

AMENDED EASEMENT AGREEMENT
(as approved in Resolution 3/05-06)

Preamble and Recitals

This Easement Agreement (the "Agreement") is entered into and made effective as of July 13, 2005 (the "Effective Date"), by and between Ohlone Community College District, a California community college district ("Grantor"), and Michael Leahy and Cynthia Leahy, husband and wife (collectively, "Grantee"), sometimes hereinafter referred to collectively as the "parties."

- A. Grantor is the owner of certain real property situated in Fremont, Alameda County, California, commonly known as Ohlone Community College (the "Servient Tenement"), more particularly described in Exhibit "A", attached hereto and incorporated herein by reference
- B. Grantee is the owner of certain real property situated in Fremont, Alameda County, California, which is adjacent to the Servient Tenement, and which is commonly known as Anza (and/or Witherly Lane), Fremont, California (the "Dominant Tenement"), more particularly described in Exhibit "B", attached hereto and incorporated herein by reference.
- C. Grantor desires to grant to Grantee, and Grantee desires to acquire from Grantor, certain rights of ingress and egress for the benefit of the Dominant Tenement over certain portions of the Servient Tenement as more fully described below.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Agreement

- 1. Grantor hereby grants to Grantee and Grantee's agents, employees, guests, invitees, and contractors, subject to the terms and conditions of this Agreement, a nonexclusive easement appurtenant to the Dominant Tenement over certain portions of the Servient Tenement, which are more particularly described as follows:
 - a. A nonexclusive easement for ingress and egress as a driveway (the "Driveway Easement") over that portion of the Servient Tenement more particularly described in Exhibit "C", attached hereto and incorporated herein by reference.
 - b. A nonexclusive easement for ingress and egress (the "Roadway Easement") over that portion of the Servient Tenement that is commonly known as Anza Street, more particularly described in Exhibit "D", attached hereto and incorporated herein by reference.
- 2. In exercising the easement rights granted under this Agreement, Grantee may not unreasonably increase the burdens of ingress or egress on the Servient Tenement, the

Driveway Easement, or the Roadway Easement beyond that burden which is reasonably contemplated by Grantor as a result of Grantee's use of the Dominant Tenement as a single family residence or a nonsectarian independent secondary school having no more than forty (40) full-time equivalent students together with such other teachers, staff and other persons necessary or required for the operation of such school (the "Permitted Use").

3. The Driveway Easement is an easement for driveway purposes only. For purposes of this Agreement, "driveway purposes" shall mean use for and by moving vehicular traffic for any purpose connected with the Permitted Uses. Driveway purposes do not include parking. No parking shall be permitted on the Driveway Easement, the Roadway Easement, or any other portion of the Servient Tenement.
4. Grantee shall, at Grantee's sole cost and expense, clean, keep, repair and maintain the Driveway Easement and every part thereof in good condition, order and repair.
5. Grantee shall hold harmless, indemnify and defend Grantor and its employees, agents and contractors, with competent counsel reasonably satisfactory to Grantor, from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments (including, without limitation, all litigation costs, expert witness fees and reasonable attorneys' fees) arising by reason of any death, bodily injury, personal injury or property damage (a) resulting from any cause or causes whatsoever (other than the active negligence or willful misconduct of Grantor) occurring in or about or resulting from an occurrence in or about the Driveway Easement, or (b) resulting from the negligence or willful misconduct of Grantee, its agents, employees, guests, invitees, and contractors, wherever the same may occur. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any claims or liability occurring prior to such expiration or sooner termination.
6. Grantor reserves the right to modify the metes and bounds description of the Roadway Easement at its sole and absolute discretion, at such times as Grantor shall deem appropriate; provided, however, that any such modification shall not unreasonably interfere with the nonexclusive rights of ingress and egress granted under this Agreement.
7. Grantor further reserves the right to restrict or halt the use of the Roadway Easement granted under this Agreement during emergencies and for the purpose of traffic control during special functions on the Servient Tenement. Such restriction or halting of use shall be limited in duration to such period of time that Grantor or Grantor's authorized representative shall deem to be reasonably necessary.
8. The Driveway Easement and the Roadway Easement shall be extinguished with no action required on the part of Grantor upon the commencement of any use of the Dominant Tenement other than the Permitted Use, including without limitation

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.

- 9. Neither this Agreement, the Driveway Easement, the Roadway Easement, or any interest therein, shall be assigned without the express written consent of Grantor, which may withheld at Grantor's sole and absolute discretion. Any purported assignment of this Agreement, the Driveway Easement, or the Roadway Easement without the express written consent of Grantor shall be void and of no effect.
- 10. Notwithstanding the foregoing, this Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Dominant and Servient Tenements.
- 11. If any legal action or proceeding arising out of or related 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 such action or proceeding by the prevailing party.
- 12. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties as of the Effective Date, including the easement agreement that the Board of Trustees of Grantor authorized Grantor to enter into with Grantee on September 12, 2001 but was never executed, and any other easements in the Servient Tenement that may have been granted to or acquired by Grantee prior to the Effective Date. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Ohlone Community College District
a California community college district

By: _____

Its: _____

Michael Leahy

Cynthia Leahy