

EASEMENT AGREEMENT

This Easement Agreement (the “Agreement”) is entered into and made effective as of _____, 2006 (the “Effective Date”) by and between Ohlone Community College District, a California community college district (“Grantor” or the “District”), and Mark Allen and Valerie Allen, husband and wife (the “Allens”), Michael Leahy and Cynthia Leahy, husband and wife (the “Leahys”), Tony Azevedo and Mary Azevedo, husband and wife (the “Azevedos”), and Brent Wahl, an unmarried man (“Wahl”) (collectively, “Grantees” or the “Witherly Lane Owners,” and individually, a “Grantee”), with Grantor and Grantees sometimes hereinafter referred to collectively as the “parties”, with reference to the following facts:

RECITALS:

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. The Allens are the owners of certain real property situated in Fremont, Alameda County, California, adjacent to the Servient Tenement, commonly known as 830 Witherly Lane, Fremont, California (the “Allen Parcel”), more particularly described in Exhibit “B”, attached hereto and incorporated herein by reference. The Leahys are the owners of certain real property situated in Fremont, Alameda County, California, adjacent to the Servient Tenement, commonly known as 750 Witherly Lane, Fremont, California (the “Leahy Parcel”), more particularly described in Exhibit “C”, attached hereto and incorporated herein by reference. The Azevedos are the owner of certain real property situated in Fremont, Alameda County, California, adjacent to the Servient Tenement, commonly known as 620 Witherly Lane, Fremont, California (the “Azevedo Parcel”), more particularly described in Exhibit “D”, attached hereto and incorporated herein by reference. Wahl is the owner of certain real property situated in Fremont, Alameda County, California, adjacent to the Servient Tenement, commonly known as 880 Witherly Lane, Fremont, California (the “Wahl Parcel”), and more particularly described in Exhibit “E”, attached hereto and incorporated herein by reference. The Allen Parcel, the Leahy Parcel, the Azevedo Parcel, and the Wahl Parcel are referred to collectively herein as the “Witherly Lane Parcels” or the “Dominant Tenements,” and individually, a “Witherly Lane Parcel” or a “Dominant Tenement.”

C. Grantees presently each hold easements for ingress and egress appurtenant to each of their Dominant Tenements over a portion of the Servient Tenement (the “Witherly Lane Easement”), more particularly described in Exhibit “F”, attached hereto and incorporated herein by reference.

D. In exchange for Grantees’ agreement to quitclaim and release to Grantor all of their right, title and interest in and to the Witherly Lane Easement, except for certain utility easement rights, as well as other valuable consideration, Grantor desires to grant to Grantees, and Grantees desire to acquire from Grantor, certain rights of ingress and egress for the benefit of the Dominant Tenements 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. Grant of Easements. Grantor hereby grants to each Grantee subject to the terms and conditions of this Agreement, a nonexclusive easement appurtenant to each Grantee's Dominant Tenement over certain portions of the Servient Tenement, which are more particularly described as follows:

a. Nonexclusive driveway easement for ingress and egress (collectively, the "Driveway Easements," and individually, a "Driveway Easement") appurtenant to and running with the Allen Parcel (the "Allen Driveway Easement"), the Leahy Parcel (the "Leahy Driveway Easement"), the Azevedo Parcel (the "Azevedo Driveway Easement"), and the Wahl Parcel (the "Wahl Driveway Easement"), over those portions of the Servient Tenement more particularly described in Exhibit "G", Exhibit "H", Exhibit "I", and Exhibit "J", respectively, attached hereto and incorporated herein by reference.

b. A nonexclusive easement for roadway purposes (the "Roadway Easement") appurtenant to and running with each Grantee's Dominant Tenement over that portion of the Servient Tenement that is presently known as Anza Street, more particularly described in Exhibit "K", attached hereto and incorporated herein by reference. The District agrees that henceforth the Roadway Easement shall be named Witherly Lane.

c. The District agrees that the City of Fremont (the "City") shall be permitted to use the Roadway Easement and the Driveway Easements for public emergency access. The District further agrees to submit a private street application to the City to seek approval of the Roadway Easement as a private street to be named Witherly Lane so that the Roadway Easement may provide legal access to the Witherly Lane Parcels. The District agrees to pursue approval of the private street application diligently with the City, and each Grantee agrees to cooperate fully in obtaining approval of the private street application.

2. Quitclaim and Release of Easements. Concurrently with the recording of this Easement Agreement or any memorandum thereof, Grantees, and each of them, shall execute and record a Quitclaim Deed, substantially in the form of Exhibit "L", attached hereto and incorporated herein by reference (the "Quitclaim Deed"), in favor of Grantor quitclaiming and releasing all of their interest in and to the Witherly Lane Easement, with the exception of an easement for utilities as more particularly described in the Quitclaim Deed. At such time, the Leahys shall also execute and record a Quitclaim Deed, substantially in the form of Exhibit "M", attached hereto and incorporated herein by reference (the "Leahy Quitclaim Deed"), in favor of Grantor quitclaiming and releasing all rights granted to the Leahys under that certain Easement Agreement entered into by and between Grantor and the Leahys and recorded on January 18, 2005, as Instrument No. 2005019161 in the Official Records of Alameda County.

3. Permitted Use. Except as otherwise specified herein, the burdens to be placed upon each Driveway Easement, the Roadway Easement, and the Servient Tenement pursuant to this

Agreement shall be no greater than those reasonably associated with the use of each Dominant Tenement as a single family residence (the "Permitted Use"). Notwithstanding the foregoing, the District agrees that the Permitted Use shall include:

a. With respect to the Azevedo Parcel only, if it is subdivided into four (4) or less separate parcels, those uses reasonably associated with each such parcel's use as one (1) single family residence.

b. With respect to the Allen Parcel only, if it is subdivided into eight (8) or less separate parcels those uses reasonably associated with each such parcel's use as one (1) single family residence. Any such parcels shall be used solely for residential purposes and shall not be used for commercial purposes and no improvements on such parcels shall be more than thirty-five feet (35') in height;

c. All such uses shall comply with all federal, state and local laws and regulations, including without limitation the City's zoning ordinances; and

d. The subdivision of the Azevedo Parcel or the subdivision of the Allen Parcel shall not give rise to the modification or enlargement of the Azevedo Driveway Easement or Allen Driveway Easement, respectively.

4. Leahy School and Leahy Permitted Use. Grantor and Leahys' acknowledge Leahys' use of the Leahy Parcel as a nonsectarian independent secondary school (the "Leahy School") having no more than forty (40) full-time equivalent students (7th through 9th grades) together with such other teachers, staff and other persons necessary or required for the operation of such school (the "Leahy Permitted Use"). The provisions of Section 3 herein notwithstanding, for so long as the Leahy School shall be operated, the holder of Leahy Driveway Easement and the Leahy Parcel's use of the Roadway Easement shall not burden said easements or the Servient Tenement with uses greater than those reasonably associated with the Leahy Permitted Use.

5. Leahy School Bus Limitations. The Leahys agree that students shall be transported to the Leahy School by two (2) passenger buses, each having a capacity of no more than twenty (20) persons and each making no more than two (2) round trips each to the Leahy School per day, and that said buses shall only follow the route shown on Exhibit "K" in transporting the students to the Leahy School, with the buses turning around at the Building 4 Turnaround located at the Servient Tenement and delivering the students on the north side of the Leahys' forty-foot (40') radius drop-off area.

6. Leahy Permitted Use Insurance. As long as the Leahys continue to use the Leahy Parcel for the Leahy Permitted Use, the Leahys shall at all times maintain in effect a policy or policies of bodily injury liability insurance with limits of not less than Two Million Dollars (\$2,000,000) combined single limit, insuring against any and all liability of the insured with respect to the Leahy Driveway Easement and the Roadway Easement or arising out of the maintenance, condition, use or occupancy thereof, and property damage liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) per accident or occurrence, and naming Grantor as an additional insured with respect to all such policies. Said policy limits may be

increased from time to time at the discretion of Grantor, after sixty (60) days notice of such increase to Grantee. Any lapse in such insurance coverage shall automatically abate the Leahy's right to use the Leahy Drive Easement and Roadway Easement for the Leahy Permitted Use.

7. Use of Driveway Easements. The Driveway Easements are easements for driveway purposes only. For purposes of this Agreement, "driveway purposes" shall mean use for and by moving vehicular traffic for any purpose reasonably associated with the Permitted Use or the Leahy Permitted Use. Driveway purposes do not include parking. No parking shall be permitted on the Driveway Easements, the Roadway Easement, or any other portion of the Servient Tenement without the express written permission of Grantor.

8. Maintenance and Costs. Grantor shall have sole responsibility for the maintenance and repair of the Roadway Easement. Each Grantee shall, at each Grantee's sole cost and expense, clean, keep, repair and maintain its respective Driveway Easement and every part thereof in good and safe condition, order and repair.

9. Indemnity.

a. Each 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 or claims therefor (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 its respective Driveway Easement, (b) resulting from any lapse in or failure to maintain insurance coverage as required under the terms of this Agreement, (c) resulting from any failure to maintain or repair any Driveway Easement as required under the terms of this Agreement, or (d) 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.

b. Grantor shall hold harmless, indemnify and defend each Grantee and its employees, agents and contractors, with competent counsel reasonably satisfactory to such Grantee, 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 or claims therefor occurring in the Driveway resulting from the negligence or willful misconduct of Grantor, its agents, employees, guests, invitees, and contractors. 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.

10. Modification of Roadway Easement Boundaries. 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 with respect to the Roadway Easement area generally.

11. District's Reservation of Rights. District further reserves the right to restrict or halt the use of the Roadway Easement granted under this Agreement during emergencies. Such restriction or halting of use shall be limited in duration to such period of time that District or District's authorized representative shall deem to be reasonably necessary.

12. Miscellaneous.

a. Exhibits. The following exhibits attached hereto shall be deemed incorporated by reference as though set forth in full.

Exhibit "A" Servient Tenement

Exhibit "B" Allen Parcel

Exhibit "C" Leahy Parcel

Exhibit "D" Azevedo Parcel

Exhibit "E" Wahl Parcel

Exhibit "F" Witherly Lane Easement

Exhibit "G" Allen Driveway Easement

Exhibit "H" Leahy Driveway Easement

Exhibit "I" Azevedo Driveway Easement

Exhibit "J" Wahl Driveway Easement

Exhibit "K" Roadway Easement

Exhibit "L" Quitclaim Deed

Exhibit "M" Leahy Quitclaim Deed

b. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, and according to its fair meaning, and not in favor of or against any party. Any action, arbitration or other proceeding relating to this

Agreement shall be instituted and maintained in any court or other forum having jurisdiction over such action, arbitration or other proceeding in Alameda County, California.

c. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties pertaining to the subject matter hereof, and all prior negotiations, agreements and understandings, oral or written, are revoked, cancelled and rescinded and are all merged herein and superseded as of the Effective Date, including without limitation the easement agreement that the Board of Trustees of Grantor authorized Grantor to enter into 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 any Grantee prior to the Effective Date.

d. Amendment and Waiver. 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.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement (or any counterpart hereof) may also be executed by facsimile signature.

f. Severability. Should any part, term or provision of this Agreement or any document required herein to be executed or delivered be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

g. Interpretation. The neuter gender includes the feminine and masculine, and vice-versa, and the singular number includes the plural. The word "person" includes, in addition to any natural person, a corporation, partnership, firm, trust, association, governmental body or other entity. The captions of the sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Ohlone Community College District,
a California community college district

By: _____

Its: _____

Mark Allen

Valerie Allen

Michael Leahy

Cynthia Leahy

Tony Azevedo

Mary Azevedo

Brent Wahl, an unmarried man

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11/1/06