RECORDING REQUESTED BY:
United States
Department of the Army

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3268
Attn: Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

(Space above this line is reserved for recorder's use.)

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Oakland United States Army Reserve Center #2
Parcel 18 and Subparcels 19 and 21
Former Oakland Army Base
Oakland, California

This Covenant to Restrict Use of Property, Environmental Restriction ("Covenant") is made by and between the United States Department of the Army, herein referred to as the "Covenantor," the current owner of property known as the Oakland United States Army Reserve ("USAR") Center #2, and the State of California, Department of Toxic Substances Control ("DTSC"). The Oakland USAR Center #2 is located in Oakland, Alameda County, California. Exhibit A, which is attached and incorporated here by this reference, identies the Oakland USAR Center #2, Parcel 18 and Subparcels 19 and 21, herein referred to as the "Property." Pursuant to California Civil Code ("Civil Code") section 1471(a)(3), DTSC has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment. The Covenantor and DTSC, collectively referred to as the "Parties," hereby agree that in accordance with Civil Code section 1471, California Health and Safety Code sections 25222.1 and 25355.5, and California Code of Regulations, title 22, section 67391.1, that the use of the Property be restricted as set forth in this Covenant to protect human health, safety, and the environment and

that this Covenant shall run with the land.

ARTICLE I
STATEMENT OF FACTS

1.01 The Property, approximately 6.76 acres, is more particularly described and depicted in Exhibit A. Exhibit A contains a legal description and maps showing the boundary of the Property. The Property is part of the former Oakland Army Base, in Oakland, Alameda County, California.

1.02 The Property is located adjacent to the Economic Development Conveyance Property ("EDC Property"), a portion of the former Oakland Army Base. The United States Department of the Army transferred the EDC Property to the Oakland Base Reuse Authority in 2003. The Oakland Base Reuse Authority immediately conveyed a portion of the EDC Property to the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners. The EDC Property is subject to the Remedial Action Plan, Oakland Army Base, Oakland, California, dated September 27, 2002 ("RAP") and accompanying Risk Management Plan, Oakland Army Base, Oakland, California, dated September 27, 2002.

1.03 The Property was used in the past for residential barracks, medical/dental facilities, storage, loading docks, and recreational activities. The Property has been impacted by soil and groundwater contamination typical of the surrounding EDC Property. The Property was not remediated to levels suitable for unrestricted use.

Based on the Amendment to Final Remedial Action Plan, Oakland Army Base, Oakland, California, for Former Parcel 18 and Subparcels 19 and 21, Oakland United States Army Reserve Center #2, dated December 4, 2006, DTSC has concluded that the restrictions set forth in Article IV of this Covenant are necessary. DTSC has further concluded that the Property, operated or occupied in accordance with the restrictions of this Covenant, does not present an unacceptable threat to human health, safety, or the environment.

ARTICLE II
DEFINITIONS

2.01 **Covenantor.** "Covenantor" shall mean the United States Department of the Army, and its successors and assigns.

2.02 **DTSC.** "DTSC" means the State of California, Department of Toxic Substances Control and includes its successor agencies, if any.

2.03 **Occupant.** "Occupant" shall mean owners and any person or entity entitled by leasehold, license, easement, servitude, agreement or other legal relationship to the right to enter and possess, occupy or improve any portion of the Property after Covenantor has conveyed the Property.

2.04 **Owner.** "Owner" means the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01 **Restrictions to Run with the Land.** This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Environmental Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Environmental Restriction: (a) runs with the land pursuant to Health and Safety Code sections 25222.1 and/or 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by DTSC; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion of the Property.

3.02 **Binding upon Owners and Lessees/Occupants.** Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471 all successive owners of the Property and each person having any interest derived through any owner are expressly bound hereby for the benefit of DTSC.

3.03 **Written Notification of the Presence of Hazardous Substances.** Prior to the sale, lease, rent, or sublease of the Property, or any portion thereof, the owner, lessor, renter, or sublessor shall give the buyer, lessee, renter, or sublessee notice that hazardous substances are located on or beneath the Property, as required by Health and Safety Code section 25359.7.

3.04 **Incorporation into Deeds, Leases, or Rental Agreements.** The Environmental Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, or rental agreements entered into for any portion of the Property to which they are in effect and applicable.

3.05 **Conveyance of Property.** The Owner shall provide notice to DTSC not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances).

3.06 **Access for DTSC.** DTSC shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by DTSC to protect the public health or safety or the environment.

3.07 **Costs of Administering the Covenant to be Paid by Owner.** DTSC will incur costs associated with the administration of this Covenant. Therefore, the Owner hereby

covenants for itself and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay DTSC's cost in administering the Covenant.

ARTICLE IV
ENVIRONMENTAL RESTRICTIONS

4.01 Environmental Restrictions.

(a) Sensitive land uses, including, but not limited to, residential housing, schools for persons under 18 years of age, day-care facilities for children, hospitals, and hospices are prohibited.

(b) Placement of Property soil outside of the Property boundary for any purpose is permitted only with the written approval of DTSC.

(c) The construction of groundwater wells and extraction of groundwater from new and/or existing wells for any purpose are permitted only with the written approval of DTSC.

(d) Construction dewatering activities are permitted subject to all applicable local and State requirements, including those of the California Regional Water Quality Control Board, for disposing of the liquid from dewatering activities.

4.02 Implementation and Enforcement Plan. The Owner shall:

(a) Conduct an annual inspection of the Property to ensure compliance with the provisions of this Covenant.

(b) Submit an annual report to DTSC. The reports submittal date shall be within thirty (30) days following the annual anniversary dates of the initial property transfer. The report shall include: (1) inspection results; (2) a certification attesting to the compliance of the terms and conditions of the Covenant; and (3) a discussion on any dewatering activities and final disposition of the liquid, violations of the Covenant, and any action taken to ensure compliance with the Covenant.

(c) DTSC shall be provided with reasonable right of entry and access to the Property in accordance with section 3.06 for periodic inspections to ensure compliance with the Covenant.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. Failure of the Owner to comply with any of the Environmental Restrictions specifically applicable to it shall be grounds for DTSC to obtain injunctive relief prohibiting commencement or continuation of any activities restricted by this Covenant. Actual

or threatened violation of this Covenant, including but not limited to commencement or completion of any activities that violate this Covenant, may be prohibited or restrained, or the interest intended for protection by this Covenant may be enforced, by injunctive relief or any other remedy as provided by law, including issuance of an administrative order.

ARTICLE VI
VARIANCE, TERMINATION AND TERM

6.01 **Variance.** Covenantor, or any other aggrieved person, may apply to DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233. DTSC may modify the Covenant in accordance with California Code of Regulations, title 22, section 67391.1.

6.02 **Termination.** Covenantor, or any other aggrieved person, may apply to DTSC for a termination of the Environmental Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234. DTSC may terminate the Covenant in accordance with California Code of Regulations, title 22, section 67391.1.

6.03 **Term.** Unless ended in accordance with the Termination paragraph above, by law, or by DTSC in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01 **No Dedication Intended.** Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 **Recordation.** The Covenantor shall record this Covenant, with Exhibit A, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 **Notices.** Whenever any person gives or serves any notice ("notice" as used herein includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (ii) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Department of the Army
Commander, HQ 63D Regional Readiness Command
4235 Yorktown Avenue, Building 7
Los Alamitos, CA 90720-5002
Attention: Wayne J. Alves
Chief, Environmental Division

To DTSC: Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3268
Attention: Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.04 **Partial Invalidity.** If any portion of this Covenant or other terms set forth herein are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.05 **Exhibit.** The exhibit referenced in this Covenant is deemed incorporated into this Covenant by reference.

7.06 **Section Headings.** The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07 **Representative Authority.** The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.08 **Statutory References.** All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

By: _____ Date: 6/21/07

William T. Birney
Acting Deputy Assistant Secretary of the Army
Installations and Housing
Office of the Assistant Secretary of the Army for Installations and Environment

Department of Toxic Substances Control:

By: _____ Date: 5-21-07

Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

State of California

County of Sacramento

On May 21, 2007 before me, (here insert name and title of the officer) Kathleen C. Duncan, personally appeared Anthony J. Landis

_____

_____,

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/he~~r/their~~ authorized capacity(~~ies~~), and that by his/he~~r/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Kathleen C. Duncan (Seal)

KATHLEEN C. DUNCAN
Commission # 1628225
Notary Public - California
Sacramento County
My Comm. Expires Dec 9, 2009

State of Virginia

County of Arlington

Elizabeth Mitchell Eh
~~William T. Birney~~

On June 21st 2007 before me, (here insert name and title of the officer), personally appeared William T. Birney

_____

_____,

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

WITNESS my hand and official seal.

Signature Elizabeth Mitchell (Seal)

ELIZABETH MITCHELL
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MARCH 31, 2010

EXHIBIT A

LEGAL DESCRIPTION
AND
PROPERTY MAP

Exhibit "A"
Legal Description
Building 762 Parcel
Former Oakland Army Base

All that certain real property situated in the City of Oakland, County of Alameda, State of California, described as follows:

A portion of that Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded February 15, 1979 as Document 79-030025, in the Office of the Recorder of said Alameda County (hereinafter referred to as Doc. 79-030025); A portion of the Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County herein after referred to as Reel:032, Image:660) all of which being the "Parcel Encompassing Building 762" as described in that certain unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated September 3, 1997 (herein after referred to as the Building 762 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Record of Surveys, at Pages 50-60, Alameda County Official Records;

Thence, North 43°48'16" East 958.07 feet to the most western corner of said Building 762 Parcel, said corner being marked by a 5/8" rebar with plastic cap stamped "LS 5671", being the **POINT OF BEGINNING**;

Thence, along the northwest, northeast, southeast and southwest lines of said Building 762 Parcel the following four courses:

1) North 41°02'39" East, 238.78 feet to the most northern corner of said parcel;

2) South 82°00'39" East, 299.96 feet to the most eastern corner of said parcel, said corner being marked by a 5/8" rebar with plastic cap stamped "LS 5671";

3) South 07°51'10" West, 200.86 feet to the most southern corner of said parcel, said corner being marked by a 5/8" rebar with plastic cap stamped "LS 5671";

4) North 81°54'53" West, 430.68 feet to the **POINT OF BEGINNING**, containing 73,278 square feet (1.682 acres) more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

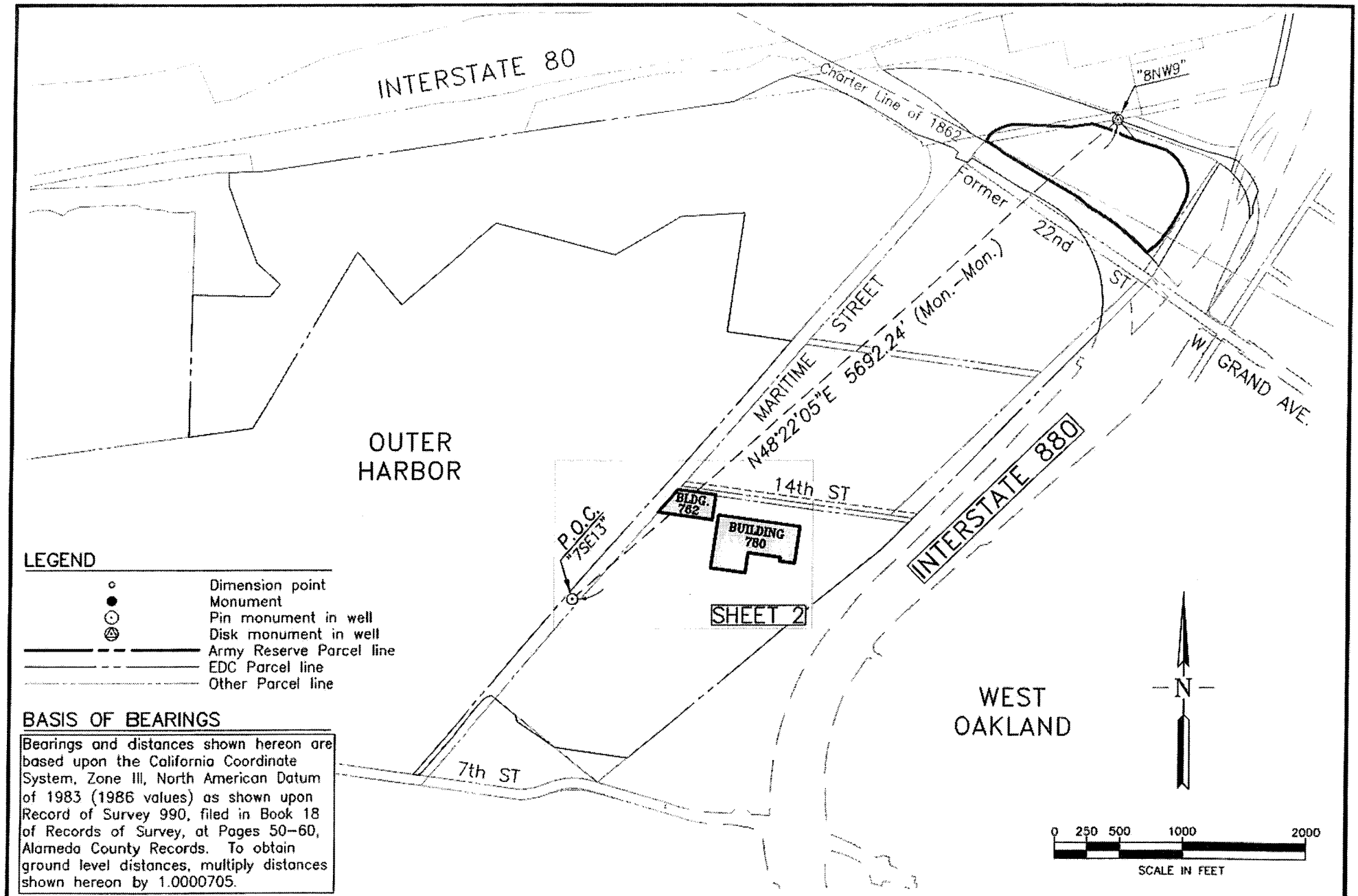
End of Description

I hereby state that this description and its accompanying plat were prepared by me, or under my direction, in October 3, 2005.

John R. Monaghan, LS 6122
License Expires: 03/31/06

10/3/05
Date

LICENSED LAND SURVEYOR
JOHN R. MONAGHAN
No. 6122
Exp. 3/31/06
STATE OF CALIFORNIA



LEGEND

- Dimension point
- Monument
- Pin monument in well
- Disk monument in well
- Army Reserve Parcel line
- EDC Parcel line
- Other Parcel line

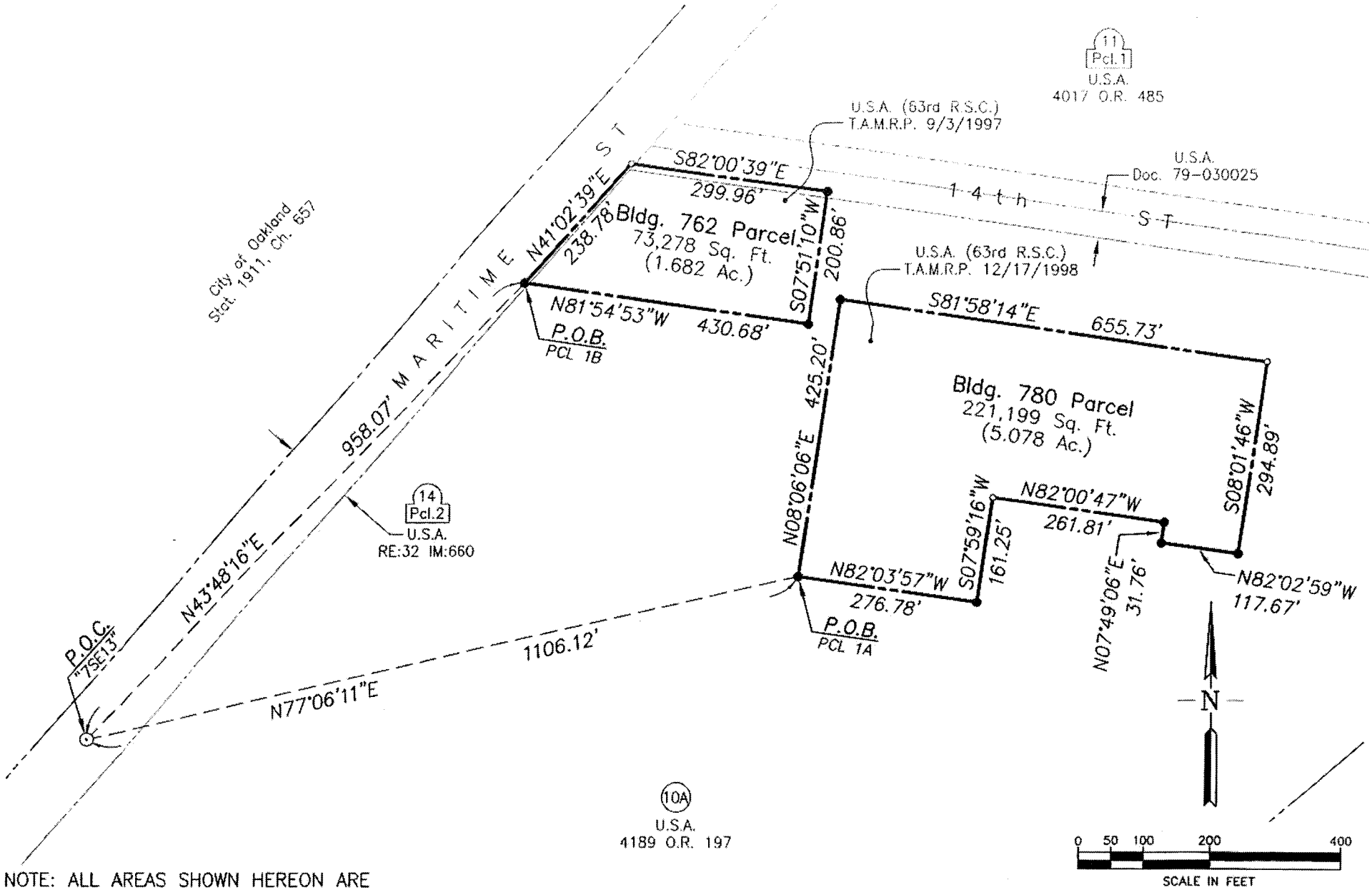
BASIS OF BEARINGS

Bearings and distances shown hereon are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon Record of Survey 990, filed in Book 18 of Records of Survey, at Pages 50-60, Alameda County Records. To obtain ground level distances, multiply distances shown hereon by 1.0000705.

PORT OF OAKLAND
LAND SURVEYS AND MAPPING
530 Water Street
Oakland, California

EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
A PORTION OF THE ARMY RESERVE ENCLAVE
FORMER OAKLAND ARMY BASE

DRAWN BY: DAM	Field Bk:
CHECKED BY: JRM	Wrk. Ord: 104471
SCALE: 1"= 1000'	Data File:
DATE: 5/21/2003	Revision: 2
SHEET 1 OF 2	Rev. date: 10/03/05
ATTACHMENTS:	
FILE LOC.> AR-PLAT_R1.DWG (1)	



NOTE: ALL AREAS SHOWN HEREON ARE MEASURED IN GROUND DISTANCES.

PORT OF OAKLAND

LAND SURVEYS AND MAPPING

530 Water Street
Oakland, California

EXHIBIT "A"

PLAT TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE ARMY RESERVE ENCLAVE
FORMER OAKLAND ARMY BASE

DRAWN BY: DAM	Field Bk:
CHECKED BY: JRM	Wrk. Ord: 104471
SCALE: 1"= 200'	Data File:
DATE: 5/21/2003	Revision: 2
SHEET 2 OF 2	Rev. date: 10/03/05
ATTACHMENTS:	
FILE LOC.> AR-PLAT_R1.DWG (2)	

Exhibit "A"
Legal Description
Building 780 Parcel
Former Oakland Army Base

All that certain real property situated in the City of Oakland, County of Alameda, State of California, described as follows:

A portion of that certain Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197), being Parcel B as described in that unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated December 17, 1998 (hereinafter referred to as the Building 780 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Record of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 77°06'11" East 1106.11 feet to the most western corner of said Building 780 Parcel, said corner being marked by a bolt and washer stamped "LS 6379", being the **POINT OF BEGINNING** of Parcel 1A;

Thence along the northwest, northeast, southeast and southwest lines of said Building 780 Parcel the following eight courses:

1) North 8°06'06" East, 425.20 feet to the most northern corner of said parcel, said corner being marked by a concrete nail and shiner stamped "LS 6379";

2) South 81°58'14" East, 655.73 feet to the most eastern corner of said parcel;

3) South 8°01'46" West, 294.89 feet to the southeast corner of said parcel, said corner being marked by a pipe and plug stamped "LS 6379";

4) North 82°02'59" West, 117.67 feet to an angle point in said southwest line, said angle point being marked by a pipe and plug stamped "LS 6379";

5) North 7°49'06" East, 31.76 feet to an angle point in said southwest line, said angle point being marked by a pipe and plug stamped "LS 6379";

6) North 82°00'47" West, 261.81 feet to an angle point in said southwest line;

7) South 7°59'16" West, 161.25 feet to an angle point in said southwest line, said angle point being marked by a 2.5" brass disk and bolt stamped "LS 6379";

8) North 82°03'57" West, 276.78 feet to the **POINT OF BEGINNING**, containing 221,199 square feet (5.078 acres) more or less, measured in ground distances.

End of Description

I hereby state that this description and its accompanying plat were prepared by me, or under my direction, in October 2005.

John R. Monaghan, LS 6122
License Expires: 03/31/06

10/3/05
Date

INTERSTATE 80

Charter Line of 1862

"8NW9"

Former 22nd ST

MARITIME STREET

N48°22'05"E 5692.24' (Mon.-Mon.)

W GRAND AVE.

OUTER HARBOR

14th ST

BLDG. 782

BUILDING 780

P.O.C. "7SE13"

INTERSTATE 880

SHEET 2

WEST OAKLAND

7th ST

N

0 250 500 1000 2000

SCALE IN FEET

LEGEND

- Dimension point
- Monument
- Pin monument in well
- Disk monument in well
- Army Reserve Parcel line
- EDC Parcel line
- Other Parcel line

BASIS OF BEARINGS

Bearings and distances shown hereon are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon Record of Survey 990, filed in Book 18 of Records of Survey, at Pages 50-60, Alameda County Records. To obtain ground level distances, multiply distances shown hereon by 1.0000705.

PORT OF OAKLAND

LAND SURVEYS AND MAPPING

530 Water Street
Oakland, California

EXHIBIT "A"

PLAT TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE ARMY RESERVE ENCLAVE
FORMER OAKLAND ARMY BASE

DRAWN BY: DAM	Field Bk:
CHECKED BY: JRM	Wrk. Ord: 104471
SCALE: 1"= 1000'	Data File:
DATE: 5/21/2003	Revision: 2
SHEET 1 OF 2	Rev. date: 10/03/05
ATTACHMENTS:	
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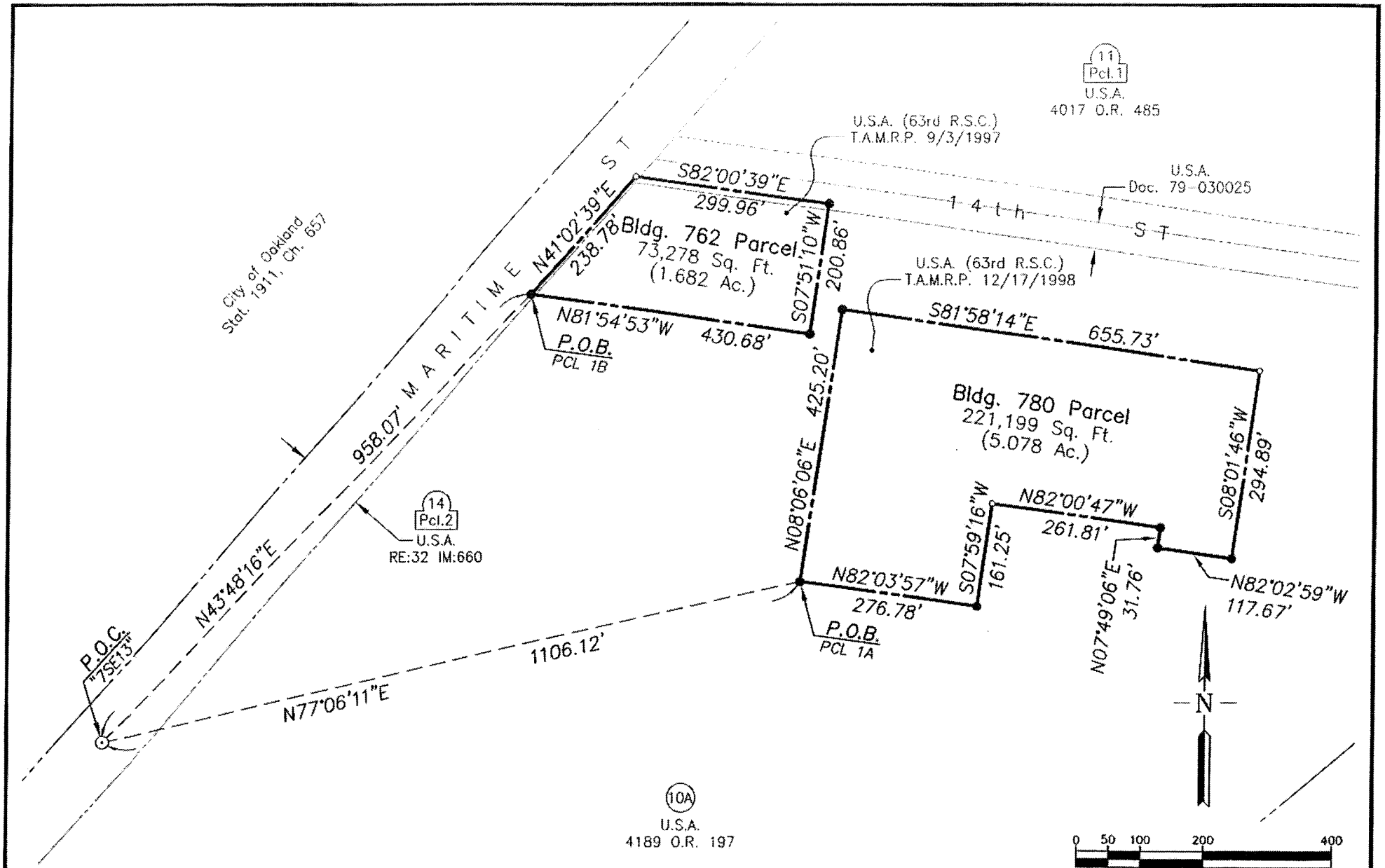

NOTE: ALL AREAS SHOWN HEREON ARE MEASURED IN GROUND DISTANCES.

PORT OF OAKLAND

LAND SURVEYS AND MAPPING

530 Water Street
Oakland, California

EXHIBIT "A"

PLAT TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE ARMY RESERVE ENCLAVE
FORMER OAKLAND ARMY BASE

DRAWN BY: DAM	Field Bk:
CHECKED BY: JRM	Wrk. Ord: 104471
SCALE: 1"= 200'	Data File:
DATE: 5/21/2003	Revision: 2
SHEET 2 OF 2	Rev. date: 10/03/05
ATTACHMENTS:	
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