

C O U N C I L C O M M U N I C A T I O N

TO: THE CITY COUNCIL
FROM: THE CITY MANAGERS OFFICE

COUNCIL MEETING DATE
March 2, 1988

SUBJECT:

APPROVE AGREEMENT FOR REDESIGN OF C-BASIN, AND DISCUSS ADDITIONAL PROPERTY ACQUISITION AT THAT SITE.

PREPARED BY City Attorney

RECOMMENDED ACTION: The City go forward with the property acquisition of the 12 acres from the Kettelman family, and continue negotiations with Daryl Geweke regarding the City's concerns as it relates to the Agreement for the redesign of the "C" Basin.

BACKGROUND INFORMATION: It is my understanding that the City Council had concerns regarding the attached C-Basin Agreement when it was discussed at the City Council meeting of February 17, 1988. This concern was specifically regarding the increased cost of land acquisition and the increased cost of construction. I understand that the Council was requesting that Mr. Geweke agree to pay any of these increased costs.

In speaking with Mr. Geweke's representative, attorney Gerry Sperry, he has asked for an opportunity to address the Council on those issues. Mr. Sperry and I have talked over a period of time regarding those exact concerns, and Mr. Sperry suggested that his client was uncomfortable with agreeing to pay additional costs at this time, but that if at the time the Council decides to go through with the redesign, if his client refuses at that time to pay for the additional costs, then this Council would be under no obligation to construct the redesign. Mr. Sperry will be in attendance at the March 2, 1988 Council meeting to discuss this matter with Council-

Further, it is my understanding that Council was concerned about the agreement with the Kettelmans to purchase the property from the Kettelmans. To date, we actually have no written agreement, but an offer to purchase the property at the present \$26,500 per acre. What this Council must be aware of is that in the Agreement of Purchase and Sale and Escrow Instructions between the Kettelrnans and Mr. Geweke, Mr. Geweke is to buy the acreage which is left over after the City of Lodi purchases 10 (or 12) acres from Parcel #30.

On February 24, 1988, Glen Robison, Assistant City Engineer, received a letter (copy attached) from Robert Elliott, attorney for the Kettelmans, which letter put the City on notice that it had 30 days to either purchase the 10 (or 12) acres; otherwise the Kettelmans will withdraw their offer to sell the property to the City.

Respectfully submitted,



RONALD M. STEIN
City Attorney

RMS:vc

CBASIN/TXTA.01V

COPY

ROBERT H. ELLIOTT

LAW OFFICES
RINN & ELLIOTT
228 WEST PINE STREET
LODI, CALIFORNIA 95240
(209) 369-2781

OF COUNSEL
ROBERT H. RINN

February 24, 1988

G E Robison
Assistant City Engineer
City of Lodi
City Hall
Lodi CA 95240

Re: Estate of GERTRUDE M KETTELMAN, Deceased
Property Acquisition ~~For~~ C-1 Basin

Dear Mr Robison:

I would refer you to your letter of September 2, 1987 addressed to the undersigned concerning discussions had earlier with certain city officials regarding the acquisition of land to add to the existing park/basin at Beckman Road and Vine Street. Your said letter confirmed that the city was offering to purchase ten acres (Option A) for \$262,500 or twelve acres (Option B) for \$315,000. At that time I indicated that the Executors of the Estate of Gertrude M Kettelman and Orrin D Kettelman, in whom this property was vested were agreeable to selling to the city either parcel at \$26,260 per acre.

Since that time my clients have been waiting with some degree of patience for the city and Daryl Geweke to negotiate a possible change in area and design, Mr Geweke having certain rights of purchase in the property from my clients contingent upon a satisfactory redesign of the proposed park/basin.

Subsequently, and by letter of October 16, 1987, you put my clients on notice that the city had set a hearing for November 4, 1987, that the Council of the city intended to adopt a Resolution of Necessity regarding Eminent Domain, for acquisition of property owned by my clients based on a description of Option A. Nearly four months have elapsed since the hearing of November 4, at which hearing the Resolution of Necessity was not adopted, without any further word from the city to my clients. This delay is causing my clients substantial harm which is increasing with passing time. I wish to advise you that unless the city acts to adopt a Resolution of Necessity regarding Eminent Domain for either Option A, Option B, or an alternate 10-acre option mutually agreeable to the city and to Daryl Geweke, within thirty (30) days from today's date (and proceeds promptly thereafter to complete and pay for such

G E Robison
Assistant City Engineer
City of Lodi
February 24, 1988
Page Two

acquisition), my clients will withdraw their offer to sell the property to the city for the terms and price above mentioned. We have reason to believe that the value of the property has been increasing and we would intend thereafter to obtain a new appraisal. We also would be free to proceed with the consummation of the sale to Daryl Geweke of the entire property. In the event Mr Geweke no longer desires to proceed then my clients would feel free to negotiate with other parties who have contacted my clients evidencing an interest to acquire the property in question.

Since the property has been under threat of condemnation for many months now, my clients have been deprived of their opportunity to maximize the economic potential of the property. Accordingly and in order to minimize my client's damages, if the city does not desire to proceed as indicated above, a written notice from you of the city's refusal to condemn any portion of the property will be imperative in order to terminate this temporary taking and the damages arising therefrom. I would refer your city attorney to the doctrine established in somewhat recent United State Supreme Court cases on the subject of the liability of public agencies in connection with a temporary taking of property from private citizens for unreasonable periods of time.

For your information, and assuming that you do wish to proceed in a timely manner to acquire a portion of my client's property, I wish to advise you that the Estate of Gertrude M Kettelman, Deceased was distributed by order of the Superior Court of this County on February 3, 1988 and an undivided one-half interest in the property in question has been distributed to a Trustee, namely Theron R Kettelman, whom I also represent.

Yours very truly,

RINN & ELLIOTT

By


Robert R Elliott

RKE/ae

cc: Ronald M Stein, City Attorney
Theron R Kettelman
Gerald A Sperry

AGREEMENT

FGR THE REDESIGN OF C-BASIN

THIS AGREEMENT, made and entered into this ____ day of _____, 19___, by and between Daryl Geweke, hereinafter called Developer, and the CITY OF LODI, a municipal corporation of the State of California, hereinafter called City.

WITNESSETH:

1. On October 15, 1986, the Lodi City Council approved the master plan for the ultimate development of "C" Basin at the southeast corner of Vine Street and Beckman Road. Subsequent thereto, the City entered into negotiations with Orrin D. Kettelman and Estate of Gertrude M. Kettelman, hereinafter called Seller, for the purchase of certain real property, being a portion of Parcel 30, to be used for addition to C-Basin. A copy of the legal description of the proposed acquisition of a portion of said Parcel 30 of said Kettelman property is attached hereto as Exhibit A and incorporated herein by reference.

2. On or about June 22, 1987, Daryl Geweke entered into a purchase agreement with Orrin D. Kettelman and the Estate of Gertrude M. Kettelman, copy attached hereto as Exhibit B and incorporated herein by reference, for the purchase of three adjacent parcels of real property, Parcels #28, #29 and #30 lying to the north of Kettleman

Lane, east of Highway 99 and adjacent to Lodi City limits, which contract of sale recites on Page 1, paragraph 3 that "the City of Lodi is Contemplating condemning approximately 10 acres of said Parcel #30".

3. One of the conditions set forth in said June 22, 1987 agreement between Seller and Developer cited on Pages 1 and 2, paragraphs 1.1 and 1.2 was that the Developer was willing to purchase and Seller willing to sell all of said parcels, including the remaining portion of Parcel #30 which would remain if the City's condemnation took place, contingent upon the City's agreeing to a reconfiguration of the "C" Basin, and Paragraph 1.1 reads to wit:

"1.1 Buyer agrees to purchase and Seller agrees to sell all of said parcels including such portion of Parcel #30 which remains either after the condemnation by the City of Lodi or the City of Lodi's failure to condemn such real property within 2 years of the date of this agreement providing and on condition that the remainder of Parcel #30 is of rectangular shape and has a minimum curb frontage of 625 feet and a minimum depth of 600 feet."

4. At an adjourned regular City Council meeting held November 11, 1987, Gerald A. Sperry, attorney representative of Daryl Geweke, signatory herein, appeared before the Lodi City Council and asked the Council whether they would agree to change the configuration of the "C" Basin in order to permit Mr. Geweke to have a 600 foot property depth measured from Beckman Road. The City Council at that time and place approved the retaining, at Mr. Geweke's cost, of Consultant Richard A. Bigler to redesign the "C" Basin, in order to determine whether it would be possible to accommodate the above referred to desire of Mr.

Geweke, while at the same time, to continue to have the structures and facilities that were originally designed, to be constructed in the "C" Basin pursuant to the adopted Masterplan. A copy of the minutes of said November 11, 1987 meeting is attached hereto as Exhibit "C" and incorporated herein by reference.

5. Mr. Richard A. Bigler has submitted to City a proposal for the redesign of C-Basin which includes a schedule of fees. A copy of said proposal is attached hereto, marked Exhibit "D" and incorporated herein by reference.

NOW, THEREFORE, IN CONSIDERATION of these premises, the parties hereto agree as follows:

1. Developer shall reimburse City on a time and material basis for the costs of the redesign by Richard A. Bigler, of "C" Basin, consistent with the **fees** set forth in Exhibit "D" .

2. Developer shall pay for all staff time that is necessary in the redesign of "C" Basin, including but not limited to staff time in working with Richard A. Bigler and Daryl Geweke, as well as any additional staff time in preparing for and attending additional **pub7**ic meetings.

3. Developer shall pay for the City's acquisition agent's time for additional work with the Kettelmanns, the Kettelman's

attorney and/or new property owners if a new property owner should become involved during the redesigning phase of the "C" Basin.

4. Developer shall reimburse City for additional title reports and property appraisals as reasonably necessary in the redesign of "C" Basin.

5. Developer and City both agree that the City Council is under no legal obligation to actually accept and/or develop and/or construct a redesign of the "C" Basin.

6. Developer shall, within ten (10) days of the execution of this agreement, deposit with City the sum of SEVEN THOUSAND (\$7,000.00) DOLLARS. If Developer fails to deposit said sum, City shall be under no obligation to proceed with the redesign of C-Basin.

7. City shall provide a monthly accounting of all costs associated with the redesign of "C" Basin. Developer shall, within ten (10) days, approve said accounting which shall then become a charge upon and shall be deducted from the \$7,000.00 deposit. In the event said costs exceed the amount of deposit, Developer shall, upon written notification from City, deposit such additional sums, not to exceed FIVE THOUSAND (\$5,000.00) DOLLARS as may be reasonably necessary to complete the redesign of "C" Basin, including all costs included under this

agreement. In the event said costs exceeds the additional \$5,000.00, Developer shall, upon written notification from City, deposit such additional sums, not to exceed \$5,000.00 as may be reasonably necessary to complete the redesign of "C" Basin.

8. This agreement shall be binding upon the heirs, devisees, legatees, executors and administrators and assigns of the parties hereto.

9. Any and all amendments to this agreement must be in writing.

IN WITNESS WHEREOF, the parties hereto have set their hands and entered into this Agreement the day and year hereinabove first written.

CITY OF LODI, a municipal corporation

CITY

DEVELOPER

THOMAS A. PETERSON
City Manager

DARYL GEWEKE

ATTEST:

ALICE M. REIMCHE
City Clerk

Approved as to Form:

RONALD M. STEIN
City Attorney

AGRGEWEK/TXTA.01V

EXHIBIT A

LEGAL DESCRIPTION
PROPERTY LOCATED SOUTH OF VINE STREET
AND EAST OF BECKMAN ROAD WITHIN SAN JOAQUIN COUNTY

Being a portion of the south one-half of the north one-half of the southwest one-quarter of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the center of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, thence South 1-04' East, 668.4 feet along the east line of the southwest one-quarter section to the northeast corner of that Kettleman parcel shown in Volume 6, Page 284, Record of Surveys, San Joaquin County Records, and the True Point of Beginning, thence North 87-41' East, 1038.0 feet along the north line of the south one-half of the north one-half of said southwest one-quarter section, thence South 1-04' East, 420.0 feet, parallel with said east line, thence South 87-41' East, 1038.0 feet, parallel with said north line of said south one-half to said east line, thence North 1-04' West, 420.0 feet, along said east line to the True Point of Beginning.

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EXHIBIT B

CITY COUNCIL, CITY OF LODI
CITY HALL COUNCIL CHAMBERS
ADJOURNED REGULAR MEETING
WEDNESDAY, NOVEMBER 11, 1987
7:30 P.M.

The Adjourned Regular Meeting of the Lodi City Council was called to order by Mayor Evelyn Olson at 7:29 p.m.

City Clerk Reimche recorded the roll as follows:

ROLL CALL Present: Council Members - Hinchman, Pinkerton,
Reid, Snider and Olson (Mayor)

Absent: Council Members - None

Also Present: City Manager Peterson, Public Works
Director Ronsko, City Attorney Stein, and City Clerk Reimche

REVIEW OF C-BASIN City Manager Peterson reminded the Council that the matter
before the Council for discussion was the review of
CC-27(a) C-Basin. The following letter which, had been received
CC-27(c) from the Law Offices of Freeman and Brown who represent Mr.
Daryle Geweke was presented for Council review:

"Re: Park Basin "C"
Acquisition of Property
10 Acre Parcel

Dear Mayor and Council Members:

This office represents Mr. Daryle Geweke who is the purchaser, pursuant to a land sales contract, of three adjacent parcels of real property, Parcels #28, #29 and #30 lying to the north of Kettleman Lane, east of Highway 99 and adjacent to Lodi City limits belonging to Orrind D. Kettleman. Said contract of sale recites that "the city of Lodi is contemplating condemning approximately 10 acres of said parcel #30".

We have reviewed the Master Plan of Park Base "C" adopted by the City Council on October 15, 1986, and discussed the proposed acquisition of the portico of parcel #30 specifically, timing, configuration, use and damages.

Mr. Geweke has instructed us to attempt to minimize the adverse impacts the presently proposed acquisition would have on Parcel #30 while attempting to equitably accommodate the needs of the City of Lodi.

We subsequently contacted Mr. Ronald Stein, City Attorney, and inquired as to how soon the city needed the property, what methods were available to mitigate Mr. Geweke's damages and how could we work with the City of Lodi in the equitable resolution of these problems.

Mr. Stein advised that the City's department of Public Works wanted to proceed immediately with the acquisition of the property and the construction of the project; that as the plan had been adopted by the City Council, it could only be modified by the City Council; that we would therefore have to direct our concerns and proposals for mitigation to the City Council.

Will you please schedule this matter for discussion by the City Council as soon as mutually convenient. As resolution of these problems need to be explored through open

Continued November 11, 1987

- A) The Council does not necessarily want to change the present facilities configuration of the Master Plan but is willing to review an alternate plan.
- B) Consultant Richard Biegler is to provide the City with a time and cost proposal for the redesign.
- C) The City and Mr. Geweke will review and approve Mr. Biegler's proposal. Mr. Biegler will be retained by the City for the redesign and Mr. Geweke is to be responsible for all the involved costs.
- D) Mr. Biegler is to work on a time and material basis, not to exceed the amount of the proposal.
- E) City staff time involved in the redesign will be monitored and accounted for. Mr. Geweke is to reimburse the City for these costs.

The motion carried by the following vote:

Ayes: Council Members - Pinkerton, Reid, Snider,
and Olson (Mayor)

Noes: Council Members - Hinchman

Absent: Council Members - None

Council Member Hinchman indicated that he is concerned about a park facility being located behind a commercial facility and that he feels it is in the City's best interest to work with the original plan.

City Attorney Stein gave a status report on negotiations with the Kettleman family regarding property acquisition in the subject area.

ADJOURNMENT

There being no further business to come before the Council, Mayor Olson adjourned the meeting at approximately 8:20 p.m.

ATTEST:

Alice M. Reimche
Alice M. Reimche
City Clerk

AGREEMENT OF PURCHASE AND SALE

AND ESCROW INSTRUCTIONS

EXHIBIT C

THIS AGREEMENT, made this 22 day of June, 1987, by and between ORRIN D. KETTLEMAN and ESTATE OF GERTRUDE M. KETTLEMAN, Deceased, individually and as Trustees, hereinafter called "Seller", and DARYL GEWEKE or his nominees, hereinafter called "Buyer",

W I T N E S S E T H:

WHEREAS, Seller is the owner of four parcels of real property, together with improvements thereon, located in the Lodi area, San Joaquin County, California, designated as "Parcels #26 (16.77 acres), #28 (1.52 acres), #29 (18.81 acres) and #30 (20.0 acres) in County Assessor's Map Book, Page 049-07 and more particularly described in Exhibit "A" attached hereto and made a

WHEREAS, the City of Lodi is contemplating condemning approximately 10 acres of said Parcel #30.

WHEREAS, Buyer is desirous of purchasing all of Parcel #26, #28, #29 and the entire Parcel #30 or such portion of Parcel #30 remaining, depending on its size and location, after the City of Lodi condemns same, and Seller is desirous of selling all such real property to Buyer.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, it is agreed by and between the parties hereto as follows:

1. City of Lodi's Condemnation. At the present time the City of Lodi is contemplating condemning by eminent domain

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approximately ten (1) acres of said Parcel #30. Buyer agrees to purchase and Seller agrees to sell all of said parcels including the Westerly ten (10) acre portion of Parcel #30 which will remain after the taking by the City of Lodi providing and on condition that the remaining portion of Parcel #30 is of the minimum size and shape as provided hereafter in paragraph 1.1.

1.1 Buyer agrees to purchase and Seller agrees to sell all of said parcels including such portion of Parcel #30 which remains either after the condemnation by the City of Lodi or the City of Lodi's failure to condemn such real property within 2 years of the date of this agreement providing and on condition that the remainder of Parcel #30 is of rectangular shape and has a minimum curb frontage of 625 feet and a minimum depth of 600 feet.

1.2 It is understood and agreed that the commencement date of this agreement depends entirely upon when the City of Lodi completes or withdraws its condemnation of a portion of Parcel #30. Until such time, it cannot be determined the extent of the property being purchased herein by Buyer or whether the condition set forth above in this paragraph has been satisfied.

2. The Real Property. The parcels of real property (#26, #28, #29 and #30) the subject of this purchase and sale are more particularly described on Exhibit "A", attached hereto and made a part hereof.

3. Purchase Price. Buyer agrees to pay to Seller the total sum of TWENTY-SIX THOUSAND TWO HUNDRED SIXTY AND NO/100 DOLLARS (\$26,260.00) an acre for the purchase price for said parcels of

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real property. The purchase price shall be paid in installments as follows:

\$ 50,000.00

3.1 ~~\$1,000.00~~ cash to be deposited by Buyer in escrow with Founder's Title Co. immediately upon the execution of this Agreement.

3.2 The cash sum equal to ten (10%) percent of the purchase price through and prior to close of escrow.

3.3 The cash sum equal to ten (10%) percent of the purchase price, plus interest, six (6) months after close of escrow.

3.4 The remaining balance of the purchase price shall be evidenced by a secured Promissory Note, in the form attached hereto as Exhibit "B". The Promissory Note shall bear interest at the rate of Nine and 3/4 (9 3/4%) percent per annum until the end of 1987 and thereafter the interest rate shall be One and One-half (1 1/2%) percent over the prime rate charged by Bank of America. The interest rate shall be determined on December 30 of each year for the following year. The interest rate shall never exceed Twelve and Three-Quarters (12 3/4%) percent or be lower than Six and three-quarters (6 3/4%) percent. The promissory note shall be due and payable as follows:

a. The entire unpaid balance of principal shall be paid in ten (10) equal annual installments commencing with the first installment payable on December 30, 1988.

b. Annual interest payments are to commence on December 30, 1988 and are to continue thereafter

3.5 The Promissory Note shall be secured by a First Deed of Trust encumbering the subject parcels of real property. The First Deed of Trust shall be substantially in the form attached and marked as Exhibit "C", and the terms of same are made a part hereof.

4. Condition of Real Property. Buyer is entirely familiar with the subject parcels of real property and all improvements thereon, as well as the zoning and physical condition thereof. Except as otherwise provided herein, Buyer shall, and does agree, to take all of the subject parcels of real property as presently zoned and in their present physical condition at the time of the execution of this Agreement.

5. Escrow. This sale shall be consummated through an escrow established with Founders Title Company. Escrow shall open immediately after the execution of this Agreement, and in no event later than 30 days from the date of signing this agreement. An executed counterpart of this document constitutes the joint escrow instructions of Seller and Buyer. Supplemental form instructions for the benefit of escrow holder in form customarily supplied by escrow holder shall be executed by Seller and Buyer as the escrow holder shall require. Escrow shall close within thirty (30) days from the receipt of the written refusal of the city of Lodi to condemn any portion of the subject property or from the recordation of the transfer to the City of Lodi pursuant to its condemnation.

5.1 As soon as it has been determined what action the City of Lodi shall take and the completion thereof, each

party shall forthwith thereafter execute and deliver to the escrow holder its written instructions consistent with the terms of this Agreement and shall provide the escrow holder with such other information, documents, and instruments as the escrow holder may reasonably require to enable it to close the transaction on the closing date.

5.2 Time is of the essence of this Agreement and failure to comply with this provision shall be a material breach of this Agreement. If escrow fails to close as provided above, Buyer or Seller may at any time thereafter, give written notice to the escrow holder to cancel the escrow and, except as may otherwise be provided herein, return all money and documents in escrow to their respective depositors. The escrow holder shall comply with the notice without further consent from any other party to the escrow or from the broker. Cancellation of escrow as provided here shall be without prejudice to whatever legal rights Buyer and Seller may have against each other.

5.3 The following expenses shall be shared equally by Seller and Buyer, Seller's portion to be deducted from the cash portion of the purchase price, Buyer's portion to be paid by Buyer into escrow upon notice from the escrow holder when the escrow is otherwise in a condition to be closed:

- a. The expense of the title company to provide a CLTA Standard Policy of Title Insurance insuring the interest of Buyer vested in title and the first lien position of the First Deed of Trust as

described herein;

5.3 Expense of the fee of an escrow holder to act as such in this transaction;

5.4 The following expense shall be those of Seller alone to be deducted from the cash portion of the purchase price:

a. Costs to record the First Deed of Trust to Seller;

b. San Joaquin County documentary stamps necessary to record the deed;

5.5 City, County and District Taxes for the 1987-1988 fiscal year shall be prorated as of close of escrow.

5.6 Buyer shall pay costs to record Seller's Deed, as well as any sales or use tax that may be assessed as a result of this sale.

6. Title to Property. Except as may otherwise be provided herein, title to said real Property to be conveyed pursuant to this Agreement shall be a fee simple interest, free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages except for current general and special taxes which are then a lien and except for covenants, conditions, restrictions, and public utility easements of record, if any, provided the same do not adversely affect the continued use of the property for the purposes for which it is presently being used, unless reasonably disapproved by Buyer in writing within fifteen (15) days of receipt of a current preliminary title report.

7. Failure of title. If Seller is unable for any reason to deliver title as herein provided, Buyer's remedy shall be limited

to either (i) terminate this Agreement of Purchase and Sale and this escrow and having returned to it the deposit set forth in Paragraph 4, or such additional sum as may be deposited in escrow as required by this Agreement, in which case Buyer and Seller shall be released from further liability or obligation under this contract and escrow instructions, or (ii) without adjustment in purchase price, and without having any right or claim for damages thereof, accepting and taking such title to property as Seller has and can convey.

8. Vesting of Title. On close of escrow, title shall vest in DARYL GEWEKE or his nominee. The precise vesting of title shall be defined through escrow.

9. Possession of Property. Buyer shall be entitled to the possession of the property on close of escrow, but during the period between the execution of this Agreement and the close of escrow, Buyer's agents and independent contractors shall be entitled to enter upon the property to the extent necessary for the purpose of planning Buyer's development of the property.

10. Proration of Taxes, Insurance and Interest. Real property taxes, interest on any assessments assumed by Buyer, rents, and insurance premiums on any hazard insurance assigned to Buyer shall be prorated as of the close of escrow on the basis of a thirty (30) day month. Any bond or assessment which is a lien shall be paid by Seller.

11. Basis of Purchase Price. The purchase price of the subject real property is based upon a per acre price of \$26,260.00. Such purchase price is contingent on Buyer's approval of a survey that determines total acres purchased equal

97% of that shown on the Assessor's Map. Survey to be at Buyer's expense. Should the acreage of the subject real property be less than 97% of the designated acres, the purchase price thereof shall be reduced by \$26,250.00 per acre. The purchase price shall be increased by \$26,250.00 per acre if the acreage is greater than 103% of the designated acres.

Seller agrees to sign such documents necessary should Buyer desire to obtain rezoning or a parcel map. Such shall be at no cost or expenses to Seller.

13. Notices. All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested. Notices shall be considered given when mailed. Notices shall be addressed as appears below for each party provided that if any party gives notice of a change of address, notices to the giver of that notice shall thereafter be given as demanded in that notice.

To Seller: ORRIN & The Estate of
 GERTRUDE M. KETTLEMAN, deceased
 1170 Green Oaks
 Lodi, CA 95240

To Buyer : DARYL GEWEKE
 P.O.Box 1210
 Lodi, CA, 95241

14. Broker's Commission. Buyer and Seller hereby acknowledge that there are no broker's commissions or finder's fee payable with regard to this transaction. Buyer and Seller each agree to indemnify and hold the other harmless from and against all liability, claims, demands, damages or costs of any kind arising from indemnitor's conduct with respect to any claim of a broker's commission.

ADDENDUM TO REAL ESTATE PURCHASE CONTRACT AND RECEIPT FOR DEPOSIT DATED JUNE , 1987 BETWEEN DARYL GEWEKE AND THE EXECUTORS OF THE ESTATE OF GERTRUDE M KETTELMAN, DECEASED AND ORRIN DAVID KETTELMAN, SR FOR THE SALE OF 35.58 ACRES (MORE OR LESS) COMPRISING ALL OF PARCELS 26 AND 29 OF COUNTY'S ASSESSOR'S MAP, BOOK 049, PAGE 070

The First Deed of Trust securing payment of the balance of the purchase price shall contain an Exhibit in essentially the following words:

"The following amendments are hereby made to that certain Short Form Deed of Trust and Assignment of Rents (hereinafter "Deed of Trust") dated _____:

So long as Trustor shall not be in default concerning any of the the covenants or provisions contained in this deed of trust or in the promissory note secured hereby, partial reconveyances may be had and will be given from the lien or charge hereof of any one or more of the parcels hereinafter described upon payment of an amount, to apply on the principal of the note for each of said parcels so reconveyed to be determined as follows:

A. As concerns the north half of San Joaquin County Assessor's Parcel No. 049-070-29, containing 9.40 acres more or less, the sum of \$246,844.

B. As concerns the south half of San Joaquin County Assessor's Parcel No. 049-070-29, containing 9.41 acres more or less, the sum of \$247,106.

C. As concerns the east half of San Joaquin County Assessor's Parcel No. 049-070-26, containing 8.3 acres more or less, the sum of \$220,059.

D. As concerns the west half of San Joaquin County Assessor's Parcel No. 049-070-26, containing 8.39 acres more or less, the sum of \$335,600.

At the time of the request for such parcel releases, Trustor shall also pay any interest accrued on the note secured hereby to the date of release.

Payments for released land shall be credited to payment or amortization of the promissory note secured by this deed of trust.

Any such reconveyance shall not be requested until on or after January 1, 1988 and the principal payment made on said note due December 30, 1987 shall not be credited in determining the amount of principal paid on the note to entitle Trustor to such partial reconveyances."

The amount specified above to be paid on account of principal to entitle the Buyer to partial releases shall not be effected by the results of the survey to be made which survey may under the terms of this agreement effect the total purchase price.

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15. Interpretation. This Agreement shall be construed as a whole and in accordance with the fair meaning of its language, and shall *not* be construed for or against either party. Captions are for convenience and shall not be used in construing meaning.

16. Inurement. This Agreement and its terms shall inure to the benefit of and be binding upon the parties, their respective heirs, personal representatives, assigns, and other successors in interest.

17. Entire Agreement. This Agreement supersedes any prior agreement and contains the entire agreement of the parties on the matters covered. No other agreement, statement or promise made by any party to any employee, officer or agent of a party to this Agreement, or any other person, that is not in writing and signed by **all** the parties to this Agreement shall be binding upon them,

18. Waiver of Covenants, Condition Remedy. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver by him of any other covenant, condition, or promise. The waiver by either or both parties of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provision in this Agreement for any ,remedy shall not exclude other consistent remedies unless they are **Expressly** excluded.

19. The Applicable Law. The validity, interpretation, **effect, legal** requirements, and **legal** consequences of this Agreement or arising out of or in connection with the subject

matter thereof, shall be determined by the local law of the State of California.

20. Attorneys' Fees. If either party files any action or brings any proceeding against the other arising out of this agreement, or is made a party to any action or proceeding brought by the escrow holder, then as between Buyer and Seller, the prevailing party shall be entitled to recover as an element of its costs of suit, and no less damages reasonable attorneys' fees to be fixed by the Court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. A party not entitled to recover its costs shall not be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees. Venue in any such action would be the County of San Joaquin, State of California.

1 Partial Release of Acreage That attached hereto marked Exhibit "D" and made a part hereof is a plan for the partial release of acreage from the security of the Deed of Trust upon specified payments by Buyer to Seller

21.1 The Deed of Trust to be given by Buyer to Seller as provided herein shall contain provisions regarding the partial release of land which are consistent with all of the terms and conditions of this Agreement.

22. Existing Lease. Buyer assumes Seller's fifty (50%) percent interest in all farm income and loss under the existing one year oral lease for the 1987 grape crop. Buyer to reimburse Seller for actual farming expense, if any, of Seller to date. It

is understood that Buyer assumes no other lease without first giving his written approval.

23. Court Confirmation. It is understood and agreed that this sale shall be completed without the necessity of confirmation by court.

24. Recording Memorandum of Purchase and Sale. Simultaneously, with the execution of this Agreement, the parties hereto will likewise execute a Memorandum of Purchase and sale which may thereafter be recorded by either party.

25. Geological Inspection. Within 30 calendar days after Seller's acceptance, Buyer shall have the right at Buyer's expense, to select a qualified professional to make tests, surveys, or other studies of the subject property. Buyer shall keep the subject property free and clear of any liens, indemnify and hold Seller harmless from all liability, claims demands, damages or costs, and repair all damages to the property arising from the tests, surveys, or studies. All claimed defects concerning the condition of the property that adversely affect the continued use of the property for the purposes for which it is presently being used shall be in writing, supported by written reports, if any, and delivered to Seller within 30 calendar days after Seller's acceptance. Buyer shall furnish Seller copies, at no cost, of all reports concerning the property obtained by Buyer. When such reports disclose conditions or information unsatisfactory to the Buyer, which the Seller is unwilling or unable to correct, Buyer may cancel this agreement. Seller shall make the premises available for all inspections. **BUYER'S FAILURE TO NOTIFY SELLER SHALL CONCLUSIVELY BE CONSIDERED APPROVAL.**

26. Underground Storage Tanks. Seller represents that to the best of their knowledge, there are no, nor have there ever been, underground storage tanks of fuel or other pollutants or hazardous substances on the subject property.

The parties hereto have executed this Agreement of Purchase and Sale on the day and year first above written.

Orrin D. Kettleman
ORRIN D. KETTLEMEN

Daryl Geweke
DARYL GEWEKE
-Buyer-

ESTATE OF GERTRUDE M.
KETTLEMEN, Deceased

By Theron R. Kettleman

By Orrin D. Kettleman
SELLERS

Consented to:

Jean K. Stickler
JEAN K STICKLER

CONTRACT AGREEMENT

THIS AGREEMENT ENTERED INTO THIS _____ DAY OF _____, 1986,
BY AND BETWEEN THE CITY OF LODI, A MUNICIPAL CORPORATION,
HEREINAFTER REFERRED TO AS "CITY" AND RICHARD BIGLER ASSOCIATES,
LANDSCAPE ARCHITECT, HEREINAFTER REFERRED TO AS "CONSULTANT",
HEREBY AGREE AS FOLLOWS:

1. CITY DOES HERESY ENGAGE CONSULTANT TO PERFORM FOR THE CITY
UNDER THE TERMS AND CONDITIONS IN THIS AGREEMENT, SERVICES AS SET
FORTH HEREIN FOR THE DEVELOPMENT OF THE LANDSCAPING PLANS AND
DESIGN OF THE C BASIN PARK SITE. THE FOLLOWING ARE THE BASIC
SERVICES TO BE PROVIDED BY THE CONSULTANT WHEN AUTHORIZED IN
WRITING BY THE CITY.

BASIC SERVICES**TASK 1, DESIGN PHASE:**

THE CONSULTANT SHALL COOPERCITE WITH THE CITY IN DEVELOPING THE
SCOPE AND RE-DESIGN OF THE LANDSCAPING AND SITE DEVELOPMENT
WITHIN THE PROJECT AREA. WORK SHALL INCLUDE THE FOLLOWING.

- A. DESIGN OF LANDSCAPING AND SITE DEVELOPMENT DRAWN AT A
SUITABLE SCALE FOR PRESENTATION TO PUBLIC GROUPS FOR REVIEW AN5
AND TO INCLUDE A COLOR RENDERING.
- B. ATTEND MEETINGS AT THE CITY WITH STAFF AND INTERESTED PARTIES
DEVELOPMENT OF THE DESIGN.
- C. MAKE PRESENTATIONS AND ATTEND MEETINGS IN THE CITY AS
NECESSARY.
- D. PREPARE COST ESTIMATES BASED ON MASTERPLAN DESIGN CONCEPT.

E. PREPARE GRADING PLAN AT SUITABLE SCALE TO 1' -0" CONTOUR INTERVALS.

F. REDUCE ALL DRAWINGS TO FIT INTO A 8 1/2 X 11 FORMAT WITH COSTS, PHASING PROFILE AND OTHER PERTINENT DATA TO THE DESIGN THAT CAN BE PUBLISHED OR USED IN FUNDING PROPOSALS.

THE CITY WILL PROVIDE ENGINEERING FOR PROVIDING OF BASE MAPS, LOCATION OF UNDERGROUND UTILITIES, OR STRUCTURE. CITY SHALL PAY FOR ANY BORING AND TESTING REQUIRED.

CONSULTANT FEES:

FOR THE PERFORMANCE OF THE BASIC SERVICES SET FORTH HEREIN, THE CITY IS PREPARED TO PAY THE CONSULTANT ON A BASIS OF LABOR AND MATERIAL AS FOLLOWS:

FEE NOT TO EXCEED.....79000.00

PRINCIPAL LANDSCAPE ARCHITECT AT..50.00.00 PER HOUR
STAFF LANDSCAPE ARCHITECT AT.....40.00.00 PER HOUR
STAFF DRAFTSMAN.....25.00.00 PER HOUR

REIMBURSEMENT OF EXPENSES AS RELATED TO THE PROJECT.

PAYABLE MONTHLY AS TO THE CITY APPROVED SCHEDULE OF COMPLETED WORK ITEMS.

THE OWNER AGREES TO LIMIT THE DESIGN PROFESSIONAL'S LIABILITY TO THE OWNER AND TO ALL CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS ON THE PROJECT, DUE TO THE DESIGN PROFESSIONAL'S NEGLIGENT ACTS, ERRORS, OR OMISSIONS, SUCH THAT THE TOTAL AGGREGATE LIABILITY OF THE DESIGN PROFESSIONAL TO ALL THOSE NAMED SHALL NOT EXCEED 50,000.00 OR THE DESIGN PROFESSIONAL'S TOTAL FEE FOR SERVICES RENDERED ON THIS PROJECT, WHICHEVER IS GREATER.

TERMINATION OF AGREEMENT :

THIS AGREEMENT MAY BE TERMINATED BY EITHER PARTY UPON WRITTEN NOTICE SHOULD THE OTHER PARTY FAIL SUBSTANTIALLY TO PERFORM IN ACCORDANCE WITH ITS TERMS THROUGH NO FAULT OF THE OTHER. ON TERMINATION, THE CITY SHALL PAY THE CONSULTANT FOR WORK PERFORMED TO THAT DATE.

APPROVED :

CITY OF LODI

BY _____

MAYOR OF THE CITY OF LODI

ATTEST:

CITY CLERK

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

APPROVED

RICHARD BIGLER ASSOCIATES

BY _____

RICHARD A. BIGLER

LANDSCAPE ARCHITECT 1168