

AMENDED AND RESTATED EASEMENT AGREEMENT
As Approved in Resolution 18/04-05

Preamble and Recitals

This Agreement is entered into by and between OHLONE COMMUNITY COLLEGE DISTRICT (Grantor) and Michael and Cynthia Leahy (Grantee).

- A. Grantor is the owner of certain real property situated in the City of Fremont, California (Grantor's Property), and more particularly described in Exhibit A, which is attached to this Agreement and hereby incorporated by reference.
- B. Grantee desires to acquire certain rights in the Property.

Agreement

- 1. Grantor grants to Grantee an easement in Grantor's Property, subject to the terms of this Agreement.
- 2. The easement granted in this Agreement is appurtenant.
- 3. The easement granted in this Agreement is an easement for ingress and egress over and across Grantor's Property.
- 4. Grantor reserves the right to revise the metes and bounds of the easement at its sole discretion, at such times as Grantor Shall deem appropriate. Such revision(s), if any, shall not impede the ingress and egress of persons entitled to use of the easement.
- 5. Additionally, Grantor reserves the right to restrict or halt use of the easement by persons otherwise entitled to such use during emergencies and for the purpose of traffic control during special functions on Grantor's Property. Such restriction of use shall be limited in duration to the period of time when Grantor's authorized representative shall reasonably deem the restriction to be necessary.
- 6. The easement granted in this Agreement shall be extinguished with no action by Grantor upon commencement of any use of Grantee's Property other than single-family residential use, including but not limited to commercial or industrial use, by Grantee, Grantee's successor(s)-in-interest, or any person authorized by Grantee or Grantee's successor(s)-in-interest. Commercial or industrial use shall not be construed to include a nonsectarian independent secondary school. Use of the easement granted in this Agreement by persons entitled to the use of this easement for

ingress and egress to a nonsectarian independent secondary school is allowed.

7. The easement granted in this Agreement is limited to use by Grantee, Grantee's guests, other persons residing on Grantee's Property, Grantee's successor(s)-in-interest and such trade, industrial, or commercial traffic as is necessary and proper for residential and/or nonsectarian independent secondary school use of Grantee's Property.
8. This Agreement replaces and supplants the original EASEMENT AGREEMENT created on September 12, 2001, and sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the undersigned pertaining to the subject matter of this Agreement.
9. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.
10. The Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Grantor and Grantee, except as otherwise provided in this Agreement.

OHLONE COMMUNITY COLLEGE DISTRICT

Dated: _____ By: _____
Authorized Representative of the Board of Trustees
and Ohlone Community College District

[GRANTEE]

Dated: _____ By: _____
[Grantee]

Approved as to form:

SCHOOL AND COLLEGE LEGAL SERVICES OF
CALIFORNIA