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Mayor Tom Bates
2180 Milvia St.
Berkeley, CA 94704

For the Attention of the City of Berkeley City Council

Mayor Tom Bates,

I appeal to you to prevent the Berkeley Inn project from crashing to the ground ending in an ignominious demise. I have many years of work and millions of dollars invested and millions of dollars more in lost opportunity costs relying on my contract with the City of Berkeley. To have the council vote to allow the City Attorney to try to break our contract and collect liens without even getting a chance to defend myself would be the ultimate betrayal. You know me well enough to know I would spend all the resources necessary to provide a maximum defense of the contract in court. The results being that there would be no building or any progress for many years at the Berkeley Inn Site.

You have told me that this project is very important to you. All the significant progress made so far has been with your help. The Berkeley City council passed a resolution 59.832 was on Dec. 8, 1998 with a 7-1 vote which defines all the major terms of the contract between the City of Berkeley and Ken Sarachan. My lawyer and I spent 4 years lobbying the staff to prepare a contract to put in effect the terms of the resolution with no success. Finally, you got elected as mayor and the contract was finally signed in 2003. In 2004-6, we recognized that a better and economically sound project should include the Wooley House and the adjacent Galaxxi Building. So with your approval as well as the City Manager's consent I bought those properties and combined them with the Berkeley Inn Site for a single development site. In 2007, I submitted plans for the "Pagoda Building", "The Greenest Building in a Green City".

So what has happened to our momentum in the years 2008-2010? This project's critical path since 2007 has been is to get the Wooley House moved. In Dec 2005, I signed a contract with John Gordon to move the Wooley House to his parking lot located behind Peet's Coffee on Dwight Way. This is only 1 block from the Wooley House's current location. In order to move the house the City Staff (the owner cannot make this decision), must decide on what level of CEQA Report (negative declaration, full EIR, categorically exempt, etc) needs to be prepared. The staff has been working on this issue for several years. In 2009, when it seemed like they would choose a Negative Declaration, I was instructed by Dave Fogarty and the planning director to prepare a thorough historical study of the Wooley House. With the help of Anthony Bruce of

BAHA and Dave Fogarty, we prepared a long exhaustive report which includes everything that is known about the history and architecture of the Wooley House. This whole delay in the Pagoda Project is really due to the Planning Departments' lack of competence to make a decision and get work done. I have tried several times to convince the Planning Department to allow me to hire the consultant to do the CEQA report. My "partner" Dana Ellsworth was allowed to hire her own consultant and did her own CEQA study several years ago for moving the "Blood House" to Dwight Way. She now is several years ahead of the City of Berkeley Staff and extremely eager to get her project back on track. It has been suggested by Dana and John Gordon and others that I hire the same consultant that Dana used in her CEQA Report for the Blood house. He is already familiar with every aspect and local condition and could quickly together with my historical study of the Wooley house do any type of CEQA study that the City Attorney and Planning Director instructed him to do. This whole CEQA impasse could easily have been completed and resolved 2 or 3 years ago. Instead, Dan Marks decided that I could not be trusted with expediting these matters. He decided that he must make all decisions regarding choosing the consultant. Finally, last year after several preliminary meetings held by staff, John Gordon and I were invited to a meeting with members of the planning, legal staff as well as other staff members in November 2010. At this meeting, it was decided that I should pay a \$25,000 deposit to allow the city to hire a consultant to prepare the CEQA documents. On July 28, 2011, I received a letter from Greg Powell. The first paragraph of this letter documents the monies that have been paid to the City of Berkeley.

In August, I talked to Greg Powell. He said he was curious and eager to see my new design. I said I would have plans for him to see by the end of August. It was a short but friendly conversation, no ultimatums, no foreshadowing of the meeting you are having today. On Aug 26, I emailed Greg Powell that I had plans ready to show him. He emailed back the next day that I should just email the plans to him. So this was done in full compliance to his letter.

I think the whole "crisis" starting in April 2011, is a communication problem. In April, I met with Dave Fogarty for probably the 50th time about the Wooley House. Dave and I have known each other for many years; he as always has been a liaison between me and the City Staff. I trust Dave Fogarty and consider him a friend of mine. I said Dave; it's been more than four years since I created the Pagoda Design. A lot has changed since 2001 with both the economy of Telegraph Ave and I am older. I think I'm coming around to your views and the city manager views on the project. The new design would have 10-15 more apartment units. The massing would be a rectangular solid instead of an inefficient low density unusual design as in the "Pagoda" plans. The new building design would be a U-shape with the open part facing south just like in the old Berkeley Inn. The greater number of apartment units would make the project more acceptable to banks for financing and appeal to other developers. And actually there would be more square footage for green open space on the roof. Dave said something like what do you want me to do with this. I said," Dave, here is my problem. I'm supposed to complete the remaining miscellaneous items on the 'Pagoda Project' for Zack Cowen in 60 days but Robert McGillis has a full time day job now. So should I have him work on the "Pagoda" items or the new design which you and I now prefer? Dave said he would get back to me. A few days later he told me to work on the new design and to go see Patrick

Kennedy (I had told Dave previously that Patrick Kennedy had written me a letter saying that he was still interested in possibly being involved in a co-venture at Haste & Telegraph.) Dave said to work on the new plan and that Kennedy knows how to get things done in Berkeley, and to meet with him as soon as possible.

On July 19, I got an email from Dave Fogarty (Exhibit B) on July 14; I sent the following email in response (Exhibit C). The purpose of Dave's request and my immediate response is that we did not want to do anything to mess with the City of Berkeley's responsibility to find and hire a CEQA consultant and finally get the ball rolling. The CEQA Report if they ever find a consultant and "decide between a negative declaration or a EIR, has 99% content about moving the Wooley House and restoring the Wooley House but may be 1% or less of the document is about the general scope of the replacement project. My email on July 19, explained that basically the new revision has basically the same scope as the 2007 Pagoda Plans with 10-15 more units. I had been talking about merchant parking with Dave at an earlier meeting. I raised the issue only as a "trial balloon" I did not insist on parking. It's probably too expensive; I certainly am not going to push parking if it is going to delay anything. So, I agree with everything Greg Powell says in his letter on July 28, 2011, except for the part about not communicating the scope of the new design. I don't think Greg Powell knew about my email response to Dave Fogarty. This I believe is at the heart of the miscommunication this summer.

I hope now you can see there is no need for an all out war. I don't need anymore pressure or incentives or law suits. I have complied with everything Greg Powell demanded in his letter. I can promise you not one day of critical path will be lost because of Ken Sarachan. I will have a 100% completed application for the revised project before I get the final legal right to move the Wooley House. In other words, before the consultant finishes his report and the City legally endorses it.

Tom, I am only one person. I would rather spend my energy and time finishing the remodeling of Cody's Books and working on the revised plans for the Berkeley Inn Site. I enjoy spending money building things like my buildings at Durant & Telegraph and Channing & Telegraph, which won the BAHA award for Best Remodel of 1995. But every organism has a right to defend itself. I've promised you (you did not solicit this promise, I volunteered it) that I would never publically criticize Berkeley Staff as long as they worked fairly with me. I have kept this promise even though some times it has been hard to contain my frustration. This action proposed in a closed meeting is unfair. I hope you have the power to prevent it from being adopted.

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