

Robert

A-2002-101

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Clerk of the Council
City of Santa Ana
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SECTION 6103

**JOINT USE AGREEMENT AND COVENANT BY AND BETWEEN
SANTA ANA UNIFIED SCHOOL DISTRICT AND THE CITY OF SANTA ANA**

THIS Joint Use Covenant and Agreement ("AGREEMENT") is dated as of June 3, 2002, by and between the Santa Ana Unified School District ("District"), a public school district duly organized and existing under the laws of the state of California, and the City of Santa Ana ("City"), a charter city and municipal corporation duly organized and existing under the constitution and laws of the state of California.

RECITALS:

WHEREAS, the City owns and operates Centennial Park with the City of Santa Ana, depicted on the map attached hereto as Exhibit "A"; and,

WHEREAS, the City acquired Centennial Park from the U.S. Government subject to the condition that it forever be dedicated and set aside for recreational purposes; and

WHEREAS, District has sought City's agreement to convey approximately 18.84 acres of Centennial Park to the District for use as a site for a performing arts center and athletic facilities (hereinafter defined as the Joint Use Property) to support Hector Godinez Fundamental High School being developed at Centennial Park; and,

WHEREAS, concurrent with approval of this Agreement, the City has agreed to convey the Joint Use Property in consideration for this covenant to make use of the High School facilities, primarily those on the parkland, for community and City purposes so as to maximize the beneficial use of the land and facilities for the entire community.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the parties hereto agree as follows:

1. DEFINITIONS

The following definitions shall apply to the terms as used in this Agreement:

A. "Joint Use Property" shall mean that certain real property and improvements thereon described in Exhibit "B" attached hereto.

B. "Joint Use Facilities" shall mean all building, facilities, fields and other improvements currently or later constructed on the Joint Use Property including but not limited to the: gymnasium (excluding the weight room and locker rooms), public restrooms, aquatic facilities (when developed), performing arts facility, band, choir and visual arts facilities, sports fields and courts, parking structure, and (to the extent located on the Joint Use Property) classrooms. To the extent that any of the foregoing facilities are ultimately developed elsewhere on the High School but not on the Joint Use Property, all of the terms of this Agreement shall extend to those facilities in order that the full intent of this Agreement is carried out.

C. "Technical Advisory Committee" shall mean that certain committee appointed by the City Manager of the City and the Superintendent of the District pursuant to this Agreement, which shall be responsible for resolving conflicts in scheduling of the Joint Use Facilities.

D. "Regular School Hours" shall mean 6:00 am through 6:00 pm, Monday through Friday (excluding state and national holiday observed by the District) unless changed by agreement of the parties.

E. "District Time" shall mean the time during Regular School Hours, when the District shall have the right to schedule use of the Joint Use Facilities.

F. "City Time" shall mean those days and hours, outside of Regular School Hours, when the City shall have the right to schedule use of the Joint Use Facilities.

G. "Athletic Fields" shall mean the high school athletic fields as described in this Agreement, but shall not include replacement softball fields or other replacement facilities of the City.

2. PROPERTY BURDENED

This Agreement constitutes a covenant and obligation running with the land burdening the Joint Use Property.

3. FACILITIES BURDENED

The City shall have the right to use all of the Joint Use Facilities, subject only to the restrictions set forth below. As part of this Agreement, the District shall also permit the City to use classrooms and other educational facilities not on the Joint Use Property or covered by this Agreement at locations and in numbers approved by the District consistent with the purposes of This Agreement.

4. TERM AND COMMENCEMENT

This AGREEMENT shall commence on the Commencement Date (as defined in Section 18), and shall continue in perpetuity unless terminated as hereinafter provided.

5. PERMITTED USE OF FACILITIES

The rights of the City to schedule use of the Joint Use Facilities shall be determined based on the following.

A. DISTRICT TIME: District shall have the right, without prior consent of the City, to schedule use of the Joint Use Facilities during Regular School Hours for both the regular school year and any summer school.

B. CITY TIME: City shall have the right at its discretion to schedule activities in the Joint Use Facilities, provided that the times are not in conflict with District Time or activities previously approved by the Technical Advisory Committee.

For each of the following Joint Use Facilities, the City Time shall be on the following days and for the following hours:

Gymnasium, Aquatic Center (when developed), Performing Arts, Band, Choir and Visual Arts Facilities

School year:

Mon - Fri 6 pm - 10 pm

Sat - Sun 8 am - 10 pm

Summer & Holidays:

Mon - Sun 8 am - 10 pm

Mon - Sun 1 pm - 10 pm (during Summer School)

Special Use of Performing Arts Facility by City designees

Mon 6 pm - 10 pm year round

Two rooms for rehearsals

Sports Fields and Courts

School year:

Mon - Fri 6 pm - midnight

Sat - Sun 8 am - midnight

Summer & Holidays

Mon - Sun 8 am - midnight

Mon - Sun 1 pm - midnight (during Summer School)

Parking Structure

School year:

Mon - Fri 5 pm - midnight

Sat - Sun 8 am - midnight

Summer & Holidays

Mon - Fri 1 pm - midnight (during Summer School)

Mon - Sun 8 am - midnight

C. During City Time, the City shall be entitled to schedule or program any and all of the following activities. These are intended to be descriptive in nature and shall be interpreted broadly. The City may directly conduct the programs or do so through a third party permittees, so long as done in the same manner and under same conditions for programming in other City facilities and meets any applicable State or Federal anti-discrimination requirements or school-site safety standards such as prohibition of alcoholic beverages and tobacco.

Gymnasium

- Youth Basketball
- Volleyball
- Martial Arts/Self-Defense Classes
- Fitness Classes
- Gymnastics Program
- Exercise Classes
- Open Gymnasium Use

Aquatic Center (when developed)

- Water Aerobics
- Lap Swim
- Water Polo
- Recreation Swim
- Senior Swim

Sports Fields and Courts

- Soccer
- Softball/Baseball
- Football
- Track & Field
- Basketball

Performing Arts Center-- Use by City-designated groups which may (without limitation) include the following:

- Arts In Person
- Pacific Symphony Youth Orchestra
- Santa Ana Winds
- Front Row Center & Broadway On Tour (Children's Theater)
- Opera Pacific
- Pacific Chorale
- Visual Art Display

Band, Choir and Visual Arts Facilities

- After School Arts and Visual Arts
- Chorus
- Dance
- Theatre
- Piano
- Digital Arts
-

Special Events Programming (various facilities)

- Classes
- After School Arts
- Community meetings
- Teen Clubs

Parking Garage

- Parking for City Time participants
- Centennial Park Visitors

D. City reserves the right to charge a reservation and use fee for use of Joint Use Facilities and, subject only to the provisions of Section 8, to retain the revenue generated from City reservations and City use fees.

E. The City will use its best efforts to retain qualifying District employees and students for positions which will be involved in conducting and supervising City programs in the Joint Use Facilities.

6. SCHEDULING USE OF JOINT USE FACILITIES/TECHNICAL ADVISORY COMMITTEE

The City Manager of the City (the "City Manager") and the Superintendent of the District (the "Superintendent") are authorized and directed to create the Technical Advisory Committee which shall meet no less than once every 2 months to agree upon scheduling of the Joint Use Facilities for the succeeding 4 months. The Technical Advisory Committee shall be composed of up to 4

persons, 2 each appointed by the City Manager and the Superintendent (and may include the City Manager and/or the Superintendent). The Technical Advisory Committee shall be responsible for resolving conflicts in scheduling City Time. The District and the City agree to submit a list of activities each seeks to schedule in the Joint Use Facilities during City Time, at least 4 months in advance.

The District and the City recognize and agree that the purpose of this Agreement is to ensure the Joint Use Facilities are of benefit to all of the community, particularly its young people. As such the City acknowledges that a full-service high school utilizes significant amounts of time outside of Regular School Hours for student activities, and that the District does not always have unilateral control over scheduling of after-school activities, particularly in the area of athletics. The parties acknowledge that at various times, and particularly on weekdays during the school year, there will be times when the District will need to use some of the Joint Use Facilities during City Time. Therefore, the Technical Advisory Committee will approve District use during City Time for any such activities for students of the High School. Without limiting the generality of the foregoing, the Technical Advisory Committee will approve District use during City Time for those activities even when the use/activity was not previously included on the list of activities submitted by the District as required by this Section, where the need for such use or activity arose subsequent to the submission of that list for reasons beyond the District's control. Examples (without limitation) include rescheduling of athletic events due to rain delays of previously scheduled events, and scheduling additional athletic events beyond regular season events where a school team advances to playoff-level games.

Likewise, the District acknowledges that the facility is intended to serve the entire community, and therefore it needs to take special effort to minimize District use of the Joint Use Facilities during City Time. Therefore, the Technical Advisory Committee is to use all reasonable efforts to cause the scheduling of other District facilities whenever it is considering use of the Joint Use Facilities for a District activity during City Time that is not primarily for the benefit of students of the High School. In the event it so determines, and the City has a need for such facilities, then the District will make another District-owned facility available to the City or its designees or permittees under the same terms as this Agreement.

The Technical Advisory Committee will also be responsible for scheduling periods where Athletic Fields, courts and other Joint Use Facilities will be unavailable to both the City and the District in order to allow replanting, reseeding or repair of grass areas, resurfacing of courts, and other necessary maintenance or repair work. In establishing such periods, the Technical Advisory Committee shall take into consideration scheduling needs of the High School's athletic and physical education programs. For the purpose of example, the football field may need to be closed for two separate periods of up to eight weeks each year for replanting, reseeding and restoration. The Technical Advisory Committee should attempt to schedule these closure periods during the football program's season break and during the summer immediately prior to the commencement of the football so as to minimize impact on the football program. Similar periodic closures [although possibly for different lengths and at different times through out the

year] will be needed to perform similar field maintenance activities with respect to baseball, softball and soccer fields; all such periodic closures shall be scheduled to minimize disruption of the District's baseball, softball and soccer programs, while still respecting to the extent possible the purpose of this agreement to facilitate use by the City.

Members of the Technical Advisory Committee will also be empowered to discuss and resolve conflicts in implementing all other provisions of this Agreement. Either party may submit issues related to maintenance, security, programming or other issue which may arise from time to time, and both parties agree to cooperate in good faith to resolve matters through the Committee. The unanimous consent of the Technical Advisory Committee shall not be required to resolve a question posed to the Technical Advisory Committee, provided that (a) reasonable effort is made to contact all members and to allow them to participate in the resolution, and (b) at least one City-appointed member and one District-appointed member agree upon the resolution of the question.

7. PROGRAMMING OUTSIDE OF AGREEMENT

In addition to City Time, the City and District agree to cooperate throughout the term of this agreement to permit the City to use the Joint Use Facilities for programming as programs are identified from time to time by the City subject to general District scheduling procedures and regulations. In general the hours may be from 3:00 pm – 10:00 pm during the school year and 7:00 am – 10 pm during the Summer and Holidays. City shall have use of Joint Use Facilities for special programs and special events as available.

8. CITY CONTRIBUTION FOR CUSTODIAL, UTILITY AND MAINTENANCE

The District and the City understand and agree that a material aspect of the City's consideration for agreeing to convey the land for the High School is obtaining the perpetual right to use the Joint Use Facilities for City programming purposes. The District and the City also understand and agree that it is impracticable to accurately calculate the incremental costs (if any) to the District to permit the City usages contemplated herein, particularly taking into consideration the potential for other community uses (without contribution to costs) if the City rights were not exercised. Therefore, the parties hereby agree that the City's obligation to contribute to the District's costs for custodial, utility and maintenance expense will be limited to the following, recognizing that such contribution may or may not fully compensate the District for its actual incremental costs attributable to the City's exercise of its rights hereunder.

A. The City shall reimburse the District on a monthly basis (or as otherwise agreed by the Technical Advisory Committee) for a pro rata share of actual electrical utility costs incurred by the District attributable to the times that the City uses the Joint Use Facilities. Where feasible, the District shall install separate metering technology to measure City use vs. District use. Otherwise, the pro rata share shall be established from time to time by the Technical Advisory Committee based upon actual usage by the City and actual electrical utility costs incurred by the District.

B. The City shall reimburse the District annually for its pro rata share of cost of reseeding and repair of the Athletic Fields. The City's contribution to these costs shall be based on a calculated estimate of the percentage of active use of the fields by the City compared to active use by the District, multiplied by the actual cost incurred by the District.

C. As its contribution to regular custodial services expense for use of all Joint Use Facilities, the City shall pay to the District as follows:

(i) for each City-operated fee based program \$1.00 for each registered participant;
or,

(ii) for each third-party-operated fee based program, 33% of any fee or charge the City receives from the third party operator; and,

(iii) a payment of \$10.00 per day per facility used (e.g. \$10.00 each for use of the auditorium, the band room, athletic field, gymnasium, and/or a classroom.)

9. SUPERVISORY AND SECURITY OBLIGATIONS OF CITY

The City shall be entitled access via keys or other access devices to Joint Use Facilities. The City shall use those keys or access devices only to gain access to the Joint Use Facilities during times when the City has scheduled the use of the Joint Use Facilities. The City shall provide a level of supervision and security commensurate with that provided at City-owned facilities at all times while using the Joint Use Facilities (and for reasonable periods of time immediately prior to an following such use). The District shall perform all custodial services relative to the Joint Use Facilities (although the District shall have no obligation to supervise recreational activities conducted at the Joint Use Facilities by the City or by third parties to whom the City has granted the use of the Joint Use Facilities pursuant to this Agreement). The City shall regularly inspect all fields and other facilities prior to use and note any concerns to the district for repair. The City shall pay for any damages of Joint Use Facilities and equipment caused by the City's usage and/or by usage of third-parties approved by the City.

10. OBLIGATIONS OF DISTRICT

During the term of this AGREEMENT, DISTRICT hereby covenants and agrees to the following:

A. Allow CITY to lawfully and peacefully use and enjoy the Joint Use Facilities in accordance with the terms of this Agreement.

B. Perform the usual maintenance of the Joint Use Facilities as required under normal working conditions and fair wear and tear.

11. RESTRICTIONS ON FENCING.

The Athletic Fields and hard courts shall not be fenced off from the remainder of Centennial Park so as to maximize the joint use potential of the facilities. The design of the other Joint Use

Facilities shall ensure reasonable access from the City's facilities in Centennial Park without access through the school campus.

12. **RESERVED.**

13. **EQUIPMENT USE:**

Each entity is responsible for providing its own equipment, materials and supplies for its own programs. The parties may agree to share use of certain specific items, such as school classroom desks, tables, chairs, computers, chalkboards, etc. If equipment is damaged or destroyed during a specific program or event, the entity responsible for the program or event shall pay for the damage or destruction under the insurance deductible(s). The entity that insured the property will file claim(s) with its insurer(s) if the damage or loss is greater than the insurance deductible(s).

14. **LIABILITY AND INDEMNIFICATION**

A. The City shall be financially responsible for damages caused by City use under this Agreement.

B. The City shall indemnify, defend, and hold harmless District, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by City under this Agreement, third party activities programmed or sponsored by the City, and City programming outside of City Time, except those which arise out of a dangerous/defective condition of District property or due to the sole negligence of the District.

C. The District shall indemnify, defend, and hold harmless the City, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of its operation of the High School, including use, operation, maintenance and repair of the Joint Use Facilities, except as provided in "B" above.

15. **INSURANCE**

Both the City and the District shall maintain, for the period covered by this Agreement, at their own respective costs, their own respective policy or policies of general liability insurance and property insurance. Each party waives subrogation of its insurance coverage for the other entity. Self-insurance authorized by state law and/or maintained by the City or the District in the regular course of business for its other activities shall satisfy this requirement.

16. **APPLICABILITY OF CIVIC CENTER ACT**

The City acknowledges that with respect to those portions of the High School that are not subject to this Agreement, the District is required to and shall comply with the "Civic Center Act" as codified at Education Code sections 38130 through 38139. Nothing contained herein shall prevent the District from making said exclusively-controlled portions of the High School available to groups and individuals as authorized and/or directed by the Civic Center Act.

Furthermore, during all times (including both District Time and City Time) when neither the District, the City, nor the City's designees or permittees are scheduled to use the Joint Use Facilities, the Technical Advisory Committee shall make the joint use Joint Use Facilities available for third-party use pursuant to the provisions of the Civic Center Act.

17. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other shall be in writing and shall be deemed given and served upon the other party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed as follows:

If to CITY:

City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702
Attn: Clerk of the Council

And

City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702
Attn: City Attorney

If to DISTRICT:

Santa Ana Unified School District
1601 E. Chestnut
Santa Ana, CA 92701
Attn: Assistant Superintendent of Budget, Facilities and Personnel

18. COMMENCEMENT DATE

This Agreement and the duties and obligations contained herein shall become effective only upon the Commencement Date (as defined therein) of that certain Ground Lease Agreement dated even herewith.

19. SEVERABILITY AND APPLICABLE LAW

Whenever possible, each provision of this AGREEMENT shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT shall be invalid under the applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of

this AGREEMENT. This AGREEMENT has been made and entered into in the State of California and the laws of said State shall govern the validity and interpretation hereof and the parties' performance hereunder.

20. AMENDMENTS

This AGREEMENT sets forth the entire understanding between the parties with respect to existing and future school and park facilities. Any and all agreements between the parties in existence at the time of the signing of this AGREEMENT shall remain in full force and effect and shall supplement this AGREEMENT. Any modifications must be in the form of a written amendment agreed to by both parties.

21. REMEDIES FOR BREACH

Any material breach of this Agreement alleged by either party shall be subject of notification in writing to the alleged breaching party, as provided herein. Each party shall be accorded a 60-day period from actual receipt of written notification to cure each and every breach identified in the notification. Failure to provide notification in writing an the opportunity to cure any alleged breach shall constitute a waiver of that breach of the Agreement. Any dispute as to the existence of a material breach, the acceptability of a cure for each alleged breach, or the appropriate remedy for each and every material breach of this Agreement shall be resolved by mediation and/or arbitration by a mediator/arbitrator agreeable to both parties. Arbitration of disputes as to material breach of this Agreement shall be final and binding as the exclusive remedy for enforcement of the rights and responsibilities of all parties subject to this Agreement.

22. BINDING EFFECT/ASSIGNMENT

This AGREEMENT and all the terms, covenants, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors. This Agreement shall not be assignable by either Party.

IN WITNESS WHEREOF, this AGREEMENT has been duly approved by both DISTRICT and CITY.

[Signatures provided on next page]


The "District"
Santa Ana Unified School District,
a political subdivision of the State of California

The "City"
City of Santa Ana
A Charter City


By:


Al Mijares
Superintendent

By:

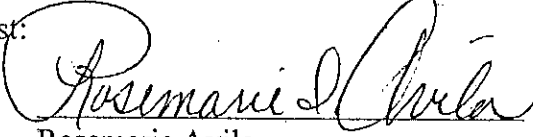

David N. Ream
City Manager

By:


John Palacio
President of the Board

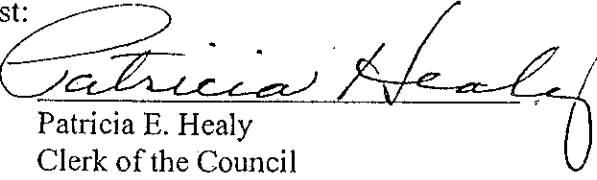
Attest:

By:


Rosemarie Avila
Clerk of the Board

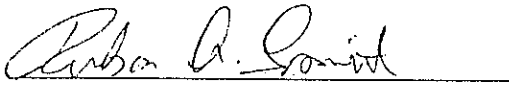
Attest:

By:


Patricia E. Healy
Clerk of the Council

Approved as to Form:
Alvarado, Smith & Sanchez
General Counsel

By:


Ruben A. Smith

Approved as to Form:

By:

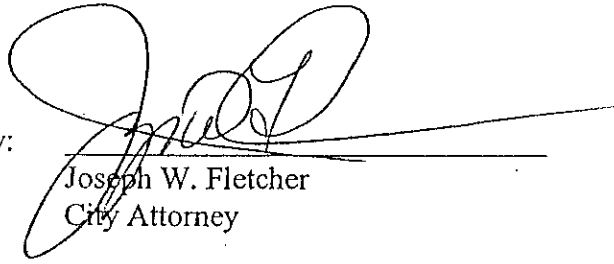

Joseph W. Fletcher
City Attorney

Exhibit "A" Aerial Photograph Centennial Park



Exhibit "B" Legal Description

Portions of Lots 1 & 4 of Tract 1024, as shown on a map recorded in Book 33, Page 33 of Miscellaneous Maps, records of Orange County, California, and a portion of Section 22, Township 5 South, Range 10 West, in the Rancho Las Bolsas, per map recorded in Book 51, Page 12 of Miscellaneous Maps, records of Orange County, more particularly described as follows:

Beginning at the southwesterly corner of said Lot 1; thence, northerly along the westerly line of said Lot 1 N. $00^{\circ}59'00''$ W. 12.33 feet to the True Point of Beginning; thence,

1. N. $00^{\circ}59'00''$ W. 174.02 feet; thence,
2. N. $89^{\circ}29'03''$ E. 577.06 feet; thence,
3. N. $89^{\circ}13'55''$ E. 236.59 feet to a non-tangential curve concave to the northwest having a radius of 239.60 feet, a radial to said point bears S. $24^{\circ}04'19''$ E.; thence,
4. Northeasterly along said curve through an angle of $10^{\circ}29'54''$ a distance of 43.90 feet to a reverse curve concave to the southeast having a radius of 210.60 feet, a radial to said point bears N. $29^{\circ}15'28''$ W.; thence,
5. Northeasterly along said curve through an angle of $14^{\circ}47'43''$ a distance of 54.38 feet to a non-tangent line, a radial to said point bears N. $14^{\circ}27'45''$ W.; thence,
6. N. $09^{\circ}02'44''$ E. 432.59 feet to a non-tangential curve concave to the west having a radius of 1,007.44 feet, a radial to said point bears S. $83^{\circ}10'29''$ E.; thence,
7. Northwesterly along said curve through an angle of $22^{\circ}35'14''$ a distance of 397.15 feet, a radial to said point bears N. $74^{\circ}14'18''$ E.; thence,
8. S. $88^{\circ}25'38''$ W. 318.65 feet; thence,
9. S. $01^{\circ}34'22''$ E. 3.53 feet to a tangential curve concave to the north having a radius of 43.00 feet, a radial to said point bears N. $88^{\circ}25'38''$ E.; thence,
10. Southwesterly along said curve through an angle of $180^{\circ}00'00''$ a distance of 135.09 feet, a radial to said point bears S. $88^{\circ}25'38''$ W.; thence,
11. N. $01^{\circ}34'26''$ W. 23.23 feet; thence,
12. S. $88^{\circ}21'21''$ W. 303.26 feet; thence,
13. S. $00^{\circ}30'49''$ E. 166.40 feet; thence,
14. S. $89^{\circ}30'37''$ W. 92.76 feet; thence,
15. S. $00^{\circ}30'57''$ E. 496.18 feet; thence,

16. S. 89°29'03" W. 146.33 feet; thence,
17. S. 00°30'57" E. 45.83 feet; thence,
18. S. 89°29'03" W. 8.00 feet; thence,
19. S. 00°30'57" E. 136.99 feet to a non-tangential curve concave to the northeast having a radius of 541.61 feet, a radial to said point bears S. 00°33'52" W.; thence,
20. Northwesterly along said curve through an angle of 36°29'32" a distance of 344.96 feet, a radial to said point bears S. 37°03'24" W.; thence,
21. S. 37°35'33" W. 80.68 feet to a non-tangential curve concave to the northwest having a radius of 121.85 feet, a radial to said point bears S. 55°46'36" E.; thence,
22. Southwesterly along said curve through an angle of 48°52'21" a distance of 103.94 feet to a compound curve concave to the northwest having a radius of 248.67 feet; thence,
23. Southwesterly along said curve through an angle of 07°55'49" a distance of 34.42 feet, a radial to said point bears S. 03°10'12" W.; thence,
24. S. 01°10'23" W. 183.62 feet; thence,
25. S. 89°20'00" E. 505.74 feet to the True Point of Beginning.

The area of above-described land is 820,846 square feet, more or less.

Centennial Park

Exhibit "B"

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