in the city and county of San Francisco, California, as shown on C.E. Drawing 43820 Sheet No. 8A. [See attached legal description]

(iii) a twelve foot wide easement located upon and along the westerly edge of the commute corridor commencing at a point at the southerly edge of the Guadalupe Canal and extending southerly approximately 4650 lineal feet to a point in parcel number 19 on the westerly edge of the Freeway right of way in the city of Brisbane, San Mateo County, California, as shown on C.E. 43820 Sheet Nos. 9 and 10. [See attached legal description]

(iv) a twenty-four foot easement within and along the westerly edge of the commute corridor extending in a northerly direction approximately 1160 lineal feet from the northerly line of Oyster Point Boulevard in South San Francisco, San Mateo County, California, affecting parcel numbers 6, 4, 3 and 2, as shown on C.E. Drawing C.E. 43820 Sheet No. 11. [See attached legal description]

(v) an easement varying in width from 15 to 45 feet upon and along the South leg of the wye in Redwood City, San Mateo County, California, affecting parcel numbers 3 and 4, as shown on C.E. Drawing 44590 Sheet No. 1A. [legal description to be provided]

Schedule I

(i)

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

Beginning at the intersection of the westerly line of Pennsylvania Avenue with the northerly line of Twenty-Fifth Street; thence westerly along said northerly line, 45.08 feet; thence northeasterly, at an angle of $100^{\circ}33'40''$ to the right, measured from the westerly prolongation of the last described course, 237.32 feet to said westerly line of Pennsylvania Avenue; thence southerly, at an angle of $169^{\circ}26'20''$ to the right, measured from the northeasterly prolongation of the last described course, along said westerly line, 233.00 feet to the point of beginning.

Being a portion of Block 297 of the Potrero Nuevo.

9
1.

Schedule I
(ii)

A strip of land 20 feet wide situated in the City and County of San Francisco, State of California, being portions of Lot No. 4 and Lot No. 5, as shown on that certain map entitled "Parcel Map, being a portion of Accessor's Blocks 5087, 5099 and 5101, San Francisco, California", as per map filed July 16, 1980 in Book 16 and Parcel Map, Page 40, Records of said City and County, and more particularly described as follows:

Commencing at the most southerly corner of said Lot 4; thence North $32^{\circ}17'13''$ East along the easterly line of said Lot No. 4, a distance of 29.95 feet to the southerly line of said Lot No. 5; thence South $72^{\circ}17'13''$ East along said southerly line, 97.46 feet to a line concentric with and distant 95.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), and the Point of Beginning; thence northerly along said concentric line on a curve to the right, tangent to said curve at last said point bears North $8^{\circ}41'05''$ East, having a radius of 5805.096 feet, a central angle of $3^{\circ}53'45''$, an arc distance of 394.72 feet; thence South $72^{\circ}01'01''$ East, 19.91 feet to a point on a line concentric with and distant 75.00 feet westerly, measured radially from said center line of Southern Pacific Transportation Company's westbound main track; thence southerly along said concentric line on a curve to the left,

tangent to said curve at last mentioned point bears South
12°35'12" West, having a radius of 5785.096 feet, a central angle
of 3°54'32", an arc distance of 394.68 feet to said southerly
line of said Lot No. 5; thence North 72°09'01" West 19.74 feet to
the point of Beginning, containing an area of 7725 square feet
more or less.

Schedule I
(iii)

A strip of land 12 feet wide situated in the County of San Mateo, State of California, lying 12 feet easterly and northeasterly of the following described line:

Beginning at the northerly corner of the 0.849 acre parcel of land reserved for railroad slope easement described in deed dated February 14, 1956 between Southern Pacific Company and State of California, recorded January 6, 1958 in Book 3328, Page 652, Official Records of said County; thence northwesterly on a curve to the left, tangent to said curve at last said corner bears North 9° 05' 11" West, having a radius of 2576.31 feet and a central angle of 4° 16' 20", an arc distance of 192.11 feet to and a point on the meander line between Survey Station 96 and Station 97 of the ordinary high tide in the Bay of San Francisco as shown on that certain map entitled "Official Map No. 1 of Salt Marsh and Tide Lands, situated in the County of San Mateo, State of California" approved by the State Board of Tide Land Commissioners on September 25, 1871; thence North 13° 21' 31" West, tangent to said curve at last mentioned point, 122 feet, more or less, to a point on the westerly line of the 0.914 acre parcel of land described in deed dated November 23, 1956 from the State of California to Southern Pacific Company, recorded January 6, 1958 in Volume 3350, Page 393, Official Records of said County, last said point being also the intersection of the southeasterly prolongation of a curve,

described as having a radius of 2471.51 feet and an arc distance of 450.22 feet, with the southwesterly line of the parcel of land described in deed from Southern Pacific Transportation Company to Oyster Point Properties, Inc., recorded on August 24, 1990, as Instrument 90114320, Records of said County; thence northwesterly, along said prolongation on a curve to the left, to the southerly corner of last said parcel of land; thence continuing northwesterly along said curve to the left, from a tangent that bears North 16° 48' 21" West, having a radius of 2471.51 feet and a central angle of 10° 26' 14", an arc distance of 450.22 feet; thence North 30° 47' 47" West 465.01 feet to a line parallel with and distant 75.00 feet southwesterly, measured at right angles, from the centerline of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco); thence North 32° 33' 11" West, along said parallel line, 2750.93 feet to the easterly line of Lot 21 of said "Salt Marsh and Tide Lands"; thence North 1° 13' 27" East, along said easterly line, to a line parallel with and distant 50 feet southwesterly, measured at right angles, from the original centerline of the Southern Pacific Railroad Company; thence Northwesterly, along last said parallel line, to the intersection with the northerly line of said Tide Land Lot 21, being also the southerly line of Guadalupe Canal.

The side lines of the above described 12 foot wide strip of land terminate in said northerly line of Tide Land Lot 21 and in

that certain course of having a bearing and distance of "South 31° 20' 25" West, 99.17 feet" of the 2.661 acres of land described in aforesaid deed, recorded January 6, 1858 in Book 3328, Page 652, Official Records of said County.

Schedule I
(iv)

All that certain parcel of land situated in the City of South San Francisco, County of San Mateo, State of California, more particularly described as follows:

A strip of land 24.00 feet in width, the northwesterly line of said strip of land being described as follows:

Beginning at a point on a line parallel with and distant 50.00 feet northwesterly measured at right angles from the original located center line of Southern Pacific Transportation Company's main (San Francisco-San Bruno) on commonly known as Bayshore Route, said point being the most southerly corner of the parcel of land described in deed dated September 11, 1925 from Wells Fargo Bank and Trust Company to Southern Pacific Company, recorded November 7, 1925 in Volume 197, Page 227, Official Records of said County; thence southwesterly along said parallel line to the northeasterly corner of the parcel of land thirdly described in deed dated July 31, 1906 from South San Francisco Land and Improvement Company to Southern Pacific Company, recorded August 16, 1906 in Volume 122, Page 524, Deed Records of said County; thence in a straight line to the intersection of the northwesterly line of said parcel of land thirdly described in said deed dated July 31, 1906 with the northerly line of Oyster Point Boulevard.

The side lines of said 24.00 foot wide strip of land terminate in the southeasterly prolongation of the course described as being southeasterly and having a distance of 51.4 feet in the deed dated September 11, 1925 from Wells Fargo Bank and Trust Company to

Southern Pacific Company, recorded November 7, 1925 in Volume 197, Page 227, Official Records of said County and said northerly line of Oyster Point Boulevard.

SCHEDULE II
"The Benefitted Property"

(i) The remainder of railroad's parcel numbers 24, 25, 26, 27, and 28 located adjacent to the northwesterly corner of 25th and Pennsylvania Streets in the city and county of San Francisco, California, as shown on C.E. Drawing 43820 Sheet No. 4. [see attached legal description]

(ii) The remainder of railroad's parcel numbers 1, 2 and 4 lying immediately north of and adjacent to the 36,000 square foot parking lot parcel in the city and county of San Francisco, California, as shown on C.E. Drawing 43820 Sheet No. 8A. [legal description to be provided]

(iii) The remainder of railroad's parcel numbers 8, 16, 17, and 19 lying westerly the commute corridor and northerly of Bayshore Freeway right of way including former tunnel no. 5 in the city of Brisbane, San Mateo County, California as shown on C.E. 43820 Sheet No. 10. [see attached legal description]

(iv) The remainder of railroad's parcel numbers 2 and 9 located westerly and adjacent to the commute corridor approximately 1160 feet north of the northerly line of Oyster Point Boulevard in South San Francisco, San Mateo County, California, as shown on C.E. Drawing 43820 Sheet No. 11. [see attached legal description]

(v) The remainder of railroad's parcel numbers 3, 4, and 26 excluding the option property lying northerly of and adjacent to the commute corridor between Charter Street and Pacific Avenue in Redwood City, San Mateo County, California as shown on C.E. Drawing 44590 Sheet 1A. [legal description to be provided]

Schedule II
(i)

A parcel of land situated in the City and County of San Francisco, State of California, being a portion of Potrero Nueva Block No. 297, described as follows:

Beginning at the point of intersection of the westerly line of Pennsylvania Avenue (90 feet wide) with the northerly line of 25th Street (66 feet wide); thence westerly, along said northerly line, 100 feet; thence at right angles northerly, 333 feet; thence at right angles westerly, 100 feet to a point in said westerly line of Pennsylvania Avenue: thence South, along said westerly line, 333 feet to the point of beginning.

Excepting therefrom the parcel of land described as follows:
BEGINNING at the intersection of the westerly line of Pennsylvania Avenue with the northerly line of Twenty-Fifth Street; thence westerly along said northerly line, 45.08 feet; thence northeasterly, an angle of $100^{\circ}33'40''$ to the right, measured from the westerly prolongation of the last described course, 237.32 feet to said westerly line of Pennsylvania Avenue; thence southerly, at an angle of $169^{\circ}26'20''$ to the right, measured from the northeasterly prolongation of the last described course, along said westerly line, 233.00 feet to the point of beginning.

A parcel of land situated in the City and County of San Francisco, State of California, being a portion of Potrero Nueva Block No. 297, described as follows:

Beginning at the point of intersection of the westerly line of Pennsylvania Avenue (90 feet wide) with the northerly line of 25th Street (66 feet wide); thence westerly, along said northerly line, 100 feet; thence at right angles northerly, 333 feet; thence at right angles westerly, 100 feet to a point in said westerly line of Pennsylvania Avenue: thence South, along said westerly line, 333 feet to the point of beginning.

Excepting therefrom the parcel of land described as follows:
BEGINNING at the intersection of the westerly line of Pennsylvania Avenue with the northerly line of Twenty-Fifth Street; thence westerly along said northerly line, 45.08 feet; thence northeasterly, an angle of $100^{\circ}33'40''$ to the right, measured from the westerly prolongation of the last described course, 237.32 feet to said westerly line of Pennsylvania Avenue; thence southerly, at an angle of $169^{\circ}26'20''$ to the right, measured from the northeasterly prolongation of the last described course, along said westerly line, 233.00 feet to the point of beginning.

A parcel of land situated in the City and County of San Francisco, State of California, being a portion of Potrero Nueva Block No. 297, described as follows:

Beginning at the point of intersection of the westerly line of Pennsylvania Avenue (90 feet wide) with the northerly line of 25th Street (66 feet wide); thence westerly, along said northerly line, 100 feet; thence at right angles northerly, 333 feet; thence at right angles westerly, 100 feet to a point in said westerly line of Pennsylvania Avenue: thence South, along said westerly line, 333 feet to the point of beginning.

Excepting therefrom the parcel of land described as follows:
BEGINNING at the intersection of the westerly line of Pennsylvania Avenue with the northerly line of Twenty-Fifth Street; thence westerly along said northerly line, 45.08 feet; thence northeasterly, an angle of $100^{\circ}33'40''$ to the right, measured from the westerly prolongation of the last described course, 237.32 feet to said westerly line of Pennsylvania Avenue; thence southerly, at an angle of $169^{\circ}26'20''$ to the right, measured from the northeasterly prolongation of the last described course, along said westerly line, 233.00 feet to the point of beginning.

Schedule II
(iii)

A parcel of land situated in the City of Brisbane, County of San Mateo, State of California, bounded as follows:

Bounded westerly by the westerly and northerly line of the land described "Second" in deed dated November 11, 1898 from the San Francisco and Fresno Land Company to the Southern Pacific Railroad Company, recorded November 14, 1898 in Book 80 of Deeds, page 319, records of said County; and by the northeasterly line of land described as Parcel No. 4 in deed dated February 15, 1934 from the Southern Pacific Company to the State of California, recorded March 8, 1934 in Book 617 of Deeds, page 402, records of said County; bounded northerly by the southerly line of land described in deed dated June 2, 1960, from South Pacific Company to Van Waters & Rogers, Inc. recorded June 15, 1960 in Book 3810 of Official Records, page 141, records of said County and by the easterly line of land described in deed dated December 28, 1989 from Southern Pacific Transportation Company to Oyster Point Properties, Inc., recorded December 29, 1989, as Document No. 89-177116 in Official Records of said County and bounded easterly by a line concentric with and distant 75 feet westerly, measured radially, from the center line of the westward main track of the Southern Pacific Transportation Company, by the westerly and southerly lines of land described in deed dated November 23, 1956 from the State of California to the Southern Pacific Company, recorded January 6, 1958 in Book 3350 of Official Records, page 393, records of said County and by the westerly line of land described in deed dated February 14, 1956 from the Southern Pacific Company to the State of California, recorded January 6, 1958 in Book 3328 of Official Records, page 652, records of said County.

A parcel of land situated in the City of Brisbane, County of San Mateo, State of California, bounded as follows:

Bounded westerly by the westerly and northerly line of the land described "Second" in deed dated November 11, 1898 from the San Francisco and Fresno Land Company to the Southern Pacific Railroad Company, recorded November 14, 1898 in Book 80 of Deeds, page 319, records of said County; and by the northeasterly line of land described as Parcel No. 4 in deed dated February 15, 1934 from the Southern Pacific Company to the State of California, recorded March 8, 1934 in Book 617 of Deeds, page 402, records of said County; bounded northerly by the southerly line of land described in deed dated June 2, 1960, from South Pacific Company to Van Waters & Rogers, Inc. recorded June 15, 1960 in Book 3810 of Official Records, page 141, records of said County and by the easterly line of land described in deed dated December 28, 1989 from Southern Pacific Transportation Company to Oyster Point Properties, Inc., recorded December 29, 1989, as Document No. 89-177116 in Official Records of said County and bounded easterly by a line concentric with and distant 75 feet westerly, measured radially, from the center line of the westward main track of the Southern Pacific Transportation Company, by the westerly and southerly lines of land described in deed dated November 23, 1956 from the State of California to the Southern Pacific Company, recorded January 6, 1958 in Book 3350 of Official Records, page 393, records of said County and by the westerly line of land described in deed dated February 14, 1956 from the Southern Pacific Company to the State of California, recorded January 6, 1958 in Book 3328 of Official Records, page 652, records of said County.

A parcel of land situated in the City of Brisbane, County of San Mateo, State of California, bounded as follows:

Bounded westerly by the westerly and northerly line of the land described "Second" in deed dated November 11, 1898 from the San Francisco and Fresno Land Company to the Southern Pacific Railroad Company, recorded November 14, 1898 in Book 80 of Deeds, page 319, records of said County; and by the northeasterly line of land described as Parcel No. 4 in deed dated February 15, 1934 from the Southern Pacific Company to the State of California, recorded March 8, 1934 in Book 617 of Deeds, page 402, records of said County; bounded northerly by the southerly line of land described in deed dated June 2, 1960, from South Pacific Company to Van Waters & Rogers, Inc. recorded June 15, 1960 in Book 3810 of Official Records, page 141, records of said County and by the easterly line of land described in deed dated December 28, 1989 from Southern Pacific Transportation Company to Oyster Point Properties, Inc., recorded December 29, 1989, as Document No. 89-177116 in Official Records of said County and bounded easterly by a line concentric with and distant 75 feet westerly, measured radially, from the center line of the westward main track of the Southern Pacific Transportation Company, by the westerly and southerly lines of land described in deed dated November 23, 1956 from the State of California to the Southern Pacific Company, recorded January 6, 1958 in Book 3350 of Official Records, page 393, records of said County and by the westerly line of land described in deed dated February 14, 1956 from the Southern Pacific Company to the State of California, recorded January 6, 1958 in Book 3328 of Official Records, page 652, records of said County.

Schedule II
(iv)

Those certain parcels of land situated in the City of South San Francisco, County of San Mateo, State of California, described as follows:

Parcel 1.

A strip of land, 18 feet wide, being a portion of the land described in deed from John R. Coryell to Southern Pacific Railroad Company, dated December 17, 1895 and recorded December 18, 1895, in Book 72 of Deeds, Page 122, Records of said County, described as follows:

COMMENCING for the same at a point on the center line of the said Railroad where said center line intersects the northeast line of the lands of John R. Coryell, at engineer's station 156 + 90 of said center line and running thence southwesterly along said center line of said Southern Pacific Railroad from San Francisco to San Bruno and embracing a strip of land fifty (50) feet wide on each side of said center line to the southerly line of the lands of John R. Coryell, at engineer's station 134 + 94 of said center line of said railroad a distance of 2196 feet, more or less.

EXCEPTING therefrom that portion thereof lying southeasterly of a line parallel with and distant 32.00 feet northwesterly, measured at right angles, from said above described located center line of said Company's Railroad.

ALSO EXCEPTING THEREFROM that portion lying within Parcel 3 of the lands conveyed by Southern Pacific Company to the State of California, by deed recorded January 6, 1958, in Book 3328, Page 652, Official Records of said County.

The side lines of said 18.00 foot wide strip of land terminate in a line drawn southeasterly, perpendicular to, and at the southwesterly terminus of the course described as "South 37° 34' 46" West 318.37 feet" in said Parcel 3 of deed, recorded January 6, 1958 in Book 3328, Page 652, Official Records of said County, and in the southeasterly prolongation of the course described as being "southeasterly" and having a distance of "51.4" feet in the deed from Wells Fargo Bank & Union Trust Co. to Southern Pacific Company by deed recorded November 7, 1925 in Book 197, Page 227, Official Records of said County.

Parcel 2.

All of the land described in deed from Wells Fargo Bank & Union Trust Co. to Southern Pacific Company, dated September 11, 1925, and recorded November 7, 1925, in Book 197, Page 227, Official Records of said County, described as follows:

BEGINNING at the point of intersection of the northwesterly line of the Southern Pacific Company's 100 foot right of way with the northeasterly line of that certain 40 foot right of way conveyed by Joseph B. Coryell and Mabel L. Coryell, his wife to the Pacific Gas and Electric Company by deed, recorded January 3, 1912 in Vol. 205 of Deeds, at Page 67, records of San Mateo

County, California, said point of intersection being distant southeasterly 330.7 feet, more or less, from the southeasterly line of the old San Bruno Road measured along the northeasterly line of said 40 foot right of way, said point of intersection also being 50.0 feet northwesterly, measured at right angles, from the center line of the Southern Pacific Company's double track main line railroad at or near Survey Station 135 + 45.0; thence northeasterly along the northwesterly line of said Southern Pacific Company's 100 foot right of way, a distance of 2,131.8 feet, more or less, to a point in the easterly line of that certain tract of land described in Deed of Conveyance from Italian American Bank to Wells Fargo Bank & Union Trust Co. and dated July 17, 1925, and recorded in Book 185, Page 27 Official Records of San Mateo County; thence northerly along said easterly property line a distance of 87.1 feet, more or less, to a point distant 100.0 feet northwesterly measured radially from said center line of double track; thence southwesterly parallel to and 100.00 feet northwesterly from said center line of double track a distance of 2191.0 feet, more or less, to a point in the northeasterly line of said Pacific Gas and Electric Company's 40 foot right of way; thence southeasterly along the northeasterly line of said 40 foot right of way a distance of 51.4 feet, more or less, to the point of beginning.

EXCEPTING therefrom that portion thereof lying northerly of that certain course described as "South 51 °36' 57" West 206.16 feet" in Parcel 3 of that certain deed from Southern Pacific Company to State of California, recorded January 6, 1958, in Book 3328, Page 652, Official Records of said County.

EXHIBIT M

BUILDING EASEMENT

Grantor excepts from the Property hereby conveyed and reserves unto itself, its lessees, sublessees, licensees, successors and assigns an exclusive easement in, on, under, over and through the property described on Schedule I attached hereto, for the location, operation, reconstruction as may be required from time to time by governmental regulations and maintenance of the existing building located thereon. This easement shall run with the land and shall benefit the adjacent property on which the building is primarily located. This easement shall continue in effect until the existing building is demolished. Upon such demolition, Grantor shall execute and deliver to Grantee a release of this easement.

Grantor shall indemnify, defend and hold Grantee harmless from and against any and all demands, claims, causes of action or judgments, and all reasonable expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with any injury to person, loss of life or damage to property arising out of the use of the easement, except as caused by Grantee's negligence.

Schedule I

A parcel of land situated in the City of San Jose, County of Santa Clara, State of California, being that portion of Parcel 2, as said Parcel 2 is shown on that certain parcel Map entitled "Being a portion of the "Rancho Los Coches" as filed in Book "A" of Maps, at Page 47," and filed August 22, 1980, in Book 469 of Maps, Page 28, Santa Clara County Records, more particularly described as follows:

Commencing at the most southerly corner of said Parcel 2 at the northwesterly line of Auzerais Street, 60.00 feet wide; thence along said line of Auzerais Street North 53°50'00" East 129.63 feet to a point distant South 53°50'00" West 67.37 feet from most southerly corner of Parcel 1 as shown on said Map, from where the radial center of a curve bears North 49°54'38" East 1463.97 feet; thence northwesterly along said curve to the right, having a radius of 1463.97 feet, through a central angle of 3°51'49", an arc distance of 98.71 feet to a point 0.50 feet distant southeasterly from an existing southeasterly exterior face of a building being the True Point of Beginning of this description; thence parallel to said southeasterly exterior face of building North 53°41'32" East 1.12 feet; thence parallel to and 0.50 feet northeasterly from the northeasterly exterior face of said building North 36°18'28" West 55.26 feet to a point on said curve having a radius of 1463.97 feet, said point bearing South 55°56'14" West from said radial center; thence southeasterly along last said curve to the left through a central angle of 2°09'47", an arc distance of 55.27 feet to the True Point of Beginning

Exhibit C: Real Property Ownership Agreement

REAL PROPERTY OWNERSHIP AGREEMENT

This Real Property Ownership Agreement (the "Agreement") is entered into by and among the Peninsula Corridor Joint Powers Board ("JPB"), San Mateo County Transit District ("SAMTRANS"), the City and County of San Francisco ("CCSF") and the Santa Clara County Transit District ("SCCTD") this 24th day of December, 1991.

RECITALS

A. SAMTRANS, CCSF, and SCCTD, as the Member Agencies of the JPB, have entered into the JPA, which reconstructs the JPB and its authority and responsibilities in light of the impending acquisition of the ROW from Southern Pacific Transportation Company ("SPTC").

B. Pursuant to the JPA, the purposes and powers of the JPB will be expanded to allow the JPB to maintain and improve the ROW, and to operate the Peninsula Commute Service ("PCS").

C. Under the JPA, SAMTRANS has been appointed the Managing Agency that will be responsible for the management and operation of the PCS.

D. Due to current unavailability of adequate funds from other sources, SAMTRANS is willing to facilitate acquisition of the ROW by contributing toward the total purchase price for it, other than Proposition 116 funds, from certain of its funds and certain funds of the San Mateo County Transportation Authority, subject to the terms and conditions established in this Agreement.

E. In light of the impending acquisition of the ROW, and of SAMTRANS' agreement to contribute additional funds necessary to

purchase it, the parties desire to provide for an orderly system of management, development and eventual disposition of the ROW, and for appropriate rights and protections relative to the Additional Contribution.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. DEFINITIONS.

1.1 **Additional Operating Grants.** Operating grants for the PCS received from state or federal sources that exceed the amount or level of such grants as of the date of this Agreement.

1.2 **Additional Contribution.** That portion of the purchase price of the ROW that will not be funded by Proposition 116 funds upon closing of the ROW transaction, plus any additions thereto as provided in Section 3.2 below.

1.3 **Closing Date.** The date of transfer of the ROW as specified in the Notice of Exercise of Option provided for in Section 7.1 below.

1.4 **JPA.** The Agreement dated October 18, 1991 by and between CCSF, SCCTD and SAMTRANS, which Agreement expands the powers and purposes of the JPB so as to enable the JPB to plan, oversee operation, maintain and improve the PCS.

1.5 **Local Option Properties.** Those properties to be acquired pursuant to the options known as the Moffett, San Bruno, Vasona I and Vasona II options in the Purchase Agreement.

1.6 **Member Agencies.** The signatories of the JPA being CCSF, SCCTD and SAMTRANS.

1.7 Mileage Formula. With respect to the three Member Agencies, a percentage equal to the number of miles of the main line ROW, from mile post 0.147 in San Francisco to Mile post 51.4 in San Jose, located in each of their jurisdictions, respectively.

1.8 Net Nonoperating Deficit. Any deficit between Nonoperating Revenues and Nonoperating Expenses for each fiscal year this Agreement is in effect.

1.9 Net Nonoperating Revenues. Any excess between Nonoperating Revenues and Nonoperating Expenses for each fiscal year this Agreement is in effect.

1.10 Nonoperating Expenses. All ownership and maintenance expenses of the Nonoperational Assets.

1.11 Nonoperating Revenues. All revenues generated from ownership and management of the Nonoperational Assets other than fares and other revenues used to support the operating budget for the PCS as of the date of this Agreement.

1.12 Nonoperational Assets. All of the areas and assets owned and operated by the JPB (alone or in conjunction with SAMTRANS) exclusive of Operational Assets.

1.13 Operational Assets. That portion of the ROW that will be used to operate and maintain the PCS as of the date of the acquisition of the ROW by the JPB and SAMTRANS, as fully described in Exhibit A which is attached to this Agreement and incorporated into it by this reference. When System Option Properties are subsequently acquired, the parties will determine what portions of said properties, if any, are Operational Assets and expand Exhibit A accordingly.

1.14 Purchase Agreement. The purchase agreement by and among the JPB, SAMTRANS and SPTC pursuant to which the JPB will acquire the ROW.

1.15 ROW. All real property and other assets to be acquired by the JPB and SAMTRANS pursuant to the Purchase Agreement other than the Local Option Properties.

1.16 State Transferred Properties. All real property and other assets to be transferred from the State of California, Department of Transportation to the JPB following the closing of the transaction contemplated in the Purchase Agreement.

1.17 System Option Properties. Those properties to be acquired pursuant to the options established in the Purchase Agreement other than the Local Option Properties.

2. PURPOSE; MILEAGE FORMULA.

The purpose of this Agreement is to allocate the respective rights and obligations of the parties relative to the ownership, maintenance, management and eventual disposition of the ROW. For the purposes set forth hereinafter, the parties agree to allocate such rights and responsibilities based on the Mileage Formula. The parties stipulate that their respective percentages under the Mileage Formula are CCSF (10.1%), SAMTRANS (47.7%) and SCCTD (42.2%).

3. ADDITIONAL CONTRIBUTION.

3.1 Initial Additional Contribution. To facilitate completion of the acquisition of the ROW and in recognition of the fact that CCSF and SCCTD do not have funds currently available for this purpose, SAMTRANS will provide the Additional Contribution upon closing of the ROW transaction.

3.2 Further Additional Contribution. Pursuant to the Purchase Agreement, the JPB will acquire options to purchase the System Option Properties. As and when the options to purchase such System Option Properties are exercised, should SAMTRANS elect, without obligation, to pay the exercise price for any or all of them from its own funds, such payments made by SAMTRANS shall be included within the total amount of the Additional Contribution for all purposes.

3.3 Reimbursement of Additional Contribution. The parties to this Agreement will use their best efforts individually and collectively to advocate for and obtain from non-local sources grants to be used for reimbursement of the Additional Contribution. Subject to the provisions of Section 7 below, the parties further agree to dedicate all Net Nonoperating Revenues from System Option Properties to reduce the Additional Contribution by reimbursing SAMTRANS and any other Member Agency that has provided the Additional Contribution pursuant to Section 3.4 below.

It is understood and agreed that full reimbursement of the Additional Contribution will include an amount equal to interest on the Additional Contribution from the dates of closing the ROW transaction and each System Option Property purchase transaction at a rate equal to the average rate of return that SAMTRANS earns on its investment portfolio, determined and compounded annually and verified in written investment reports prepared on a regular basis and presented to the SAMTRANS Board of Directors. As the foregoing sources of revenue are obtained to reimburse the Additional Contribution or any other source is obtained for that purpose, the amounts so received shall be applied first to pay off

accrued interest at the rate specified above and then to reduce the principal balance of the Additional Contribution. Any amounts received in reimbursement of the Additional Contribution or any accrued interest thereon shall be shared among those Member Agencies who have fully participated in the Additional Contribution as provided in Section 3.4 in proportion to each such Member Agency's percentage participation toward the Additional Contribution.

3.4 Additional Contribution Participation. It is understood and agreed by all the parties hereto that neither CCSF nor SCCTD have any legal obligation to participate in the Additional Contribution. With the understanding and acknowledgment that (a) in making the Additional Contribution, SAMTRANS is incurring a substantial financial burden that will benefit all of the parties to this Agreement, and (b) the efforts of the parties to reimburse SAMTRANS for the Additional Contribution from non-local sources as described in Section 3.3 may be unavailing, CCSF and SCCTD may at their election undertake good faith efforts to contribute a lump sum or equivalent assets or to establish a schedule of payments to SAMTRANS by which they will share in the burden of the Additional Contribution to the extent of their percentages under the Mileage Formula, plus interest to be applied in the manner and at the rate set forth in Section 3.3 above.

In particular, CCSF commits to take the necessary steps that may make it possible, subject to preparation of appraisals and performance of other due diligence investigations, to transfer to SAMTRANS certain land owned by CCSF that will be of special

benefit to SAMTRANS in connection with non-PCS services of interest to SAMTRANS, as a means of sharing in the burden of the Additional Contribution. This transfer, if feasible, will be documented by separate contract to be negotiated between CCSF and SAMTRANS. In the event that the value of the land to be transferred exceeds or is less than CCSF's percentage under the Mileage Formula, said contract will address the manner in which such excess or shortfall in value will be treated.

Any party which contributes to SAMTRANS funds or other assets that are applied to the principal of the Additional Contribution shall share, pro rata, based on the percentage such contribution to principal bears to the total Additional Contribution, in SAMTRANS' right to be reimbursed as set forth in Section 3.3 from (a) all Net Nonoperating Revenues generated from System Option Properties, and (b) all other non-system, non-Member sources of revenue that may be made available for reimbursement of the Additional Contribution.

SCCTD will consider the creation of a source of funds to be applied in a manner that contributes toward the Additional Contribution from potential new transit revenue sources.

3.5 Additional Operating Grants. Any Member Agency which has not voluntarily provided the full percentage under the Mileage Formula toward the Additional Contribution and which has not withdrawn its operating subsidy pursuant to Section 9 below, shall maintain its level of operational subsidy of the PCS as determined under the JPA, notwithstanding the receipt by the JPB or any other party of Additional Operating Grants which might otherwise reduce its local operational subsidy. Any and all such

Additional Operating Grants shall be used for their specified operational purposes. As among the Member Agencies, (a) each fully participating Member Agency may reduce its level of operational subsidies by an amount of the Additional Operating Grant equal to its percentage participation in the Additional Contribution, and (b) the Additional Contribution shall be deemed to be reimbursed as set forth in Section 3.3 in the amount by which the local operational subsidy of the non-contributing Member Agency would have been reduced by the Additional Operating Grant based on the Mileage Formula.

4. OWNERSHIP OF ROW.

4.1 ROW. Title to the ROW shall vest initially in the JPB; provided, however, that title shall vest in the JPB and SAMTRANS as tenants in common (not as partners) as to all ROW property located in San Mateo County. Upon full participation in the Additional Contribution by all Member Agencies, or full reimbursement of the Additional Contribution to SAMTRANS as provided in Section 3.3 above, SAMTRANS shall reconvey to the JPB all of its interests in title to the ROW. Title to State Transferred Properties shall vest in the JPB.

4.2 ROW System Options. Provided SAMTRANS has not withdrawn its operational subsidy pursuant to Section 9 below, at any time prior to full reimbursement of the Additional Contribution as provided in Section 3.3 or full participation in the Additional Contribution as provided in Section 3.4, SAMTRANS may require the JPB to assign any or all of the option rights to System Option Properties to SAMTRANS.

4.3 Local Options. The JPB assigns the options to purchase the Local Option Properties as follows:

To SAMTRANS - San Bruno

To SCCTD - Moffett, Vasona I, Vasona II.

Neither the exercise of such an option by any party hereto nor the assignment by the JPB of such an option shall affect each Member Agency's percentage under the Mileage Formula as stipulated herein. Upon the exercise of an option to purchase a Local Option Property by a Member Agency which has received an assignment from the JPB, title to the property covered by such option shall vest in the Member Agency, which shall pay the option price.

4.4 Gilroy Trackage Rights. At the request of SCCTD, the JPB shall assign all of its rights, title and obligations under the Trackage Rights Agreement - Lick/Gilroy Line to SCCTD and upon such assignment SCCTD shall succeed JPB as the owner thereof.

5. TERM.

This Agreement shall become effective upon the acquisition of the ROW by the JPB and SAMTRANS, and shall continue in full force and effect until disposition of the ROW pursuant to Section 10 below is effected. This Agreement shall govern the disposition of the ROW and represents the "separate agreement" referenced in Section 13 of the JPA.

6. MANAGEMENT OF THE ROW; DIVISION OF EXPENSES AND NET REVENUES.

6.1 Management of Operational Assets. Pursuant to the JPA, the JPB will provide oversight, and SAMTRANS will manage the Operational Assets. Nothing herein shall preclude the delegation

by the JPB of management responsibilities for certain Operational Assets to another Member Agency, with such rights and responsibilities as may be designated by the JPB.

6.2 Operating Expenses and Revenues. Expenses incurred in operating the PCS and the cost of all ROW capital projects shall be shared among the Member Agencies or borne by an individual Member Agency as provided in the JPA. Similarly, revenues earned by the JPB and used to support the operating budget of the PCS at the time of execution of this Agreement shall continue to be used to reduce operating expenses as provided in the JPA.

6.3 Management of Nonoperational Assets. SAMTRANS will manage the Nonoperational Assets, and in this regard hereby is authorized to (a) manage and oversee existing leases, licenses, franchises and development projects, and (b) pay applicable taxes and take all other actions as may be necessary to manage effectively the Nonoperational Assets. Renewals of existing leases, licenses, and franchises, as well as proposed new lease, license, franchise and development arrangements and projects must first be approved by the JPB. Any lease, license, franchise and/or development project so approved shall be managed by SAMTRANS as provided above. Nothing herein will preclude the delegation by the JPB of the administration or management of certain Nonoperational Assets to another Member Agency, with such rights and responsibilities as may be designated by the JPB.

6.4 Nonoperating Expenses and Revenues - ROW. With respect to all Nonoperational Assets comprising the ROW, exclusive of System Option Properties, for each fiscal year this Agreement

is in effect, the responsibility to pay for all Nonoperating Expenses shall be shared by the Member Agencies in accordance with the Mileage Formula. The JPB will determine the use of all Nonoperating Revenues generated by said assets in accordance with the terms and conditions of CTC Resolution #PA-91-01. To the extent such revenues are applied to operations, to the extent possible they will be used and accounted for within the provisions of Section 3.5 above.

6.5 Nonoperating Expenses and Revenues - System Option Properties and State Transferred Properties. With respect to all Nonoperational Assets included in System Option Properties and State Transferred Properties, for each fiscal year this Agreement is in effect, all Nonoperating Expenses shall be paid first from all Nonoperating Revenues. Any Net Nonoperating Deficit shall be borne by each Member Agency, pro rata, in accordance with the Mileage Formula. Any Net Nonoperating Revenues shall be paid to SAMTRANS and any other Member Agencies entitled thereto pursuant to Section 3.3 above. Upon full reimbursement of the Additional Contribution, or full participation by all Member Agencies as set forth in Section 3.4, any such Net Nonoperating Revenues will be distributed annually among the Member Agencies in accordance with the Mileage Formula. Any such distributions may be used by each Member Agency which receives them for any purpose.

7. SAMTRANS' OPTION TO CONVERT ADDITIONAL CONTRIBUTION TO EQUITY INTEREST.

7.1 Conversion to Equity. Notwithstanding any other provision of this Agreement, and provided that SAMTRANS has not withdrawn its operational subsidy pursuant to Section 9 below at

any time prior to full reimbursement of the Additional Contribution as provided in Section 3.3 or full participation in the Additional Contribution by all Member Agencies as set forth in Section 3.4, SAMTRANS may elect to treat the Additional Contribution as an equity contribution towards the ROW purchase by exercising an option to take title to part or all of the ROW. The JPB hereby grants such option to SAMTRANS. The option may be exercised by SAMTRANS upon a minimum of ninety (90) days' written notice to the JPB, CCSF and SCCTD, which notice will designate the Closing Date.

Upon the Closing Date, the JPB will transfer to SAMTRANS all of its right, title and interest in the ROW selected by SAMTRANS for transfer, with SAMTRANS assuming responsibility for closing costs. Title to State Transferred Properties shall remain in the JPB. Station properties shall be treated as Nonoperational Assets for all purposes as contemplated in this Section 7 to the extent that these properties can be used for nonoperational purposes without detriment to the transportation operations.

7.2 Management of Operational Assets. SAMTRANS shall license the Operational Assets to the JPB at no cost, which will continue to operate the PCS in a manner consistent with the JPA as set forth in Sections 6.1 and 6.2.

7.3 Management of Nonoperational Assets. Upon the Closing Date, SAMTRANS will assume control over and responsibility for management, use and development of all Nonoperational Assets, subject to the participation rights established in Sections 7.6 and 7.7 and the management of Operational Assets as set forth in Section 7.2. Section 6.3 of this Agreement, except for the last

sentence thereof, shall be deemed suspended during the period of time that SAMTRANS owns the ROW pursuant to this Section 7.

7.4 Nonoperating Expenses and Revenues - ROW Other Than System Option Properties. With respect to all Nonoperational Assets comprising the ROW exclusive of Nonoperational Assets of System Option Properties, for each fiscal year that SAMTRANS owns the ROW, the responsibility to pay for all Nonoperating Expenses and the use and treatment of all Nonoperating Revenues shall be as provided in Section 6.4 above.

7.5 Nonoperating Expenses Revenues - System Option Properties and State Transferred Properties. With respect to all Nonoperational Assets of the System Option Properties and the State Transferred Properties, for each fiscal year that SAMTRANS owns the ROW, all Nonoperating Expenses shall be paid first from all Nonoperating Revenues. Any Net Nonoperating Deficit shall be borne by the Member Agencies in accordance with their respective percentage participation in the Additional Contribution. Any Net Nonoperating Revenue shall be paid to SAMTRANS and any other Member Agencies entitled thereto pursuant to Section 3.4 above. Any such distributions may be used by each Member Agency which receives them for any purpose.

7.6 Fully Contributing Member Agency. Upon the transfer contemplated in Section 7.1, any Member Agency which has provided its total percentage under the Mileage Formula toward the Additional Contribution as set forth in Section 3.4 above will be granted participatory rights and responsibilities, as follows:

(a) voting rights on management and development decisions as specified in Section 6.3 above equal to its percentage share under

the Mileage Formula, and (b) a right to veto any proposed development that lies within its jurisdiction.

7.7 Partially Contributing Member Agencies. Upon the transfer contemplated in Section 7.1 above, any Member Agency which has participated in the Additional Contribution less than the Member Agency's total percentage under the Mileage Formula as provided in Section 3.4 will be granted participatory rights and responsibilities only to the extent of voting rights on management and development decisions as specified in Section 7.3 equal to the percentage said Member Agency's participation in the principal of the Additional Contribution bears to the total Additional Contribution.

7.8 Restoration of Title in JPB. When each Member Agency has fully participated in the Additional Contribution under the Mileage Formula, or when the Additional Contribution has been fully reimbursed as provided in this Agreement, or at such time as SAMTRANS withdraws its operating subsidy pursuant to Section 9, SAMTRANS shall reconvey all of its right, title and interest in the ROW to the JPB, and the provisions of Section 6 shall be deemed restored in all respects.

8. RESTRICTIONS ON TRANSFER AND ENCUMBRANCES.

Neither the JPB nor SAMTRANS shall be permitted to sell, transfer, convey, alienate, encumber, hypothecate, pledge, or otherwise dispose of its interest in the ROW, System Option Properties and State Transferred Properties voluntarily or involuntarily, by operation of law or otherwise, without the written approval of the other, except as otherwise expressly provided herein. Any attempt to transfer in violation of this

Section 8 shall be void and confer no rights on the transferee.

Notwithstanding the foregoing, in the event SAMTRANS exercises its option and receives title to the ROW pursuant to Section 7 and until such time as SAMTRANS withdraws its operating subsidy pursuant to Section 9, SAMTRANS, without the prior approval of the JPB, shall, with respect to any ROW property to which it holds title, be entitled: (a) to lease, encumber, pledge and take any other action necessary or desirable to manage or develop the Nonoperational Assets (in counties outside San Mateo County these actions shall be limited to the Nonoperational Assets at the locations described in Exhibit B which is attached to this Agreement and incorporated into it by this reference); (b) to transfer, sell, convey or otherwise dispose of any of the Nonoperational Assets (in counties outside San Mateo County these actions shall be limited to the Nonoperational Assets at the locations described in Exhibit B) in the event that any Member Agency withdraws its operational support pursuant to Section 9 below, provided, however, that a fully participating Member Agency will be granted voting rights on any such decision to transfer, sell, convey or otherwise dispose of a Nonoperational Asset equal to its percentage under the Mileage Formula; and (c) to transfer, sell, convey or otherwise dispose of any Operational Asset in the event that CCSF and SCCTD have both withdrawn their operational support pursuant to Section 9, below. In the event of any such transfer, sale, conveyance or disposition of Nonoperational or Operational Assets, the proceeds shall be dispersed in the manner set forth in Section 10.

9. AMENDMENT OF THE JPA.

This Section supersedes and amends Section 12 of the JPA. Any party may cease to support operations of the PCS at the end of any fiscal year upon one (1) year's prior written notice to the other parties. The decision of one or more Member Agencies to cease their support for operations shall not cause the termination of the JPB. The withdrawal of operational subsidies by any Member Agency shall not constitute a withdrawal from the JPB by said Member Agency, nor shall it entitle said Member Agency to reimbursement for past capital contributions, a distribution of any assets, or to participation in any future net revenues derived from operating activities, from either JPB or SAMTRANS. Upon the effective date of a Member Agency's withdrawal of operational subsidies, it shall (a) no longer be entitled to vote on any matter involving operational issues, (b) no longer be obligated to subsidize the PCS as provided herein or to participate in capital projects, (c) remain entitled to its share of Net Nonoperating Revenues in accordance with Section 3.4, 6.5 or 7.5, as the case may be, up to such time as its participation in the Additional Contribution has been repaid in full, and (d) remain obligated to contribute its share of any Net Nonoperating Deficit in accordance with Section 6.5 or 7.5, as the case may be, until the ROW and all system assets are finally disposed of. Upon the effectuation of the sale of the ROW and PCS assets, the JPB shall be deemed dissolved.

10. MANDATORY DISPOSITION OF ASSETS.

Unless otherwise agreed by the parties or otherwise required

by laws, regulations, or contractual obligations, and notwithstanding the transfer of title of the ROW to SAMTRANS pursuant to Section 7 above, in the event the ROW is not used by any Member Agency to provide a minimum level of PCS equal to 44 trains per day for a period of seven consecutive years, the JPB or SAMTRANS shall sell the ROW System Option Properties at the earliest practicable opportunity. Upon disposition, the proceeds of the sale will be used first to satisfy any contractual obligations, second, to pay to any Member Agency any amount it has contributed to the principal of the Additional Contribution which has not been reimbursed previously, with interest on said amount from the date of said principal contribution at the rate provided in Section 3.3 above. The remainder of the sales proceeds, if any, shall be shared among CCSF, SAMTRANS and SCCTD in accordance with the Mileage Formula.

11. WAIVER OF PARTITION.

As long as this Agreement is in full force and effect, each party hereto hereby waives the right it would otherwise have to institute an action or otherwise require partition of the ROW or any part thereof, or any similar remedy, and each party also waives the same on behalf of its successors and assigns.

12. REPORTS AND RECORDS.

12.1 Records. SAMTRANS, in its capacity as Managing Agency under the JPA, shall maintain proper and complete books as may be required by this Agreement, including records of contributions, to the Additional Contribution, Nonoperating Revenues and Nonoperating Expenses. Such records shall be available to all Member Agencies upon request.

12.2 Annual Report. The annual report of JPB financial activities that shall be prepared pursuant to Section 14 of the JPA shall include a report on the Net Nonoperating Revenues or Net Nonoperating Deficit during the prior year.

13. LIMITATION OF LIABILITY.

13.1 Limitation of Liability. SAMTRANS, its directors, officers, employees and agents will not be liable to the JPB or any one of its Member Agencies for any action taken or omission to act on behalf of the JPB, whether negligent or not, unless such act or omission is fraudulent, in bad faith, or constitutes gross negligence.

13.2 Indemnity. The JPB shall defend, indemnify, and hold harmless SAMTRANS, CCSF and SCCTD and their directors, officers, employees and agents from and against any loss, expense, damage or injury suffered or sustained by reason of any of their acts or omissions or alleged acts or omissions, whether negligent or not, in performing the obligations undertaken by any of them hereunder, including but not limited to any judgment, award, settlement, reasonable attorney's fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided, however, that no Member Agency or its directors, officers, employees or agents shall be indemnified by the JPB in connection with any liabilities incurred arising out of acts or omissions which are fraudulent, in bad faith, or grossly negligent.

14. RECORDATION OF MEMORANDUM OF AGREEMENT.

The parties agree to sign and record in the counties of Santa Clara, San Mateo and San Francisco a Memorandum of Agreement that

summarizes all salient provisions of this Agreement, including specifically SAMTRANS' option to convert the Additional Contribution to an equity interest in the ROW and the restrictions on transfer and encumbrances set forth herein.

15. MISCELLANEOUS.

15.1 Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the JPA.

15.2 Further Acts. Each party to this Agreement agrees to execute and deliver all documents and to perform all additional acts which may be reasonably necessary to carry out the provisions of this Agreement.

15.3 Notices. All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

SAMTRANS: San Mateo County Transit District
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: General Manager

JPB: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: Executive Director

SCCTD: Santa Clara County Transit District
1555 Berger Drive
San Jose, CA 95112
Attn: Assistant Executive Officer

CCSF: Public Utilities Commission
 425 Mason Street
 San Francisco, CA 94102
 Attn: Director of Finance

15.4 Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

15.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns.

15.6 Amendments. This Agreement may be amended at any time and from time to time, provided such amendments are in writing and executed by all parties.

15.7 Representation. SCCTD, SAMTRANS and CCSF have each been represented by independent counsel with respect to the negotiation and approval of this Agreement. The JPB has not been represented by independent counsel, it being understood that this Agreement has been approved by the three member agencies which constitute the JPB, which in turn have authorized the JPB to enter into this Agreement and to perform its obligations hereunder.

15.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior oral or written understandings on the same subject.

15.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall be deemed an entire Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above with the intent to be legally bound.

SAN MATEO COUNTY TRANSIT DISTRICT

John R. Brown

Approved as to Form and Legality:

By: David Miller

PENINSULA CORRIDOR JOINT POWERS BOARD

Tom Nolan

Approved as to Form and Legality:

By: David Miller

CITY AND COUNTY OF SAN FRANCISCO

[Signature]
MAYOR

Approved as to Form and Legality:

By: Robin Lee
Deputy City Attorney

Approved
SAN FRANCISCO PUBLIC
UTILITIES RESOLUTION NO. 91-0388
Dated: November 26, 1991

ATTEST:

Romaine A. Boldridge
Secretary, PUBLIC UTILITIES
COMMISSION

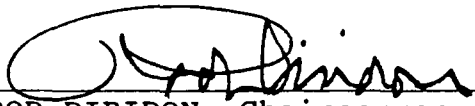
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 1075-91

ATTEST:

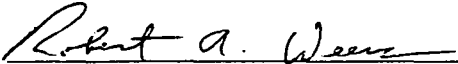
John Taylor
JOHN TAYLOR, Clerk

SANTA CLARA COUNTY TRANSIT DISTRICT



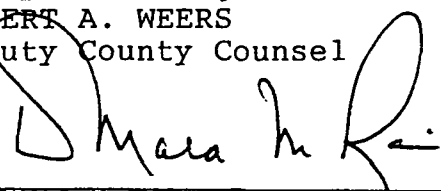
ROD DIRIDON, Chairperson
Santa Clara County Transit District
Board of Supervisors

Approved as to Form and Legality:

By: 

ROBERT A. WEERS
Deputy County Counsel

ATTEST:



DONALD M. RAINS, Clerk
Santa Clara County Board of
Supervisors

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EXHIBIT A

OPERATIONAL ASSETS

The term "Operational Assets" as defined in Section 1.13 of the Real Property Ownership Agreement will include that portion of the property and assets of the ROW consisting of an 80-foot wide strip (said strip to be measured 40 feet on each side of the median of the ROW) in those areas where the width of the ROW is in excess of 80 feet and the entire right of way in those areas where the width of the ROW is less than 80 feet, as more particularly shown on Exhibit A attached to and incorporated in the Purchase, Sale and Option Agreement, dated November 22, 1991, CE Drawing 43820 Sheets 1 through 40, approved August 12, 1991, September 9, 1991 and November 1, 1991.

EXHIBIT B

LOCATIONS IN SANTA CLARA COUNTY AND IN CITY AND
COUNTY OF SAN FRANCISCO WHERE THE PCS CORRIDOR IS OVER
80 FEET WIDE AND HAS POTENTIAL FOR DEVELOPMENT OR SALE

CITY AND COUNTY OF SAN FRANCISCO

NONE

COUNTY OF SANTA CLARA

<u>Val. Map</u>	<u>SH</u>	<u>W</u>	<u>L</u>	<u>AC</u>	<u>Location</u>	<u>Limits</u>
1. V-74/12	(26)	100- 125	2000'	1.5	Mt. View	San Antonio to Calderon
2. V-74/16	(30)	140'	2400'	3.3	Sunnyvale	Uranium Rd. to Saratoga Cr.
3. V-74/17	(31)	100- 125	7000'	5.0	Santa Clara	San Tomas Cr. to Lafayette

Exhibit C-1: Amendment to JPB Real Property Ownership Agreement

AMENDMENT TO REAL PROPERTY OWNERSHIP AGREEMENT

This First Amendment to Real Property Ownership Agreement (the "Agreement") is entered into by and among the Peninsula Corridor Joint Powers Board ("JPB"), San Mateo County Transit District ("SAMTRANS"), the City and County of San Francisco ("CCSF"), and the Santa Clara Valley Transportation Authority ("VTA"), formerly known as the Santa Clara County Transit District, this 31st day of October, 2008.

RECITALS

A. SAMTRANS, CCSF and VTA are member agencies of the JPB, which is governed by an amended and restated joint exercise of powers agreement ("JPA") dated October 3, 1996. Among the enumerated purposes of the JPB are the planning, administration, operation and expansion of the commuter rail system commonly known as Caltrain, and the maintenance, improvement and management of the rail corridor on which the Caltrain system is operated, together with other real estate assets necessary for the operation of Caltrain.

B. Under the JPA, SAMTRANS serves as the Managing Agency responsible for the management and operation of the Caltrain rail service and all of the assets of the JPB.

C. SAMTRANS, CCSF, VTA and JPB also are parties to a Real Property Ownership Agreement ("RPOA") dated December 24, 1991.

D. Among other things, the RPOA sets forth the understandings of SAMTRANS, CCSF and VTA associated with financing the acquisition by the JPB of the former Southern Pacific Transportation Company ("SP") right-of-way extending from 4th and Townsend Streets in San Francisco 51.4 miles to Lick Junction (the "ROW"), together with various other property rights all as memorialized in a Purchase, Sale and Option Agreement dated November 22, 1991 between SP, JPB and SAMTRANS. More specifically, pursuant to the RPOA, SAMTRANS agreed to facilitate acquisition of the ROW by advancing certain of its funds, and arranging for the contribution of certain funds of the San Mateo County Transportation Authority, which were necessary to complete the purchase of the ROW (the "Additional Contribution"). In consideration of SAMTRANS' willingness to facilitate acquisition of the ROW in said fashion, CCSF and VTA agreed to enter into the RPOA to acknowledge, safeguard and protect the Additional Contribution,

made by SAMTRANS as defined in Section 1.2 of the RPOA. Among the provisions contained in the RPOA to protect SAMTRANS' advance of funds were the following:

- (1) Title to the ROW located in San Mateo County was vested in both the JPB and SAMTRANS, as tenants in common;
- (2) SAMTRANS was granted an equity conversion option pursuant to which SAMTRANS was granted the right to take sole title to part or all of the ROW at any time prior to reimbursement of the Additional Contribution; and
- (3) CCSF and VTA agreed to use their best efforts individually and collectively to advocate for and obtain grants from non-local sources to reimburse SAMTRANS for the Additional Contribution .

E. In recognition of the voluntary advance of funds to acquire the ROW made by SAMTRANS and the commitment of the parties to the RPOA to use best efforts to effect reimbursement of that advance, the Metropolitan Transportation Commission ("MTC") has assumed a leadership role in identifying grant funds from non-local sources to be used to reimburse SAMTRANS for its Additional Contribution. Specifically, as stated in a report to the MTC dated June 25, 2007, MTC's Executive Director has identified "spillover" state transit funds projected to flow to the San Francisco Bay Area region over a period of several years as a viable repayment source for the SAMTRANS Additional Contribution. More specifically, \$43.3 million in population-based spillover funds that fall under MTC's control and jurisdiction and \$10 million in revenue-based spillover funds (\$8 million from VTA and \$2 million from CCSF), have been identified as proposed sources of funds to be allocated to SAMTRANS in full reimbursement of the Additional Contribution.

F. By this Amendment to the RPOA, the JPB, SAMTRANS, CCSF and VTA desire to memorialize their understandings pertaining to the proposed reimbursement of the SAMTRANS Additional Contribution and to fully resolve all outstanding financial issues related to the acquisition of the ROW.

G. In conjunction with the Amendment of the RPOA, the parties have agreed that SAMTRANS will be designated as the managing agency of the JPB unless and until it no longer

chooses to do so, it being agreed and understood that a formal amendment to the JPA incorporating this commitment will be implemented at a future date.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

I. Section 3.3 of the Agreement (Reimbursement Of Additional Contribution) is amended in its entirety to read as follows:

3.3 Reimbursement of Additional Contribution. The parties agree that the Metropolitan Transportation Commission ("MTC") will facilitate reimbursement of the Additional Contribution provided by SAMTRANS for the purchase of the ROW in the following manner:

A. **VTA Contribution.** The amount of the Additional Contribution attributable to VTA, \$43 million, will be paid to SAMTRANS through future gasoline sales tax "spillover" money: \$35 million in regional population-based "spillover" money to be allocated directly by MTC to SAMTRANS; and \$8 million in revenue-based "spillover" money from VTA to SAMTRANS.

B. **CCSF Contribution.** The amount of the Additional Contribution attributable to CCSF, \$10.3 million, will be paid to SAMTRANS through future gasoline sales tax "spillover" money: \$8.3 million in regional population-based "spillover" money to be allocated directly by MTC; and \$2 million in revenue-based "spillover" money from CCSF, through the San Francisco Municipal Transportation Agency.

C. **Timing and Method of Allocation of Funds.** The parties recognize that the precise time frame for allocation of the funds described in subsections A and B above is uncertain. The parties agree that they will use best efforts to effect allocation in full within a period of two (2) to four (4) years and in no event later than ten (10) years from the date of execution of this Amendment to the Agreement; provided that if and when MTC determines that the schedule of payments can be accelerated based upon greater availability of spillover funds made available from time to time by the State of

California, incremental revenue-based spillover funds otherwise allocable to VTA and CCSF will be paid to SAMTRANS in a ratio that equals or exceeds the incremental MTC allocation of regional population-based spillover funds.

If circumstances arise that would preclude allocation of the funds in full within ten (10) years, the parties acknowledge and agree that MTC will be authorized to identify alternative sources of non-local funds to effect full reimbursement of the Additional Contribution to SAMTRANS at the earliest practicable date.

MTC will allocate the regional population-based spillover funds directly to SAMTRANS. For Fiscal Year 2008-09, VTA and CCSF will pay the revenue-based spillover funds referred to in subparagraphs A and B to SAMTRANS. In subsequent years, if required, and until VTA's and CCSF's commitments are fully discharged, MTC will allocate and pay to SAMTRANS the respective shares of VTA and CCSF revenue-based spillover funds.

Upon receipt by SAMTRANS of all funds in satisfaction of the Additional Contribution, the commitments of CCSF and VTA under Sections 3.3 and 3.4 of the Agreement will be deemed fulfilled.

II. Section 4.1 of the Agreement (ROW) is amended in its entirety to read as follows:

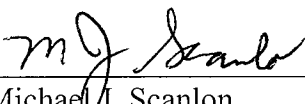
Title to the ROW shall vest initially in the JPB; provided, however, that title shall vest in the JPB and SAMTRANS as tenants in common (not as partners) as to all ROW property located in San Mateo County. Upon full participation in the Additional Contribution by all Member Agencies, or full reimbursement of the Additional Contribution to SAMTRANS as provided in Section 3.3 above, SAMTRANS shall reconvey to the JPB all of its interests in title to the ROW. At such time, Section 7 of the RPOA granting SAMTRANS an option to convert its Additional Contribution to an equity interest in the ROW shall no longer be in effect and Section 6.5 of the RPOA shall be repealed. Title to State Transferred Properties shall vest in the JPB.

III. AGREEMENT TO AMEND JOINT POWERS AGREEMENT.

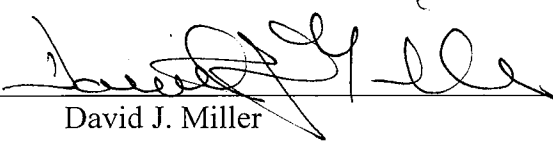
In consideration of the understandings reached pursuant to this Amendment to the RPOA, and in keeping with the shared commitment of the parties to continue their collaborative support of Caltrain, the parties have agreed that SAMTRANS is designated as the managing agency of the JPB and will serve in that capacity unless and until it no longer chooses to do so. The parties also agree to incorporate this agreement in a formal amendment of the JPA at a future date.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above, with the intent to be legally bound.

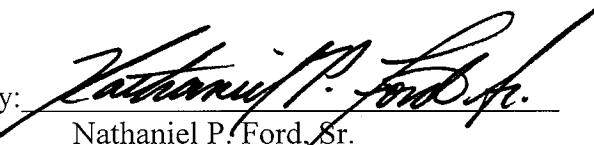
SAN MATEO COUNTY TRANSIT DISTRICT

By: 
Michael J. Scanlon
General Manager/CEO

Approval as to form:

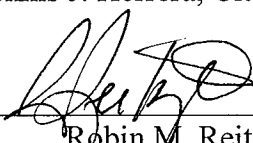

David J. Miller
Attorney

CITY AND COUNTY OF SAN FRANCISCO

By: 
Nathaniel P. Ford, Sr.
Executive Director/CEO
Municipal Transportation Agency

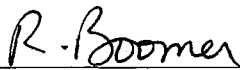
Approved as to form:

Dennis J. Herrera, City Attorney


Robin M. Reitzes
Deputy City Attorney

Municipal Transportation Agency
Board of Directors
Resolution No. 08-099
Dated: June 17, 2008

Attest:


Secretary

Board of Supervisors
Resolution No. 389-08
Dated: September 16, 2008

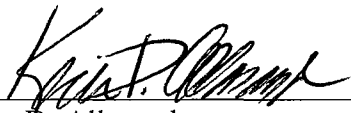
Attest:


Clerk of the Board

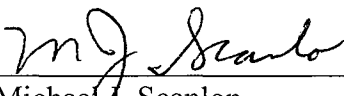
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: 
Michael T. Burns, General Manager

Approved as to form:


Kevin D. Allmand
Acting General Counsel

PENINSULA CORRIDOR JOINT POWERS BOARD

By: 
Michael J. Scanlon
Executive Director

Approved as to form:

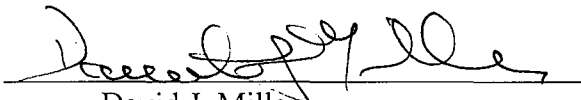

David J. Miller
Attorney

Exhibit D: Joint Powers Agreement

JOINT POWERS AGREEMENT
PENINSULA CORRIDOR PROJECT

This Agreement is made and entered into this 3rd day of October, 1996, by and between the Santa Clara County Transit District, dba Santa Clara Valley Transportation Authority ("SCCTD" or "SCVTA"), the City and County of San Francisco ("CCSF"), and the San Mateo County Transit District ("SamTrans") (collectively referred to herein as "Member Agencies").

RECITALS

WHEREAS, in 1988, SCCTD, CCSF and SamTrans entered into a Joint Powers Agreement (the "1988 Agreement") creating the Peninsula Corridor Study Joint Powers Board ("JPB") pursuant to Title 1, Division 7, Chapter 5, Article I (§6500 et seq.) of the California Government Code, for the purpose of conducting planning studies related to the Peninsula Commute Service ("PCS"); and

WHEREAS, based upon the planning studies and other activities conducted by the JPB, including, among other things, the negotiation of an agreement to acquire the full corridor right-of-way owned by Southern Pacific Transportation needed for operation and future expansion of the PCS, the parties determined that it would be beneficial to residents of their respective counties that the purposes and powers of the JPB be expanded to enable the JPB to plan, oversee and operate the PCS following

transfer of the system assets from the State of California to local control; and

WHEREAS, such planning, oversight, and operation of the PCS required the maintenance and improvement of the Southern Pacific Right of Way and related system assets, as well as the application for and obtainment of State and federal funding; and

WHEREAS, in 1991 SCCTD, CCSF and SamTrans amended and restated in its entirety the 1988 Joint Powers Agreement to reflect their expanded objectives and executed a Joint Powers Agreement dated August 18, 1991 ("1991 Agreement"); and

WHEREAS, the 1991 Agreement provided for the allocation among the parties of the administrative, capital and operating expenses attendant to ownership of the Peninsula Corridor right-of-way ("ROW") and operation of the PCS; and

WHEREAS, pursuant to an Amendment adopted on November 3, 1994, the JPB amended the 1991 Agreement to modify the basis for allocation of administrative and capital costs among the parties and to effect certain other related changes to the 1991 Agreement ("1994 Amendment"); and

WHEREAS, SCTVA has proposed further revisions to the 1991 Agreement pertaining to SCTVA's powers to appoint representatives to the JPB; and

WHEREAS, the parties now desire to restate the 1991 Agreement as amended by the 1994 Amendment to include SCTVA's proposed revisions.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Section 1. DEFINITIONS

The terms defined in this section shall for all purposes of this Agreement have the meanings specified herein.

"Agreement" means this Joint Powers Agreement as it now exists or as it may hereafter be amended.

"Gilroy Service" means the PCS Service between the Tamien Station in San Jose and Gilroy.

"Local Funds" means funds generated by a Member Agency or allocated to a Member Agency by another agency on a non-discretionary basis.

"Main Line Service" means the PCS service between the City and County of San Francisco and the Tamien Station in San Jose.

"Project" means (a) the maintenance and improvement of the ROW, (b) the planning, administration, operation and expansion of the PCS, including the Gilroy Service that will be run on the ROW, and (c) the application for and obtainment of State and federal funding to achieve the aforesaid Project objectives.

Section 2. PURPOSE

The purpose of the Agreement is to establish an organization that shall be responsible for implementing the objectives of the Project and related actions pertaining to the PCS.

Section 3. TERM

This Agreement shall be effective upon execution of this Agreement by all parties.

Upon becoming effective, this Agreement shall continue in full force and effect for ten (10) years from the October 18, 1991 execution of the Joint Powers Agreement, subject, however, to each party's right to withdraw upon one (1) year's prior written notice given to the other parties at the end of any fiscal year in the manner prescribed in Section 19 below. At the end of ten (10) years, this Agreement shall continue in full force and effect on a year-to-year basis until such time as two or more parties withdraw pursuant to the terms of Section 12 below.

Section 4. JOINT POWERS BOARD

There is hereby created the JPB as a public entity separate and apart from CCSF, SCVTA and SamTrans, or any current combination thereof. This new entity shall be known as the Peninsula Corridor Joint Powers Board. The Board shall consist of nine (9) members representing their respective Member Agencies as follows:

A. Representing SamTrans

1. Member of SamTrans Board designated by Board;
2. Member of SamTrans Board appointed by San Mateo County Board of Supervisors; and

3. Member of SamTrans Board appointed by the Cities Selection Committee of the Council of Mayors of San Mateo County.

B. Representing the Santa Clara Valley Transportation Authority

1. Member of SCVTA Board of Directors representing the City of San Jose or the County of Santa Clara, as appointed by the SCVTA Board;

2. Member of SCVTA Board of Directors representing the County of Santa Clara or a city in Santa Clara County other than the City of San Jose, as appointed by the SCVTA Board; and

3. The County of Santa Clara's representative to the Metropolitan Transportation Commission ("MTC"), or if this person declines to serve, then the MTC appointee of the Cities Selection Committee, or if this person also declines to serve, then a member of the SCVTA Board of Directors as appointed by the SCVTA Board.

No more than two members of the County of Santa Clara Board of Supervisors may serve on the JPB Board at the same time.

C. Representing the City and County of San Francisco

1. An appointment of the Mayor;
2. An appointment of the Board of Supervisors;

and

3. An appointment of the San Francisco Public Transportation Commission.

Each of the nine (9) members shall serve in his or her individual capacity, but at the pleasure of the party appointing him or her.

Section 5. POWERS OF THE JPB

The JPB shall be the policy-making body for the Project and shall have all such powers to implement the Project as may be exercised under applicable laws by joint powers agencies. The JPB hereby is authorized, in its own name, to do all acts deemed necessary or convenient for the exercise of said power, including, but not limited to, any or all of the following: to make and enter into contracts; to acquire, own, and maintain real and personal property; to employ agents and employees; to incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of the State, CCSF, SamTrans, or SCVTA; to sue and be sued in its own name; and to apply for, receive, and utilize State, local, and Federal funding and funds from all other sources given to it for the purpose of accomplishing the Project. Without limiting the generality of the foregoing, the JPB shall:

A. Approve short-range plans for PCS.

B. Approve by March 31 of each year the annual PCS operating budget, subject to the approval of the governing board of each Member Agency.

C. Approve the annual capital budget by March 31 of each year, and approve other proposed actions pertaining to the level of service, changes in service schedules that add or delete

service to or from a station, fares, and capital improvement programs.

D. Commit Proposition 116 Funds earmarked for the JPB to specific capital projects approved in the capital budget without the approval of the Member Agency governing boards. Approve all other specific capital projects requiring use of Local Funds, subject to the approval of the Member Agency governing boards.

E. Concur in the award by the Managing Agency of the operating contract for the PCS.

F. Advise, review and make recommendations to the Managing Agency regarding the following:

1. marketing programs;
2. financial reports;
3. other reports for public distribution;
4. interagency cooperation; and
5. management plan.

G. Award a contract to perform an independent audit of the financial condition of the JPB.

Pursuant to Government Code Section 6509, the power of the JPB is subject to the restrictions upon the manner of exercising the power of SamTrans.

Section 6. MANAGING AGENCY; DELEGATION OF AUTHORITY

A. The JPB shall appoint a managing agency ("Managing Agency") to implement the objectives of the Project.

B. SamTrans hereby is appointed as Managing Agency for the duration of the term, provided, however, that the JPB may replace SamTrans as the Managing Agency upon one (1) year's prior written notice given at the end of any fiscal year after SamTrans has been fully repaid monies advanced by it to cover the ROW purchase price.

C. The Managing Agency shall be delegated the following authority and required to perform the following responsibilities:

(i) Award the operating contract for the PCS, subject to the concurrence of the JPB as provided in Section 5 above, and administer and modify said contract consistent with the JPB's operating budget;

(ii) Maintain and manage the ROW and other system assets unless the administration of particular station sites is delegated by the JPB to an individual Member Agency.

(iii) Implement capital programs contained in the approved PCS capital budget unless the administration of particular capital projects is delegated by the JPB to an individual Member Agency;

(iv) Seek, obtain and administer grants;

(v) Develop and implement marketing programs;

(vi) Prepare and submit financial reports;

(vii) Recommend changes in fare structure to the

JPB;

(viii) Recommend changes in scheduling and levels of service to the JPB;

(ix) Prepare and implement changes in scheduling other than those requiring the approval of the JPB as provided in Section 5(C) above.

(x) Prepare capital and operating budgets for presentation to the JPB;

(xi) Keep staff of Member Agencies advised on PCS matters; and

(xii) Report regularly to the JPB regarding PCS issues.

Section 7. FINANCIAL COMMITMENTS

A. Operations

Each Member Agency agrees to share in the operating costs associated with the PCS. Member Agency subsidies for the Main Line Service shall be based on the existing passenger boarding formula which is predicated upon county of origin a.m. peak hour boardings of passengers as adjusted annually prior to the JPB's adoption of the operating budget. SCVTA shall be responsible for all net operating costs of the Gilroy Service based upon the fully allocated cost methodology.

B. Capital Projects

The JPB and the Member Agencies shall use their best efforts to fully fund from state, Federal and JPB Proposition 116 resources, capital projects contained in the approved capital budget. If approved by Member Agencies pursuant to Section 5(D),

Member Agencies shall share in the remaining costs of capital projects according to the following guidelines: Proposed capital projects shall be categorized in the capital-program process as being designed to replace, enhance or expand PCS assets. Costs of capital replacement and enhancement projects that are not covered by outside funding sources shall be shared equally by the Member Agencies. Furthermore, Member Agencies shall support the equal sharing of Federal funding for replacement and enhancement projects with the understanding that the method for allocating the Federal funds will be reviewed by the Metropolitan Transportation Commission Regional Transit Coordinating Council Finance Committee. Cost allocation among the JPB members for expansion projects such as the downtown terminal relocation, the Gilroy Service and the Bayshore Corridor Service shall be determined on a case-by-case basis. SCVTA shall assume full responsibility for obtaining funding for all Gilroy Service capital projects.

In addition to the costs for capital projects to be shared by the Member Agencies as provided in this Section 7.B, on an annual basis the JPB shall determine an amount to be contributed by the Member Agencies into a capital contingency fund to cover unanticipated, necessary capital improvements. Each Member Agency shall contribute an equal share of this capital contingency fund.

C. JPB Administrative Costs

Expenses for personnel and resources of the Managing Agency to administer the affairs of the JPB, including the administration of the operating contract, shall be shared by the Member Agencies based on the a.m. boarding formula as provided in Section 7.A above.

D. Procedures for Making Monthly Contributions.

(i) Operational Subsidies. Operational subsidies shall be paid monthly in advance by each Member Agency to the Managing Agency in accordance with procedures to be enacted by the JPB.

(ii) Capital Contributions. Commitments by Member Agency governing boards to provide Local Funds for a particular capital project shall be obtained prior to the filing of grant applications for each said project. Actual contributions shall be paid as and when they are due and owing. All contributions to the capital contingency fund provided in Section 7.B above shall be delivered to the Managing Agency within sixty (60) days of the JPB's determination of the amount to be funded.

(iii) JPB Administrative Costs. Administrative costs of the JPB shall be billed by the Managing Agency and paid by the Member Agencies on a monthly basis.

(iv) Late Payments. Member Agencies who fail to pay or who are delinquent in any financial commitment hereunder shall be assessed interest charges based on the Managing Agency's average rate of return on its investment portfolio.

E. Duration.

All allocations of expenses and costs established in this Section 7 shall be subject to re-evaluation during the JPB's 1998-1999 fiscal year. Any changes made as a result of this re-evaluation shall become effective during the fiscal year 1999-2000. In the event any allocation method is hereafter revised, any capital projects in progress at the time of the revision shall be carried to completion using the allocation methods in place at the time of the award of the construction/procurement contract for the capital project.

F. Covenant.

Each Member Agency hereby affirmatively covenants to the other Member Agencies henceforth to pay any and all financial obligations to the JPB promptly as and when such obligations become due and owing to the JPB as provided in Section 7 or otherwise in this Agreement.

G. Obligations of the City and County of San Francisco.

CCSF shall pay to the Managing Agency CCSF's portion of the JPB start-up costs in the amount of \$557,485.00, plus interest at the rate of seven percent (7%) per annum in accordance with the schedule of payments contained in Exhibit "A" attached hereto and incorporated herein by this reference. CCSF shall have the right to prepay its outstanding obligation, including accrued interest, at any time. In consideration for the foregoing, and provided that CCSF makes the payments provided

for in Schedule A on a timely basis, the JPB shall waive its right to receive from CCSF interest on late payments made by CCSF for fiscal year 1993-94 financial obligations, The CCSF Board of Supervisors' representative on the JPB shall introduce legislation to approve CCSF's payment of the amounts referenced in this Paragraph 4, as well as to approve all other revisions of the 1991 Agreement contained in this Agreement, within sixty (60) days following JPB's action approving the 1994 Amendment to the 1991 Agreement. This Agreement is subject to the budget and fiscal provisions of the Charter of CCSF. Charges will accrue only after appropriation of funds by CCSF's Board of Supervisors and after prior written authorization certified by CCSF's Controller, and the amount of CCSF's obligation hereunder shall not at any time exceed the amount appropriated and certified for the purpose and period stated in such advance authorization.

Section 8. MEETINGS OF THE JPB

A. Regular and Special Meetings.

The JPB shall hold at least one (1) regular meeting each month. The date, hour and place of said regular meetings shall be fixed by resolution of the JPB. The Managing Agency may call a special meeting of the JPB by providing written or telephone notice to each member of the JPB at least 72 hours prior to the date of said special meeting, which said notice shall specify the purpose for said meeting.

B. Conduct of Meetings

All meetings of the JPB shall be held subject to the provisions of Section 54950 et seq. of the Government Code of the State of California.

C. Minutes

The Secretary shall cause minutes of all meetings of the JPB to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Member of the JPB.

D. Quorum

A majority of the members of the JPB shall constitute a quorum for the transaction of business. No action may be taken by the JPB except upon the affirmative vote of five or more of its members.

Section 9. BYLAWS

The JPB shall have the power to adopt such bylaws that it, in its sole discretion, may deem necessary or desirable for the conduct of its business.

Section 10. OFFICERS AND EMPLOYEES

A. The JPB shall elect annually a chairperson and a vice-chairperson from among its members. The JPB also shall appoint a secretary who may, but need not be, a member of the JPB.

B. The JPB shall designate its legal counsel.

C. The Managing Agency's General Manager shall be the Executive Director of the JPB.

D. The Finance Director of the Managing Agency shall be the treasurer of the JPB and shall have custody of all the moneys of the JPB from whatever source and shall perform the function of treasurer and have all the powers, duties, and responsibilities of said office as set forth in Government Code Section 6505.5.

E. The Finance Director of the Managing Agency shall act as controller of the JPB and shall perform the functions and have the powers, duties, and responsibilities of said office set forth in Government Code Section 6505.5. The controller shall draw warrants to pay demands against the Managing Agency or the JPB pursuant to authorization of the JPB.

F. The JPB shall designate such independent auditors as it deems appropriate for the purpose of reporting on the JPB's operations and its financial condition.

Section 12. WITHDRAWAL FROM AGENCY

Any party may withdraw from this Agreement upon one (1) year's prior written notice to the other parties given at the end of any fiscal year. Upon delivery of such a notice, the Member Agencies shall jointly request the Metropolitan Transportation Commission ("MTC") to mediate the issues giving rise to the withdrawal notice, and shall participate in such mediation if undertaken by the MTC. In addition, should a withdrawal result despite such mediation efforts, each Member Agency, including the withdrawing party, shall participate with MTC in a further mediated negotiation relative to disbursement of regional funds

to assure the remaining Member Agencies are not subject to undue financial hardship. In the event of such a withdrawal by a single party, the JPB shall continue to exist, with the membership adjusted to reflect the withdrawal. Withdrawal by a single party shall not entitle that party to reimbursement for past capital contributions or to distribution of any assets or funds of the JPB. If two or more of the parties to this Agreement withdraw, then this Agreement shall terminate at the end of the fiscal year following expiration of the one-year's notice given by the second party to withdraw from the Agreement, at which time the property and funds of the JPB shall be distributed to the Member Agencies pursuant to the terms of Section 13.

Section 13. DISPOSITION OF PROPERTY AND FUNDS

At such time as this Agreement is terminated, any property interest remaining in the JPB, following discharge of all obligations due by the Board, shall be disposed of and the proceeds or property shall be allocated in accordance with a separate agreement to be entered into between the parties.

Section 14. ACCOUNTS AND REPORTS

The JPB shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the JPB shall be open to inspection at all reasonable times to the parties to this Agreement and their representatives. The JPB, within one hundred twenty (120) days after the close of each fiscal year (which shall be the period

from July 1 of each year to and including the following June 30), shall give a complete written report of all financial activities for such fiscal year to the parties. The Controller shall prepare and maintain such accounts and reports.

Section 15. OBLIGATIONS OF THE JPB

The debts, liabilities and obligations of the JPB shall not be debts, liabilities and obligations of any of the parties to this Agreement unless and to the extent specifically provided by agreement in writing with any of such parties.

Section 16. INDEMNIFICATION

The JPB shall acquire such insurance protection as it deems necessary to protect the interests of the JPB, the parties to this Agreement and the public. The JPB shall assume the defense of and indemnify and save harmless each party to this Agreement and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the JPB not delegated to the Managing Agency or the activities of the JPB undertaken pursuant to this Agreement.

Section 17. AMENDMENTS

This Agreement may be amended at any time by agreement of all of the parties.

Section 18. ENTIRE AGREEMENT

This Agreement constitutes the entire Joint Powers Agreement among the parties, and supersedes any prior oral or

written understandings between them pertaining to the same subject matter, including, but not limited to, the 1988 Agreement, the 1991 Agreement and all amendments to these agreements.

Section 19. NOTICES

All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the second day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

CCSF: Public Transportation Commission
 949 Presidio Avenue
 San Francisco, CA 94115
 Attn: Director of Public Transportation

SamTrans: San Mateo County Transit District
 1245 San Carlos Drive
 San Carlos, California
 Attn: General Manager

SCCTD: Santa Clara Valley Transportation
 Authority
 3331 North First Street
 Bldg. C, 2nd Floor
 San Jose, California 95134-1906
 Attn: Assistant Executive Officer

Any party may change its address for purposes of this Section by giving the other parties written notice thereof in the manner set forth above.

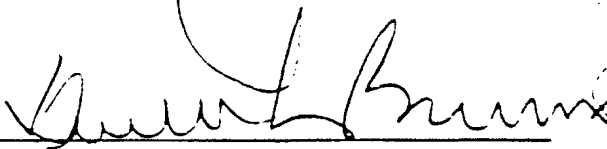
Section 20. COUNTERPARTS

This Agreement may be entered into in counterparts each of which shall be deemed an original, but all of which together shall be deemed an entire Agreement.

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

CITY AND COUNTY OF SAN FRANCISCO

By



MAYOR

APPROVED

PUBLIC TRANSPORTATION
COMMISSION

Resolution No. 96-136

Dated: Nov. 26, 1996

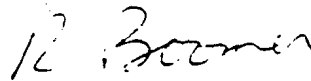
Approved as to Form and Legality
Louise H. Renne, City Attorney

ATTEST:

By



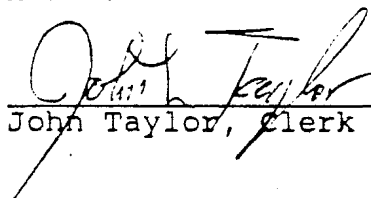
Deputy City Attorney



Secretary, PUBLIC
TRANSPORTATION COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
Ordinance No. 22-97

ATTEST:



John Taylor, Clerk

SANTA CLARA COUNTY TRANSIT DISTRICT

By Don H. Cipolla

Approved as to Form and Legality

By Gregory Miller
2/11 2007

SAN MATEO COUNTY TRANSIT DISTRICT

By [Signature]

Approved as to Form and Legality

By David Miller

RESOLUTION NO. 2000 – 2 /

**PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA**

**ADOPTION OF FISCAL YEAR 2000-2001 OPERATING BUDGET IN THE AMOUNT
OF \$63,031,120; CAPITAL CONTINGENCY FUND OF \$960,000; AND APPROVAL OF
FAREBOX CAPITAL FUND OF \$1,128,000**

WHEREAS, the Joint Powers Agreement requires approval of an operating budget each year; and

WHEREAS, the adoption of an operating budget is necessary for obtaining both Federal and State funds to support the Peninsula Commute Service operation; and

WHEREAS, the Executive Director has prepared and presented an operating budget for Fiscal Year 2001 in the amount of \$63,031,120, which sets forth the projected revenues and expenses associated with the Peninsula Commute Service; and

WHEREAS, following review and deliberation the Staff Coordinating Council has recommended adoption of the operating budget as presented by the Executive Director; and

WHEREAS, the Staff Coordinating Council also recommends approval of a Capital Contingency Fund of \$960,000 to cover infrastructure repairs and improvements along the right of way between San Francisco and Tamien Station in San Jose and of a Farebox Capital Fund of \$1,128,000 to generate local match funding for capital grants submitted in FY 2001; and

WHEREAS, amendments to the Joint Powers Agreement are being discussed which could change methods of allocating operating and capital formulas among member agencies, and affect terms of the agreement as presently stipulated.

NOW, THEREFORE, BE IT RESOLVED that the Peninsula Corridor Joint Powers Board approves the Fiscal Year 2001 operating budget for the Peninsula Corridor Joint Powers Board in the amount of \$63,031,120, and approves member agency apportionments according to an interim formula predicated upon a continuation of a.m. boardings as a method of apportioning costs, supplemented by (a) use of a five-year statistical average; and (b) incorporation of Gilroy service into Mainline operating costs for subsidy allocation purposes; and

BE IT FURTHER RESOLVED that said action creates no precedent for subsequent calculation of operating or capital shares which may be recommended by the Peninsula

Corridor Joint Powers Board associated with administration or operation of Caltrain rail service.

BE IT FURTHER RESOLVED that the Peninsula Corridor Joint Powers Board approves a Capital Contingency Fund of \$960,000 and a Farebox Capital Fund of \$1,128,000.

BE IT FURTHER RESOLVED that the Executive Director is requested to forward a copy of the Fiscal Year 2001 budget to member agencies of the Peninsula Corridor Joint Powers Board for approval at the earliest practicable date.

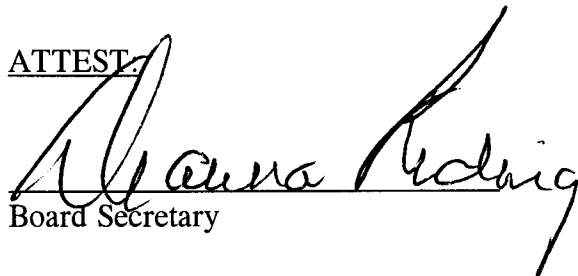
Regularly passed and adopted this 1st day of June 2000, by the following vote:

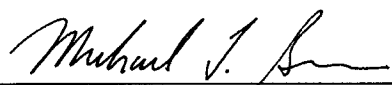
AYES: Ammiano, Lloyd, McLemore, Nevin, Powers, Schmidt, Burns

NOES:

ABSENT: Ayerdi, Valerio

ATTEST:


Board Secretary


Chair, Peninsula Corridor Joint
Powers Board

**PENINSULA CORRIDOR JOINT POWERS BOARD
BUDGET PROPOSAL
FY2001**

Expanded Level of Service (78 trains) No Fare Increase		(A) FY1999 YEAR ACTUAL	(B) FY2000 BUDGET	(C) PROJECTED FY2000 ACTUAL	(D) % INC (DEC) PROJ FY2000 to BUDGET (C-B) / B	(E) FY2001 REQUESTED BUDGET	(F) INC (DEC) REQUESTED to FY2000 BUD E - B	(G) % INC (DEC) BUDGET to BUDGET F / B	(H) % INC (DEC) PROJ FY2000 BUDGET to (E-C) / C	Line
REVENUE										
OPERATIONS:										
1	FAREBOX REVENUE (Net)	17,967,581	18,701,874	21,000,000	12.3%	23,006,700	4,304,826	23.0%	9.6%	1
2	PARKING REVENUE	965,024	906,000	900,000	(0.7%)	906,000	0	0.0%	0.7%	2
3	SHUTTLES (Including Peninsula Pass)	1,586,297	1,485,110	1,350,000	(9.1%)	1,485,100	(10)	(0.0%)	10.0%	3
4	RENTAL INCOME	802,677	792,000	900,000	13.6%	950,000	158,000	19.9%	5.6%	4
5	OTHER INCOME	1,009,461	720,400	2,698,000	274.5%	2,786,000	2,065,600	286.7%	3.3%	5
6										6
7	TOTAL REVENUE FROM OPERATIONS	22,331,040	22,605,384	26,848,000	18.8%	29,133,800	6,528,416	28.9%	8.5%	7
8										8
CONTRIBUTIONS:										
10	AB434 - PENINSULA FEEDER SHUTTLE	583,861	786,010	786,010	0.0%	815,000	28,990	3.7%	3.7%	10
11	FTA SECTION 8 PLANNING GRANT	69,475	41,500	41,500	0.0%	41,200	(300)	(0.7%)	(0.7%)	11
12	MEMBER AGENCY CONTRIBUTION	24,995,212	31,036,706	25,406,069	(18.1%)	32,781,920	1,745,214	5.6%	29.0%	12
13	PAC BELL PARK - MEMBER SUBSIDY	0	734,000	734,000	0.0%	259,200	(474,800)	(64.7%)	(64.7%)	13
14										14
15	TOTAL CONTRIBUTIONS & GRANTS	25,648,548	32,598,216	26,967,579	(17.3%)	33,897,320	1,299,104	4.0%	25.7%	15
16										16
17										17
18	TOTAL REVENUE	47,979,588	55,203,600	53,815,579	(2.5%)	63,031,120	7,827,520	14.2%	17.1%	18
19										19
EXPENSE										
OPERATING EXPENSE										
23	OPERATING AGREEMENT	30,654,902	36,093,600	35,305,000	(2.2%)	40,749,000	4,655,400	12.9%	15.4%	23
24	SHUTTLE SERVICE	4,316,945	4,590,900	4,633,500	0.9%	4,925,600	334,700	7.3%	6.3%	24
25	FUEL	2,398,172	3,036,700	3,455,000	13.8%	4,094,300	1,057,600	34.8%	18.5%	25
26	TIMETABLES & TICKETS	361,731	397,500	380,000	(4.4%)	455,000	57,500	14.5%	19.7%	26
27	INSURANCE	3,934,439	3,037,400	2,736,000	(9.9%)	3,408,000	370,600	12.2%	24.6%	27
28	JPB FACILITIES & EQUIPMENT MAINT.	254,245	1,302,300	909,600	(30.2%)	1,648,400	346,100	26.6%	81.2%	28
29	UTILITIES	528,005	616,300	557,400	(9.6%)	607,100	(9,200)	(1.5%)	8.9%	29
30										30
31	TOTAL OPERATING EXPENSE	42,448,439	49,074,700	47,976,500	(2.2%)	55,887,400	6,812,700	13.9%	16.5%	31
32										32
ADMINISTRATIVE EXPENSE										
34	WAGES & BENEFITS	2,027,455	2,133,900	2,138,929	0.2%	2,536,157	402,257	18.9%	18.6%	34
35	CONTRACTED OVERSIGHT SERVICE	68,992	60,000	57,161	(4.7%)	60,000	0	0.0%	5.0%	35
36	BOARD OF DIRECTORS	9,185	12,400	18,000	45.2%	35,000	22,600	182.3%	94.4%	36
37	PROFESSIONAL SERVICES	947,115	1,001,000	1,147,700	14.7%	1,389,000	388,000	38.8%	21.0%	37
38	OTHER EXPENSE & SERVICES	1,127,609	1,213,100	831,787	(31.4%)	1,386,150	173,050	14.3%	66.6%	38
39	MARKETING	340,793	428,500	365,502	(14.7%)	360,000	(68,500)	(16.0%)	(1.5%)	39
40										40
41	TOTAL ADMINISTRATIVE EXPENSE	4,521,149	4,848,900	4,559,079	(6.0%)	5,766,307	917,407	18.9%	26.5%	41
42										42
43										43
44	TOTAL OPERATING & ADMINISTRATIVE	46,969,588	53,923,600	52,535,579	(2.6%)	61,653,707	7,730,107	14.3%	17.4%	44
45										45
46	HEP DEBT SERVICE	0	270,000	270,000	0.0%	367,413	97,413	36.1%	36.1%	46
47										47
48	TOTAL EXPENSES	46,969,588	54,193,600	52,805,579	(2.6%)	62,021,120	7,827,520	14.4%	17.5%	48
49										49
50	MAINLINE CCF	960,000	960,000	960,000	0.0%	960,000	0	0.0%	0.0%	50
51	GILROY CCF	50,000	50,000	50,000	0.0%	50,000	0	0.0%	0.0%	51
52										52
53		1,010,000	1,010,000	1,010,000	0.0%	1,010,000	0	0.0%	0.0%	53
54										54
55	GRAND TOTAL	47,979,588	55,203,600	53,815,579	(2.5%)	63,031,120	7,827,520	14.2%	17.1%	55

**PENINSULA CORRIDOR JOINT POWERS BOARD
MEMBER AGENCY OPERATING AND CAPITAL CONTINGENCY FUND SHARES
5 YEAR ROLLING AVERAGE AND GILROY IN THE MAINLINE
FY2001**

	<u>SAN MATEO</u>	<u>SANTA CLARA</u>	<u>SAN FRANCISCO</u>	<u>TOTAL</u>
FY2000 Budget	12,659,331	12,130,510	5,236,865	30,026,706
Pacific Bell Park Service	244,667	244,667	244,666	734,000
Current FY2000 Share	<u>12,903,998</u>	<u>12,375,177</u>	<u>5,481,531</u>	<u>30,760,706</u>
FY2001 5 Year Average	43.20%	41.66%	15.14%	100.00%
FY2001 Budget Increase	753,933	727,056	264,225	1,745,214
Pacific Bell Park Increase	(158,267)	(158,267)	(158,266)	(474,800)
FY2001 Proposed Shares	<u>13,499,664</u>	<u>12,943,966</u>	<u>5,587,490</u>	<u>32,031,120</u>
Mainline Total	13,413,264	12,857,566	5,501,090	31,771,920
Pacific Bell Park Total	<u>86,400</u>	<u>86,400</u>	<u>86,400</u>	<u>259,200</u>
	<u>13,499,664</u>	<u>12,943,966</u>	<u>5,587,490</u>	<u>32,031,120</u>
Capital Contingency Fund	320,000	370,000	320,000	1,010,000
FY2001 Total	<u>13,819,664</u>	<u>13,313,966</u>	<u>5,907,490</u>	<u>33,041,120</u>
FY2000 Total	<u>13,223,998</u>	<u>12,745,177</u>	<u>5,801,531</u>	<u>31,770,706</u>
Percent Increase	4.50%	4.46%	1.83%	4.00%

Exhibit E: Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING BETWEEN THE PENINSULA CORRIDOR
JOINT POWERS BOARD, THE SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY, THE SAN MATEO COUNTY TRANSIT DISTRICT,
AND THE CITY AND COUNTY OF SAN FRANCISCO**

This Memorandum of Understanding (“MOU”) is entered into by and among the Peninsula Corridor Joint Powers Board (“JPB”), the Santa Clara Valley Transportation Authority (“VTA”), the San Mateo County Transportation District (“SMCTD”), and the City and County of San Francisco (“CCSF”) on this 5th day of August, 2022 (the “Effective Date”).

RECITALS

- A. Previous Agreements.** VTA, SMCTD, and CCSF are member agencies (“Member Agencies”) of the JPB, which is governed by an amended and restated joint exercise of powers agreement (“JPA”), dated October 3, 1996. The JPB, VTA, SMCTD, and CCSF (together the “Parties”) are also parties to a Real Property Ownership Agreement (“RPOA”), dated December 24, 1991, and an Amendment to Real Property Ownership Agreement (“2008 RPOA”), dated October 31, 2008.
- B. Affirmation of Intent to Address Resolution 2020-42.** JPB Resolution 2020-42 contemplated that the JPB would recommend governance changes to the Member Agencies, including enabling a majority of the JPB to appoint its own Executive Director and providing for the reimbursement of SMCTD for its investment in Caltrain. The resolution further provided that the expenditure of more than \$40 million annually from Measure RR revenues would be subject to a two-thirds majority vote requirement until such time as the JPA has been amended to modify the JPB’s governance structure in a manner satisfactory to the three Member Agencies. This Memorandum of Understanding (“MOU” or “Agreement”) provides a pathway and timeline for consideration of amendments to the JPA that conform with this Agreement, address conflicts between the JPA and RPOA, resolve ambiguities, and codify certain current practices that are inconsistent with the JPA. Upon adoption of an amended JPA, the two-thirds vote requirement established in Resolution 2020-42 will be repealed.
- C. Affirmation of SMCTD as the Managing Agency for Caltrain.** SMCTD shall remain as the Managing Agency for Caltrain, as modified by the terms of this Agreement.
- D. Affirmation Regarding Effect of Repayment of Outstanding Balance to SMCTD under 2008 RPOA.** Upon payment in a non-credit form of the outstanding balance of \$19.8 million owed to SMCTD under the 2008 RPOA: (1) SMCTD shall reconvey its tenancy in common interest in the ROW to the JPB; (2) SMCTD’s equity conversion interest and right to approve real property transactions under the RPOA, except as provided in this Agreement, shall be extinguished; and (3) SMCTD shall be deemed to have released any claim that it may have against VTA and CCSF under the RPOA and 2008 RPOA for SMCTD’s payment of the Additional Contribution.
- E. Additional Payment by CCSF and VTA.** CCSF and VTA shall pay \$15.2 million to SMCTD within twelve (12) months of the Effective Date of this Agreement. Such

payment is to account for the delay in payment of the outstanding amount owed under the 2008 RPOA and SMCTD's agreement to assign certain rights as Managing Agency to the JPB.

- F. Affirmation of JPB Appointment of General Counsel and Auditor.** As of 2021, the JPB has appointed, and will maintain, both its own general counsel and auditor separate from those of any of the Member Agencies.
- G. Affirmation of Rail Service Provider Contract.** This Agreement does not alter the ongoing contractual relationship between the JPB and its selected Rail Service Provider whereby the contractor maintains responsibility for providing the JPB with rail operations, maintenance and support services that include administration/safety; operations and dispatch; maintenance of equipment, track, communications and signals, and stations; construction support; and state of good repair.
- H. Statement Related to Regional Governance.** This Agreement does not preclude JPB's ongoing participation in processes related to potential regional governance changes, including the consideration of recommendations forthcoming from the Network Management Business Case and/or Regional Rail study. Further, the JPB commits to work with stakeholders, including the Metropolitan Transportation Commission ("MTC"), to develop a timeline for expeditious consideration of regional governance recommendations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree to the following:

1. Caltrain Executive Director.

- A. A separate, permanent Caltrain Executive Director position ("Caltrain ED") is hereby established. Although this position shall remain as an SMCTD employee, the Caltrain ED shall exclusively report to, and take direction from, the JPB.
- B. The JPB shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the Caltrain ED position.
- C. The appointment and termination of the Caltrain ED shall be subject to a simple majority vote of five members of the JPB, provided that the majority consists of at least one Director appointed from each county.

2. Staff Reporting.

- A. The following functions, which are currently included as "direct services" within the existing Rail Division, shall report to the Caltrain ED. The Caltrain ED, as authorized by the JPB, shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of employees

providing these functions, subject only to SMCTD's salary ordinance and employee manual and policies:

- i. Rail Operations and Maintenance, which shall include management, oversight, and operational direction of the operations and maintenance activities of TransitAmerica Services Inc. ("TASI") (and any successor contractor for operating the Peninsula Commute Service) as well as management of other aspects of the customer interface in coordination with the communications and marketing group;
 - ii. Rail Planning, which shall include service planning, capital planning, transit-oriented development planning and policy development for Caltrain;
 - iii. Rail Contracts and Budgets, which shall include management of the TASI contract (and any successor contract for operating the Peninsula Commute Service) and other on-call contracts supporting the Rail Division;
 - iv. Rail Development, which shall include capital program management, capital program delivery, engineering, and quality assurance/quality control for Caltrain; and
 - v. The Peninsula Corridor Electrification Project ("PCEP") and the Caltrain Modernization Project ("CalMod") programs.
- B. The following positions, or equivalent positions, shall be added as "direct services" reporting to the Caltrain ED as described below, and the individuals holding these positions shall not serve in a similar role for SMCTD. The Caltrain ED, as authorized by the JPB, shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the individuals holding these positions, subject only to SMCTD's salary ordinance and employee manual and policies:
- i. Chief of Staff. This position shall provide executive administrative support to the Caltrain ED, may oversee positions within the Rail Division as determined by the Caltrain ED, and may assist the Caltrain ED in managing the relationship with SMCTD shared services;
 - ii. Director of Government and Community Affairs. This position shall provide direction, policy guidance, and strategy on all government and external affairs matters related to Caltrain, and shall determine the Caltrain work plan for Communications (as pertinent to external affairs only) and coordinate with the SMCTD Communications Chief to implement the direction of the JPB and the Caltrain ED;

- iii. Director of Budgets and Financial Analysis. This position shall provide direction, policy guidance, and strategy on all financial analysis and budgeting matters related to Caltrain, and shall determine the Caltrain work plan for finance and budgets and coordinate with the SMCTD CFO to implement the direction of the JPB and the Caltrain ED;
 - iv. Director of Real Estate. This position shall provide direction, policy guidance, and strategy on all real estate transactions pertaining to Caltrain, and shall determine the Caltrain work plan for real estate and coordinate with the SMCTD Real Estate Director and/or Chief of Planning, Grants, and Transportation Authority to implement the direction of the JPB and the Caltrain ED; and
 - v. Director of Grants and Funds Management. This position shall provide direction, policy guidance, and strategy on the pursuit and management of all grants and public funding sources of interest to Caltrain, and shall determine the Caltrain work plan for grants and coordinate with the SMCTD Director of Grants and Fund Management, and /or Chief of Planning, Grants and the Transportation Authority to implement the direction of the JPB and the Caltrain ED.
- C. The following functions shall continue as fully shared services under the direction of the SMCTD General Manager and in coordination with the Caltrain ED:
 - i. Human Resources;
 - ii. Contracts and Procurement;
 - iii. Information Technology;
 - iv. Civil Rights;
 - v. Marketing and Customer Service; and
 - vi. Accounting and Treasury.
- D. The following functions shall continue as partially shared services with policy level direction provided by direct Caltrain positions listed in Subsection 2.B, above, but shall remain under the overall direction of the SMCTD General Manager in coordination with the Caltrain ED:
 - i. Communications, Government and External Affairs;
 - ii. Finance and Budgets;
 - iii. Real Estate; and

iv. Grants.

- E. The role of the managing agency shall be to support the JPB through the employment of all staff directly supporting the railroad and the Caltrain ED and through the provision of fully or partially shared services in the areas of Human Resources, Contracts and Procurements, Information Technology, Civil Rights, Accounting, Treasury, Budgets, Finance, Communications, Government and External Affairs, Real Estate and Grants.
- F. With the exception of the direct report positions identified in Subsection 2.B, above, the JPB shall not have the authority to replace a function currently being performed through partially and fully shared services, as set forth in Subsections 2.C and 2.D above, with a direct report, unless SMCTD and the JPB mutually agree to the change, provided that such agreement shall not be unreasonably withheld by either party.
- G. The JPB and SMCTD shall negotiate and execute an agreement that governs the provision of partially and fully shared services, as set forth in Subsections 2.C and 2.D, above. The agreement shall define the scope of partially and fully shared services and how those services will be periodically evaluated and adjusted by mutual agreement. The current arrangement and practices relating to shared services and cost allocation under the internal cost allocation plan (ICAP) in effect as of January 1, 2022, shall only be changed through the negotiated process set forth in this Subsection, unless required by an internal cost allocation plan (ICAP) prepared by SMCTD's consultant and by SMCTD's Cognizant Agency (FTA, Region 9). The JPB and SMCTD agree that they will not unreasonably withhold their consent to a shared services agreement or any subsequent amendment thereto, and will execute a final agreement no later than three (3) months after the payment of \$15.2 million into an escrow account as set forth in Subsection 3.B, below, provided, however, that failure to meet that deadline shall not be grounds for voiding this Agreement.
- H. The JPB shall document the assets owned by the JPB, no later than three (3) months after payment of \$15.2 million into an escrow account as set forth in Subsection 3.B, below, provided, however, that failure to meet that deadline shall not be grounds for voiding this Agreement. The Member Agencies will provide documents related to the assets to the JPB upon request.

3. Right of Way Repayment.

- A. MTC and CCSF have agreed to pay SMCTD \$19.6 million and \$200,000, respectively, for the outstanding balance owed pursuant to the 2008 RPOA. On April 18, 2022, CCSF paid SMCTD the \$200,000 it agreed to pay, and SMCTD acknowledges receipt of that amount and that CCSF has satisfied its obligation

under this Subsection. MTC shall make the remaining \$19.6 million payment forthwith. Upon SMCTD receiving full payment of the remaining \$19.6 million payment from MTC:

- i. SMCTD shall reconvey all of its interest in title to the ROW as set forth in Section 4.1 of the RPOA;
 - ii. SMCTD's equity conversion interest as set forth in Section 7 of the RPOA and its rights to approve real property transactions set forth in Section 8 of the RPOA, except as provided in Subsection 3.D, below, shall be extinguished;
 - iii. All ownership of the ROW shall vest with the JPB, which shall have sole authority over the management, acquisition, and disposition of real property, except as provided in Subsection 3.D, below;
 - iv. SMCTD shall be deemed to have released any claim that it may have against CCSF and VTA under the RPOA and 2008 RPOA for SMCTD's payment of the Additional Contribution, which release shall be documented in a form acceptable to CCSF and VTA.
- B. Within twelve (12) months of execution of this Agreement, CCSF and VTA shall pay SMCTD \$6,080,000 and \$9,120,000, respectively, to compensate SMCTD for the delay in payment of the outstanding balance owed pursuant to the 2008 RPOA and for SMCTD's agreement to assign certain rights as Managing Agency to the JPB. Payment shall be made into an escrow account established by the JPB and the funds shall be disbursed to SMCTD, without further action by SMCTD, upon satisfaction of the conditions specified in Subsection 3.C, below.
- C. The funds in the escrow account shall be disbursed to SMCTD upon: (1) receipt in the escrow account of all of the payments set forth in Subsection 3.B, above; and (2) SMCTD's receipt of \$19.6 million from MTC as set forth in Subsection 3.A., above, or its written acknowledgement that MTC has satisfied its commitment to pay \$19.6 million as set forth in Subsection 3.A.
- D. The JPB shall not sell, transfer, convey, or otherwise dispose of all or substantially all of its interest in the ROW without the written approval of all three member agencies.

4. Reversion.

- A. If the payments required by Subsection 3.B have not been received in the escrow account within twelve (12) months of the execution of this Agreement, the

Managing Agency arrangement, as modified pursuant to Sections 1 and 2, above, and the parties' indemnification obligations, as modified pursuant to Section 6 below, will revert to the written terms of the JPA, the RPOA and 2008 RPOA. In addition, Section 5 shall be void, except that Section 5.A.i, 5.B.i and iii as to the negotiating of the RPOA shall remain, and Section 5.A.i, 5.B.ii and iii, shall remain as to the negotiating of the JPA but only as necessary to implement Section 3.A. Once the funds in the escrow account are disbursed to SMCTD pursuant to Subsection 3.C, this clause shall be void.

- B. The parties acknowledge the existence of Resolution 2020-42 which is described in Recital B of this MOU.

5. Future Amendment of RPOA and JPA.

- A. The parties agree to negotiate amendments to the JPA, the RPOA, and the 2008 RPOA (together the "Agreements") as necessary to accomplish the following:
 - i. Conform the Agreements with the terms of this MOU, which shall take precedence over any conflicting terms of the Agreements;
 - ii. Resolve inconsistencies among the Agreements;
 - iii. Clarify ambiguities in the Agreements; and
 - iv. Codify certain current practices that are inconsistent with the JPA.

The changes made to the Agreements shall be limited to accomplishing the above-mentioned purposes and this Section shall not constitute an opportunity to re-negotiate the Agreements in their entirety.

- B. Timeline.
 - i. Within two (2) months of execution of this Agreement, the JPB shall draft revisions to the RPOA, as amended by the 2008 RPOA (the "Revised RPOA"), for the purpose of making the changes identified in Section 5.A, above, and circulate the Revised RPOA to counsel for the Member Agencies to obtain their input. Counsel for the Member Agencies shall provide their comments on the Revised RPOA to the JPB within 30 days of receiving the Revised RPOA. The Revised RPOA shall be finalized within 30 days of the JPB receiving comments from the Member Agencies, and shall be presented for approval to the JPB and each Member Agency board at the Agency's next regularly scheduled meeting following the payment of funds from MTC to SMCTD.

- ii. Within two (2) months of approval of the Revised RPOA, the JPB shall develop a draft revision to JPA (the “Revised JPA”), for the purpose of making the changes identified in Section 5.A, above, and circulate the Revised JPA to counsel for the Member Agencies to obtain their input. Counsel for the Member Agencies shall provide their comments on the Revised JPA to the JPB within two (2) months of receiving the Revised JPA. The Revised JPA shall be finalized within two (2) months of receipt of Member Agency comments by the JPB and shall be presented to each Member Agency board at an agency’s next regularly scheduled meeting after the draft Revised JPA has been finalized.
- iii. The parties agree to cooperate in good faith and meet the deadlines set forth above, provided, however, that failure to meet these deadlines shall not constitute grounds to terminate this Agreement. This Agreement shall remain in effect and shall take precedence over conflicting provisions of the JPA and RPOA until both the Revised RPOA and Revised JPA are approved and executed by all member agencies.
- iv. Upon approval of the Revised RPOA by the Parties and the Revised JPA by each Member Agency, the super-majority vote requirement in JPB Resolution No. 2020-42 shall be deemed repealed.

6. Indemnification.

- A. The JPB shall defend, indemnify, and hold harmless SMCTD and its respective directors, officers, employees and agents, and its successors and assigns from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from (i) SMCTD’s performance of functions undertaken or directed by JPB direct reports set forth in Sections 1, 2.A and 2.B, above, or SMCTD’s performance of functions directed by the JPB or its Executive Director as set forth in Sections 2.C and 2.D; and (ii) JPB’s negligence, recklessness, or willful misconduct. The only exception to these provisions is that JPB’s obligations under this subsection shall not apply to the extent that the claims, losses, damages, costs, injury or liability arise from or are caused by SMCTD’s gross negligence, willful misconduct, or fraud. The JPB shall select counsel of its choice to defend SMCTD, and SMCTD is authorized to approve such counsel, such approval not to be unreasonably withheld.
- B. SMCTD shall defend, indemnify, and hold harmless the JPB and its respective directors, officers, and agents, and the successors and assigns from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from (i) SMCTD’s provision of shared services set forth in Sections 2.C and 2.D, above, not otherwise directed by the JPB, its Executive Director or JPB’s direct reports; and (ii) SMCTD’s negligence, recklessness, or willful misconduct. The only exception to these provisions is that SMCTD’s obligations under this subsection shall not apply to the extent that the claims, losses, damages, costs, injury, or liability arise from or are caused by

JPB's gross negligence, willful misconduct, or fraud. SMCTD shall select counsel of its choice to defend the JPB, and JPB is authorized to approve such counsel, such approval not to be unreasonably withheld.

- C. Except as provided in Subsections 6.A and 6.B above, JPB shall indemnify Member Agencies for activities undertaken by the JPB as provided in Section 16 of the JPA.
7. **Attorneys' Fees and Costs.** Each party to this Agreement shall bear its own costs in connection with negotiating, drafting, and approving this Agreement, the Revised RPOA, and the Revised JPA.
8. **Term of Agreement.** This Agreement shall remain in effect until such time as the Member Agencies either (1) approve both a Revised RPOA and Revised JPA, or (2) the Member Agencies and JPB mutually agree to amend or terminate this Agreement.
9. **Terms of Agreement Prevail Over Existing Agreements.** To the extent a conflict exists among any provision of this Agreement and the JPA, RPOA, 2008 RPOA, or any other agreement among the parties, the provisions of this Agreement shall take precedence over any conflicting provisions of any other agreement as long as this Agreement remains in effect.
10. **Notices.** All notices, payments, requests, demands, and other communications to be or given under the MOU shall be in writing and shall be deemed to have been duly served given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail:

SMCTD: San Mateo County Transit District
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: General Manager

JPB: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: Executive Director

CCSF: San Francisco Municipal Transportation Agency
1 South Van Ness Ave., Floor 7
San Francisco, CA 94102
Attn: Director of Transportation

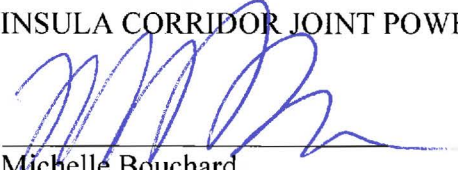
VTa: Santa Clara Valley Transportation District
3331 North First Street
San Jose, CA 95134
Attn: General Manager

In addition to the written notice required above, the parties agree to provide courtesy notice to all of the general managers and general counsels for the parties of such notice by email.

11. **Governing Law.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of California.
12. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns.
13. **Amendments.** This Agreement may be amended at any time and from time to time, provided such amendments are in writing and executed by all parties.
14. **Representation.** SMCTD, VTA, CCSF, and the JPB have each been represented by independent counsel with respect to the negotiations and approval of this Agreement.
15. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior oral or written understanding on the same subject.
16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall be deemed an entire Agreement.

In witness whereof the parties have entered into this Agreement on the date first written above with the intent to be legally bound.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: 

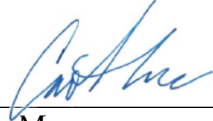
Michelle Bouchard
Acting Executive Director, JPB

Approved as to form by:

By: 

James C. Harrison
General Counsel, JPB

SAN MATEO COUNTY TRANSIT DISTRICT

By: 
Carter Mau
Acting General Manager

Approved as to form by:

By: 
Jim Wagstaffe
Special Counsel, SMCTD

SANTA CLARA VALLEY TRANSPORTATION DISTRICT

By: _____
Carolyn Gonot
General Manager, VTA

Approved as to form by:

By: _____
Evelynn Tran
General Counsel, VTA

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Jeffrey P. Tumlin
Director of Transportation
Municipal Transportation Agency

Approved as to form by:

By: _____
David F. Innis
Deputy City Attorney

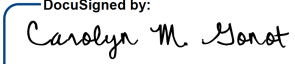
SAN MATEO COUNTY TRANSIT DISTRICT

By: _____
Carter Mau
Acting General Manager

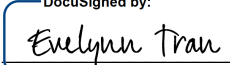
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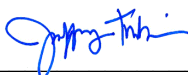
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