

ORIGINAL

ATTACHMENT 2

**AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUNNYVALE
HISTORICAL SOCIETY AND MUSEUM ASSOCIATION FOR THE
DEVELOPMENT OF AN INTERPRETIVE EXHIBIT AT ORCHARD
HERITAGE PARK AT THE SUNNYVALE COMMUNITY CENTER**

THIS AGREEMENT, made and entered into this 19th day of September 2000, by and between CITY OF SUNNYVALE, a municipal corporation of the State of California ("CITY"), and SUNNYVALE HISTORICAL SOCIETY, a California not for profit corporation ("SOCIETY");

WHEREAS, on December 15, 1992, pursuant to the Open Space Sub-Element of the General Plan of CITY, the City Council of CITY designated a ten (10) acre orchard at CITY's Community Center as a special use site to be known as Orchard Heritage Park; and

WHEREAS, on September 27, 1994, the City Council of CITY approved a design concept for the Orchard Heritage Park Interpretive Exhibit as outlined in Report to Mayor and Council No. 94-496. The City Council also directed CITY staff to continue coordination with SOCIETY for development and funding of said design concept, with engineering and exhibit design documents to be submitted to the City Council in the future; and

WHEREAS, SOCIETY has represented to CITY that SOCIETY currently has sufficient funding to proceed with the development of the Interpretive Exhibit; and

WHEREAS, the parties desire to proceed with the development of the Exhibit through a formal agreement between them.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. SOCIETY HAS PREPARED CONSTRUCTION PLANS AND SPECIFICATIONS
AND WILL CONSTRUCT AND FINANCE PROJECT.

(a) The parties acknowledge that SOCIETY has caused to be prepared at its expense and has submitted to CITY construction plans and specifications for a project (the "Project") consisting of an interpretive exhibit depicting and commemorating the history of orchards within the City of Sunnyvale and the surrounding community. SOCIETY has prepared such plans and specifications in consultation with CITY. The Project site consists of an area in the southeasterly portion of the Sunnyvale Community Center, east of the Arboretum building and the existing orchard fence. The area encompasses approximately 7,200 square feet. The Project site is more precisely depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Conceptual Plan for the Project set forth in Exhibit "B", attached hereto and incorporated herein by this reference.

(b) Upon filing of the final plans and specifications CITY shall review the Project through its staff under the miscellaneous plan permit process. It is acknowledged that the Planning Commission and City Council of CITY have reviewed the plans and specifications as an informational item and have approved them. If CITY fails to approve the plans and specifications within a reasonable time this Agreement shall terminate, and the parties shall have no further obligations thereunder. If CITY, through its staff, approves the plans and specifications within a reasonable time), SOCIETY shall have the following responsibilities regarding the Project:

- (1) Obtaining all necessary permits authorizing construction of the Project

from CITY and other public agencies having jurisdiction over the Project, in compliance with all applicable laws, regulations, Codes, and the permitting process. All fees that CITY would otherwise charge SOCIETY in connection with CITY's review and processing of the Project are hereby waived.

(2) Prior to commencement of construction of the Project, provide CITY with access to the financial records of SOCIETY, with sufficient proof that the SOCIETY has sufficient funds to undertake and complete such construction.

(3) Commence construction of the Project not later than November 30, 2000, and complete construction not later than March 30, 2001.

(4) Provide all labor, materials and funding necessary for construction of the Project. The parties understand that CITY's role in providing the means for construction of the Project is limited to furnishing the land upon which the Project is to be constructed. In the event that CITY makes any monetary contribution to SOCIETY in connection with the Project, SOCIETY shall use all moneys so received toward implementation of the exhibit and not for payments toward the cost of construction. Exhibit implementation costs include the professional design and services of an exhibit designer, research and documentation of a professional historian, and the fabrication of the exhibit panels presenting the history story.

(c) CITY shall use reasonable efforts to expedite planning, permits and approval for construction of the Project.

SECTION 2. OBLIGATIONS OF CITY UPON COMPLETION AND ACCEPTANCE OF PROJECT

(a) Upon completion of the Project and acceptance of it by CITY, ownership in the Project shall vest in CITY.

(b) Upon completion of the Project and acceptance of it by CITY, CITY shall become responsible for maintenance of the Project, and the furnishing of all utilities related thereto, including water, gas, electricity, sewer, garbage, and such telephone service as CITY may deem appropriate, at the cost and expense of CITY.

(c) CITY shall determine the hours of the day the Project shall be open to the public.

(d) CITY shall have the right to determine whether fees should be charged to the public for admittance to the Project, and the amounts of such fees as may be charged in accordance with the policies of CITY's Recreation Sub-Element of its General Plan. CITY shall not charge SOCIETY any fees for its use of Project, provided that such use is first scheduled and approved by the Director of Parks and Recreation of CITY or his or her designee.

SECTION 3. INDEMNIFICATION AND INSURANCE.

(a) SOCIETY shall defend, indemnify and hold harmless CITY, its officer, agents and employees from any claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees, in connection with any death of or bodily injury to persons or loss of or damage to property arising out of or in any way connected with the act, omission, or negligence of SOCIETY, its officers, employees, agents, contractor,

subcontractor or any officer, agent or employee thereof in relation to the performance by SOCIETY of its obligations under this Agreement. This paragraph shall not apply to any death, bodily injury, loss or damage occurring more than five (5) years after completion of construction of the Project and its acceptance by CITY.

(b) SOCIETY shall obtain and keep in force a liability insurance policy in the amount of not less than \$1,000,000.00 insuring against the risks of personal and bodily injury and loss of or damage to property arising out of the performance by SOCIETY of its obligations under this Agreement. Such insurance policy shall designate CITY, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of activities performed on behalf of SOCIETY under this Agreement. For any claims related to such activities, SOCIETY's insurance shall be primary.

(c) SOCIETY shall obtain from any contractors performing activities designated in this Agreement with regard to the Project, whether such persons are performing such activities for compensation or in kind, certificates of such liability insurance protecting against the risks described in Section 3(b) as such contractors may have in effect. Such certificates shall designate CITY, SOCIETY, and their officials, employees, agents and volunteers as additional insureds with respect to liability arising out of activities performed by the contractor on behalf of SOCIETY under this Agreement.

SECTION 4. REPRESENTATIVES OF THE PARTIES

(a) The Director of Parks and Recreation or designee shall represent CITY in all matters pertaining to the administration of this Agreement. All requirements of CITY pertaining to the Project shall be coordinated through the CITY representative.

(b) The President of SOCIETY or designee shall represent SOCIETY in all matters pertaining to the administration of this Agreement. All requirements of SOCIETY pertaining to the Project shall be coordinated through the SOCIETY representative.

SECTION 5. TIME OF THE ESSENCE. Time is of the essence of this Agreement. If SOCIETY fails to perform its obligations set forth in Section 1 in a timely manner, CITY may terminate this Agreement, except to the extent that such obligations may be suspended pursuant to Section 6.

SECTION 6. 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 either party which makes performance of any of its obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

SECTION 7. DISCRIMINATION PROHIBITED. Neither CITY nor SOCIETY shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, sex, disability, sexual orientation, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 8. NOTICES. All notices shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY Director of Parks and Recreation
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

To SOCIETY President
Sunnyvale Historical Society and Museum Association
P.O. Box 61301
Sunnyvale, CA 94088

SECTION 9. 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 that 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 10. LEGAL ACTIONS; ATTORNEY FEES.

(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, not to exceed \$ 5,000.00.

SECTION 11. INTEGRATED AGREEMENT. This document represents the entire and integrated Agreement between CITY and SOCIETY 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 12. AMENDMENT OF AGREEMENT. This Agreement may be amended only by written instrument, signed by both CITY and SOCIETY.

SECTION 13. ALL PROVISIONS OF AGREEMENT ARE CONDITIONS. All provisions of this Agreement are expressly made conditions.

SECTION 14. TERMINATION OF AGREEMENT; SURVIVAL OF OBLIGATIONS.

(a) SOCIETY may terminate this Agreement upon written notice to CITY for any of the following reasons:

(1) The failure of CITY to approve the plans and specifications within a reasonable time.

(2) The failure of CITY to issue all permits necessary for construction of the Project within a reasonable time.

(b) CITY may terminate this Agreement upon written notice to SOCIETY for any of the following reasons:

(1) The failure of SOCIETY to timely prepare and submit the final version of its plans and specifications for the Project.

(2) The failure of SOCIETY to commence construction of the Project by November 30, 2000.

(3) The failure of SOCIETY to complete construction of the Project by March 30, 2001.

(c) This Agreement may be terminated at any time upon the mutual assent of the City Council of CITY and the Board of Directors of SOCIETY.

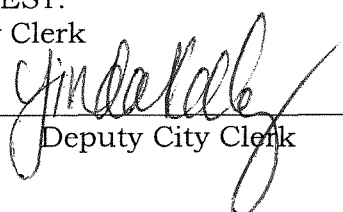
(d) Upon termination of this Agreement the parties shall have no further responsibilities thereunder, except that the obligation of SOCIETY pursuant to Section 3(a) shall survive the termination of this Agreement.


IN WITNESS WHEREOF, CITY and SOCIETY have executed this Agreement on the day and year first above written.

ATTEST:
City Clerk

CITY OF SUNNYVALE ("CITY")

By


Deputy City Clerk

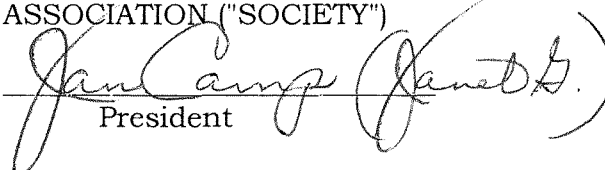

Mayor

APPROVED AS TO FORM:

SUNNYVALE HISTORICAL
SOCIETY AND MUSEUM
ASSOCIATION ("SOCIETY")

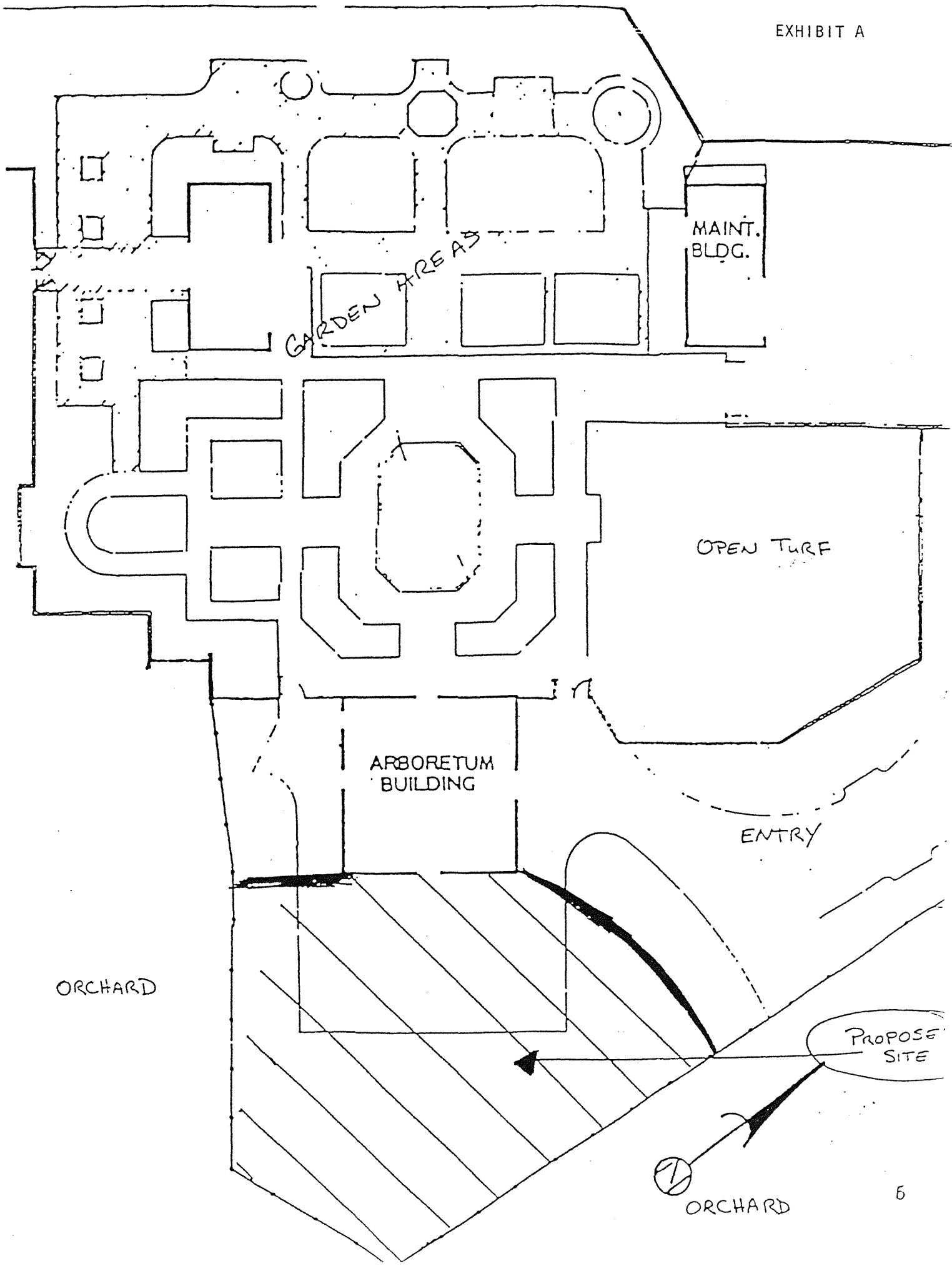

City Attorney

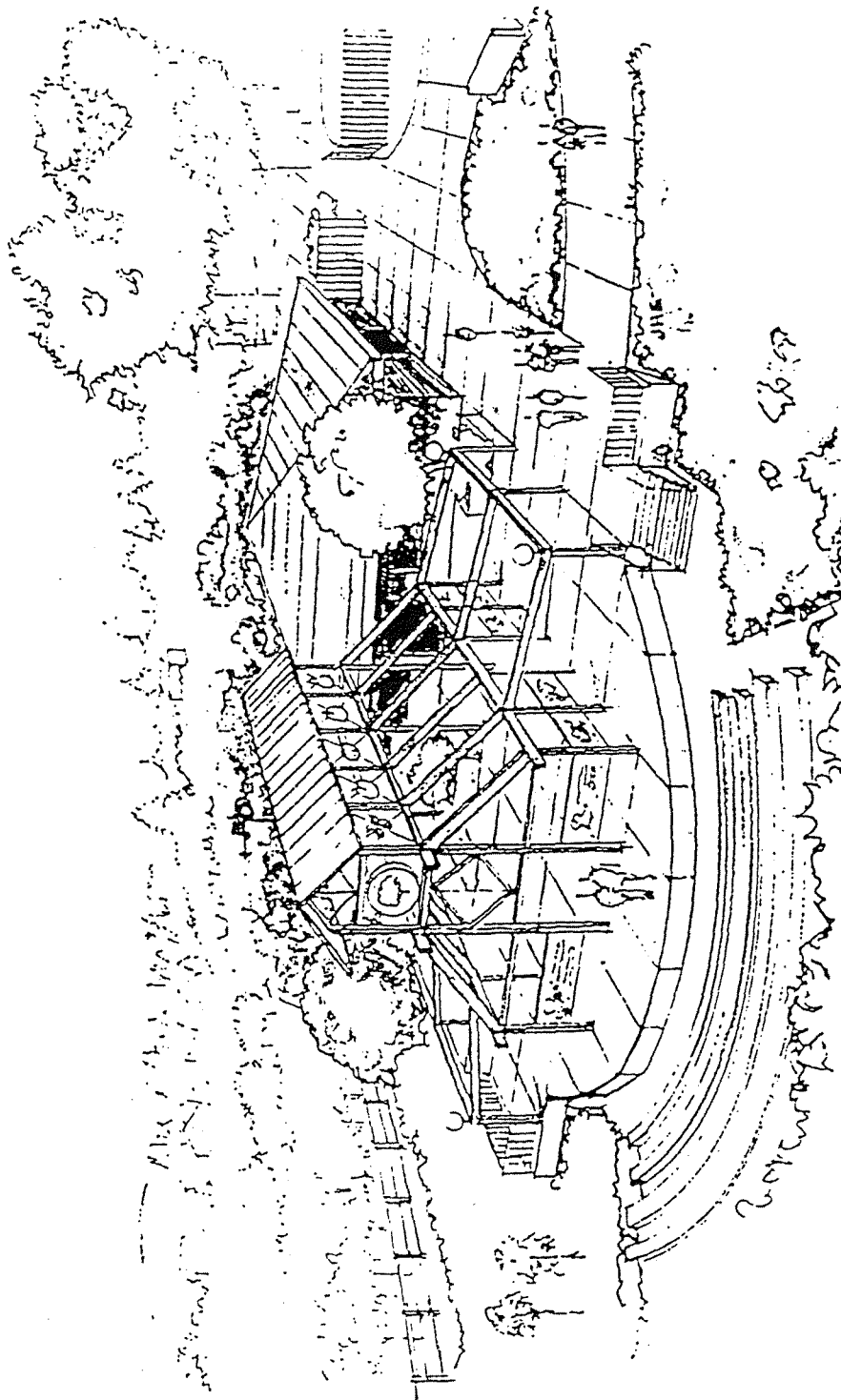
Acting Sec. Asst


President

ARBORETUM

EXHIBIT A





ORCHARD HERITAGE PARK

AN INTERPRETIVE EXHIBIT AT THE
SUNNYVALE COMMUNITY CENTER