

Attachment B

Ground Lease Agreement

**GROUND LEASE AGREEMENT
BETWEEN THE CITY OF NEWPORT BEACH AND
PACIFICA CHRISTIAN HIGH SCHOOL OF ORANGE COUNTY**

This Lease Agreement ("Agreement") is made and entered into as of the 21st day of ~~August~~ ^{SEPTEMBER}, 2014 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city ("City"), and Pacifica Christian High School - Orange County, a California non-profit corporation ("Tenant"). City and Tenant are sometimes individually referred to as "Party" and collectively as "Parties" herein.

RECITALS

A. City is the owner of the property, structures, and improvements commonly known as West Newport Community Center located at 883 West 15th Street, Newport Beach, California [Assessor's Parcel Number 424-011-37] ("Property"). The Property includes an existing 17,455 square foot, two-story building with gymnasium, on-site parking, and play area and is depicted on Exhibit "A" attached hereto and incorporated herein by this reference.

B. City owns fee simple title to the Property pursuant to an Agreement between the City and Newport Campus Church dated October 10, 1988.

C. Tenant is a non-profit corporation commonly known as Pacifica Christian High School - Orange County ("Pacifica Christian High School"). Pacifica Christian High School is to be operated as a private school with instruction for ninth through twelfth grade.

D. Tenant proposes to lease the Property including the existing 17,455 square foot, two-story building with gymnasium, on-site parking, and play area. Subject to City review and approval as to scope, Tenant may make modifications and improvements to the existing buildings, site, and equipment which may be necessary to operate the Property as a high school. The Property is depicted and legally described on Exhibit "A" attached hereto and incorporated herein by this reference. Tenant may begin constructing the necessary improvements upon execution of this Agreement and delivery of the Property, subject to receipt of necessary permits and approvals, but in no event before September 15, 2014. Equipment (as defined in Recital "E") may not be removed until the Shared Use Termination Date (as defined in Section 5.3), or at the time in which new Equipment is installed on the Property by Tenant to replace the existing Equipment, pursuant to Section 8.1.2, whichever occurs first. Construction shall not have a material impact or prevent City's use of the various classrooms, equipment, and associated parking on the Property (*i.e.* installation of partition walls to demise Room 2 and Room 4), subject to the schedule attached as "Exhibit B" attached hereto and incorporated herein by this reference. Further, Tenant shall insure that restrooms are available for use during City's recreation programming. Improvements to building and site must comply with current building code requirements (*i.e.* ADA compliance).

E. The playground equipment ("Equipment") on the Property consists of that which is fully depicted in "Exhibit A" attached hereto and incorporated herein by this reference.

F. Further, all Tenant modifications and improvements to the existing buildings, site, and Equipment, including parking restrictions, are subject to the City Zoning Administrator approval, as resolved in Resolution No. ZA2014-031 (PA2014-045) on August 14, 2014 and any future amendments or revisions thereto and attached hereto and incorporated herein by this reference as "Exhibit C."

G. Pursuant to City Council Policy F-7(B), the City sought the assistance of an appraiser to determine the fair market value rent for the Property. Under City Council Policy F-7(E)(3) and (5), the City did not conduct an open bid process because converting the Property to another use or changing the manager, concessionaire or lessee of the Property would result in excessive vacancy, relocation or severance costs, which would outweigh other financial benefits and the Property provides an essential or unique service to the community that might not otherwise be provided were full market value of the Property be required. Although the City did not conduct an open bid process, the City shall charge Tenant the fair market value rent for the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, City and Tenant hereby agree as follows:

1. DEFINITIONS

1.1 General Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

(a) Alteration – any improvements, additions, alterations, changes, or modifications of the Property made by Tenant, its employees, agents, contractors, and subcontractors.

(b) Authorized City Representative – the City Manager or his/her designee.

(c) Commencement Date – the date the City delivers possession of the Property to Tenant in the condition provided in Section 8.1.

(d) Expiration – the lapse of the time specified as the Term of this Agreement, including any extension of the Term resulting from the exercise of an option to extend.

(e) Law(s) – any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the Parties hereto or the Property.

(f) Maintenance or Maintain – repairs, replacement, maintenance, striping, repainting, and cleaning.

(g) Person – one (1) or more natural persons, or legal entities, including, without limitation, partnerships, corporations, trusts, estates, associations, or a combination of natural persons and legal entities.

(h) Provision – any term, covenant, condition, or clause in this Agreement that defines, establishes, or limits the performance required or permitted by either Party.

(i) Rent – includes rent, taxes, and other similar charges payable by Tenant under the provisions of this Agreement.

(j) Successor – assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of this Agreement, to the rights or obligations of either Party.

(k) Term – the Initial Term, as the same may be extended by the Option Term pursuant to the provisions of this Agreement.

(l) Termination – the termination of this Agreement, for any reason, prior to Expiration.

1.2 Other Definitions. – The following additional terms are defined in the following sections of this Agreement:

(a)	Rent	§4
(b)	Hazardous Materials	§16
(c)	Indemnified Parties	§10.1
(d)	Option Term(s)	§3.2
(e)	Property	Recitals, §A
(f)	Equipment	Recitals, §E
(g)	Initial Term	§3.1
(h)	Tenant Improvements	§8.1

2. **PROPERTY**

City finds it to be consistent with public facility uses to grant Tenant a right to remodel, maintain, use and operate the existing 17,455 square foot two-story building with gymnasium, on-site parking, and play area on the Property. Therefore, subject to

the terms and conditions set forth herein, City hereby leases to Tenant and Tenant agrees to lease the Property in an “as is” condition as tendered from City, subject to any representations, warranties and covenants of the City specifically set forth in this Agreement. Tenant agrees that no representations with respect to the condition or improvements of the Property have been made by City except as specifically set forth in this Agreement.

3. TERM

3.1 Term of Agreement. The initial term of this Agreement shall be ten (10) years from the Commencement Date (“Initial Term”), unless terminated sooner as provided in this Agreement, or extended as provided in Section 3.2.

3.2 Option to Extend. Provided Tenant is not then in default under this Agreement beyond applicable notice and cure periods, Tenant may extend the term of this Agreement for two (2) additional successive terms of five (5) years (the “Option Term”) commencing on Expiration of the Initial Term or an Option Term, on the same terms and conditions as contained in this Agreement. Tenant must exercise its option by giving City written notice of its intention to extend the Term at least six (6) months prior to Expiration of the Initial Term or an Option Term.

3.3 Purchase Option. Subject to City’s obligation to first comply with the Surplus Lands Act (Cal. Govt. Code §§ 54220, *et seq.*) and provided Tenant is not in default under this Agreement beyond applicable notice and cure periods, , City shall, in good faith and upon the same material terms as would be offered to other private parties, grant Tenant a continuing First Right of Refusal (FROR) to purchase, should City elect to transfer the Property. For purposes of this Agreement, “transfer” and similar terms mean and include, without limitation, a sale or other transfer of all or any part of the Property, or interest therein, either alone, or as part of a larger sale, provided, however, that “transfer” shall not include the granting of an easement or similar right on a portion of the Property that would not materially interfere, disrupt, or frustrate Tenant’s contemplated use pursuant to this Agreement.

3.4 Hold Over. Should Tenant, with City’s consent, hold over and continue in possession of the Property after Expiration of the Term or any Option Term, Tenant’s continued occupancy of the Property shall be considered a month-to-month tenancy subject to all the terms and conditions of this Agreement, except the provisions of Sections 3.1 and 3.2.

3.5 Redevelopment of Property. Should City redevelop the Property for City use during the term of this Agreement, or any extensions thereof, which will materially interfere with Tenant’s ability to occupy or use all or a portion of the Property, City shall provide Tenant with at least two (2) years’ prior written notice of termination of this Agreement, and in no event shall City commence redevelopment of the Property until at least two (2) years after Tenant’s receipt of such written notice.

4. RENT

4.1 Rent. Tenant shall commence payment of rent upon the Commencement Date. The "Rent," which includes the use of the Property, shall be established at Two Hundred Eighty Nine Thousand, Fifty Four Dollars and 80/100 Cents (\$289,054.80) per year. Rent shall be paid, in advance, in equal monthly installments on the first day of each month (e.g., Twenty Four Thousand, Eighty Seven Dollars and 90/100 Cents (\$24,087.90) per month). Rent for any partial month shall be prorated in accordance with the actual number of days in that month and shall be due on the first day of that month that falls within the Term.

Rent due hereunder will be subject to the rent adjustment provisions of Section 4.2 below. Tenant shall send said rent to the mailing address or send an electronic fund transfer via the web address provided in Section 4.5. Tenant shall be responsible for any delays in the mode of sending the rent payment to City.

4.2 Rent Adjustments. Rent may be adjusted on the 1st anniversary of the Commencement Date and then on the 1st of each Lease Year thereafter (the term "Lease Year" as used herein refers to successive twelve (12) month periods, commencing with the Commencement Date of this Agreement) to reflect increases in the cost of living as indicated by the Consumer Price Index described below, except as set forth in Section 4.3. Rent may be adjusted if the Consumer Price Index for the Los Angeles – Orange County - Riverside Area, All Urban Consumers, All Items ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics ("Bureau"), increases over the Base Period Index. The initial "Base Period Index" shall be the Index for the calendar month which is four (4) months prior to the month of the Commencement Date. The initial Base Period Index shall be compared with the Index for the same calendar month for each subsequent Lease Year ("Comparison Index"). The Comparison Index used for a given year's adjustment calculation will become the Base Period Index for purposes of the next annual Rent adjustment calculation. If the Comparison Index is higher than the Base Period Index, then Rent for the next Lease Year shall be increased by the amount of such percentage change. Should the Bureau discontinue the publication of the above Index, or publish same less frequently, or alter same in some other manner, then the Parties shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors consumer prices. City shall notify Tenant in writing of any annual adjustment pursuant to this Section 4.2 at least thirty (30) days prior to the effective date of such adjustment, but in no event sooner than thirty (30) days from the notice date.

4.3 Rent Reductions (City Use of Property). Rent shall be reduced by thirty percent (30%) during City's shared use of Rooms 2 and/or 4, the gym and Equipment, pursuant to Section 5.3 and the schedule shown on "Exhibit B." Rent shall be reduced by twenty percent (20%) during City's shared use of the gym and Equipment, pursuant to Section 5.3 and the schedule shown on "Exhibit B." The rental rate shall be adjusted to one hundred percent (100%) upon the Shared Use Termination Date as defined in Section 5.3.

4.4 Notwithstanding the Index adjustments described above, if City, in its sole and absolute discretion, believes that notwithstanding such adjustments pursuant to Section 4.2, Rent, as adjusted, does not accurately reflect the fair market rental value of the Property (the "FMR"), City may elect to adjust Rent at the commencement of the eleventh (11th) Lease Year to reflect the FMR pursuant to this Section (which adjustment shall be in lieu of the adjustment pursuant to Section 4.2). City shall provide written notice to Tenant if it elects to adjust rent under this Section and such Rent adjustment shall become effective no sooner than nine (9) months after notice. Within thirty (30) calendar days thereafter, City and Tenant will attempt in good faith to agree upon an adjustment in Rent based upon the FMR. If City and Tenant are unable to agree within such thirty (30) calendar day period, the Property will be appraised to determine its fair market rental value in accordance with this Section. City shall, within ten (10) days after the expiration of such thirty (30) day period, submit to Tenant three (3) California licensed appraisers experienced in commercial real estate lease appraisal, and experience in commercial real estate in the Newport Beach, California area; Tenant shall select one (1) appraiser from the three (3) submitted appraisers to appraise the Property. City shall pay all costs associated with the appraiser and the appraisal. The fair market rental value determined by the appraiser will constitute rent for the eleventh (11th) Lease Year and each successive year remaining on the Agreement; provided, however, that in no event will Rent so determined be less than that otherwise payable through the annual Index adjustments described above.

4.5 Payment Location. All payments of rent shall be made in lawful money of the United States of America and shall be paid to City in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach, California, 92658, or to such other address as City may from time to time designate in writing to Tenant. If requested by City, Tenant shall make payments electronically (at www.newportbeachca.gov) or by wire transfer (at Tenant's cost). Tenant assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

4.6 Late Payment. Tenant hereby acknowledges that the late payment of Rent or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Tenant not paid when due and then within five (5) calendar days of its due date shall be subject to a ten percent (10%) late charge. City and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Tenant.

4.7 Interest on Unpaid Sums. Unpaid sums due to either City or Tenant under this Agreement shall bear interest at the rate of ten percent (10%) per annum on the unpaid balance, including but not limited to late payment penalties, from the date due until paid.

4.8 Additional Rent. Any provision in this Agreement that requires Tenant to pay additional amounts classified as “additional rent” shall be paid within thirty (30) calendar days of City’s written demand therefor (unless a different time for payment is expressly provided in this Agreement). Additional rent does not reduce or offset Tenant’s obligations to pay Rent.

5. BUSINESS PURPOSES AND USE OF PROPERTY

5.1 Business Purposes. The Property is to be used by Tenant for the construction, maintenance, use, and operation of a high school and for no other use. The Tenant shall be responsible for obtaining all required permits and licenses for the construction, maintenance and operation of the high school and complying with all applicable conditions imposed by such permits and licenses. Tenant shall have use of the Property throughout the Term, subject to the City’s shared use rights set forth in Section 5.3

5.2 Operation of Property. Tenant shall operate and manage the Property in a manner comparable to other private high schools providing similar uses and services. Except with respect to any entry onto and/or use of the Property by City, its employees, contractors, agents, customers, invitees, elected officials, and volunteers, Tenant is responsible for the security of the Property and must close and secure all points of access each night. Tenant use of the Property shall comply with all use permits, conditions, laws, and terms of this Agreement.

5.3 Shared Use of Lease Property. Tenant shall continue to allow City to use portions of the Property, including restrooms, during the times specified on “Exhibit B”, which may be amended in writing from time to time by mutual agreement of Tenant and City, each acting reasonably and in good faith, as follows: (a) use of the gymnasium for City’s programming, (b) use of the gymnasium by local schools and youth sports leagues, such as Carden Hall and Newport Junior Basketball League at a reasonable rate, consistent with the City’s facility rental rates; (c) use of Room Four (4) for City’s programming; and (d) use of Room Two (2) for City’s programming. All of City’s shared use rights shall terminate upon the date on which City confirms in writing that it no longer requires shared use of the Property (the “Shared Use Termination Date”). Tenant shall have the right to use the gymnasium and Room Four (4) at any time not reserved for City use, as specified on “Exhibit B,” and at such other times as may be permitted by City. Tenant shall be responsible for any damage to City equipment in Room Four (4) resulting from any entry into and/or use of Room Four (4) by Tenant and/or any of its employees, contractors, agents, representatives, customers, students, and invitees. Tenant shall ensure that all City equipment in Room Four (4) is returned to its original set-up or configuration, should Tenant require use of the room. City shall remove all such equipment promptly upon termination of City’s right to use Room Four (4). Tenant shall not have use of Room Two (2) until such time the room is no longer used for programming by City; existing gymnastics equipment must remain in place and cannot be reconfigured for temporary use by Tenant. City may require use of Room Two (2) outside of the times specified on “Exhibit B;” reserved through the City Recreation & Senior Services Department. City shall not permit any use of the Property pursuant to

this Section 5.3 (i) other than strictly during the times set forth herein and as may be amended from time to time and/or (ii) in any manner that results in unreasonable wear and tear and/or requires janitorial or other maintenance work in excess of the type and amount of such work that would be reasonable and customary for City's contemplated use unless otherwise agreed upon by City and Tenant.

City shall cooperate with Tenant, act reasonably and in good faith, and communicate with Tenant regularly and proactively regarding any potential for City's shared use beyond the initially contemplated time periods. City shall not assign its shared use rights under this Agreement to a third party, without Tenant's written consent. At any time during City's exercise of the Shared Use of the Property, Tenant shall have the option to give one (1) year's written notice to terminate this Agreement. If Tenant exercises this termination right, Tenant shall, at its cost, (i) surrender the Property on the applicable termination date in a condition reasonably acceptable to the City, that permits City to continue its use of the Property in the same manner as before the lease and Tenant's use of the Property; and (ii) remove Tenant's signage and other identifying marks and repair any damage caused thereby.

After the expiration of the Shared Use term, City and Tenant shall meet in good faith to discuss the possibility to allow other community groups to use and/or sublet the Property

5.4 Prohibited Uses. Tenant shall not use the Property for any purpose other than a high school. The high school is for the exclusive use of the Tenant's employees, contractors, agents, volunteers, guests and invitees. Use of the Property for a temporary construction yard or any construction staging is strictly prohibited, except in connection with the construction of any tenant improvements in accordance with Section 8. Tenant shall not hold the Property open for use by the general public. Tenant shall not use or permit the use of the Property in any manner that: (a) creates a nuisance; or (b) violates any Law. Further, Tenant shall limit events or activities (i.e. deliveries, sporting events, dances, etc.) at the high school between the hours of 10:00 p.m. and 7:00 a.m., which may create noise or be disruptive to the neighboring residential properties.

5.5 Signage. Tenant may install permanent signage upon the Property in such locations as Tenant desires, but until the Shared Use Termination Date shall ensure that identifying and directional signage for shared use of the Property for City programs is maintained and installed. The existing West Newport Community Center monument sign shall remain in place until the Shared Use Termination Date. Tenant must obtain necessary approvals and permits for signage, which must comply with applicable City regulations and conditions (which consent shall not be unreasonably withheld, conditioned or delayed). All signage placed by Tenant on, in or about the Property shall remain the property of Tenant and shall be removed by Tenant upon termination or expiration of this Agreement at Tenant's expense, and any damage caused by removal shall be repaired at Tenant's expense.

5.6 Parking. Tenant shall provide no less than twenty-five (25) on-site parking

stalls for City program use during school hours until notified in writing by the City that the spaces are no longer required, or the Shared Use Termination Date, whichever occurs first. Tenant must comply with the parking requirements outlined in the minor use permit conditions approved and adopted by Zoning Administrator Resolution No. ZA2014-031 (PA2014-045) on August 14, 2014 and any future amendments or revisions thereto. Non-compliance with these conditions shall constitute a default under this Agreement, and subject to the provisions of Section 14, City shall have the rights to terminate this Agreement.

5.7 Personnel. Tenant shall be responsible for hiring the necessary personnel to conduct the daily operation of a high school. Tenant shall comply with all applicable federal, state, and local Laws related to minimum wage, Social Security, nondiscrimination, ADA, unemployment compensation and workers' compensation.

5.8 Independent Contractor. It is understood that Tenant is an independent contractor and not an agent or employee of City. The manner and means of operating the Property are under the control of Tenant, except to the extent they are limited by statute, rule or regulation and/or the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Tenant's employees. Nothing in this Agreement shall be deemed to constitute approval for Tenant or any of Tenant's employees or agents, to be the agents or employees of City. City acknowledges that it has no interest in the business of Tenant.

6. TAXES, LICENSES AND OTHER OBLIGATIONS

6.1 Payment of Taxes. Tenant shall pay directly to the appropriate taxing authorities all taxes applicable to this Agreement, fixtures and Tenant's personal property on the Property, that are levied or assessed against Tenant during the Term. Taxes shall be paid before delinquency and before any fine, interest, or penalty is due or imposed by operation of law. Tenant shall, upon request, promptly furnish to the City reasonably satisfactory evidence of payment. City hereby gives notice to Tenant, pursuant to Revenue and Tax Code Section 107.6, that this Agreement may create a possessory interest that is the subject of property taxes levied on such interest, the payment of which taxes shall be the sole obligation of Tenant. Tenant shall pay, before delinquency all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed against Tenant's interest in the Property or any personal property installed on the Property.

6.2 Payment of Obligations. Tenant shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by Tenant in connection with Tenant's occupation and/or use of the Property.

6.3 Challenge to Taxes. Tenant shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes on or attributable to this Agreement, the Property, Tenant's personal property, or Tenant's occupation and/or use of the Property, including the right to apply for reduction. If Tenant seeks a reduction or contests such Taxes, Tenant's failure to pay the Taxes shall not constitute

a default under this Agreement as long as Tenant complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any Law require that the proceeding or contest be brought by or in the name of City. In that case, City shall join in the proceeding or contest or permit it to be brought in City's name as long as City is not required to bear any cost. If requested by Tenant, City shall execute any instrument or document necessary or advisable in connection with the proceeding or contest. Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties. Tenant shall indemnify, defend and hold harmless the City, its council members, boards, commissions, committees, officers, employees, Authorized City agents and volunteers ("Indemnified Parties," as defined in Section 10.1) from and against any liability, claim, demand, penalty, cost or expense arising out of or in connection with any contest by Tenant pursuant to this Section.

6.4 No Rent Offset. Any payments under this Section 6 shall not reduce or offset Rent payments. City has no liability for such payments.

7. UTILITIES.

Tenant shall be responsible for all utility connection fees and ongoing monthly costs. Consideration for the City's pro rata share of utility costs is included in the rent reductions discussed in Section 4.3 above.

8. ALTERATIONS TO THE PROPERTY.

8.1 Tenant Improvements. On the Commencement Date City shall deliver possession of the Property to Tenant free and clear of any prior tenants or occupants (including, without limitation, their equipment and personal property), generally free of any rubbish and debris, free of any construction materials and equipment, and otherwise in its "as-is" condition, subject to any representations, warranties and covenants of the City specifically set forth in this Agreement. Subject to compliance with all Laws, Tenant may construct improvements consistent with those shown on Exhibit "C," as attached hereto and incorporated herein, as may be revised or modified in order to obtain entitlements and/or building permits from the applicable local and state agencies. Tenant shall obtain all necessary entitlements and permits in order to construct. Tenant shall pay for all costs associated with construction to reconfigure the site to use as a high school including but not limited to addition/removal of demising walls in classrooms, addition/removal of wall coverings, flooring, lighting, and any addition/removal of restrooms, locker rooms, HVAC/mechanical equipment, electrical, plumbing, etc. Subject to compliance with all applicable Laws, all improvements by the Tenant must be submitted for review of improvement plans and permitting, and construction shall be subject to the prior written approval of the City Manager or his/her designee, which approval shall not be unreasonably withheld, conditioned or delayed so long as the improvements are consistent with those shown on Exhibit "C" as may be revised or modified as set forth above. Improvements shall be performed between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays. Any contractors hired by Tenant shall be

fully licensed and bonded. Tenant's contractors and any subcontractors shall obtain insurance in an amount and form to be approved by City's Risk Manager, including workers compensation insurance as required by law, general liability, automobile liability and builder's risk insurance covering improvements to be constructed accordance with the applicable requirements set forth in Exhibit "D," all pursuant to standard industry custom and practice. City shall be named as an additional insured on the contractor's and any subcontractor's policies.

8.1.1 Early Occupancy: Tenant may enter and occupy the Property as early as thirty (30) calendar days prior to the Commencement Date provided that Tenant does not interfere with City's relocation efforts at the Property and allows City and it's agents and employees to enter the Property to continue its relocation efforts up to thirty (30) calendar days past the Commencement Date. All entries on to the Property by Tenant prior to the Commencement Date shall be subject to all of the terms, covenants and conditions of this Agreement, including, but not limited to, Tenant's insurance obligations and Tenant's indemnity obligations contained in Section 10, but excluding the obligation to pay Rent.

8.1.2 Playground Equipment: The Equipment that currently exists on the Property shall only be removed at the time in which City purchases new Equipment and the new Equipment is installed by Tenant at a location on the Property that is mutually agreeable to the Parties. Tenant shall be responsible for the removal and disposal of the currently existing Equipment and installation of the new replacement Equipment purchased by the City.

8.2 Tenant's Architects and Contractors. All improvements and landscaping on the Property and any subsequent repairs, alterations, additions or improvements to any of the foregoing shall be designed, selected or constructed, as applicable, by qualified and licensed (where required) architectural, design, engineering and construction firms selected by Tenant.

8.3 Costs of Construction. Tenant shall bear all costs and expenses associated with the design, use, construction, and maintenance of the Property and Tenant Improvements (except for any costs and expenses incurred as a result of any negligence or willful misconduct by City or any of its officers, agents, contractors, or employees), which costs and expenses include without limitation: (i) relocation of existing City facilities (*e.g.*, driveways, points of access, *etc.*), utility relocation, hook-up, and connection fees and all distribution facilities, conduits, pipelines and cables legally required in connection with the Property and Tenant Improvements; (ii) all design, engineering, financing and construction costs; and (iii) all necessary studies and appraisals, use permits or variances, and all grading, building and like permits required to construct and operate the Property and Tenant Improvements, including any fees assessed on the Property by any governmental, or quasi-governmental agency or authority in connection with any regional transportation or other public improvements

and school district taxes, development fees and assessments.

Notwithstanding the above payment obligations of Tenant, City and Tenant shall equally share the cost of waterproofing the basement in the existing building on the Property. The City's share of the costs for waterproofing the basement shall be capped at Fifteen Thousand Dollars and No Cents (\$15,000).

8.4 Permits. Unless restricted by law, Tenant shall obtain, and be responsible for the costs for all building permits and other required permits necessary for the Property. If applicable, Tenant shall be responsible, at its sole cost and expense, for compliance with the California Environmental Quality Act ("CEQA") in connection with Tenant's operation and use of the Property.

8.5 Quality of Work Performed. All construction, maintenance and other work shall be performed in a good and workmanlike manner, shall comply with the plans and specifications submitted to City, and shall comply with all applicable governmental permit requirements and Laws in force at the time permits are issued.

8.6 Payment of Costs. Tenant shall pay all costs related to the construction of the Tenant Improvements and any alterations and/or improvements by Tenant or its agents, except for any costs incurred as a result of any negligence or willful misconduct by City or any of its officers, agents, contractors, or employees.

8.7 Liens Prohibited: Tenant shall not permit to be imposed, recorded or enforced against the Property, any portion thereof or any structure or improvement thereon, any mechanics, materialmen's, contractors or other liens arising from, or any claims for damages growing out of, any work or repair, construction or alteration of improvements on the Property.

8.7.1 Release/Removal of Liens: In the event any lien or stop notice is imposed or recorded on the Property, or an improvement permanently affixed to the Property, during the Term, Tenant shall pay or cause to be paid all such liens, claims or demands before any action is brought to enforce the same against the Property or the improvement. Notwithstanding the foregoing, if Tenant legitimately contests the validity of such lien, claim or demand, then Tenant shall, at its expense, defend against such lien, claim or demand provided that it provide City the indemnity in this Agreement and provided Tenant shall pay and satisfy any adverse judgment that may be rendered before any enforcement against City or the Property.

8.8 Disposition of Alterations at Expiration or Agreement Termination. Any alterations made to the Property shall remain on, and be surrendered with, the Property on expiration or termination of this Agreement (excluding Tenant's moveable personal property). Prior to expiration or within thirty (30) calendar days after termination of this Agreement, Tenant may remove any moveable machinery, equipment, and other personal property installed by Tenant, provided that Tenant repairs any damage to the Property caused by removal and restore the Property to good condition.

9. MAINTENANCE OF THE PROPERTY

9.1 Maintenance and Repair by Tenant and City. Tenant shall be responsible for maintenance of the Property, including routine janitorial and housekeeping costs. Tenant agrees that it will keep the Property in good condition, free of trash and debris, with reasonable wear and tear and damage by casualty and condemnation excepted. Tenant may enter upon areas of the Property still used by the City, as defined in Section 5.3, in order to conduct routine maintenance and repair upon portions of the facility which may be shared between City and Tenant, including all utilities, roof, *etc.* City may perform maintenance or repairs in the event Tenant fails to commence any maintenance or repairs required to keep the Property in the condition described in this Agreement within the time provided by City in the written notice requesting such maintenance or repair (which shall not be less than thirty (30) calendar days after the date of such notice). The cost of any maintenance or repairs performed by the City pursuant to this Section shall be payable as additional rent. City may perform required cleaning and charge the costs to Tenant if the Tenant fails to perform said cleaning within the time provided by City in the written notice requesting the cleaning (which shall not be less than ten (10) calendar days after the date of such notice) and if City performs such cleaning on Tenant's behalf more than two (2) times during the Term, City may take over such obligation by providing written notice thereof to Tenant and thereafter City shall continue to maintain the Property as required by this Agreement. Notwithstanding the foregoing, City shall be responsible, and shall promptly reimburse Tenant, for any costs incurred by Tenant to comply with this Section 9.1, which costs would not have been incurred but for City's shared use of the Property pursuant to Section 5.3.

9.2 Entry by City. City and its authorized City representative(s) may, upon one (1) business day prior notice to Tenant (except no prior notice shall be required in the event of an emergency, emergency maintenance, or emergency repair to facilities), enter upon and inspect the Property during normal business hours for any lawful purpose, provided that City shall use commercially reasonable efforts to not interfere with Tenant's operation and/or use of the Property in performing any such entry and/or inspection. In case of emergency, City or its authorized City representative(s) may enter the Property by whatever force reasonably necessary if Tenant is not present to open and permit an entry. Any entry to the Property by City under this Agreement shall not be construed as a forcible or unlawful entry into, or a detainer of, the Property, or an eviction of Tenant from the Property or any portion thereof. Any damage caused to the Property pursuant to this Section by the City shall be repaired or replaced by the City at the City's sole expense.

10. INDEMNITY AND EXCULPATION; INSURANCE

10.1 Hold-Harmless Clause. Tenant agrees to indemnify, defend and hold harmless the City, its City Council, Boards, Commissions, Committees, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses,

judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim;" collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to Tenant's, Tenant's employees, contractor, subcontractor, agents, guests, invitees, occupation or use of the Property, specifically including, without limitation, any claim, liability, loss or damage arising by reason of:

(a) The death or injury of any Person or damage to personal property caused or allegedly caused by the condition of the Property or an act or omission of Tenant or an agent, contractor, subcontractor, supplier, employee, or servant Tenant;

(b) Any work performed on the Property or materials furnished to the Property at the request of Tenant or any agent or employee of Tenant, with the exception of maintenance performed by City; and/or

(c) Tenant's failure to perform any provision of this Agreement or to comply with any requirement of Law or any requirement imposed on the Property by any duly authorized governmental agency or political subdivision.

Tenant's obligations pursuant to this Subsection shall not extend to any Claim proximately caused by the negligence, willful misconduct, or unlawful or fraudulent conduct on the part of the Indemnified Parties. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable.

10.2 Exculpation of City. Except as otherwise expressly provided in this Agreement, City shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause other than the negligence, intentional or willful acts of the Indemnified Parties. Except as otherwise expressly provided in this Agreement, Tenant waives all claims against the Indemnified Parties arising for any reason other than the negligence, intentional or willful acts of the Indemnified Parties. City shall not be liable to Tenant for any damage to the Property, Tenant's property, Tenant's goodwill, or Tenant's business income, caused in whole or in part by acts of nature.

10.3 Insurance. Tenant shall maintain insurance in the types and amounts specified in Exhibit "D," attached hereto and incorporated herein by this reference.

11. DAMAGE OR DESTRUCTION OF PROPERTY; CONDEMNATION

11.1 Destruction of the Property. If the Property is totally or partially destroyed, rendering the Property or any portion thereof totally or partially inaccessible or unusable, Tenant shall restore the Property to substantially the same condition as immediately prior to such destruction (including all trade fixtures, personal property, improvements and alterations as are installed by Tenant, which shall be replaced by Tenant at its expense), provided that, if such destruction occurs prior to the Shared Use Termination Date, City shall be responsible for its pro rata share of any restoration costs to materials, equipment, *etc.*, required exclusively for City's use of the Property, based on the extent of its then-current shared use rights pursuant to Section 5.3 above.

Alternatively, Tenant may elect to terminate this Agreement by giving notice of such election to City within sixty (60) calendar days after the date of the occurrence of any casualty if the cost of the restoration exceeds the amount of any available insurance proceeds, if the damage has been caused by an uninsured casualty or event, or if Tenant reasonably estimates that repairs of the Property will take more than six (6) months. Upon such termination, any insurance proceeds applicable to reconstruction of the Property (excluding Tenant's personal property therein) then received by Tenant shall be paid to City and Tenant shall have no further liability or obligations under this Agreement.

11.2 Destruction of Property. In the event that all or a portion of the Property is damaged, and the Property or a material portion becomes inaccessible or commercially unusable, and the damage or destruction cannot reasonably be repaired within twelve (12) months after the date of the casualty, City shall have the right to either:

(a) Terminate this Agreement by giving to Tenant written notice (which notice shall be given, if at all, within thirty (30) calendar days following the date of the casualty), in which case this Agreement shall be terminated thirty (30) calendar days following the date of the casualty; or

(b) Give Tenant written notice of City's intention to repair such damage as soon as reasonably possible at City's expense, in which event this Agreement shall continue in full force and effect; however, Rent shall be abated in accordance with the procedures set forth in Section 12. Tenant may terminate this Agreement by giving City written notice at any time prior to the commencement of repairs if City agrees to repair the Property pursuant to this Section and fails to commence repairs within one hundred twenty (120) calendar days after giving Tenant written notice of its intention to repair. In such event, this Agreement shall terminate as of the date of notice from Tenant to City, and City shall have no liability under this Agreement.

11.3 Condemnation. If the use or possession of the entire Property or any material portion thereof shall be taken in condemnation proceedings, then Tenant may elect to terminate this Agreement by giving written notice of such election to City within sixty (60) calendar days after the date of such taking. If only a non-material portion of the Property shall be taken in condemnation proceedings, then this Agreement shall continue in full force and effect; however, Rent shall be proportionally abated in accordance with the procedures set forth in Section 12.

12. ABATEMENT OF RENT

General Rule. In the event of damage or destruction of the Property (or any portion thereof), or condemnation of the Property (or any portion thereof), and this Agreement is not terminated, Tenant may continue to utilize the Property for the operation of the high school to the extent it may be practicable and commercially reasonable, as determined in Tenant's reasonable judgment. Rent shall abate only in proportion to the area of the Property that is rendered unusable (as determined in Tenant's reasonable judgment). The abatement of Rent shall commence on the date

that use of the Property is impacted and continue until the completion of those repairs necessary to restore full use of the Property, if any, and Tenant's re-opening of the Property. Tenant's obligation to pay Taxes pursuant to this Agreement shall not be abated or reduced. Rent shall not abate if the damage or destruction to the Property is the result of the negligence or willful conduct of Tenant or its employees, officers or agents.

13. PROHIBITION AGAINST VOLUNTARY ASSIGNMENT, SUBLETTING, AND ENCUMBERING

Prohibition of Assignment. City and Tenant acknowledge that City is entering into this Agreement in reliance upon the experience and abilities of Tenant and Consequently, Tenant shall not sublease or encumber its interest in this Agreement or in the Property, or assign substantially all or any part of the Property, or allow any other person or entity to occupy or use all or any part of the Property other than for the uses permitted under this Agreement and with the City's prior written consent. Notwithstanding the foregoing or anything else to the contrary in this Agreement, but in all events subject to City's shared use rights as provided herein prior to the Shared Use Termination Date, Tenant may, without City's consent, permit third parties to use the Property on a periodic and/or temporary basis for uses that are reasonably compatible with and/or incidental to the operation of a high school (such as, by way of example but not limitation, use of the gymnasium by other schools and/or recreational leagues and use of portions of the Property by community and/or religious organizations for meetings and gatherings). Except as expressly provided in the immediately preceding sentence, any assignment, sublease or transfer made without the City's written consent is null and void, which consent shall not be unreasonably withheld.

14. DEFAULT; REMEDIES

14.1 Default by Tenant. The occurrence of any one (1) or more of the following events shall constitute a default and material breach of this Agreement by Tenant:

(a) The vacating or abandonment of the Property by Tenant for a period of more than one hundred eighty (180) successive calendar days during which time Tenant shall be required to pay Rent and fulfill all other obligations under this Agreement, without the prior permission of the City Manager or his/her designee, excluding closures during periods of casualty, condemnation or permitted closures set forth in this Agreement or during periods when the Property is temporarily closed for routine breaks (e.g., Christmas break, spring break, summer break, etc.);

(b) The failure by Tenant to make any payment of Rent or any other payment required by this Agreement, as and when due, when such failure shall continue for a period of ten (10) calendar days after written notice of default from City to Tenant;

(c) Except as specified in Subsection 14.1(b), the failure of Tenant to observe or perform any of the material covenants, conditions or provisions of this

Agreement to be observed or performed by Tenant where such failure shall continue for a period of thirty (30) calendar days after written notice thereof from City to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) calendar day period and thereafter diligently prosecutes such cure to completion;

(d) The making by Tenant of any general arrangement or assignment for the benefit of creditors;

(e) Tenant becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) calendar days);

(f) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Agreement, where such appointment is not discharged within sixty (60) calendar days; and

(g) The attachment, execution or the judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Agreement, where such seizure is not discharged within sixty (60) calendar days.

14.2 Remedies for Default by Tenant.

(a) Cumulative Nature of Remedies. If any default by Tenant shall continue without cure beyond the time permitted under this Agreement, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.

(1) Re-entry without Termination. City may re-enter the Property, and, without terminating this Agreement, re-let all or a portion of the Property. City may execute any agreements made under this provision in City's name and shall be entitled to all rents from the use, operation, or occupancy of the Property. Tenant shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Tenant under this Agreement, plus City's reasonable expenses in conjunction with re-letting, less the proceeds of any re-letting or atonement. No act by or on behalf of City under this provision shall constitute a termination of this Agreement unless City gives Tenant specific written notice of termination.

(2) City may terminate this Agreement by giving Tenant written notice of termination with a specified termination date. In the event City terminates this Agreement, City may recover possession of the Property (which Tenant shall surrender and vacate upon demand in the condition required under this Agreement) and remove all persons and property. City shall be entitled to recover the following as damages:

(A) The value of any unpaid rent or other charges that are unpaid at the time of termination (which value shall be computed by allowing interest at the rate of ten

percent (10%) per annum). All Rent and other charges shall begin to accrue late charges from the date due or the date they would have accrued;

(B) The value of the Rent and other charges that would have accrued after termination less the amount of Rent and charges the City received or could have received through the exercise of reasonable diligence as of the date of the termination (which value shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of termination plus one percent (1%));

(C) Any other amount necessary to reasonably compensate City for the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement; and

(D) At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable California law. City shall be entitled to an award of the reasonable costs and expenses incurred by City in maintaining or preserving the Property after default (after the expiration of all notice and cure periods), preparing the Property for re-letting, or repairing any damage caused by an act or omission of Tenant.

(b) City's Right to Cure Tenant's Default. Upon continuance of any material default beyond applicable notice and cure periods, City may, but is not obligated to, cure the default at Tenant's cost. If City pays any money or performs any act required of, but not paid or performed by, Tenant after such applicable notice and cure periods, the payment and/or the reasonable cost of performance shall be due as additional Rent not later than ten (10) calendar days after service of a written demand accompanied by supporting documentation upon Tenant. No such payment or act shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from performance, provided that Tenant shall no longer be in default to the extent the default is actually cured by City, once reimbursement is made to City.

15. WASTE OR NUISANCE

Tenant shall not commit or permit the commission of any waste on the Property. Tenant shall not maintain, commit, or permit any nuisance as defined in Section 3479 of the California Civil Code on the Property. Tenant shall not use or permit the use of the Property for any unlawful purpose.

16. NO CONFLICTS OF USE, HAZARDOUS MATERIALS.

From the Effective Date and throughout the Term, Tenant shall not use, occupy or permit any portion of the Property to be used or occupied in violation of any Law. City represents and warrants that, to the best of City's knowledge: (i) Tenant's use of the Property does not conflict with applicable Laws, and City knows of no reason why Tenant would be unable to obtain all required permits, licenses and approvals from the appropriate governmental authorities; and (ii) the Property is not in violation of any

applicable Law, rules or regulations and Tenant's contemplated uses will not cause any such violation. Provided Tenant did not bring, cause or allow such Hazardous Materials on the Property, Tenant shall have the right (but not the obligation) to terminate this Agreement, upon thirty (30) calendar days advance written notice to City in the event that Hazardous Materials are detected at the Property and the presence or the remediation (without any obligation of Tenant to perform remediation) materially affects Tenant's ability to operate the high school at the Property. "Hazardous Materials" shall mean any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under applicable federal, state and local laws, ordinances and regulations.

17. CITY'S DEFAULTS/TENANT'S REMEDIES.

City shall be in default if it fails to perform, or commence performance if the obligation requires more than ten (10) calendar days to complete, any material obligation within ten (10) calendar days after receipt of written notice by Tenant to City specifying the nature of such default. City shall also be in default if it commences performance within ten (10) calendar days but fails to diligently complete performance. In the event of City's default, Tenant may:

(a) Upon thirty (30) calendar days written notice to City, cure any such default, and City shall reimburse Tenant the amount of all reasonable costs and expenses incurred by Tenant in curing the default; or

(b) Terminate this Agreement if City's default materially interferes with Tenant's use of the Property for its intended purpose and City fails to cure such default within thirty (30) calendar days after a second written demand by Tenant.

18. EVENT OF BANKRUPTCY

18.1 If this Agreement is assigned to any Person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101 *et seq.*, or any similar or successor statute ("Bankruptcy Code"), to the extent permitted by the Bankruptcy Code and applicable Laws, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to City, shall be and remain the exclusive property of City and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting City's property under this Section not paid or delivered to City shall be held in trust for the benefit of City and be promptly paid or delivered to City.

18.2 To the extent permitted by the Bankruptcy Code and applicable Laws, any Person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment,

including the obligation to operate the Property, pursuant to Section 5.1.

19. NOTICES

Any notice, demand, request, consent, approval or communication that either Party desires or is required to give shall be in writing and shall be deemed given three (3) calendar days after deposit into the United States registered mail, postage prepaid, by registered or certified mail, return receipt requested, or one (1) business day after deposit with a reputable overnight courier for overnight delivery. Unless notice of a different address has been given in accordance with this Section, all notices shall be addressed as follows:

If to City, to:	City of Newport Beach Attn: Real Property Administrator 100 Civic Center Drive P.O. Box 1768 Newport Beach, CA 92658
If to Tenant, to:	Pacifica Christian High School-Orange County Attn: David O'Neil 883 West 15 th Street Newport Beach, CA 92663
With a copy to:	Pacifica Christian High School-Orange County Attn: Keith Carlson 2424 SE Bristol Street, Suite 300 Newport Beach, CA 92660
And with a copy to:	Garrett DeFrenza Stiepel Ryder LLP Attn: Michael Hill 3200 Bristol Street, Suite 850 Costa Mesa, CA 92626

20. SURRENDER OF PROPERTY

At the expiration or earlier termination of this Agreement, Tenant shall surrender to City the possession of the Property. Tenant shall leave the Property in good and broom-clean condition, reasonable wear and tear and damage by casualty and condemnation excepted. All property that Tenant is not required to surrender, but that Tenant does abandon for more than thirty (30) calendar days after the expiration or termination of this Agreement, shall, at City's election, become City's property at expiration or termination. City shall owe no compensation to Tenant for any personal property, equipment or fixtures left at the Property by Tenant more than thirty (30) calendar days after the expiration or termination of this Agreement.

21. COMPLIANCE WITH ALL LAWS

Tenant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Tenant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the City Manager or his/her designee.

22. WAIVERS

The waiver by either Party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either Party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

23. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

24. CONFLICT

In case of conflict, the more specific provision of this Agreement shall control.

25. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of California. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

26. ENTIRE AGREEMENT; AMENDMENTS

26.1 The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire agreement of the Parties with respect to the subject matter of this Agreement.

26.2 This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between Tenant and City.

26.3 No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written

amendment to this Agreement.

26.4 The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by Tenant and the City Manager or his/her designee, and approved as to form by the City Attorney.

26.5 If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

26.6 Any obligation of the Parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

26.7 The Recitals provided in this Agreement are true and correct and are incorporated into the substantive part of this Agreement.

26.8 Each party has relied on its own inspection of the Property and examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants in this Agreement. The failure or refusal of either Party to inspect the Property, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

26.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

27. TIME IS OF THE ESSENCE

Time is of the essence for this Agreement.

28. SUCCESSORS; BINDING EFFECT

Subject to the provisions of this Agreement on assignment and subletting, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective Parties.

29. INTERPRETATION

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

30. TABLE OF CONTENTS; HEADINGS

The table of contents of this Agreement and the captions of the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

31. GENDER; NUMBER

The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership, or other legal entity whenever the context requires. The singular number includes the plural whenever the context so requires.

32. EXHIBITS

All exhibits to which reference is made in this Agreement are incorporated by reference. Any reference to "this Agreement" includes matters incorporated by reference.

33. CITY BUSINESS LICENSE

Tenant shall obtain and maintain during the duration of this Agreement, a City business license as required by the Newport Beach Municipal Code.

34. ATTORNEYS' FEES

The prevailing Party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall not be entitled to recover its attorneys' fees.

35. NONDISCRIMINATION

Tenant, for itself and its successors, agrees that in the performance under this Agreement, Tenant shall not discriminate against any person because of the marital status or ancestry of that person or any characteristic listed or defined in Section 11135 of the Government Code.

36. MEMORANDUM OF LEASE AGREEMENT

A Memorandum of Lease Agreement, in a form and content similar to that contained in Exhibit "E," attached hereto and incorporated by this reference, shall be recorded by the Parties promptly upon execution of this Agreement. Upon execution by both Parties, the Memorandum of Lease Agreement shall be recorded against the Property in the office of the Orange County Clerk-Recorder, as required by Government Code Section 37393.

37. NO THIRD PARTY BENEFICIARIES

City (both as a lessor and as the City of Newport Beach) and Tenant do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one Party, under the terms and conditions of this Agreement, to the other Party.

38. CALIFORNIA LABOR LAWS

It shall be the obligation of Tenant to comply with all Laws, including, but not limited to, State of California labor laws, rules and regulations and the Parties agree that the City shall not be liable for any violation by Tenant (or Tenant's agent, sublessee or any party affiliated with Tenant) thereof.

39. NO DAMAGES

Tenant acknowledges that City would not enter into this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents related to the Property. Accordingly, Tenant covenants and agrees on behalf of itself and its successors and assigns, not to sue City (either in its capacity as lessor in this Agreement or in its capacity as the City of Newport Beach) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and Tenant arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, the Parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be Tenant's sole and exclusive judicial remedies. Notwithstanding the foregoing, nothing in this Section 39 shall limit Tenant's remedies as expressly set forth in this Agreement.

40. QUIET ENJOYMENT

So long as Tenant pays Rent and complies with its obligations under this Agreement, Tenant shall peaceably and quietly enjoy the Property throughout the Term without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the provisions of this Agreement.

41. GOVERNMENT CLAIMS ACT

Tenant and City agree that in addition to any claims filing or notice requirements in this Agreement, Tenant shall file any claim that Tenant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*), or any successor statute.

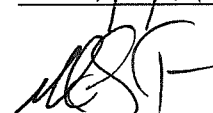
[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below.

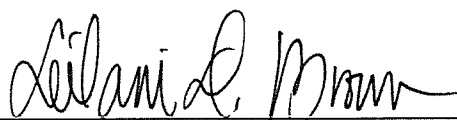
APPROVED AS TO FORM:

THE CITY ATTORNEY'S OFFICE

Date: 9/3/14

By:  (car)
Aaron C. Harp CAM 9/3/14
City Attorney

ATTEST:
Date: 9.26.14

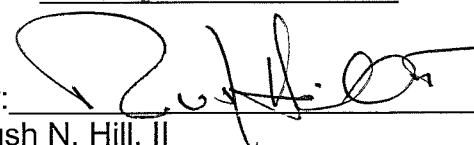
By: 
Leilani I. Brown
City Clerk



CITY

The City of Newport Beach,
a California municipal corporation

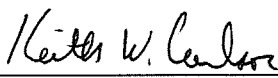
Date: 9.26.14

By: 
Rush N. Hill, II
Mayor

TENANT

**Pacifica Christian High School-Orange
County,**
a California non-profit corporation

Date: 9/15/14

By: 
Keith Carlson
President

Date: September 12, 2014

By: 
David Bahnsen
Vice President/Treasurer

[End of Signatures]

- Attachments: Exhibit A: Property Depiction & Equipment
 Exhibit B: City Schedule
 Exhibit C: [Tenant Improvements]
 Exhibit D: Insurance Requirements
 Exhibit E: Memorandum of Lease Agreement

EXHIBIT "A" Property Depiction

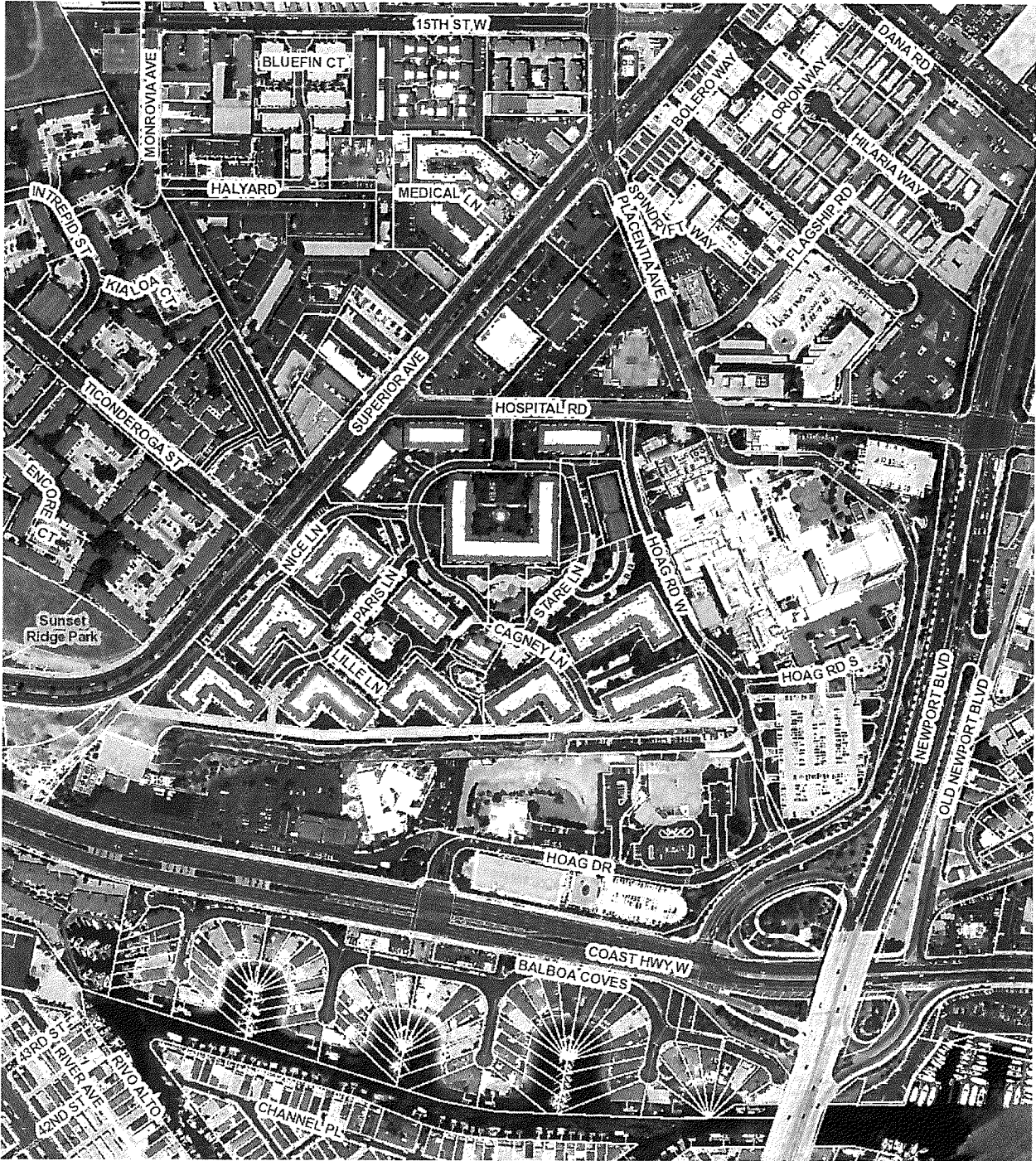
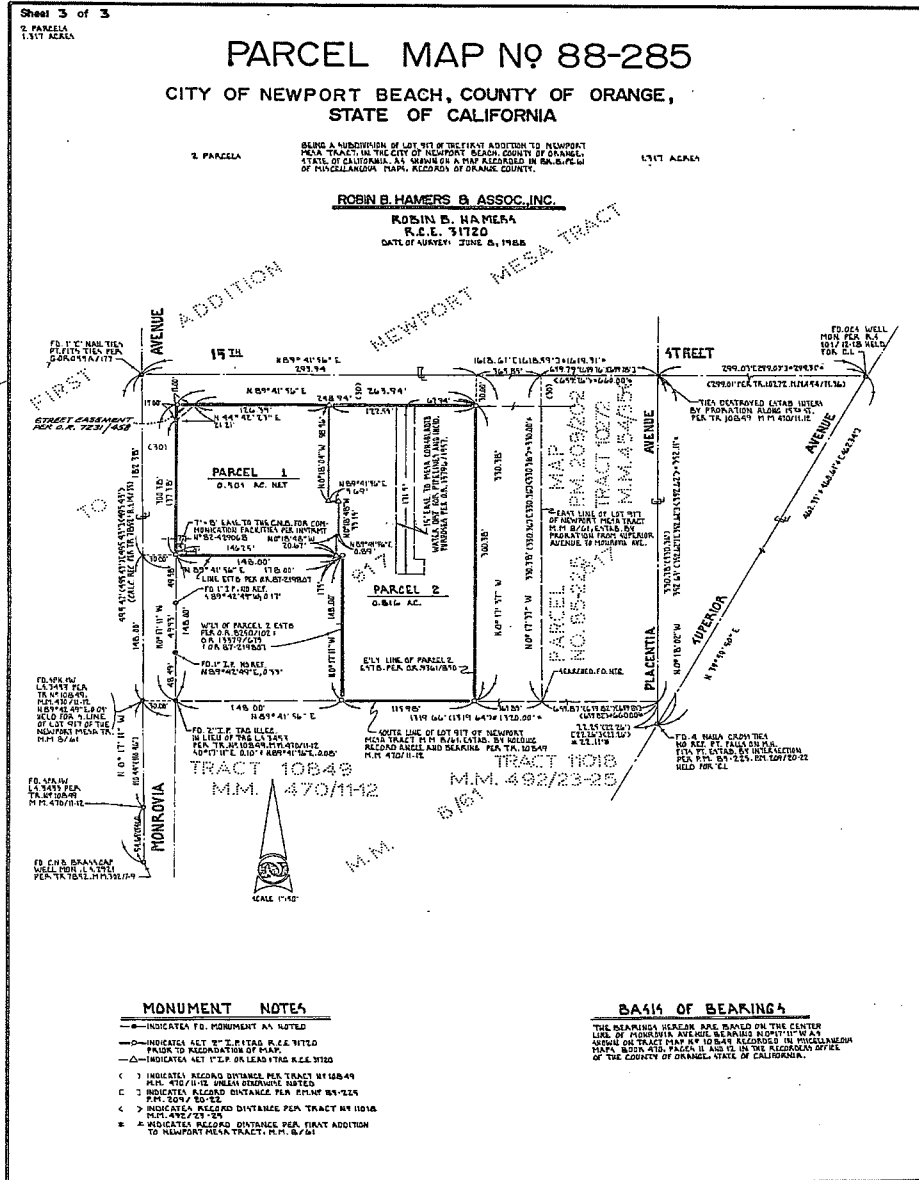


EXHIBIT "A"

Property Depiction



PM 251/3

RECOR 877

237 3

EXHIBIT "A" Property Depiction

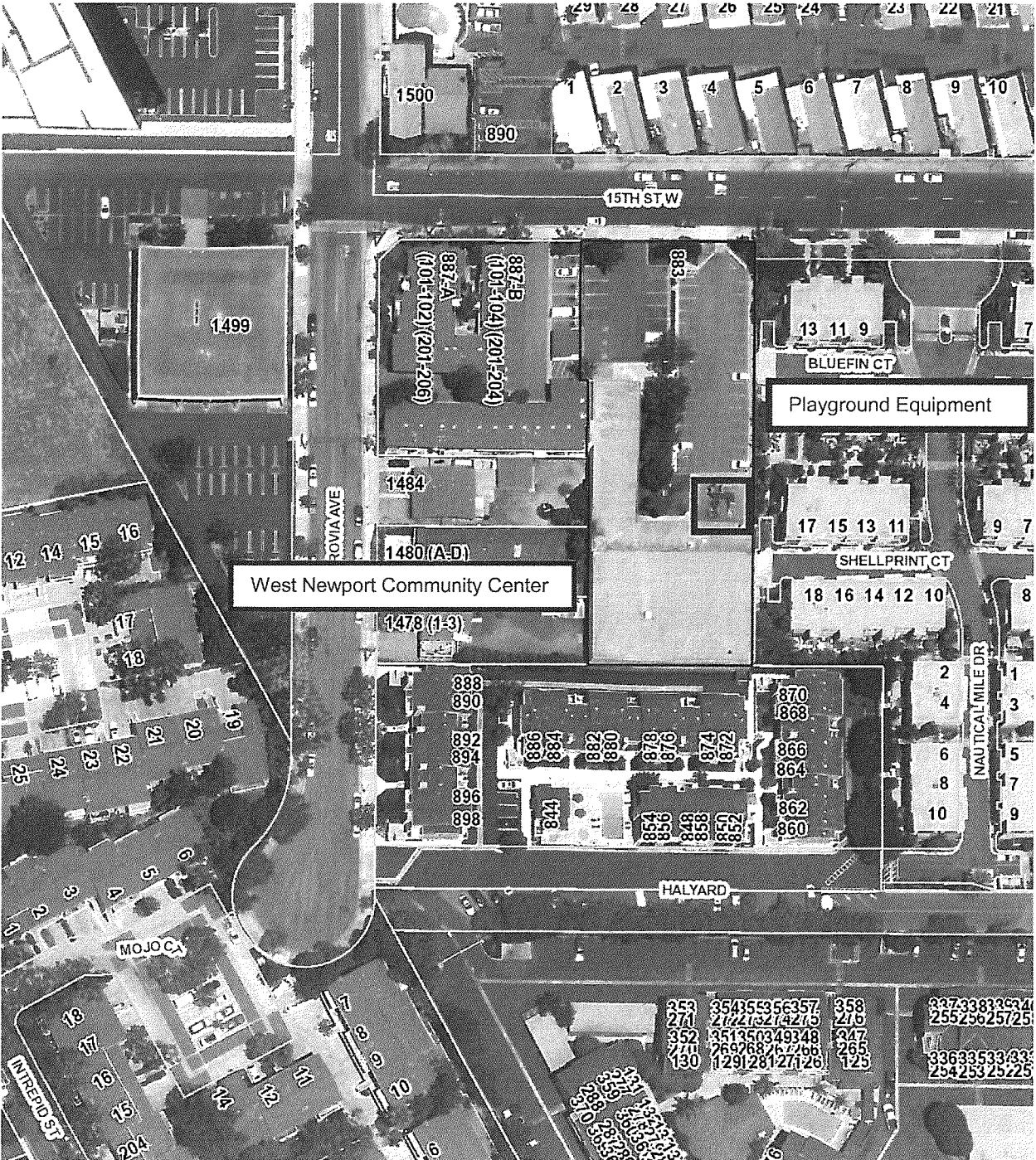


EXHIBIT "A"
Property Depiction



View of playground equipment from 15th Street



Aerial view of playground equipment

EXHIBIT "A"
Property Depiction



Playground Equipment

EXHIBIT "B"
City Use of Property Schedule

City Use of Premises

School Year Programming:

Day	Room	Gymnasium	Room 2	Room 4
Monday		3-5pm – Carden Hall 6-11pm – City	N/A	9-10:30am – City
Tuesday		6-11pm – City	N/A	9-10:30am - City 3:30-4:30pm – City 6:30-7:30pm – City
Wednesday		3-5pm – Carden Hall 6-11pm – City	9:30-11:30am – City	9-10:30am – City 10:30am-12pm – City 6-7:30pm – City
Thursday		3-5pm – Carden Hall 6-11pm – City	N/A	9-11am – City 11am-12pm – City 6-8pm – City
Friday		7-11pm – City	3-6pm – City	N/A
Saturday		8am-6pm – Newport Junior Basketball 6pm-11pm – City	N/A	N/A
Sunday		8am-6pm – Newport Junior Basketball 6pm-11pm – City	N/A	N/A
<i>Total Hours</i>		<i>55/week</i>	<i>5/week</i>	<i>14.5/week</i>

Spring Break Programming:

Day	Room	Gymnasium	Room 2	Room 4
Daily, April 7-April 11		N/A	9:30am-12:30pm – City	N/A
<i>Total Hours</i>		<i>0</i>	<i>15</i>	<i>0</i>

Summer Break Programming:

<i>Day</i>	<i>Room</i>	<i>Gymnasium</i>	<i>Room 2</i>	<i>Room 4</i>	<i>Room TBD*</i>
Daily, June 23-June 27		N/A	N/A	1:30pm-4:30pm – City	9am-12pm – City
Daily, July 7-July 11		9am-12pm – City	N/A	N/A	9am-12pm – City
Daily, July 14-July 18		N/A	N/A	N/A	9am-12pm – City
Daily, July 21-July 25		N/A	N/A	N/A	9am-12pm – City 1pm-4pm – City
Daily, August 4-August 8		9am-12pm – City	10am-12pm – City	N/A	N/A
Daily, August 11-August 15		9am-12pm – City	N/A	N/A	N/A
Daily, August 18-August 22		N/A	N/A	10am-12pm – City	9am-12pm – City 1pm-4pm – City
<i>Total Hours</i>		45	10	25	105

*Room TBD - room to be designated at Tenant's discretion, but must have tables/chairs and accommodate occupancy of 25 people.

Exhibit "C"
Tenant Improvements

RESOLUTION NO. ZA2014-031

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-008 FOR PACIFICA CHRISTIAN HIGH SCHOOL LOCATED AT 883 WEST 15TH STREET (PA2014-045)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Pacifica Christian High School, with respect to property located at 883 West 15th Street, and legally described as Parcel 2 of Parcel Map 88-285 requesting approval of a Minor Use Permit.
2. The applicant proposes to operate a private high school for grades 9 through 12 at the West Newport Community Center.
3. The subject property is located within the Public Facilities (PF) Zoning District and the General Plan Land Use Element category is Public Facilities (PF).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on August 14, 2014, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities). Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The use of the high school will be similar to the existing instructional programs that are currently being provided by the City at this facility. The operational characteristics of the proposed school, including classroom occupancy, hours of operation, parking needs, and traffic demand are similar to the existing City's classes. Parking will be provided on-site and the implementation of a parking management plan and school busing program will mitigate any traffic impact to the area.
2. The Zoning Administrator finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In

addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The property is designated PF by the General Plan. It allows for public schools, cultural institutions, government facilities, community centers, public hospitals, and public facilities. The use of the high school will be similar to the existing instructional programs and classes that are currently being provided by the City at this facility and thereby consistent with the General Plan Land Use designation.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. A private school is permitted in the Public Facility (PF) Zoning District with the approval of a Minor Use Permit per Section 20.26.020 (Special Purpose Zoning Districts Land Uses and Permit Requirements).

Finding:

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

1. The high school use is similar to that of the existing community center, with instructional classes, administrative offices and a gymnasium. Additionally, the operating characteristics of the use are compatible with existing educational institutions and residential uses in the immediate area.

2. The subject property has a total of forty (40) parking spaces. Pacifica will be obligated to provide twenty-five (25) parking spaces to be used by the City for community programs during the first two (2) years of school operation and the school will have exclusive use of fifteen (15) parking spaces. Alternative options are placed in the event that the City will continue the programs and activities beyond Year 2 to ensure there would be adequate on-site parking provided.
3. A parking management plan has been prepared to ensure that adequate parking will be provided for the City's programs and proposed school use. It contains the following stipulations:
 - a. Designation of twenty-five (25) spaces for City programs during first two (2) years of school operation and alternative options should City programs will continue beyond Year 2
 - b. Implementation of transportation demand program to reduce number of vehicle trips generated (i.e. carpooling, school busing, bicycling)
 - c. Implementation of drop-off, pick-up and queuing plan
 - d. Implementation of on-site parking policy for students
 - e. Implementation of on-street parking policy including enforcement and oversight
4. The proposed parking management plan has been reviewed and approved by the City traffic engineer. A list of conditions has been included in the draft resolution to ensure that Pacifica will be operated in a functional manner and compatible with the existing uses in the vicinity.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. With the implementation of a parking management plan, the high school will have adequate parking for their staff members and students. All student pick-up and drop-off will be done within the school's parking lot. Physical access for emergency vehicles will be provided along the existing driveways within the subject property.
 2. The City traffic engineer has reviewed the plan and is supportive of the proposed traffic queuing arrangement of the school parking lot. With the proposed conditions of approval, no conflicts in traffic circulation or queuing problems are anticipated and the current locations and design of the driveways can accommodate the vehicle movements.
- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

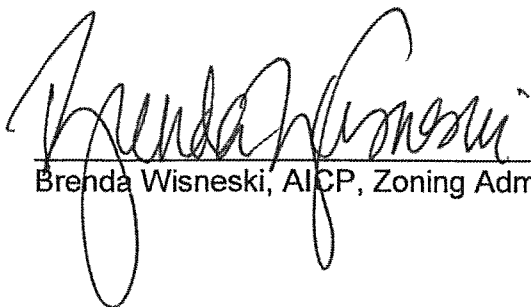
1. The proposed high school has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to ensure the operation of the high school will not create a nuisance to the surrounding uses.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-008, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen (14) days following the date this Resolution was adopted unless within such time an appeal is filed with the community development director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 14th DAY OF AUGUST, 2014.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

PLANNING

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Use Permit No. UP2014-008 shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
5. This Use Permit may be modified or revoked by the City if: (i) the Conditions of Approval are violated; (ii) it is determined that the proposed uses or conditions under which the Use Permit is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity; or (iii) if the property is operated or maintained so as to constitute a public nuisance.
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new use permit.
7. A copy of the Resolution, including conditions of approval (Exhibit "A") shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
8. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
9. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the director of community development, and may require an amendment to this Use Permit.
10. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal

Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00 a.m. and 10:00 p.m.		Between the hours of 10:00 p.m. and 7:00 a.m.	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed-Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

11. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three (3) walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
12. Storage outside of the building in the front of the property shall be prohibited, with the exception of the required trash container enclosure.
13. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds (open house, back-to-school night, etc.), include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
14. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Pacifica Christian High School including, but not limited to, Minor Use Permit No. UP2014-008. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
15. *Prior to issuance of building permits, the lease agreement between Pacifica and the City for the improvement and use of the property shall be executed.*
16. *Student enrollment shall be restricted as follows:*

- a. Year 1: No students
- b. Year 2: Seventy-five (75) students maximum
- c. Year 3: One hundred and twenty (120) students maximum
- d. Year 4 and Beyond: One hundred twenty-five (125) students maximum

Year	Total Students	Freshmen	Sophomore	Junior	Senior
1	0	0	0	0	0
2	75	42	33		
3	120	45	40	35	
4	125	38	31	28	28

- 17. Administration/faculty shall be restricted as follows:
 - a. Years 1 through 3: Ten (10) persons
 - b. Year 4 and Beyond: Fifteen (15) persons
- 18. A minimum of one (1) parking space shall be provided for each administration/faculty member (ten (10) spaces for Years 1 through 3 and fifteen (15) spaces for Year 4 and beyond).
- 19. A total of forty (40) parking spaces shall be maintained within the subject property; twenty-five (25) of those spaces shall be allocated for the use of City programs and activities during the first two (2) years of school operation while the school shall have exclusive use of fifteen (15) parking spaces. After the second year, provided the City discontinues all use and the school shall have exclusive use of the entire property and all forty (40) parking spaces.
- 20. In the event that the City continues its programs and activities and require parking spaces at the subject property beyond Year 2, the applicant shall be required to pursue one of the following alternatives:
 - a. Secure additional off-street parking. Any off-street parking arrangement shall require the approval of a conditional use permit in accordance with Section 20.40.100 (Off-Site Parking) of the Municipal Code;
 - b. Reduce the student enrollment and administration/faculty consistent with the approved parking management plan; or
 - c. Obtain a parking waiver pursuant to Section 20.40.110 (Adjustment to Off-Street Parking).
- 21. An adequate number of bicycle storage racks shall be provided at the school facility.
- 22. Pacifica shall be responsible for the control of noise generated by the subject facility. The use of outside loudspeakers, a paging system or a sound system shall be included within this requirement. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code.

Upon evidence that noise generated by the project exceeds the noise standards established by Chapter 10.26 of the Municipal Code, the community development director may require that the applicant or successor retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the use and to develop a set of corrective measures necessary in order to ensure compliance.

23. *All proposed signs shall be in conformance with the provisions of Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code.*
24. *No outside paging system shall be utilized in conjunction with this establishment.*
25. *The student classroom hours during the school year (August to June) shall be from 7:30 a.m. to 3:00 p.m., Monday through Friday. Board/staff meetings, parent/teach conferences, and student extra curriculum (sports, theater, etc.) are permitted before or after classroom hours as long as adequate on-site parking is provided. Office/administrative functions are permitted outside of the classroom hours and during the summer months.*

Fire Department Conditions

26. Every room with an occupant load of three hundred (300) or more shall have one (1) of its exits or exit-access doorways lead directly into a separate means of egress system that consists of no less than two (2) paths of exit travel which are separated by a smoke barrier in accordance with Section 710 in such a manner to provide an atmospheric separation that precludes contamination of both paths of exit travel by the same fire. Not more than two (2) required exits or exit-access doorways shall enter into the same means of egress system per California Building Code Section 442.1.2.
27. Fire Sprinklers shall be required as per California Fire Code Section 903.2., for the E and A-3 occupancies.
28. A manual and automatic fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies (school) with an occupant load of fifty (50) or more persons or containing more than one (1) classroom per California Fire Code Sec. 907.2.3.
29. A fire alarm system shall be required for the A occupancy (gym) as per California Fire Code Sec. 907.2.1.

Building Division Conditions

30. Obtain a building permit for all proposed improvements and change in uses.
31. For any proposed improvement to the existing facility, accessibility upgrades to the existing facility shall be required as specified in Section 11B-202.4 of the 2013 California Building Code.

32. *A new Certificate of Occupancy shall be obtained from the City and posted prior to occupancy of the school.*

Public Works Conditions

33. The parking layout shall comply with City Standard STD-805-L-A and STD-805-L-B. The parking layout shall be reviewed and approved by the City traffic engineer.
34. The project driveway shall be designed to accommodate adequate sight distance per City Standard STD-110-L.
35. *The final parking management plan shall be reviewed and approved by the City traffic engineer. The requirements of the parking management plan shall be implemented.*
36. *Students shall be prohibited from parking within the public right-of-way. School staff shall monitor the public streets adjacent to the school (i.e. Monrovia Avenue and West 15th Street) at least thirty (30) minutes prior to the start of school and at least fifteen (15) minutes after school begins to ensure that students do not park off-site.*
37. *School staff shall only be allowed to direct traffic queuing within the school's parking lot. School staff shall not direct traffic within the public right-of-way.*
38. *No traffic control devices (i.e. cones, signage) shall be allowed within the public right-of-way.*
39. *The applicant shall monitor the drop off/pick up queues to ensure that the queues do not impact/impede traffic in the public right-of-way.*
40. *The applicant shall provide busing service to and from the high school starting at the 3rd year of school operation.*
41. *If parking demand exceeds capacity or student parking on public streets becomes an issue, the applicant shall secure additional off-street parking. Any off-street parking arrangement shall require the approval of a conditional use permit in accordance with Section 20.40.100 (Off-Site Parking) of the Municipal Code.*
42. *If issues/problems arise with the Parking Management Plan (i.e. school drop-off/pick-up, parking queuing within the public right of way, etc.), the applicant shall modify the Parking Management Plan to the satisfaction of the City traffic engineer and community development director. Implementation of the modified Parking Management Plan shall occur immediately upon approval of the City.*

Exhibit "D"

Insurance Requirements

Without limiting Tenant's indemnification of City, Tenant will obtain, provide and maintain at its own expense during the Term of this Agreement, a policy or policies of insurance of the type, amounts and form acceptable to City. The policy or policies shall provide, at a minimum, those items described below.

1. Provision of Insurance. Without limiting Tenant's indemnification of City, and prior to commencement of work on Property by Tenant or Tenant's agents, representatives, consultants, contractors and/or subcontractors, Tenant shall obtain, provide and maintain at its own expense during the term of this Agreement policies of insurance of the type and amounts described below and in a form satisfactory to City. Tenant agrees to provide insurance in accordance with requirements set forth here. If Tenant uses existing coverage to comply and that coverage does not meet these requirements, Tenant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' rating of a- (or higher) and financial size category class vii (or larger) in accordance with the latest edition of best's key rating guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - B. General Liability Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than five million dollars (\$5,000,000) per occurrence, ten million dollars (\$10,000,000) general aggregate. The policy shall cover liability arising from Property, operations, personal and

advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

- C. Automobile Liability Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Tenant arising out of or in connection with work to be performed at the Property, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than five million dollars (\$5,000,000) combined single limit each accident.
- D. Professional Liability (Errors & Omissions) Insurance. Tenant shall require that Tenant's consultants, contractors and/or subcontractors providing any design, engineering, surveying or architectural services for the Property maintain professional liability insurance that covers the services to be performed, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Tenant shall require that Tenant's consultants, contractors and/or subcontractors agree to maintain continuous coverage through a period no less than three (3) years after completion of the services performed.
- E. Automobile Liability Insurance. Tenant and Tenant's consultants, contractors and/or subcontractors shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Tenant or all activities of Tenant's consultants, contractors and/or subcontractors arising out of or in connection with work to be performed on the Property, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than five million dollars (\$5,000,000) combined single limit each accident.
- F. Builder's Risk Insurance. During construction, Tenant shall require that Tenant's construction contractors and subcontractors maintain Builders Risk insurance or an installation floater as directed by City, covering damages to the work for "all risk" or special causes of loss form with limits equal to one hundred percent (100%) of the Property as it exists on the Effective Date and the completed value of the work, with coverage to continue until final acceptance of the work by Tenant and City. City shall be included as an insured on such policy, and Tenant shall provide City with a copy of the policy. City shall not be responsible for any coinsurance and City shall be named as a loss payee on such policy. "All Risk" Property Insurance (Operations) including coverage against the perils of earthquake, fire, flood, explosion of machinery or equipment, and

vandalism covering the full replacement cost of all improvements and fixtures on the Property. City shall be added as insured under the standard loss payable endorsement. Tenant waives all rights of subrogation against City for any damage to the improvements or fixtures covered by collectable commercial insurance. Tenant's obligations to provide insurance under this paragraph shall apply to all improvements and fixtures on the Property without regard to the date of construction or installation.

- G. Property Insurance-Construction. During construction of any improvements on the Property, Tenant shall maintain Builder's Risk Insurance against "all risk" of physical loss, including the perils of fire, collapse and transit, with commercially reasonable deductibles, covering the total cost of work performed, equipment, supplies and materials furnished on a replacement cost basis. Tenant's obligation to provide this coverage is contingent on the availability of coverage at commercially reasonable rates.
- H. Pollution Liability Insurance. Tenant shall require that Tenant's construction contractors and subcontractors maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than two million dollars (\$2,000,000) per loss and in the aggregate per policy period dedicated to this project. The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. If all or any portion of CPL coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-site disposal of materials. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

4. Endorsements: Policies shall contain or be endorsed to contain the following provisions:
- A. Additional Insured Status. City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as an additional insured under all general liability and pollution liability policies with respect to liability arising out of Tenant's activities related to this Agreement and with respect to use or occupancy of the Property.
 - B. Primary and Non Contributory. Policies shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from Tenant's operations. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
 - C. Liability Insurance. Liability insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - D. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Tenant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Tenant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its consultants, contractors or subcontractors.
 - E. Reporting Provisions. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
 - F. Notice of Cancellation. The insurance required by this Agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) written notice has been received by City. It is Tenant's obligation to ensure that provisions for such notice have been established.
 - G. Loss Payee. City shall be included a loss payee under the commercial property insurance.

5. Additional Requirements.

- A. In the event City determines that (i) the Tenant's activities on the Property creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Tenant agrees that the minimum limits of any insurance policy required to be obtained by Tenant or Tenant's consultants, contractors or subcontractors, may be changed accordingly upon receipt of written notice from City. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates evidencing acceptable insurance policies with City incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates evidencing acceptable insurance policies with City, incorporating such changes, within ninety (90) calendar days of receipt of such notice.
- B. Any deductibles applicable to the commercial property or insurance purchased in compliance with the requirements of this section shall be approved by City.
- C. Tenant and Tenant's consultants, contractors and/or subcontractors shall be subject to the insurance requirements contained herein unless otherwise specified in the provisions above or written approval is granted by the City. Tenant shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Tenant shall ensure that City is an additional insured on insurance required from contractors, consultants and/or subcontractors.
- D. For General Liability coverage, contractors, consultants and/or subcontractors shall provide coverage with a format at least as broad as provided by Insurance Services Office form CG 203 80413.
- E. If Tenant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Tenant shall give City prompt and timely notice of any claim made or suit instituted arising out of or resulting from Tenant or Tenant's agents, representatives, consultants, contractors or subcontractors performance under this Agreement.
- G. Tenant shall provide certificates of insurance, with original endorsements as required above, to City as evidence of the insurance coverage required

herein. Insurance certificates must be approved by City prior to commencement of work or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

- H. All required insurance shall be in force on the Effective Date, and shall be maintained continuously in force throughout the term of this Agreement. In addition, the cost of all required insurance shall be borne by Tenant or by Tenant's consultants, contractors or subcontractors.
- I. If Tenant or Tenant's consultants, contractors or subcontractors fail or refuse to maintain insurance as required in this Agreement, or fail to provide proof of insurance, City has the right to declare this Agreement in default without further notice to Tenant, and City shall be entitled to exercise all available remedies.
- J. Tenant agrees not to use the Property in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance City may have on the Property or on adjacent Property, or that will cause cancellation of any other insurance coverage for the Property or adjoining Property. Tenant further agrees not to keep on the Property or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Property. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Property.

Exhibit "E"
Memorandum of Lease

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

Office of the City Clerk
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

[Exempt from Recordation Fee - Govt. Code §§ 6103 & 27383]

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement ("Memorandum") is dated 9-24, 2014, and is made between City of Newport Beach, a California municipal corporation and charter city ("City") and Pacifica Christian High School - Orange County, a California non-profit corporation ("Tenant"), concerning the Property described in Exhibit "A," attached hereto and by this reference made a part hereof.

For good and adequate consideration, City leases the Property to Tenant, and Tenant leases the Property from City, for the term and on the provisions contained in the Agreement dated SEPT 26, 2014, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of City in each instance, as well as provisions for an option to extend the Agreement for up to two (2) successive five (5) year terms and a first right of refusal to purchase the Property subject to City's compliance with applicable surplus property statutes, all as more specifically set forth in said Agreement, which said Agreement is incorporated in this Memorandum by this reference.

The Agreement's term is ten (10) years, beginning 9-26-14, and ending 9-26-2024, unless extended by the parties.

This Memorandum is not a complete summary of the Agreement. Provisions in this Memorandum shall not be used in interpreting the Agreement's provisions. In the event of conflict between this Memorandum and other parts of the Agreement, the other parts shall control. Execution hereof constitutes execution of the Agreement itself.

[Signatures on the next page]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the dates written below.

CITY

**City of Newport Beach
a California Municipal Corporation**

Date: 9/26/14

Dave Kiff
Dave Kiff, City Manager

TENANT

**Pacifica Christian High School-Orange
County
a California non-profit corporation**

Date: 9/15/14

By: *Keith W. Carlson*
Keith Carlson
President

Date: September 12, 2014

By: *David Bahnsen*
David Bahnsen
Vice President/Treasurer

ATTEST:
Date: 9-26-14

Leilani I. Brown
Leilani I. Brown
City Clerk



APPROVED AS TO FORM:

Date: 9/23/14

Aaron C. Harp (for)
Aaron C. Harp
City Attorney

NOTARY ACKNOWLEDGMENT

State of California)
County of ORANGE)

On SEPT 24, 2014 before me, JENNIFER ANN MULVEY Notary Public, personally appeared DAVE KIFF, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature] (Seal)



NOTARY ACKNOWLEDGMENT

State of California)
County of ORANGE)

On September 15, 2014 before me, Christine G. Anderson Notary Public, personally appeared KEITH CARLSON who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity(ies), and that by his/her signature on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature] (Seal)



ALL PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF ORANGE }ss
}

On SEPTEMBER 12, 2014, before me Judi Lowenthal, Notary Public, personally appeared

DAVID BAHNSEN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Judi Lowenthal



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW.

Title of Document Type MEMO of LEASE AGREEMENT

Number of Pages _____ Date of Document _____

Signer(s) Other Than Named Above _____
