

MEETING AGENDA

A. OPENING PROCEDURES

- A.1 Pledge of Allegiance
- A.2 Welcome and Meeting Procedures
- A.3 Roll Call

B. ACTION ITEMS

- * B.1 Amended and Restated Ground Lease Agreement Between the District And The City Of San Pablo Regarding The Construction And Use Of A Community Center At Helms Middle School and Related Documents

Comment:

In June 2010, the original Ground Lease for Construction and Use of a Community Center at Helms Middle School was amended. The District and City have now negotiated additional revisions to the Amended Ground Lease relating to requirements for the New Markets Tax Credit Program, the funding mechanism for the construction of the Community Center.

This Amended and Restated Ground Lease contemplates that the Helms Middle School site will be subdivided to create a real property parcel for the portion of the School Site leased to the City under the Amended Ground Lease that is separate and distinct from the School Site. The Ground Lease Parcel will be the subject of the Amended and Restated Ground Lease and the parcel upon which the Community Center will be constructed, and will be pledged as collateral for the construction of the Community Center.

this Amended Ground Lease. Finally, the Amended Ground Lease includes negotiated terms relating to, but not limited to, the parking, construction staging and access rights relating to both the School Site and the Ground Lease Parcel.

Recommendation:

Approve the (1) Amended and Restated Ground Lease Agreement; (2) Ground Lease Estoppel Agreement; and (3) School Site and Ground Lease Parcel Legal Descriptions

Fiscal Impact:

No fiscal impact or implications associated with the approval of these documents.

C. THE NEXT SCHEDULED BOARD OF EDUCATION MEETING
Lovonya DeJean Middle School ó December 12, 2012

D. ADJOURNMENT

* The public may only address items which are marked with an asterisk (*).

The Governing Board welcomes and encourages public comment. Members of the public may comment on items included on this agenda; however, we ask that you limit your comments to 2 minutes so that as many as possible may be heard. The total time for public comment for each item is limited to no more than 30 minutes. (Education Code §35145.5, Government Code §54954.3)

Special Accommodations: *Upon written request to the District, disability-related modifications or accommodations, ipenwfkpi"cwzknkctf"ckfu"qt"ugt.xkegu."yknndg"rtqxfkfgf0"Rngcug"eqpvcev"vjg"Uwrgtkpvpgpfgpvøu"Qhhkeg"cv"732-231-1101 at least 48 hours in advance of meetings.*

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
1108 Bissell Avenue
Richmond, California 94803-1335
Office of Superintendent of Schools

ITEM REQUIRING ATTENTION --- BOARD OF EDUCATION

To: Board of Education Meeting Date: December, 2012

From: Bill Fay Agenda Item: B.1
Associate Superintendent for Operations

Subject:

RESOLUTION NO. 54-1213

A RESOLUTION OF THE GOVERNING BOARD OF THE WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT APPROVING THE AMENDED AND RESTATED GROUND LEASE AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF SAN PABLO REGARDING THE CONSTRUCTION AND USE OF A COMMUNITY CENTER AT HELMS MIDDLE SCHOOL AND CERTAIN DOCUMENTS RELATED THERETO

WHEREAS, Chapter 10 of Division 1 of the California Education Code, commencing with Section 10900, authorizes public entities to cooperate with one another to organize, promote, and conduct programs for community recreation that will contribute to the attainment of general recreational and educational objects for children and adults of this State; and

WHEREAS, Educational Code section 10905 specifically authorizes public entities to cooperate with one another to establish, improve, or maintain recreation facilities; and

WHEREAS, Education Code section 10910 authorizes the governing body of any school district to grant the use of any building, grounds, or equipment of the district to any other public authority for community recreational purposes if such use will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system and

WHEREAS, the City of San Pablo ("City") is in need of a community center which may be used by the public and by the students of the District for community purposes ("Community Center"); and

WHEREAS, District has determined that there is space for a Community Center on a portion of the Helms Middle School site ("Ground Lease Parcel") located at 2500 Road 20, San Pablo, CA, 94806 ("School Site"); and

WHEREAS, in June 2010, the Governing Board approved the original ground lease with the City of San Pablo; and

WHEREAS, District and the City have negotiated the attached Amended and Restated Ground Lease Agreement ("Amended Ground Lease") to facilitate and effectuate the desires of City to jointly develop a Community Center located on the Ground Lease Parcel and to set forth the terms and conditions agreed to by the parties for the funding, construction,

WHEREAS

EXHIBIT "A"
PARCEL A
Ground Lease Parcel
Legal Description

All that real property situated in the City of San Pablo, Contra Costa County, State of California, being a portion of the 18.152 acre parcel of land as shown on that certain Record of Survey entitled "W. HELMS JUNIOR HIGH SCHOOL SITE", filed October 19, 1951, in Book 15 of Licensed Survey Maps, at Page 7, in the Office of the County Recorder of Contra Costa County, more particularly described as follows:

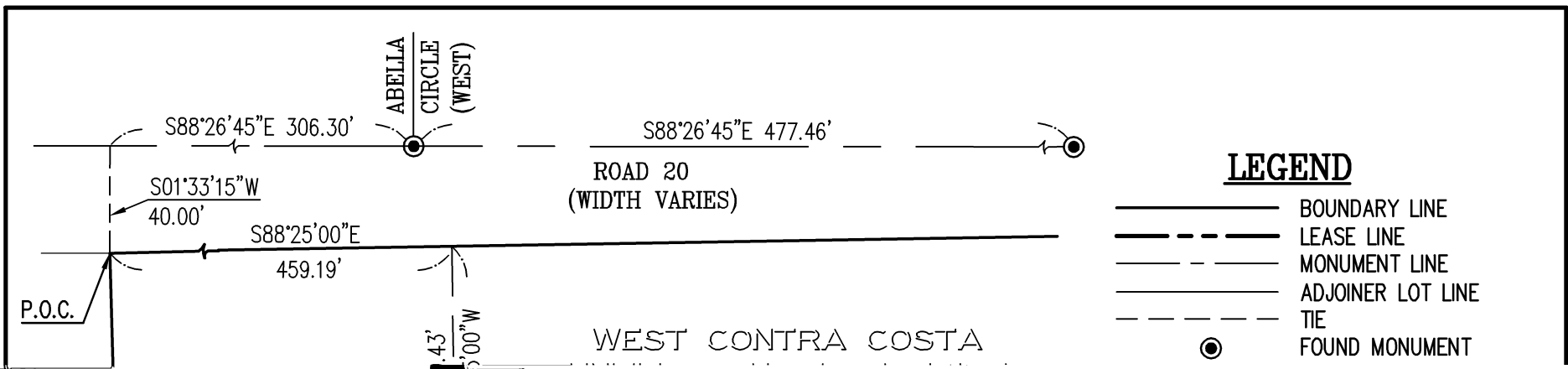
COMMENCING at the Northwestern corner of said 18.152 acre parcel of land, being a point on the Southerly line of Road 20, formerly known as San Pablo Rancho Road as shown on said Record of Survey; thence along said Southerly line, South 88°25'00" East, 459.19 feet; thence leaving said Southerly line at a right angle, South 01°35'00" West, 89.43 feet to the POINT OF BEGINNING; thence South 88°25'19" East, 193.34 feet; thence South 01°28'52" West, 112.07 feet; thence North 88°25'19" West, 193.54 feet; thence North 01°34'44" East, 112.07 feet to the POINT OF BEGINNING.

CONTAINING 21,679 square feet, more or less.

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

Jacqueline Luk
P.L.S. 8934

DATE _____



LEGEND

- BOUNDARY LINE
- LEASE LINE
- MONUMENT LINE
- ADJOINER LOT LINE
- TIE
- FOUND MONUMENT

EXHIBIT "B"
PARCEL B
Remainder Parcel
Legal Description

All that real property situated in the City of San Pablo, Contra Costa County, State of California, being all of that 18.152 acre parcel of land as shown on that certain Record of Survey entitled "W. T. LUMS JUNIOR HIGH SCHOOL SITE", filed October 19, 1951, in Book 15 of Licensed Surveyor's Map, at Page 7, in the Office of the County Recorder of Contra Costa County.

EXCEPTING THEREFROM the interest conveyed to the City of San Pablo by that certain Document entitled "BEFORE THE GOVERNING BOARD OF THE RICHMOND UNIFIED SCHOOL DISTRICT OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA, RESOLUTION NO. 85-6970", recorded September 22, 1970, in Book 6218, at Page 187, Official Records of Contra Costa County.

ALSO EXCEPTING THEREFROM that part of land described as follows:

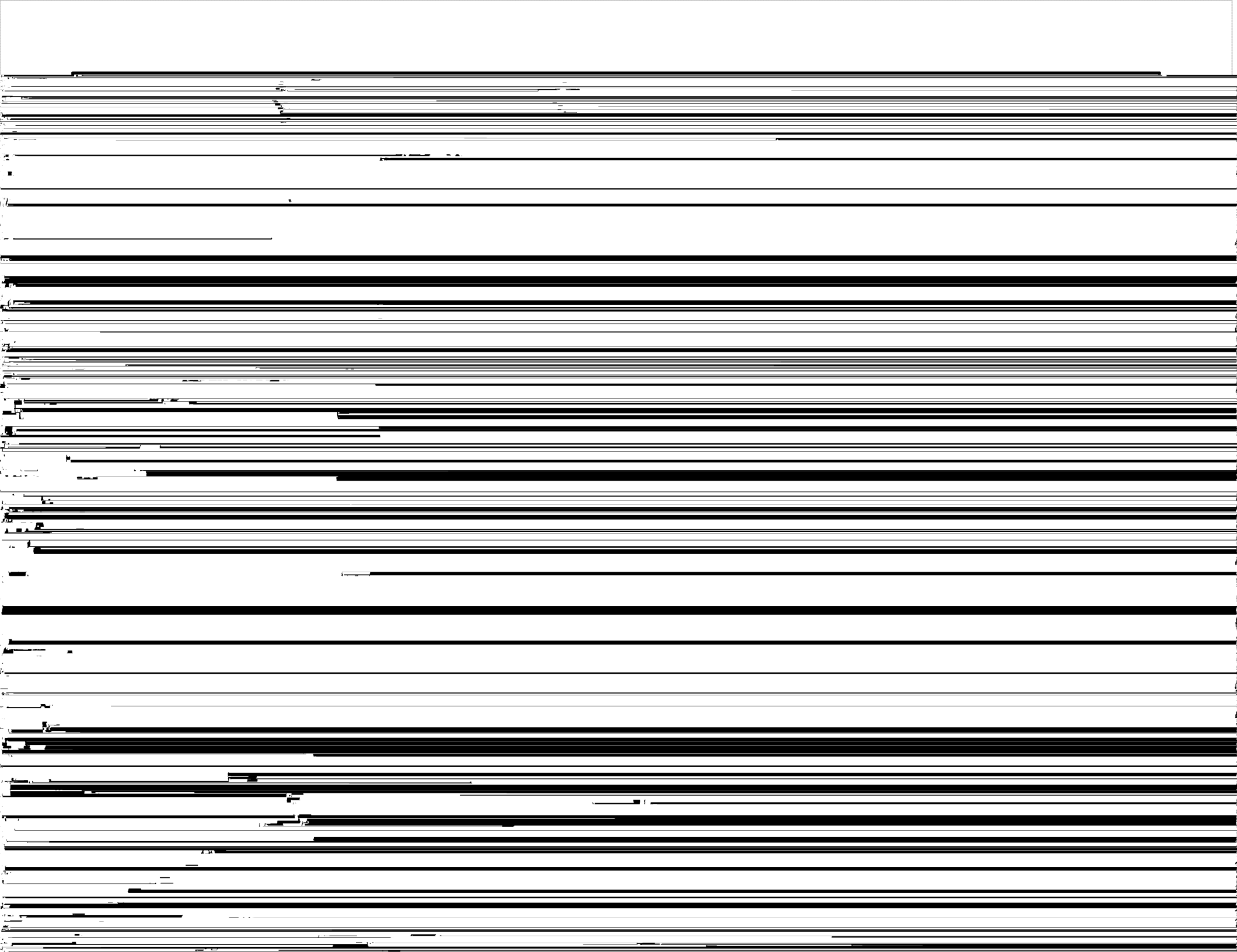
COMMENCING at the Northwestern corner of said 18.152 acre parcel of land, being a point on the Southerly line of Road No. 20, formerly known as San Pablo Rancho Road as shown on said Record of Survey; thence along said Southerly line, South 88°25'00" East, 459.19 feet; thence leaving said Southerly line at a right angle, South 01°35'00" West, 89.43 feet to the POINT OF BEGINNING; thence South 88°25'19" East, 193.34 feet; thence South 01°28'52" West, 112.07 feet; thence North 88°25'19" West, 193.54 feet; thence North 01°34'44" East, 112.07 feet to the POINT OF BEGINNING.

CONTAINING 17.64 acres, more or less.

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

Jacqueline Luk
P.L.S. 8934

DATE _____



PROPERTY LINE DATA

LINE TABLE		
LINE	LENGTH	BEARING
L1	783.73'	N88°25'00"W
L2	100.57'	N00°00'00"W

LINE TABLE		
LINE	LENGTH	BEARING
L18	36.30'	N15°00'00"W
L19	11.00'	N00°00'00"W

LEGEND

- BOUNDARY LINE
- - - - LEASE LINE

PCLA&B.TXT

Lot name: PCLA

North: 2178321.0220 East: 6031128.8707
Line Course: S 88-25-19 E Length: 193.34
North: 2178315.6976 East: 6031322.1374
Line Course: S 01-28-32 W Length: 112.07
North: 2178203.6648 East: 6031319.2515
Line Course: N 88-25-19 W Length: 193.54
North: 2178208.9947 East: 6031125.7849
Line Course: N 01-34-44 E Length: 112.07
North: 2178321.0221 East: 6031128.8728

Perimeter: 611.02 Area: 21,678.90 sq.ft. 0.50 acres

Mapcheck Closure - (Uses listed courses and chords)
Error Closure: 0.0021 Course: N 86-44-26 E
Error North: 0.00012 East: 0.00212
Precision 1: 287,338.09

Lot name: PCLB

North: 2178423.1058 East: 6030672.3226
Line Course: S 88-25-00 E Length: 783.73
North: 2178401.4507 East: 6031455.7533
Line Course: S 88-20-00 E Length: 482.53
North: 2178387.4164 East: 6031938.0792
Line Course: S 01-40-00 W Length: 10.00
North: 2178377.4206 East: 6031937.7884
Curve Length: 48.64 Radius: 390.00
Delta: 7-08-43 Tangent: 24.35
Chord: 48.61 Course: S 84-45-50 E
Course In: S 01-39-48 W Course Out: N 08-48-31 E
RP North: 2177987.5850 East: 6031926.4680
End North: 2178372.9845 East: 6031986.1955
Line Course: S 00-58-30 E Length: 457.66
North: 2177915.3907 East: 6031993.9831
Line Course: S 69-45-00 W Length: 1.06
North: 2177915.0239 East: 6031992.9886
Line Course: S 82-45-00 W Length: 115.50
North: 2177900.4479 East: 6031878.4121
Line Course: S 78-00-00 W Length: 74.58
North: 2177884.9418 East: 6031805.4618
Line Course: S 89-15-00 W Length: 81.18
North: 2177883.8792 East: 6031724.2888
Line Course: S 64-00-00 W Length: 51.48
North: 2177861.3119 East: 6031678.0189
Line Course: S 81-45-00 W Length: 202.62
North: 2177832.2374 East: 6031477.4957
Line Course: N 77-15-00 W Length: 46.20
North: 2177842.4336 East: 6031432.4349
Line Course: S 67-45-00 W Length: 99.00
North: 2177804.9474 East: 6031340.8064
Line Course: S 42-15-00 W Length: 36.30
North: 2177778.0775 East: 6031316.3995
Line Course: S 17-30-00 W Length: 151.80
North: 2177633.3032 East: 6031270.7523

PCLA&B.TXT

Line Course: S 36-45-00 W Length: 56.76
North: 2177587.8241 East: 6031236.7914
Line Course: S 58-45-00 W Length: 46.20
North: 2177563.8568 East: 6031197.2945
Line Course: S 84-30-00 W Length: 42.90
North: 2177559.7450 East: 6031154.5920
Line Course: N 15-00-00 W Length: 36.30
North: 2177594.8081 East: 6031145.1968
Line Course: N 02-30-00 E Length: 44.88
North: 2177639.6454 East: 6031147.1545
Line Course: N 09-30-00 W Length: 54.78
North: 2177693.6741 East: 6031138.1132
Line Course: N 03-15-00 W Length: 38.28
North: 2177731.8925 East: 6031135.9430
Line Course: N 42-15-00 W Length: 87.78
North: 2177796.8689 East: 6031076.9226
Line Course: N 79-45-00 W Length: 87.78
North: 2177812.4888 East: 6030990.5435
Line Course: S 87-15-00 W Length: 69.30
North: 2177809.1639 East: 6030921.3233
Line Course: S 62-30-00 W Length: 56.10
North: 2177783.2598 East: 6030871.5620
Line Course: S 87-45-00 W Length: 96.36
North: 2177779.4767 East: 6030775.2763
Line Course: N 72-15-00 W Length: 87.78
North: 2177806.2377 East: 6030691.6750
Line Course: N 47-15-00 W Length: 25.16
North: 2177823.3163 East: 6030673.1995
Line Course: N 00-05-00 W Length: 599.79
North: 2178423.1057 East: 6030672.3271

Perimeter: 4072.43 Area: 790,175.80 sq.ft. 18.14 acres

Mapcheck Closure - (Uses listed courses and chords)
Error Closure: 0.0045 Course: S 88-30-37 E
Error North: -0.00012 East: 0.00453
Precision 1: 899,031.36

Recording Requested By and
When Recorded, Mail To:

Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116
Attention: Douglas Banghart, Esq.

GROUND LEASE ESTOPPEL AND AGREEMENT

certain Leasehold Deed of Trust,

benefit of Lender. The foregoing shall in no event be deemed causing Lender to be deemed to have acquired the Property or to have assumed any of the obligations under the Ground Lease.

3. Defaults by Tenant.

A. For the purpose of curing any default by Tenant under the Ground Lease or the Loan Documents, Ground Lessor and Tenant hereby authorize Lender to enter upon the Property and, to the maximum extent permitted by applicable law, to exercise any of the rights and powers granted to Lender under the Ground Lease or this Agreement and, subject to the provisions of the Ground Lease and this Agreement, under the Deed of Trust. Ground Lessor agrees that any notice of default, termination of the Ground Lease or termination of Tenant's right to possession delivered to Tenant shall not be valid or of

2-)s([((b tos h

a s

Richmond, California 94801 - 3135
Email: Bharter@wccusd.net

To Tenant: San Pablo Economic Development Corporation, Inc.
13830 San Pablo Avenue, Suite D
San Pablo, CA 94806
Attention: Kelsey D. Worthy, Assistant Executive Director
Facsimile: 510-215-3031
Email: kelseyw@sanpabloca.gov

With a copy to: Nixon Peabody LLP
555 West Fifth Street
Los Angeles, CA 90013
Attention: Aleks S. Frimershtein
Facsimile: 866-771-9454
Email: afrimershtein@nixonpeabody.com

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, 19th Floor
Mail Code: IL1-0953
Chicago, IL 60603-5506
Attention: NMTC Asset Manager
Facsimile: 312-325-5050

t@WaTj EMC -

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, 19th Floor
Mail Code: IL1-0953
Chicago, IL 60603-5506
Attention: NMTC Asset Manager
Facsimile: 312-325-5050
Email: nmtc.reporting@chase.com

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
New Markets Tax Credit Group
560 Mission Street
San Francisco, CA 94105
Attention: Elizabeth Tracey
Facsimile: 415-644-2257
Email: elizabeth.tracey@chase.com

With a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: Douglas R. Banghart, Esq.
Facsimile: 617-523-6850
Email: douglas.banghart@hklaw.com

19. Status of Ground Lease. Ground Lessor hereby certifies, agrees and represents to Lender that as of the date of this Agreement: (i) Ground Lessor has delivered to Lender a true, correct and complete copy of the Ground Lease; (ii) the Ground Lease is in full force and effect and has not been modified, supplemented, altered or superseded in any way except pursuant to documents delivered by Ground Lessor to Lender prior to the date hereof; (iii) Tenant is not in default in the payment, performance or observance of any covenant or condition to be performed or observed by Tenant under the Ground Lease nor has any event occurred which with the giving of notice or the passage of time or both would constitute such a default; (iv) no event has occurred which authorizes or, with the giving of notice or the passage of time or both, will authorize Ground Lessor to terminate the Ground Lease, (v) during the term of the Ground Lease, title to all of the Improvements is vested in Tenant, (vi) the execution and delivery by Tenant of the Loan Documents will constitute neither a breach of Tenant's obligations as "City" under the Ground Lease nor an event of default thereunder, or, to the extent that the execution and delivery by Tenant of the Loan Documents does constitute a breach of Tenant's obligations as "City" under the Ground Lease, Ground Lessor hereby irrevocably and unconditionally waives any and all such events of default and breaches; (vii) there is no mortgage, deed of trust, security interest or similar encumbrance encumbering the fee estate in the Property; (viii) there are no material agreements, consents, or approvals in effect relating to the Ground Lease other than those delivered by Ground Lessor to Lender prior to the date hereof; and (ix) at the time that Ground Lessor delivered the Property to Tenant, the Property were in compliance with all applicable laws, including, but not limited to subdivision and environmental laws.

29. Attorneys' Fees. If any lawsuit or other proceeding is commenced which arises out of, under or in connection with, or which relates to, this Agreement, including, without limitation, any alleged tort action, the prevailing party shall be entitled to recover from each other party to such lawsuit or proceeding such sums as the court or other party presiding over such lawsuit or proceeding may adjudge to be reasonable attorneys' fees and costs in the lawsuit or proceeding, in addition to costs and expenses otherwise allowed by law. Any such attorneys' fees and costs incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment and shall survive and not be me57 Tdall suroe andor 6.855 nd s(n)-24(y157 T57 T

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease Estoppel and Agreement to be executed as of the day and year first written above.

GROUND LESSOR

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

By: _____
Its: _____

TENANT

SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, INC.,
a California nonprofit public benefit corporation

By: _____
Name: Bradley J. Ward
Title: Treasurer

LENDER

NEW MARKETS COMMUNITY CAPITAL XI, LLC , a
Delaware limited liability company

By: New Markets Community Capital, LLC,
a Delaware limited liability company
its Managing Member

By: _____
Name: José Villalobos

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____, 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 PENALT

EXHIBIT A

Legal Description of the Premises

ASSESSOR'S PARCEL NO. _____.

- I. It will be beneficial to District and City to accept improvements made by City within the leased Premises for enjoyment by District students outside of school hours and the general public.
- J. The Parties desire to work collaboratively to design and construct such Community Center on the Premises and agree to cooperate in the construction and operation of the Community Center in order to maximize use of the Community Center for community purposes as more fully set forth herein.
- K. The development, use, and maintenance of the Premises and the fulfillment generally of this Agreement are in the vital and best interests of the residents of the City and of the District, and of their health, safety, and welfare, and are in accordance with the public purposes and provisions of applicable federal, State and local law. An additional purpose of this Agreement is to ensure a cooperative effort by and between City and District to enable each entity to provide for public use and benefit in the most cost-effective manner.

THEREFORE, DISTRICT AND CITY AGREE AS FOLLOWS:

Section 1: LEASE OF PREMISES AND TERM OF LEASE

Agreement to Lease

1.01. For and in consideration of the rents to be paid and covenants to be performed by City under this Lease, District agrees to lease Premises to City, and City agrees to lease Premises from District, on the terms and conditions set forth in this Lease. Except as expressly otherwise provided in this Lease Agreement, the leased premises includes the real property plus any appurtenances and easements.

Status of Title

1.02. Title to the leasehold estate created by this Lease Agreement is subject to all exceptions, easements, rights-of-way, and other matters of record which are in effect at the time of the execution of this Lease Agreement. District represents that Premises is not subject to any superior liens.

Term of Lease

1.03. The term of this Lease shall commence on the date on which the Board of Education executes this Agreement and shall continue for a period of sixty (60) years, until 2070, and be irrevocable for that period except only by mutual consent or for cause as set forth herein. At the termination of this agreement, City shall have the right to renew for an additional term of up to fifteen (15) years, at City's discretion. Upon expiration of this period, renewal of the terms may be executed by mutual agreement of the parties.

Upon expiration of the lease and before the City exercises its right to renew for the additional fifteen (15) year term, District and its authorized representatives shall have the right to enter Premises to determine whether Premises are in good condition and whether City is complying with its obligation under the Lease; 2) to perform any acts that may be

Termination by Parties

1.04 City shall have the right to terminate this lease if adequate funding for Project cannot be attained or budgeted. District shall have the right to terminate this lease if City fails or is unable to commence construction within five years of the effective date of this Lease.

Section 2: RENT

City agrees to pay to District annual rent of One Dollar (\$1.00) ("Minimum Rent") for each year during the term of this Lease. Rent shall be due and payable in a lump sum payment of \$ 60.00 at the commencement of the Lease Term.

Section 3: USE OF PREMISES

3.01. City shall use the Leased premises for the purpose of constructing and operating a public Community Center and other uses.

District's construction manager shall use its reasonable discretion when making decisions on the coordination of construction activities undertaken by the City and the District.

5.06. Due to

Code of Regulations . City shall provide executed certificates in the form attached hereto as Attachment D as written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of any work of construction on the Premises and prior to permitting contact with any pupils.

California Environmental Quality Act

5.09. The parties to the Agreement recognize and acknowledge that this agreement does not constitute a commitment to construct any project, and that adequate funding must be obtained and the project defined. Once the project is defined, such activities will require an environmental review and compliance with the California Environmental Quality Act ("CEQA"). City shall be responsible for complying with all requirements of CEQA with regard to this agreement and this project. The parties recognize that, as a result of information obtained by means of the CEQA process, the parties may decide to modify, condition, or disapprove the activities set forth in this Agreement. City shall defend, indemnify and hold District harmless from any claims or lawsuits, or damages or attorney's fees arising therefrom, challenging the CEQA approval process.

6.04 City shall not keep any trash, garbage, waster or other refuse on the Premises except in sanitary containers and shall regularly and frequently remove the same from the Property. City shall keep all containers and other equipment used for the storage or disposal of such matter in a clean and sanitary condition.

City's Duty to Restore the Premises

6.05.a. If any time during this lease term, any Improvements now or hereafter on the on the Premises are destroyed in whole or in part by fire, theft, vandalism, or any other cause not the fault of District, this Ground Lease Agreement shall continue in full force and effect and City, at City's own cost and expense, if financially feasible, shall repair and restore the damaged Improvements. Any restoration by City shall comply with original plans for the Improvements, except as may be modified by City and approved by writing by District. The work of repair and restoration shall be commenced by City within one hundred twenty (120) days after the damage or destruction occurs and shall be completed no later than one year after the work has commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises.

6.05.b. City shall indemnify and hold harmless District from any damage to the School Premises caused by City's activities authorized in this Ground Lease Agreement. City shall either reimburse District for any damage or destruction to the School Premises, or other property, occurring by reason of City's construction activities, or to replace or restore School Premises to its preexisting condition.

Option to Terminate Lease for Destruction

6.06. City shall have the right to terminate this Lease if, during the Lease's term, the improvements are damaged or destroyed by a casualty for which City is not required to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the fair market value of the improvements immediately before the damage or destruction.

Application of Insurance Proceeds

6.07. Any and all fire and other insurance proceeds that become payable at any time during the term of this Ground Lease because of damage to or destruction of any Improvements on the Premises shall be paid to City and applied by City toward the costs of repairing and restoring the damaged or destroyed Improvements in the manner required herein, or if this Ground Lease Agreement is terminated under Section 6.06, applied by City towards the payment of any leasehold encumbrance.

Section 7: INDEMNITY AND INSURANCE

Indemnity Agreement

due in whole or in part, directly or indirectly, from the negligence or willful misconduct of District, its employees or agents. This indemnification shall not apply in those instances where District had actual knowledge and failed to inform City of an actual hazardous condition of the premises.

7.02. District agrees to indemnify, reimburse, hold harmless, and defend City, its trustees, officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of District's negligence or willful misconduct; unless due in whole or in part, directly or indirectly, from the negligence or willful misconduct of City, its employees or agents. This indemnification shall not apply in those instances where City had actual knowledge and failed to inform District of an actual hazardous condition of the premises.

Liability Insurance

7.03. Each party acknowledges that it is permissibly self-insured under the applicable Government Code provision and agrees to provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall provide to the other a Certificate of Insurance naming the other as an additional insured with respect to the obligations under this Agreement and the use of Premises. Each party shall provide a letter of self-insurance and give a copy to the other party. City shall also maintain insurance required by any third party lender in connection with a leasehold encumbrance.

Subrogation

7.04. Except as provided in the Certificate of Insurance obtained per Section 7.03 above, neither City nor District shall be liable to the other or to any insurance company (by way of subrogation) insuring the other party for any loss or damage to the Premises, if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage.

Section 8: EMINENT DOMAIN

If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by condemnation; this Lease shall terminate on the date of taking. If any portion of Premises is taken by condemnation, City shall have the right to either terminate this Lease or to continue in possession of the remainder of Premises under the terms of this Lease or to continue in possession of the remainder Premises under the terms of this Lease. Such right to terminate must be exercised by notifying District within ninety (90) days after possession of the part taken by

Section 9: ENTRY , EASEMENTS AND PARKING

Entry

9.01. District and its authorized representatives shall have the right to enter Premises at all reasonable times for any of the following purposes: 1) to determine whether Premises are in good condition and whether City is complying with its obligation under the Lease; 2) to perform any acts that may be necessary to protect District's interest in Premises; and 3) to perform District's duties under the Lease.

Access

9.02. District does hereby establish, grant and convey to City, and its assigns, a non -

11.05. This Lease shall not be assigned without the prior written consent of the District. This Lease shall be binding on and shall inure to the benefit of the executors, administrators, successors, and assigns of the parties hereto . District hereby acknowledges that City

the resolution of the dispute. No Party will be permitted to file legal action without first meeting in mediation and maintain a good faith attempt to reach a mediation resolution.

Execution in Counterparts

11.12 . This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Interpretation

11.13 . In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof. To the extent there is any inconsistency between the terms of this Ground Lease and the terms of any financing or loan agreement with any third party lender under which this Groun wh wl()JTJ 0.063 TwT*d [(i)-20(s)-2()

edG 42(dG)-39()13Rses-2(t)3
.. his Amened wnd estate Gground e
,2t as amened(b)-21(y)-3(t)-9(h)-10

- (f) For the purpose of curing a party default by EDC under this Lease, District, City and EDC hereby authorize Lender to enter upon the Premises and to exercise any of the rights and powers granted to Lender under the Ground Lease, subject to the provisions of the Ground Lease. City and EDC agree to provide Lender with any notice of default, termination of the Ground Lease or termination of City's or EDC's right to possession with five (5) business days of receipt of the same.
- (g) The District hereby confirms that each and every covenant, condition and obligation contained in the Ground Lease required to be performed by the Lender shall be performed by the Lender.

and School Premises and shall not be affected by a conveyance of all or any part of the properties.

No Merger of Estates

11.18. For as long as any leasehold encumbrance is in existence, there shall be no merger of the leasehold estate created by this Ground Lease Agreement and the fee estate of District in the Premises due to the fact that both estates have been acquired or become vested in the same person or entity unless approved in writing by all third party lenders.

Lender Protection

11.19. No third party lender under any leasehold encumbrance shall be liable to District as an assignee of this Ground Lease Agreement unless and until such third party lender acquires all rights of City under this Ground Lease Agreement through foreclosure or an assignment in lieu of foreclosure.

ATTACHMENT A
Property Map

ATTACHMENT C
Construction Staging Map

ATTACHMENT D
CERTIFICATE

ATTACHMENT E
ACCESS AND PARKING SITE MAP

