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THE COMMITTEE FOR RESPONSIBLE SCHOOL EXPANSION AND NOT BY
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TO ITS CONTENT -- DRAFT 10/16/05

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

COMMITTEE FOR RESPONSIBLE SCHOOL
EXPANSION

Petitioner,

vs.

HERMOSA BEACH CITY SCHOOL
DISTRICT, and DOES 1-X

Respondents.

BEACH CITIES HEALTH DISTRICT,
and DOES XI-XX

CASE NO: BS096014

STIPULATION AND
SETTLEMENT AGREEMENT



WHEREAS a dispute exists between various residents of the
City Of Hermosa Beach and the Hermosa Beach City School District
as alleged in the Court Filings in this case.

WHEREAS each party to this litigation believes it has and
continues to be acting in good faith and for legitimate ends.

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WHEREAS the general position of the COMMITTEE FOR RESPONSIBLE SCHOOL EXPANSION is that the gymnasium which the Hermosa Beach City School District desires to build is unnecessary and should be deleted in favor of building classrooms but if the Hermosa Beach City School District decides to pursue the building of the gym in spite of this, the gym should be limited in use needed to mitigate noise, parking and access impacts.

WHEREAS residents who live in close proximity to the proposed gym believe that there have been insufficient noise, parking and traffic mitigation measures put in place to date by the Hermosa Beach City School District.

WHEREAS residents who live in close proximity to the proposed gym believe that even if noise and traffic mitigation measures are put in place by the Hermosa Beach City School District there are no assurances that such mitigation measures will remain in place.

WHEREAS residents who live in close proximity to the proposed gym want assurances that if the gym is built, over their objections, that noise and traffic mitigation measures must be put in place which cannot easily be changed by the Hermosa Beach

City School District.

WHEREAS the Hermosa Beach City School District believes it has an obligation to proceed with the building of the gymnasium.

WHEREAS the Hermosa Beach City School District believes it has and continues to be acting properly and responsibly in pursuing the building of the gym.

WHEREAS Hermosa Beach City School District has already passed a resolution to implement hour and days of operation essentially as set forth herein.

WHEREAS residents who live in close proximity to the proposed gym believe that even if noise and traffic mitigation measures are put in place by the Hermosa Beach City School District there are no assurances that such mitigation measures will remain in place.

WHEREAS money is being spent on litigation by Hermosa Beach City School District in an attempt to win Court approval of the Gymnasium Project.

WHEREAS the litigation is having the effect of a least temporarily impeding progress of the gym building project.

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WHEREAS all parties to this action would like to obtain a resolution of this litigated matter without further recourse to the Courts and without need for a trial of the matter and to minimize costs for all involved parties.

WHEREAS all parties are willing to compromise their respective positions so that this litigation can be ended.

WHEREAS

WHEREAS

WHEREAS

IT IS THEREFORE STIPULATED AND AGREED AS FOLLOWS WHICH ALLOWS FOR THE GYM TO BE BUILT WITHOUT FURTHER LITIGATION BY COMMITTEE FOR RESPONSIBLE SCHOOL EXPANSION WHILE AFFORDING HERMOSA BEACH RESIDENTS CERTAIN ASSURANCES OF IMPLEMENTATION AND MAINTENANCE OF CERTAIN NOISE AND TRAFFIC AND OTHER MITIGATION MEASURES AS SET FORTH HEREIN:

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1. GENERAL PROVISIONS:

It is understood that this STIPULATION AND SETTLEMENT AGREEMENT pertains to "non-school use" only which is defined as use by other than the School district during school hours or after school use for it's own academic and it's own athletic use and for uses directly related to Hermosa Beach School District uses such as school meetings, parent/teacher meetings.

Use and/or rental of the facility under the "Civic Center Act" is deemed "non school use".

2. LIMITATION ON TYPES OF EVENTS FOR "NON-SCHOOL USE":

As to all "non school use" of the Gymnasium and all other school facilities, such facilities shall be rented out or otherwise allowed for use solely for non commercial use, that is for athletic and academic/scholastic uses only as mandated under the Civic Center Act only and per the current agreement in place for "Joint Use" by the Beach Cities Health District.

3. HOURS OF USAGE OF BUILDING FACILITIES FOR NON-SCHOOL USE:

The hours allowed for non school use of he gym and associated facilities shall be no later and no more extensive than as follows:

Monday Through Friday non-school use hours shall begin at 5:00 pm and users of the facility may not schedule events to go

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beyond 8:00pm and must exit the facility by 8:15pm.

Saturday non-school users of the gym shall not be allowed to schedule or hold events any earlier than 10am nor later than 4:45pm and must exit the facility by 5 pm.

Sundays there shall be no use of the gym or facilities.

The above hours of usage shall be made part of the rules and regulations provided to all non-school users of the facility.

4. ADDITIONAL NOISE MITIGATION PROVISIONS FOR NON-SCHOOL USE:

* Doors and windows to the gym to remain closed during non-school use.

* For team or league play, the outside basketball courts cannot be used by teams or team members waiting to play or by teams or team members after play in the gymnasium.

* All of the above shall be spelled out and provided to all non-school users of the facilities upon granting of permit for use, as part of the materials provided to the renter including but not necessarily limited to being included in the "Rules and Regulations for use of the gymnasium. (##### se other paragraph on this ###)

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* No amplified sound of any kind including voice or music or buzzers or timers etc may be allowed to be heard at all further than 25 feet of the walls of the gym during non-school use.

5. RULES AND REGULATIONS PROVIDED TO USERS OF THE FACILITIES:

* Rules and Regulations will be provided to users _____

6. LOCKING OF NORTH SCHOOL GATE:

Access to the school yard from the North side of the campus via the gate and/or driveway shall be exclusively limited to one hour before start of normal school hours until no later than 4:00pm.

It shall be the responsibility of the Hermosa Beach City School District to enforce this provision.

However access up the hill to Loma Drive shall be available at all times, 24 hours a day, year round, either by way of the "Nature Path" or via the North school yard gate.

The "Nature Path" shall be locked at an appropriate time in the evening so that it cannot be accessed. When this is done the North side campus gate shall be opened to allow access to the path up the hill to Loma Drive.

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7. LAYOUT OF FIELDS:

The soccer and football playing fields and other similarly shaped playing field layouts shall be made East to West as to the longest length of the playing field and permits granted only to play on the fields so laid out for those sports normally played on such shaped fields.

Except for the existing baseball/softball field -- No field of play for any sport other than school usage shall be laid out within 150 feet (check) of the North boundary of the school yard.

8. BUILDING DESIGN AND CONSTRUCTION:

* Gymnasium Windows

The Gymnasium shall be designed and constructed such that any and all windows cannot be opened.

* Gymnasium Lighting

The Gymnasium lighting shall be designed with a timer which shall turn off gym floor lighting (except for emergency and exit lighting) which shall be set to no later than 8:30pm and which is maintained in a locked enclosure which only authorized Hermosa Beach City School District employees can access. If the timer is overridden by an employee, for example to allow cleaning of the facility, the timer must be reset that night/day so that it will activate the next evening.

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* The shall be no exterior lighting of the basketball courts for nighttime play.

9. PROCEDURES TO HELP ASSURE THAT FACILITY USERS COMPLY WITH USAGE RESTRICTIONS:

* Materials Must Be Provided To Facilities Users:

Includes that they sign off on understanding of the rules including that they can loose their Sanction Deposit.

* Must inform no parking on 18th Street or Valley Park and no drop offs on those streets.

* Provided with rules and regulations for use including a map showing where parking is allowed. Includes that all doors and windows must be kept closed.

10. JOINT AND SEVERAL RESPONSIBILITY FOR CONFORMING TO THE USE PROVISIONS OF THIS STIPULATION AND SETTLEMENT AGREEMENT:

Although the Hermosa Beach School District shall require users of the facility to comply with its rules and regulations for us of the gym facility, including those provisions set forth herein, the Hermosa Beach School District still remains responsible to see that these rules and regulations and other

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provisions as set forth in this Stipulation And Settlement Agreement are carried out and abided by.

Any Party or Hermosa Beach resident who has standing to demand compliance with this STIPULATION AND SETTLEMENT AGREEMENT or file and maintain a Grievance as set forth herein shall be able to pursue either the offending user of the facility as provided herein or the Hermosa Beach School District. (#### Check difference between those who can demand compliance vs file Grievance if any #####)

11. SANCTIONS FOR FAILURE TO CONFORM TO PROVISIONS OF THIS STIPULATION AND SETTLEMENT AGREEMENT BY NON SCHOOL USE USERS:

* SANCTION DEPOSIT:

Each user of the facility is required to provide with their application for permit to use the facility or when granted use of the facility if no permit is issued, a "Sanction Deposit" which shall be held by the school district until 60 days after any event. The 60 days is based on sufficient time for any Hermosa Beach resident to file a Grievance as set forth herein. If a Grievance is filed, the deposit shall be held until resolution of the Grievance.

Organizations such as a league are only required to post the

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deposit one time for the season or length of use of the particular permit. If for instance the Beach Cities Health district or other organization has more than one type of activity or class, they will be required to post the deposit for each separate activity but only once for the season of that activity such as a yoga class or stretch class etc.

The deposit shall be \$450. This amount shall be increased by \$15 per year as a provision to meet inflation with no cap.

* GRIEVANCE PROCEDURE:

If any Hermosa Beach resident believes that there has been a violation of any of the Rules and Regulations for use of the gym as set forth herein including but not limited to hours or days of use, noise mitigation, locking of gates than that person may file a grievance with the Hermosa beach City School District.

The Hermosa Beach City School District shall maintain a form at their office to provided to anyone who asks for one.

On the form there shall be a place, including but not necessarily limited to, for the following:

- * Name, address and telephone number of the party filing the Grievance and date of the filing.

- * General nature of the violation

- * General nature of evidence supporting the Grievance,

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although additional evidence not disclosed may be admitted at a hearing on the Grievance.

* ???

* ???

* ???

A hearing concerning the Grievance shall be convened within 45 days with all concerned parties being provided written notice of the hearing at least 15 days in advance of the hearing.

The hearing shall be heard by the Superintendent or his/her designee one member of the School Board of Trustees and two residents of either Valley Park or 18th Street. (Four persons total)

Once a year, the two Valley Park or 18th Street members will be selected by any 12 residents of 18th Street and/or Valley Park which must be from different households. Any member selected may refuse to sit or may resign at any time in which case another will be selected. Further, that person selected may designate another to fulfil his/her obligation on an as needed basis or may request the same 12 persons to select another person to fulfil the position.

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(**** ???Alternatively any 12 residents from different households may choose 5 members any 2 of which can sit on the committee depending upon availability **** ????)

* Any reasonable evidence shall be considered by the Grievance Committee including that the committee shall hear a reasonable amount of oral testimony from any source including but not limited to the party filing the Grievance.

* Authority and Findings of the Grievance Committee:

Upon majority vote of the committee, any appropriate sanction can be imposed including but not limited to loss of part or all of the money deposit, revocation of permit, limitations on activities or hours of use etc.

If a majority vote cannot be reached as to how to handle the Grievance, the deposit shall be refunded with a "warning note" to the effect that the matter was reviewed and no particular finding was made, and including the fact that a Grievance had been filed would be considered in any future Grievance proceeding concerning the same activity or entity who sponsored the activity.

The finding of the Grievance Committee shall be adopted by the Hermosa Beach City School District.

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* Appeal From The Findings Of The "Grievance Committee"

The findings of the Grievance Hearing shall be final and shall be in writing and shall be provided to all interested parties to the hearing. In addition to any ultimate finding, including any sanctions agreed upon, any member may annotate the findings with his/her comments as to the matter.

If all or a portion of the deposit is deemed forfeited, the party requesting use of the facilities must bring the balance of the deposit back to the amount required for the initial permit or ability to use the facility before any use can continue.

However, any resident of 18th Street or Valley Park may challenge any action or procedure by way of allegation of violation of the provisions of the Stipulation and Settlement Agreement per paragraph _____. (Currently paragraph 16) A legitimate basis would be that the members of the Committee from the Hermosa Beach City School District are not acting in good faith in the evaluation or prosecution of Grievances filed.

* Independent Hermosa Beach City School District action.

It must be noted that this Grievance procedure is in addition to any action that the District is entitled to take independent of this grievance procedure as normally provided for

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such as issuing warnings, suspending permits or refusal to grant permits.

12. SANCTIONS FOR FAILURE TO CONFORM TO PROVISIONS OF THIS
STIPULATION AND SETTLEMENT AGREEMENT BY THE HERMOSA BEACH CITY
SCHOOL DISTRICT:

* Sanctions For Failure To Adhear To Gate Closure
Requirements:

REWORD THIS

If it is deemed by an arbitrator or Judge to be a lack of adhearnace to the rules concerning the gate closures, due to other than an occasional (meaning a few times a year) neglect or unusual circumstance, then by petition to this Court or via ruling of arbitrator agreed upon by the parties penalty assessed must include but is not limited to the HERMOSA BEACH SCHOOL DISTRICT being required to hire an appropriate private security agency to conform to the gate locking procedures for as long a period as deemed appropriate by the Judge or arbitrator not to exceed 8 mos for any single infraction.

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* Sanctions For Nonconformity or Violation Of Other Provisions Of This Stipulation and Settlement Agreement:

For nonconformity or violation of Hours or days of usage and for Noise Mitigation Provisions and all other provisions other than as to the gates :

* Material Violations

If it is determined by way of an arbitrator or Court that the nonconformity or violations of the provisions herein as to hours or days of gym usage, are deemed " Material Violations" then the arbitrator or Court shall/must impose a sanction that includes but is not necessarily limited to ordering the School District to suspend the permit to use the gym facility or otherwise prohibit use of the facility by the offending user entity for a minimum period of at least 4 weeks or 12 sessions of that activity whichever is longer. If it is the end of the season or end of the sessions for that permit or use period, then the balance of that sanction shall be assessed at the beginning of the following season or set of sessions.

If it is the end of the season or end of the sessions for that permit or use period, then the balance of that sanction shall be assessed at the beginning of the following season or set of sessions.

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* Significant Violations

"Significant Violations" are deemed to include but not be limited to, ##### (LIST SOME EXAMPLE SITUATIONS HERE) situations where the School District has made repeated warnings to the users, where there have been repeated forfeits of Sanction Deposits, where it is determined that the School District has not acted in good faith in complying with provisions under this Stipulation and Settlement Agreement _____ (ADD HERE)

Two consecutive findings of a "material violation" as set forth above would constitute a "Significant Violation" and sanctions as set forth herein would have to be applied by the arbitrator or Judge.

If it is determined by way of an arbitrator or Court that the nonconformity or violations of the provisions herein as to hours or days of gym usage, are deemed "significant violations" then the arbitrator or Court shall/must impose a sanction that includes but is not necessarily limited to ordering the School District to suspend the permit to use the gym facility or otherwise prohibit use of the facility by the offending user entity for a minimum period of at least eight weeks or 20 sessions of that activity whichever is longer. If it is the end of the season or end of the sessions for that permit or use

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period, then the balance of that sanction shall be assessed at the beginning of the following season or set of sessions.

Two consecutive findings of a "significant violation" would require suspension of use of the offending entity for one calendar year.

In addition to the above, if the arbitrator or Judge finds a "significant violation" as defined herein the Hermosa City School District would be ordered to pay the costs of the resident only parking permits for all of the residents on 18th Street and Valley Park for a period of one year.

13. AGREEMENT IS CONTINGENT ON CONDITIONS PRECEDENT:

The consummation of this STIPULATION AND SETTLEMENT AGREEMENT is contingent upon the Hermosa Beach City Council granting "Resident Only Parking" status to 18th Street between Valley Drive and Valley Park and to Valley Park. This provision is a condition precedent to consummation of this STIPULATION AND AGREEMENT if this condition precedent is not met this STIPULATION AND SETTLEMENT AGREEMENT is null and void.

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14. LACHES SHALL NOT APPLY:

The fact that any party chooses to delay in attempting enforcement of any provision of this agreement, no matter how often the alleged violation occurs and no matter how long the delay, shall not constitute laches and no party can raise the defense of laches, or delay should any party wish to enforce a provision of this agreement.

Further, any arbitrator or Judge who hears a matter may not consider any delay, no matter how long, as a basis for his/her decisions.

The reason for this provision is in part so that no party feels obligated to attempt formal enforcement of provisions which from time to time may appear to be violations of the agreement but which perhaps at the time of the violations may not be deemed significant enough to warrant formal enforcement.

15. COURT TO RETAIN JURISDICTION:

Although this case will be dismissed if the conditions precedent are met and when all obligations of the parties fulfilled, this Court shall maintain jurisdiction to enforce this agreement and stipulation pursuant to CCP Section 664.6.

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16. METHOD FOR REDRESS:

Should any party to this agreement believe that another party is in violation of this agreement, they may petition the Court to enforce compliance upon noticed Motion.

17. METHOD OF SELECTING AN ARBITRATOR:

For any provision in this STIPULATION where there is an option or requirement to select and utilize an arbitrator the following process shall be used.

A neutral arbitrator would be selected agreeable to the Board and any 50% of the residents of Valley Park and 18th Street.

Written notice to all residents of Valley Park and 18th Street would be made by the Hermosa Beach School District so that all residents were aware of the request for arbitration and will also be provided a general description of the nature of the dispute.

Best efforts would be made by all to choose such an arbitrator within 60 days. Verification of agreement to use arbitrator would be by signature verifying agreement to the arbitrator by the 50% margin.

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The arbitrator will schedule the arbitration date and would hear argument and evidence and will render a written order or findings specifying his reasons for his findings and/or order.

Best efforts will be made by all parties to have the arbitration heard within 45 days of the selection of the arbitrator.

(Add appropriate wording for contractual arbitrations under California Law)

18. WHO IS DEEMED A "PARTY" AS TO THE PETITIONER:

For the purpose of enforcing any provision of this STIPULATION AND SETTLEMENT AGREEMENT any resident, of Hermosa Beach, acting alone or in concert with others, is deemed a "PARTY" and has standing to attempt to enforce provisions of the Stipulation and Settlement Agreement, except where, as set forth herein one of the Parties are deemed to be specifically residents of Valley Park and 18th Street.

(#### CHECK THIS VIS A VIS THE OTHER PARAGRAPHS WHERE THIS MAY HAVE EFFECT ####)

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19. RIGHT TO TAKE DEPOSITIONS, SUBPOENA WITNESSES AND SUBMIT EVIDENCE:

SOME APPROPRIATE WORDING WILL BE PLACED HERE
CONSISTENT WITH CALIFORNIA LAW REGARDING CONTRACTUAL ARBITRATIONS
AND HEARINGS BEFORE A COURT TO ALLOW APPROPRIATE USE AT
ARBITRATIONS OR COURT HEARINGS #####

20. PROCEDURE TO CHANGE PROVISIONS OF THIS STIPULATION AND SETTLEMENT AGREEMENT:

If the Hermosa Beach School District should desire to change a provision of this Stipulation and Settlement Agreement the following procedure would be applied.

* Eighty Percent Signature Provision:

The Hermosa Beach City School District will schedule a board regular meeting with the desire to change a provision of this Stipulation and Settlement Agreement as an item on the agenda.

At least 60 calendar days prior to the meeting, a letter will be sent to each of the residents and property owners specifying an agenda item for that meeting will be to request a change in the Stipulation and Settlement Agreement and will specify in general terms the nature of the change requested, the general reasons for the requested change and will set forth the specific wording requested to be changed. (Note the 60 days is to

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allow any party to petition the Court by Noticed Motion under paragraph ____ (Currently Paragrph 16) that the attempt at the change is not in compliance with this STIPULATION AND SETTLEMENT AGREEMENT.

Assuming at some time the Board ultimately adopts a resolution to further pursue the change the change could be implemented as follows.

* Initial Procedure

A "petition" would be circulated among the owners of the properties on 18th Street and Valley Park stating in general terms the nature of the change requested, the general reasons for the requested change and will set forth the specific wording requested to be changed.

Upon obtaining agreement to the petition by 80% of the adult residents of 18th street and Valley Park as calculated by official voter rolls for those addresses the provision is deemed acceptable to be changed.

The Board could then adopt the change at a regularly scheduled Board meeting where any resident can address the proposed changes prior to a vote on the proposed changes.

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After adoption of the changes by this method, the change cannot be challenged by any resident of Valley Park or 18th Street except under the general provisions of this agreement which allow any party to enforce the settlement agreement by petition to this Court under paragraph _____. (Currently Paragraph 16) (For instance if a Party believed that appropriate procedures were not followed)

*"Appeal" Procedure

If the Board is not able to obtain the 80% approval as required by the above provisions then the Board may proceed as follows.

A neutral arbitrator would be selected to hear and rule on the matter pursuant to paragraph ____ (%% Currently paragraph 17) agreeable to the Board and any 50% of the residents of Valley Park and 18th Street. Best efforts would be made by all to choose such an arbitrator within 60 days. Verification of agreement to use arbitrator would be by signature verifying agreement to the arbitrator.

The arbitrator would hear argument and evidence (add ability to subpoena witnesses and evidence)

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The arbitrator would be bound by the following provisions in that he could rule to allow changes to the Stipulation and Settlement Agreement only if the following requirements are met:

* The change cannot be made if the intent of the Board to make the change as determined by the arbitrator is to increase usage of the gym facility to obtain more income from rental fees. For instance, if the Board requested that use be allowed for commercial uses or longer hours of use were requested and it appeared to the arbitrator that a primary reason for the change was to increase revenues he would be required to deny the requested change.

* The arbitrator could only agree to the change if the Hermosa Beach City School District demonstrates a compelling reason for the change. Such a compelling reason would have to be based on circumstances which have changed since the approval of this Stipulation and Settlement Agreement.

* The only other basis on which the Hermosa Beach City School District could base a requested change would be based on a circumstance or condition or situation which was not contemplated in the agreement such as an oversight or area which just was not addressed. In such case the test for the arbitrator to use would be one of a reasonableness standard.

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For any procedure above the costs of the arbitrator would be born by the Hermosa Beach School District.

As to the above procedures, the ruling by the arbitrator would be final subject only to a challenge by way of allegation of violation of the provisions of the Stipulation and Settlement Agreement per paragraph _____. (Currently paragraph 16)

21. DISPUTES AS TO MEANING OF PROVISIONS HEREIN:

Should any dispute arise as to the meanings of the provisions herein or the interpretation of the provisions, any party may, on Noticed Motion apply to this Court for a non appealable interpretation by the Court. Alternatively, an independent person, agreed upon by all parties can make the determination, such as an arbitrator chosen under the provisions of this Stipulation and Settlement Agreement.

22. COSTS AND ATTORNEY FEES:

The community was forced to file a lawsuit to get put in place a reasonable system whereby the mitigation measures could not be arbitrarily changed by the Board -- this could have been done without any litigation had the Board wished to do so.

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If this matter is settled now without need for further litigation and associated costs ie before a trial and before an appeal process is begun by either side (which seems inevitable if there is a trial) then the amount of costs and attorney fees requested to be paid is negotiable.

23. DISMISSAL OF LAWSUIT:

The Petitioner is hereby directed to have its attorney dismiss this above entitled lawsuit, with prejudice, immediately upon the completion of the Conditions Precedent set forth herein.

24. STIPULATION TO CONTINUE TRIAL DATE OR TAKE IT OFF CALENDAR:

Upon agreement to the terms of this STIPULATION AND SETTLEMENT AGREEMENT the Court will at its discretion, reset the trial date consistent with the intent of this agreement or take it off calendar without prejudice to either party petitioning to have it reset if the condition precedents are not met.

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IT IS SO STIPULATED AND AGREED:

* (Signature Blocks as appropriate for School Board and Committee For Responsible School Expansion)

APPROVED AS TO FORM AND CONTENT:

10/12/05

DATED: _____

BY _____

Attorney for Petitioner

DATED: _____

BY _____

Attorney for Respondents

=====

STIPULATION AND SETTLEMENT AGREEMENT IS SO ACCEPTED:

DATED: _____

BY _____

Judge of the Superior Court

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