

AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUNNYVALE
SCHOOL DISTRICT PERTAINING TO THE USE, MAINTENANCE
AND IMPROVEMENT FOR PUBLIC RECREATIONAL PURPOSES OF
VARIOUS BUILDINGS AND OPEN SPACE AREAS AT THE
BISHOP, CHERRY CHASE, COLUMBIA, CUMBERLAND, DE
ANZA, ELLIS, FAIRWOOD, HOLLENBECK, LAKEWOOD, SAN
MIGUEL, SUNNYVALE MIDDLE AND VARGAS SCHOOL SITES;
AND PERTAINING TO POSSIBLE ACQUISITION BY CITY OF
SUNNYVALE OF LIMITED AREAS OF SCHOOL SITES OWNED BY
SUNNYVALE SCHOOL DISTRICT

THIS AGREEMENT, made and entered into this 25th day of June, 1991, by and between CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "CITY", and SUNNYVALE SCHOOL DISTRICT OF SANTA CLARA COUNTY, herein called "DISTRICT";

W I T N E S S E T H:

WHEREAS, Section 10900 et. seq. of the Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, construct, improve, maintain and operate recreation centers, including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums; and

WHEREAS, Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public authority for the organizing, promoting and conducting of community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system; and

WHEREAS, CITY and DISTRICT have jointly developed, maintained and kept open for public use sports and recreational facilities on the following school or middle school sites in the City of Sunnyvale: Cherry Chase, Columbia, De Anza, Hollenbeck, Lakewood and Sunnyvale Middle, and desire to continue arrangements for the use and maintenance of such facilities; and

WHEREAS, CITY and DISTRICT are interested in entering into a long-term arrangement under which CITY will undertake the maintenance of the open space recreational areas of six additional school sites to enhance their usability by school students and by the general public, and DISTRICT will make such areas available to the general public at times when such areas are not being used for school purposes; and

WHEREAS, prior to the sale, lease, conveyance, transfer or disposition of open space recreational areas among most of the school sites within the territory of DISTRICT, DISTRICT is willing to make available to CITY for acquisition a portion of such sites;

NOW, THEREFORE, in consideration of the covenants and conditions herein set forth, and pursuant to the provisions of the Education Code hereinabove referred to, it is agreed as follows:

SECTION 1. DEFINITIONS; CONTEMPLATED IMPROVEMENTS.

(a) School open space and special facilities sites. There are attached to this Agreement and incorporated by reference herein certain exhibits, to which reference is made in this Paragraph. Each of said exhibits contains a diagram showing real property encompassing an open space area within a parcel of real property

consisting of a school site of DISTRICT, and some of said exhibits also contain diagrams of swimming pools, locker and shower rooms, tennis courts, and parking lots on some of the parcels which are used for school and/or public recreation purposes. For purposes of this Agreement, whenever reference is made to one or more school open space or recreational facilities sites, swimming pools, locker or shower rooms, tennis courts, or parking lots, such reference shall be construed to pertain to the applicable parcels of real property described in this Paragraph:

<u>Name of school open space or facility site*</u>	<u>Exhibit reference</u>
Bishop	"A"
Cherry Chase	"B"
Columbia	"C"
Cumberland	"D"
De Anza	"E"
Ellis	"F"
Fairwood	"G"
Hollenbeck	"H"
Lakewood	"I"
San Miguel	"J"
Sunnyvale Middle	"K"
Vargas	"L"

(* - as of date of execution of this Agreement)

(b) Contemplated improvements. Section 3 of this Agreement contemplates that CITY will construct certain improvements within the open space areas of the Bishop, Cumberland, Ellis, Fairwood,

San Miguel and Vargas school sites. Those improvements are as follows:

(1) Each open space area will be graded as necessary to insure safe terrain and good drainage.

(2) The irrigation system of each open space area (i.e., controller, piping, valves and sprinklers) will be redesigned, renovated and/or replaced as needed.

(3) All landscaping within each open space area, including trees, turf, shrubs and mulches, will be redesigned, renovated and/or replaced as needed.

(4) Within each open space area, all existing portable baseball backstops, and soccer goal posts will be repaired, replaced and/or supplemented with additional portable backstops and goal posts as necessary. All fields are intended to remain as open turf for multi-purpose use. No permanent backstops, field markings, bleachers, buildings or skinned infields/basepaths are contemplated, unless determined as part of an approved site Master Plan.

(5) Within the Ellis school open space site, improvements to a small picnic site, identified as "mini-park" as shown on Exhibit "F", shall be constructed as necessary.

(6) Within the Fairwood school open space site, one permanent baseball backstop with bleachers shall be eliminated.

(7) Within the San Miguel school open space site, three (3) pieces of galvanized play equipment shall be removed, and improvements to a small picnic area, identified as "mini-park" on

Exhibit "J", shall be constructed as necessary.

SECTION 2. ASSUMPTION OR CONTINUATION BY CITY OF MAINTENANCE OBLIGATION FOR SCHOOL SITE; INSTALLATION OF WATER METERS.

(a) CITY shall continue its obligations for the mowing, trimming, fertilization, irrigation, repair and related maintenance at the expense of CITY of turf, grounds and landscaped areas at the Cherry Chase, Columbia, De Anza, Hollenbeck, Lakewood, and Sunnyvale Middle School open space areas. CITY shall maintain such open space areas consistent with standards of like classification of CITY parks.

(b) CITY shall provide at its sole expense the maintenance, gas, electricity and water utilities for the swimming facilities at the Columbia and Lakewood school sites and for the locker and shower rooms at the Lakewood school site. CITY shall provide at its sole expense the maintenance at the Sunnyvale Middle School swimming facility. As used herein, maintenance of a swimming facility includes cleaning, chemical treatment and water filtration. CITY shall provide at its sole expense all lifeguards and other supervisory personnel at the times during which City is using such facilities.

(c) CITY shall provide at its sole expense the maintenance, gas, electricity and water utilities for the tennis courts at the Sunnyvale Middle school site.

(d) CITY shall provide at its sole expense the maintenance of the parking lot at the De Anza school site.

(e) DISTRICT shall provide at its sole expense the gas,

electricity and water utilities for the swimming facility at the Sunnyvale Middle school site, and the maintenance, gas, electricity and water utilities for the locker and shower rooms at the Columbia and Sunnyvale Middle school sites.

(f) If DISTRICT converts a school which was an elementary school at the time of execution of this Agreement to a middle school, and a swimming facility is included within or adjoins such school site, and DISTRICT elects to use such swimming facility in connection with the instructional purposes of DISTRICT, then DISTRICT, upon commencement of such use, shall provide at its sole expense the gas, electricity and water utilities for such swimming facility.

(g) Commencing on July 1, 1991, CITY shall undertake the mowing, trimming, fertilization, irrigation, repair and related maintenance at the expense of CITY of turf, grounds and landscaped areas at the Bishop, Cumberland, Ellis, Fairwood, San Miguel, and Vargas school site open space areas. As soon as practicable after July 1, 1991, the authorized representative of CITY and DISTRICT shall meet with each other to identify those areas needing immediate repair. Initially, CITY shall maintain such open space areas not below minimum DISTRICT standards. After construction of the improvements to the open space areas with respect to each of the six school sites (Bishop, Cumberland, Ellis, Fairwood, San Miguel, and Vargas) CITY shall maintain such open space areas consistent with standards of like classification of CITY parks.

(h) Not later than July 1, 1992, CITY shall install or cause

to be installed at each school site which is the subject of this Agreement, at the sole expense of CITY, water metering facilities which will enable measurement of the quantities of water used by CITY to irrigate each open space area on each such site for which CITY is responsible, or used by CITY to provide water to other facilities on each such school site as to which CITY is required to furnish water pursuant to this Agreement.

(i) Notwithstanding any other provision of this Agreement to the contrary, DISTRICT shall be responsible for preparation and maintenance of buildings and open space areas at the expense of DISTRICT in connection with special events or other functions of DISTRICT, including but not limited to graduation ceremonies and athletic events.

(j) CITY shall have no obligation for the mowing, trimming, fertilization, irrigation, repair or related maintenance at the expense of CITY of turf, grounds, landscaped areas, buildings, parking lots, fences, sidewalks, trees or other facilities owned by DISTRICT not reflected in the exhibits to this Agreement.

(k) DISTRICT shall provide for the removal of garbage, refuse, debris, rubbish, litter and other solid waste produced on each school site as a result of DISTRICT activities.

(l) CITY will determine the location of portable backstops as required in order to maintain acceptable field condition standards.

(m) In undertaking its maintenance obligations under this Agreement, CITY shall minimize the impact on DISTRICT use of facilities during school hours, but priority shall be given to CITY

maintenance personnel and equipment between the hours of 6:00 a.m. to noon as to the areas to be maintained by CITY. The authorized representatives of CITY and DISTRICT shall meet annually and review scheduling of maintenance at the various school sites. For the purposes of providing required turf and grounds maintenance, and with two weeks advance notice, CITY may curtail all DISTRICT use of those areas maintained by CITY four times during the school year. CITY shall attempt to schedule such maintenance in coordination with school calendars, and on days when school is not in session, where possible. CITY shall curtail DISTRICT use only if necessary, and for a maximum of one day each time. General maintenance schedules shall be coordinated by the Superintendent of Parks of CITY and the District Site Administrator of DISTRICT.

(n) For the purpose of abating hazardous conditions on the various school sites, CITY may curtail DISTRICT use of those areas maintained by CITY at any time and without prior notification. In such cases CITY will minimize DISTRICT's lack of access to the facility.

(o) At least once annually, the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT, or their authorized representatives shall meet to discuss the use and maintenance of those areas maintained by CITY pursuant to this Agreement.

(p) Except issues concerning safety, any and all concerns or issues of DISTRICT governing the general maintenance or use of those areas maintained by CITY pursuant to this Agreement shall be

communicated to CITY by the Superintendent of School or the Director of Operational Services of DISTRICT and shall be communicated with the Director of Parks and Recreation of CITY or his or her authorized representative.

(q) Upon assumption of maintenance responsibility for a school open space site pursuant to this Agreement, CITY shall modify the signs identifying the site to designate the responsibility of CITY and DISTRICT as to ownership, use, maintenance and improvements of the site.

SECTION 3. IMPROVEMENTS TO SCHOOL SITES.

(a) CITY shall prepare, at its expense, subject to subsection (k), a Master Plan for the design of the open space site improvements contemplated by this Agreement for the open space areas at the Bishop, Cumberland, Ellis, Fairwood, San Miguel, and Vargas school sites. The Master Plan will also identify potential future locations of sites of portable school facilities to the extent DISTRICT is able to identify such sites.

(b) The Master Plan for each school open space site shall be the governing document which determines the precise improvements to be installed at the open space areas at the Bishop, Cumberland, Ellis, Fairwood, San Miguel, and Vargas school sites. The description of certain improvements in Section 1(b) of this Agreement as to the various school open space sites are illustrative examples only. Although it is contemplated by the parties that the improvements developed in each Master Plan will be substantially similar to those generally described in Section 1(b)

of this Agreement as school open space improvements, where there is any conflict between any school open space site improvement generally described in Section 1(b) of this Agreement and any improvement described in a Master Plan, the Master Plan shall prevail.

(c) (1) CITY and DISTRICT may provide in any Master Plan for a school open space site for the construction by CITY of special recreational improvements for exclusive or primary use of DISTRICT in addition to those improvements contemplated by this Agreement. Prior to the approval of a Master Plan for a school open space site, DISTRICT may provide for the construction of such special improvements by DISTRICT without approval of CITY. DISTRICT shall provide CITY with a copy of the plans and specifications for such improvements for its review prior to their construction. Any such special improvement shall be designated as such in the Master Plan. DISTRICT shall be responsible for all capital costs, including cost of installation, and all costs of maintenance with respect to such improvements.

(2) CITY and DISTRICT may provide in any Master Plan for a school open space site for the construction by CITY of special recreational improvements for exclusive or primary use of CITY in addition to those improvements contemplated by this Agreement. CITY shall provide DISTRICT with a copy of the plans and specifications for such improvements for its review prior to their construction. Any such special improvement shall be designated as such in the Master Plan. CITY shall be responsible for all capital

costs, including cost of installation, and all costs of maintenance with respect to such improvements. The costs of such improvements are not within the expenditure limitations set forth in subsection (k).

(d) CITY shall consult and coordinate its preparation of each such Master Plan with DISTRICT. CITY and DISTRICT shall appoint representatives for purpose of such consultation and coordination.

(e) Upon completion of the preparation of each Master Plan, it shall be presented to the respective governing bodies of CITY and DISTRICT for approval. No such Master Plan shall be effective unless and until it shall have been approved by the governing boards of CITY and DISTRICT.

(f) If either party during the term of this Agreement seeks the installation of substantial improvements not included in any approved Master Plan to one or more school sites designated in this Agreement, CITY shall prepare an appropriate amendment to the pertinent Master Plan. The cost and expense of preparation of such amendment shall be by the party proposing it, or shall be borne jointly if CITY and DISTRICT jointly propose it. No such amendment shall be effective unless and until it shall have been approved by the governing boards of CITY and DISTRICT. The cost of installation and maintenance of any such improvement shall be borne by the party which proposed it, or shall be borne jointly if CITY and DISTRICT jointly proposed it.

(g) CITY is empowered to undertake and shall be responsible for all activities related to the construction and installation of

the improvements within the open space areas of the Bishop, Cumberland, Ellis, Fairwood, San Miguel and Vargas school sites in accordance with each adopted Master Plan, including preparation of plans and specifications, selection and payment of services of consultants, advertising and calling for bids for construction and installation of the improvements, awarding construction contracts, supervision of construction and installation of the improvements, and payment of costs of such construction and installation. No contract for construction shall be awarded unless and until DISTRICT shall have approved the plans and specifications. No contract for construction of any school building, as defined in Chapter 2 of Part 23 of Title 2 of the Education Code, shall be awarded without the prior approval of the State Architect, where required.

(h) Except as provided in subsection (i) and Section 10, the commencement and completion of construction and installation of the improvements for the various school open space sites under this Agreement shall occur not later than the following dates:

<u>School open space site</u>	<u>Commencement</u>	<u>Completion</u>	
Bishop School	June 30, 1992	June 30, 1993	Nov
Cumberland School	June 30, 1992	June 30, 1993	Nov
Ellis School	June 30, 1992	June 30, 1993	Oct
Fairwood School	June 30, 1993	June 30, 1994	
San Miguel School	June 30, 1993	June 30, 1994	
Vargas School	June 30, 1993	June 30, 1994	Nov

(i) The required date of completion of construction and installation of any improvement required pursuant to this Agreement shall be extended where and to the extent that delay is attributable to weather or circumstances beyond the control of CITY

or any contractor constructing or installing improvements under the authority of CITY.

(j) DISTRICT recognizes that the construction of improvements pursuant to this Agreement may occur during times of the year when its schools are in session. CITY will endeavor to schedule construction activities so as to cooperate with DISTRICT and will assure that adequate safety precautions are in place. CITY shall consult with DISTRICT as to the scheduling and timing of construction of the improvements so as to minimize any adverse impact such construction may have on the instructional program of DISTRICT.

(k) (1) Except as provided in subsection (k)(2), CITY shall not be required to expend more than an aggregate of two million dollars (\$2,000,000.00), adjusted by changes in the Consumer Price Index as calculated pursuant to subsection (k)(3), for all activities related to preparation of all Master Plans and the construction and installation of the improvements within the open space areas of the Bishop, Cumberland, Ellis, Fairwood, San Miguel and Vargas school sites in accordance with each adopted Master Plan, including preparation of plans and specifications, selection and payment of services of consultants, advertising and calling for bids for construction and installation of the improvements, awarding construction contracts, and supervision of construction and installation of the improvements in any approved Master Plan. Except as provided in subsection (k)(2), the improvements developed in each Master Plan will be substantially similar to those

generally described in Section 1(b) of this Agreement as school open space improvements. It is the intent of CITY to assure that all Master Plan elements for which CITY is responsible will be constructed.

(2) CITY may expend funds in excess of two million dollars (\$2,000,000.00), adjusted by changes in the Consumer Price Index as calculated pursuant to subsection (k)(3), for the activities described in subsection (k)(1) with the specific authorization of the City Council of CITY. CITY may approve improvements in any Master Plan which are in addition to those generally described in Section 1(b) with the specific authorization of the City Council of CITY and the Board of Education of DISTRICT. The City Council of CITY shall have sole discretion in determining whether it shall grant such authorizations.

(3) The expenditure limitations set forth in this subsection shall be adjusted as follows:

a. The Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose area for all items (1982-84 = 100) compiled by the U.S. Department of Labor Bureau of Labor Statistics for June, 1991, shall be determined.

b. Such index for June, 1993, shall be determined.

c. The increase of such index between June, 1991, and June, 1993, if any, shall be calculated as follows and then stated as a percent (%): $(b. - a.) / a.$ (The quantity b. minus a., divided by a.).

d. The expenditure limitations shall be adjusted in

accordance with the percent (%) of increase, if any, calculated under c.

(4) Upon completion of construction and installation of all improvements subject to the expenditure limitation set forth in subsection (k)(1), CITY shall calculate the total expenditures for all activities related to such improvements described in subsection (k)(1). If such total is less than two million dollars (\$2,000,000.00), adjusted by changes in the Consumer Price Index as calculated pursuant to subsection (k)(3) ("adjusted expenditure limitation"), then not later than sixty (60) days after such calculation, CITY shall pay DISTRICT an amount equivalent to the difference between such adjusted expenditure limitation and such total.

SECTION 4. FACILITY USAGE POLICY FOR RECREATIONAL AREAS AND INTERIOR FACILITIES AT SCHOOL SITES. (a) The following usage policy shall be effective upon execution of this Agreement with respect to school open space areas and interior facilities at Cherry Chase, Columbia, De Anza, Hollenbeck, Lakewood and Sunnyvale Middle school sites, and with respect to swimming pools, locker rooms, shower rooms and tennis courts at Columbia, Lakewood and Sunnyvale Middle school sites.

(b) The following usage policy shall be effect on July 1, 1991, with respect to school open space areas and interior facilities at the Bishop, Cumberland, Ellis, Fairwood, San Miguel, and Vargas school sites.

(c) The items contained in this section are intended to define

basic guidelines in order to maximize recreational opportunities for both students of DISTRICT and residents of CITY.

(d) The policy set forth in this section may be modified from time to time by agreement of the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized representatives. Either party may recommend to the other modifications to this policy.

(e) (1) DISTRICT shall have priority use of school open space areas, locker rooms, shower rooms, and tennis courts governed by this Agreement between the hours of 8:00 a.m. to 4:00 p.m. on days during which school is in session, except as set forth in subsection (f). Generally, this will apply to Monday through Friday from September to mid-June of each year. CITY will have priority use of facilities after 4:00 p.m. on days when school is in session and all other times, including weekends, holidays and summer vacation. Exceptions to this schedule can be agreed upon by the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized representatives. CITY will cooperate with DISTRICT so as to give DISTRICT adequate opportunity to use each school site for its activities, programs and needs.

(2) CITY shall have exclusive use of the swimming pools on the Columbia and Sunnyvale Middle school sites on days during which school is not in session and between 4:00 p.m. and 8:00 a.m. on days during which school is in session. CITY shall have exclusive use of the swimming facility at the Lakewood school site. Special exceptions to this schedule can be agreed upon by the Director of

Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized representatives.

(f) DISTRICT shall have priority use of facilities during days and times other than those listed in subsection (e) for DISTRICT activities such as summer school, school special events, afterschool athletics, and similar activities. Specific schedules shall be agreed upon by the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized representatives. Non-school related groups will be notified of school priority and may be required to relocate due to school special events.

(g) During school hours the facilities described above in this section may be used for public related recreational activities, except in the areas of the facilities mutually designated by the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized representatives as those which can be used by the public during hours when school classes are in session.

(h) CITY shall be responsible for administering facility reservations for public use of open space, swimming pools, athletic fields or tennis courts for each school site. CITY shall be solely responsible for determining a priority use system, as well as fees to be charged to the public and/or organized groups for use of school sites during such times that the sites are under control of CITY. Such fees shall be required to conform to all applicable rules, regulations, ordinances and/or laws governing school grounds in addition to those applicable to CITY property. All fees

collected shall be the property of CITY. Copies of CITY's reservation and priority use policy will be provided to DISTRICT.

(i) When school buildings are under lease by DISTRICT to private users, the Director of Parks and Recreation of CITY shall allow such users reasonable use of recreational open space to meet the specialized recreational needs of the user. Such requests may be granted when reasonable advance notice is given and the use does not interfere with public related recreational activities.

(j) Not later than August 31, 1991, CITY and DISTRICT shall enter into a written agreement, which shall provide the following:

(1) That CITY shall be entitled to access to and the use of the gymnasium, multipurpose rooms, and other special use interior facilities, included related equipment, such as backstops, poles, nets and scoreboards, at the Bishop, Cherry Chase, Columbia, Cumberland, De Anza, Ellis, Fairwood, Hollenbeck, Lakewood, San Miguel, Sunnyvale Middle and Vargas school sites for public recreational purposes; and

(2) The terms and conditions under which CITY shall be entitled to access to and use of such facilities, including but not limited to the cost to CITY for such access and use; responsibility for loss or damage to facilities; and responsibility for maintenance of such facilities and for the cost of such maintenance.

(k) Amendments, revisions or modifications to this policy will be the responsibility of the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized

representatives.

SECTION 5. OBLIGATION OF DISTRICT NOT TO SELL, LEASE OR DISPOSE OF CERTAIN OPEN SPACE OR OTHER AREAS FOR 25 YEARS. (a) As used in this section and in Section 6 of this Agreement, the term "restricted site" shall mean any school open space area or portion thereof at the Bishop, Cherry Chase, Columbia, Cumberland, Ellis, Fairwood, Lakewood, San Miguel, Sunnyvale Middle, or Vargas school sites, or any swimming pool, locker room, shower room or tennis court facility at the Columbia, Lakewood, or Sunnyvale Middle school sites.

(b) DISTRICT shall have the power to sell, lease, convey, transfer, or otherwise dispose of the Benner school site without first offering said site to CITY for its acquisition.

(c) DISTRICT shall not sell, lease, convey, transfer, or otherwise dispose of any restricted site prior to July 1, 2016.

SECTION 6. OBLIGATION OF DISTRICT NOT TO SELL, LEASE OR DISPOSE OF CERTAIN OPEN SPACE AND OTHER AREAS WITHOUT GRANTING CITY RIGHT OF ACQUISITION. (a) DISTRICT shall not sell, lease, convey, transfer, or otherwise dispose of any restricted site on or after July 1, 2016, without following the procedure set forth in this section.

(b) DISTRICT shall not sell, lease, convey, transfer, or otherwise dispose of any school open space area or portion thereof at the De Anza or Hollenbeck school sites without following the procedure set forth in this section.

(c) (1) Upon the execution of this Agreement, there is

established a reserve bank consisting of eight (8) acres of real property. The reserve bank shall never exceed eight (8) acres. The reserve bank is depleted to the extent specified in this paragraph when CITY acquires from DISTRICT an area which is the subject of potential acquisition by CITY from DISTRICT.

(2) Upon execution of this Agreement, the areas of potential acquisition are the school open space areas at the De Anza and Hollenbeck school sites.

(3) Whenever the CITY shall acquire school open space areas at the De Anza or Hollenbeck school sites from DISTRICT, the reserve bank shall be deemed depleted to the extent of the amount of land acquired by CITY.

(4) If, as of June 30, 2016, sufficient real property shall not have been acquired by CITY from DISTRICT to have completely depleted the reserve bank, the restricted sites shall be added to the areas of potential acquisition subject to the reserve bank. The addition of the restricted sites to the areas of potential acquisition shall not increase the acreage of the reserve bank beyond eight (8) acres. Whenever the CITY shall acquire school open space areas from among any restricted site or sites, the reserve bank shall be deemed depleted to the extent of the amount of such land acquired by CITY.

(d) Prior to selling, leasing, conveying, transferring or otherwise disposing of any school site or facility or portion thereof to which the procedure described in this section applies, DISTRICT shall first give CITY written notice of its intent to

sell, lease, convey, transfer or otherwise dispose of such property.

(e) Not more than thirty (30) days after the date of the written notice of intent CITY may give DISTRICT written notice that CITY is interested in exercising its rights of acquisition under this section. If CITY fails to give DISTRICT timely notice pursuant to this subsection with respect to a school site or portion thereof, it shall have no further rights with respect to such site or portion.

(f) If CITY gives DISTRICT timely notice of interest in exercising its right of acquisition pursuant to subsection (e), CITY shall have the right to acquire the site or a portion thereof at no cost to CITY if the site is a restricted site and is within the reserve bank as specified in subsection (c), to the extent that such reserve bank shall not have been depleted.

(g) With respect to any real property which CITY is entitled to acquire from DISTRICT at no cost pursuant to subsection (f), DISTRICT shall convey such property to CITY through a legal entity qualified to perform escrow services in California not later than thirty (30) days from the date CITY gives DISTRICT its notice of interest to acquire the property. CITY shall be responsible for all escrow expenses.

(h) Notwithstanding any provision of this Agreement to the contrary, the CITY shall have no further right to acquire real property from DISTRICT pursuant to this section, and DISTRICT shall have no obligation to notify CITY pursuant to subsection (d) once

CITY shall have acquired an aggregate of real property sufficient to have depleted such reserve bank, to wit: eight (8) acres.

(i) CITY shall not sell any portion of any real property acquired from DISTRICT pursuant to this section, nor cease to use such property for recreational purposes unless and until CITY shall have offered to DISTRICT a first right of refusal to repurchase such real property at the repurchase price within sixty (60) days from the date of written notice by CITY to DISTRICT of the intent of CITY to sell such property or to terminate recreational uses thereon. For purposes of this Agreement, and for purposes of Sections 39396 and 39398 of the Education Code, the repurchase price shall be twenty-five per cent (25%) of the fair market value of the real property or affected portion thereof. The fair market value of any such real property shall be determined by a written report prepared by a qualified real estate appraiser jointly selected by CITY and DISTRICT. The fee for such appraisal shall be borne equally by CITY and DISTRICT. If CITY and DISTRICT are unable to agree upon an appraiser to determine fair market value, said value shall be determined by the Superior Court of the County of Santa Clara, State of California.

SECTION 7. CERTAIN AGREEMENTS SUPERSEDED. This Agreement supersedes the following agreements between CITY and DISTRICT, which agreements shall be terminated upon execution of this Agreement:

(a) Agreement of October 26, 1971, pertaining to development and maintenance for recreational purposes of CITY parks and

DISTRICT school sites adjacent to one another.

(b) Agreement of June 30, 1986, for the joint use of Cherry Chase School.

(c) Agreement of June 30, 1986, for the joint use of Columbia School-Park.

(d) Agreement of November 14, 1977, pertaining to development, use and maintenance of the De Anza School site.

(e) First Amendment to Agreement for Joint Use of Recreational Facilities, dated November 14, 1977. Said amendment is dated April 15, 1986.

(f) Agreement of June 30, 1986, for the joint use of Hollenbeck School.

(g) Agreement of August 7, 1972, pertaining to the development, use and maintenance for recreational purposes of Lakewood School site.

(h) Agreement of October 9, 1972, pertaining to development, use and maintenance for recreational purposes of the Mango school site.

(i) Agreement of October 9, 1972, pertaining to development, construction and maintenance of an outdoor swimming facility at the Madrone Middle School site on Morse Avenue.

SECTION 8. DUTY OF PARTIES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS. (a) CITY shall defend, indemnify and hold harmless DISTRICT, its officers, agents and employees from any and all claims or causes of action for death or injury to persons, or damage to or loss of property arising out of the negligent or

inadequate supervision of any community recreation activities conducted by CITY at any school open space site for which CITY has undertaken the responsibility for maintenance, improvement or rehabilitation under this Agreement or under previous agreements between the parties, or due to the failure of CITY to construct or cause the construction of any improvement for which CITY is responsible under this Agreement, or due to the negligence of CITY or its officers, agents or employees in the use by CITY of the interior of any building of DISTRICT arising out of this Agreement, except where such claim or cause of action arises from the sole negligence of DISTRICT, its officers, agents or employees.

(b) DISTRICT shall defend, indemnify and hold harmless CITY, its officers, agents and employees from any and all claims or causes of action for death or injury to persons, or damage to or loss of property arising out of the negligent or inadequate supervision of any educational or recreational activities conducted by DISTRICT at any school open space site for which CITY has undertaken the responsibility for maintenance, improvement or rehabilitation under this Agreement or under any previous agreement between the parties, except where such claim or cause of action arises from the sole negligence of CITY, its officers, agents or employees.

(c) CITY shall defend, indemnify and hold harmless DISTRICT, its officers, agents and employees from any claims or causes of action for death or injury to persons, or damage to or loss of property accruing on or after July 1, 1991, attributable to the

physical condition of any school open space site for which CITY has undertaken responsibility for maintenance, improvement or rehabilitation under this Agreement arising out of the maintenance of such site by CITY, except for those claims or causes of action to which DISTRICT is responsible pursuant to subsection (b).

SECTION 9. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

SECTION 10. FORCE MAJEURE. If, due to act of God; fire; flood; storm; inclement weather; earthquake; drought; acute restrictions or riot; war or insurrection; plant or animal infestation or disease; sudden or severe energy shortage; strike; work stoppage; work slowdown or other concerted job action; or other condition of emergency or disaster beyond the control of CITY which makes performance of its construction, rehabilitation and/or maintenance obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

SECTION 11. DISCRIMINATION PROHIBITED. Neither CITY nor DISTRICT shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, sex, physical handicap, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 12. NOTICES. All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY

City Manager
City of Sunnyvale
P.O. Box 3707
Sunnyvale, California 94088-3707

To DISTRICT

Superintendent
Sunnyvale School District
830 West McKinley Avenue
Sunnyvale, California 94088

SECTION 13. EFFECT OF WAIVER OF BREACH OR VIOLATION. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision of law shall not be deemed to be a waiver of any other term, covenant, or condition or law. The subsequent acceptance by either party of any money which may become due hereunder shall not be deemed a waiver of any preceding breach or violation by the other party of any term or condition of this Agreement, or of any applicable law.

SECTION 14. LEGAL ACTIONS; ATTORNEY FEES; SPECIFIC PERFORMANCE.

(a) Any disputes regarding this Agreement shall be resolved according to the laws of the State of California. Any legal proceedings shall be instituted in the courts of the State of California and County of Santa Clara, irrespective of any claim of diversity of citizenship or other possible jurisdictional conditions.

(b) The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

(c) In any action to enforce the provisions of Sections 5 and 6 of this Agreement, specific performance shall be a remedy

available in addition to any other remedies provided by law.

SECTION 15. INTEGRATED AGREEMENT. This document represents the entire and integrated Agreement between CITY and DISTRICT and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement shall not be construed as nor deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatever.

SECTION 16. AMENDMENT OF AGREEMENT. This Agreement may be amended only by written instrument, signed by both CITY and DISTRICT.

SECTION 17. ALL PROVISIONS OF AGREEMENT ARE CONDITIONS. All provisions of this Agreement are expressly made conditions.

SECTION 18. TERMINATION OF AGREEMENT. (a) Except as provided in subsections (b) and (c) this Agreement shall terminate on June 30, 2016.

(b) Subsection 6(i) of this Agreement shall continue to be in full force and effect after June 30, 2016.

(c) If, as of June 30, 2016, sufficient real property shall not have been acquired by CITY from DISTRICT to have completely depleted the reserve bank established pursuant to Section 5(c), then subsections (a) through (h), inclusive, of Section 6 of this Agreement shall continue to be in full force and effect until the

825 WEST IOWA

reserve bank is depleted, to wit: CITY shall have obtained a total of eight (8) acres pursuant to this Agreement.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Agreement on the 25th day of June, 1991.

ATTEST:

City Clerk

By

Carol Ann Dwyer
Deputy City Clerk

CITY OF SUNNYVALE ("CITY")

Richard Napier
Mayor

APPROVED AS TO FORM:

William R. Brink
Sr. Atty City Attorney

SUNNYVALE SCHOOL DISTRICT
("DISTRICT")

Maury S. Martin
President

APPROVED AS TO FORM:

BROWN AND CONRADI, APLC

by Jonathan R. Dancy
Attorney for District

AVE.

0001 1 27425 . 00

10,000

17000' R -

MAUDY
AVE

506.00-

20.00' N

AYE-

BAYVIEW

A.C.-P.	100,458	44.16
A.C.-O.	10,320	4.77
<u>Total A.C.</u>	<u>110,778</u>	<u>48.93</u>

A.C.-P.	100,438 to 11
A.C.-D.	10,320 to 17,

Total A.C. = 110,758 sq ft.

SPACE

OPEN

11-231 Acron

3.17 Acres

TURP

5' Color Line Fence

HAZELTON
AV

714.44

BISHOP ELEMENTARY SCHOOL,
450 N. SUNNYVALE AVE

ALC 100-0
02/1000 773
71. 4/81

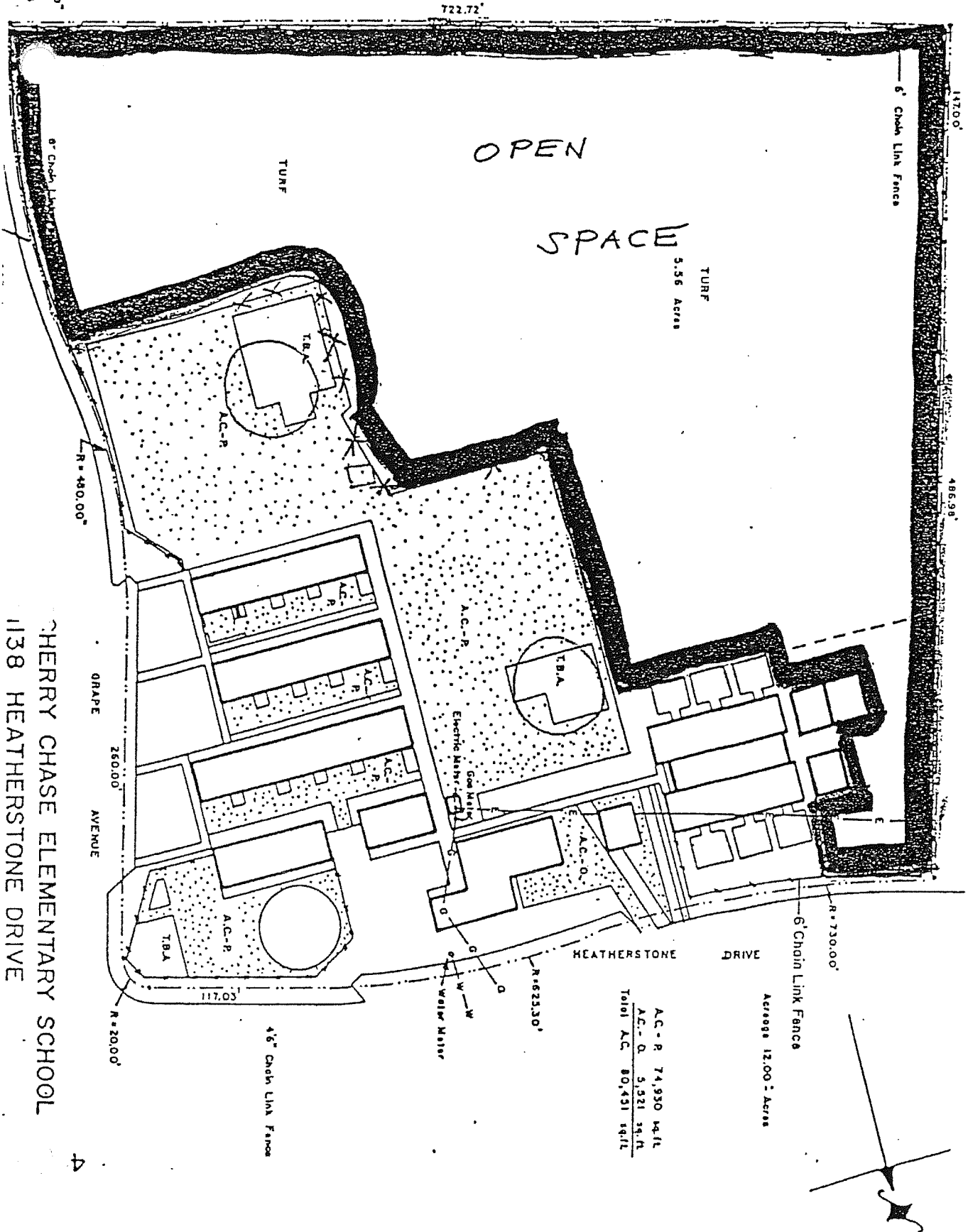


EXHIBIT "C"

MORSE
A.C.-P. 53,880 sq.ft.
A.C.-O. 39,329 sq.ft.
TOTAL AC 33,209 sq.ft.

- GAS VALVES
- WATER VALVES
- ELECTRICAL PANELS

LEGEND

CHAIN LINK FENCE

MAIN TURF & MINI

PARK WATER VALVE & ACREAGE 23.02 ACRES

TURF CONTROLLER

Chain Link Fence

TURF
4.33 ACRES

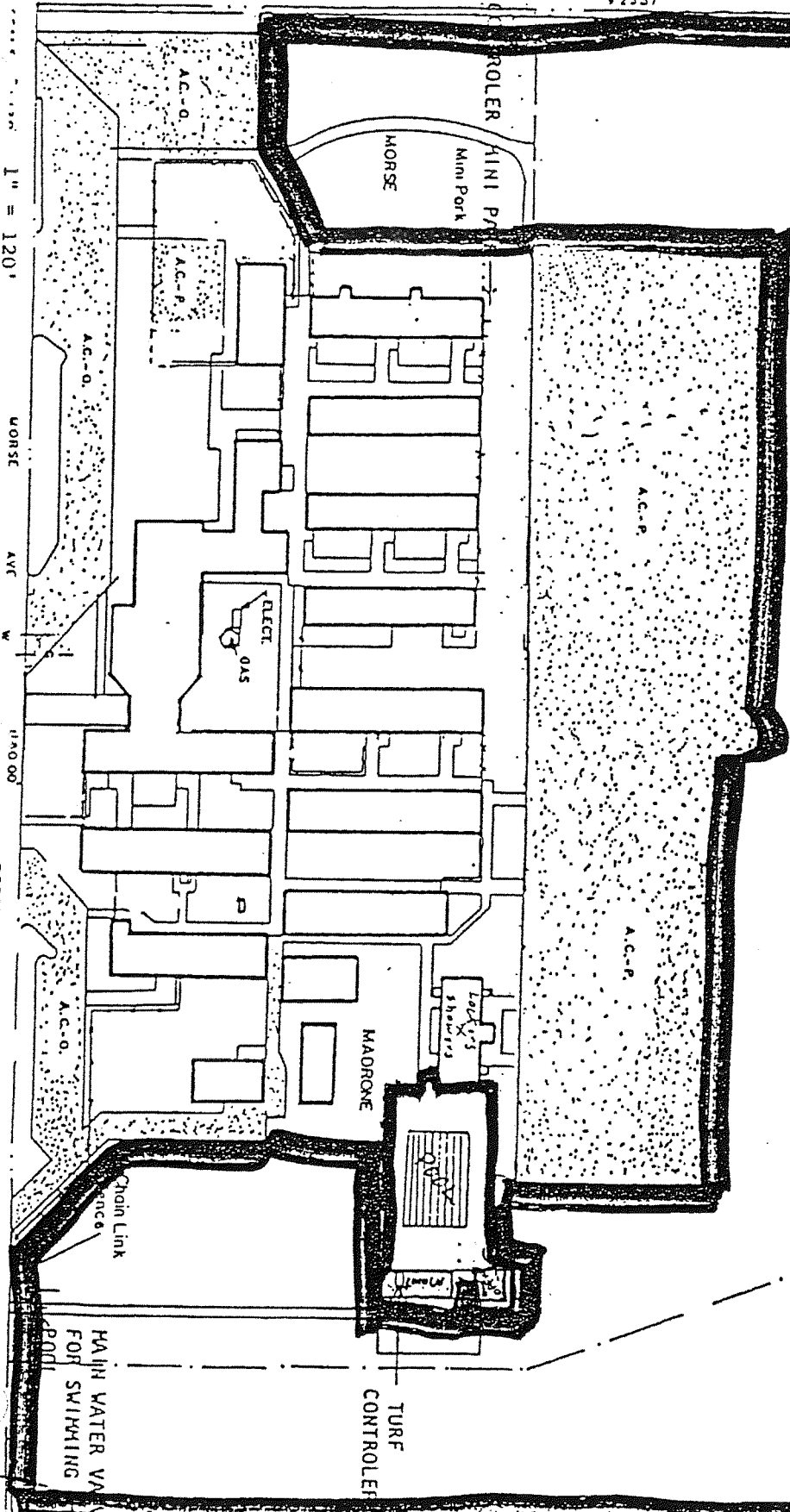
OPEN
SPACE

TURF
5.33 ACRES

MAORONE
A.C.-P. 49,248 sq.ft.
A.C.-O. 11,920 sq.ft.
TOTAL A.C. 51,168 sq.ft.

15' P.G.E. RIGHT OF WAY

Chain Link Fence



1" = 120'

MORSE

AVC

W

11:00

COLUMBIA COMMUNITY SCHOOL

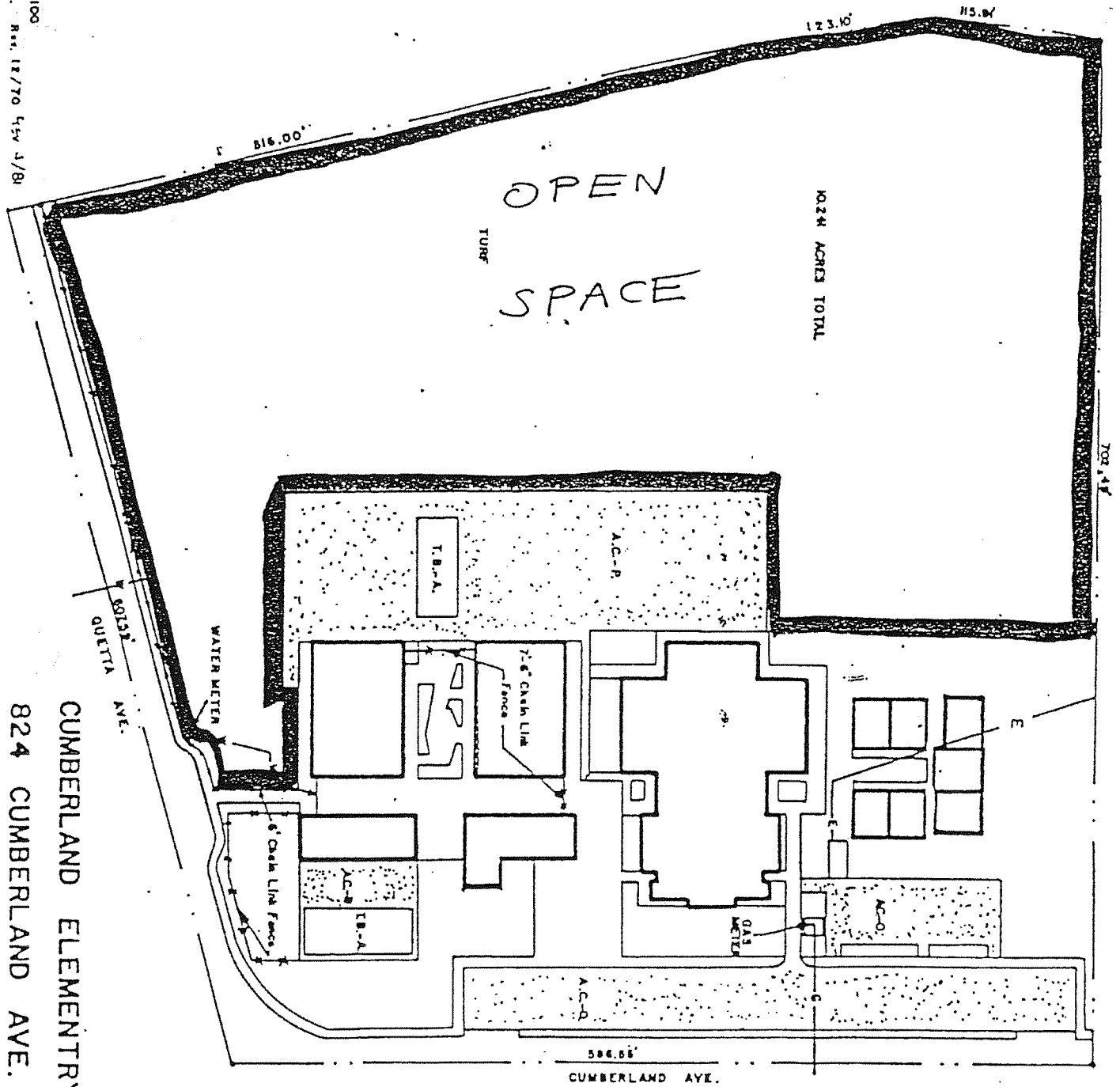
739 Morse

MAIN WATER VALVE FOR SWIMMING POOL

TURF CONTROLLER

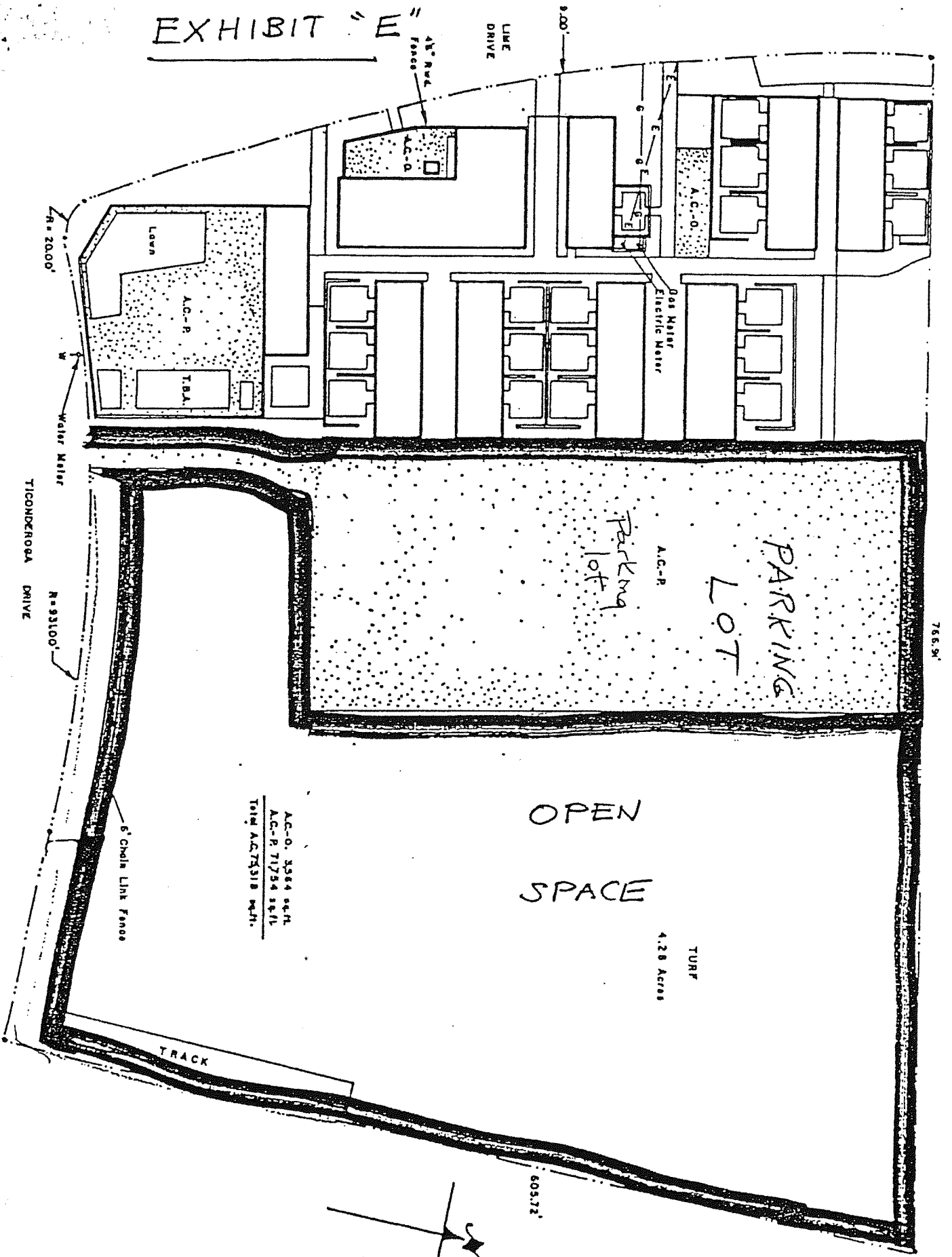
EXHIBIT "D"

SCALE 1"=100'
DATE: 11/11/70 Rev. 12/70 1/4" 3/8"



CUMBERLAND ELEMENTARY SCHOOL
824 CUMBERLAND AVE.

EXHIBIT "E"



A.C.-O. 3264 sq.ft.
A.C.-R. 71754 sq.ft.
Total A.C. 74818 sq.ft.

531.5.

23-1

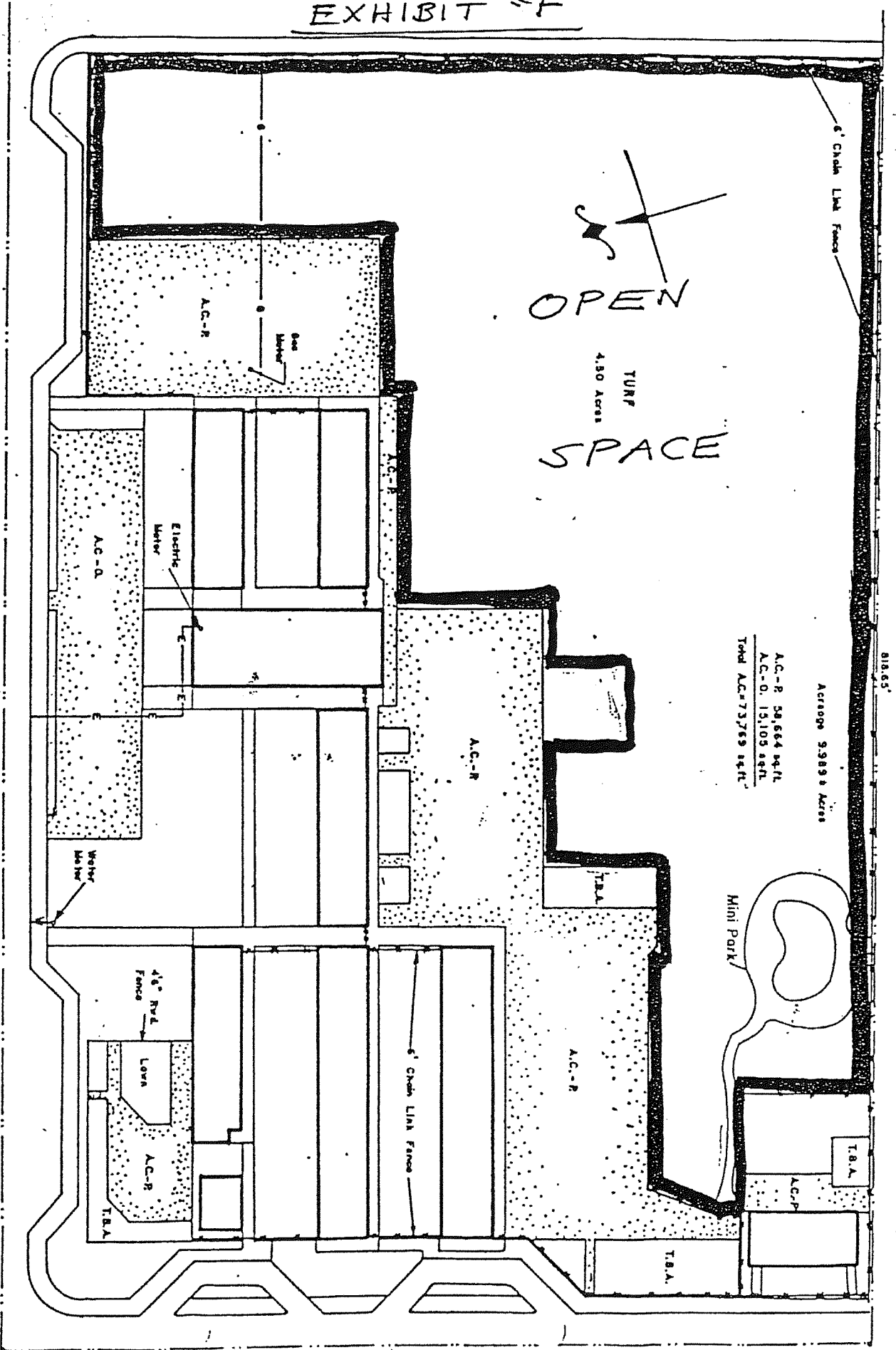
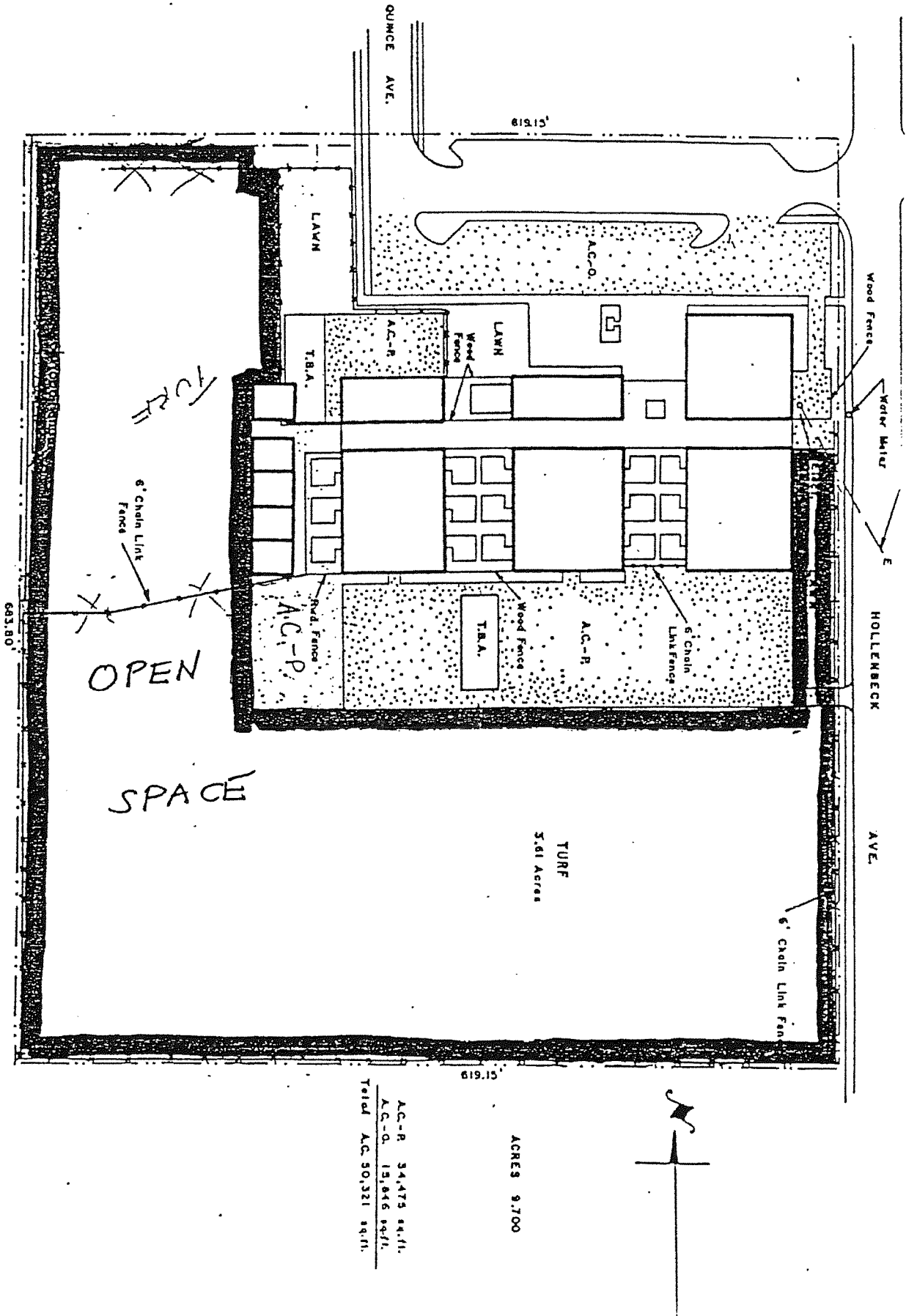


EXHIBIT "H"

SCALE 1" = 100'-0"
R.B.Y./M.C.M. 7/73
REV. 4/71



HOLLENBECK ELEMENTARY SCHOOL
1185 HOLLENBECK RD.

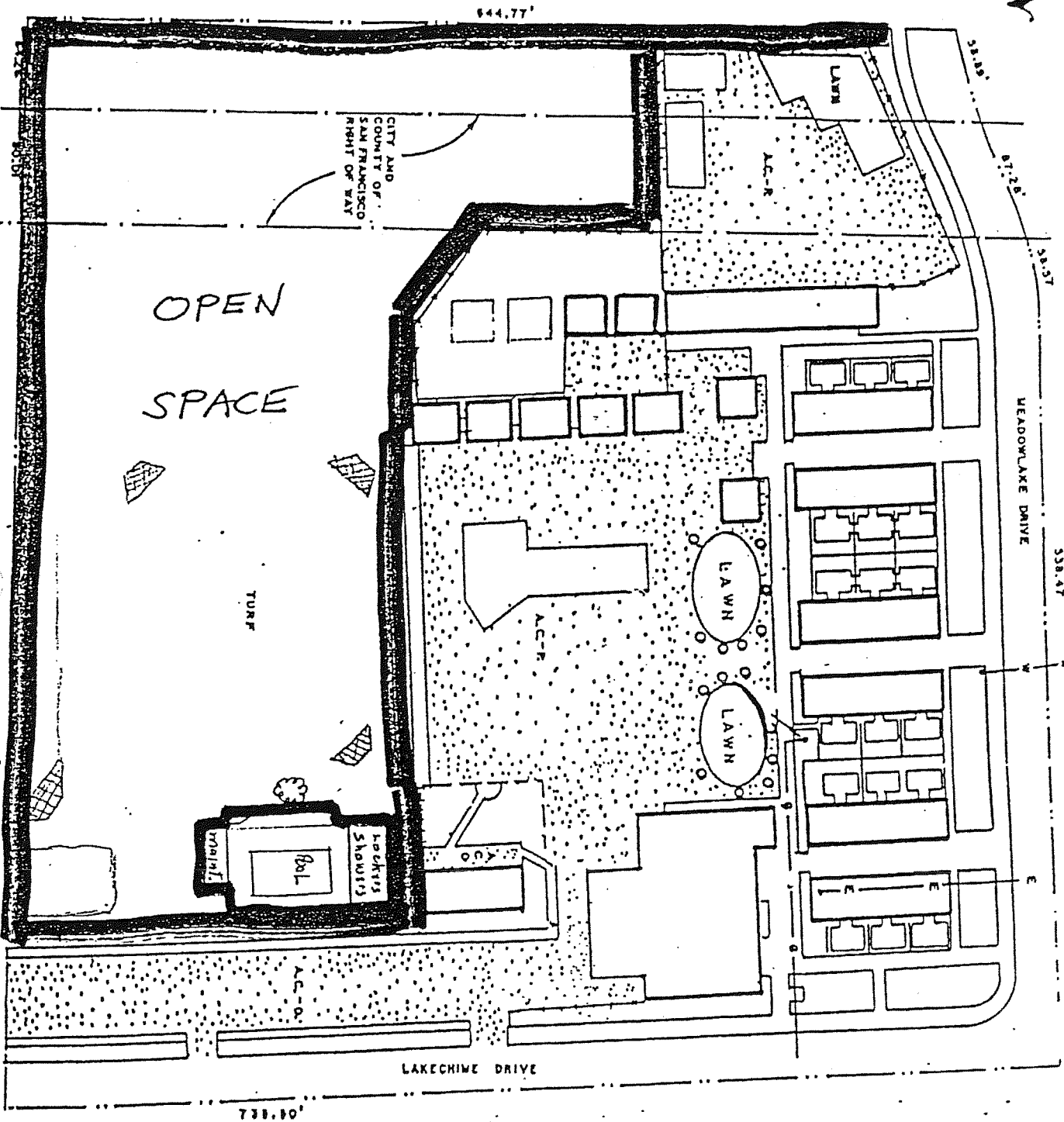
EXHIBIT "I"



8-73,103 ACFT
 0-18,900 ACFT
 1-AC-92,003 ACFT

12,210 ACRES

SCALE 1"=100'
 1/4" = 1/4" MCM, 7/73 REV.



LAKEWOOD ELEMENTARY SCHOOL
 750 LAKEWOOD DRIVE

EXHIBIT J

AC-R 64,663 sq ft
 AC-D 2,863 sq ft
 TOTAL 67,526 sq ft

BLDG Area

334.73'

443.4'

6' Chain Link Fence

OPEN
SPACE

TURF
330 Acres

T.B.A.

T.B.A.

GRAVURED
PLAY EQUIPMENT

6' Chain Link Fence

ALVARADO AVENUE

306.43'

443.43'

437.66'

Mini Port

AC-R

CON. MALL
CIRCULAR

AC-D

T.B.A.

AC-R

T.B.A.

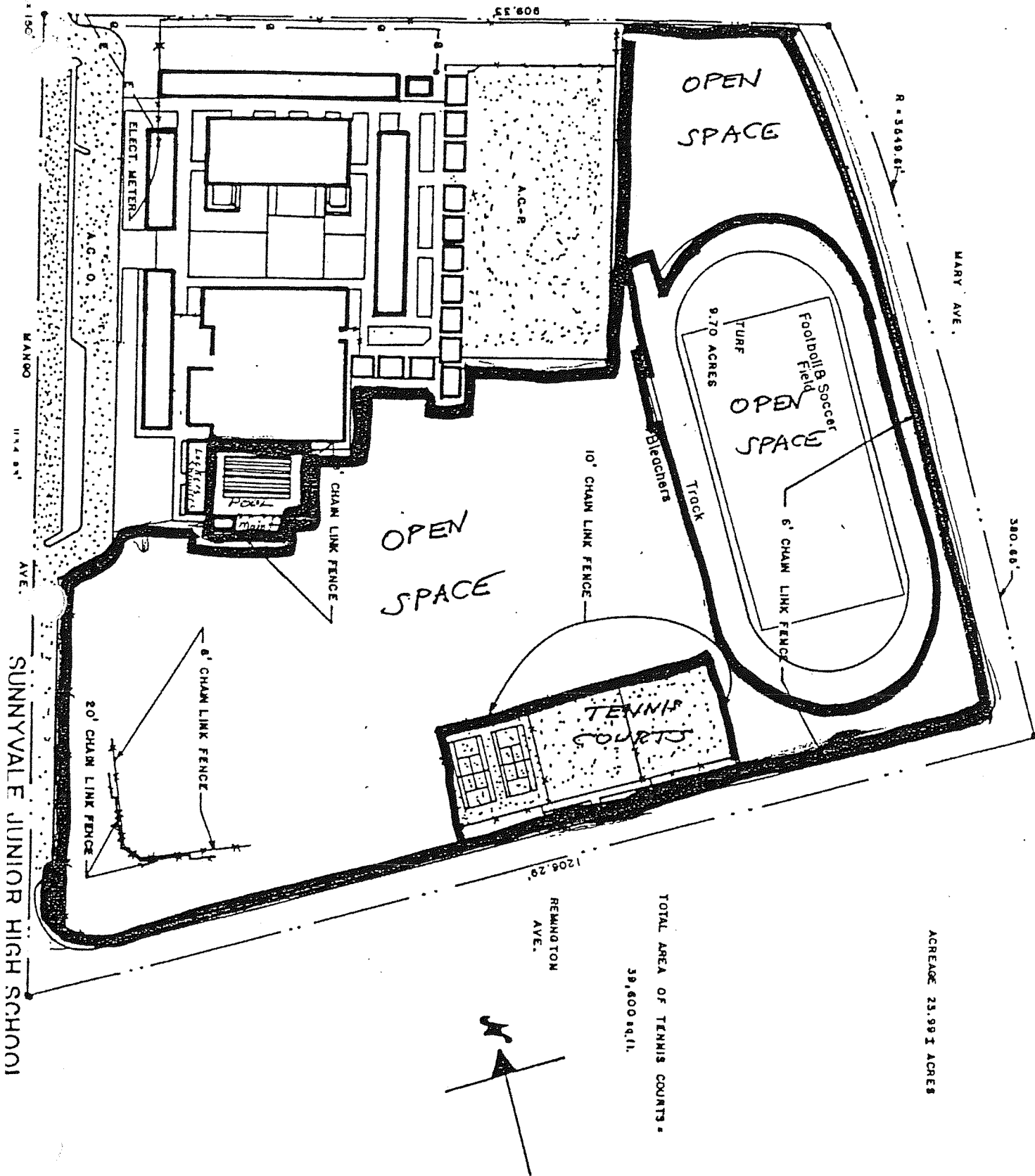
LOBBY

SAN MIGUEL ENDE

SAN MIGUEL ELEMENTARY SCHOOL

SCALE 1" = 100'

EXHIBIT "K"





Sunnyvale School District

819 West Iowa Avenue, Sunnyvale, California 94088-3217

(408) 522-8200 • FAX: (408) 522-833

Joseph W. Rudnicki, Ed.D., Superintendent

EXHIBIT L

October 9, 2006

City of Sunnyvale
Department of Parks and Recreation
221 Commercial Street
P.O. Box 3707
Sunnyvale, CA 94088

Attention: Curtis Black, Superintendent of Parks

Reference: Revision of Exhibit "L" for the Lease Agreement dated June 25, 1991

VIA FAX AND U.S. MAIL

Dear Mr. Black:

As per your request at our meeting of September 28, 2006, this letter will serve to notify you that Sunnyvale School District will be conducting a construction project in the near future at the Vargas Elementary School located at 1054 Carson Avenue in Sunnyvale and as such we will need to revise Exhibit "L" of our Lease Agreement dated June 25, 1991 for the said school to reflect the proposed changes to the Open Space area.

I have attached to this letter a copy of Exhibit "L" and the site plans for Vargas Elementary School showing the before construction footprint and the after construction footprint to the open space area.

I want to thank you for your efforts in assisting us with this process.

Sincerely,

Rob Williams
Director of Facility Modernization and Construction

cc: Dr. Benjamin Picard, Deputy Superintendent
Dave A. Lewis, City of Sunnyvale, Director Parks and Recreation

RECEIVED

OCT 12 2006

PARKS & REC.

Board of Education

Jeffrey Arnett • Wendy Bockholt • Phyllis Fowler • Anita Herrmann • Nancy Newkirk

EXHIBIT "L"

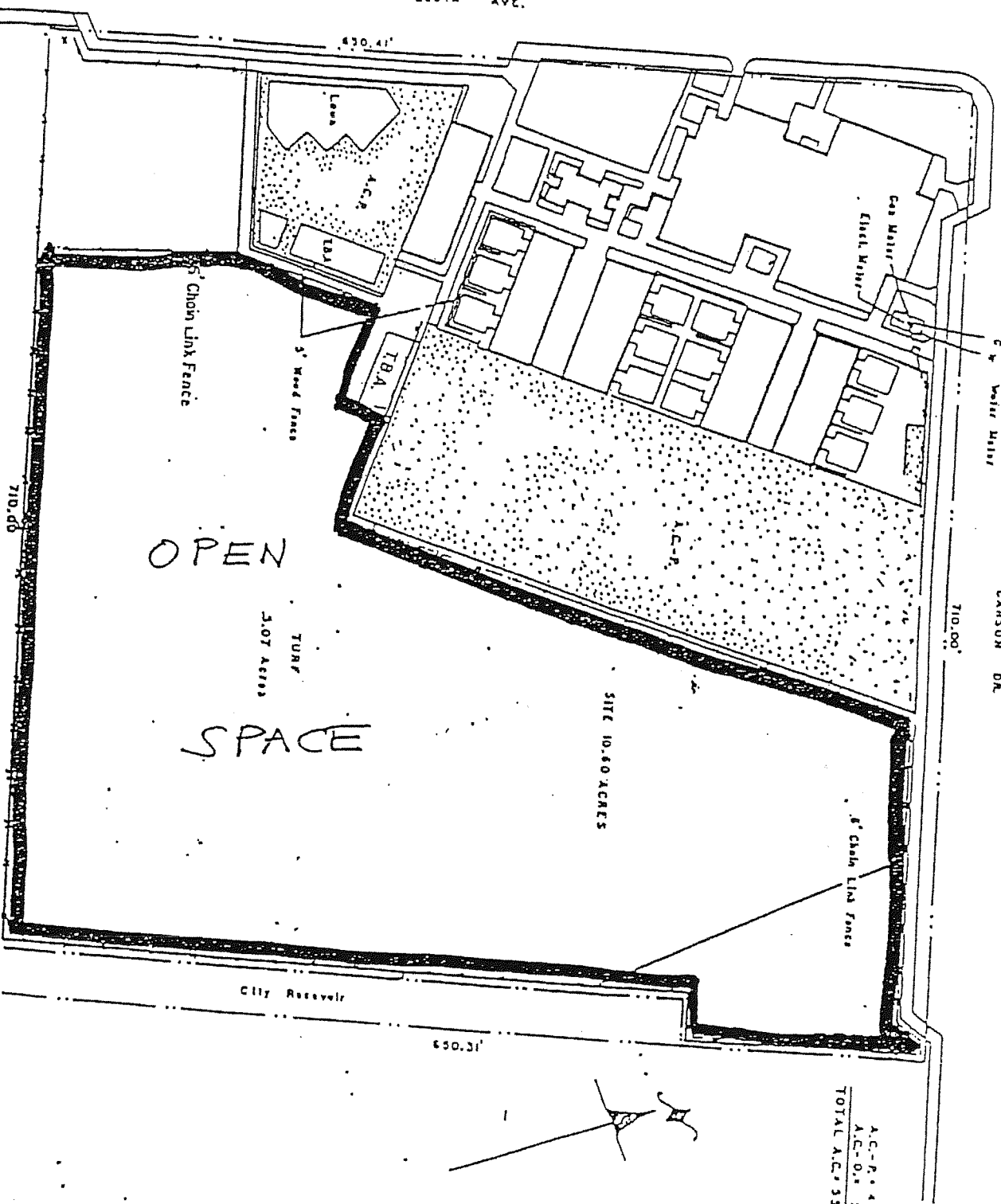
LEOTA AVE.

35' 100' A. Rev 4/81

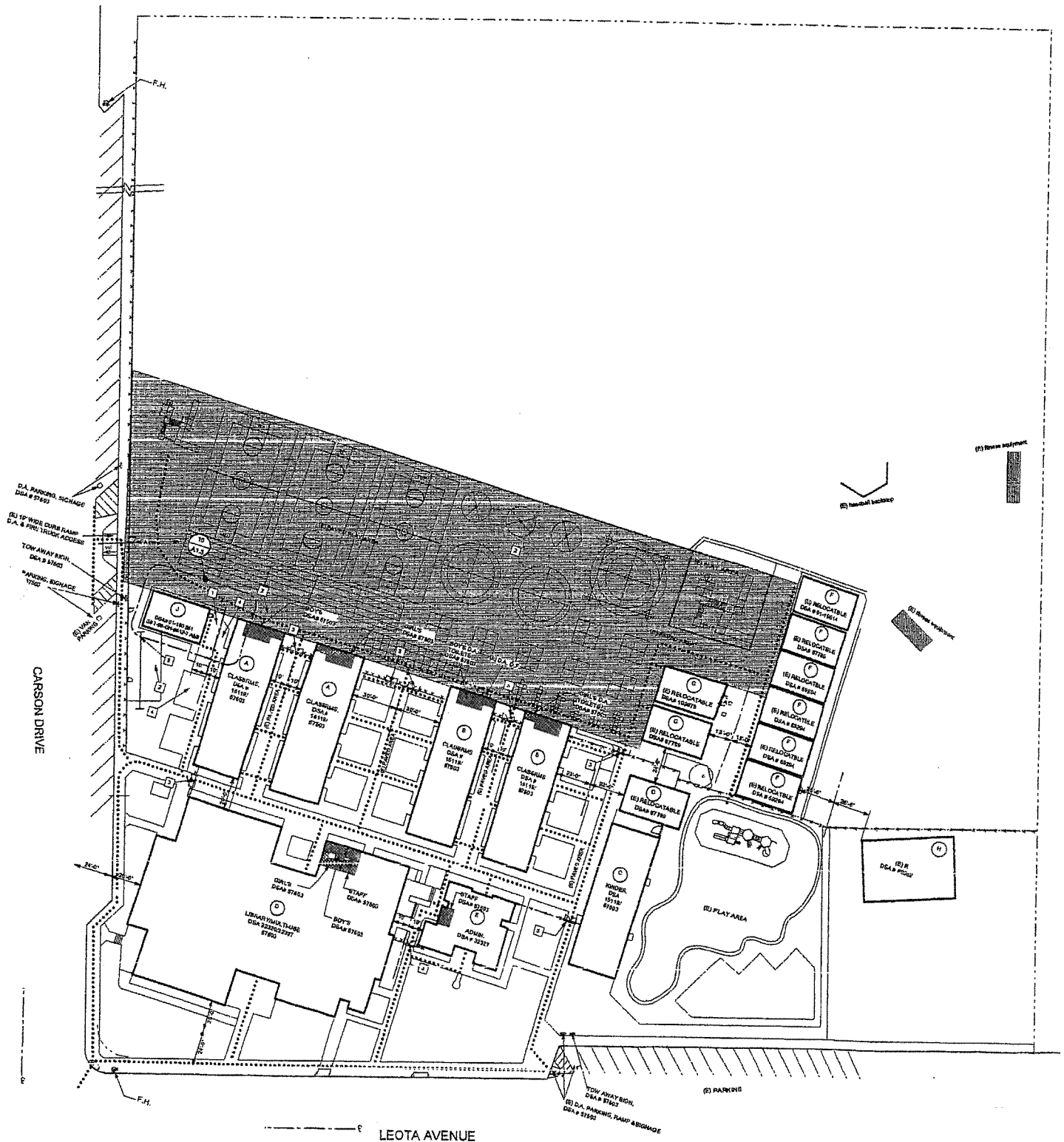
VARGAS

ELEMENTARY SCHOOL

Q

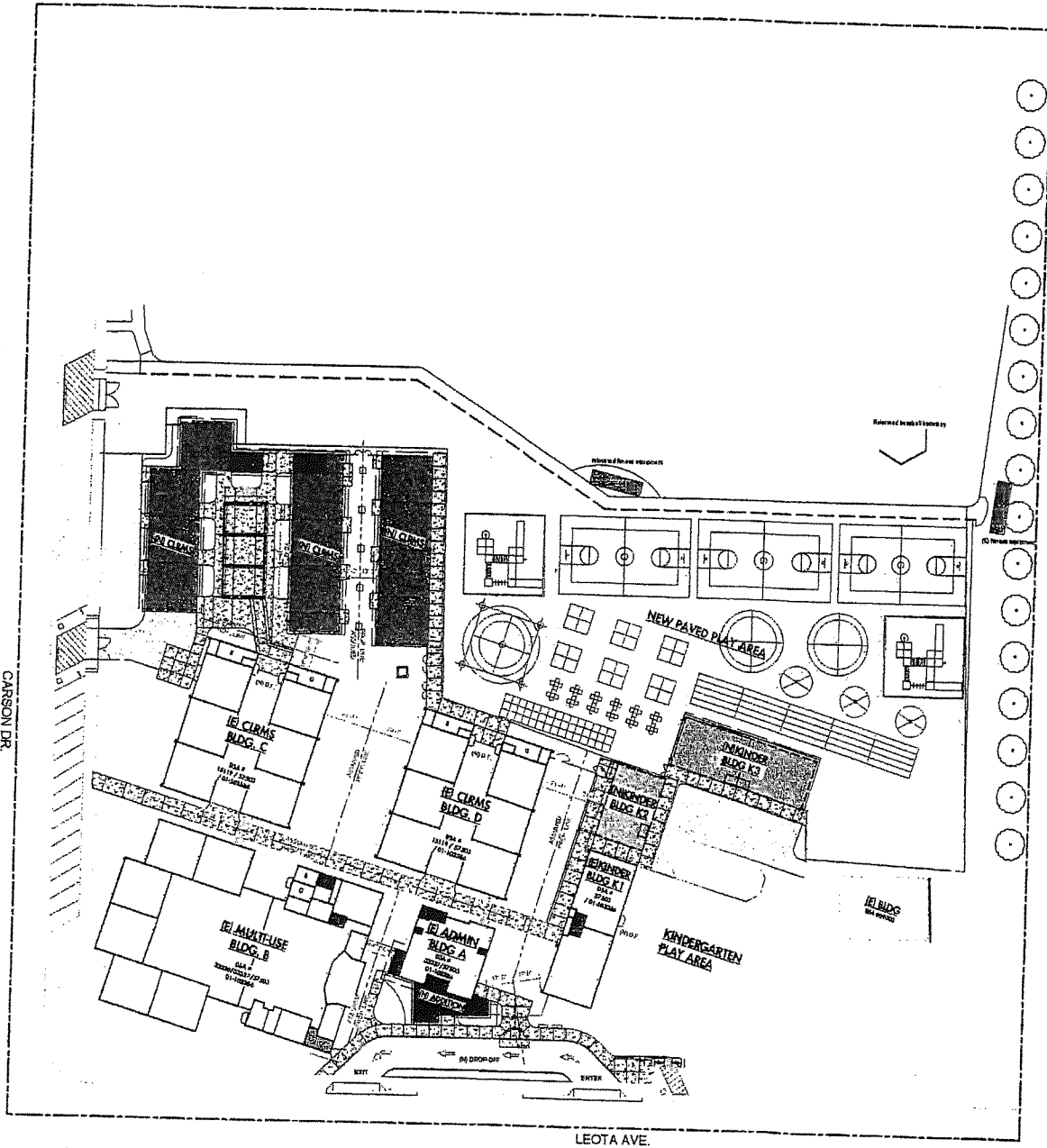


A.C.-P. 44,340 sq. ft.
A.C.-O. 3,124 sq. ft.
TOTAL A.C. 55,324 sq. ft.



1 EXISTING SITE PLAN - VARGAS ELEMENTARY SCHOOL
Scale: 1" = 30' 0"





(01) SITE PLAN - VARGAS ES