

**RIGHT OF ENTRY AGREEMENT FOR CONSTRUCTION ACCESS AND USE OF REAL PROPERTY FOR
CONSTRUCTION RELATED ACTIVITIES BETWEEN
MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT AND RICHARD T. SPIEKER AND CATHERINE R. SPIEKER**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into on Dec 20, 2017 ("Effective Date"), by and between Mountain View Whisman School District, a California public school district located in the County of Santa Clara, California ("District"), and Richard T. Spieker and Catherine R. Spieker ("Owners"). District and Owners may be individually referred to herein as "Party" or collectively referred to herein as the "Parties."

BACKGROUND TO AND PURPOSE OF AGREEMENT

- A. District is the owner of real property, located at 505 Escuela Avenue, Mountain View, CA 94040, Santa Clara County, Assessor's Parcel Number 154-22-037 ("District Property").
- B. Owners are the owners of real property, located at 1825 California Street, Mountain View, CA 94041, Santa Clara County, Assessor's Parcel Number 154-22-003 ("Greenwood Apartments").
- C. The carport structure located at the Greenwood Apartments is intruding onto the District's Property and impedes the District's ability to construct a necessary and mandatory emergency lane for fire trucks, first aid and emergency responders at the District's Property. The District shall modify the carport structure located at the Greenwood Apartments in order to have full access and use of the District's Property and to construct the emergency lane ("Work").
- D. In order to perform the Work, District requires access to the Greenwood Apartments.

NOW THEREFORE, District and Owners hereby agree as follows:

1. RESPONSIBILITIES AND OBLIGATIONS

- 1.1. **Right of Entry.** To facilitate the Work, Owners hereby provide District and its agents, contractors, representatives, and consultants the right to reasonable access and use of the Greenwood Apartments, subject to the following provisions:
 - 1.1.1. Reasonable precautions and care will be exercised by the District in performing the Work to avoid damage and protect persons and/or property.
 - 1.1.2. District shall notify Owners at least twelve (12) hours prior to entry upon the Greenwood Apartments by District or its agents, representatives, or consultants, as more particularly described in this Agreement.
- 1.2. **Term.** District's right to enter the Greenwood Apartments pursuant to this Agreement shall commence on the Effective Date and shall end upon completion of the new elementary school at the District's Property or December 31, 2019, whichever occurs first.

2. SCOPE OF WORK

- 2.1. The District shall modify the carport structure located at the Greenwood Apartments to have full access and use of the District's Property and to construct the emergency lane. The modifications shall include but not be limited to the following:

Carport to be cut back approximately +/- 20 inches to achieve required clearance for emergency vehicle access lane. Contractor will remove roofing to approximately point 6" past structure demolition. Existing 2x6 roof sheathing to be removed to point of demolition. Rafters to be cut back to point of demolition. Contractor to weather treat cut rafter tail, patch roofing and gravel stop.

3. PERFORMANCE OF WORK

- 3.1. **Performance of Work.** District shall conduct the Work in accordance with all applicable laws. All Work shall be performed by District at its own expense and in a good and workmanlike manner.

- 3.2. **Equipment and Labor.** District shall furnish all tools, equipment, apparatus, facilities, transportation, labor and material necessary to perform the Work.
- 3.3. **District's Contractors.** District agrees to bind every contractor by the terms of this Agreement as far as such terms are applicable to the contractor's work, including, without limitation, all insurance, bond, and warranty requirements. Nothing contained in this Agreement shall create any contractual relations between any District contractor or subcontractor and Owners.
- 3.4. **Maintenance of Property.** District shall promptly and properly clean and maintain the area of Work and the immediate surrounding area as it progresses with the Work.
- 3.5. **Notice of Entry to Perform the Work.** District shall notify Owners at least twelve (12) hours prior to entry upon the Greenwood Apartments by District or its agents, representatives, or consultants. District agrees to coordinate all construction activity with Owners' designated contact person, Donald Naugle at (650) 353 0934, so as to ensure that the Work is not disrupted or delayed.
- 3.6. **Insurance.** District shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect, commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary, with limits of liability of not less than Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage. District shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect during the term of this Agreement, workers' compensation insurance, at statutory minimums, including employers' liability coverage with limits not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) as the aggregate policy limit, and One Million Dollars (\$1,000,000) as the policy limit for each employee. A certificate evidencing the insurance requirements of this section shall be provided prior to commencing any Work activities on the Greenwood Apartments. The insurance policies shall include, or be endorsed to include Richard T. Spieker and Catherine R. Spieker as an additional insured. The District's insurance shall not be the primary insurance but in addition to Owners' insurance.

4. OTHER PROVISIONS

- 4.1. **Termination.** If any Party fails to properly fulfill its obligations under this Agreement, or if any Party violates any provision of this Agreement, the non-breaching Party shall notify the other Party in writing of the specific violations of the Agreement. The breaching Party shall have fourteen (14) days from receipt of such a notice in which to cure any such violation.
 - 4.1.1. If the violation cannot be reasonably cured within a fourteen (14) days, and the breaching Party has diligently pursued such remedy as shall be reasonably necessary to cure the violation, then the Parties may agree in writing to an extension of the period in which the violation may be cured.
 - 4.1.2. If the breaching Party has not cured any such violation as specified in the written notice or has not done so within the time provided for under this section, or as otherwise agreed upon by the Parties, then the non-breaching Party, at its sole option, shall have the right to terminate this Agreement.
- 4.2. **Authority to Execute.** Each signatory represents and warrants that he or she has the authority to sign the Agreement on behalf of the Parties and the authority to bind said Parties.
- 4.3. **Counterparts.** This Agreement may be executed in counterparts, and photocopies or facsimile copies of this Agreement may be used as originals. Each such counterpart, photocopy or facsimile copy of this Agreement shall be deemed an original, but all of them together shall constitute one and the same instrument.
- 4.4. **Effective Date.** This Agreement shall be binding upon and inure to the benefit of the Parties as of the date this Agreement is executed by the Parties.

- 4.5. **Time of Essence.** Time is of the essence of each provision of this Agreement in which time is an element.
- 4.6. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or sent by overnight delivery service, addressed as follows:

District
 Robert Clark, Ed.D.
 Associate Superintendent/Chief Business Officer
 Mountain View Whisman School District
 750 A San Pierre Way,
 Mountain View, CA 94043
 Telephone: (650) 526-3500

Owners
 Richard T. Spieker and Catherine R. Spieker
1020 Corporado Way Suite 100
PALO ALTO CA 94303
 Telephone: 650 968 2660

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

- 4.7. **Amendment.** No addition to or modification of the terms of this Agreement shall be valid unless made in a written agreement to this Agreement, which is formally approved and signed by each of the Parties to this Agreement.
- 4.8. **Assignment.** Neither party may assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the other Party. Even if that consent is given, any assignment made in contravention of any law will be void and of no effect.
- 4.9. **Waiver.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.
- 4.10. **Applicable Law.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this agreement shall be in Orange County, California.
- 4.11. **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 4.12. **Captions.** The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the article, paragraph or subparagraph at the head of which it appears, the article, paragraph or subparagraph and not the caption shall control and govern the construction of this Agreement.
- 4.13. **Number and Gender.** In this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.
- 4.14. **Further Action.** The due diligence and Work performed by District pursuant to this Agreement is anticipation of the Easement Agreement to be executed by the Parties, and any other necessary actions or agreement related thereto as contemplated by the Parties.

- 4.15. **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto, including any real estate brokers.
- 4.16. **Mutual Drafting.** This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.
- 4.17. **Attorney Fees.** If either Party brings an action to enforce their rights under this Agreement, the prevailing party may recover its expenses (including reasonable attorneys' fees) incurred in connection with the action.
- 4.18. **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

IN WITNESS WHEREOF, the Parties have executed this Right of Entry Agreement, as of the date last written below.

Dated: 21 Dec, 2017

Mountain View Whisman School District

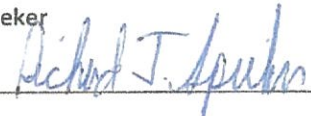
By: 

Print Name: Robert Clark

Print Title: Assoc Supt/CBO

Dated: 12-20, 2017

Richard T. Spieker

Signature: 

Dated: Dec. 20, 2017

Catherine R. Spieker

Signature: 