

## ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement"), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **TEMPUR-PEDIC MANAGEMENT, INC.**, a Delaware corporation, with a mailing address of 1676 McGrathiana Parkway, Lexington, Kentucky 40511 ("First Party") and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky, with a mailing address of 200 East Main Street, Lexington, Kentucky 40507 ("Second Party").

### WITNESSETH:

**WHEREAS**, First Party is the owner of a leasehold estate in a certain tract of land situated in Coldstream Research Campus in Fayette County, Kentucky, which is more particularly described in Exhibits A and B, together with the improvements located thereon ("Property").

**WHEREAS**, Second Party is the holder of a non-exclusive easement over the Property which is described as follows:

A 40' Utility Easement ("Utility Easement") running along and parallel to the southwest boundary line of the Property adjacent to McGrathiana Parkway.

**WHEREAS**, the First Party desires to construct and locate certain improvements, including, without limitation, flagpoles, a stone plinth, a stone wall and certain signage, on the Property at a location which will encroach upon the Utility Easement as shown on the Partial Site Plan attached hereto as Exhibit C.

**WHEREAS**, First Party acknowledges that Second Party does not want to release any portion of its Utility Easement, but has requested Second Party to consent to the above-described encroachment, and Second Party has agreed to consent to the above-described encroachment on the following terms and conditions.

Now, therefore, in consideration of the foregoing and of the mutual promises and covenants herein contained, it is agreed by and between the parties as follows:

1. Second Party hereby consents to and gives, grants and conveys to First Party, its successors and assigns, permission to encroach upon the Utility Easement as set forth above and as shown on Exhibit C.
  
2. After the completion of the installation of the above-described improvements on the Property, no alterations or additions shall be made to the improvements which would result in an additional encroachment to the then existing horizontal encroachment or which would reduce the then vertical clearance between any utility lines located within the Utility Easement and said improvements.

3. No television antenna, radio aerial or similar apparatus shall be erected at any location within the Utility Easement.
4. No gasoline, coal fuel or other flammable substances shall be stored at any location within the Utility Easement.
5. Second Party shall have the right to require First Party to remove the improvements encroaching on the above-described portion of the Utility Easement should such removal be required for Second Party to construct, reconstruct, repair or otherwise work on its facilities located within the Utility Easement. Such improvements may be replaced by First Party upon completion of work by Second Party with the total costs of removal and replacement being the responsibility of First Party.
6. This Agreement the rights and obligations herein expressed shall run with the land and shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, assigns or successors in interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

FIRST PARTY:

TEMPUR-PEDIC MANAGEMENT, INC.

By: De E Woll

Title: CEO

SECOND PARTY:

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

By: \_\_\_\_\_

James Gray

Title: Mayor

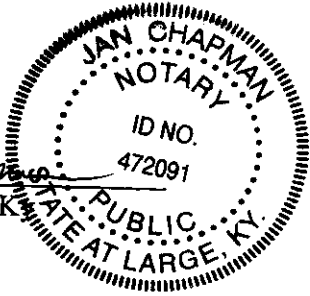
ACKNOWLEDGMENTS

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2013, by Dale Williams, as CEO of Tempur-Pedic Management, Inc., a Delaware corporation, for and on behalf of the corporation.

My commission expires: 8/26/16

J. Chapman  
Notary Public, State At Large, Ky.  


STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by James Gray, Mayor, and attested to by \_\_\_\_\_, Clerk of the Urban County Council, for and on behalf of the Lexington-Fayette Urban County Government.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State At Large, Ky

This instrument prepared by:

James T. Hodge  
James T. Hodge  
Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington, Kentucky 40507  
(859) 288-7405

**EXHIBIT A**

**(Description of Property)**

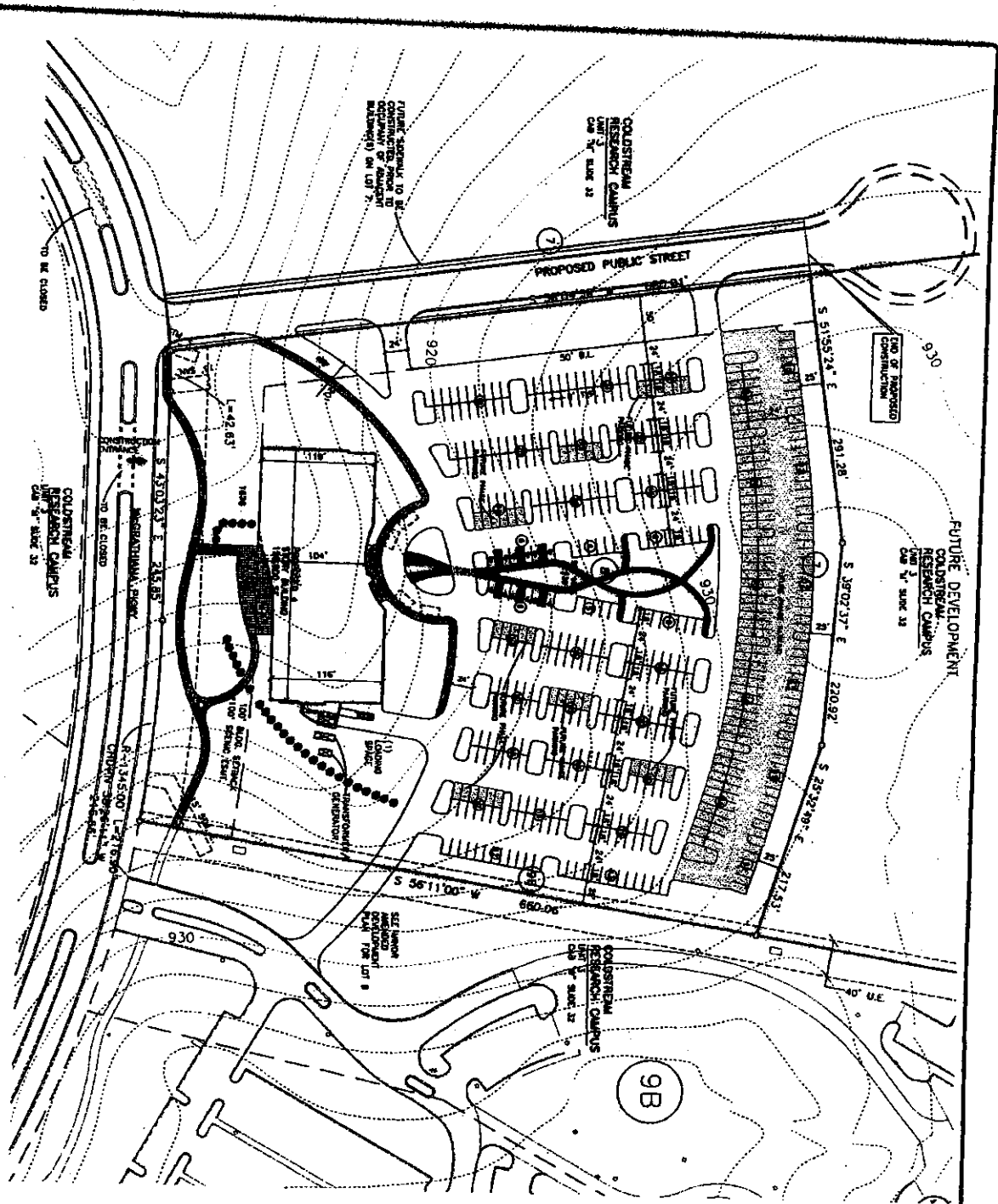
Being all of Lot 8 (Parcel Three), containing 9.80 acres, as shown on the Consolidation & Easement Minor Amended Plat of Coldstream Research Campus, Unit 3, Lots 7 and 8, Fayette County, Kentucky, of record in Plat Cabinet N, Slide 845, in the Fayette County Clerk's Office, to which plat reference is hereby made for a more particular description of the property, the improvements located thereon being commonly known and designated as 1676 McGrathiana Parkway, Lexington, Kentucky.

Being a part of the same property conveyed to the Commonwealth of Kentucky, for the use and benefit of the University of Kentucky, by deed dated December 9, 1991, of record in Deed Book 1744, page 652 and by Deed of Correction dated February 15, 2000, of record in Deed Book 2121, page 575, in the Fayette County Clerk's office.

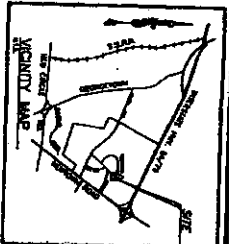
**EXHIBIT B**

**SEE ATTACHED PLAN**

THE UNIVERSITY OF CALIFORNIA ARCHITECTURAL RECORDS DEPARTMENT  
 1000 UNIVERSITY AVENUE, SUITE 100, BERKELEY, CA 94720-1000  
 TEL: (415) 495-1300 FAX: (415) 495-1301



**EXHIBIT B**

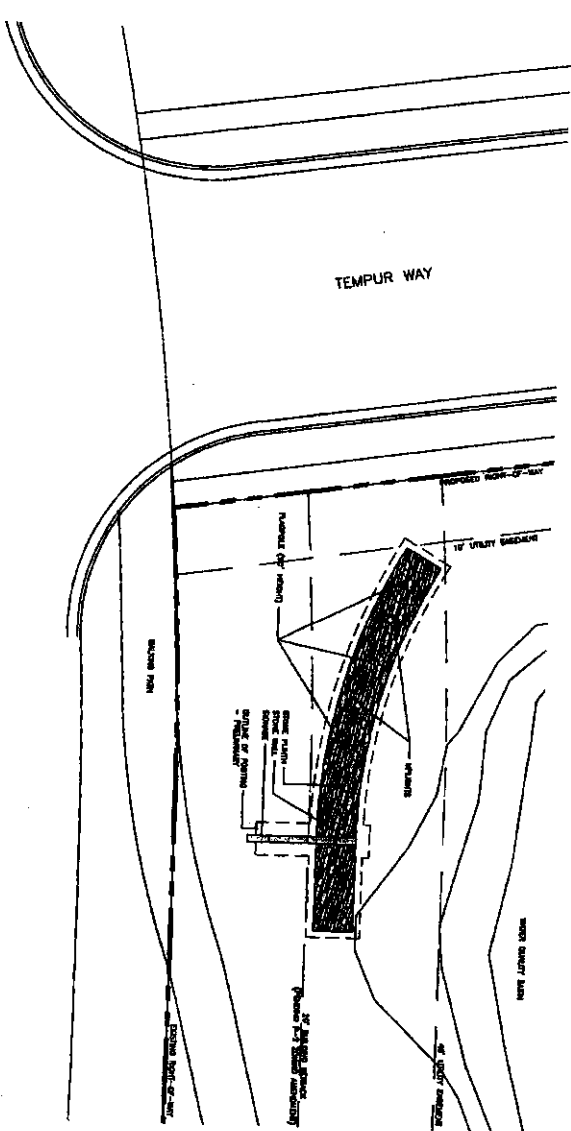
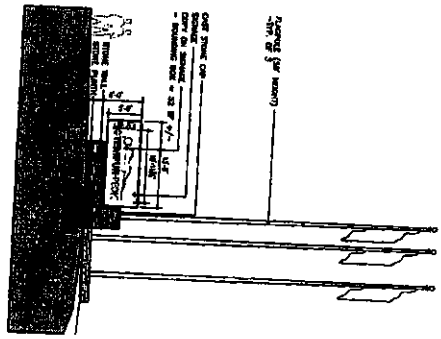
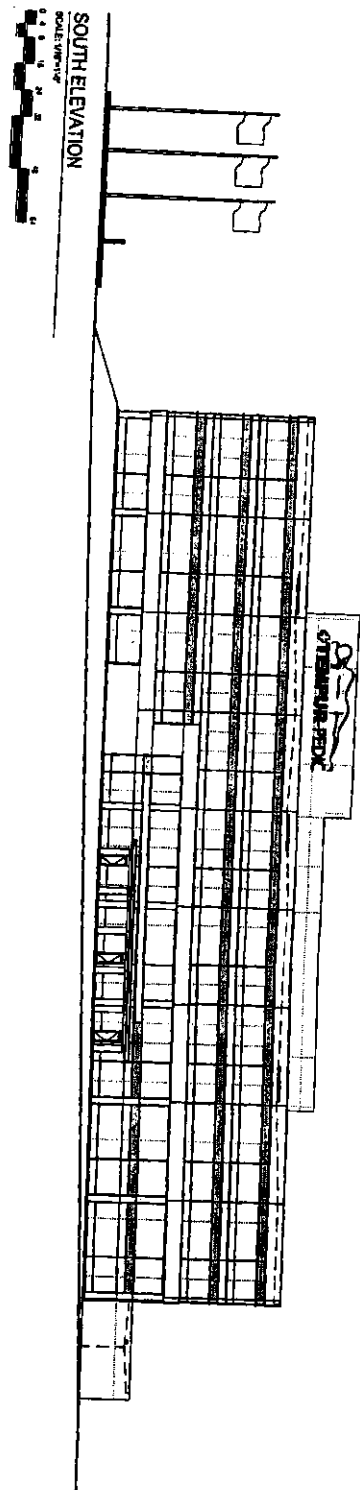


<p>UNIVERSITY OF CALIFORNIA ARCHITECTURAL RECORDS DEPARTMENT          1000 UNIVERSITY AVENUE, SUITE 100, BERKELEY, CA 94720-1000          TEL: (415) 495-1300 FAX: (415) 495-1301</p>		<p>DATE: 10/1/01          DRAWN BY: [Name]          CHECKED BY: [Name]          APPROVED BY: [Name]</p>
<p>PROJECT: CAL SUTRO RESEARCH CAMPUS          SHEET: EXHIBIT B</p>	<p>SCALE: AS SHOWN</p>	<p>DATE: 10/1/01</p>

**EXHIBIT C**

**SEE ATTACHED PARTIAL SITE PLAN PREPARED BY NEYER ARCHITECTS, INC.  
DATED AUGUST 10, 2012**

60308368.1  
1/7/2013 1:45 pm



# TEMPUR-PEDIC

AUGUST 10, 2012

**NEYER**  
Architects, Inc.  
SGN