

LICENSE AND FIELD USE AGREEMENT

This LICENSE AND FIELD USE AGREEMENT (this “**Agreement**”) is entered into effective as of May 16 , 2008 (“**Effective Date**”) by and between the Millbrae School District, a public school district (hereafter “**School District**” or “**Licensor**”), the City of Millbrae, a municipal corporation (the “**City**”), and the Redevelopment Agency of the City of Millbrae, a public body, corporate and politic (the “**Agency**”). Agency and City are hereinafter collectively referred to as “**Licensee.**” The School District, City, and Agency are hereinafter collectively referred to as the “**Parties.**”

RECITALS

- A. Pursuant to the authority granted under the Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (“**CRL**”), the Agency has responsibility to implement the redevelopment plan adopted by the City Council of the City on July 12, 1988 by Ordinance No. 537 (as subsequently amended, the “**Redevelopment Plan**”) for the Millbrae Redevelopment Project Area (“**Project Area**”).
- B. School District owns the athletic fields located at Green Hills School, Meadows School, Lomita Park School, Spring Valley School, and Taylor Middle School (collectively, the “**Athletic Fields**”). The school properties on which the Athletic Fields are located are particularly described in Exhibit A attached hereto (collectively, the “**School Properties**”).
- C. Pursuant to Section 10910 of the California Education Code, the District may grant the use of school grounds to any public authority for the purpose of organizing, promoting and conducting programs of community recreation so long as such use does not interfere with the use of the school grounds for school purposes.
- D. The Athletic Fields are located near the Project Area, are the only recreational fields in the City, and are used by the School District, the City, the residents of the Project Area and the community for recreational purposes.
- E. The Athletic Fields are in poor condition. The Agency, City and School District desire to improve the Athletic Fields for the benefit of the School District, the City, the residents of the Project Area and the community.
- F. City proposes to substantially rehabilitate the Athletic Fields and to construct improvements (the “**Improvements**”) on the Athletic Fields. The Improvements are described in detail in the attached Exhibit B. The rehabilitation of the Athletic Fields and construction of the Improvements are referred to in this Agreement collectively as the “**Project.**”
- G. Subject to the terms of this Agreement, City and School District have each agreed to share equally the costs for the design, development and construction of the Project.
- H. Agency and City have determined that development of the Project pursuant to this Agreement is consistent with the Redevelopment Plan and the Implementation Plan for the Project Area, will be of primary benefit to the Project Area, and will be consistent with and

further the goals of the CRL and the Redevelopment Plan by assisting in the elimination of blight and by providing recreation amenities of benefit to the residents located in the Project Area. The Agency, City, and School District have each determined that there is no feasible alternative means of financing the Project without Agency assistance, and have each followed all procedures required by the CRL, including without limitation the requirements of CRL Section 33445.

I. School District desires to grant City and Agency a license to use the Athletic Fields upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

GRANT OF LICENSE; TERM; LICENSE FEE

1.1 Grant of License. School District grants to Licensee a license (“**License**”) to use the Athletic Fields and the Improvements for the purposes and subject to the terms and conditions set forth in this Agreement. Except for the limited purposes prescribed herein, this grant of License shall not constitute a grant of any property rights.

1.2 Condition of Athletic Fields. Licensee acknowledges that, except as otherwise expressly set forth in this Agreement, School District makes no representations or warranties to Licensee with regard to the condition of the Athletic Fields or the fitness or suitability thereof for Licensee’s purposes, including but not limited to, matters pertaining to topography, utilities, soil, subsoil, presence or absence of fill, presence or absence of hazardous materials, drainage, flood zone designation, environmental laws, rules, or regulations. Licensee shall rely solely on its own independent investigation and judgment as to all matters relating to the Athletic Fields.

1.3 Term. The term of this License (the “**Term**”) shall commence on the date that the financing conditions set forth in Section 2.1 have been satisfied (“**Commencement Date**”) and shall expire on the fifteenth (15th) anniversary of the Commencement Date, unless extended or earlier terminated pursuant to the provisions hereof. The expiration or earlier termination of this License shall be referred to as “**License Termination**.” Unless the Commencement Date is extended by mutual consent of the Parties, this Agreement shall terminate and shall be of no force or effect if the Commencement Date does not occur on or before October 1, 2008. If the Licensee desires to extend the Term beyond the original fifteen (15) year Term, the Licensee may request that the School District agree to such an extension for up to an additional three (3) years. The School District shall grant such a request if it determines, in its reasonable discretion, that the Athletic Fields are in good condition and are likely to remain in good condition during the period of the extension. The extension shall be on all the same terms and conditions as are set forth in this Agreement for the original Term, including payment of the License Fee as required under Section 1.4.

1.4 License Fee; Pledge of Tax Increment. Agency shall pay to School District a License fee (the “**License Fee**”) in the amount of One Hundred Eighty Thousand Dollars (\$180,000) per year. The License Fee for the first year of the Term shall be due and payable on or before the

Commencement Date. The License Fee for subsequent years shall be due and payable on or before the anniversary of the Commencement Date. The License Fee shall be paid in lawful money of the United States at the address shown in Section 10.3, unless School District designates a different address for payment of the License Fee in writing to City and Agency. In its discretion, the Agency may elect to prepay the License Fee in advance for future years.

The Agency hereby pledges the revenue it receives pursuant to Health & Safety Code Section 33670, excluding amounts required to be deposited into the low and moderate income housing fund of the Agency and excluding amounts required to meet statutory obligations of the Agency ("**Tax Increment**") to payment of the obligation to the School District under this Agreement. Such pledge shall be subordinate to pledges which secure existing obligations of the Agency to which Tax Increment has been pledged for payment. The Agency may also request that the School District consent to subordinate the pledge under this Agreement to future bonds or obligations of the Agency. The School District shall not unreasonably withhold its consent to such subordination provided the Agency has provided evidence reasonably satisfactory to the School District that the amount of Tax Increment to be received in the current fiscal year is at least equal to One Hundred Ten Percent (110%) of the amount necessary to meet the sum of: (i) the amount of the License Fee due in such fiscal year, (ii) the maximum annual aggregate amount of debt service on all existing Agency obligations, statutory obligations, and the new bonds or obligations the Agency proposes to issue or incur.

1.5 City's Obligation to Pay License Fee. If at any time during the Term of this Agreement, Agency fails to pay the License Fee or perform any of its other obligations hereunder, City shall pay the License Fee or perform such other obligation.

ARTICLE II

FUNDING AND DEVELOPMENT OF PROJECT

2.1 Project Funding. City shall contribute funds for the Project in the amount equal to, and not to exceed, the amount of funds contributed by the School District pursuant to this section. The City contribution will be made from park in-lieu fee revenue currently on hand and the park in-lieu fee revenue the City expects to collect when building permits are issued for development of the property located at 1 Alp Way within the City. The School District contribution will be raised from the following sources: (1) maintenance assessment district payments currently on hand totaling \$ 30,065; (2) maintenance assessment district payments in the approximate amount of \$ 372,000 expected to be paid in the future to the School District through the 2010- 2011 fiscal year; and (3) proceeds from a lease revenue financing secured by one or more of the School Properties with annual payments for fifteen (15) years of approximately \$120,000 (the "**Lease**"). It is the School District's intent to use \$120,000 of the annual License Fee to pay the annual debt service on the Lease. The School District shall seek to maximize the amount of proceeds from the Lease that will be available for the Project, subject to reasonable financial prudence. The commencement of the Term shall be conditioned on the payment of the park in-lieu fees for the development of the property at 1 Alp Way and the School District's execution of the Lease. The School District shall make good faith efforts to

execute the Lease promptly following execution of this Agreement unless the Parties mutually agree to delay execution of the Lease until such time when financial market conditions improve. In such case, the School District shall make good faith efforts to execute the Lease by the date mutually agreed upon by the Parties.

2.2 Procedure for Payment of Expenses. Notwithstanding anything to the contrary set forth herein, all costs incurred by the City or School District in connection with the design, development and construction of the Project (“**Project Costs**”) shall be shared by the School District and the City equally. When the City undertakes work on the Project, it shall maintain detailed records of the work done and costs associated with the work. The City shall periodically (but no more frequently than monthly) provide the School District with detailed Project Cost information and a billing indicating the Project Costs incurred since the previous billing. The Project Cost information shall include bills and invoices from contractors undertaking the Project. Within thirty (30) days of the School District’s receipt of a billing from the City, the School District shall pay to the City fifty percent (50%) of the costs of such billing. The School District may dispute a particular billing if the School District determines that it is not consistent with the provisions of this Agreement. In no event shall the School District’s payment obligation under this Section 2.2 exceed the amount of financing the School District provides for the Project pursuant to Section 2.1 above. If the timing of payments required of the School District under this section is such that the School District needs funds from the maintenance assessment district payments in order to make a payment owing to the City under this section, the School District may postpone making that payment until it receives the payments from the maintenance assessment district.

2.3 Design and Construction of Project. City shall develop the Project as more fully described in Exhibit B in accordance with plans and specifications approved by the School District. The plans and specifications for the Project shall include a phasing plan showing the time period in which each of the Athletic Fields would be closed due to construction. The design of the Project shall be based on the amount of the funds available for the Project pursuant to Section 2.1 above, it being the intent of the Parties to design the Project so that the Project Costs do not exceed the amount of money that the City and School District will make available for the Project pursuant to Section 2.1 above. If changes in the design, or reduction in the scope, of the Project are necessary to accommodate increased Project Costs or reduced funds available for the Project pursuant to Section 2.1, such changes or reductions shall be approved by the School District. City shall be solely responsible for all rehabilitation and new construction necessary for completion of the Project and for entering into any and all agreements required for, and relating to, the design, development, and construction of the Project. The City shall also be responsible for correcting any defects, errors or omissions in the design, construction or installation of the Project. City shall use a competitive bidding process for selection of contractors to undertake the work on the Project, awarding the contract to the lowest responsible bidder. In lieu of contracting with contractors for the work and to the extent permitted by law, the City may use its own employees to undertake a portion of the work. Prior to undertaking any work with its own employees, the City shall obtain approval from the School District for the City employee work. To facilitate the School District review, the City shall provide to the School District information on the scope of the work to be undertaken by the City employees, the amount to be charged for the work and evidence that the cost for the work to be undertaken by the City employees will be

equal to or less than the cost of that work if it were bid to outside contractors. The School District shall not unreasonably withhold its approval of the City employee work if the work is work typically performed by the City employees and the School District is reasonably satisfied that the cost of the work will be equal to or less than the cost of that work if it were bid to outside contractors.

2.4 Schedule of Performance. Within thirty (30) days following the Commencement Date, the City shall prepare a schedule of performance in consultation with School District staff and shall submit such schedule to School District for its review and approval. Such schedule of performance shall provide for the construction of the Improvements in a manner that minimizes, to the extent reasonably feasible, interference with school activities. The City shall commence and complete construction of the Project in accordance with such schedule of performance. Such schedule of performance shall include the Improvements at Lomita Park School as part of the first phase of work to be completed. The schedule of performance may be amended upon mutual agreement of the City and School District.

2.5 Construction Standards. All work done in connection with construction of the Project, including subsequent improvement, alteration or replacement, shall be conducted in accordance with all applicable local, state and federal statutes, codes, ordinances, laws and regulations (collectively, “**Applicable Laws**”), including without limitation, California Labor Code Section 1720 *et seq.* (“**Prevailing Wage Laws**”), the Americans with Disabilities Act, and provisions of law applicable to school facilities, as and to the extent applicable. City shall have the responsibility for obtaining all necessary governmental permits and approvals for the development of the Project. The costs of such governmental permits and approvals shall constitute Project Costs and shall be allocated between the City and the School District in accordance with Section 2.2.

2.6 Equal Opportunity. During construction of the Project there shall be no discrimination on the basis of race, religion, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project. City shall direct its contractors and subcontractors to refrain from discrimination on such basis.

ARTICLE III

MAINTENANCE, USE AND OPERATION OF ATHLETIC FIELDS

3.1 Permitted Uses. Licensee may use the Athletic Fields and Improvements for the development, maintenance and operation of public sports fields and related facilities as described herein and for no other purposes without the prior written consent of District.

3.2 Joint Use of Athletic Fields and Improvements.

(a) Use by School District. School District shall have exclusive control of the Athletic Fields and the Improvements during all hours when school is in session and during after school

events and activities, including, without limitation, assemblies, school productions, athletic team practice or other school functions (“**School Hours**”).

(b) Use by City. City shall have priority use of the Athletic Fields and the Improvements during non-School Hours; provided however, that such use shall not interfere with the use of the Athletic Fields or Improvements for school purposes. In the event any conflicts in scheduling and use of the Athletic Fields arise, the needs of the School District to use the Athletic Fields and the Improvements for school purposes shall prevail.

(c) Use by Third Parties. When not in use by the School District or City, City shall permit third parties to use the Athletic Fields and the Improvements in conformance with the Procedures for the Use of Athletic Fields Maintained by the City of Millbrae attached hereto as Exhibit C (“**Procedures for Use of Athletic Fields**”).

(d) Closure of Fields. School District shall have the right to close the Athletic Fields due to inclement weather, overuse, or other conditions that pose a danger to the health, safety or well being of the community or threaten the condition of the Athletic Fields for future use.

(e) Private Business Use. The City shall assure that the Athletic Fields and the Improvements are not used by third parties as to cause the Lease to satisfy the private business tests of Section 141(b) of the Internal Revenue Code of 1986 (the “**Code**”) as in effect on the date of execution of this Agreement or the private loan financing test of Section 141(c) of the Code.

3.3 Cleanup. Each Party shall be responsible for leaving the Athletic Fields and Improvements in clean and orderly condition following each use.

3.4 Maintenance. Except as provided herein, at City’s sole cost and expense throughout the Term, City shall operate, maintain and manage the Athletic Fields and Improvements in good order and repair and in neat, clean sanitary and safe condition in compliance with all Applicable Laws. City shall promptly, at City’s own cost and expense, make all necessary repairs, including replacements or renewals when necessary and correction of any defects, errors or omissions in the design, construction or installation of the Project, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear excepted. City shall keep and maintain all portions of the Athletic Fields and Improvements in a clean and orderly condition, free of accumulation of dirt, rubbish and graffiti. City shall consult School District about any maintenance projects or activities that could potentially disrupt school activities. The City shall operate and maintain the Athletic Fields in conformance with the City of Millbrae Maintenance Standards for Athletic Fields attached hereto as Exhibit E (“**Field Standards**”).

3.5 School District’s Right to Perform City Obligations. If following notice and the expiration of any applicable cure period, City fails to perform its obligations to maintain the Athletic Fields and the Improvements in accordance with Section 3.4 or the Field Standards, School District shall have the right, but not the obligation, to perform such work upon delivery of written notice to City, and City shall reimburse School District for all reasonable expenditures School District incurs in connection with such work. To remedy the City’s failure to perform its

maintenance obligations under this section, School District shall also have the right to close the Athletic Fields if there are conditions on the Athletic Fields that pose a danger to the health, safety or well being of the community or threaten the condition of the Athletic Fields for future use. School District's election to undertake such obligation shall not operate as a waiver of any other right or remedy School District may have pursuant to this Agreement.

3.6 School District's Contribution for Maintenance. No later than December 31st of each year, School District shall pay to City an annual lump sum of Sixty Thousand Dollars (\$60,000) to compensate City for a portion of the annual costs of maintaining the Athletic Fields and the Improvements in good condition and repair. Notwithstanding the foregoing, the School District may reduce the payment otherwise owing to the City pursuant to this section by any amount owing from the Agency or the City to the District pursuant to Section 1.4, Section 1.5 or Section 3.5 above. Upon such reduction, the Agency and City shall receive a credit against the amount owing to the School District pursuant to Section 1.4, Section 1.5, or Section 3.5 above.

3.7 Utilities. City shall pay for the cost of all utilities necessary to maintain, repair, replace and service the Athletic Fields and the Improvements, including, without limitation, water and electricity.

3.8 Scheduling; User Fees. City shall schedule and coordinate the use of the Athletic Fields and Improvements by the School District, City and third parties. City shall also be responsible for charging appropriate fees for use of the Athletic Fields by third parties in accordance with the rate schedule attached hereto as Exhibit D, as such schedule may be amended annually by City. Any fees collected by the City for use of the Athletic Fields shall belong exclusively to the City.

3.9 Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person or group on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Athletic Fields, or any portion thereof, nor shall Licensee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Athletic Fields herein transferred. The foregoing provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.

All deeds, leases and contracts made or entered into by Licensee, its successors or assigns, as to any portion of the Athletic Fields or the Improvements shall contain therein the following language:

(a) In Deeds:

"The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or

segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In Contracts:

"The contractor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall be binding upon and shall obligate the contractor and any subcontracting parties, successors, assigns and other transferees under the contract."

3.10 Hazardous Materials.

3.10.1 Obligations of Licensee. Licensee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Athletic Fields other than materials commonly used in the renovation, construction, operation and maintenance of the Athletic Fields and the Improvements provided such materials are used, stored and disposed of in

compliance with all Applicable Laws. If Licensee breaches the covenant set forth in the preceding sentence, then Licensee shall indemnify, defend, protect and hold School District harmless from and against all claims, demands, liabilities, losses, damages, fines, penalties, remediation orders, costs or expenses (including attorney's fees) incurred by or brought against School District as a result of such breach by Licensee. This indemnification of School District by Licensee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the breach by Licensee of the terms and provisions of this Section 3.10.1. Without limiting the foregoing, if the presence of any Hazardous Material on the Athletic Fields caused by or permitted by Licensee results in any contamination of the Athletic Fields in violation of Applicable Law, Licensee shall promptly take all actions at its sole expense as are necessary to remediate the Athletic Fields as required by law; provided that School District's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld.

3.10.2 Obligations of School District. School District shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Athletic Fields other than materials commonly used in the renovation, construction, operation and maintenance of the Athletic Fields and the Improvements provided such materials are used, stored and disposed of in compliance with all Applicable Laws. If School District breaches the covenant set forth in the preceding sentence, then School District shall indemnify, defend, protect and hold Licensee harmless from and against all claims, demands, liabilities, losses, damages, fines, penalties, remediation orders, costs or expenses (including attorney's fees) incurred by or brought against Licensee as a result of such breach by School District. This indemnification of Licensee by School District includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the breach by School District of the terms and provisions of this Section 3.10.2. Without limiting the foregoing, if the presence of any Hazardous Material on the Athletic Fields caused by or permitted by School District results in any contamination of the Athletic Fields in violation of Applicable Law, School District shall promptly take all actions at its sole expense as are necessary to remediate the Athletic Fields as required by law.

3.10.3 Definition of Hazardous Material. As used in this Agreement, the term "Hazardous Material" means any hazardous, explosive or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 15122.7, or is listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6. 5 (Hazardous Waste Control Law), (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (c) defined as "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division

20, Chapter 6.7 (Underground Storage of Hazardous Substances), (e) petroleum, (f) asbestos, (g) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 30, (h) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (i) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 41 U.S.C. § 6901 et seq. (42 U.S.C. § 6903), or (j) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. § 9601 et seq. (42 U.S.C. § 9601).

ARTICLE IV

SURRENDER AND RIGHT TO REMOVE

4.1 Ownership During Term.

4.1.1 Improvements. During the Term of this Agreement, the Improvements constructed on the Athletic Fields by Licensee as permitted or required by this Agreement shall, subject to the terms of this Agreement, be and remain the property of School District.

4.1.2 Personal Property. All personal property, furnishings, fixtures and equipment installed by Licensee in, or on the Athletic Fields which (i) are not attached to the Athletic Fields so as to cause substantial damage upon removal, and (ii) are not necessary for the normal operation of the Project, shall be the personal property of Licensee (the “**Personal Property**”). At any time during the Term, Licensee shall have the right to remove the Personal Property provided Licensee shall repair any damage caused by the removal of such Personal Property. Personal Property shall not include any portion or part of any building components or fixtures necessary for the operation of basic systems for structures constructed on the Athletic Fields including without limitation, restroom facilities (such as boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems) which shall be deemed a part of the Improvements. The School District shall have the right to use any Personal Property on the Athletic Fields during the times that the School District uses the Athletic Fields.

4.2 Ownership at License Termination.

4.2.1 Intentionally Omitted.

4.2.2 Personal Property. Any Personal Property may be removed prior to License Termination by Licensee; provided, however, the removal shall be with due diligence, and without expense to School District, and any part of the Athletic Fields damaged by such removal shall be promptly repaired. Any Personal Property which remains on the Athletic Fields for thirty (30) days after the License Termination may, at the option of School District, be deemed to have been abandoned and either may be retained by School District as its property or may be disposed of in accordance with Applicable Law. If requested by School District within a reasonable time but not less than six months prior to the termination of this Agreement, upon

License Termination Licensee shall, at Licensee's sole cost and expense, remove all Personal Property, or portions thereof designated by School District.

4.3 Condition of Improvements at License Termination. School District has entered this Agreement in reliance on the fact that, at License Termination, School District will receive from Licensee the Improvements in good condition and repair, reasonable wear and tear excepted and reflecting the age of the Improvements at such time. At any time during the Term, upon reasonable advance notice and during normal business hours, School District may inspect the Athletic Fields to confirm that they are being properly maintained as required herein. Following its inspection, School District may deliver to Licensee written notification of any portions of the Athletic Fields and/or Improvements which School District has determined are not being properly maintained and City shall promptly comply with the provisions of this Agreement regarding such items; provided, the failure of School District to inspect or to notify Licensee of any default hereunder shall not be a waiver of School District's right to enforce City's maintenance and repair obligations hereunder.

ARTICLE V

INSURANCE AND INDEMNIFICATION

5.1 Insurance.

5.1.1 Commercial Liability Insurance. Throughout the Term, Agency, City and School District shall, at their sole cost and expense, keep and maintain in full force and effect a policy of general commercial liability, with limits of not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be provided to the other party within thirty (30) days of written request. City and Agency shall name School District as an additional insured, and School District shall name City and Agency as additional insureds.

As an alternative to the foregoing insurance, School District or the City and Agency may obtain coverage for the risks required to be insured against under this section by participating in a joint powers risk management authority under a memorandum of coverage providing coverage in at least the amount required above for insurance. Such memorandum of coverage shall name the other Party or Parties as an additional covered party or parties providing them with the same coverages as the Party obtaining the memorandum of coverage. The Parties understand and agree that the coverage provided by a coverage memorandum from a joint powers risk management authority is not commercial insurance. Any coverage which a Party elects to provide through a memorandum of coverage from a joint powers risk management authority, shall provide coverage no less restrictive than as provided by standard Insurance Services Office, Inc. commercial general liability policy form commercially available during the Term and shall, at a minimum, be equivalent in coverage to that provided by a commercial general liability policy as of the date of this Agreement.

5.1.2 Casualty Insurance. School District shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the

replacement value of the Improvements with deductible, if any, in an amount acceptable to Licensee, naming Licensee as loss payee.

5.2 Indemnity. City shall indemnify, defend, protect and save School District and its elected and appointed officials, officers, employees, officers and agents (collectively hereafter the “**Indemnitees**”) harmless from and against any and all claims, liabilities, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, judgments, costs and expenses (including without limitation reasonable attorneys’ fees and court costs) (collectively “**Claims**”) arising during the Term from the construction, rehabilitation, improvement, operation, or maintenance of the Project, the Improvements or the Athletic Fields by the City; or arising from any breach or default on the part of City in the performance of any covenant or agreement on the part of City to be performed pursuant to the terms of this Agreement; or arising from any negligence of City, or any of its agents, contractors, servants, employees, sublessees or licensees; or arising from City’s use of the Athletic Fields or Improvements, or during the course of any programs or activities sponsored by City, pursuant to this Agreement; or from the furnishing of labor or materials by City; and from and against all costs, attorney’s fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought thereon. In the event any such action or proceeding is brought against School District by reason of any such claim, City, upon notice from School District, covenants to defend such action or proceeding by counsel reasonably satisfactory to School District. The obligations of City under this Section shall not apply to any claims or other matters resulting from the breach or default by School District under this Agreement or from the gross negligence or willful misconduct of School District, its agents, employees or consultants and other Indemnitees.

Agency shall indemnify, defend, protect and save Indemnitees harmless from and against any and all Claims arising during the Term from the construction, rehabilitation, improvement, operation, or maintenance of the Project, the Improvements or the Athletic Fields by Agency; or arising from Agency’s use of the Athletic Fields or Improvements, or during the course of any programs or activities sponsored by Agency, pursuant to this Agreement; from any breach or default on the part of Agency in the performance of any covenant or agreement on the part of Agency to be performed pursuant to the terms of this Agreement; or arising from any negligence of Agency, or any of its agents, contractors, servants, employees, sublessees or licensees; or from the furnishing of labor or materials by Agency; and from and against all costs, attorney’s fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought thereon. In the event any such action or proceeding is brought against School District by reason of any such claim, Agency, upon notice from School District, covenants to defend such action or proceeding by counsel reasonably satisfactory to School District. The obligations of Agency under this Section shall not apply to any claims or other matters resulting from the breach or default by School District under this Agreement or from the gross negligence or willful misconduct of School District, its agents, employees or consultants and other Indemnitees.

School District shall indemnify, defend, protect and save Agency, City and their respective elected and appointed officials, officers, employees, officers and agents from any and all Claims arising during the Term from School District’s use of the Athletic Fields or Improvements, or during the course of any programs or activities sponsored by School District, pursuant to this Agreement; or from any breach or default on the part of School District in the

performance of any covenant or agreement on the part of School District to be performed pursuant to the terms of this Agreement; or arising from any negligence of School District, or any of its agents, contractors, servants, employees, sublessees or licensees; or from the furnishing of labor or materials by School District; and from and against all costs, attorney's fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought thereon. In the event any such action or proceeding is brought against Agency and/or City by reason of any such claim, School District, upon notice from Agency or City, covenants to defend such action or proceeding by counsel reasonably satisfactory to Agency and/or City. The obligations of School District under this Section shall not apply to any claims or other matters resulting from the breach or default by Agency or City under this Agreement or from the gross negligence or willful misconduct of Agency, City, or their respective officials, agents, employees or consultants.

ARTICLE VI

DAMAGE OR DESTRUCTION; CONDEMNATION

6.1 Damage or Destruction. In the event of any damage to, or destruction of, the Athletic Fields which Licensee determines, following consultation with School District, in Licensee's reasonable discretion, hinders Licensee's effective use of the Athletic Fields, Licensee may elect to terminate this Agreement as of the date of the damage or destruction by notifying School District within thirty (30) days of the date of damage or destruction. Such termination notice shall only be effective if it is accompanied by payment to the School District of an amount equal to two-thirds of the License Fee that would be owing for the remaining portion of the Term, assuming the Term is fifteen (15) years from the Commencement Date. Upon such notice, all rights and obligations of the Parties which do not survive the termination of this Agreement shall cease as of the date of the damage or destruction.

6.2 Condemnation. If all or part of the Athletic Fields is taken by condemnation, this Agreement shall terminate unless Licensee determines, in its sole and absolute discretion, that such taking will not hinder its effective use of the Athletic Fields. The School District shall be entitled to the condemnation proceeds, except that City shall be entitled to the City's Share of the condemnation proceeds calculated in accordance with Section 8.4.

ARTICLE VII

ALTERATIONS AND NEW CONSTRUCTION

7.1 Changes and Alterations. With the consent of the School District, which consent shall not be unreasonably withheld, Licensee shall be permitted to make major changes or alterations in, to or of the Improvements. In undertaking any changes or alterations, Licensee shall comply with all of the following at Licensee's sole cost and expense:

(a) The change or alteration shall not materially impair the value or structural integrity of the Improvements.

(b) The change or alteration shall be for a use which is permitted hereunder.

(c) No change, alteration or addition shall be undertaken until Licensee shall have obtained and paid for, so far as the same may be required from time to time, all permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them, having jurisdiction. School District shall join in the application for such permits or authorizations whenever such action is necessary; provided, however, that School District shall incur no liability or expense in connection therewith.

(d) Any change, alteration or addition shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(e) During the period of initial renovation of, or of construction of any change, alteration or addition in, to or of, the Improvements or of any permitted demolition or new construction or of any restoration, Licensee shall maintain or cause to be maintained property damage, fire and other applicable insurance, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Improvements (including excavations, foundations and footings) under a broad form, all risks builders' risk form, or equivalent thereof.

7.2 No Right to Demolish. Notwithstanding any other provisions of this Article VII, Licensee shall have no right to demolish any Improvement, once built, unless Licensee shall have received the prior written consent of School District which shall not be unreasonably withheld if the age and condition of the Improvements makes repair or reconstruction impractical or financially infeasible.

7.3 Additional School District Facilities. In order to accommodate future growth in enrollment of students, the School District shall have the right to use the portions of the School Properties designated on the attached Exhibit B for construction of classrooms or other temporary or permanent facilities. In the event additional locations are required to accommodate such growth, School District shall have the right to use portions of the Athletic Fields so designated by the School District, after consultation with the City, in School District's reasonable discretion. The School District shall notify Licensee in writing at least ninety (90) days prior to the date the School District intends to install a facility on a site designated by School District pursuant to this section. Thereafter, the areas so designated shall not be subject to use by Licensee under this Agreement and this Agreement shall terminate as to the portions of the Athletic Fields so designated. The School District shall compensate the City for the portions of the Athletic Fields for which this Agreement is terminated pursuant to this section in the manner specified in Section 8.4 below when there is a sale of a portion of the Athletic Fields. The School District shall be responsible for removal of any Improvements on the portion of the Athletic Fields designated by School District pursuant to this section.

ARTICLE VIII

ASSIGNMENT, SUCCESSION AND TRANSFER; RIGHT OF FIRST REFUSAL

8.1 Assignment of Agreement. Notwithstanding anything to the contrary set forth herein, City and Agency shall have the right to assign their rights under this Agreement to another government entity upon written consent of the School District, which consent shall not be unreasonably withheld, provided that the government entity assumes all obligations of Agency or City, as applicable, hereunder. School District agrees to execute and deliver such instruments as may be reasonably necessary to effectuate and evidence the assignment of Agency's or City's rights, as applicable, pursuant to this Section 8.1.

8.2 Successor to Agency. If during the term of this Agreement, the Agency ceases to exist, the City shall succeed to the interest of the Agency hereunder and this Agreement shall remain in full force and effect.

8.3 Sale by School District. Nothing contained in this Agreement shall be deemed in any way to limit, restrict or otherwise affect the right of School District to sell, transfer, assign or convey all or any portion of the right, title and estate of School District in the Athletic Fields and in this Agreement; provided, however, that, except as provided in Section 8.4 or Section 8.5 below, in each such instance any such sale, transfer, assignment or conveyance shall be subject to this Agreement, and Licensee's rights arising out of this Agreement shall not be affected or disturbed in any way by any such sale, transfer, assignment or conveyance. Any other provision of this Agreement to the contrary notwithstanding, each covenant, agreement or obligation of School District under this Agreement relating to the ownership or use of the Athletic Fields is intended to and shall constitute a covenant running with the title to the Athletic Fields and shall be binding upon any subsequent owner of the Athletic Fields. At such time as School District shall sell, transfer, assign or convey the entire right, title and estate of School District in the Athletic Fields and in this Agreement, all obligations and liability on the part of School District arising under this Agreement after the effective date of such sale, transfer, assignment or conveyance shall terminate as to School District, and thereupon all such liabilities and obligations shall be binding upon the transferee.

8.4 Termination upon Sale by School District. Notwithstanding the provisions of Section 8.3, subject to Section 8.6, the School District may, to meet the School District's needs, elect to sell one or more of the Athletic Fields and terminate this Agreement as to the Athletic Field so sold. If the School District so elects, it shall give the Licensee written notice of its intent to sell and shall, at the time of the sale of the property in question, pay to the City an amount equal to fifty percent (50%) of the unamortized remaining Project Costs for the portion of the Athletic Fields being sold plus the unamortized remaining costs of any improvements made by the City pursuant to Section 7.1 above (collectively, the "**City's Share**"). The City's Share for the portion of the Athletic Fields being sold shall be determined based on the Project Costs as documented pursuant to Section 2.2 above and any additional costs incurred by the City pursuant to Section 7.1 above.

8.5 Superiority of Lease. The rights of the lessee under the Lease, with respect to the property so leased, shall be superior to the rights of the Licensee under this Agreement. The

School District may engage in future lease transactions in which all or part of School District Properties are leased for the purpose of raising revenues for the School District. If subordination is required by the terms of the financing documents for such lease transactions, the rights of Licensee under this Agreement shall be subordinate to the rights of the lessees; provided however, if subordination results in termination of this Agreement with respect to a portion of the Athletic Fields, then, upon such termination, the School District shall compensate the Licensee for the portion of the Athletic Fields for which this Agreement is terminated in the manner specified in Section 8.4 above when there has been a sale of a portion of the Athletic Fields.

8.6 First Right of Purchase.

(a) Notwithstanding anything to the contrary in this Agreement and unless required otherwise by law, City shall, during the term of this Agreement, have the first right to purchase the Athletic Fields and the Improvements (“**First Right of Purchase**”) in accordance with this Section 8.6 and Education Code Section 17485 *et seq.*

(b) Unless required otherwise by law, prior to selling the Athletic Fields and the Improvements, School District shall first offer to sell the Athletic Fields and the Improvements to the City in writing. The City may exercise the First Right of Purchase by delivery of written notice of exercise to School District within sixty (60) days after the City has received School District’s written offer to sell. If the City does not deliver such written notice to School District within the 60-day period, the City’s First Right of Purchase shall expire.

(c) The purchase price for the Athletic Fields and the Improvements pursuant to the First Right of Purchase (the “**Right of Purchase Price**”) shall be an amount equal to:

- (i) The fair market value of the Athletic Fields and Improvements as determined by a licensed appraiser mutually acceptable to the City and the School District and who is a member of the Master Appraisal Institute; minus
- (ii) The City’s Share calculated in accordance with Section 8.4.

In no event shall the Right of Purchase Price exceed the maximum sales price, or be less than the minimum sales price, set forth in Education Code Section 17491.

(d) In the event the City elects to purchase the Athletic Fields and Improvements pursuant to this Section 8.6, the terms and conditions of the purchase and sale agreement shall comply with the requirements set forth in Education Code Section 17485 *et seq.*

ARTICLE IX

BREACHES, REMEDIES AND TERMINATION

9.1 Licensee Event of Default. Licensee shall be in default under this Agreement upon the occurrence of any of the following (“**Licensee Event of Default**”):

(a) Monetary Obligation. Licensee at any time is in default hereunder as to any monetary obligation and such default continues for thirty (30) days after Licensee receives Notice of Breach (as defined in Section 9.3.1).

(b) Insurance. Licensee fails to obtain and maintain any policy of insurance required pursuant to this Agreement, and Licensee fails to cure such default within ten (10) days following receipt of Notice of Breach.

(c) Bankruptcy. City or Agency files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of City or Agency, as applicable, or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due.

(d) Nonmonetary Obligations. Licensee is in default in any other of its promises, covenants or agreements contained herein, and such default shall continue for thirty (30) days after Licensee receives Notice of Breach specifying the particulars of such default, unless Licensee commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

9.2 School District Event of Default. The School District shall be in default under this Agreement upon the occurrence of any of the following (“**School District Event of Default**”):

(a) Monetary Obligation. School District at any time is in default hereunder as to any monetary obligation and such default continues for thirty (30) days after School District receives Notice of Breach.

(b) Insurance. School District fails to obtain and maintain any policy of insurance required pursuant to this Agreement, and School District fails to cure such default within ten (10) days following receipt of Notice of Breach.

(c) Bankruptcy. School District files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of School District or of all or any substantial part of its property, or of any

or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due.

(d) Nonmonetary Obligations. School District is in default in any other of its promises, covenants or agreements contained herein, and such default shall continue for thirty (30) days after School District receives Notice of Breach specifying the particulars of such default, unless School District commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

9.3 Notice and Opportunity to Cure.

9.3.1 Notice of Breach. Unless expressly provided otherwise in this Agreement, no breach by a party shall be deemed to have occurred under this Agreement unless another party first delivers to the nonperforming party a written request to perform or remedy (the “**Notice of Breach**”), stating clearly the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

9.3.2 Failure to Give Notice of Breach. Failure to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

9.4 Remedies Upon Default. Upon the occurrence of a Licensee Event of Default or School District Event of Default and in addition to any and all other rights or remedies of the Parties hereunder and/or provided by law, the non-defaulting party may terminate this Agreement and/or bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

9.5 Remedies Cumulative. No remedy in this Article IX shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations referred to hereinabove.

9.7 Non-Binding Mediation.

If the Parties are unable to resolve any dispute arising in connection with this Agreement, the Project or the Athletic Fields, the Parties agree to submit such dispute to a mutually

acceptable professional mediator and to negotiate in good faith toward reaching a resolution of the dispute prior to taking legal action. Each Party shall pay an equal share of the mediator's fees and expenses and each Party shall pay its own attorneys' fees and expenses in such mediation. The time between a Party's written request for mediation and the mediation itself, not to exceed ninety (90) days, shall toll the running of any applicable period of limitations for filing a claim or action.

ARTICLE X

GENERAL PROVISIONS

10.1 Representations of Agency, City and School District.

10.1.1 Agency hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Agency has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of Agency, enforceable against Agency in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon Agency or any provision of any indenture, agreement or other instrument to which Agency is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to Agency.

10.1.2 City hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) City has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of City, enforceable against City in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon City or any provision of any indenture, agreement or other instrument to which City is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement,

mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to City.

10.1.3 School District hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) School District has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of School District, enforceable against School District in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon School District or any provision of any indenture, agreement or other instrument to which School District is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to School District.

10.2 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

10.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this section. For required notice to Licensee, School District shall give notice to both the Agency and the City. For required notice from Licensee to School District, one notice from either the Agency or the City shall satisfy the notice requirement. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated

reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

School District: Millbrae School District
555 Richmond Drive
Millbrae, CA 94030
Attention: District Superintendent

Agency: Redevelopment Agency of the City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030
Attention: Executive Director

City: City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030
Attention: City Manager

Licensee: City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030
Attention: City Manager

Redevelopment Agency of the City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030
Attention: Executive Director

10.4 Captions; Construction. The captions used for the sections and articles of this Agreement are inserted for convenience only and shall not be used to construe this Agreement. The language in all parts of this Agreement shall be construed as a whole, according to its fair meaning and not strictly for or against School District or Licensee.

10.5 Successors and Assigns. Subject to the provisions hereof, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and wherever a reference in this Agreement is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, a reference to the successors and assigns of such party, as if in every case so expressed.

10.6 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflict of laws. Venue shall be in the Superior Court of the County of San Mateo.

10.7 Waiver of Claims. Licensee and School District hereby waive any claim against each other for damage or loss caused by any suit or proceeding directly or indirectly attacking the

validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

10.8 Attorney's Fees. Should either party hereto commence a lawsuit against the other to interpret or enforce any obligation contained herein, the prevailing party shall be entitled to recover from the other party reasonable counsel fees and costs and necessary disbursements, as determined by the court having jurisdiction over the action.

10.9 No Brokers; No Third-Party Beneficiaries. School District represents that it has not engaged any broker or agent to represent School District in this transaction. Licensee represents that it has not engaged any broker or agent to represent Licensee in this transaction. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities or expenses, including attorneys' fees and costs, arising out of, or in connection with claims made by any broker or individual for commissions or fees as a result of the acts of the indemnifying party. There shall be no third-party beneficiaries to this Agreement.

10.10 Disclaimer of Partnership, Lender/Borrower Relationship. The relationship of the parties under this Agreement is solely that of licensor and licensee, and it is expressly understood and agreed that School District does not as a result of this Agreement in any way nor for any purpose become a partner of Licensee or a joint venturer with Licensee in the conduct of Licensee's business or otherwise. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, association, or seller and buyer as between School District and Licensee.

10.11 Entire Agreement; Amendments. This Agreement together with Exhibits A through E attached hereto and incorporated herein by this reference contains the entire agreement between the Parties relative to the subject matter hereof. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement. No amendment or modification hereof shall be effective for any purpose unless in writing signed by School District and Licensee.

10.12 Time is of the Essence. Time is of the essence of this Agreement and of each provision hereof.

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

10.14 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency in its capacity as Licensee hereunder is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the governing board of the Agency.

10.15 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City in its capacity as Licensee hereunder is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

10.16 Action by the District. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the School District in its capacity as Licensor hereunder is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the District Superintendent or by any person who shall have been designated by the District Superintendent, without further approval by the governing body of the School District.

10.17 No Joint Powers Agency. Nothing contained in this Agreement shall be construed as intending to create or creating a joint powers agency of any kind.

10.18 Survival of Obligations. The Parties indemnification obligations pursuant to Section 5.2 shall survive License Termination.

10.19 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, School District, City and Agency have executed this Agreement effective as of the date first written above.

THE MILLBRAE SCHOOL DISTRICT, a public school district.

By:
Its:

REDEVELOPMENT AGENCY OF THE CITY OF MILLBRAE, a public body, corporate and politic

By:
Its:

THE CITY OF MILLBRAE, a municipal corporation

By:
Its:

ATTEST:

By:
Its: Agency Secretary

APPROVED AS TO FORM:

By:
Its: Agency Counsel

Exhibit A

LEGAL DESCRIPTION AND MAP OF SCHOOL PROPERTIES
(Attach legal description and map of school parcels.)

Exhibit B
SCOPE OF WORK AND ILLUSTRATIVE PLAN OF IMPROVEMENTS
(INCLUDING POTENTIAL LOCATIONS FOR FUTURE PORTABLE CLASSROOM
FACILITIES)

(Attach scope of work and illustrative plan of improvements.)

Exhibit C

PROCEDURES FOR THE USE OF ATHLETIC FIELDS MAINTAINED BY THE
CITY OF MILLBRAE
(Attach Procedures for the Use of Athletic Fields Maintained by the City of Millbrae.)

Exhibit D

RATE SCHEDULE
(Attach rate schedule.)

Exhibit E

FIELD STANDARDS

(Attach City of Millbrae Maintenance Standards for Athletic Fields)