

RESTRICTIONS AND EASEMENT AGREEMENT

THIS RESTRICTIONS AND EASEMENT AGREEMENT (this "Agreement"), is made and entered into as of the Effective Date (as defined in Article 1 hereof) by and between the MASON CITY SCHOOL DISTRICT ("School") and THE CITY OF MASON ("City").

RECITALS:

WHEREAS, the residents of School have passed a tax levy for, among other things, the construction, furnishing and equipping of a new high school and a community recreation center; and

WHEREAS, City owns the real estate on which said high school and community recreation center have been constructed as well as a certain contiguous parcel of real estate; and

WHEREAS, pursuant to an Agreement to Proceed with a Community Recreation Center, dated December 15, 1999, the parties hereto have entered into the Joint Use and Operation Agreement, of even date herewith (the "Joint Use Agreement"), which sets forth School's and City's joint rights and obligations with respect to the operation and maintenance of said community recreation center and certain portions of said real estate on which the community recreation center have been constructed pursuant to applicable provisions of the Ohio Revised Code, including O.R.C. § 755.16; and

WHEREAS, pursuant to the Joint Use Agreement, the parties hereto have entered into a Ground Lease, of even date herewith (the "Ground Lease"), wherein City leased to School and School leased from City the real estate on which said high school and community recreation center have been constructed and will be operated and maintained; and

WHEREAS, pursuant to the Joint Use Agreement, the parties hereto have entered into a Sublease, of even date herewith (the "Sublease"), wherein School subleased to City and City subleased from School a portion of said community recreation center, described by the Sublease as the "Community Center"; and

WHEREAS, pursuant to the Joint Use Agreement, the parties hereto have agreed that City shall reserve certain easements in connection with its access to and parking in connection with said community recreation center and that City shall grant to School certain easements in connection with its access to said community recreation center and high school over City's contiguous real estate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the following covenants, conditions, restrictions, easements, and encumbrances shall be binding upon City and School, and shall attach to and run with each respective Parcel (as defined under Article I hereof), and shall be for the benefit of and shall be limitations upon any future Owners (as defined under Article I hereof) or Occupants (as defined under Article I hereof), and each easement granted herein shall be appurtenant to the dominant estate, and all covenants, conditions, restrictions and encumbrances shall be covenants running with the land and mutual equitable servitudes.

ARTICLE 1. DEFINITIONS

"ACCESS EASEMENT AREAS" means the Perimeter Road, Bike Path (if applicable pursuant to Section 3.7 of this Agreement), Driveways, Parking Lots and Sidewalks.

"ADDITIONAL FACILITIES" means the Gas Line Facilities, Sewer Facilities, Utility Facilities, City Municipal Sign, and Community Facilities Sign.

"AGREEMENT" means this Restrictions and Easement Agreement.

"BIKE PATH" means the path, intended for use by bicycles, which may be constructed by City pursuant to Section 3.7 hereof on a portion of the Contiguous Parcel and on a portion of the perimeter of the Land, as designated on the Site Plan.

"CITY MUNICIPAL BUILDING" the building located on the Contiguous Parcel that functions as the administrative building for City and is designated as the "City Municipal Building" on the Site Plan.

"CITY MUNICIPAL SIGN" means the Sign located on the Contiguous Parcel and designated as the "City Municipal Sign" on the Site Plan.

"COMMUNITY CENTER" means that portion of the Community Facility which School is subleasing to City and City is subleasing from School under the Sublease and which is more particularly described in the Joint Use Agreement.

"COMMUNITY FACILITIES" means the Community Facility, Community Facility Parking Lots, Community Facility Driveways and Community Facility Sidewalks, as more particularly described by the Joint Use Agreement and including any future expansion, replacements, alterations, modifications thereof made in accordance with the Joint Use Agreement or Ground Lease.

"COMMUNITY FACILITIES SIGN EASEMENT AREA" that area on the Land on which the Community Facilities Sign is located, as designated on the Site Plan.

"COMMUNITY FACILITIES SIGN" means the Sign located on the Land and designated as the "Community Facilities Sign" on the Site Plan.

"COMMUNITY FACILITY" means that portion of the Project that is designated on the Site Plan as the "Community Facility" and includes those areas designated as "Outdoor Recreation/Athletic Facilities" on the Site Plan, as more particularly described by the Joint Use Agreement.

"COMMUNITY FACILITY DRIVEWAYS" means those Driveways designated on the Site Plan.

"COMMUNITY FACILITY PARKING LOTS" means the Parking Lots designated as "Community Facility Parking Lots" on the Site Plan.

"COMMUNITY FACILITY SIDEWALKS" means the Sidewalks designated as "Community Facility Sidewalks" on the Site Plan.

"CONTIGUOUS PARCEL" means that certain parcel of land, owned by City, which is contiguous to the Land which includes (a) that real estate described on the attached Exhibit "A" and (b) that portion of the real estate, depicted as "City of Mason 118.264 Acres OR 275, Page 53 (SR 66-88)" ("118 Acre Parcel") on the Utilities Plan and legally described on Exhibit "B", on which a portion of the Detention Areas, Perimeter Road, Bike Path, and Outdoor Recreation/Athletic Facilities are located as depicted on the Site Plan. Those portions of the 118 Acre Parcel to which the Detention Areas, Perimeter Road, Bike Path and Outdoor Recreation/Athletic Facilities are not applicable or on which the Detention Areas, Perimeter Road, Bike Path and Outdoor Recreation/Athletic Facilities are not located are not included within the definition of "Contiguous Parcel" and are not subject to this Agreement.

"CONTRACT YEAR" means the fiscal year of City, which runs from January 1 to December 31 of each calendar year.

"DETENTION AREAS" means those areas designated as "Detention Basin" on the Utilities Plan.

"DRIVEWAYS" means the School Driveways and Community Facility Driveways.

"EASEMENT AREAS" means the Access Easement Areas, Sewer Easement Area, Gas Line Easement Area, Water Easement Area, Utility Easement Area, Main Sign Easement Area, Community Facilities Sign Easement Area and Detention Areas to the extent such Easement Areas are subject to an Easement (as defined in Section 3.2(e) hereof).

"EFFECTIVE DATE" means June 1, 2002.

"GAS LINE EASEMENT AREA" means those areas in which the Gas Line Facilities are located and designated as the "Existing 20' Gas Line Easement" on the Utilities Plan.

"GAS LINE FACILITIES" means those certain gas lines and related facilities which are located on or in the Gas Line Easement Area.

"GROUND LEASE" means the Ground Lease, of even date herewith, by and between City and School, wherein City leases to School and School leases from City the Project and Land and related easements and improvements, as more particularly described by the Ground Lease.

"HIGH SCHOOL" means that portion of the High School Facilities which is designated on the Site Plan as the "High School".

"HIGH SCHOOL FACILITIES" means the High School, School Parking Lots, School Sidewalks and School Driveways located on the Land, as more particularly described in the Ground Lease and Joint Use Agreement, and including all other improvements (except the Community Facilities, Additional Facilities and Perimeter Road) constructed or installed on the Land by Tenant and including any future expansion, replacements, modifications or alterations thereof made in accordance with Joint Use Agreement or Ground Lease.

"JOINT USE AGREEMENT" means the Joint Use and Operation Agreement, of even date herewith, by and between City and School with respect to their joint rights and obligations regarding the use, operation and maintenance of the Community Facilities and that portion of the Land on which the Community Facilities are located and the maintenance of the Easement Areas (except the Bike Path, Additional Facilities and that portion of the Perimeter Road located on the Contiguous Parcel).

"LAND" means that certain parcel of real estate which is owned by City and leased to School pursuant to the Ground Lease, as more particularly described on Exhibit "C", attached hereto and incorporated herein by reference.

"MAIN SIGN EASEMENT AREA" means that area designated as the "Main Sign Easement Area" on the Site Plan..

"MAIN SIGN" means the Sign to located on the Contiguous Parcel and designated as the "Main Sign" on the Site Plan.

"OCCUPANT" means a person and/or entity, including, without limitation, any Owner, that occupies, or has a right to occupy, all or a part of a Parcel pursuant to a lease, license or other type of occupancy agreement from the Owner or Occupant of the Parcel in question.

"OUTDOOR RECREATION/ATHLETIC FACILITIES" means those areas designated as "Outdoor Recreation/Athletic Facilities" on the Site Plan.

"OWNER" means any person and/or entity who or which is the record owner of fee simple title to a Parcel or portion thereof.

"PARCEL" means the Land or the Contiguous Parcel or any portion of real estate on which an Easement Area is located, as applicable.

"PARKING LOTS" means the School Parking Lots and the Community Facility Parking Lots.

"PERIMETER ROAD" means the road located around a portion of the perimeter of the Land and on a portion of the Contiguous Parcel, as designated on the Site Plan.

"PROJECT" means the High School Facilities, Community Facilities, Perimeter Road, Additional Facilities and, if applicable, Bike Path.

"PROJECT IMPROVEMENTS" means the Community Facilities and High School Facilities, as more particularly described in the Joint Use Agreement.

"SCHEDULED USE" means those time periods during which City or School is scheduled under the Joint Use Agreement (i.e., via a Shared Use Schedule [as defined in the Joint Use Agreement], Section 4.3(b) of the Joint Use Agreement or mutual agreement of City and School) to use a particular area within the Shared Areas, whether or not City or School (as the case may be) actually uses the particular area during the applicable time periods.

"SCHOOL DRIVEWAYS" means those Driveways designated on the Site Plan.

"SCHOOL PARKING LOTS" means those Parking Lots designated on the Site Plan.

"SCHOOL SIDEWALKS" means those Sidewalks designated on the Site Plan.

"SEWER EASEMENT AREA" means the area in which the Sewer Facilities are located, as designated on the Utilities Plan.

"SEWER FACILITIES" means the sewer line and related facilities located in the Sewer Easement Area.

"SHARED AREAS" means a portion of the Community Facility and certain other unimproved areas of the Land (including, without limitation, the Outdoor Recreation/Athletic Facilities) as more particularly described in the Joint Use Agreement.

"SIDEWALKS" means the Community Facility Sidewalks and School Sidewalks.

"SIGNS" means the four (4) signs designating various portions of the Project and/or the name of the City Municipal Building, and located on those areas designated on the Site Plan as the "Community Facilities Sign", "City Municipal Sign", "Main Sign" and "High School Sign".

"SITE PLAN" means the drawing, which depicts certain portions of the Land, Contiguous Parcel and Project Improvements as well as the locations of the Perimeter Road, Bike Path and Community Facilities Sign Easement Area. A true and accurate copy of the Site Plan is attached hereto as Exhibit "D", which is attached hereto and incorporated herein by reference.

"SUBLEASE" means the Sublease Agreement, of even date herewith, by and between City and School, wherein School subleases to City and City subleases from School the Community Center.

"UTILITIES PLAN" means the drawing, which depicts the Land and Contiguous Parcel as well as the locations of the Sewer Easement Area, Gas Line Easement Area, Water Easement Area, Utility Easement Area, Detention Areas and Main Sign Easement Area. A true and accurate copy of the Utilities Plan is attached hereto as Exhibit "E", which is attached hereto and incorporated herein by reference.

"UTILITY EASEMENT AREA" means those in which the Utility Facilities are located and designated as the "Ex. 10' Utility Ease." and "Ex. 25' Easement" on the Utilities Plan.

"UTILITY FACILITIES" means the utility line and related facilities located in the Utility Easement Area.

"WATER EASEMENT AREA" means the area in which the Water Facilities are located, as designated on the Site Plan.

"WATER FACILITIES" means the water line and related facilities located in the Water Easement Area.

ARTICLE 2. PERMITTED USES OF PARCELS

2.1 PERMITTED USES. Except as otherwise provided in this Agreement, the Parcels and all portions thereof shall be used, if at all, only for the purposes set forth this Agreement.

(a) Contiguous Parcel.

(i) Use. No portion of the Contiguous Parcel shall be used or operated for any purpose other than exclusively for municipal purposes and/or for community events or programs sponsored or promoted by City, provided that (1) any non-municipal uses shall be permitted upon obtaining the prior written consent of School, and (2) any detention, jail or similar municipal uses (excluding improvements already constructed as of March 1, 2003 in which such uses are already occurring as of March 1, 2003) shall only be permitted upon obtaining the prior written consent of School, which may be withheld in the sole and absolute discretion of School.

(ii) Signs. Except with respect to the Signs, no Owner or Occupant of the Contiguous Parcel shall allow or cause to be used or erected on any portion of the Contiguous Parcel any signs or advertising media without first obtaining the prior written consent of School.

(b) Land. No portion of the Land shall be used or operated other than for the following purposes:

(i) Community Center. So long as the Sublease remains in effect, the Community Center shall only be used for athletic, community recreation and fitness center purposes and, as permitted under the Joint Use Agreement, by the School for educational and related extracurricular and intramural purposes, provided that if the Sublease is terminated and the Ground Lease remains in effect after such termination as to the Community Center, the Community Center may be used for any legal purpose including, without limitation, educational and related extracurricular and intramural purposes and community and fitness center purposes.

(ii) Detention Areas. No structures or other buildings shall be constructed in the Detention Areas which will unreasonably interfere or are reasonably likely to unreasonably interfere with the flow of storm water and rain water run off over and across the Detention Areas to the catch basins or drains installed or to be installed thereon for the draining and removal of storm water and rain water run off from the Land, Contiguous Parcel and other contiguous real property.

(iii) Balance of Land. That portion of the Land, other than the Community Center and subject to the foregoing Section 2.1(b)(ii), shall be used

for any legal purpose including, without limitation, educational and related extracurricular and intramural purposes and community and fitness center purposes, subject to the terms and conditions of the Joint Use Agreement and the Ground Lease.

(c) Intent Regarding Permitted Uses. In no event shall any Parcel, or portion thereof, or any improvements thereon, be used or operated for any use or purpose, and/or by any Owner or Occupant, which is inconsistent and/or incompatible with the intention of this Agreement, and at all times during the Term (as defined by Section 4.1 hereof).

(d) No Interference with Easements. No use of the Parcels or any of the Project Improvements shall be made which shall interfere with the use of the Easement Areas or the exercise of any rights under the Easements for the purposes for which they were intended as provided in this Agreement or shall impede the free flow of vehicular or pedestrian traffic on the Access Easement Areas, as applicable.

(e) Miscellaneous Use Restrictions. Notwithstanding anything herein to the contrary, the Easement Areas shall be subject to the following additional restrictions:

(i) Employee Parking. Notwithstanding anything herein to the contrary, no Owner, Occupant or any employee of any Owner or Occupant shall use any part of the Parking Lots for motor vehicle parking purposes except for those spaces within the Parking Lots which are designated for employee parking.

(ii) Permitted Motor Vehicles. Only domestic and foreign automobiles, vans and trucks not exceeding three-quarters (3/4) of a ton shall be permitted to park in the Parking Lots.

(iii) Deliveries. Except for small parcel deliveries, no Owner, Occupant or any employee of an Owner or Occupant shall use any part of the Access Easement Areas for delivery purposes except for those areas within the Access Easement Areas designated for deliveries, provided, however, that the foregoing shall not be deemed to be applicable to deliveries during the course of construction of buildings or other improvements in connection with the Project or the Easement Areas.

(iv) Unauthorized Activities. No person shall in or on any part of the Parcels or Easement Areas:

(1) vend, peddle, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other matter whatsoever;

(2) exhibit any sign, placard, banner, notice, or other written material, except as permitted by this Agreement or the Joint Use Agreement, Ground Lease or Sublease;

(3) distribute any circular, booklet, handbill, placard, or other material;

(4) solicit membership in any organization, group, or association or solicit contributions for any purposes;

(5) parade, patrol, picket, demonstrate, rally, or engage in any conduct that might tend to interfere with or impede the use of any of the Project Improvements by any committee, create a disturbance, attract attention, or harass, annoy, disparage, or be detrimental to the interest of City or School in the Project or the Parcels and the activities intended to be conducted therein under the Joint Use Agreement, Ground Lease and Sublease;

(6) throw, discard, or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind;

(7) use any sound-making devices of any kind or create or produce in any manner noise or sound that is annoying unpleasant, or distasteful to any Owner or Occupant; and/or

(8) deface, damage, demolish any sign, light standard or fixture, landscaping material, or other improvement on the Parcels or the property of any Owner, Occupant, agent, business invitee or employee situated on the Parcels.

The foregoing restrictions in items (1), (2), (3), and (4) shall not apply to promotional activities of the Project nor to periodic activities of scholastic, charitable and/or community service groups (e.g., sale of Girl Scout cookies, school bake sales, and like activities).

The foregoing restrictions in items (2), (3), (4), and (5) also do not apply to labor disputes and/or political free speech activities where, under applicable law, third parties shall have the right to come onto parts of the Project and Parcels for such purposes; provided, however, the Owner(s) and Occupant(s) of the Parcel(s), affected by any such activities, shall take all reasonable efforts to minimize the disruptive effect such activities cause to the Project and Parcels to the extent permitted by then applicable law.

ARTICLE 3. EASEMENTS

3.1 EASEMENTS RESERVED TO CITY.

(a) City Access Easements.

(i) Perimeter Road. City hereby reserves for itself a non-exclusive easement and right of way, in common with School and others entitled to use the Project Improvements for the purpose of vehicular ingress and egress to and from

the Community Facilities and, subject to Section 3.1(b)(ii) hereof, the School Parking Lots and School Driveways, over, upon and across that portion of the Perimeter Road located on the Land (the "Perimeter Road Easement").

(ii) Driveways. City hereby reserves for itself a non-exclusive easement and right of way, in common with School and others entitled to use the Project Improvements for the purpose of vehicular ingress and egress to and from the Community Facility, Community Facility Parking Lots and, subject to Section 3.1(b)(ii) hereof, the School Parking Lots, over, upon and across the Driveways (the "Driveways Easement").

(iii) Sidewalks. City hereby reserves for itself a non-exclusive easement and right of way, in common with School and others entitled to use the Project Improvements for the purpose of pedestrian ingress and egress to and from the Community Facility, over, upon and across that portion of the Sidewalks located on the Land, provided that City shall only be permitted to use the School Sidewalks hereunder during City's Scheduled Use of those parts of the Shared Areas requiring access via the School Sidewalks (the "Sidewalks Easement").

(b) Parking Easements.

(i) Community Facility Parking Lots. City hereby reserves for itself a non-exclusive easement, in common with School and others entitled to use the Project Improvements for the purpose of parking vehicles on the Community Facility Parking Lots (the Community Facility Parking Lots Easement").

(ii) School Parking Lots. City hereby reserves for itself a non-exclusive easement, in common with School and others entitled to use the Project Improvements for the purpose of parking vehicles on the School Parking Lots, provided that City shall only be permitted to park vehicles on the School Parking Lots during those times which are designated as City's Scheduled Use of those parts of the Shared Areas requiring access via the School Parking Lots (the "School Parking Lots Easement") (collectively, the Community Facility Parking Lots Easement and School Parking Lots Easement shall be referred to herein as the "Parking Lots Easements") (collectively, the Perimeter Road Easement, Driveways Easement, Sidewalks Easement and Parking Lots Easement shall be referred to herein as the "City Access Easements")

(c) City Sewer Facilities Easement. City hereby reserves for itself a non-exclusive easement, in common with School and others entitled to use the Project Improvements for the purpose of using, maintaining and (if necessary) replacing the Sewer Facilities in, under, across and through that portion of the Sewer Easement Area located on the Land (the "City Sewer Facilities Easement").

(d) City Water Facilities Easement. City hereby reserves for itself a non-exclusive easement, in common with School and others entitled to use the Project Improvements for the purpose of using, maintaining and (if necessary) replacing the

Water Facilities in, under, across and through that portion of the Water Easement Area located on the Land (the "City Water Facilities Easement").

(e) Community Facilities Sign Easement. City hereby reserves for itself a non-exclusive easement, in common with School and others entitled to use the Project Improvements for the purpose of using, maintaining and (if necessary) replacing the Community Facilities Sign Easement in, under, across and through the Community Facilities Sign Easement Area (the "Community Facilities Sign Easement").

(f) City Detention Area Easement. City hereby reserves for itself a non-exclusive easement, in common with School and others entitled to use the Project Improvements, for the purpose of draining and removing from the Contiguous Parcel and other contiguous real property storm water and rain water run off over and across that portion of the Detention Areas located on the Land to the catch basins or drains installed or to be installed thereon ("City Detention Area Easement") (collectively, the City Access Easements, City Sewer Facilities Easement, City Water Facilities Easement, Community Facilities Sign Easement and City Detention Area Easement shall be referred to herein as the "City Easements").

3.2 EASEMENTS GRANTED TO SCHOOL.

(a) Perimeter Road. City hereby grants, bargains, sells and conveys to School a non-exclusive easement and right of way, in common with City and others entitled to use the Project Improvements and the Contiguous Parcel, for the purpose of vehicular ingress and egress to and from the Land and Project Improvements over, upon and across that portion of the Perimeter Road located on the Contiguous Parcel (the "Perimeter Road School Easement") (collectively, the City Access Easements and Perimeter Road School Easement shall be referred to herein as the "Access Easements").

(b) Additional Facilities School Easements.

(i) School Gas Line Facilities Easement. City hereby grants, bargains, sells and conveys to School a non-exclusive easement, in common with City and others entitled to use the Project Improvements and the Contiguous Parcel, for the purpose of using the Gas Line Facilities in, under, across and through that portion of the Gas Line Easement Area located on the Contiguous Parcel for the purpose of providing gas services to the Project (the "School Gas Line Facilities Easement").

(ii) School Water Facilities Easement. City hereby grants, bargains, sells and conveys to School a non-exclusive easement, in common with City and others entitled to use the Project Improvements and the Contiguous Parcel, for the purpose of using the Water Facilities in, under, across and through that portion of the Water Easement Area located on the Contiguous Parcel for the purpose of providing water services to the Project (the "School Water Facilities Easement").

(iii) School Sewer Facilities Easement. City hereby grants, bargains, sells and conveys to School a non-exclusive easement, in common with City and others entitled to use the Project Improvements and the Contiguous Parcel, for the purpose of using the Sewer Facilities in, under, across and through that portion of the Sewer Easement Area located on the Contiguous Parcel for the purpose of providing sewer services to the Project (the "School Sewer Facilities Easement").

(iv) Utility Facilities Easement. City hereby grants, bargains, sells and conveys to School a non-exclusive easement, in common with City and others entitled to use the Project Improvements and the Contiguous Parcel, for the purpose of using the Utility Facilities in, under, across and through the Utility Easement Area for the purpose of providing utility service to the Project (the "Utility Facilities Easement").

(c) Main Sign Easement. City hereby grants, bargains, sells and conveys to School a non-exclusive easement, in common with City, for the purpose of maintaining and (if necessary) replacing the Main Sign on the Main Sign Easement Area (the "Main Sign Easement")

(d) Outdoor Recreation/Athletic Facilities. City hereby grants, bargains, sells and conveys to School a non-exclusive easement and right of way, in common with City and others entitled to use the Project Improvements and the Contiguous Parcel, for the purpose of pedestrian use of that portion of the Outdoor Athletic/Recreation Athletic Facilities located on the Contiguous Parcel (the "Outdoor Athletic/Recreation Facilities Easement").

(e) School Detention Area Easement. City hereby grants, bargains, sells and conveys to School a non-exclusive easement, in common with City and others entitled to use the Project Improvements, for the purpose of draining and removing from the Land storm water and rain water run off over and across that portion of the Detention Areas located on the Contiguous Parcel to the catch basins or drains installed or to be installed thereon ("School Detention Area Easement") (collectively, the Perimeter Road School Easement, School Gas Line Facilities Easement, School Water Facilities Easement, School Sewer Facilities Easement, Utility Facilities Easement, Main Sign Easement, Outdoor Recreation/Athletic Facilities Easement and School Detention Area Easement shall be referred to herein as the "School Easements") (collectively, the City Easements and School Easements shall be referred to herein as the "Easements").

(f) Expansion of School Easements. In the event that any other improvements are constructed or installed on the Land by or on behalf of School under the Ground Lease, immediately upon commencement of construction of such improvements, the School Easements shall be expanded to benefit such improvements.

3.3 USE OF EASEMENTS BY OTHERS. Subject to Article 2 hereof, City and School may extend their respective rights of access and parking, reserved or granted under the Access Easements to their respective employees, suppliers, contractors, business invitees, and other

persons having contact with the activities being conducted in or on the Project or on the Parcels or in or on any improvements constructed by School on the Land under the Ground Lease.

3.4 NO OBSTRUCTIONS. No fence or other barrier shall be erected or permitted within or across the Easement Areas which would prevent or obstruct the passage of vehicular, pedestrian or bicycle travel or parking, as the case may be, on the applicable Easement Area; provided, however, that the foregoing shall not prohibit the temporary erection of barricades which are reasonably necessary for security and/or safety purposes in connection with the construction, reconstruction, repair and maintenance of improvements, it being agreed by the parties however that all such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the applicable Easement Area, and such work shall be diligently pursued to completion.

3.5 INCIDENTAL AND TEMPORARY ENCROACHMENTS. In addition to the foregoing, and, in connection with the work performed within the Easement Areas, School and City each agree that incidental encroachments upon Easement Areas may occur as a result of the use of ladders, scaffolding, barricades and similar facilities, resulting in temporary obstruction of portions of the Easement Areas, all of which are permitted hereunder, so long as their use is kept within reasonable requirements of construction work expeditiously pursued. Easement Areas may be utilized for ingress and egress of vehicles transporting construction materials, equipment and persons employed in connection with any work provided for herein and temporary storage of material and vehicles being utilized in connection with such construction, subject to all of the other terms in this Agreement, and provided such activities shall be carried out in such manner so as to minimize any disruption to the activities conducted in or on the Project or on the Parcels.

3.6 PRESCRIPTIVE RIGHTS OF OTHERS. School reserves the right to close off that portion of the Perimeter Road and/or the Bike Path which is located on the Land and/or any other Easement Areas located on the Land and City reserves the right to close off that portion of the Bike Path and/or Perimeter Road which is located on the Contiguous Parcel and/or any other Easement Areas located on the Contiguous Parcel, for such reasonable period of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone, and for such reasonable period of time as may be legally necessary; provided, however, that prior to taking such action, School or City, as the case may be, shall give written notice to the other party hereto of its intention to do so, and to the extent reasonably possible, the parties shall coordinate such closing so that the interruption in the use and enjoyment of the applicable Easement Area is kept to a minimum

3.7 BIKE PATH.

(a) Construction of Bike Path. City and School acknowledge and agree that City shall be permitted to construct the Bike Path on that portion of the Parcels which is designated on the Site Plan. In the event that City elects to construct the Bike Path, it shall (i) provide School with at least sixty (60) days prior written notice of same; (ii) provide School with detailed final plans and specifications for the construction and installation of the Bike Path; (iii) receive School's prior written approval (which shall not be unreasonably withheld or conditioned or unduly delayed) of such final plans and specifications; (iv) obtain all necessary governmental approvals and permits in

connection with the construction and installation of the Bike Path and provide written copies thereof to School; (v) commence and complete construction and installation of the Bike Path within three hundred sixty-five (365) days from the later of (1) the date City receives the written approval described in the preceding subpart (iii) and (2) the date City provides to School copies of the governmental approvals and permits described in the preceding subpart (iv); and (vi) take all steps reasonably necessary to ensure that the activities performed in connection with the construction and installation of the Bike Path do not unreasonably interfere with access to and use of the Project Improvements and all Easement Areas as contemplated by this Agreement or otherwise violate the terms and conditions of this Agreement.

(b) Bike Path Easement. In the event that the Bike Path is constructed and installed pursuant to Section 3.7(a) hereof, the following shall be deemed to have been reserved and granted immediately upon substantial completion of the Bike Path:

(i) Additional Access Easement. City shall be deemed to have reserved for itself a non-exclusive easement and right of way, in common with School and others entitled to use the Project Improvements and Land for the purpose of pedestrian and bicycle traffic, over, upon and across that portion of the Bike Path which is located on the Land (the "Bike Path Easement"), and the term "City Access Easements" shall be deemed to include the Bike Path Easement.

(ii) Additional School Easements. City shall be deemed to have granted, bargained, sold and conveyed to School a non-exclusive easement and right of way, in common with City and others entitled to use the Project Improvements, Land and Contiguous Parcel, for the purpose of pedestrian and bicycle ingress and egress to and from the Land and Project, over, upon and across that portion of the Bike Path located on the Contiguous Parcel (the "School Bike Path Easement"), and the term "School Easements" shall be deemed to include the School Bike Path Easement.

(c) No Mechanic's Liens. In connection with the construction and installation of the Bike Path, City shall pay all contractors and materialmen promptly and with due diligence, so as to avoid having a lien attaching to the Land, Easement Areas, Project Improvements, or any portion thereof. Should any such lien be made or filed, City shall bond against or discharge the same within ten (10) days after written request by School and shall indemnify and save harmless School and the Land, Easement Areas and Project Improvements from and against all claims, demands, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) which School may incur in connection with such a lien. In the event that City fails to bond against or discharge such a lien within the foregoing ten (10) day period, School may (but shall not be obligated to) pay the claim upon which such lien is based so as to have such lien released of record; and if School does so, then City shall pay to School the amount of such claim, plus all interest thereon at the rate of eighteen percent (18%) per annum which shall accrue from the date payment is made by School through the date School receives from City reimbursement for such payment plus all accrued interest as hereinbefore provided. This

Section 3.7(c) shall survive the expiration of the Term or earlier termination of this Agreement.

3.8 DEDICATION. The parties hereto agree that in the event School desires to dedicate that portion of the Perimeter Road located on the Land, or any portion of thereof, to the public, and/or City desires to dedicate that portion of the Perimeter Road located on the Contiguous Parcel, or any portion thereof, the other party ("Other Party") shall agree to such dedication, and each party hereto shall execute and deliver any dedication plats, deeds or other instruments that may be required to effectuate such dedication, provided that the Other Party shall not be responsible for paying any performance on maintenance bonds that may be required in connection with such dedication or for any other costs and expenses associated with such dedication. Upon acceptance of the applicable portion of the Perimeter Road, as the case may be, the rights and obligations created with respect to such dedicated portion under this Agreement shall automatically be extinguished (including, without limitation, the obligation to provide or share in any maintenance or the costs thereof). Also, in the event that, within one (1) calendar year from March 1, 2003, School dedicates that portion of the Perimeter Road located on the Land, School shall, in connection with such dedication, assign to City any maintenance and/or performance bonds (if any) submitted to School by the contractor who constructed such portion of the Perimeter Road. Further, School acknowledges and agrees that an approval or variance from the applicable zoning authority may be required in connection with School's dedication of the foregoing portion of the Perimeter Road and that, though City has agreed, in good faith, to support any application for such approval or variance, City does not control such zoning authority or otherwise make the determination with respect to whether or not such approval or variance will be granted.

ARTICLE 4. TERM

4.1 TERM OF AGREEMENT. The term of this Agreement and all rights and obligations created hereunder shall commence on the March 1, 2003 and shall terminate ninety-nine (99) Contract Years thereafter (the "Term"), provided that the Term shall automatically terminate earlier than the expiration of said ninety-nine (99) Contract Years on the date on which the Ground Lease terminates in its entirety pursuant to the terms thereof.

4.2 TERMINATION OF JOINT USE AGREEMENT

(a) Termination As To Community Center and Gymnasium. Notwithstanding anything herein to the contrary, in the event that the Joint Use Agreement terminates and, under the terms thereof, School retains the right and/or the obligation to continue to lease and/or use all of the Land and the Project, with the exception of the Community Center and the Gymnasium, (collectively, the "Retained Project and Land A") under the Ground Lease, effective as of the date of such termination, the School Easements, and all of School's rights and obligations in connection therewith, shall remain in effect under this Agreement, but (i) School's rights and obligations under the School Easements shall automatically be deemed to be amended, as of the date of such termination, such that the School Easements shall only be for the benefit of and shall only be exercised by School in connection with its use of the Retained Project and Land A and any other improvements constructed on the Land by or on behalf of School (other than the

Community Center and Gymnasium); (ii) the Perimeter Road School Easement, Bike Bath Easement and School Detention Area Easement shall automatically be deemed to be amended, as of the date of such termination, such that the Perimeter Road Easement shall apply to the entire Perimeter Road, the Bike Path Easement shall apply to the entire Bike Path and the School Detention Area Easement shall apply to the entire Detention Areas; (iii) the School Gas Line Facilities Easement, School Water Facilities Easement, School Sewer Facilities Easement and Utility Facilities Easement (collectively, "Utility Easements") and the Easement Areas applicable thereto (collectively, "Utility Easement Areas") shall automatically be deemed to be amended, as of the date of such termination, such that the Utility Easements and Utility Easement Areas apply to and encumber all parts of the Land that will not continue to be leased by School under the Ground Lease after such termination is effective but on which or in which utility lines, gas lines, water lines, sewer lines and related facilities then exist and provide utility, gas, water and sewer services to the Retained Project and Land A and any other improvements constructed on the Land by or on behalf of School (other than the Community Center and Gymnasium) (such utility lines, gas lines, water lines, sewer lines and related facilities shall be deemed to be, as of the date such termination is effective, part of the Additional Facilities); and (iv) the City Easements shall terminate as of the date of such termination.

(b) Termination as to Community Facilities. Notwithstanding anything herein to the contrary, in the event that the Joint Use Agreement terminates and, under the terms thereof, School retains the right and/or the obligation to continue to lease and/or use the Project and Land, with the exception of the Community Facilities, (collectively, the "Retained Project and Land B"), effective as of the date of such termination, the School Easements, and all of School's rights and obligations in connection therewith, shall remain in effect under this Agreement, but (i) School's rights and obligations under the School Easements shall automatically be deemed to be amended, as of the date of such termination, such that the School Easements shall only be for the benefit of and shall only be exercised by School in connection with its use of the Retained Project and Land B and any other improvements constructed on the Land by or on behalf of School (other than the Community Facilities); (ii) the Perimeter Road Easement, Bike Bath Easement and School Detention Area Easement shall automatically be deemed to be amended, as of the date of such termination, such that the Perimeter Road Easement shall apply to the entire Perimeter Road, the Bike Path Easement shall apply to the entire Bike Path and the School Detention Area Easement shall apply to the entire Detention Areas; (iii) the Utility Easements and Utility Easement Areas shall automatically be deemed to be amended, as of the date of such termination, such that the Utility Easements and Utility Easement Areas apply to and encumber all parts of the Land that will not continue to be leased by School under the Ground Lease but on which or in which utility lines, gas lines, water lines, sewer lines and related facilities then exist and provide utility, gas, water and sewer services to the Retained Project and Land B and any other improvements constructed on the Land by or on behalf of School (other than the Community Facilities) (such utility lines, gas lines, water lines, sewer lines and related facilities shall be deemed to be, as of the date such termination is effective, part of the Additional Facilities); and (v) the City Easements be deemed terminated as of the date of such termination.

(c) School Retains Entire Project. Notwithstanding anything herein to the contrary, in the event that City terminates or causes the termination of the Joint Use Agreement (i.e., as a consequence of City's default), effective as of the date of such termination, the City Easements shall terminate, provided that the City Sewer Facilities Easement and City Water Facilities Easement shall remain in full force and effect after the effective date of such termination.

(d) Other Easements. Notwithstanding anything herein to the contrary, in the event that the Joint Use Agreement terminates, City and School shall each grant to the other such additional easements and rights of way for ingress and egress and utilities for the benefit of the Parcels, or either of them, to the extent reasonably necessary to provide reasonably adequate and sufficient ingress and egress and utilities services to the various portions of the Project retained by City and School after such termination is effective.

4.3 EFFECT OF TERMINATION. To the extent that this Agreement is terminated pursuant to Sections 4.1 or 4.2 above or for any reason specifically permitted under this Agreement or the Joint Use Agreement, as of the effective date of such termination, neither party hereto shall have any further rights or obligations hereunder except to the extent that this Agreement specifically provides otherwise (as set forth in Sections 4.2 above) or that such rights or obligations shall survive the expiration of the Term or earlier termination of this Agreement.

ARTICLE 5. MAINTENANCE

5.1 MAINTENANCE OF EASEMENT AREAS.

(a) Roads and Bike Path. Subject to the rights and obligations created under the Joint Use Agreement and subject to provisions hereof relating to an Event of Casualty (as defined by Section 9.1 hereof) and Condemnation (as defined by Section 8.1 hereof), the maintenance, upkeep and repair, and all costs related thereto, of that portion of the Perimeter Road located on the Land shall be performed and paid pursuant to the rights and obligations set forth in the Joint Use Agreement. City, at all times hereunder and at its cost, will keep and maintain the Bike Path and that portion of the Perimeter Road located on the Contiguous Parcel in a good state of repair and shall repair any and all damage caused in connection with such maintenance.

(b) Driveways. Subject to the rights and obligations created under the Joint Use Agreement and subject to provisions hereof relating to Events of Casualty and Condemnation, the maintenance, upkeep and repair, and all costs related thereto, of the Community Facility Driveways shall be performed and paid pursuant to the rights and obligations set forth in the Joint Use Agreement. School, at all times hereunder and at its cost, will keep and maintain the School Driveways in a good state of repair pursuant to the Ground Lease.

(c) Sidewalks. Subject to the rights and obligations created under the Joint Use Agreement, subject to provisions hereof relating to an Event of Casualty and Condemnation and subject to Section 5.1(e) hereof, the maintenance, upkeep and repair, and all costs related thereto, of the Community Facility Sidewalks shall be performed and

paid pursuant to the rights and obligations set forth in the Joint Use Agreement. School, at all times hereunder and at its cost, will keep and maintain the School Sidewalks in a good state of repair pursuant to the Ground Lease.

(d) Parking Lots. Subject to the rights and obligations created under the Joint Use Agreement and subject to provisions hereof relating to an Event of Casualty and Condemnation, the maintenance, upkeep and repair, and all costs related thereto, of the Community Facility Parking Lots shall be performed and paid pursuant to the rights and obligations set forth in the Joint Use Agreement. School, at all times hereunder and at its cost, will keep and maintain the School Parking Lots in a good state of repair pursuant to the Ground Lease.

(e) Additional Facilities. City, at all times hereunder and at its cost, will keep and maintain the Additional Facilities and those Easement Areas on which or in which the Additional Facilities are located in a good state of repair and shall repair any and all damage caused in connection with such maintenance.

(f) Detention Areas. The Detention Areas and all improvements therein, shall be maintained continuously by School. No structure, planting, fencing, culvert, grading, topsoil, or other materials shall be placed or permitted to remain which may obstruct, retard or divert the flow through the water course in the Detention Areas. No improvements of any kind shall be made in the Detention Areas, which would interfere with access to the Detention Areas.

5.2 TERMINATION OF JOINT USE AGREEMENT. If the Joint Use Agreement terminates:

(a) Retained Project and Land A and Retained Project and Land B. Notwithstanding anything herein to the contrary, in the event that the Joint Use Agreement terminates and, under the terms thereof, School retains the right and/or the obligation to continue to lease and/or use Retained Project and Land A or Retained Project and Land B, effective as of the date of such termination, City, at all times thereafter and at its cost, shall keep and maintain all of the Easement Areas in a good state of repair; provided that, with respect to the Easement Areas to which the School Easements are applicable (but excluding the Additional Facilities and Easement Areas in which the Additional Facilities are located which are the sole responsibility of City pursuant to Sections 5.1(e) and 5.2(c) hereof), School shall reimburse City in an amount equal to fifty percent (50%) of all reasonable costs and expenses actually incurred by City in connection with such maintenance within thirty (30) days from the date School receives an itemized statement of such costs and expenses of maintenance and a written explanation of the applicable maintenance performed. The foregoing notwithstanding but subject to Section 6.6 hereof, in the event that any maintenance of any Easement Area, or any portion thereof, is necessitated by either party's (or that of its agents, employees, licensees or invitees) negligence or misuse, such party shall be solely responsible for all costs and expenses associated with repairing the damage caused by such negligence or misuse, as the case may be, and, if such party is School, shall reimburse City for same within ten (10) days of receiving an invoice for such costs and expenses.

Notwithstanding the foregoing, School shall continue, at all times hereunder and at its cost, to keep and maintain the School Sidewalks, School Driveways and School Parking Lots in a good state of repair pursuant to the Ground Lease.

(b) School Retains Entire Project and Land After Termination. Notwithstanding anything herein to the contrary but subject to Sections 5.1(e) and 5.2(c) hereof, in the event that City terminates or causes the termination of the Joint Use Agreement (i.e., as a consequence of City's default under the Joint Use Agreement), effective as of the date of such termination, School, at all times thereafter and at its cost, shall keep and maintain all of the Easement Areas in a good state of repair.

(c) Roads, Bike Path and Additional Facilities. Notwithstanding whether City or School terminates or causes the termination of the Joint Use Agreement and notwithstanding anything herein to the contrary, City shall continue to keep and maintain, at its cost and expense, the Bike Path and that portion of the Perimeter Road located on the Contiguous Parcel and the Additional Facilities and those Easement Areas on which or in which the Additional Facilities are located in a good state of repair and shall repair all damage caused by such maintenance.

5.3 SNOW AND ICE REMOVAL. The maintenance obligations imposed under this Article 5 shall include the obligation to remove any snow and ice from Easement Areas and to take such precautions as are reasonably feasible (including, without limitation, salting) to prevent the accumulation of snow and ice on the Easement Areas, provided that, so long as the Joint Use Agreement remains in effect, School shall be responsible for the removal of snow and ice from the Perimeter Road in accordance with the Joint Use Agreement.

5.4 DEDICATION. The foregoing rights and obligations shall be subject to Section 3.8 of this Agreement.

ARTICLE 6. INSURANCE

6.1 LIABILITY INSURANCE.

(a) Bike Path and Easement Areas on Contiguous Parcel. City, at all times hereunder and at its cost, will maintain and keep in force during the Term commercial general liability insurance for claims for personal injury, death or property damage, occurring in or about the Bike Path those portions of the Easement Areas located on the Contiguous Parcel, which insurance shall have limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence (collectively, the "City Liability Insurance"). The City Liability Insurance shall also name School and any other party reasonably designated by School as an additional insured.

(b) School Driveways, School Parking Lots and School Sidewalks. School, at all times hereunder and at its cost, will maintain and keep in force during the Term commercial general liability insurance on the School Driveways, School Parking Lots and School Sidewalks as such commercial general liability insurance is required under Section 9.1 of the Ground Lease (collectively, the "School Liability Insurance"). The

School Liability Insurance shall also name City and any other party reasonably designated by City as an additional insured.

(c) Community Facility Driveways, Community Facility Parking Lots and Community Facility Sidewalks. Subject to Section 6.3 below, all insurance procured, maintained and paid for with respect to insuring the Community Facility Driveways, Community Facility Parking Lots and Community Facility Sidewalks against commercial general liability shall be procured, maintained and paid for pursuant to the terms and conditions of Section 9.3(a) of the Joint Use Agreement (the "Community Facility Liability Insurance").

(d) Additional Insurance. In addition to the other insurance described in this Section 6.1, each party hereto, at all times hereunder and at its cost, will maintain and keep in force during the Term with respect to its use of all Easement Areas liability insurance which includes coverage and terms which are substantially similar to the Additional Insurance (as defined in the Joint Use Agreement) required to be maintained by such party under the Joint Use Agreement ("Additional Insurance").

6.2 PROPERTY INSURANCE. Subject to Section 6.3 below, pursuant to the Joint Use Agreement, all insurance procured, maintained and paid for with respect to insuring the Easement Areas against any Event of Casualty shall be procured, maintained and paid for pursuant to Section 9.3(a) of the Joint Use Agreement (the "Property Insurance"), provided that City shall, at all times hereunder and at its cost, maintain and keep in force during the Term fire and extended coverage all risk insurance with respect to insuring the Bike Path, Additional Facilities and those portions of the Easement Areas located on the Contiguous Parcel against any Event of Casualty with limits in an amount equal to the full replacement cost thereof, as reasonably determined by City (the "City Property Insurance").

6.3 TERMINATION OF JOINT USE AGREEMENT. If the Joint Use Agreement terminates:

(a) Retained Project and Land A and Retained Project and Land B. Notwithstanding anything herein to the contrary but subject to Sections 6.1(a) and 6.3(c) hereof, in the event that the Joint Use Agreement terminates and, under the terms thereof, School retains the right and/or the obligation to continue to lease and/or use the Retained Project and Land A or Retained Project and Land B under the Ground Lease, effective as of the date of such termination, City, shall, at its sole cost and expense, promptly upon the effective date of such termination, (i) add all of the Easement Areas to the City Liability Insurance and (ii) procure, maintain and pay for insurance for all of the Easement Areas which includes coverage and terms which are substantially similar to that which is required under the Property Insurance except that the insurable value of the Easement Areas shall be subject to the reasonable determination of City (the "City Easement Areas Property Insurance"); provided that School shall reimburse City for paying that portion of the premiums for the City Easement Areas Property Insurance which is equal to the product of (the "School Insurance Share") (i) the total cost of the City Easement Areas Property Insurance and (ii) a percentage which is based on a fraction, (1) the numerator of which is the full replacement cost of the improvements that

are part of the Retained Project and Land A or, if applicable, the Retained Project and Land B, as reasonably determined by School from time to time ("Retained Project Value"), and (2) the sum of the Retained Project Value and the full replacement cost of the improvements that are not part of the Retained Project and Land A or, if applicable, Retained Project and Land B and that are otherwise covered under the City Easement Areas Property Insurance, as determined by mutual agreement of City and School from time to time. School shall pay the School Insurance Share within thirty (30) days from the date School receives an invoice and a copy of the invoice or bill from the insurer(s) setting forth the applicable premium. Notwithstanding the foregoing, School shall continue, at all times hereunder and at its cost, to keep and maintain the School Liability Insurance in accordance with Section 6.1(b) hereof with respect to the School Driveways, School Sidewalks and School Parking Lots, and both parties shall continue to maintain the Additional Liability Insurance in accordance with Section 6.1(d) hereof.

(b) School Retains Entire Project and Land after Termination. Notwithstanding anything herein to the contrary but subject to Sections 6.1(a) and 6.3(c) hereof, in the event that City terminates or causes the termination of (i.e., as a consequence of City's default under the Joint Use Agreement) of the Joint Use Agreement, School, shall, at its sole cost and expense, promptly upon the effective date of such termination, (i) add all of the Easement Areas to the School Liability Insurance and (ii) procure, maintain and pay for insurance for all of the Easement Areas which includes coverage and terms which are substantially similar to that which is required under the Property Insurance except that the insurable value of the Easement Areas shall be subject to the reasonable determination of School (the "School Easement Areas Property Insurance") (collectively, the City Liability Insurance, School Liability Insurance, Community Facility Liability Insurance, Additional Insurance, Property Insurance, City Property Insurance and, as and if applicable, the City Easement Areas Property Insurance, City Property Insurance, City Easement Areas Property Insurance or School Easement Areas Property Insurance shall be referred to herein as "Insurance" or, as to any one of them, "Insurance").

(c) City's Insurance. Notwithstanding whether City or School terminates or causes the termination of the Joint Use Agreement and notwithstanding anything herein to the contrary, City shall be required to continue to carry, at its cost, the City Liability Insurance and the City Property Insurance in accordance with Sections 6.1(a) and 6.2, respectively, of this Agreement with respect to the Bike Path and Additional Facilities (including the Easement Areas applicable thereto) and that portion of the Easement Areas located on the Contiguous Parcel at all times.

6.4 GENERAL INSURANCE REQUIREMENTS. Each party hereto shall furnish to the other party hereto a certificate(s) of the applicable Insurance which such party is required to procure and maintain under this Article 6, evidencing the coverage required hereunder with respect to the applicable Insurance and payment for such Insurance (a) prior to March 1, 2003 and annually on each anniversary of March 1, 2003 and (b) as may be reasonably requested from time to time by such other party. The Insurance shall be issued by an insurance company with a Best Rating of "A" or above or by a self insurance program organized and maintained in accordance with ORC § 2744.08 and shall require that the other party (the party not required to

procure and maintain such Insurance) shall be given a minimum of thirty (30) days written notice by the insurance carrier prior to cancellation, modification or non-renewal of such coverage. Further, all Insurance shall include the endorsement required under Section 6.6 hereof.

6.5 BLANKET INSURANCE COVERAGE. Each party hereto may, at its option, provide the Insurance which such party is required to maintain hereunder in a blanket policy or policies of insurance and may, at its option, effect such Insurance under a policy or policies in the amounts required, less a reasonable deductible amount, the loss with respect to which would be required to be borne by the party responsible for maintaining such Insurance, subject to any liability imposed upon the other party hereto with respect to such loss under this Agreement or applicable law.

6.6 WAIVER OF SUBROGATION. To the extent permitted by law, each party ("Waiving Party") hereby releases, on behalf of such Waiving Party and its agents, employees, licensees and invitees (collectively, "Waiving Parties"), and, to the extent it is legally possible for it to do so, on behalf of all insurers providing such Waiving Parties with insurance coverage, the other Party and its agents, employees, licensees and invitees (collectively, "Released Parties") from any and all liability or responsibility under or in connection with any and all claims for recovery from the Released Parties (or any of them) for (a) any loss or damage to any of the Waiving Parties' property caused by any Event of Casualty insured against or required to be insured against hereunder, even if such Event of Casualty shall have been caused by the fault or negligence of the Released Parties (or any of them or of anyone for whom any of the Released Parties may be legally responsible), (b) any loss or damage to buildings or other improvements or the contents thereof, (c) any loss or damage as a result of interruption of any of the Waiving Parties' businesses (or any of them), (d) any loss or damage caused by the negligence or misconduct of the Released Parties (or any of them or of anyone for whom any of the Released Parties may be legally responsible) and/or (e) any other direct or indirect loss or damage caused by fire or other risks or by any other cause or origin, to the extent (and only to the extent) the loss or damage under subparagraphs (a), (b), (c), (d) and/or (e) of this Section 6.6 is covered or required under this Agreement to be covered (whether or not such required insurance is in effect) by standard fire and extended coverage insurance, all risk insurance, or commercial general liability insurance. Each Waiving Party hereto hereby agrees to give immediately to any insurer that has issued to it any Insurance described under this Agreement or any other insurance maintained by such Waiving Party in connection with this Agreement written notice of the mutual release contained in this Section and to have such policies endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of such mutual release.

6.7 DEDICATION. The foregoing rights and obligations shall be subject to Section 3.8 of this Agreement.

ARTICLE 7. MORTGAGES

7.1 SUBORDINATION. Any mortgage (including, without limitation, any Leasehold Mortgage, as defined by the Joint Use Agreement and Ground Lease) affecting any portion of the Parcels shall at all times be subject and subordinate to the terms of this Agreement and any person foreclosing any such mortgage, or acquiring title by reason of a deed in lieu of

foreclosure, shall acquire title to that Parcel, or portion thereof, affected thereby subject to all of the terms and conditions of this Agreement.

7.2 LEASEHOLD MORTGAGES. School shall have the right to grant to any Leasehold Mortgagee (as defined by the Ground Lease) a security interest in the School Easements in connection with any security interest granted to such Leasehold Mortgagee by School in the Project, or any portion thereof, in accordance with the Ground Lease.

7.3 SUBLEASEHOLD MORTGAGES. City shall have the right to grant to any Subleasehold Mortgagee (as defined by the Sublease) a security interest in the City Easements in connection with any security interest granted to such Subleasehold Mortgagee by City in the Community Center, or any portion thereof, in accordance with the Sublease.

ARTICLE 8. CONDEMNATION

8.1 CONDEMNATION OF EASEMENT AREAS. In the event that all or a portion of the Easement Areas shall be taken, condemned or appropriated under power of eminent domain or by any competent authority for any public or quasi-public use or purpose, whether such taking, condemnation or appropriation be by agreement (i.e. negotiated settlement) or by suit (as to any one of them, "Condemnation"), then this Agreement shall be terminated as to that part of the Easement Areas which is subject to such Condemnation on the date that School or City, as the case may be, are required to yield possession thereof, and all of School's and City's other respective rights and obligations with respect to such Condemnation shall be subject to the terms and conditions of the Joint Use Agreement; provided that if the part of the Easement Areas subject to such Condemnation is part of the High School Facilities, the terms and conditions of the Ground Lease shall govern such rights and obligations.

8.2 BIKE PATH, CENTRAL ENTRANCE ROAD, PERIMETER ROAD, AND ADDITIONAL FACILITIES. Notwithstanding the foregoing but subject to Condemnation Debt Reduction (as defined by the Joint Use Agreement or Ground Lease, as applicable) and notwithstanding whether or not the Joint Use Agreement is then in effect, to the extent that the part of the Easement Areas subject to a Condemnation is the Bike Path, the Additional Facilities and/or any portion of the Easement Areas located on the Contiguous Parcel ("City Condemned Property"), the proceeds of all awards, settlements or purchase monies received by either party hereto in connection with such Condemnation (collectively, the "Condemnation Proceeds") which are applicable to the City Condemned Property shall be applied to the repair, restoration or replacement of the remaining portions of, as applicable, the Bike Path and/or the Additional Facilities and the Easement Areas on which such Additional Facilities are located and/or that portion of the Perimeter Road located on the Contiguous Parcel, as the case may be, which repair, restoration and replacement shall be performed by City, at its cost and expense. Notwithstanding the foregoing, but subject to Section 8.4 below, in the event that School and City mutually agree that such repair, restoration or replacement is not economically or reasonably feasible or possible or the Ground Lease terminates in connection with such Condemnation, School and/or City, as the case may be, shall have no such obligation to repair, restore or replace, and the Condemnation Proceeds (subject to Condemnation Debt Reduction, if applicable) shall be divided between the parties hereto such that City shall receive that portion of the Condemnation Proceeds equal to the value of City's fee ownership of the City Condemned

Property, and School shall receive that portion of the Condemnation Proceeds equal to the value of School's easement estate hereunder in the City Condemned Property.

8.3 TERMINATION OF JOINT USE AGREEMENT. Notwithstanding Section 8.1, in the event that at the time of a Condemnation, the Joint Use Agreement is terminated, to the extent that the portion of the Easement Areas subject to such Condemnation includes the Driveways, Parking Lots or Sidewalks, the terms and conditions of the Ground Lease shall govern the respective rights and obligations of the parties hereto with respect to such Easement Areas.

8.4 ALTERNATIVE ACCESS ROADS. In the event that all of the Perimeter Road is subject to a Condemnation or that the part of an Perimeter Road subject to such Condemnation is so substantial that the repair, restoration and replacement of same under this Article 8 is not economically or reasonably feasible or possible and whether or not the Joint Use Agreement is then in effect, provided the Ground Lease is not terminated in connection with such Condemnation, each party hereto shall use its best efforts and shall in good faith cooperate with the other to locate an alternative site (the "Alternative Access Road") to replace the portion of the Perimeter Road subject to such Condemnation on either or both of the Parcels. In the event that the parties hereto locate an Alternative Access Road, all of the proceeds of all awards, settlements or purchase monies received by either party hereto in connection with such Condemnation (collectively, the "Access Road Proceeds") (subject to Condemnation Debt Reduction, if applicable) received by the parties hereto in connection with such Condemnation shall be used to improve the Alternative Access Road with the improvements that had been or are located on the portion of the Perimeter Road subject to such Condemnation, provided that any costs and expenses exceeding the Access Road Proceeds shall be paid out of the Community Center Fund (as defined by the Joint Use Agreement) if the Joint Use Agreement is still in effect or, if the Joint Use Agreement is terminated, such costs and expenses shall be shared equally by the parties hereto. Further, this Agreement shall be amended to reflect the addition of the Alternative Access Road to the Easement Areas and the parties' respective rights and obligations thereto as an addition to the Easements.

8.5 DEDICATION. The foregoing rights and obligations shall be subject to Section 3.8 of this Agreement.

ARTICLE 9. EVENT OF CASUALTY

9.1 EVENT OF CASUALTY. In the event of damage or destruction to all or a portion of the Easement Areas (an "Event of Casualty"), the repair, restoration and/or replacement of same shall be performed pursuant and subject to the terms and conditions of the Joint Use Agreement; provided that if the Joint Use Agreement is terminated at the time of such Event of Casualty, the terms and conditions of the Ground Lease shall govern such rights and obligations.

9.2 BIKE PATH, CENTRAL ENTRANCE ROAD, PERIMETER ROAD AND ADDITIONAL FACILITIES. Notwithstanding the foregoing, to the extent that the part of the Easement Areas subject to an Event of Casualty is the Bike Path and/or the Additional Facilities and/or that portion of the Perimeter Road located on the Contiguous Parcel ("Damaged Property"), regardless of whether the Joint Use Agreement is then in effect, all proceeds received

by City under the City Property Insurance shall be used by City to repair, restore and rebuild the Damaged Property, which repair, restoration and rebuilding City shall perform diligently and shall complete same within a reasonable time after the Event of Casualty, subject to events or circumstances not within the reasonable control of City; provided that if the Ground Lease is terminated in connection with such Event of Casualty, City shall have such no obligation to repair, restore or rebuild.

9.3 DEDICATION. The foregoing rights and obligations shall be subject to Section 3.8 of this Agreement.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT

(a) Event of Default by School. If School fails to pay when due any sum due City hereunder, which failure continues for a period of thirty (30) days after receipt of written notice of such failure from City to School, or if School fails to keep, perform or observe any covenants to be kept, observed or performed by School hereunder, which failure continues for a period of ninety (90) days after written notice of such failure from City to School (or such shorter period of time as is reasonably necessary under the circumstances in order to eliminate an unreasonable risk of material harm to persons or property or to stop already occurring material harm to persons or property or such longer period of time as is reasonably necessary to diligently pursue and complete said cure provided that School commences such cure within said ninety (90) day period and thereafter diligently proceeds to completion of same and while doing so shall continue to perform all of its monetary obligations hereunder), then, in either of such events, an "Event of Default" by School shall exist hereunder.

(b) Event of Default by City. If City fails to pay when due any sum due School hereunder, which failure continues for a period of thirty (30) days after receipt of written notice of such failure from School to City, or if City fails to keep, perform or observe any of the other covenants to be kept, observed or performed by City hereunder, which failure continues for a period of ninety (90) days after written notice of such failure from School to City (or such shorter period of time as is reasonably necessary under the circumstances in order to eliminate an unreasonable risk of material harm to persons or property or to stop already occurring material harm to persons or property or such longer period of time as is reasonably necessary to diligently pursue and complete said cure provided that City commences such cure within said ninety (90) day period and thereafter diligently proceeds to completion of same and while doing so shall continue to perform all of its monetary obligations hereunder), then, in either of such events, an "Event of Default" by City shall exist hereunder.

10.2 REMEDIES. If an Event of Default by a party hereto (the "Defaulting Party") exists, then the other party hereto (the "Non-Defaulting Party") may exercise the following remedies while such Event of Default is continuing or remains uncured.

(a) to commence an action for specific performance or, if applicable, for injunctive or other equitable relief against the Defaulting Party and to recover in such proceeding any and all reasonable attorney fees and/or court costs incurred by the Non-Defaulting Party in connection with enforcing the Non-Defaulting Party's remedies under this Section 10.2(a) against the Defaulting Party; and/or

(b) to recover damages (including, without limitation, any costs and expenses which may have been incurred by and unreimbursed to the Non-Defaulting Party under Section 10.2(c) hereof) suffered or incurred by the Non-Defaulting Party as a result of such Event of Default by the Defaulting Party and any and all reasonable attorney fees and/or court costs and/or Binding Arbitration (as defined in Section 10.3 hereof) costs incurred by the Non-Defaulting Party in connection with enforcing the Non-Defaulting Party's remedies under this Section 10.2(b) in accordance with Section 10.4 hereof and, if applicable, via Binding Arbitration (as defined in Section 10.3(b) hereof) proceedings; and/or

(c) to itself perform, or cause to be performed, the covenant, performance or condition required to be kept, observed or performed by the Defaulting Party and which is the subject of the Event of Default by the Defaulting Party; in which event the Defaulting Party shall reimburse the Non-Defaulting Party, within thirty (30) days after a written notice requesting same, for the Non-Defaulting Party's reasonable costs and expenses actually incurred in doing so.

Notwithstanding any provisions of this Agreement or of applicable law or equity to the contrary, the foregoing remedies shall be the sole remedies available to a Non-Defaulting Party, neither party hereto having no right to terminate this Agreement in the event of any Event of Default by the other party hereto. Further, any damages and/or costs and expenses (including, without limitation, the reasonable attorney's fees and court and Binding Arbitration costs referenced in subparagraphs (a) and (b) above) which a Non-Defaulting Party is entitled to recover from a Defaulting Party under this Section 10.2 shall accrue interest at the rate of twelve (12) percent per annum until the date such damages and/or costs and expenses, as the case may be, are paid to the Non-Defaulting Party by the Defaulting Party.

10.3 BINDING ARBITRATION.

(a) Arbitration Required. The parties hereto mutually agree that, subject to Section 10.4 hereof, all disputes, claims and controversies between the parties hereto, whether individual, joint, or class in nature, arising from this Agreement or the Joint Use Agreement, Ground Lease or Sublease or otherwise related to this Agreement, including without limitation contract disputes and tort claims) (as to any of them, "Dispute") shall be resolved by binding arbitration pursuant to the Commercial Rules of the American Arbitration Association (collectively, "Binding Arbitration"), provided that the parties hereto shall not be required to select arbitrators through the American Arbitration Association or pay the filing fees required by the American Arbitration Association. Notwithstanding anything herein to the contrary, this Section shall not limit or otherwise prohibit either Party from the right to pursue the other remedies specifically described under Section 10.2(a) or (c) and the exercise of any such remedies shall not be deemed an

election of remedies. Further, any Dispute concerning the lawfulness or reasonableness of any act, or exercise of any right or remedy under this Agreement, including any claim to rescind, reform, or otherwise modify any portion of this Agreement, shall also be resolved pursuant to Binding Arbitration; provided, however that no arbitrator shall have the right or the power to enjoin or restrain any act of either party hereto or otherwise award either party hereto any equitable relief. Judgment upon any award rendered in accordance with this Section 10.3 hereof may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a party hereto shall be applicable in any Binding Arbitration proceeding, and the commencement of a Binding Arbitration proceeding in accordance with Section 10.3(b) hereof shall be deemed the commencement of any action for these purposes. The Federal Arbitration Act (Title 9 of the United States Code) shall apply to the construction, interpretation, and enforcement of this Section 10.3.

(b) Selection of Arbitrators. Provided that the terms and conditions of Section 10.4 hereof have been satisfied, within thirty (30) days (the "Selection Period") after a party hereto ("Arbitration Requester") provides the other party hereto ("Opposing Party") with written notice that the Arbitration Requester desires to submit a Dispute to Binding Arbitration, the Arbitration Requester and Opposing Party shall attempt to agree upon an arbitrator to whom to submit the applicable Dispute for Binding Arbitration. If the parties hereto are unable to agree upon an arbitrator within the Selection Period, then, at the end of the Selection Period, each party hereto shall select an arbitrator from the seven (7) county Greater Cincinnati Area (Warren County, Butler County, Hamilton County and Clermont County, Ohio and Campbell County, Kenton County and Boone County, Kentucky) ("Cincinnati Area"), and within fifteen (15) days after the end of the Selection Period ("Second Selection Period"), the arbitrators shall agree upon an arbitrator from the Greater Cincinnati Area. If such arbitrators are unable to agree upon an arbitrator within ten (10) days after the end of the Second Selection Period, an arbitrator shall be selected by the American Arbitration Association. Upon selection of the third arbitrator, the Dispute shall be submitted for resolution to all three (3) arbitrators; and based upon pre-arbitration hearing position statements filed by each party hereto with such arbitrators, the arbitrators shall determine in writing, within sixty (60) days of selection of the last arbitrator, which Party has lost the arbitration. The losing party shall pay all fees and expenses of the arbitrators.

10.4 Joint Use Agreement. Notwithstanding anything herein to the contrary, so long as the Joint Use Agreement remains in effect, before pursuing Binding Arbitration as provided in Section 10.3 hereof, a Non-Defaulting Party shall first request relief in accordance with Section 7.5(a) and (b) of the Joint Use Agreement, the terms and conditions of which are incorporated herein by express reference.

ARTICLE 11. ADDITIONAL PROVISIONS

11.1 INDEMNITY.

(a) General Indemnity. Subject to Section 6.6 hereof, School will indemnify and save City harmless from any liability (including, without limitation, reasonable attorney's fees and court costs incurred in connection therewith) on account of any damage to person or property arising out of any uncured Event of Default by School under this Agreement or arising out of any acts or omissions of School, its agents, servants, employees, invitees and/or contractors on, affecting or with respect to the Easement Areas or the Parcels. Subject to Section 6.6 hereof, City will indemnify and save School harmless from any liability (including, without limitation, reasonable attorney's fees and court costs incurred in connection therewith) on account of any damage to person or property arising out of any uncured Event of Default by City under this Agreement and/or arising out of any acts or omissions of City, its agents, servants, employees, invitees and/or contractors on, affecting or with respect to the Easement Areas or the Parcels. This Section 11.1(a) shall survive the expiration of the Term or earlier termination of this Agreement.

(b) Environmental Indemnity.

(i) Definition of Hazardous Substance. For the purposes of this Agreement, the term "Hazardous Substance" means any substance or waste that poses or causes, or is alleged to pose or cause, any damage to property or any personal injury, including death, or threat to human health or the environmental, including without limitation those substances defined, listed, designated or classified as hazardous, toxic, radioactive, or dangerous under any existing applicable local, regional, state, U.S. and foreign laws, or court ruling, regulations, ordinances, codes, and other requirements and directives, concerning environmental, health and safety matters, including but not limited to applicable regulations, ordinances, permits, standards and agreements regarding discharges, emissions, handling, storing, treating and disposal of hazardous and solid wastes, clean-up, and right-to-know requirements, including but not limited to (1) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"), (2) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"), (3) the federal water Pollution Control Act, 33 U.S.C. Section 1251, et seq., (4) the Clean Air Act, 42 U.S.C. Section 7401, et seq., (5) the Safe Drinking Water Act, 42 U.S.C. Section 300F, et seq., (6) the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., (7) the Rivers and Harbors Act of 1899, 33 U.S.C. Section 401, et seq., (8) the Endangered Species Act of 1973, 16 U.S.C. Section 1531, et seq., (9) the Occupational Safety and Health Act of 1979, 29 U.S.C. Section 651, et seq., and (10) the Community Right to Know Act, 42 U.S.C. Section 11001, et seq., all as amended (collectively, the "Environmental Laws") as well as any petroleum product or by-product, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable as fuel, or polychlorinated biphenyls. The term Hazardous Substances shall not include and this Agreement

shall not be construed to prohibit the use, storage or sale of incidental quantities of supplies or products which are commonly used in conjunction with any existing use of the Easement Areas or the Parcels, so long as these items are used, kept and stored in compliance with all Environmental Laws.

(ii) Definition of Environmental Matters. For the purposes of this Agreement, the term "Environmental Matters" means any and all claims, costs, fines, damages, expenses or liabilities (including attorneys' and consultants' fees and expenses) arising under any Environmental Laws, whether brought by government authorities or private parties, which claims, costs, fines, damages, expenses or liabilities relate to or arise out of: (1) the handling, use, storage, disposal, treatment or release (as defined in the CERCLA or any state equivalent) of any Hazardous Substance; (2) the direct or indirect disposal or release of any solid, liquid or gaseous material or any Hazardous Substance; (3) discharges to industrial, storm or sanitary sewers; (4) the placement of structures or materials into any waters, waterways or wetlands; or (5) the presence of any Hazardous Substance in or on any land, water, wetlands, building, structure, equipment or workplace; all of the above, including without limitation, any claims involving the investigation monitoring or cleanup of all or any properties, sites, waters, wetlands (whether waste disposal sites, former plant sites or other sites), buildings, structures, equipment, or workplace upon which any Hazardous Substance may be or may have been bound.

(iii) Covenant Regarding Current Environmental Conditions. City represents and warrants that each of the following covenants are true and correct with respect to Easement Areas and the Parcels. The Parcels currently comply with all Environmental Laws relating to Environmental Matters including, but not limited to, air pollution, water pollution, noise control, on-site or off-site infectious waste discharge, disposal or recovery, on-site or off-site hazardous waste discharge, disposal or recovery, toxic or hazardous substances, and employee safety, and no notice of violation of any such Environmental Laws with respect thereto has been received or is pending, nor does City have knowledge that any such notice is threatened. To City's knowledge, no solid or hazardous wastes, pollutants, contaminants, Hazardous Substances or petroleum substances have been discharged, disposed, released, placed, or dumped onto or under the Parcels, or either of them. No polychlorinated biphenyls, asbestos, or underground storage tanks were or are used by City. City has not received any formal or informal notice from any governmental agency of private or public entity, foreign or domestic, that City is responsible or potentially responsible for response costs in connection with the operations of the Parcels, or either of them, with respect to a release or threat of a release of Hazardous Substances, pollutants or contaminants at any location. There are no, and to City's knowledge have been no, underground fuel storage tanks or any Hazardous Substance, present on, in or under the Parcels, or either of them: (1) the presence of which requires investigation or remediation under any Environmental Laws, and any state health and safety code; or (2) which contains polychlorinated biphenyls or asbestos; or

(3) which contains gasoline, diesel fuel or other petroleum hydrocarbons in any unconfined manner.

(iv) Covenant Regarding Future Environmental Conditions. City covenants and agrees that City will continue to comply with all Environmental Laws relating to Environmental Matters at the Parcels and the Easement Areas and that City will not introduce or permit the introduction of Hazardous Substances on the Parcels or the Easement Areas, without complying with all applicable Environmental Laws. School covenants and agrees that as of March 1, 2003, it will comply with all Environmental Laws relating to Environmental Matters at the Parcels and the Easement Areas and that it will not introduce or permit the introduction of Hazardous Substances on the Parcels, or either of them, or on the Easement Areas without complying with all applicable Environmental Laws, including, but not limited to, the obligation to obtain the proper permits. Each party shall immediately notify the other of any inquiry, test, investigation, or enforcement proceeding concerning the presence of a Hazardous Substance on or affecting any portion of the Parcels or the Easement Areas.

(v) School's Indemnity. Subject to Section 6.6 hereof, School shall defend, indemnify and hold City, City's officers, directors, representatives, and agents harmless from and against any and all damages, claims, judgments, fines, penalties, costs, court costs, liabilities (including, sums paid in settlement of claims) or loss, including reasonable fees of attorneys, technical consultants and other experts, incurred by any of them to the extent such amount results from the violation of School's covenant in this Section 11.1(b) from March 1, 2003 and any clean up work, inquiry, or enforcement proceeding in connection therewith.

(vi) City's Indemnity. Subject to Section 6.6 hereof, City indemnifies and holds School, its members, officers and representatives and agents harmless from and against any and all damages, claims, judgments, fines, penalties, costs, court costs, liabilities (including, sums paid in settlement of claims) or loss, including reasonable fees of attorneys, technical consultants and other experts, incurred by any of them to the extent such amount results from the violation of any of City's covenants in this Section 11.1 (b) and any clean up work, inquiry, or enforcement proceeding in connection therewith.

(vii) Term of Indemnities. This Section 11.1(b) shall survive the expiration of the Term or earlier termination of this Agreement.

11.2 RUN WITH LAND. Each of the Easements, restrictions, covenants and conditions contained herein shall be appurtenant to and for the benefit of all portions of the Parcels and Project Improvements and shall be a burden thereon for the benefit of all portions of the Parcels and Project Improvements and shall run with the land for the Term. Further, this Agreement and the Easements, restrictions, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon City and School and their respective successors, transferees and assigns.

11.3 MODIFICATION. This Agreement may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the consent of City and School at the time of such modification or rescission, and then only by a written instrument duly executed and acknowledged by City and School and duly recorded in the Office of the Recorder of Warren County, Ohio.

11.4 NOT A PUBLIC DEDICATION. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Parcels or the Project Improvements to the general public, or for any public purposes whatsoever, it being the intention of City and School that this Agreement shall be strictly limited to and for the purposes herein expressed; provided that this Section shall not affect the parties respective rights and obligations with respect to the Perimeter Road as provided in Section 3.8 of this Agreement.

11.5 SUBSEQUENT CONVEYANCES. All conveyances, leases or subleases of all or any portion of the Parcels or the Project Improvements subsequent to the date hereof shall recite that they are subject and subordinate to the terms and provisions hereof; provided, the failure of any such deed, lease or sublease to contain such a recital shall not affect the applicability of this Agreement as to the portion of the Parcel or Project Improvements being conveyed, leased or subleased and provided further that nothing in this Section shall be deemed to be an approval or authorization of such conveyance, lease or sublease except as specifically permitted by this Agreement, the Joint Use Agreement, Ground Lease and Sublease and any such conveyance, lease or sublease shall, at all times during the Term, be subject to the Right of First Refusal (as defined by the Ground Lease) of School in and to the "Premises", which includes the Land, Project Improvements and which is more particularly defined by the Ground Lease.

11.6 NO MERGER. The ownership of the all of the Parcels and the lease of the Premises by the same person, entity or instrumentality shall not effectuate a merger and termination of this Agreement.

11.7 ABANDONMENT. Notwithstanding any provisions of applicable law to the contrary, no misuse or abandonment of any Easement Area by any party hereto shall result in a termination of this Agreement or of any of the Easements or other rights granted herein.

11.8 ADDRESSES-NOTICES. Except for legal process which may also be served as by law provided (other than by tacking), all notices required or desired to be given with respect to this Agreement shall be in writing and shall be deemed to have been given when hand delivered and/or, if sent by certified mail return receipt requested or by same day or overnight receipted courier service, when actually received or refused, and shall be addressed as follows:

To: Mason City School District

Kevin L. Bright, Superintendent
211 East North Street
Mason, Ohio 45040

With a copy to:

Richard L. Gardner, Treasurer
211 East North Street
Mason, Ohio 45040

To: The City of Mason

The City of Mason
c/o Community Center Manager
6000 Mason Montgomery Road
Mason, Ohio 45040

With a copy to:

The City of Mason
c/o City Manager
6000 Mason Montgomery Road
Mason, Ohio 45040

The period in which a response to any such notice must be given or taken shall run from the date of personal delivery or the date of actual receipt as evidenced on the return receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. A party's address for notice and/or payment may be changed from time to time by such party by not less than fifteen (15) days' prior written notice to the other party hereto.

11.9 WAIVER OF RIGHTS: ENTIRE AGREEMENT. No failure or delay by City or School to exercise any right or power given it or to insist upon strict compliance by the other with any obligation imposed on it, and no custom or practice of either party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by City or School or any right either party hereto has herein to demand strict compliance with the terms hereof by the other. Except with respect to the Joint Use Agreement, Ground Lease and Sublease, this Agreement (including all exhibits and addenda attached hereto) contains the sole and entire agreement of City and School, and no prior or contemporaneous oral or written representation or agreement between the parties hereto and affecting the Parcels shall have legal effect so as to modify or amend or change the conditions hereof.

11.10 INCONSISTENCIES. Notwithstanding anything herein to the contrary, to the extent that the terms and conditions of this Agreement and the Joint Use Agreement are inconsistent, if the Joint Use Agreement has not otherwise been terminated, the terms and conditions of the Joint Use Agreement shall prevail unless such inconsistency is required to conform this Agreement with the requirements of applicable law, in which event the provisions of this Agreement and such applicable law shall prevail. If the Joint Use Agreement has been terminated, the terms and conditions of the Ground Lease shall control in the event of inconsistency in this Agreement or of this Agreement and the Ground Lease, subject to the requirements of applicable law as provided in the preceding sentence.

11.11 RECORDING. This Agreement shall be recorded in the Office of the Recorder of Warren County, Ohio.

11.12 SEVERABILITY. If any clause or provision of this Agreement or the application thereof to any person, entity or circumstance is or becomes illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity now or hereafter effective during the Term, the intention of the parties hereto is that the remaining parts of this Agreement and the application of such clause or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each such clause or provision shall be valid and enforceable to the fullest extent permitted by law.

11.13 CAPTIONS. The captions used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Agreement as a whole except where noted otherwise. The necessary grammatical changes required to express singular, plural, male, female or neuter, as applicable, shall be assumed in each case to be fully expressed.

11.14 GOVERNING LAW. The laws of the state of Ohio are located shall govern the interpretation, validity, performance and enforcement of this Agreement.

11.15 ESTOPPEL CERTIFICATE. At any time and from time to time, School or City, on or before the date specified in a request therefor made by the other, which date shall not be earlier than ten business (10) days from the making of such request, shall execute, acknowledge and deliver to the requesting party a certificate evidencing: (a) whether or not this Agreement is in full force and effect; (b) whether or not this Agreement has been amended in any way; and (c) whether or not there are any existing Event of Defaults on the part of the party requesting the certificate hereunder to the knowledge of the certifying party and specifying the nature of such Event of Defaults, if any. Each certificate delivered pursuant to this Section may be relied on by any prospective purchaser or transferee of City's or School's interest hereunder or of any part of City's or School's property or by any prospective mortgagor of City or School. The requesting party shall pay all expenses connected with such certificate reasonably incurred by the party giving such certificate.

11.16 TIME IS OF THE ESSENCE. Except as otherwise specifically provided herein, TIME IS OF THE ESSENCE OF this Agreement.

11.17 APPROVALS. When any approval, consent or agreement of a party hereto is required under this Agreement, the parties hereto agree the following shall apply in the absence of a specific provision expressly provided for in this Agreement.

(a) The party whose approval, consent or agreement is required will (unless otherwise specifically provided for in this Agreement with respect to such approval, consent or agreement) within ten (10) days after receipt of a request for same, accompanied in all cases by reasonable detail if the circumstances require, give written notice to the requesting party either that it gives its approval, consent or agreement or that

it withholds same, and, if the latter, such notice shall set forth in reasonable detail its reasons for such withholding; and

(b) If the notification referred to Section 11.17(a) above is not given within the applicable period of time specified in Section 11.17(a) above or as elsewhere provided in this Agreement, the party whose approval, consent or agreement is requested will be deemed conclusively to have given its approval, consent or agreement in writing; and

(c) Any party acting hereunder with respect to giving or withholding an approval, consent or agreement, unless otherwise specified in this Agreement, shall at all times act reasonably and in good faith in doing so.

11.18 FORCE MAJEURE. City and School each shall be excused from the performance of any of their non-monetary obligations for the period of any delay resulting from any cause beyond its reasonable control, including, without limitation, all labor disputes, governmental regulations or controls, fires or other casualties, inability to obtain any material or services or acts of God; subject to any express provision in this Agreement stating that force majeure shall not excuse a delay.

11.19 RELATIONSHIP OF CITY AND SCHOOL. This Agreement does not create any partnership, joint venture or other legal entity between City and School, but rather, is merely a means and a tool for the concerted planning, development and operation of the Contiguous Parcel, Land and the Project Improvements for mixed uses with cross-easements, and with an allocation of certain costs and expenses incurred or expended in connection with the Easement Areas.

11.20 Fiscal Certification by City. As evidenced by her signature on this Agreement, Jennifer Heft, the Finance Director of City, hereby certifies, in accordance with O.R.C. § 5705.41 and the Charter of the City of Mason, that the amount of money necessary to meet the obligations of the City under this Agreement has been lawfully appropriated for that purpose and is in the treasury of the City or is in the process of collection to an appropriate fund.

11.21 Fiscal Certification by School. In accordance with O.R.C. § 5705.412, School hereby certifies that School has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to School on the date on which School has executed this Agreement, are sufficient to provide the operating revenues necessary to enable School to maintain all personnel and programs for all of the days set forth in its adopted School calendars for the current School's fiscal year and for a number of days in succeeding fiscal years of School equal to the number of days instruction was held or is scheduled for the current School's fiscal year.

11.22 EXECUTION. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts. The persons executing this Agreement on behalf of or as a party hereby covenant, warrant and represent that: (a) such party is a duly organized and qualified to do business in the

state in which the Parcels are located; (b) execution of this Agreement has been duly authorized by such party; and (c) execution of this Agreement and performance by such party, of its obligations hereunder do not violate any provision of the corporate charter or by-laws, partnership agreement, or other governance agreement of such party, as applicable, or any outstanding agreement of such party with any other person or entity.

City and School have caused this Agreement to be executed under seal as of the day, month and year first above written.

MASON CITY SCHOOL DISTRICT

By: Kevin L. Bright
Kevin L. Bright, its Superintendent

And

By: Richard L. Gardner
Richard L. Gardner, its Chief
Financial Officer / Treasurer

And as to Section 11.21 hereof only:

Eric B. Kantor
Eric B. Kantor, as President of the Mason
City School Board

THE CITY OF MASON

By: Scot F. Lahrner
Scot F. Lahrner, its City Manager

And

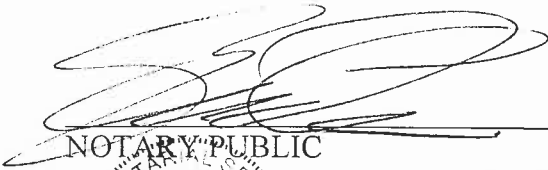

By: Jennifer Heft
Jennifer Heft, its Finance Director

(Acknowledgments On Next Page)

STATE OF OHIO)
) ss:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, did personally appear The City of Mason, by Scot F. Lahrmer, its City Manager, and by Jennifer Heft, its Finance Director, who each acknowledged to me that he/she did sign the foregoing instrument as such City Manager or Finance Director, as the case may be, and that the same is his/her free act and deed, both individually and as such officer of said city and the free act and deed of such city.

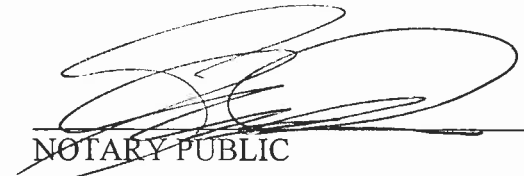
28th IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at this February day of _____, 2003.


NOTARY PUBLIC
 STERLING WIGGS COLVIN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

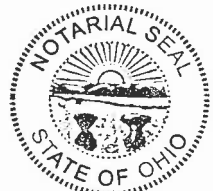
STATE OF OHIO)
) ss:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, did personally appear the Mason City School District, by Kevin L. Bright, its Superintendent, and by Richard L. Gardner, its Chief Financial Officer / Treasurer, who each acknowledged to me that he did sign the foregoing instrument as such Superintendent or Chief Financial Officer / Treasurer, as the case may be, and that the same is his free act and deed, both individually and as such officers and the free act and deed of such school district.

28th IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at this February day of _____, 2003.


NOTARY PUBLIC

(Acknowledgments Continued On Next Page)

 STERLING WIGGS COLVIN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

STATE OF OHIO)
) ss:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, did personally appear the Mason City School Board, by Eric B. Kantor its President, who acknowledged to me that he did sign the foregoing instrument as such President and that the same is his free act and deed, both individually and as such officer and the free act and deed of said school board.

28th IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at this day of February, 2003.


NOTARY PUBLIC

