

## ORDINANCE NO. 6,999–N.S.

AUTHORIZING AND DIRECTING CITY MANAGER TO CONVEY EASEMENT (FIRE SEPARATION EASEMENT) ABOVE THE CENTER STREET GARAGE AT 2025 CENTER STREET TO SNK CAPTEC ARPEGGIO, LLC

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Conveyance of property authorized.

The City Manager is hereby authorized to take all actions necessary to convey the Fire Separation Easement described in Exhibit A, to SNK Captec Arpeggio, LLC, a Delaware limited liability company, pursuant to the terms of said Fire Separation Easement.

Section 2. Posting.

Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 9, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Worthington, Wozniak and Bates.

Noes: Spring.

Absent: None.

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

THIS SPACE FOR RECORDER'S USE ONLY

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**FIRE SEPARATION EASEMENT**  
(City of Berkeley / SNK Captec Arpeggio LLC)

This Agreement is entered into as of September \_\_\_\_, 2007 between the City of Berkeley (“Grantor”) and SNK Captec Arpeggio, LLC, a Delaware limited liability company (“Grantee”), with reference to the following facts:

A. Grantor is the owner of the property (the “Servient Tenement”) located in the City of Berkeley, State of California, commonly known as 2025 Center Street, the legal description of which is attached hereto as Exhibit A.

B. Grantee is the owner of the property (the “Dominant Tenement”) located in the City of Berkeley, State of California, commonly known as 2055 Center Street, the legal description of which is attached hereto as Exhibit B.

C. The Servient Tenement is immediately adjacent to the Dominant Tenement. Grantor desires to grant to Grantee, and Grantee desires to acquire from Grantor, an easement over the Servient Tenement for the benefit of the Dominant Tenement, all as provided in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Grant of Fire Separation Easement. Grantor grants to Grantee an easement (the "Fire Separation Easement") for fire separation purposes over the portions of the Servient Tenement described in Exhibit C attached hereto (the "Fire Separation Easement Area"). The purpose of the Fire Separation Easement is to allow Grantee to construct improvements on the Dominant Tenement up to the property boundary and still comply with governmental regulations which require a means of access for fire safety and other public safety entry. Grantor agrees that it shall not construct or allow to be constructed any buildings, structures or similar improvements in the Fire Separation Easement Area.

2. Non-Exclusive Easement. The Fire Separation Easement is non-exclusive, and Grantor retains the right to make any use of the Servient Tenement not inconsistent with the easement granted to Grantee under this Agreement.

3. Easement Appurtenant. The Fire Separation Easement is appurtenant to the Dominant Tenement.

4. Easement Perpetual. The Fire Separation Easement is perpetual, shall run with the land and be binding upon and inure to the benefit of Grantor's and Grantee's respective heirs, executors, successors and assigns, and all parties having or acquiring any right, title or interest in either the Servient Tenement or the Dominant Tenement or any portion thereof.

5. Recording Costs and Transfer Tax. The costs of preparing and recording this Agreement, including recording fees and any documentary transfer tax, shall be paid by Grantee.

6. Payment for Easement. In consideration for the grant of the Fire Separation Easement, Grantee shall pay to the Grantor the sum of Two Hundred Thousand Dollars (\$200,000) concurrently with the issuance of a building permit for the foundation and parking garage which Grantee intends to construct on the Dominant Tenement.

7. Condition Subsequent. The Fire Separation Easement granted herein shall terminate if the City records a Notice of Termination of Easement, which City shall have the right to record, if construction of improvements on the Dominant Tenement is not commenced within sixty (60) days after issuance of the permit described in the preceding paragraph, as such sixty (60) day period may be extended due to events of force majeure. As used herein, "events of force majeure" means acts of God, inclement weather, strikes, war, or other causes, similar or dissimilar, which are not within the reasonable control of the Grantee.

8. Attorneys' Fees. If any legal action or proceeding arising out of relating to this Agreement is initiated by any party to this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred by the prevailing party in connection with such legal action or proceeding.

9. Entire Agreement. This Agreement constitutes the entire agreement between Grantor and Grantee relating to its subject matter. All prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

10. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected.

11. Amendment. This Agreement may be amended only by a writing signed by Grantor and Grantee.

12. California Law. This Agreement shall be construed under and governed by the laws of the State of California.

13. Additional Documents. Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to carry out and perform all the terms and provisions of this Agreement.

14. Exhibits. The exhibits attached to this Agreement are incorporated and shall be treated as set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written in above.

“Grantor”

City of Berkeley

By \_\_\_\_\_

Its: \_\_\_\_\_

“Grantee”

SNK Captec Arpeggio, LLC, a Delaware limited liability company

By \_\_\_\_\_  
Donald C. Peterson

Its: Vice President

**EXHIBIT A**

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California,  
described as follows:

Legal Descriptions (to follow)

**EXHIBIT A**

**Licensors Parcel**

**DESCRIPTION**

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, described as follows:

**PARCEL ONE**

Lot 16 in Block 1, as said lot and block are shown on the map of "Subdivision Map of Block 1, Shattuck Tract, etc.", filed June 21, 1886, in Book 11 of Maps, page 27, in the office of the County Recorder of Alameda County.

EXCEPTING THEREFROM: All that portion conveyed to Thomas A. Berry, et ux. by deed recorded March 13, 1958 in Book 8619 page 489 of Official Records.

**PARCEL TWO**

LOTS 17, 18 and portions of lot 36 and lot 37 in block 1, as said lots and blocks are shown on the map of "Subdivision Map of Block 1, Shattuck Tract, northerly portion of Plot 68, of Kellersbergers Survey, Berkeley, Alameda Co., Cal.", filed June 21, 1886 in book 11 of Maps, at page 27, in the office of the County Recorder of Alameda County, described as follows:

COMMENCING at a point on the northern line of Center Street, distant thereon westerly 403 feet from the western line of Shattuck Avenue, as said street and avenue are shown on said map; run thence at right angles northerly 9.98 feet to the northern line of Center Street, as said street now exists, and the actual point of beginning of the parcel of land to be described; and running thence along said last named line of Center Street westerly 85 feet, more or less; to the eastern line of a parcel of land described in the deed by A. D. Porter, et al., to Aurora Hume, dated October 29, 1906, recorded November 9, 1906, in book 1265 of Deeds, at page 42, in the office of the County Recorder of Alameda County; thence at right angles northerly along the last named line 124.64 feet; thence at right angles easterly 35 feet, more or less, to the western line of said lot 17; thence along the last named line northerly 134.62 feet to the southern line of Addison Street, as said street is shown on said map; thence along the last named line easterly 100 feet to the eastern line of said lot 18; thence along the last named line southerly 134.62 feet to the southern line of said lot 18; thence along the last named line westerly 50 feet to the southwestern corner of said lot 18; and thence at right angles to said last named line of Center Street southerly 124.64 feet to the actual point of beginning.

**PARCEL THREE**

BEGINNING at a point on the northern line of Center Street, distant thereon westerly 353 feet from the intersection thereof with the western line of Shattuck Avenue, as said street and avenue are shown on the Map herein referred to; running thence westerly along said line of Center Street

50 feet; thence at right angles northerly 134.62 feet; thence at right angles easterly 50 feet; thence at right angles southerly 134.62 feet to the point of beginning.

BEING Lot 35 in Block No. 1, according to Map entitled "Subdivision Map of Block 1, Shattuck Tract," etc., filed June 21, 1886 in Book 11 of Maps, at page 27, in the office of the County Recorder of Alameda County.

EXCEPTING therefrom the southern 9.98 feet thereof conveyed by H. C. Maculay and John Lauffer to City of Berkeley, a municipal corporation, by deed dated May 4, 1922 and recorded in Book 332 of Official Records at page 103, in the office of the County Recorder of Alameda County.

## **EXHIBIT B**

Legal Descriptions (To Follow)

**EXHIBIT B**

**Licensee's Parcel**

**DESCRIPTION**

**PARCEL 1:**

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERN LINE OF CENTER STREET, AS SAID STREET NOW EXISTS SINCE THE WIDENING THEREOF, AS SHOWN ON THE MAP OF "PLAT OF CENTER STREET OPENING AND WIDENING, BERKELEY, CALIFORNIA", FILED APRIL 4, 1922, IN BOOK 7 OF MAPS, PAGE 15, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, WITH THE WESTERN BOUNDARY LINE OF LOT 31, AS SAID LOT IS SHOWN ON THE MAP HEREIN REFERRED TO; AND RUNNING THENCE EASTERLY ALONG SAID LINE OF CENTER STREET, 38 FEET; THENCE NORTHERLY PARALLEL WITH SAID WESTERN BOUNDARY LINE OF LOT 31, 124.64 FEET TO THE NORTHERN BOUNDARY LINE OF SAID LOT 31; THENCE WESTERLY ALONG SAID LAST NAMED LINE, 38 FEET TO SAID WESTERN BOUNDARY LINE OF SAID LOT 31; AND THENCE SOUTHERLY ALONG SAID LAST NAMED LINE, 124.64 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 31, AS SAID LOT IS SHOWN ON THE "SUB MAP OF BLOCK 1, SHATTUCK TRACT, NORTHERLY PORTION OF PLOT 68 OF KELLERBERGER'S SURVEY BERKELEY ALAMEDA CO., CAL.", FILED JUNE 21, 1886, IN BOOK 11 OF MAPS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

**PARCEL 2:**

LOT 32, SUBDIVISION MAP OF BLOCK 1, SHATTUCK TRACT, FILED JUNE 21, 1886, MAP BOOK 11, PAGE 27, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM, THAT PORTION TAKEN FOR THE WIDENING OF CENTER STREET, AS MORE FULLY DESCRIBED IN THE DEED FROM N.E. PRESTON AND L. LUELLA PRESTON, HIS WIFE TO CITY OF BERKELEY, A MUNICIPAL CORPORATION, DATED OCTOBER 2, 1922 AND RECORDED DECEMBER 5, 1922, IN BOOK 306 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 402.

**PARCEL 3:**

LOT 33, BLOCK 1, SUBDIVISION MAP OF BLOCK 1, SHATTUCK TRACT, FILED JUNE 21, 1886, MAP BOOK 11, PAGE 27, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM, THAT PORTION THEREOF TAKEN FOR THE WIDENING OF CENTER STREET.

PARCEL 4:

THAT PORTION OF LAND DESCRIBED AS FOLLOWS:

LOT 34, BLOCK 1, "SUBDIVISION MAP OF BLOCK 2, SHATTUCK TRACT. NORTHERLY PORTION OF PLOT NO. 68 OF KELLERSBERGER'S SURVEY," FILED JUNE 21, 1886 IN MAP BOOK 11, PAGE 27; LESS THAT PORTION THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN LINE OF CENTER STREET. DISTANT THEREON WESTERLY 303 FEET FROM THE INTERSECTION THEREOF, WITH THE WESTERN LINE OF SHATTUCK AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON THE MAP HEREINABOVE REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID LINE OF CENTER STREET, 50 FEET; THENCE AT RIGHT ANGLES NORTHERLY 9.98 FEET; THENCE AT RIGHT ANGLES EASTERLY, 50 FEET; THENCE AT RIGHT ANGLES SOUTHERLY, 9.98 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NOS. 057-2023-005  
057-2023-006-01  
057-2023-006-03  
057-2023-007

**EXHIBIT C**

Fire Separation Easement Area

**2041-2069 CENTER STREET  
FIRE SEPARATION  
AREA "A"  
LEGAL DESCRIPTION**

THE LAND DESCRIBED HEREIN IS A PORTION OF LOT 35 OF "SUBDIVISION MAP OF BLOCK 1, SHATTUCK TRACT, NORTHERN PORTION OF PLOT No. 68 OF KELLERBERGER'S SURVEY", FILED JUNE 21, 1886 IN MAP BOOK 11, PAGE 27, ALAMEDA COUNTY RECORDS, SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, CITY OF BERKELEY, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERN LINE OF CENTER STREET AS SAID STREET NOW EXISTS WITH THE WESTERN LINE OF SHATTUCK AVENUE, AS SAID LINE OF SHATTUCK AVENUE WAS ESTABLISHED BY ORDINANCE NO. 387, ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERKELEY, JANUARY 18, 1892, RUNNING THENCE ALONG SAID NORTHERLY LINE OF CENTER STREET SOUTH 80°23'30" WEST 355.71 FEET TO THE EASTERLY LINE OF SAID LOT 35 OF SAID MAP, SAID POINT BEING THE SOUTHWEST CORNER OF PARCEL FOUR OF THAT CERTAIN GRANT DEED TO SNK CAPTEC ARPEGGIO, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED MAY 18, 2005 IN DOCUMENT NO. 2005204985, ALAMEDA COUNTY RECORDS;

THENCE, LEAVING SAID NORTHERLY LINE, ALONG THE SAID EASTERLY LINE OF LOT 35 OF SAID MAP, AND THE WESTERLY LINE OF PARCEL FOUR OF SAID GRANT DEED, NORTH 09°36'30" WEST 19.88 FEET, TO THE TRUE POINT OF BEGINNING OF HEREIN DESCRIBED FIRE SEPARATION AREA "A";

THENCE LEAVING SAID EASTERLY LINE OF LOT 35, SOUTH 80°23'30" WEST 20.00 FEET;

THENCE ALONG A LINE PARALLEL WITH AND LYING 20.00 FEET WESTERLY OF SAID EASTERLY LINE OF LOT 35 OF SAID MAP, AND THE WESTERLY LINE OF SAID GRANT DEED, NORTH 09°36'30" WEST 89.00 FEET;

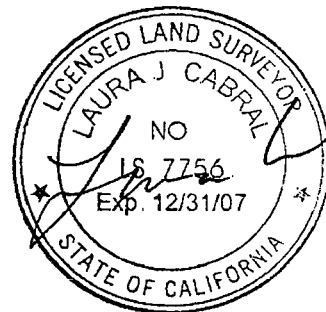
THENCE NORTH 80°23'30" EAST 20.00 FEET TO THE SAID EASTERLY LINE OF LOT 35 OF SAID MAP AND THE WESTERLY LINE OF PARCEL FOUR OF SAID GRANT DEED;

THENCE ALONG SAID LINE SOUTH 09°36'30" EAST 89.00 FEET TO THE TRUE POINT OF BEGINNING;

DESCRIBED LANDS CONTAINING 1,780 SQUARE FEET, MORE OR LESS;

DESCRIBED AREA "A" IS SUBJECT TO A LIMITATION OF ELEVATION 236.80' FEET; THIS ELEVATION IS TO BE REFERENCED TO THE CITY OF BERKELEY BENCHMARK, DESIGNATION BC107NE633, UNSTAMPED BRASS CAP AT THE NORTHEAST CORNER OF THE INTERSECTION OF SHATTUCK AVENUE AND ADDISON STREET (ELEVATION = 183.71 FEET).

THE BEARING NORTH 80°28'20" EAST ALONG THE MONUMENTATION LINE OF ADDISON STREET AS PER PARCEL MAP No. 6210 IN THE CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA PER BOOK 208 OF PARCEL MAPS AT PAGES 41 AND 42, ALAMEDA COUNTY RECORDS, WAS TAKEN AT THE BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION.



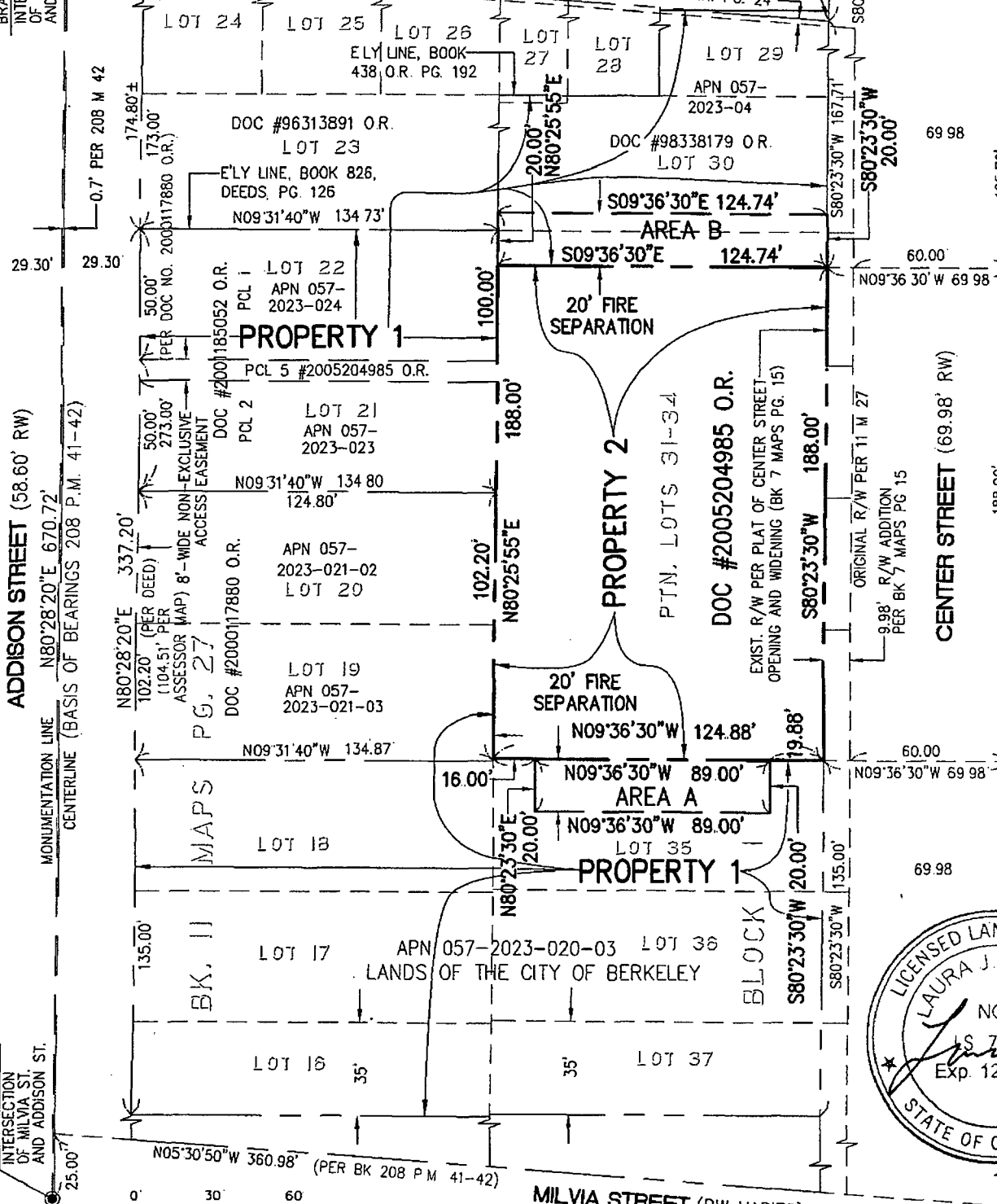
BASIS OF BEARINGS: THE BEARING N80°28'20"E  
OF MON LINE OF ADDISON ST PER P.M. #6210  
BK 208 P.M. PG 41-42

(PER BK 208 P.M. 41-42)  
S05°30'50"E 360.07'  
289.91'

P.O.B., PROPERTY 2  
AND AREA A & B

SHATTUCK AVENUE (RW VARIES)  
PTN OF SHATTUCK AVE VACATED PER ORD #1124-N.S. PER BK 1102 O.R. PG. 24

BRASS PIN  
INTERSECTION  
OF SHATTUCK AVE.  
AND ADDISON ST.



58.6' R/W PER BK. 216 P.M. PG. 40-41

ADDISON STREET (58.60' RW)  
MONUMENTATION LINE N80°28'20"E 670.72'  
CENTERLINE (BASIS OF BEARINGS 208 P.M. 41-42)

MAPS PG. 27  
ASSASSOR (MAP) 8'-WIDE NON-EXCLUSIVE  
ACCESS EASEMENT

102.20' (PER DEED)  
104.51' PER

DOC #2000117880 O.R.  
PCL 2

LOT 21  
APN 057-2023-023

N09°31'40"W 134.80'

LOT 20

APN 057-2023-021-02

LOT 19

APN 057-2023-021-03

N09°31'40"W 134.87'

LOT 18

APN 057-2023-020-03

LOT 35

LOT 36

LOT 37

N09°36'30"E 89.00'

N09°36'30"W 89.00'

19.88'

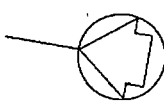
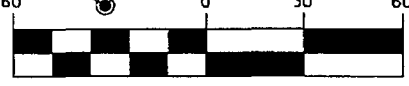
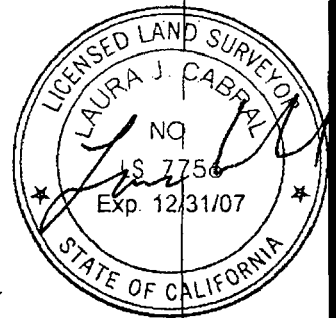
N09°36'30"W 69.98'

60.00'

EXIST. R/W PER PLAT OF CENTER STREET  
OPENING AND WIDENING (BK 7 MAPS PG. 15)

ORIGINAL R/W PER 11 M 27  
9.98' R/W ADDITION  
PER BK 7 MAPS PG 15

CENTER STREET (69.98' RW)  
188.00'  
S80°23'30"W 645.78'  
(PER BK 208 P.M. 41-42)



POB POINT OF BEGINNING  
TPOB TRUE POINT OF BEGINNING

**SANDIS** CIVIL ENGINEERS  
SURVEYORS  
PLANNERS  
605 Castro Street | Mountain View, CA 94041 | P. 650.969.6900 | F. 650.969.6472 | www.sandis.net  
MOUNTAIN VIEW ROSEVILLE OAKLAND

DATE: 09/05/07  
SCALE: 1"=60'  
DRAWN BY: MHG  
APPROVED BY: LJC  
DRAWING NO.: 605128

**EXHIBIT MAP**  
**'FIRE SEPARATION'**  
**2041-2069 CENTER ST.**  
**BERKELEY CA**

SHEET  
**1**  
OF 2 SHEETS

03/17/06  
FIREPLAT

605128

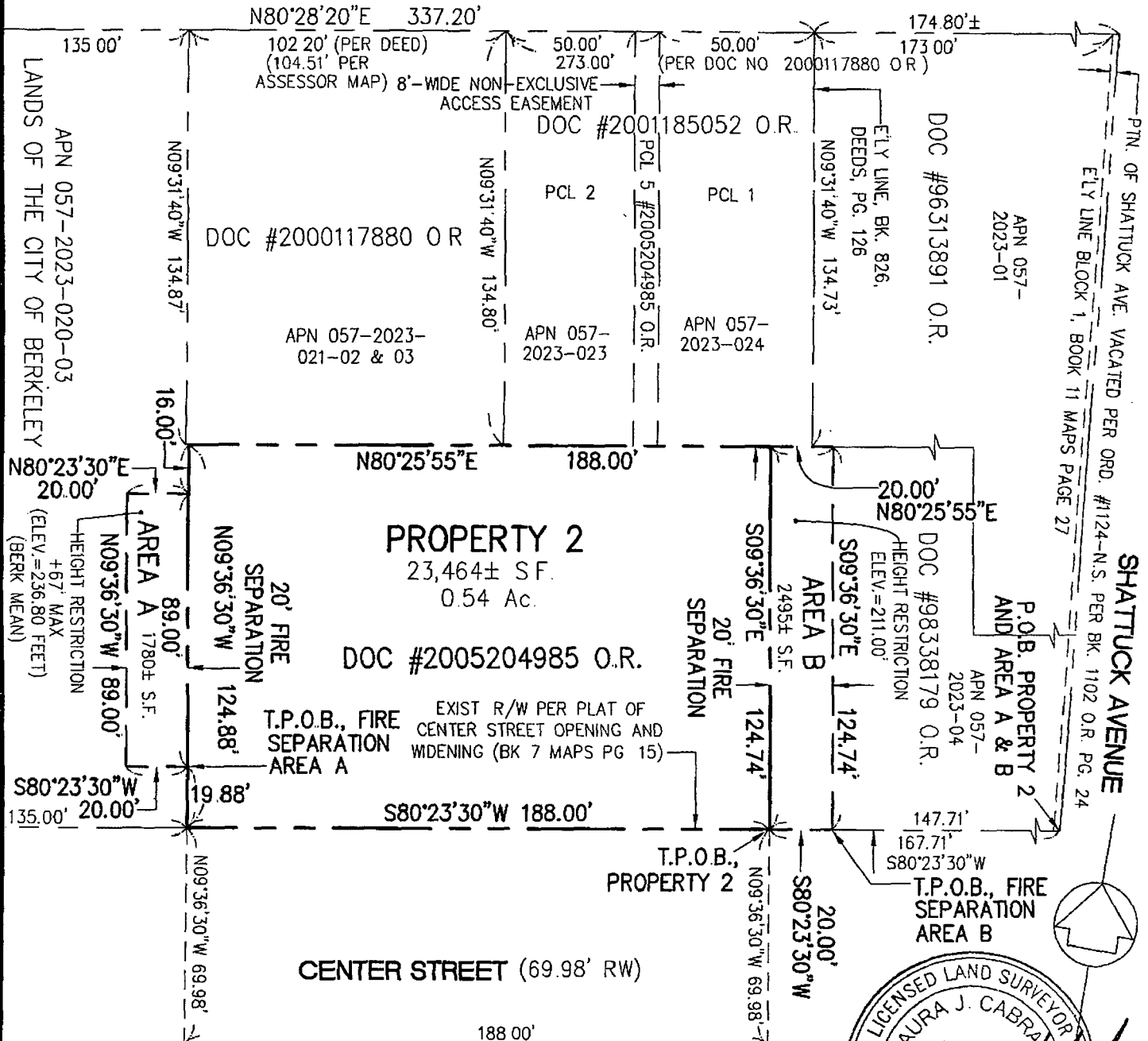
BASIS OF BEARINGS: THE BEARING N80°28'20"E OF MON LINE OF ADDISON ST PER P.M. #6210 BK. 208 P.M. PG. 41-42

P.O.B. POINT OF BEGINNING  
T.P.O.B. TRUE POINT OF BEGINNING

**ADDISON STREET**

MONUMENTATION LINE N80°28'20"E 670.72'  
CENTERLINE (BASIS OF BEARINGS 208 P.M. 41-42)

0.7' PER 208 P.M. 42



LANDS OF THE CITY OF BERKELEY  
APN 057-2023-020-03

PN. OF SHATTUCK AVE. VACATED PER ORD. #1124-N.S. PER BK. 1102 O.R. PG. 24  
ELY LINE BLOCK 1, BOOK 11 MAPS PAGE 27  
**SHATTUCK AVENUE**  
P.O.B. PROPERTY 2 AND AREA A & B  
APN 057-2023-04

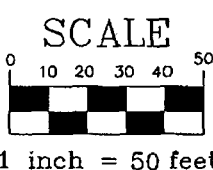
N80°23'30"E 20.00'  
HEIGHT RESTRICTION (+67' MAX (BERK MEAN))  
AREA A 1780± S.F.  
N09°36'30"W 89.00'

DOC #98338179 O.R. 2023-04  
HEIGHT RESTRICTION (ELEV.=211.00')  
AREA B 2495± S.F.  
N09°36'30"E 124.74'

S80°23'30"W 135.00'  
N09°36'30"W 69.98'

T.P.O.B., FIRE SEPARATION AREA B  
S80°23'30"W 147.71'  
N09°36'30"W 69.98'

**CENTER STREET (69.98' RW)**



BENCHMARK: CITY OF BERKELEY BENCHMARK, DESIGNATION BC107NE633, UNSTAMPED BRASS CAP AT THE NORTHEAST CORNER OF THE INTERSECTION OF SHATTUCK AVE & ADDISON ST (ELEV=183.71 FEET)



<p><b>SANDIS</b> CIVIL ENGINEERS SURVEYORS PLANNERS</p> <p>605 Castro Street   Mountain View, CA 94041   P. 650.969.6900   F. 650.969.6472   www.sandis.net</p> <p>MOUNTAIN VIEW    ROSEVILLE    OAKLAND</p>	DATE: 09/05/07 SCALE: 1"=50' DRAWN BY: MHG APPROVED BY: LJC DRAWING NO: 605128	<p><b>EXHIBIT MAP</b> <b>"FIRE SEPARATION"</b> <b>2041-2069 CENTER ST.</b> <b>BERKELEY CA</b></p>	SHEET <p><b>2</b></p> OF 2 SHEETS
	605128		
	03/17/05		
	FIREPLAT2		
	605128		