

ORDINANCE NO. 890-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA APPROVING DEVELOPMENT AGREEMENT DA-3-20 TO APPROVE AND AUTHORIZE A DEVELOPMENT AGREEMENT BETWEEN THE PACIFICA SCHOOL DISTRICT AND CITY OF PACIFICA TO PROVIDE CERTAIN PUBLIC AND PRIVATE BENEFITS IN CONJUNCTION WITH A DEVELOPMENT PROJECT AT 930 ODDSTAD BOULEVARD (APN 023-672-600) (FILE NO. 2020-009).

WHEREAS, California Government Code section 65864 *et seq.* authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property; and

WHEREAS, the City Council of the City of Pacifica adopted Ord. 837-C.S., establishing Article 50 of Chapter 4, Title 9, authorizing the execution of development agreements and setting forth the procedures for approving development agreements; and

WHEREAS, the Pacifica School District owns certain real property known as the former Oddstad Elementary School located at 930 Oddstad Boulevard (APN 023-672-600) ("Property"); and

WHEREAS, the Pacifica School District ("Developer") has submitted an application for construction of a 70-unit residential development including a property management office, residents' commons building, and public restroom/changing facilities located at 930 Oddstad Boulevard (APN 023-672-600); removal of three heritage trees; a division of land into three individual lots; a development agreement with certain public and developer benefits, including use of playing fields; a rezoning to change the zoning classification to the P-D Planned Development District; and a Development Plan and a Specific Plan to insure the proper orientation, design character and compatibility of the construction of 70 residential units across seven buildings, a property management office, residents' commons, and public restroom and changing facility ("Project"); and

WHEREAS, the City Council of the City of Pacifica adopted Resolution No. 39-2023 on April 24, 2023, to certify a final environmental impact report ("EIR") including a mitigation monitoring and reporting program (MMRP), findings of fact, and statement of overriding considerations for the Project (State Clearinghouse No. 2021100457); and

WHEREAS, the proposed development agreement would incorporate certain public benefits and developer benefits including, but not be limited to, use of parkland in excess minimum required parkland dedication requirements for the Project, construction of restroom/changing room facilities for public use, maintenance of park facilities by Developer, construction of all below-market rate (BMR) housing units in Phase 1 of the Project, and vested rights for the Developer to proceed with the subject development; and

WHEREAS, City and Developer have reached mutual agreement on the terms of the Development Agreement to facilitate development of the Project subject to the conditions and requirements set forth therein, in the form attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, the Planning Commission, after giving all public notices required by Government Code sections 65090 and 65091 conducted a public hearing on March 20, 2023, and at that hearing considered all oral and written information, testimony, and comments received during the public review process, including information received at the public hearing, the oral report from City staff, the written report from City staff, materials, exhibits presented, and all other information that constitutes the record of proceedings on which the Planning Commission has based its decision; and

WHEREAS, on March 20, 2023, the Planning Commission, after consideration of all pertinent

plans, documents, and testimony, adopted Resolution No. 2023-006 approving Specific Plan-173-20, Vesting Tentative Subdivision Map SUB-248-20, and Heritage Tree Removal Authorization (“Development Permits”) and recommending City Council approval of Development Agreement DA-3-20 as well as Rezoning RZ-205-20 and Development Plan DP 81-20; and

WHEREAS, the City Council after giving all public notices required by Government Code sections 65090 and 65091 conducted a public hearing on April 24, 2023, and at that hearing considered all oral and written information, testimony, and comments received during the public review process, including information received at the public hearing, the oral report from City staff, the written report from City staff, the recommendation of the Planning Commission, materials, exhibits presented, and all other information that constitutes the record of proceedings on which the City Council has based its decision; and

WHEREAS, the City Council, after the duly noticed public hearing on April 24, 2023, introduced this Ordinance.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Compliance with CEQA. The City Council of the City of Pacifica adopted Resolution No. 39-2023 on April 24, 2023, to certify a final environmental impact report (“EIR”) including a mitigation monitoring and reporting program (MMRP), findings of fact, and statement of overriding considerations for the Project (State Clearinghouse No. 2021100457).

Section 3. General Plan and Local Coastal Plan Consistency. The City Council hereby finds that the provisions of the Development Agreement and the Project are consistent with the following General Plan policies:

1. Promote a Positive Image. Promote a positive image of Pacifica as a desirable place to work, live and visit (ES-G-3);
2. Appropriate Site Design. Ensure that development projects adjacent to protected natural areas are designed to minimize impacts on those areas by employing low impact development techniques for stormwater management, using native/non-invasive landscaping, and minimizing nighttime lighting and glare (ES-I-36);
3. Concentrated Development. Focus new development in or directly adjacent to already-developed areas, where it can be served by existing public services and where it will not have significant impacts on coastal or other resources (LU-G-2);
4. Future Residential Development. Limit development to sites that are not critical for open space connections or habitat preservation, and which will be in harmony with the surrounding natural setting (LU-G-3);
5. Private Parking. Ensure adequate off-street parking in all new development (CI-G-20);
6. Development of City Parks. Create and enhance neighborhood and pocket parks and plazas to provide access to local recreational space to all Pacifica residents (OC-G-1);
7. School Playfields. Continue to cooperate with the school districts to make school play fields available for public use after school hours (OC-G-4);
8. Park Land Dedication or In-Lieu Fees. For new development, continue to require the dedication of land or payment of in-lieu fees to provide park land at a ratio of five acres per 1,000 residents (OC-I-1);
9. Optimize Public Facilities. Ensure that public facilities are adequate to meet needs, and plan for opportunities that help to meet goals of school districts and the City (OC-G-11);
10. School Site Reuse and Redevelopment. Identify appropriate future land uses for unused school sites

- that are compatible with existing neighborhoods (OC-I-55);
11. Prioritize in-fill residential development (Housing Element #4.D.i);
 12. Provide housing opportunities for all income groups (Housing Element 8.A. page 114); and
 13. Provide a choice of housing types and densities (Housing Element 8.A. page 114).

Section 4. Factors for Consideration. The City Council hereby finds that the Development Agreement, which vests the right to build the Project meets the considerations in section PMC section 9-4.5007 as follows:

1. Other pending applications and approved projects.

The Project site is located at 930 Oddstad Boulevard. There are no other pending applications or projects recently approved in the immediate vicinity.

2. The traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the community.

The Project site consists of an in-fill development with direct access to a public street and utilities within Oddstad Boulevard. The Project would not result in any adverse impacts to public health, safety, or welfare as conditioned. In particular, the Project is consistent with the Low Density Residential land use designation in the General Plan, providing 70 residential units on 7.47 acres, which is approximately nine dwelling units per gross acre. Building mass would be broken up into seven residential buildings and three buildings with accessory uses, as opposed to a single building as would be required under current General Plan and zoning standards.

The Transportation Analysis evaluated intersections along Oddstad Boulevard and estimated that there would be no noticeable change in the level of service or traffic conditions due to the project, which is consistent with the General Plan's Circulation Element Policy CI-I-18 which indicates the city should strive to maintain a certain level of service. The Project would not exceed the threshold. Additionally, the Project is anticipated to result in two additional trips per minute during peak hours which is not expected to be noticeable to the surrounding community.

3. Ability of the applicant to address public facility needs and financing obligations.

The Development Agreement would establish certain developer benefits and public benefits. These include, but are not limited to, Developer benefits including vested rights to proceed with development under the City's current land use regulations.

Public benefits include, but are not limited to, public use of the 4.9 acre fields located at 930 Oddstad for at least 20 years, field improvements (drainage improvements, parking lot sealing and striping, basketball hoop installation), a public building with restrooms and changing rooms, ongoing maintenance of the fields and facilities by the Developer for at least 20 years term, and a potential 1.4 acre dedication after 20 years. These public improvements and community benefits would increase park and recreation availability and the Developer's agreement to operate and provide maintenance of the fields and amenities enhances City operations while minimizing costs to the City. Maintenance of the fields, in 2022 dollars, is anticipated to be \$243,704 annually and would be considered a community benefit. However, the costs that are incurred by the Developer for drainage improvements, striping, construction of the public restroom, and basketball hoops, would be credited to the Developer for its obligation to pay \$961,984 for the Parkland Improvement Fee.

Public benefits would also include construction of all BMR housing units in Phase 1 of the Project, regardless whether Phase 2 of the Project is ever constructed. Therefore, a public benefit would be

provided by ensuring the creation of affordable housing for the community.

4. The relationship of the project to the City's growth management program.

Pursuant to Government Code section 66300(b)(1)(D), the City is currently unable to require issuance of a growth management allocation for housing projects as required by PMC section 9-5.03 through January 1, 2025. Therefore, consideration of this factor for approval of a development agreement is not applicable at this time.

5. The provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessibility to the public.

The proposed public benefits in the Development Agreement would include improvements to the playing fields at Oddstad Boulevard. These improvements would include construction of additional off-street parking facilities, striping, and drainage improvements. These improvements and the availability of the playing fields would create park and recreation opportunities for the public.

6. The type and magnitude of the project's economic effects to the City of Pacifica, and of its contribution, if any, toward meeting the City's housing needs, including affordable housing.

The Project provides a total of 70 residential units across various income levels including 11 below market rate units at low- and moderate- income levels, subsidized housing for Developer's employees, and market rate housing. The project seeks to support the Developer in its goals of attracting and retaining quality employees, which benefits Pacifica residents.

Playing fields would be accessible to the Pacifica community and would be operated and maintained by the Developer at no cost to the City for a minimum of 20 years. The savings of not having to perform operations or maintenance on the fields results in an annual savings of \$243,704 in 2022 dollars. Extrapolated over the 20-year term of this provision, this amounts to a total of \$4,874,080 in savings.

7. Any other comparable, relevant factor or factors.

The Project would result in an appropriate development of the site given its in-fill nature and access to existing City infrastructure. The Project would be compatible with existing residential uses, and Pacifica residents will be able to utilize the project's playing fields. Given the Project's proximity to Frontierland Park, the addition of playing fields to the City's parkland inventory helps to make the area a local destination for recreation. The Project, in whole, inclusive of the provisions of the Development Agreement, would be positive for the City of Pacifica and would not adversely affect public health, safety, or welfare.

Section 5. Approval. The City Council does hereby approve and authorize the City Manager to execute the Development Agreement in the form attached hereto as Exhibit "A", with minor technical, non-substantive revisions that may be approved by the City Manager in consultation with the City Attorney. Upon execution of the Development Agreement by all parties, the City Clerk is hereby directed to record the Development Agreement with the San Mateo County Recorder's Office.

Section 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,

subsections, sentences, clauses or phrases be declared unconstitutional.

Section 7. Effective Date. This Ordinance shall become effective thirty (30) days following its passage and adoption.

Section 8. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published once in The Pacifica Tribune, a newspaper of general circulation, published and circulated in the City of Pacifica, California.

* * * * *

PASSED AND ADOPTED this 8th day of May, 2023, by the following vote:

AYES, Councilmembers: Bier, Bigstycck, Boles, Vaterlaus.

NOES, Councilmembers: n/a

ABSTAIN, Councilmembers: Beckmeyer

ABSENT, Councilmembers: B/a

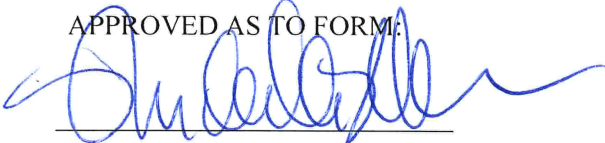

Tregarjas Twyrls Bigstycck, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney

EXHIBIT A

DEVELOPMENT AGREEMENT DA-3-20

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Pacifica
City Clerk's Office
540 Crespi Drive
Pacifica, CA 94044
Attn: City Clerk

Record Without Fee
*Pursuant to Government Code
Section 27383*

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

(DA-3-20, File No. 2020-009)

BY AND BETWEEN

CITY OF PACIFICA

AND

PACIFICA SCHOOL DISTRICT

Effective Date: _____

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DEVELOPMENT AGREEMENT (DA-3-20)

This Development Agreement (“**Agreement**”), dated as of the Effective Date, is entered into by and between the City of Pacifica, a California municipal corporation (“**City**”) and Pacific School District, a California school district (“**District**”). District and City may be referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties**.”

R E C I T A L S

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”) which authorizes a city and a school district having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council of the City of Pacifica enacted Pacifica Municipal Code (“**PMC**”) section 9-4.5001 *et seq.* (“**Development Agreement Regulations**”), which authorize the execution of development agreements and set forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City’s Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law**.”

C. District is the owner of that certain real property located at 930 Oddstad Boulevard, in the City of Pacifica, also known as Assessor’s Parcel Number 023-672-600, and described in Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”).

D. District has submitted applications to the City for a Rezoning (RZ-205-20), Development Agreement (DA-3-20), Development Plan (DP-81-20), Specific Plan (SP-173-20), Vesting Tentative Parcel Map (SUB-248-20), and Heritage Tree Removal Authorization for the development of seventy (70) residential housing units, residential amenity buildings and improvements, circulation improvements, open space and landscaping, and recreational fields and amenities, attached hereto and incorporated herein by reference (the “**Project**”).

E. The Project is proposed to be developed in two phases. Phase 1 generally consists of four (4) residential buildings consisting of forty-five (45) units, three (3) amenity buildings, circulation and other improvements, and retention of and improvements to existing recreational fields, (“**Phase 1**”). Of the units in Phase 1, eleven (11) shall be designated as below-market rate units consistent with the requirements in Pacifica Municipal Code Title 9, Chapter 4, Article 47. Phase 2 generally consists of three (3) residential buildings consisting of twenty-five (25) units, and circulation and other residential amenities (“**Phase 2**”). The improvements to the existing recreational fields in Phase 1 consist of drainage improvements, natural turf repairs, parking lot sealing/stripping, and basketball hoop installation (all located on Lot 1), as described in more detail in Exhibit B, attached hereto and incorporated herein by this reference (“**Parkland Improvements**”). The following two buildings are also in Phase 1, and more particularly described in Exhibit B: (1) the residents’ common amenity building to be constructed on a

portion of Lot 2 (that is immediately adjacent to Lot 1), which includes a snack window/kiosk and covered picnic area that will serve the public and community groups under terms and conditions described herein ("**Residents' Commons Building**"); and (2) a restroom structure on Lot 2 (that is immediately adjacent to Lot 1), which includes new restrooms/changing rooms that will be used in conjunction with the Parkland Improvements ("**Recreation Restroom**").

F. In order to satisfy the parkland dedication requirements of the Project, District shall maintain and operate that 4.99-acre portion ("Lot 1") of the Property depicted in Exhibit C, attached hereto and incorporated herein by reference, and the Parkland Improvements to be constructed thereon, for public use for a period of at least twenty (20) years ("**Recreation Site**"). The Recreation Site consists of 1.4-acres that would have been required to be dedicated ("**Dedication Acreage**") and an additional 3.59 acres of parkland and recreational property ("**Additional Parkland**"). After the initial 20-year public use period of the Recreation Site, the Parties have agreed that District may withdraw the Additional Parkland from public use on the terms set forth herein.

G. City and District have reached mutual agreement on the terms of this Agreement and desire to voluntarily enter into this Agreement to facilitate development of the Project subject to the conditions and requirements set forth herein.

H. Pursuant to the California Environmental Quality Act ("**CEQA**") (Public Resources Code section 21000 et seq.), an Environmental Impact Report ("**EIR**") has been prepared and adopted for the Project. As required by CEQA, the City has certified the EIR, and adopted written findings and a Mitigation Monitoring and Reporting Program ("**MMRP**") on April 24, 2023, pursuant to Resolution No. 39-2023.

I. Prior to or concurrently with approval of this Agreement, the City will take numerous actions in connection with the approval of the Project on the Property. The approvals and development actions described herein are collectively referred to as the "**Existing Approvals**": (1) Rezoning; (2) Development Plan; (3) Specific Plan, (4) Vesting Tentative Parcel Map, and (5) Heritage Tree Removal Authorization.

J. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and PMC section 9-4.5006. The City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and found that the provisions of this Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

K. On April 24, 2023, the City Council introduced Ordinance No. 890-C.S. ("**Enacting Ordinance**") approving this Agreement and authorizing its execution, and adopted that Ordinance on May 8, 2023.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

“*Additional Parkland*” is defined in Recital F.

“*Additional Parkland Site*” is defined in Section 5.1.3.1.

“*Agreement*” shall mean this Development Agreement between City and District, including all Exhibits hereto.

“*Applicable Law*” is defined in Section 3.2.

“*Assignee*” is defined in Section 10.1.

“*Assignment*” is defined in Section 10.1.

“*Board of Trustees*” means the Board of Trustees of the Pacifica School District.

“*Bona Fide District Use*” is defined in Section 5.1.3.

“*CEQA*” means the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.*, as amended from time to time.

“*CEQA Guidelines*” means the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000, *et seq.*), as amended from time to time.

“*Changes in the Law*” is defined in Section 3.7.

“*City*” means the City of Pacifica, a municipal corporation.

“*City Council*” means the City Council of the City of Pacifica.

“*City Manager*” means City’s City Manager or his or her designee.

“*City Parties*” means and includes City and its elected and appointed officials, officers, employees, attorneys, contractors and representatives.

“*Claims*” means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys’ fees and costs.

“*Commence Construction*” shall be deemed to have occurred when the District has begun vertical construction as evidenced by an approved foundation City inspection.

“*Connection Fees*” means those fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee, as defined below.

“Dedication Acreage” is defined in Recital F.

“Dedication Site” is defined in Section 5.1.3.1.

“Default” is defined in Section 12.1.

“Development Agreement Law” is defined in Recital B.

“Development Agreement Regulations” is defined in Recital B.

“Development Agreement Statute” is defined in Recital A.

“District” means the Pacifica School District, and its permitted successors and assigns.

“District CBO” means the individual who serves as the Chief Business Officer for the District or his or her designee.

“District Superintendent” means the individual who serves as the Superintendent of Schools for the entire District or his or her designee.

“District’s Development Manager” means the individual or company that District appoints to serve as its development phase authorized representative, collaborating with the District in planning and managing the overall development of the Project, overseeing its design and construction, and assisting with marketing and start-up operations. As of the Effective Date, the District’s Development Manager is Brookwood Group, Inc., a California corporation.

“District’s Property Manager” means the individual or company that District appoints to serve as its property manager and authorized representative for the leasing and on-site management for the operations of the Project or any portion thereof.

“Effective Date” means the date that this Agreement becomes effective as determined under Section 2.1.

“EIR” is defined in Recital H.

“Enacting Ordinance” refers to the Ordinance identified in Recital K.

“Exactions” means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“Existing Approvals” means and includes those permits and approvals for the Project granted by City to District as of the Effective Date as set forth in Recital I.

“**General Plan**” means the City of Pacifica’s General Plan, as amended from time to time.

“**Impact Fees**” means the monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction will be considered to be an Impact Fee.

“**Litigation Challenge**” is defined in Section 9.3.

“**Lot 1**” (the legal description for which is in Exhibit A) comprises the western portion of the Property and is that portion of the Project site for Phase 1 that is defined herein as the Recreation Site.

“**Lot 2**” (the legal description for which is in Exhibit A) comprises the central portion of the Property and is that portion of the Project site upon which all three amenity buildings and the four residential buildings of Phase 1 will be constructed.

“**Lot 3**” (the legal description for which is in Exhibit A) comprises the eastern portion of the Property and is the Project site for Phase 2 of the Project.

“**Major Amendment**” is defined in Section 8.2.

“**Minor Amendment**” is defined in Section 8.2.

“**Mortgage**” means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the District’s rights under this Agreement.

“**Mortgagee**” means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

“**Municipal Code**” means and refers to the City of Pacifica’s Municipal Code, as amended from time to time.

“**New City Laws**” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

“**Notice of Breach**” is defined in Section 12.1.

“**Other Agency Fees**” is defined in Section 4.3.

“**Other Agency Subsequent Approvals**” means Subsequent Project Approvals to be

obtained from entities other than the City.

“*Parkland Improvements*” is defined in Recital E.

“*Permitted Delay*” is defined in Section 13.3.

“*Phase 1*” is defined in Recital E.

“*Phase 2*” is defined in Recital E.

“*Planning Commission*” means the City of Pacifica Planning Commission.

“*Processing Fees*” means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

“*Project Approvals*” means the Existing Approvals and all Subsequent Approvals.

“*Project*” is defined in Recital D.

“*Property*” is defined in Recital C.

“*Recreation Restroom*” is defined in Recital E.

“*Recreation Site*” is defined in Recital F.

“*Residents’ Commons Building*” is defined in Recital E.

“*Subdivision Map Act*” means California Government Code sections 66410 through 66499.58, as it may be amended from time to time.

“*Subsequent Approvals*” is defined in Section 7.1.

“*Term*” is defined in Section 2.2.

“*Withdrawal Notice*” is defined in Section 5.1.3.

ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 Effective Date. The Effective Date of this Agreement shall be the later of (1) the date that is 30 days after the date that the Enacting Ordinance is adopted, or (2) the date this Agreement is fully executed by the Parties. The Effective Date is inserted at the beginning of this Agreement.

2.2 Term of Agreement. Unless earlier terminated, the “Term” of this Agreement shall commence on the Effective Date and shall expire on the earlier of: (1) 25 years after the Effective Date, or (2) District’s satisfaction of all obligations contained herein.

2.3 City Representations and Warranties. City represents and warrants to District that, as of the Effective Date:

2.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.3.2 The execution and delivery of this Agreement and the performance of the obligations of the City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

2.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written notice of such fact or condition to District.

2.4 District Representations and Warranties. District represents and warrants to City that, as of the Effective Date:

2.4.1 District is a California District formed under the laws of the State of California, and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of District under this Agreement.

2.4.2 The execution and delivery of this Agreement and the necessary performance of the obligations of District hereunder have been duly authorized by all necessary action and all necessary shareholder approvals have been obtained.

2.4.3 This Agreement is a valid obligation of District and is enforceable in accordance with its terms.

During the Term of this Agreement, District shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.4 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

3.1 Vested Rights. District shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Project Approvals, the Subsequent Project Approvals, Applicable Law and this Agreement, which shall control the permitted uses, density

and intensity of use of the Property and the maximum height and size of buildings on the Property.

3.2 Applicable Law. City and District acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and District that this Agreement be construed to provide District with rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and/or the Project shall be (collectively, “**Applicable Law**”):

3.2.1 Those rules, regulations, official policies, standards and specifications of the City set forth in the Project Approvals and this Agreement, including without limitation Section 3.1 above;

3.2.2 With respect to matters not addressed by and not otherwise inconsistent with the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, heights and sizes, requirements for on- and off-site infrastructure and public improvements, in force and effect on the Effective Date, except as set forth in section 3.1 above;

3.2.3 New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.4 New City Laws that revise City’s uniform construction codes, including City’s building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit application, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.5 New City Laws that are necessary to protect physical health and safety of the public; provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.6 New City Laws that do not conflict with this Agreement or the Project Approvals, provided such new City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; and

3.2.7 New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by District in its sole discretion.

3.3 Development Timing. District shall phase and construct the Project within the time-frames set forth below:

3.3.1 District shall obtain a building permit to construct Phase 1, including the Parkland Improvements prior to, or concurrently with, issuance of a building permit for Phase 2. In no event shall City issue a building permit for any portion of the Project prior to the issuance of a building permit for Phase 1, except that the City may issue a building permit for construction of the Parkland Improvements prior to issuance of a building permit for Phase 1.

3.3.1.1 District shall construct all below-market rate units required by Pacifica Municipal Code Title 9, Chapter 4, Article 47 in relation to the Project during construction of Phase 1. These below-market rate units shall remain in operation consistent with applicable deed restrictions and/or other agreements regardless whether District constructs Phase 2 of the Project.

3.3.2 District shall commence construction of Phase 1 and the Parkland Improvements prior to, or concurrently with, commencement of construction of any other portion of the Project, but no later than seven (7) years from the Effective Date, subject to extension for a Permitted Delay.

3.3.3 District shall complete construction of and obtain a certificate of occupancy for Phase 1, including the Parkland Improvements, prior to the date that is thirty (30) months from the issuance of the first building permit for Phase 1 and the Parkland Improvements subject to extension for a Permitted Delay. City may extend such 30-month time period for up to six months if City reasonably determines that District has made substantial progress toward completion of construction of Phase 1 and/or the Parkland Improvements prior to the expiration of such initial 30-month period.

3.3.4 District has no obligation to construct Phase 2. However, in the event District desires to construct Phase 2, District shall commence construction of Phase 2, no later than twelve (12) years from the Effective Date, subject to extension for a Permitted Delay.

3.3.5 In the event District commences construction of Phase 2, District shall complete construction of and obtain a certificate of occupancy for Phase 2 prior to the date that is thirty (30) months from the date of issuance of a building permit for Phase 2, subject to extension for a Permitted Delay. City may extend such 30-month time period for up to six (6) months upon the written request of District if City reasonably determines that District has made substantial progress toward completion of construction of Phase 2 prior to the expiration of the initial 30-month period.

3.3.6 Except as set forth above, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, District's vested rights under this Agreement include the right to develop the Property and the Project in such order and at such rate and at such times as District deems appropriate in the exercise of its discretion, subject to the terms, requirements and conditions of the Project Approvals and this Agreement.

3.4 Regulation by Other Public Agencies. City and District acknowledge and agree that other governmental or quasi-governmental entities not within the control of City possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. City shall reasonably cooperate with District in District's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

3.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term or the term otherwise applicable to such Project Approval. Without limiting the generality of the foregoing, pursuant to the Subdivision Map Act, any vesting or tentative maps heretofore or hereafter approved in connection with development of the Project or the Property shall be extended for the Term (and may be subject to other extensions provided under the Subdivision Map Act).

3.6 District's Right to Rebuild. City agrees that District may renovate or rebuild portions of the Project at any time within the Term should it become necessary due to any casualty, including natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval consistent with all prior Project Approvals and Applicable City Law. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, Applicable City Law, and the requirements of CEQA.

3.7 State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude, or render substantially more expensive or time consuming, compliance with one (1) or more provisions of this Agreement, the City and District shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude City or District from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project any such Changes in the Law. If Changes in the Law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, District, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to City.

ARTICLE 4 FEES

4.1 Impact Fees. District shall pay any and all Impact Fees imposed by City that are in place as of the Effective Date, at the rate in effect at the time of building permit issuance, except as

provided in Section 4.1.1 below. In addition, City may impose and District shall comply with those Exactions required by this Agreement and the Project Approvals.

4.1.1 Park Facilities Improvement Fee. District's construction of the Parkland Improvements shall satisfy District's obligation to pay the Park Facilities Improvement Fee. Therefore, no Park Facilities Improvement Fee shall be required in connection with the Project, provided that the Parkland Improvements are constructed.

4.2 Processing Fees. Subject to District's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fee, City may charge and District agrees to pay any and all Processing Fees which are in effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

4.3 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from District that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("**Other Agency Fees**").

4.4 Connection Fees. Subject to District's right to protest and/or pursue a challenge in law or equity to any new or increased connection Fee, City may charge and District shall pay any Connection Fee that is lawfully adopted.

ARTICLE 5 PARKLAND DEDICATION AND PUBLIC BENEFITS

5.1 Parkland Dedication and Recreation Site. District shall satisfy its parkland dedication requirements as set forth below.

5.1.1 Initial 20-Year Public Use of Recreation Site. District shall maintain and operate the entire Recreation Site, including the Dedication Acreage and Additional Parkland Area, and Parkland Improvements constructed thereon and the Recreation Restroom (on Lot 2) for use by the general public for a period of twenty (20) years from the Effective Date ("**20-Year Public Use Period**").

5.1.1.1 Rental Payments. District's operation will include, among other things, rental to sports leagues and for other community events. For the 20-Year Public Use Period, District shall have the right to receive all rents for the entire Recreation Site (Lot 1), including the Dedication Site, and also including rents relating to the Residents' Commons Building to be located on a portion of Lot 2 that is immediately adjacent to Lot 1). During the 20-Year Public Use Period, District shall retain all records of payments for use of Dedication Site and associated use of the Residents' Common Building and, within thirty (30) days of any written request from City, provide City with access to or copies of such records.

5.1.1.2 Maintenance Obligations. District, at its sole expense, shall maintain, safely operate, periodically inspect, repair, resurface and replace the Parkland Improvements (on Lot 1) and the Recreation Restroom and Residents' Common Building (on Lot 2) if deemed necessary by District or City, as well as perform all necessary service on maintenance

equipment, in order to ensure the attractive and healthy appearance of the landscaping, the attractive appearance, condition and safety of any and all structures, and the efficient operation of all of the Parkland Improvements, including paying the electrical expense of operating any light and irrigation controllers.

5.1.1.3 Insurance Obligations. In addition to the insurance obligations of Section 9.1 below, District shall ensure the Recreation Site and Parkland Improvements and the Residents' Commons Building and Recreation Restroom are covered by its general liability and property insurance policies and that the City is named as an additional insured, in a form approved by City, on all insurance policies regarding the Recreation Site and Parkland Improvements.

5.1.1.4 Exclusion of Public. District may have exclusive use of the Recreation Site (on Lot 1) and the Recreation Restroom (on Lot 2) for special events, including but not limited to, soccer leagues, flea markets, and farmers markets, up to ten (10) calendar days per month for not more than eight hours each day. District shall provide notice to City at least one month prior to the start of each month of the days in which the Recreation Site and Recreation Restroom will not be open to the public that month. District shall have exclusive use of the Residents' Commons Building, except as provided in Section 5.2 below.

5.1.2 Ongoing Public Use. Following the 20-Year Public Use Period, District shall continue to allow public use of the Recreation Site and the Recreation Restroom on Lot 2 and may continue to collect rents upon the terms set forth in Section 5.1.1 above, unless otherwise agreed by the Parties, except that maintenance of the Recreation Site and the Recreation Restroom on Lot 2 pursuant to Section 5.1.1.2 shall become the obligation of the City.

5.1.3 Withdrawal of Additional Parkland from Public Use. Following the 20-Year Public Use Period, District may provide written notice to City of its intent to withdraw the Additional Parkland from public use ("**Withdrawal Notice**"). The Withdrawal Notice shall describe whether or not the District requires the Additional Parkland for a bona fide use directly related to the District's educational mission, as follows: a pre-school or school; District offices or support or maintenance facilities; workforce housing for District employees or employees of another government entity; or market rate rental housing that generates cash flow to directly support District operations ("**Bona Fide District Use**"). District may also request City's approval of a Bona Fide District Use not described above, which approval shall not be unreasonably withheld.

5.1.3.1 Dedication Acreage. Upon City receipt of the Withdrawal Notice, the City and the District shall meet in good faith to identify the 1.4-acre portion of the Recreation Site that shall remain in continued public use and shall be dedicated to the City in fee simple to satisfy the PSD's obligation to dedicate the Dedication Acreage (the "**Dedication Site**"). The remaining portion of the Recreation Site other than the Dedication Site shall be referred to as the "**Additional Parkland Site.**" In identifying the Dedication Site, City and District shall consider the existing park improvements and the ability of the site to meet the recreational needs of the public. In the event City and District cannot agree on the Dedication Site, the Parties shall equally share the costs of mediation to resolve the dispute. District shall convey title to the Dedication Site to the City through a Grant Deed, subject only to liens for unpaid taxes, and

easements and other exceptions approved by City, prior to withdrawal of the Additional Parkland from public use. The District shall provide an easement and right-of-entry to the City for continued use of the Recreation Restroom, together with dedication of the Dedication Site.

(i) As an alternative to dedication of the required Dedication Acreage, District may satisfy its obligation through one of the following alternatives, upon the written approval of City. In the event that City approves one of the following alternatives, the City and public have no further right of use and access to the Recreation Restroom.

(1) District may dedicate another comparable site to City as parkland.

(2) District may pay a parkland dedication in-lieu fee. In the event City approves payment of the in-lieu fee, District shall pay the fee amount in effect on the date of the Withdrawal Notice. Payment of the fee shall occur prior to withdrawal of the Additional Parkland from public use. The fee shall be calculated on the value of the Dedication Area and shall not include any portion of the Additional Parkland.

5.1.3.2 Requirements for Additional Parkland. In the event District withdraws the Additional Parkland for a Bona Fide Public Use, District's obligations as to the Additional Parkland Site terminate upon the grant of the Dedication Site to City. In the event that the District is not withdrawing the Additional Parkland for a Bona Fide Public Use, City shall have a right of first offer to purchase the Additional Parkland Site, which right shall remain in effect for one year from the Withdrawal Notice. During such one-year time period, City may exercise its right to purchase the Additional Parkland Site, at which time the Parties shall commence good faith efforts to complete the property transfer. If the City desires to exercise its right of first offer, it must do so with respect to the entire 3.59 acres of Additional Parkland, unless District consents, in its sole discretion, to an acquisition of less than the entire 3.59 acres. In the event that the City exercises its right of first offer, the purchase price for the Additional Parkland shall be the per-acre value assigned to the parkland based on the City's park in-lieu fee in effect at the time of the Withdrawal Notice, unless otherwise agreed to by the Parties. If the City does not exercise its right to submit an offer within the one-year time period or if City notifies District that it does not desire to purchase the Additional Parkland Site, District may withdraw the Additional Parkland Site from public use after City approval of any required land use or other approvals for an alternative use for the site. Until such approval, District shall continue to make the Additional Parkland available for public use pursuant to Section 5.1.2 above.

5.1.4 Agreement to be Recorded Affecting Real Property. The Parties shall enter into and record an agreement against the Recreation Site setting forth the terms and obligations of this Section 5.1, within ninety (90) days of the Effective Date, in substantially the form attached hereto as Exhibit D, which agreement shall survive termination or expiration of this Agreement.

5.2 Residents' Commons Building / Occasional Use by City. District shall make the Residents' Commons Building available for use by the City not more than two (2) days per month for City-hosted or sponsored activities, not to exceed eight (8) hours per day. City shall be responsible for reserving the Residents' Commons Building through the District's standard facility reservation system, or other process mutually agreed by City and District, and City's use

shall be subject to periods of availability based on reservations by other facility users. Use of the Residents' Commons Building will be subject to City payment of any standard facility use fee adopted by District. This Section 5.2 shall survive the termination or earlier expiration of this Agreement. Further, this obligation shall be documented in the Agreement to be Recorded Affecting Real Property described in Section 5.1.4.

5.3 Sales Tax Point of Sale Designation. District shall require, to the extent allowed by law, all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. District shall instruct its general contractor(s) for the Project to, and cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, District shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City.

ARTICLE 6 ANNUAL REVIEW

6.1 Annual Review.

6.1.1 Purpose. As required by California Government Code section 65865.1 and PMC section 9-4.5009, City and District shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining compliance by District with its obligations under this Agreement. Each annual review shall also document: (a) the status of the Project development, and (b) the status of ongoing public use of the Recreation Site and/or compliance with parkland dedication requirements.

6.1.2 Conduct of Annual Review. The annual review shall be conducted as provided in this Section 6.1.2. By December 1st of each year, District shall provide documentation of its good faith compliance with this Agreement during the calendar year, and such other information as may reasonably be requested by the Planning Director. If the Planning Director finds good faith compliance by District with the terms of this Agreement, District shall be notified in writing and the review for that period shall be concluded. If the Planning Director is not satisfied that District is performing in accordance with the terms and conditions of this Agreement, the Planning Director shall prepare a written report specifying why the District may not be in good faith compliance with this Agreement, refer the matter to the City Council, and notify District in

writing at least 15 business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to evaluate good faith compliance with this Agreement, a copy of the Planning Director's report and recommendations, if any, and any other information reasonably necessary to inform District of the nature of the proceeding. The City Council shall conduct a public hearing at which District must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. District shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether District has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that District has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If the City Council determines, based upon substantial evidence in the record, that District has not complied in good faith with the terms and conditions of this Agreement, or there are significant questions as to whether District has complied with the terms and conditions of this Agreement, the City Council, at its option, may continue the hearing and may notify District of the City's intent to meet and confer with District within 30 days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding District's good faith compliance with the terms and conditions of this Agreement. In the event City determines District is not in good faith compliance with the terms and conditions of this Agreement, City may give the District a written Notice of Breach, in which case the provisions of Section 12.1, below, shall apply.

6.1.3 Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall District have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

ARTICLE 7 COOPERATION AND IMPLEMENTATION

7.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building permits, design review permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon the development and construction of the Project that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement.

ARTICLE 8 AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

8.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 6.1 relating to City's annual review and Section 12.1 relating to termination in

the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65967, 65867.5 and 65868.

8.2 Major Amendments to Agreement. Any amendment to this Agreement which affects or relates to (a) the Term; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) parkland requirements of District, shall be deemed a “**Major Amendment**” and shall require giving of notice and a public hearing before the Planning Commission and City Council and also shall require the approval of the District’s Board of Trustees. Any amendment which is not a Major Amendment shall be deemed a “**Minor Amendment**” and shall not, except to the extent otherwise required by Applicable Law, require notice of public hearing before the Parties may execute an amendment hereto. Either the City Manager or the District Superintendent (acting alone or together) shall have the authority to determine if an amendment is a Major Amendment.

8.3 Minor Amendment. The City Manager and the District Superintendent or their respective designees shall have the authority to review and approve amendments to this Agreement provided that such amendments are not Major Amendments.

8.4 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of the Parties or their successors in interest.

8.5 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City, at District’s expense, shall conduct such additional CEQA review as expeditiously as possible.

ARTICLE 9 INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF LEGAL CHALLENGE

9.1 Insurance Requirements. District shall procure and maintain, or cause its contractor(s) to procure and maintain, until the expiration of this Agreement, a commercial general liability policy in an amount not less than two million (\$2,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of one million (\$1,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. District’s insurance shall be placed with insurers with a current A.M. Best’s rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. District shall furnish at City’s request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement

of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the District. Coverage provided hereunder by District shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

9.2 Indemnity and Hold Harmless. District shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project by or on behalf of District, maintenance and operation of the Recreation Site and Parkland Improvements (on Lot 1) and the Residents' Common Building and Recreation Restroom (on Lot 2), and/or from any other acts or omissions of District under this Agreement, whether such acts or omissions are by District or any of District's contractors, subcontractors, agents or employees, except to the extent such Claims arise from the sole active negligence or willful misconduct of City or City Parties.

9.3 Defense and Cooperation in the Event of a Litigation Challenge. City and District shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent District desires to contest or defend such Litigation Challenge, (a) District shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (b) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by District; (c) District shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City's administrative, legal, and court costs and City Attorney oversight expenses; and (d) District shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City's approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If District opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so.

ARTICLE 10
ASSIGNMENT, TRANSFER AND NOTICE

10.1 Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project and ongoing parkland obligations, certain restrictions on the right of District to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. District agrees to and accepts the restrictions set forth in this Section 10.1 as reasonable and as a material inducement to City to enter into this Agreement. District shall have the right to sell or transfer its fee interest, or ground lease its interests in the Property, in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an “Assignee”) subject to the prior written consent of City, which consent shall not be unreasonably withheld. District shall provide the City with written notice of any proposed transfer or assignment of District’s rights or obligations hereunder (each, an “Assignment”) at least thirty (30) days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of Assignee’s agreement to assume District’s obligations hereunder. District shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney’s Office. If City consents to such Assignment, a written assignment and assumption agreement, in a form approved by City, shall be recorded in the Official Records of San Mateo County. Assignee shall succeed to the rights, duties and obligations of District only with respect to the parcel or parcels, or portion of the Property so purchased, transferred, ground leased or assigned, and District shall continue to be obligated under this Agreement with respect to any remaining portions of the Property retained by District and not assigned.

10.2 Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Assignment and Assignee. This Article 10 does not apply to or rental of the residential units.

ARTICLE 11
MORTGAGEE PROTECTION

11.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit District, at its sole discretion and to the extent authorized by law, from granting one or more Mortgages encumbering all or a portion of District’s interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise. District shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of San Mateo County; provided, however, that District’s failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

11.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 11.2, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

11.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given District hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to District, any Notice of Default given to District. Each Mortgagee shall have the right during the same period available to District to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 120 days from the date the City delivers the Notice of Default to District.

11.4 No Supersedure. Nothing in this Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 11 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to Permitted Delays or by mutual consent in writing, and except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default**." In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall

exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

12.2 Withholding of Permits. In the event of a Default by District, or following notice of breach to District pursuant to Section 12.1 above and during the cure period provided therein, upon a finding by the Planning Director that District is in breach, City shall have the right to refuse to issue any permit or other Subsequent Approvals to which District would otherwise have been entitled pursuant to this Agreement until such Default or breach is cured. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.3 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.9.

12.4 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by District in the future, and if District then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing District to satisfy such condition.

12.5 Legal Actions.

12.5.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the limitation of damages in Section 12.7, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for San Mateo County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.5.2 Acceptance of Service of Process. In the event that any legal action is commenced by District against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against District, service of process on District shall be made by personal service upon District's registered agent for service of process, or in such other manner as may be provided by law.

12.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the

same Default or any other Default by the other Party, except as otherwise expressly provided herein.

12.7 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages, including without limitation, actual, consequential or punitive damages, for any Default under this Agreement. It is expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

12.8 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.8 shall in any way be interpreted as requiring that District, City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or District unless expressly agreed to in writing by the parties to such meetings.

12.9 Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of District set forth in Sections 5.1 and 5.2 and Article 9.

ARTICLE 13 GENERAL PROVISIONS

13.1 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement and subject to the limitations on assignment set forth herein, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

13.2 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and District as follows:

If to the City:	City Clerk City of Pacifica 170 Santa Maria Avenue Pacifica, CA 94044 Telephone: 650-738-7300
with a copy to:	City Attorney City of Pacifica 1901 Harrison Street, Suite 900 Oakland, CA 94612 Telephone: 510-273-8780
If to District:	Pacifica School District Attn: Superintendent 375 Reina del Mar Avenue Pacifica, CA 94044 Telephone: 650-738-6600
with a copy to:	County Attorney 400 County Center, 6 th Floor Redwood City, CA 94063 Telephone: 650-363-4750
And with a copy to:	District's Development Manager

Notices are deemed effective if delivered by certified mail, return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Parties.

13.3 Permitted Delays. Performance by either of the Parties of an obligation hereunder shall be excused during any period of "**Permitted Delay**." Permitted Delay shall mean delay beyond the reasonable control of a Party caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; or (f) vandalism. A Party's financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a Permitted Delay. The Party claiming a Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within thirty (30) business days after the occurrence of the conditions which establish the grounds for the claim. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the

giving of such notice. The period of Permitted Delay shall last no longer than the conditions preventing performance. In no event shall any Permitted Delay extend the Term of this Agreement.

13.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.5 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

13.6 Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; (e) “includes” and “including” are not limiting; and (f) “days” means calendar days unless specifically provided otherwise.

13.7 Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

13.8 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Party.

13.9 Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

13.10 Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

13.11 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement

on behalf of the respective legal entities of District and the City. Each District Party shall be jointly and severally liable for the obligations of the other District Party.

13.12 Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

13.13 Estoppel Certificate. District or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) District is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. District shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs expended by the City Attorney's Office in connection therewith. The Planning Director shall be authorized to execute any certificate requested by District hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The Planning Director shall execute and return such certificate within thirty (30) days following District's request therefor. District and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty-day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

13.14 Recordation of Termination. Upon completion of performance of the Parties or termination of this Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of San Mateo County.

13.15 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

13.16 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of District, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

13.17 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including

Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

13.18 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

IN WITNESS WHEREOF, the City and District have executed this Agreement as of the Effective Date.

CITY:

CITY OF PACIFICA, a municipal corporation

By: _____
Kevin Woodhouse, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon, City Attorney

DISTRICT:

Pacifica School District,
a California School District

By: _____
Name: Heather Olsen
Its: Superintendent
[Signature must be notarized]

By: _____
Name: Josie Peterson
Its: Chief Business Officer
[Signature must be notarized]

Exhibit A

Legal Description of the Property (consisting of three Lots)

LOT 1

All that certain real property situated in the City of Pacifica, County of San Mateo, State of California, being all of Lots 1-21 inclusive, Lot C, and Everglades Court, Block 6, and being a portion of Lots 22-30, Block 6, as said lots are shown on that certain map entitled "PARK PACIFICA HIGHLANDS NO. 1", filed for record on October 5, 1965, in Volume 63 of Maps at Pages 13, 14 and 15, Records of San Mateo County, and also being a portion of that certain parcel of land described in that certain City of Pacifica Resolution No. 960, passed and adopted on March 22, 1967 in Book 5535 at Page 226, Official Records of said County, being more particularly described as follows:

BEGINNING at the most southerly corner of said parcel described in said Resolution No. 960, said corner also being on the northeasterly right-of-way line of Yosemite Drive;

Thence northwesterly along said northeasterly right-of-way line, said northeasterly right-of-way line being common to said Lots 1-7 inclusive, and said Lot C as shown on said map, the following four (4) courses:

- 1) North 78°22'00" West, 299.73 feet to the beginning of a tangent curve to the right;
- 2) Along said curve, having a radius of 320.00 feet, through a central angle of 33°10'00", for an arc length of 185.24 feet;
- 3) North 45°12'00" West, 168.40 feet to the beginning of a tangent curve to the right;
- 4) Along said curve, having a radius of 20.00 feet; through a central angle of 77°50'42", for an arc length of 27.17 feet to a point on the southeasterly right-of-way line of Oddstad Boulevard, also being a point on the northwesterly line of said Lot 7 as shown on said map, said point also being the beginning of a tangent curve to the right;

Thence northeasterly along said southeasterly right-of-way line, said southeasterly right-of-way line being common to said Lot 7, 8, and 22, the following two (2) courses:

- 1) Along said curve, having a radius of 968.00 feet, through a central angle of 12°21'18", for an arc length of 208.74 feet;
- 2) North 45°00'00" East, 113.66 feet to the beginning of a non-tangent curve to the left, whose radius point bears North 86°35'57" East;

Thence leaving said southeasterly right-of-way line and along said curve, having a radius of 24.00 feet, through a central angle of 131°35'57", for an arc length of 55.12 feet;

Thence North 45°00'00" East, 65.58 feet to the beginning of a tangent curve to the right;

Thence along said curve, having a radius of 10.00 feet, through a central angle of 90°00'00", for an arc length of 15.71 feet;

Thence South 45°00'00" East, 204.53 feet;

Thence South 45°00'00" West, 7.50 feet;

Thence South 45°00'00" East, 233.44 feet;

Thence South 69°30'43" East, 49.64 feet to a point on the southeasterly line of said parcel described in said Resolution No. 960;

Thence southwesterly along said southeasterly line, South 20°29'17" West, 247.22 feet to the **POINT OF BEGINNING**.

Containing 218,586 square feet or 5.02 acres, more or less.

This legal description is not to be used in violation of the Subdivision Map Act or for the transfer, lease, or sale of the real property described within.

Lot 1 is intended to describe a proposed future lot subject to a future Parcel Map to be recorded with the County of San Mateo.

This legal description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.

LOT 2

All that certain real property situated in the City of Pacifica, County of San Mateo, State of California, being all of Lots 31-42, inclusive, Shenandoah Court, Carlsbad Court, Block 6, and being a portion of Lots 22-30, Lots 43-45, Lots 48 and 49 and Lot D, block 6, as said lots are shown on that certain map entitled "PARK PACIFICA HIGHLANDS NO. 1", filed for record on October 5, 1965, in Volume 63 of Maps at Pages 13, 14 and 15, Records of San Mateo County, and also being a portion of that certain parcel of land described in that certain City of Pacifica Resolution No. 960, passed and adopted on March 22, 1967 in Book 5535 at Page 226, Official Records of said County, being more particularly described as follows:

BEGINNING at the northerly corner of said parcel described in said Resolution No. 960;

Thence southwesterly along the southeasterly line of said parcel, South $20^{\circ}29'17''$ West, 281.03 feet;

Thence leaving said southeasterly line, North $69^{\circ}30'43''$ West, 49.64 feet;

Thence North $45^{\circ}00'00''$ West, 233.44 feet;

Thence North $45^{\circ}00'00''$ East, 7.50 feet;

Thence North $45^{\circ}00'00''$ West, 204.53 feet to the beginning of a tangent curve to the left;

Thence along said curve, having a radius of 10.00 feet, through a central angle of $90^{\circ}00'00''$, for an arc length of 15.71 feet;

Thence South $45^{\circ}00'00''$ West, 65.58 feet to the beginning of a tangent curve to the right;

Thence along said curve, having a radius of 24.00 feet, through a central angle of $131^{\circ}35'57''$, for an arc length of 55.12 feet to a point on the southeasterly right-of-way line of Oddstad Boulevard, said point also being on the northwesterly line of said Lot 22, as shown on said map;

Thence northwesterly along said southeasterly right-of-way line, said southeasterly right-of-way line being common to said Lots 22, 23, 37, 38, & 45, the following three (3) courses:

- 1) North $45^{\circ}00'00''$ East, 232.34 feet to the beginning of a tangent curve to the right;
- 2) Along said curve, having a radius of 638.00 feet, through a central angle of $11^{\circ}49'00''$, for an arc length of 131.58 feet to the beginning of a reverse curve to the left;
- 3) Along said curve, having a radius of 1632.00 feet, through a central angle of $03^{\circ}31'08''$, for an arc length of 100.23 feet;

Thence leaving said line, South $36^{\circ}42'08''$ East, 14.84 feet to the beginning of a tangent curve to the left;

Thence along said curve, having a radius of 60.00 feet, through a central angle of $36^{\circ}01'54''$, for an arc length of 37.73 feet;

Thence South $72^{\circ}44'01''$ East, 39.36 feet to the beginning of a tangent curve to the right;

Thence along said curve, having a radius of 60.00 feet, through a central angle of $27^{\circ}41'10''$, for an arc length of 28.99 feet;

Thence South 45°02'52" East, 109.32 feet;

Thence North 44°57'08" East, 145.00 feet;

Thence South 46°45'00" East, 153.84 feet to the southeasterly line of said Lot D;

Thence along said southeasterly line, South 43°15'00" West, 278.59 feet to the **POINT OF BEGINNING**.

Containing 204,273 square feet or 4.69 acres, more or less.

This legal description is not to be used in violation of the Subdivision map Act or for the transfer, lease, or sale of the real property described within.

Lot 2 is intended to describe a proposed future lot subject to a future Parcel Map to be recorded with the County of San Mateo.

This legal description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.

LOT 3

All that certain real property situated in the City of Pacifica, County of San Mateo, State of California, being all of Lots 46 and 47, inclusive, Lots 50-53, inclusive, Lot 56 and Big Bend Court, Block 6, and being a portion of Lots 43-45, Lots 48 and 49 and Lot D, block 6, as said lots are shown on that certain map entitled "PARK PACIFICA HIGHLANDS NO. 1", filed for record on October 5, 1965, in Volume 63 of Maps at Pages 13, 14 and 15, Records of San Mateo County, being more particularly described as follows:

BEGINNING at the easterly corner of said Lot D, as shown on said map;

Thence southwesterly along the southeasterly line of said Lot D, South 43°15'00" West, 245.53 feet;

Thence leaving said line, North 46°45'00" West, 153.84 feet;

Thence South 44°57'08" West, 145.00 feet;

Thence North 45°02'52" West, 109.32 feet to the beginning of a tangent curve to the left;

Thence along said curve, having a radius of 60.00 feet, through a central angle of 27°41'10", for an arc length of 28.99 feet;

Thence North 72°44'01" West, 39.36 feet to the beginning of a tangent curve to the right;

Thence along said curve, having a radius of 60.00 feet, through a central angle of 36°01'54", for an arc length of 37.73 feet;

Thence North 36°42'08" West, 14.84 feet to a point on the southeasterly right-of-way line of Oddstad Boulevard, said point also being on the northwesterly line of said Lot 45, as shown on said map, said point also being the beginning of a non-tangent curve to the left, whose radius point bears North 36°42'08" West;

Thence northwesterly along said southeasterly right-of-way line, said southeasterly right-of-way line being common to said Lots 45, 46, 51-53, and along said curve, having a radius of 1632.00 feet, through a central angle of 14°27'00", for an arc length of 411.59 feet to the northerly corner of said Lot 53;

Thence leaving said southeasterly right-of-way line, and along the northeasterly line of said Lots 53, 56 and D, the following three (3) courses:

- 1) South 51°09'07" East, 144.95 feet;
- 2) South 41°19'17" East, 57.78 feet;
- 3) South 45°49'00" East, 160.00 feet to the POINT OF BEGINNING.

Containing 121,203 square feet or 2.78 acres, more or less.

This legal description is not to be used in violation of the Subdivision map Act or for the transfer, lease, or sale of the real property described within.

Lot 3 is intended to describe a proposed future lot subject to a future Parcel Map to be recorded with the County of San Mateo.

This legal description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.

Exhibit B

Description of the Parkland Improvements, Residents' Common Building and Recreation Restroom

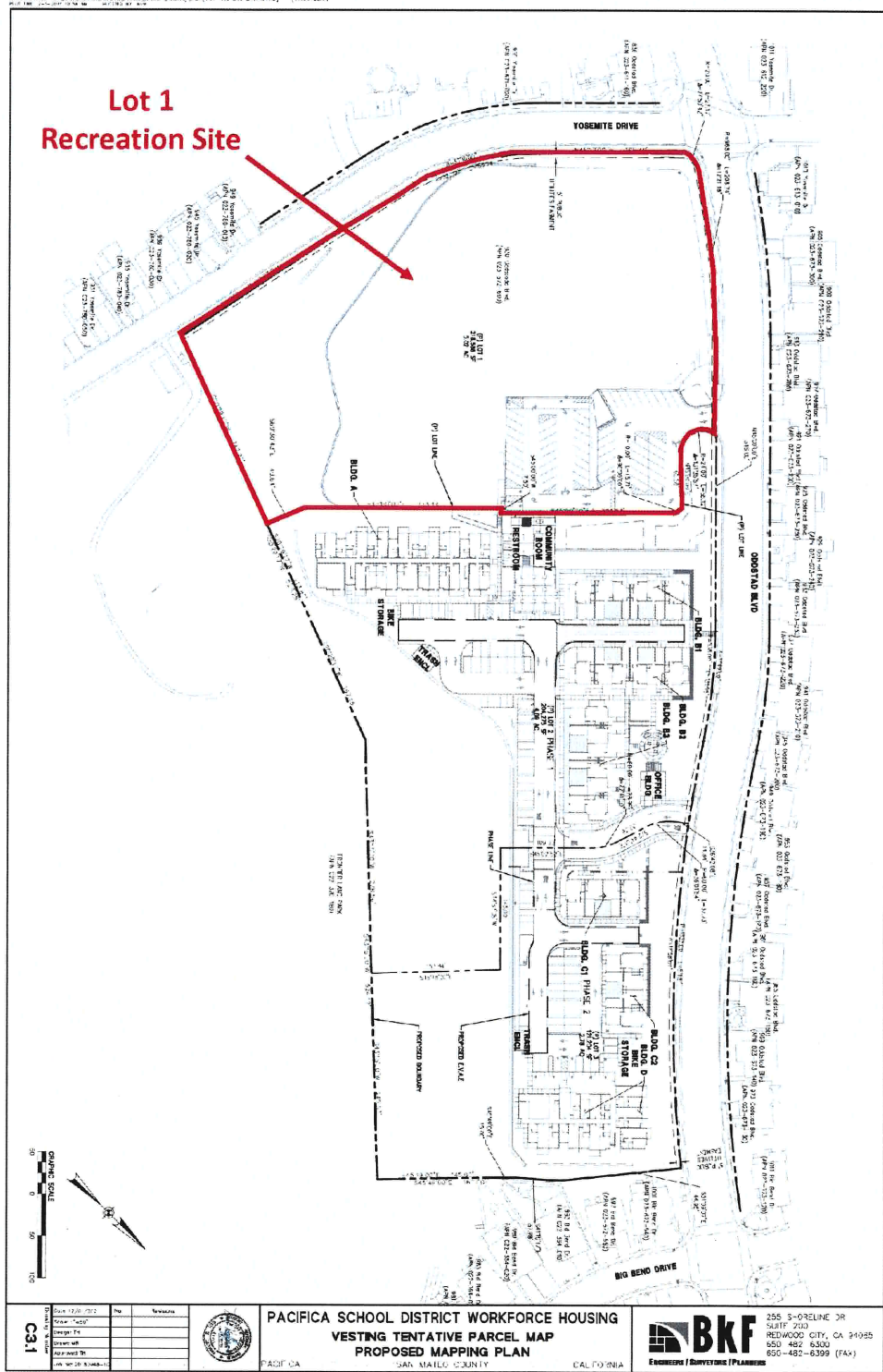
Parkland Improvements - Improvements to existing recreational fields consisting of natural turf repairs such as but not limited to reseeding, aeration, soil leveling, weed removal, and drainage improvements. Other improvements to facilities supporting the recreational fields, comprised of repair and/or replacement of a concrete surface drain adjacent to the recreational fields, slurry seal or overlay and striping of the parking lot for off-street parking purposes, striping of the off-street parking area for alternate use as a basketball court (striping color to contrast with parking striping), and installation of two basketball hoops and backboards with adjustable heights and a maximum rim height of ten (10) feet.

Residents' Common Building - Construction of one (1) approximately 860-square foot amenity building, substantially consistent in height, materials, and architectural design with that shown on Sheet A3.15 of the plan set presented to the Planning Commission on March 20, 2023, comprised of an open floor area, snack window/kiosk, kitchen countertop and sink, a 61-square foot restroom, and exterior covered picnic area and installation of at least four (4) picnic tables.

Recreation Restroom - Construction of one (1) approximately 716-square foot amenity building, substantially consistent in height, materials, and architectural design with that shown on Sheet A3.15 of the plan set presented to the Planning Commission on March 20, 2023, comprised of two gender separated restrooms with toilets, urinals, handwashing sinks, and other restroom improvements as required by the California Building Code.

Exhibit C

Depiction of Recreation Site



CS1	DATE	DESCRIPTION	BY



PACIFIC SCHOOL DISTRICT WORKFORCE HOUSING
 VESTING TENTATIVE PARCEL MAP
 PROPOSED MAPPING PLAN
 SAN MATEO COUNTY CALIFORNIA

BKF
 ENGINEERS | SURVEYORS | PLANNERS
 255 S-O'REILLY DR
 SUITE 200
 REDWOOD CITY, CA 94065
 650-482-6300
 650-482-6399 (FAX)

Exhibit D

Form of Agreement to be Recorded

Attached

RECORDING REQUESTED BY)
 AND WHEN RECORDED MAIL TO:)
)
 City of Pacifica)
 City Clerk's Office)
 540 Crespi Drive)
 Pacifica, CA 94044)
 Attn: City Clerk)
)

(Space Above This Line for Recorder's Use Only)
 [Exempt from recording fee per Gov. Code § 27383]

AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY

This AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY ("Agreement"), dated as of _____, 2023, is made and entered into by and between CITY OF PACIFICA, a California municipal corporation ("City") and PACIFIC SCHOOL DISTRICT, a California school district ("**District**").

RECITALS

A. District is the owner of that certain real property located at 930 Oddstad Boulevard, in the City of Pacifica, also known as Assessor's Parcel Number 023-672-600, and described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. City and District have entered into a Development Agreement dated for identification purposes as of _____ ("**Development Agreement**"), which provides, for the development of a residential project and amenities to be developed in two phases (the "**Project**"). Phase 1 generally consists of four (4) residential buildings consisting of forty-five (45) units, three (3) amenity buildings, circulation and other improvements, and retention of and improvements to existing recreational fields.

C. In order to satisfy the parkland dedication requirements of the Project, District agreed to maintain and operate that 4.99-acre portion ("**Lot 1**") of the Property and the Parkland Improvements, as defined below, to be constructed thereon, for public use for a period of at least twenty (20) years ("**Recreation Site**"). The Recreation Site consists of 1.4-acres that would have been required to be dedicated ("**Dedication Acreage**") and an additional 3.59 acres of parkland and recreational property ("**Additional Parkland**"). After the initial 20-year public use period of the Recreation Site, the District may withdraw the Additional Parkland from public use on the terms set forth in the Development Agreement.

D. The improvements to the existing recreational fields to be constructed consist of drainage improvements, natural turf repairs, parking lot sealing/stripping, and basketball hoop installation (all located on Lot 1) ("**Parkland Improvements**"). The following two buildings

are also in Phase 1: (1) the residents' common amenity building to be constructed on a portion the lot that is immediately adjacent to Lot 1, which includes a snack window/kiosk and covered picnic area that will serve the public and community groups under terms and conditions described herein ("**Residents' Commons Building**"); and (2) a restroom structure on the lot that is immediately adjacent to Lot 1, which includes new restrooms/changing rooms that will be used in conjunction with the Parkland Improvements ("**Recreation Restroom**").

E. As set forth in Sections 5.1.4 and 5.2 of the Development Agreement, City and District have agreed to execute and record this Agreement in order to bind District and future owners of the Property to the parkland obligations set forth in the Development Agreement, which survive termination or expiration of the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and District on behalf of themselves and their respective heirs, executors, successors, assigns and each successor in interest hereby covenant and agree as follows:

1. Compliance with Parkland Dedication and Recreation Site Requirements. District shall comply with the following obligations, as set forth in Section 5.1 of the Development Agreement, with respect to the use of the Property and the Recreation Site, which obligations survive termination of the Development Agreement.

1.1 Initial 20-Year Public Use of Recreation Site. District shall maintain and operate the entire Recreation Site, including the Dedication Acreage and Additional Parkland Area, and Parkland Improvements constructed thereon and the Recreation Restroom (on Lot 2) for use by the general public for a period of twenty (20) years from the [INSERT EFFECTIVE DATE OF DEVELOPMENT AGREEMENT] ("**20-Year Public Use Period**").

1.1.1 Rental Payments. District's operation will include, among other things, rental to sports leagues and for other community events. For the 20-Year Public Use Period, District shall have the right to receive all rents for the entire Recreation Site (Lot 1), including the Dedication Site, and also including rents relating to the Residents' Commons Building to be located on a portion of Lot 2 that is immediately adjacent to Lot 1). During the 20-Year Public Use Period, District shall retain all records of payments for use of Dedication Site and associated use of the Residents' Common Building and, within thirty (30) days of any written request from City, provide City with access to or copies of such records.

1.1.2 Maintenance Obligations. District, at its sole expense, shall maintain, safely operate, periodically inspect, repair, resurface and replace the Parkland Improvements (on Lot 1) and the Recreation Restroom and Residents' Common Building (on Lot 2) if deemed necessary by District or City, as well as perform all necessary service on maintenance equipment, in order to ensure the attractive and

healthy appearance of the landscaping, the attractive appearance, condition and safety of any and all structures, and the efficient operation of all of the Parkland Improvements, including paying the electrical expense of operating any light and irrigation controllers.

1.1.3 Insurance Obligations. District shall ensure the Recreation Site and Parkland Improvements and the Residents' Commons Building and Recreation Restroom are covered by its general liability and property insurance policies and that the City is named as an additional insured, in a form approved by City, on all insurance policies regarding the Recreation Site and Parkland Improvements.

1.1.4 Exclusion of Public. District may have exclusive use of the Recreation Site (on Lot 1) and the Recreation Restroom (on Lot 2) for special events, including but not limited to, soccer leagues, flea markets, and farmers markets, up to ten (10) calendar days per month for not more than eight hours each day. District shall provide notice to City at least one month prior to the start of each month of the days in which the Recreation Site and Recreation Restroom will not be open to the public that month. District shall have exclusive use of the Residents' Commons Building, except as provided in Section 2 below.

1.2 Ongoing Public Use. Following the 20-Year Public Use Period, District shall continue to allow public use of the Recreation Site and the Recreation Restroom on Lot 2 and may continue to collect rents upon the terms set forth in Section 1.1 above, unless otherwise agreed by the Parties, except that maintenance of the Recreation Site and the Recreation Restroom on Lot 2 pursuant to Section 1.1.2 shall become the obligation of the City.

1.3 Withdrawal of Additional Parkland from Public Use. Following the 20-Year Public Use Period, District may provide written notice to City of its intent to withdraw the Additional Parkland from public use ("**Withdrawal Notice**"). The Withdrawal Notice shall describe whether or not the District requires the Additional Parkland for a bona fide use directly related to the District's educational mission, as follows: a pre-school or school; District offices or support or maintenance facilities; workforce housing for District employees or employees of another government entity; or market rate rental housing that generates cash flow to directly support District operations ("**Bona Fide District Use**"). District may also request City's approval of a Bona Fide District Use not described above, which approval shall not be unreasonably withheld.

1.3.1 Dedication Acreage. Upon City receipt of the Withdrawal Notice, the City and the District shall meet in good faith to identify the 1.4-acre portion of the Recreation Site that shall remain in continued public use and shall be dedicated to the City in fee simple to satisfy the PSD's obligation to dedicate the Dedication Acreage (the "**Dedication Site**"). The remaining portion of the Recreation Site other than the Dedication Site shall be referred to as the "**Additional Parkland Site.**" In identifying the Dedication Site, City and District shall consider the existing park improvements and the ability of the site to meet the recreational needs of the public. In the event City and District cannot agree on the Dedication

Site, the Parties shall equally share the costs of mediation to resolve the dispute. District shall convey title to the Dedication Site to the City through a Grant Deed, subject only to liens for unpaid taxes, and easements and other exceptions approved by City, prior to withdrawal of the Additional Parkland from public use. The District shall provide an easement and right-of-entry to the City for continued use of the Recreation Restroom, together with dedication of the Dedication Site.

(a) As an alternative to dedication of the required Dedication Acreage, District may satisfy its obligation through one of the following alternatives, upon the written approval of City. In the event that City approves one of the following alternatives, the City and public have no further right of use and access to the Recreation Restroom.

(i) District may dedicate another comparable site to City as parkland.

(ii) District may pay a parkland dedication in-lieu fee. In the event City approves payment of the in-lieu fee, District shall pay the fee amount in effect on the date of the Withdrawal Notice. Payment of the fee shall occur prior to withdrawal of the Additional Parkland from public use. The fee shall be calculated on the value of the Dedication Area and shall not include any portion of the Additional Parkland.

1.3.2 Requirements for Additional Parkland. In the event District withdraws the Additional Parkland for a Bona Fide Public Use, District's obligations as to the Additional Parkland Site terminate upon the grant of the Dedication Site to City. In the event that the District is not withdrawing the Additional Parkland for a Bona Fide Public Use, City shall have a right of first offer to purchase the Additional Parkland Site, which right shall remain in effect for one year from the Withdrawal Notice. During such one-year time period, City may exercise its right to purchase the Additional Parkland Site, at which time the Parties shall commence good faith efforts to complete the property transfer. If the City desires to exercise its right of first offer, it must do so with respect to the entire 3.59 acres of Additional Parkland, unless District consents, in its sole discretion, to an acquisition of less than the entire 3.59 acres. In the event that the City exercises its right of first offer, the purchase price for the Additional Parkland shall be the per-acre value assigned to the parkland based on the City's park in-lieu fee in effect at the time of the Withdrawal Notice, unless otherwise agreed to by the Parties. If the City does not exercise its right to submit an offer within the one-year time period or if City notifies District that it does not desire to purchase the Additional Parkland Site, District may withdraw the Additional Parkland Site from public use after City approval of any required land use or other approvals for an alternative use for the site. Until such approval, District shall continue to make the Additional Parkland available for public use pursuant to Section 1.2 above.

2. Residents' Common Building Obligations. District shall comply with the following obligations of District under Section 5.2 of the Development Agreement with respect to Residents' Common Buildings, which obligations survive termination of the Development

Agreement. District shall make the Residents' Commons Building available for use by the City not more than two (2) days per month for City-hosted or sponsored activities, not to exceed eight (8) hours per day. City shall be responsible for reserving the Residents' Commons Building through the District's standard facility reservation system, or other process mutually agreed by City and District, and City's use shall be subject to periods of availability based on reservations by other facility users. Use of the Residents' Commons Building will be subject to City payment of any standard facility use fee adopted by District.

3. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing; provided, however, that any successor of District to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

4. City as Beneficiary; Rights and Remedies. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether City has been, remains or is an owner of any land or interest therein in the Property. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

5. Entire Agreement; Conflict. This Agreement, including the Recitals and all Exhibits (which are hereby incorporated by reference), together with the Development Agreement, contains the entire agreement between the parties with respect to the subject matter hereof. In the event of any express conflict between this Agreement and the Development Agreement, the provisions of the Development Agreement shall control. No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by the authorized parties hereof.

6. Interpretation. This Agreement shall be deemed to be jointly prepared by both of the parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either of the parties hereto. The words "including," "included," "include" and words of similar import shall be not be interpreted as words of exclusion but shall instead be interpreted as though followed by the words "but not limited to" or "without limitation." No waiver by City of any breach or default of any provision of the Agreement shall be deemed a waiver of any other provision hereof or of any subsequent breach or default by District of the same or any other provision. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

7. Authority. The parties represent and warrant that each has the full right, power and authority to carry out its obligations under this Agreement. The individuals executing this Agreement on behalf of the parties represent and warrant that they have full power and authority

to execute and deliver this Agreement on behalf of such party.

8. Runs with the Land. All provisions of this Agreement, including the benefits and burdens, are equitable servitudes, run with the Property and are binding upon the heirs, executors, successors, assigns and personal representatives of District and inure to the benefit of City and its successors and assigns. Each and every contract, deed or other instrument covering, conveying or otherwise transferring the Property or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to this Agreement.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

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

IN WITNESS WHEREOF, the City and District have executed this Agreement as of the Effective Date.

CITY:

CITY OF PACIFICA, a municipal corporation

By: _____
Kevin Woodhouse, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon, City Attorney

DISTRICT:

Pacifica School District,
a California School District

By: _____

Name: Heather Olsen

Its: Superintendent

[Signature must be notarized]

By: _____

Name: Josie Peterson

Its: Chief Business Officer

[Signature must be notarized]

EXHIBIT A

LEGAL DESCRIPTION

[to be inserted]