

**SUMMARY OF AMENDED AND RESTATED
PURCHASE AND SALE AGREEMENT AND
JOINT ESCROW INSTRUCTIONS
BETWEEN THE DISTRICT AND WAVECREST VILLAGE, LLC**

- A. Conveyance. Wavecrest Village, LLC (“Seller”) agrees to convey School Property, an approximately 23-acre site for a middle school that is substantially located and configured as the Parties may approve and generally located in the NE corner of the Wavecrest property, to the District. District agrees to convey El Granada Property to Developer.

This is a change in relation to prior agreements from a designated school site to an undesignated school site and from an approximately 25-acre site to an approximately 23-acre site.

- B. Consideration. Purchase price for School Property is \$2.2 million, paid partly in cash and partly in property.
- District agrees to convey El Granada Property to Wavecrest. EG Property is valued at \$1 million in Agreement.
 - District agrees to pay \$1.2 million and participate in future shared infrastructure costs as defined in Section 2.5.3.
 - Wavecrest agrees to pay District school mitigation fees as defined in Section 2.5.9. Fees will include cost-of-living adjustment.

This is a change from a prior purchase price of \$2.7 million composed of conveyance of the El Granada property (\$1.7 million value) and \$1 million cash. The school mitigation fees’ provision is unchanged although the District has less leverage under current law.

- C. Outside Hearing Date. Seller shall use good faith efforts to obtain a CCC hearing date for consideration of the project no later than the date of the regularly scheduled meeting in September 2004.

CCC Approval no later than Outside Hearing Date is a condition for District/Seller.

This is a new provision limiting time for performance and allowing either party to proceed alone if timeline is not met.

- D. Final Approval Date. The Final Approval Date shall be the date that all of the following (“Final Approvals”) occur:
- CCC approval and any other final approvals of the CCC Approved Project are obtained;

- All periods for appeal or challenge of CCC Approved Project have expired without challenge or appeal or are resolved in favor of Seller;
- All maps or other entitlements necessary to sell School Property shall have been issued and periods for appeal or challenge have expired without challenge or appeal or are resolved in favor of Seller;
- All other discretionary approvals from any governmental agency, if any, for the CCC Approved Project or the School Property that are required for Seller to convey the School Property to District and for District to accept School Property have been received and periods for appeal or challenge have expired without challenge or appeal or are resolved in favor of Seller

Obtaining of Final Approvals by October 31, 2004, is a condition for District/Seller.

This is a new provision limiting time for performance and allowing either party to proceed alone if timeline is not met.

- E. Shared Processing Costs. District shall reimburse Seller for 12 percent of the costs incurred for pursuit and processing of the proposed project (including costs incurred for prosecuting CCC Appeal and obtaining Final Approvals, such as all fees of all engineering, traffic, architectural, planning and economic consultants, copying charges and application fees but excluding costs incurred in present litigation between Seller and City). To date, Seller has incurred \$824,030.50 in processing costs and District has reimbursed Seller \$98,883.56. District's contribution to Processing Costs shall be nonrefundable regardless of whether CCC Approval or Final Approvals are obtained.
- F. Shared Infrastructure Costs. To the extent any Off-Site Improvements relate to and benefit both the School Property and the remainder of the NWC Property, or part thereof, and to the extent any On-Site Improvements also benefit the balance of the NWC Property (e.g. sewer or drainage facilities), such costs shall be reasonably allocated between the Parties based upon the projected benefit to and usage of those improvements or as defined with regard to Street Improvements and Drainage Facilities.

Street Improvements (as defined) and Drainage Facilities (as defined) shall be paid 23.5 percent by District and 76.5 percent by Seller.

Party who first needs to install Off-Site Improvements in order to proceed with development shall advance funds for same and the other Party shall reimburse shared proportion of costs subject to receipt of Final Approvals. Obligation to reimburse District for Shared Off-Site Costs shall run with the land for development on NWC property within 10 years of conveyance of School Property.

This is a change from prior agreements in District's percentage share of Street Improvements (increased from 21.5 percent) and Drainage Facilities (increased from 17 percent). Potential reimbursement to the District if it develops first is a new provision.

- G. Closing Date. Escrow shall close at a mutually agreeable date within 10 days following the satisfaction or waiver of the Conditions of Sale but in any event no later than 30 days from the issuance of the Final Approvals or other such date as the parties may mutually select.

The escrow period is shortened from prior agreements since parties have had time for due diligence.

- H. Deposit. \$30,000 portion and accrued interest thereon of prior \$100,000 deposit will be returned to District. Remainder of \$70,000 portion and accrued interest thereon will constitute the deposit under this agreement. Interest on deposit shall accrue in favor of District. Deposit shall be applied to purchase price at Closing. Deposit of \$70,000 and previously accrued interest thereon to become nonrefundable subject to terms of Agreement, including obtaining of Final Approvals.

The provision allowing a potential refund to the District of a portion of the deposit is new.

- I. Due Diligence.
- District shall have 60 days from notice by Seller of the site configuration of the School Property to conduct all physical inspections of the School Property.

The timeline for due diligence is shortened from prior agreements.

- J. Conditions

District's obligation to purchase the School Property is expressly subject to the following conditions:

- CCC Approval is obtained no later than the Outside Hearing Date;
- Final Approvals as necessary for legal purchase of School Property and use as a middle school are obtained no later than October 31, 2004;
- Title Company shall be ready, willing, and able to issue policy to District insuring fee simple title to the School Property subject only to Permitted Exceptions;
- All authorities with jurisdiction over District's acquisition of School Property or District's project shall have approved acquisition or project;
- District shall have approved its due diligence inspection and title review.

Seller's obligation to sell the School Property is expressly subject to the following conditions:

- CCC Approval is obtained no later than the Outside Hearing Date;
- Final Approvals as necessary for purchase of School Property and use as a middle school are obtained no later than October 31, 2004;
- Title Company shall be ready, willing, and able to issue policy to Seller insuring fee simple title to the EG Property subject only to EG Approved Exceptions;

K. No Application or Condemnation. Unless the Outside Hearing Date shall pass without CCC Approval or the Final Approval Date shall pass without Final Approval of the CCC Approved Project, District shall not make any applications (or similar item) relating to the School Property or any proposed use, development or improvements which is contrary to the proposed plans for the CCC Approved Project or Final Approvals without Seller's consent, and District shall not institute any action for condemnation of the School Property or any portion of the NWC Property.

L. Independent Processing. If, for any reason, including condemnation, District should proceed with its own application for a school in the NWC Property independently from the remainder of the project, District agrees to consult with Seller regarding District's plans and submittals and shall use reasonable efforts not to impede or hinder Seller's proposed plans for the remainder of the property. If Seller requests District to size or locate any improvements that would have otherwise constituted Shared Off-Size Improvements to accommodate Seller's proposed plans, District shall provide Seller notice of estimated additional costs and Seller may agree to excess costs and pay excess costs upon completion. District shall not be obligated to comply with Seller's request(s) if such compliance would prohibit District from obtaining all approvals necessary for District's project.

This is a new provision.

M. As-Is and With All Faults. District and Seller agree that they are purchasing the respective School Property and EG Property As-Is and With All Faults in the condition that exists on the Final Approval Date.