

ORDINANCE NO. NS-2895

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING A SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND DIOCESE OF ORANGE EDUCATION AND WELFARE CORPORATION, A CALIFORNIA NON-PROFIT CORPORATION, FOR THE MATER DEI HIGH SCHOOL PARKING STRUCTURE AND SCHOOL EXPANSION PROJECT LOCATED AT 1202 WEST EDINGER AVENUE

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. On August 21, 1995, the Diocese of Orange Education and Welfare Corporation (“Developer”) and the City of Santa Ana (“City”) entered into a Development Agreement to facilitate the physical expansion and improvement of an existing private secondary school on that certain property generally located on the west side of Baker Street, north of St. Andrew Place, south of Edinger Avenue, and east of Bristol Street, as approved by Santa Ana City Council Ordinance No. NS-2260.

B. On June 21, 1999, the Developer and City entered into an Amendment to Development Agreement to reflect various changes in the development standards applicable to the Project, as approved by Santa Ana City Council Ordinance No. NS-2389.

C. The Developer is proposing to expand upon the operations of the existing Mater Dei High School campus by constructing a three level, 990-space parking structure, as well as proposing to demolish two older classroom buildings and construct a new two-story classroom building in the central section of the campus (“Project”) located at 1202 West Edinger Avenue within the City.

D. The parties to the Development Agreement now desire to further amend for a second time and completely restate said Development Agreement to reflect these various changes in the development of the Project.

E. The City enters into this Second Amended and Restated Development Agreement pursuant to the provisions of the Government Code and applicable City policies. Specifically, the City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with entities having legal or equitable interests in real property for the purpose of establishing certainty for both City and owner in the development process.

F. Entering into this Second Amended and Restated Development Agreement would provide the City with benefits that are of regional significance, relate to existing deficiencies in public facilities, require the Developer to contribute a greater percentage of benefits than would otherwise be required, and represent benefits which would not otherwise be required as part of the development process.

G. The Project and the use that the Developer proposes in connection with the property have been extensively reviewed and considered by the City, and such proposed development and use have been found to accommodate the City's recommendations and suggestions in order to protect the public's interest to enhance the desirability of such proposed development and use. The terms and conditions of this Second Amended and Restated Development Agreement have been found to be fair, just and reasonable, and the City has concluded that the pursuit of the Project will serve the interests of the City.

H. The Planning Commission has, following a duly noticed public hearing, on July 13, 2015, recommended approval of a second amendment to the Development Agreement.

I. The City Council has held a noticed public hearing on this Ordinance and has considered all testimony presented thereto.

J. Additionally, Final Environmental Impact Report No. 2013-01 and Mitigation Monitoring Program have been approved and certified by this Council by resolution simultaneously with the introduction of this ordinance.

K. The proposed Project will not adversely affect the General Plan, as is expressly set forth in the Request for Council Action dated March 15, 2016, together with all supporting documents and exhibits, which are incorporated herein by this reference.

L. The Developer agrees to indemnify, hold harmless, and defend the City of Santa Ana, its officials, officers, agents, and employees, from any and all liability, claims, actions or proceedings that may be brought arising out of its approval of this project, and any approvals associated with the project, including, without limitation, any environmental review or approval, except to the extent caused by the negligence of the City of Santa Ana.

Section 2. The Second Amended and Restated Development Agreement, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is hereby approved, and the City Manager and Clerk of the Council are authorized to execute it on behalf of the City with such non-substantive changes as may be authorized by the City Manager and City Attorney. The Clerk of the Council is hereby authorized and directed to cause this Second Amended and Restated Development Agreement to be recorded with the County Recorder's Office.

Section 3. This ordinance shall not be effective unless and until Resolution No. 2016-019 is adopted and becomes effective. If said resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or otherwise does not go into effect for any reason, then this ordinance shall be null and void and have no further force and effect.

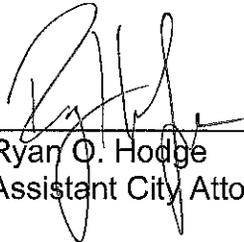
Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this 5<sup>th</sup> day of April, 2016.



\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By:   
\_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

AYES: Councilmembers: Amezcuca, Benavides, Martinez, Pulido, Reyna, Sarmiento, Tinjaero (7)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2895 to be the original ordinance adopted by the City Council of the City of Santa Ana on April 5, 2016 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 4/19/2016

Maria D. Huizar  
Clerk of the Council  
City of Santa Ana

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Recorded in the County of Orange, California

Clerk of the Council  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701

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THIS SPACE ABOVE FOR RECORDER'S USE

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Second Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF SANTA ANA, a charter city and municipal corporation organized and existing under the laws of the State of California ("City"), and THE DIOCESE OF ORANGE EDUCATION AND WELFARE CORPORATION, a California non-profit corporation ("Developer").

RECITALS

A. Developer and City entered into a Development Agreement (the "Development Agreement") dated August 21, 1995 and recorded August 26, 1995 as Instrument No. 19950419668 in the Official Records of Orange County, California (the "Official Records") to facilitate the physical expansion and improvement of an existing private secondary school (the "Project") on that certain property generally located on the west side of Baker Street, north of St. Andrew Place, south of Edinger Avenue, and east of Bristol Street (the "Property"), as approved by Santa Ana City Council Ordinance No. NS-2260.

B. Developer and City entered into an Amendment to Development Agreement dated July 19, 1999 and recorded August 17, 1999 as Instrument No. 19990599190 in the Official Records (the "First Amendment") to reflect various changes in the development standards applicable to the Project, as approved by Santa Ana City Council Ordinance No. NS-2389.

C. *Government Code* § 65868 provides that a development agreement may be amended by mutual consent of the parties to the agreement. City and Developer desire to enter into this Second Amendment in order to facilitate an increase in student population, expansion of school classroom facilities, construction of a parking structure, and for general athletic uses and activities on parcels to be acquired by Developer.

D. The new development added by this Second Amendment is to be located on the additional parcels proposed to be acquired by Developer, which are shown collectively as Additional Parcel No. 4 on Exhibit 1 attached hereto and incorporated herein by this reference. Additional Parcel No. 4 shall be considered as an "Additional Parcel" and as part of the "Property" as those terms are defined herein. The parcels comprising Additional Parcel No. 4 are owned by several different owners.

E. The terms and conditions of this Second Amendment have been found by the City Council to be fair, just and reasonable, and City has concluded that the purpose of the development of the Property as described herein (the "Development") will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this Second Amendment. The City and Developer intend that this Second Amendment shall restate and supersede in their entirety the Development Agreement and the First Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, and the mutual covenants and promises hereinafter contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Application.

As used herein, the "Original Parcel" means that certain property owned by Developer and identified as the "Original Parcel" in Exhibit A (and legally described in Exhibit B) to the Development Agreement. This Second Amendment pertains initially to the Original Parcel and Additional Parcel Nos. 1, 2, and 3, and shall apply to Additional Parcel No. 4 at such time as Developer acquires title to all of the parcels comprising Additional Parcel No. 4 and processes all necessary Street Vacations, Lot Merger and/or Tract Map, Zoning Amendment Application and General Plan Amendment, as applicable, to match the zoning on the Original Parcel with the Additional Parcels is processed by City. It is intended that no further or additional action be necessary by either party hereto to make this Second Amendment effective as to such property.

2. Term.

(a) The "Effective Date" of this Second Amendment shall be the effective date of the ordinance adopted by City approving same after it is submitted to the City Council for approval. City and Developer shall finalize and execute this Second Amendment after it has been approved by the City Council.

(b) The term of this Second Amendment (the "Term") shall be twenty-five (25) years from the Effective Date, subject to earlier termination as hereinafter provided. Unless otherwise specified, the obligations herein and the rights herein shall remain in full force and effect throughout the Term.

(c) City may terminate this Second Amendment prior to expiration of the Term if Developer fails to perform its obligations under this Second Amendment, subject to the requirements of Section 13 hereof.

3. Permitted Use of the Property.

The parties agree that the use of the Property as a private secondary school offering general, technical, vocational and college preparatory education to students in grades 9 through 12 is a permitted use of the Property, subject to the right of City to enforce all laws which do not conflict with the rights of Developer under this Second Amendment. In addition, a permitted use of Additional Parcel Nos. 1 and 2 is a parking lot use and a permitted use of Additional Parcel No. 3 is an office or classroom use, provided such office or classroom use is carried on exclusively in conjunction with the school on the Original Parcel. In addition, a permitted use of

Additional Parcel No. 4 is a parking structure with a possible phasing in or surface parking prior to the construction of the parking structure, provided such uses are carried on exclusively in conjunction with the school on the Original Parcel.

4. Special Development Standards.

The following standards shall apply to the Development notwithstanding anything to the contrary in the land use and development plans and regulations of City as they currently exist or may be hereinafter amended;

(a) Intensity of use: The number of students attending the school on the Property shall not exceed 2,500 at any one time.

(b) Maximum height of buildings: No building on the Property shall exceed 50 feet in height within 100 feet of residential property, or 75 feet otherwise.

(c) Maximum size of buildings: The aggregate floor area of all buildings (excluding the parking structure) on the Property shall not exceed 267,146 square feet to allow for the construction of a new 55,410 square foot Performing Arts Center (in place of the original gymnasium) and a new two-story academic building (to partially replace a number of the original classroom buildings) such that the total aggregate square footage of those classroom buildings other than the academics/science building does not exceed 79,040 square feet. Currently, the site contains 78,639 square feet of original classroom buildings (6 buildings), a 5,000 square foot chapel center, a 13,681 square foot student services building, a 53,426 square foot academics/science building, the 21,320 square foot original gymnasium, a 52,721 square foot athletic complex, a 1,182 square foot locker building for baseball, a 2,879 square foot maintenance building and a 3,807 square foot aquatics center building.

(d) A minimum of 200 parking spaces shall be maintained onsite.

(e) A minimum 15 foot landscaped setback shall be maintained along all public right-of-way, except where existing structures encroach at the bus turn out on Edinger Avenue and where parking is between Bristol Street and the performing arts building per the master plan.

(f) A minimum 5 foot landscaped setback shall be maintained along all interior property lines.

(g) Fire protection systems and fire lanes shall be provided to the satisfaction of the Fire Marshall.

(h) Site access shall be from Bristol Street, Edinger Avenue and at the intersection of St. Andrew Place and Baker Street and emergency vehicle access at Pomona Street and Stanford Street as shown on Exhibits 2, 3, 4, 5, and 6 attached hereto and incorporated herein by this reference.

(i) On-site circulation shall meet minimum City Standard of 23-foot aisle width, 24-foot radius turn-around area for passenger vehicles (40-foot radius for buses and

trucks), continuous forward movement of passenger vehicles, 60-foot entry throats and no less than 8 ½ x 18 foot parking stall sizes.

(j) A minimum 35 foot on-site student drop-off zone shall be provided.

(k) Perimeter limited access gates may be constructed provided that they are open during all business/school hours, visible to the street when closed, and located no closer than 20 feet from the street right-of-way. Access gates shall maintain a 60 foot setback from Edinger and a 20-foot setback from Berkeley and St. Andrew Place.

(l) Parking lots shall be landscaped with 150 square foot minimum planters at the end of rows of parking.

(m) An 8-foot high masonry wall, as measured from the adjacent grade, shall be provided along the east property line abutting residential.

(n) Ornamental iron or similar fencing, such as painted tubular steel or aluminum, shall be used if fencing is provided around the campus buildings along Edinger and Bristol Streets. Chain link may be utilized at athletic fields.

(o) The Building Security Regulations (S.A.M.C. Chapter 8, Article 2, Division 3) are applicable only to new buildings and remodels exceeding 50% of the value of the existing building or structure. These regulations do not apply to unopenable windows or mechanical shafts that are not accessible. Waiver requests from these regulations will be considered as each building is being reviewed in Building Division plan check. On-site manned security shall be a consideration in evaluating waiver requests.

(p) City will conduct architectural review as a component of the Development Project Plan Review process as to:

- Architectural compatibility to the site and area;
- Architectural treatment on all sides of buildings;
- Architectural finishes, materials and colors; and
- Compliance with general architectural design standards applied citywide.

However, City will not mandate a particular architectural style (i.e. mission, post modern, cape cod) on the Project.

(q) Developer shall install parking lot lighting for security purposes as required by City.

(r) Developer shall maintain an on-site circulation management program.

(s) Developer grants to City the authority to remove graffiti on any block wall facing a public street upon reasonable notice to Developer.

5. General Development Standards

Except as otherwise provided in Sections 4 and 6 of this Second Amendment, City and Developer agree that the general plan provisions, ordinances, rules, regulations and official policies of City establishing design, density, improvement and construction standards which are in effect as of the Effective Date of this Second Amendment shall govern the Development during the Term; provided, however, that development standards as revised after the Effective Date of this Second Amendment may be applied to the Development with the mutual consent of Developer and City's Planning Manager. Additionally, all proposed improvements must conform to all Site Plan Review approvals for the Project.

6. Non-vested City Laws and Regulations

(a) Developer and all persons and entities in occupancy of any portion of the Property shall comply with all City laws and regulations which do not conflict with the use and development of the Property pursuant to Sections 3 and 4 of this Second Amendment, as such City laws and regulations may from time to time be enacted or amended hereafter. Specifically, but without limitation on the foregoing, use and development shall comply with the following types of City laws and regulations as they may from time to time be enacted or amended hereafter:

- (i) Taxes, assessments, fees and charges; provided, however, that the collection of certain development fees shall be governed by subsection (b) of this Section 6.
- (ii) Building, electrical, mechanical, fire and similar codes based upon uniform codes incorporated by reference into the Santa Ana Municipal Code;
- (iii) Laws, including zoning code provisions, which regulate the manner in which business activities may be conducted or which prohibit any particular type of business activity on a city-wide basis; and
- (iv) Procedural rules of general city-wide application.

(b) The Transportation System Improvement Fee (currently established by S.A.M.C. § 8-44), the Drainage Area Fee (currently established by S.A.M.C. §§ 34-191 et seq.) and the Sewer Connection Fee (currently established by S.A.M.C. § 39-53) shall be paid by Developer in the rates in effect at the time payment is due. However, the calculation and collection of such fees shall be governed by the following principles:

- (i) Transportation System Improvement Fee:
  - Payment shall be due prior to issuance of building permits.

- The fee will not be applied to the remodel or rehabilitation of existing buildings.
- Credit will be given for the demolition of any existing structure pursuant to Santa Ana Municipal Code § 8-44.

(ii) Drainage Area Fee:

- Payment will be due prior to the issuance of a building permit.
- A 12-acre credit will be given for previous fees paid for the Property.

(iii) Sewer Connection Fee:

- Payment shall be due prior to issuance of building permits.
- Credit will be given for fixture units removed due to the demolition of any structure.
- No fee shall be collected for the rehabilitation or remodel of a building unless there is a net increase in the number of fixture units.

The parties also understand that City currently collects a fee on behalf of the Orange County Sanitation District and that such district determines the rules for collection, and for determining the amount, of that fee.

City shall not impose any fee on Developer for the construction of street medians.

7. Dedications and Street Improvements

(a) Dedication of a 34-foot wide drainage and utility easement with landscaping as shown on Exhibit 7 attached hereto and incorporated herein by this reference. Developer, at a minimum, shall be responsible for replacement of the paving and improvements within the Pedestrian Plaza as identified on the Site Plan.

Prior to the issuance of a certificate of occupancy for any new building on the Property, Developer shall make the dedication described in subsection 7(a), above, and shall complete the improvements listed in subsection 7(b).

(b) Parking Structure and Additional Athletic Space to be completed by Developer at Developer's sole cost and expense:

- (i) Installation of a traffic signal and crosswalk at Bristol Street and St. Andrew Place, plus a dedicated right-turn lane along westbound St. Andrew Place at Bristol Street;

- (ii) Completion of abandonment and associated utility relocations for Baker Street, Berkeley Street and Occidental Street, keeping an opening between Berkeley Street and Occidental Street as a public alley;
- (iii) Completion of drainage improvements and storm drains;
- (iv) Modification of a four-way stop at the intersection of St. Andrew Place and Baker Street; and
- (v) Updated left-turn signal timing at the Edinger Avenue and Monarch Way intersection for entry into the Mater Dei campus.

8. Site and Development Plan.

It is agreed by the parties hereto that the Site and Development Plan conforms to the development standards established for the Property by this Second Amendment. It is understood, however, that said Site and Development Plan is conceptual only, and that nothing herein shall be construed to require that the development of the Property be in accordance with the Site and Development Plan, provided the development of the Property is otherwise consistent with the development standards established by this Second Amendment. It is recognized that there may be changes in the Site and Development Plan and any such changes in the Site and Development Plan that are in substantial conformance with the development standards established for the Property by this Second Amendment shall be approved by City. Further, nothing herein shall be construed: (i) to relieve Developer from obtaining development project plan approval pursuant to Sections 41-668 et seq. of the Santa Ana Municipal Code, whether the proposed development of the Property is in accordance with the Site and Development Plan or not, or (ii) to prohibit City from imposing reasonable conditions on such development project plan approval consistent with the development standards established by this Second Amendment; provided however no such review shall authorize or permit City to impose any condition or withhold approval to any proposed building or plan modification, the result of which would be inconsistent with any provisions of this Second Amendment.

Developer, through oversight and management, shall use its best efforts to assure that staff and students attending the school on the Property fill on-site parking spaces first, parking spaces in the City lot referenced in subsection 12(b) hereof second, other available off-street parking facilities third, and on-street parking last. Developer shall also use its best efforts to promote vehicle trip-reduction practices. Developer is exempt from other city requirements concerning parking management and trip reduction.

9. Vesting of Development Rights.

As a material inducement to Developer to continue with diligent efforts to promote the development of the Property, City desires to cause all development rights which may be required to develop the Property to completion, consistent with this Second Amendment, to be deemed vested in Developer for the benefit of the Property, as of the time specified in Section 1 of this Second Amendment, to the greatest extent permitted by law, and to be free of all (i) discretionary rights of City or any other person, entity or governmental agency, other than those required in

connection with Street Vacations, Lot Merger and/or Tract Map, Zoning Amendment Application and General Plan Amendment discussed in Sections 1 and 11 hereof, and (ii) any subsequent building moratoriums, ordinances, rules, regulations, policies or restrictions on development which are inconsistent with this Second Amendment. Notwithstanding the foregoing, nothing set forth in this Second Amendment shall be deemed to require Developer to commence or complete the Development.

In accordance with the terms of Government Code Section 65866, City and Developer agree that the general plan provisions, ordinances, rules, regulations and official policies of City in effect as of the date of this Second Amendment governing the design, density, permitted land uses, improvement and construction standards applicable to the Development (collectively, the "Existing Development Regulations") shall govern during the Term. City shall not, in subsequent actions applicable to the Property or the Development, apply general plan provisions, ordinances, rules, regulations and policies which conflict with the Existing Development Regulations, except with the mutual consent in writing of City's Planning Manager and Developer. Except as otherwise provided in this Second Amendment, no amendment to or revision of, or addition to any of the Existing Development Regulations without the mutual consent in writing of City's Planning Manager and Developer, whether adopted or approved by the City Council or any office, board, commission or other agency of City, or by the people of City through charter amendment, referendum or initiative measure or other vote, shall be effective or enforceable by City with respect to the Development, its design, grading, construction, remodeling, use or occupancy, schedule or development.

10. Environmental Compliance.

The Environmental Impact Report for the Development is incorporated herein by reference as though fully set forth at length. City and Developer acknowledge that to the extent that said document identifies certain mitigation measures applicable to the Development, Developer agrees to implement the various mitigation measures recommended to be implemented by Developer pursuant to said document, provided that Developer proceeds with the Development and commences construction. City agrees to implement the various mitigation measures recommended to be implemented by City pursuant to said document, provided that Developer proceeds with the Development and commences construction.

11. Street Vacations.

Developer shall submit an application and City shall hold a public hearing to consider whether to adopt a resolution vacating City's right of way easements over Baker Street, Berkeley Street, Occidental Street and St. Andrew Place, to the extent they are included on or about Additional Parcel No. 4, as shown in Exhibit 8 attached hereto and incorporated herein by this reference. Such resolution shall not be adopted prior to Developer having acquired title to all the parcels that collectively comprise Additional Parcel No. 4, and may include conditions which must be fulfilled prior to the vacation becoming effective, including, but not limited to, Developer compensating City for the fair market value of the street right of way to be vacated.

If said vacation resolution is approved, Developer shall prepare plans for and remove street improvements from the vacated streets, relocate utilities and construct public drainage

improvements in the area of any drainage easement granted to City by Developer pursuant to Section 7 of this Second Amendment, in accordance with the following terms and conditions:

(1) The traffic access and circulation, utility service and drainage will be continuously provided to the parcels within the block adjacent to Additional Parcel No. 4, acceptable to the Public Works Agency.

(2) Said street removal, utility and drainage improvement work shall be completed by Developer prior to the date occurring two (2) years after the date on which City has adopted the resolution vacating the right of way easements.

(3) Developer shall be responsible for plan preparation, removal and/or relocation of all public utilities located in the area of the streets that are to be vacated pursuant to this section, without cost to City. If, at the design development stage, City determines that street lights are required as a result of the termination of Berkeley Street or Occidental Street, Developer shall design and install the street lights within the context of standard spacing requirements utilized citywide.

(4) Once all required street vacations are completed, the Additional Parcels shall be merged with the Original Parcel into a single new parcel by means of a lot consolidation process. Developer shall file, process and record the lot consolidation. The consolidation shall be completed prior to the issuance of a building permit.

(5) City shall retain existing utility easements within the former street rights-of-way abandoned for the Project, where necessary as determined by the Public Works Agency. The Developer shall hold City harmless against damages and all other claims resulting from the condition of City utilities.

(6) It is understood and agreed that the drainage improvements to be installed by Developer in the drainage easement shall be storm drains and surface drainage facilities as depicted in Exhibits 9 and 9A attached hereto and incorporated herein by this reference, or as approved by the Public Works Agency. Developer may install an underground piped drainage system within school property. Once constructed, Developer shall be responsible for maintaining and cleaning the on-site drainage facilities and shall keep the drainage facilities free and clear of all impediments to drainage.

(7) Developer shall relocate any utility poles and guy wires that interfere with the Project located between Berkeley Street and Occidental Street as shown on Exhibit 10 attached hereto and incorporated herein by this reference.

#### Off-site Parking Mitigation

(b) The parties hereto acknowledge and agree that the students attending the school park their automobiles on the local streets in neighboring residential areas. The parties have worked to jointly mitigate the student parking problem that would exist unless mitigated by the provision of additional off-street parking areas. Specifically, the parties have already undertaken the off-street parking mitigation measures set forth in subsections (b) and (c) of this Section 12.

(c) In the year 2000, City constructed a public parking lot on the east side of Bristol Street north of Edinger Avenue as part of its Bristol Street widening project. The parking lot contains approximately 240 parking spaces. City shall not impose any charge for parking at the parking lot.

(d) In the year 1999, Developer acquired Additional Parcel Nos. 1, 2, and 3 for use and improvement as a parking area for students attending the school as shown on the Site and Development Plan. At Developer's expense, Developer removed the improvements previously located on Additional Parcel No. 3 within one (1) year after the conveyance of Additional Parcel No. 3 to Developer. Developer may use the area for other school uses including offices and classrooms if a substitute parking area for students having an equal parking capacity is provided elsewhere, either on the Property or on other property in the vicinity of the Property which either is owned by Developer or is subject to an easement or covenant which allows its use for parking appurtenant to the school on the Property.

## 12. Default and Remedies

(a) Developer shall be in default under this Second Amendment upon the happening of one or more of the following events or conditions:

- (i) If a material warranty, representation or statement made or furnished by Developer to City is false or proves to have been false in any material respect when it was made;
- (ii) A finding and determination by the City Council made following a periodic review under Government Code Section 65865.1 that upon the basis of substantial evidence, Developer has not complied in good faith with a material requirement of this Second Amendment; or
- (iii) An express repudiation, refusal or renunciation of this Second Amendment, if the same is in writing and signed by Developer.

(b) City shall be in default under this Second Amendment if it shall:

- (i) fail to comply in good faith with the requirements hereof regarding the permitted development standards and uses specified herein, or City's obligations under Section 12 hereof; or
- (ii) expressly repudiate, refuse or renounce this Second Amendment in writing.

(c) Notwithstanding any provision of this Second Amendment to the contrary, except for Developer's default under subsection 13(a)(iii), above, Developer shall not be deemed to be in default under this Second Amendment, and City may not terminate Developer's rights under this Second Amendment, unless City shall have first delivered a written notice of any alleged default to Developer, which shall specify the nature of such default. Except for Developer's default under subsection 13(a)(iii), if such default is not cured by Developer within

ninety (90) days of service of such notice of default, or with respect to defaults which cannot be cured within such period, Developer fails to commence to cure the default within sixty (60) days after service of the notice of default, or thereafter fails to diligently pursue the cure of such default until completion, City may terminate Developer's rights under this Second Amendment. Upon the occurrence of a default by City, as described in subsection 13(b)(i), Developer may give written notice to City specifying the nature of such default. If City has not cured such default within (90) days of such notice, an event of default by City shall be deemed to have occurred. The occurrence of a default by City under section 13(b)(ii), above shall, at the option of Developer, and upon written notice to City, immediately constitute an event of default by City.

(d) In the event a breach of this Second Amendment occurs, irreparable harm is likely to occur to the nonbreaching party and damages may be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that specific enforcement of this Second Amendment is a proper and desirable remedy.

(e) In no event shall either party be entitled to damages against the other party based on the other party's default under this Second Amendment.

#### 13. Amendment or Cancellation

Except as otherwise provided for herein, this Second Amendment may be amended or canceled in whole or in part only by mutual consent of the parties, or their successors in interest, and in the manner provided in Government Code Sections 65865.1, 65867, 65867.5 and 65867.

#### 14. Enforcement

Unless amended or canceled as provided in Section 14, this Second Amendment shall continue to be enforceable by any party to it, notwithstanding any change or other regulations adopted by City which alter or amend the rules, regulations or policies applicable to the Development.

#### 15. Suppression of Agreement by Changes in State or Federal Law or by Judicial Decision

In the event that state or federal laws, ordinances, rules, policies or regulations or the laws, ordinances, rules, policies, or regulations of any other governmental or quasi-governmental entity are enacted after the Effective Date of this Second Amendment, or the action or inaction of any other affected governmental jurisdiction or any judicial decision prevents or precludes compliance with one or more provisions of this Second Amendment, or imposes a requirement on the Development materially different than as otherwise contemplated by this Second Amendment, or requires changes in plans, maps or permits approved by City or changes in the development standards set forth in this Second Amendment, the parties shall:

(a) Provide the other party with written notice of such restriction, together with a copy of the applicable law, rule, regulation or policy and a statement in reasonable detail setting forth the conflict of same with the provisions of this Second Amendment; and

(b) Promptly meet and confer with the other party in good faith and make a reasonable attempt to modify or suspend this Second Amendment to comply with such law, ordinance, rule, policy or regulation or judicial decision. Thereafter, regardless of whether the parties reach agreement on the effect of such law, ordinance, rule, policy or regulation upon this Second Amendment, the matter shall be scheduled for a hearing before the City Council upon thirty (30) days notice, for the purposes of determining the exact modification or suspension which is required by such law, ordinance, rule, policy, regulation or judicial decision. It is the express intent of the parties to modify this Second Amendment to allow for the development of the Development in as close conformity to the terms and conditions of this Second Amendment as reasonably possible. Nothing herein shall preclude Developer from challenging the conflicting law, rule, regulation or policy.

16. Mortgagees

In the event City receives written notice from any institutional lender or pension trust (a "Mortgagee") that it has obtained a deed of trust or mortgage on all or any portion of the Property (a "Mortgage"), together with a copy thereof, City agrees as follows:

(a) City shall mail, first-class, postage prepaid, to each Mortgagee a copy of any notice given to Developer concurrently with the giving of such notice to Developer. If Developer fails to cure such default within the period allowed in this Second Amendment, City shall give another written notice to each Mortgagee of such failure.

(b) City shall not terminate or cancel this Second Amendment (i) if any Mortgagee has cured any default curable by payment of money within thirty (30) days of notice, or (ii) if a non-monetary default, any Mortgagee has commenced, in good faith, to cure such non-monetary default and diligently proceeds to cure such non-monetary default within a reasonable time. A default shall be deemed cured by the giving of a written agreement by any Mortgagee or by any purchaser of the Property upon a foreclosure of a Mortgage or by a transfer by deed in lieu of foreclosure (herein, a "Purchaser") to continue to be bound by the terms of this Second Amendment.

(c) City shall accept the performance of any such Mortgagee or Purchaser as if such performance were rendered by Developer. Each Mortgagee and each such Purchaser shall have the right but not the obligation, to remedy any defaults of Developer within the time specified herein. No Mortgagee or Purchaser shall have any liability under this Second Amendment except for acts or events which occur while such Mortgagee or Purchaser holds title to the Property or portion thereof.

(d) The provisions of this Section 17 are solely for the benefit of Mortgagees and Purchasers and shall not otherwise impair any rights of City against Developer.

(e) No default or event of default hereunder by Developer shall defeat, impair or render invalid the lien of any Mortgage made in good faith and for value as to the Development or any portion thereof.

(f) City, by resolution of the City Council, may modify or add to the provisions of this Section 17 at the request of any institutional lender or pension trust providing

financing, so long as such requested modifications or additions pertain only to the rights of a Mortgagee or Purchaser hereunder and are not otherwise inconsistent with the terms of this Second Amendment.

17. Relationship of the Parties

It is hereby specifically understood and acknowledged that the Development is a private project and that neither City nor Developer will be deemed to be the agent of the other for any purposes whatsoever.

18. Notices.

Any notice of instrument required to be given or delivered to either party to this Second Amendment may be given or delivered by depositing the same in the United States mail, certified mail, postage prepaid, addressed to:

City: City of Santa Ana  
20 Civic Center Plaza  
P.O. Box 1988  
Santa Ana, California 92702  
Attention: Hassan Haghani,  
Executive Director, PBA

Developer: Diocese of Orange  
13280 Chapman Avenue  
Garden Grove, California 92840  
Attention: Bill Milligan,  
Director of Real Estate

Notice of a change of address shall be delivered in the same manner as any other notice provided herein, and shall be effective three days after mailing by the above-described procedure.

19. Severability

If any term, provision, condition, or covenant of this Second Amendment, or the application thereof to any part or circumstances, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Second Amendment shall be valid and enforceable to the fullest extent permitted by law.

20. Entire Agreement.

This Second Amendment and the Exhibits attached hereto contain the entire agreement between the parties, and is intended by the parties to completely state this Second Amendment in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto, not expressly set forth in this Second Amendment, is null and void.

21. Exhibits

All exhibits to the Second Amendment are attached hereto and incorporated herein as if fully set forth herein, and in the event of any duplicative numbered or lettered exhibits, all exhibits to this Second Amendment shall supersede and replace any previous exhibits.

22. Hold Harmless

Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage, which may arise from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relate to the Project; and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Second Amendment. Developer agrees to pay all costs for the defense of City and its officers, agents, employees, consultants, special counsel, and representatives regarding any action for damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Developer's actions in connection with the Project, any claims arising out of this Second Amendment, or any approval or certification by City relating to the Project. This hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in Section 11.5 or due by reason of the terms of, or effects, arising from, this Second Amendment or any approval or certification by City relating to the Project, regardless of whether or not City prepared, supplied or approved this Second Amendment, plans or specifications, or both, for the Project. Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of City, including fees and costs for special counsel to be selected by City, regarding any action by a third party challenging the validity of this Second Amendment or any approval or certification by City relating to the Project, or asserting that damages, just compensation, restitution, judicial or equitable relief is due to personal or property rights by reason of the terms of, or effects arising from this Second Amendment. City may make all reasonable decisions with respect to its representation in any legal proceeding.

23. This Second Amendment may be executed in counterparts which, when both of the parties hereto have signed this Second Amendment, shall constitute an original.

24. The Development Agreement, originally adopted on August 21, 1995, as amended by the First Amendment, and as further amended and completely restated in its entirety by this Second Amendment, is hereby accepted by City and Developer, and it will be administered in the State of California, and its validity, construction, and all rights thereunder shall be governed by the laws of such state.

IN WITNESS WHEREOF, this Second Amended and Restated Development Agreement has been executed by the Parties hereto on the day and year first written above.

**ATTEST:**

**CITY OF SANTA ANA**

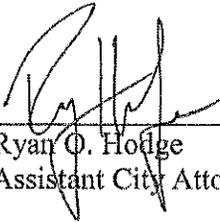
\_\_\_\_\_  
MARIA D. HUIZAR  
Clerk of the Council

\_\_\_\_\_  
DAVID CAVAZOS  
City Manager

**APPROVED AS TO FORM:**  
SONIA R. CARVALHO  
City Attorney

THE DIOCESE OF ORANGE EDUCATION  
AND WELFARE CORPORATION

By:

  
\_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

By:

\_\_\_\_\_  
Reverend G. Sallot,  
its Vicar General

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
HASSAN HAGHANI  
Executive Director – PBA

MORTGAGEE'S CONSENT

This Mortgagee's Consent is executed by the undersigned Farmers & Merchants Bank of Long Beach ("Lender") as the current beneficiary of record under that certain Deed of Trust encumbering the Property and recorded December 17, 2010 as Instrument No. 2010000682344 in the Official Records of Orange County, California (as amended, the "Deed of Trust"). The Lender has reviewed the foregoing Second Amended and Restated Development Agreement (the "Second Amendment"), and hereby consents to the terms and conditions of the Second Amendment. Capitalized terms used and not otherwise defined in this Mortgagee's Consent shall have the meanings set forth in the Second Amendment.

FARMERS & MERCHANTS BANK OF  
LONG BEACH, a \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name and Title]

By: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name and Title]