

TOWN OF ROSS

RESOLUTION NO. 2233

A RESOLUTION OF THE TOWN OF ROSS TOWN COUNCIL DETERMINING THAT APPROVAL OF A USE PERMIT ALLOWING AN INCREASE IN STUDENT ENROLLMENT AT THE BRANSON SCHOOL, 39 FERNHILL AVENUE, ROSS, CALIFORNIA, FROM 320 TO 420 STUDENTS IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO STATE CEQA GUIDELINES SECTION 15314, APPROVING A USE PERMIT PURSUANT TO SECTION 18.16.030 OF THE ROSS MUNICIPAL CODE TO AUTHORIZE THE INCREASE IN THE TOTAL MAXIMUM ALLOWED FULL-TIME AND PART-TIME ENROLLMENT AT THE BRANSON SCHOOL, 39 FERNHILL AVENUE, ROSS, CALIFORNIA, FROM 320 TO 420 STUDENTS, AND IMPOSING AMENDED AND RESTATED CONDITIONS OF APPROVAL

WHEREAS, The Branson School, is the owner of certain real property located at 39 Fernhill Avenue, Ross, California ("**Project Site**");

WHEREAS, on May 11, 1978, the Ross Town Council adopted Resolution No. 1042 approving a use permit which allowed the expansion of a private school at the Project Site (the "**1978 Use Permit**"), subject to certain conditions of approval, including Condition of Approval No. 1 which limited enrollment in a manner consistent with the terms of the Ross Municipal Code Section 18.16.030 (b) to 320 students; and

WHEREAS, on March 3, 2020, a majority of the electorate of the Town of Ross approved Measure F, a voter initiative measure which effectuated an amendment to Ross Municipal Code Section 18.16.030 (b) to increase the allowable enrollment of any public or private school in the R-1 zoning district from 320 to 420 students; and

WHEREAS, subsequent to the approval of Measure F and the resulting amendment to Ross Municipal Code Section 18.16.030 (b), The Branson School submitted an application for a use permit amending Condition of Approval Nos. 1 to increase student enrollment from its current permitted enrollment of 320 students in increments of 25 students per academic calendar year, over a period of 4 academic calendar years, to a total of 420 students, along with the approval of a Transportation Demand Management Plan ("**TDMP**") (Parisi Transportation Consulting; Final Plan - December 2021) to be implemented by The Branson School (collectively, the "**Project**"); and

WHEREAS, in accordance with the provisions of the California Environmental Quality Act ("**CEQA**"), the Project was evaluated to determine if it is exempt from further environmental review pursuant to State CEQA Guidelines Section 15314, which exempts minor additions to

existing schools within existing school grounds where the addition does not increase original student capacity by more than 25 percent; and

WHEREAS, case law has established that the exemption set forth in Section 15314 applies to enrollment increases as well as projects that propose physical changes at a school, and that “original student capacity” means the school’s preexisting physical ability to house students, or stated slightly differently, the phrase “original student capacity” means the school’s enrollment capacity, “physical space for housing students” or “number of students that can be accommodated physically at the receptor school”; and

WHEREAS, as discussed in the staff report accompanying this Resolution, the proposed Project does not propose any physical changes to the Project Site and The Branson School already has the physical capacity to accommodate more than the proposed 100 additional students; therefore, no changes in the physical capacity at The Branson School are needed or proposed at the Project Site, the “original student capacity” would not be increased by more than 25 percent nor would classrooms be increased by more than 10 classrooms, and therefore, the Project is eligible for a Class 14 CEQA exemption set forth in State CEQA Guidelines Section 15314; and

WHEREAS, notwithstanding the preliminary determination that the Project falls within an exemption to CEQA, a project must not fall into any of the six exceptions to the exemptions set forth in Section 15300.2 of the State CEQA Guidelines; and

WHEREAS, the only objective exception that could conceivably be applicable is related to “unusual circumstances” as a result of the location of the Project Site within a single-family neighborhood with small, constrained local streets and the school’s status attracting students from all over the region that result in significant impacts to VMT, traffic safety hazards, or inadequate emergency access; and

WHEREAS, as set forth in greater detail in the TDMP, which is a component of the Project, there is no indication that with the *successful implementation* of the TDMP strategies there would be a net increase in vehicle trips to the Project Site as a result of the enrollment increase; the Project would generate fewer than 110 trips per day and would have a per capita VMT that is at least 15 percent below the Ross per capita VMT, and therefore VMT impacts would be less-than-significant; and there is no indication of any effect on traffic safety or emergency response times; and

WHEREAS, for the reasons outlined above, the proposed Project, which includes the implementation of the TDMP, is eligible for a Class 14 CEQA exemption pursuant to State CEQA Guidelines Section 15314 and no additional environmental review is required, however, the Town Council has identified concerns related to the TDMP monitoring protocol, TDMP strategies, and remedies for violation of the Average Daily Trip Limit set forth in the TDMP; and

WHEREAS, in connection with the consideration of the Project application for a use permit to increase the allowable student enrollment by 100 students and implementation of the TDMP,

Section 18.44.030 of the Ross Municipal Code requires the Town Council to find that the Project *“will not be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the”* vicinity of the Project Site *“and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood”* surrounding the Project Site; and

WHEREAS, the requested enrollment of 420 students represents an increase of 31.25% over the existing enrollment, and beyond issues related to the efficacy of the TDMP monitoring protocols, TDMP strategies, and remedies for violation of the Average Daily Trip Limit as a means to maintain net neutral traffic notwithstanding the increased enrollment, the 31.25% increase in enrollment will also affect the level of use of on-site athletic facilities and related increases in noise and activity at the Project Site extending into the evening hours, which collectively represent potential impediments to the peace, comfort, convenience and general welfare of persons residing in the vicinity of the Project Site; and

WHEREAS, the Project Site is presently used by The Branson School for varied outdoor non-athletic events, such as the All School Welcome BBQ, attended by students and members of their families (parents, siblings, grandparents, etc.), at which The Branson School is authorized to utilize amplified sound, yet with the 31.25% increase in student enrollment there is the potential for the intensity of these events, both in terms of numbers of people and noise, to increase significantly beyond current levels necessitating the need for increased use of amplified sound systems to communicate with the ever increasing number of attendees to the detriment of the peace, comfort, convenience and general welfare of persons residing in the vicinity of the Project Site; and

WHEREAS, on January 13, 2022, at 6:00 p.m., in accordance with the requirement of Section 18.44.020, the Town Council held a duly noticed public hearing to consider the proposed Project, which, following conclusion of the public hearing, commencement of deliberation by the Town Council and direction to Town staff, was thereafter continued to a noticed special meeting held on Tuesday, February 8, 2022, at 5:00 p.m., and which, following conclusion of public comment and further deliberation by the Town Council and direction to Town staff, was continued to Tuesday, February 15, at 8:30 a.m. (collectively, the **“Public Meetings”**); now, therefore, be it

RESOLVED, that the Town Council of the Town of Ross, having carefully reviewed and considered the staff reports and all attachments thereto presented as part of the agenda for said Public Meetings, including this Resolution and the Amended and Restated Conditions of Approval (**“Conditions of Approval”**), attached hereto as Exhibit A and incorporated herein by this reference, any and all timely submitted correspondence, all information submitted at or prior to the Public Meetings, and all public comment and testimony presented at the Public Meetings (collectively, the **“Record”**), does hereby find and determine based upon the aforementioned Record as follows:

1. The Conditions of Approval are designed to ensure that the Project *“will not be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or*

working in the” vicinity of the Project Site “and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood” surrounding the Project Site, and in particular:

- Condition No. 18 of the Conditions of Approval, which affects the TDMP monitoring protocol, is designed to ensure that the monitoring protocol is sufficiently robust to provide a strong level of comfort to the Town Council that the monitoring data is sufficient, reliable and representative of typical conditions, against which the TDMP’s promise of net neutral traffic can be measured, is within the range of current traffic engineering practice, and thus serves to guarantee that any increase in Project related traffic will not be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the vicinity of the Project Site and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood surrounding the Project Site; and
- Condition Nos. 1 and 3 of the Conditions of Approval, which affect the TDMP strategies and remedies for violation of the Average Daily Trip Limit as established by the TDMP, are designed to enhance the efficacy of the TDMP strategies, and ensure that the remedy for violations of the Average Daily Trip Limit are proportional to the violation and designed to immediately assist the Project’s return to net neutral traffic through proportional reductions to the allowable Annual Enrollment Maximum, while providing The Branson School the ability to return the allowable Annual Enrollment Maximum back to the Maximum Enrollment Cap in the next academic calendar year through correction and cure of the violation as adjudged in the next Annual Monitoring Report, and thus serves to guarantee that any increase in Project related traffic will not be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the vicinity of the Project Site and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood surrounding the Project Site; and
- Condition Nos. 11 and 12 of the Conditions of Approval, which establish days and hours of the week that athletic facilities may be used by The Branson School and outside organizations, are designed to ameliorate impacts to noise and general disturbance from increased activities at the Project Site attributable to the increased enrollment, and therefore serve to guarantee that increases in Project related activities will not be detrimental to the quiet enjoyment, peace, comfort, convenience and general welfare of persons residing in the vicinity of the Project Site; and
- Condition No. 13 of the Conditions of Approval, which extends the existing prohibition on use of amplified equipment or sound systems at outdoor athletic events, and limits the use of amplified sound to no more than ten (10) outdoor non-athletic events, seven (7) of which must end no later than 7:00 p.m., and three (3) of which must end no later than 10:00 p.m., are designed to ameliorate impacts to noise and general disturbance from the increased intensity of activities at the Project Site attributable to the increased enrollment, and therefore serve to guarantee that increases in the intensity of Project related activities will

not be detrimental to the quiet enjoyment, peace, comfort, convenience and general welfare of persons residing in the vicinity of the Project Site; and

2. Consistent with the requirements of Section 18.44.030 of the Ross Municipal Code, the Project, as conditioned to substantially secure the objective of protecting the public welfare and property or improvements in the neighborhood surrounding the Project Site, as more particularly set forth in the Conditions of Approval, attached hereto as Exhibit A, will not be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the vicinity of the Project Site and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood surrounding the Project Site; and
3. That the Project, inclusive of the TDMP, as amended by the Conditions of Approval, is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15314, and that said exemption is not subject to any exception set forth in State CEQA Guidelines Section 15300.2. The Planning and Building Director is hereby directed to file a Notice of Exemption with the County of Marin County Clerk in accordance with State CEQA Guidelines Section 15062; and
4. As permitted by Section 18.16.030 (b) of the Ross Municipal Code, the Project, subject to the Conditions of Approval, attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved; and
5. The Conditions of Approval, attached hereto as Exhibit A, shall hereby repeal and replace the conditions of approval adopted and imposed by the Town Council on the 1978 Use Permit pursuant to Resolution No. 1042, approved on May 11, 1978. However, in addition to the Conditions of Approval, attached hereto as Exhibit A, The Branson School and the Project Site shall remain subject to all other conditions of approval associated with all other land use approvals approved by the Town for the Project Site to date, which remain unaffected by the approval of the Project pursuant to this Resolution, excepting those conditions imposed pursuant to Resolution No. 1042; and
6. The Branson School and/or owners of the Project Site shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the Project or alleging any other liability or damages based upon, caused by, or related to the approval of the Project. The Town shall promptly notify The Branson School and the owners of the Project Site of any action. The Town, in its sole discretion, may tender the defense of the action to The Branson School and/or owners of the Project Site or the Town may defend the action with its attorneys with all attorneys' fees and litigation costs incurred by the Town in either case paid for by The Branson School and/or owners of the Project Site.

FURTHER RESOLVED, THAT THIS RESOLUTION IS HEREBY APPROVED AND ADOPTED, by the Ross Town Council at its continued special meeting held on Tuesday, the 15th day of February 2022, by the following vote:

AYES: Council Members Robbins, Brekhus, Kircher, Kuhl, McMillan

NOES:

ABSENT:

ABSTAIN:


Elizabeth Robbins, Mayor

ATTEST:


Linda Lopez, Town Clerk

EXHIBIT A
Amended And Restated Conditions of Approval

1. That the total full and part-time student enrollment allowed at The Branson School, 39 Fernhill Avenue, Ross, California ("**Project Site**"), shall at no time exceed 345 students during the 2022/2023 academic calendar year, 370 students during the 2023/2024 academic calendar year, 395 students during the 2024/2025 academic calendar year, and 420 students during the 2025/2026 academic calendar year and all subsequent academic calendar years (each a "**Maximum Enrollment Cap**"). Commencing with the 2022/2023 academic calendar year and each academic year thereafter, The Branson School may enroll no more students than as provided in the then applicable Maximum Enrollment Cap less the Trip Limit Violation Enrollment Reduction, if applicable, but in no event below 320 students (the "**Annual Enrollment Maximum**"). In the event an enrolled student withdraws or otherwise is dismissed from The Branson School, that enrollment slot may be filled by The Branson School at any grade level and shall be counted towards the then applicable Annual Enrollment Maximum.

Commencing February 1, 2023, and each February 1 of each calendar year thereafter, concurrent with the submission of the Annual Monitoring Report to the Town Manager pursuant to Condition of Approval No. 18 below, The Branson School shall submit to the Town Manager its recommendation of the Annual Enrollment Maximum for the upcoming academic calendar year, based upon the findings in the Annual Monitoring Report and calculated as follows:

- a. Commencing with the 2023/2024 academic calendar year and each academic calendar year thereafter, for each 2.69 vehicle trips determined to be in excess of the Average Daily Trip Limit set forth in the TDMP pursuant to the Annual Monitoring Report prepared for the calendar year preceding the calendar year in which the academic calendar year at issue commences, the Maximum Enrollment Cap for the academic calendar year at issue shall be reduced by 1 student, up to a maximum of 25 students ("**Trip Limit Violation Enrollment Reduction**").
- b. Once The Branson School has reached an enrollment of 420 students and operated without a Trip Limit Violation Enrollment Reduction for one year thereafter, in the event The Branson School violates the Average Daily Trip Limit set forth in the TDMP pursuant to an Annual Monitoring Report prepared for the calendar year preceding the calendar year in which the academic calendar year at issue commences, then such violation shall be accounted for as follows¹:

¹ An example of the application of subsection 1.b.(i) and 1.b.(ii) to a hypothetical set of assumptions is attached as Attachment 1 to these Amended and Restated Conditions of Approval.

(i) for the first violation as indicated in an Annual Monitoring Report, and all subsequent odd numbered (i.e. 3rd, 5th, 7th, etc.) violations thereafter, The Branson School shall pay to the Town a fine of \$100,000.00, without deduction or set-off for any amounts due or claimed by The Branson School from the Town, if and only if the immediately following Annual Monitoring Report indicates that The Branson School remains in violation of the Average Daily Trip Limit set forth in the TDMP, and in such event The Branson School shall pay to the Town said fine within sixty (60) calendar days following the date of said following Annual Monitoring Report and will be subject to a Trip Limit Violation Enrollment Reduction against the Maximum Enrollment Cap in accordance with subsection (ii) below; and

(ii) for the second violation as indicated in an Annual Monitoring Report, and all subsequent even numbered (i.e. 4th, 6th, 8th, etc.) violations thereafter, a Trip Limit Violation Enrollment Reduction will be imposed against the Maximum Enrollment Cap and said enrollment reduction shall carry over to subsequent academic calendar years, and any subsequent Trip Limit Violation Enrollment Reductions to the Maximum Enrollment Cap shall apply cumulatively until such time that The Branson School has not violated the Average Daily Trip Limit set forth in the TDMP pursuant to an Annual Monitoring Report prepared for a subsequent calendar year, at which time the Annual Enrollment Maximum shall reset to the Maximum Enrollment Cap.

In the event The Branson School fails to prepare or timely submit the Annual Monitoring Report, or fails to prepare or timely submit its recommendation of the Annual Enrollment Maximum for the Town's review and approval, the Annual Enrollment Maximum for the upcoming academic calendar year shall be the Maximum Enrollment Cap less 25 students. The Town Manager, or her or his designee, with the assistance of a transportation consultant retained by the Town, subject to reimbursement by Branson in accordance with Condition of Approval No. 19 below, shall review the Annual Monitoring Report and The Branson School's recommendation of the Annual Enrollment Maximum and shall, within thirty (30) calendar days of receipt, either approve or modify the Annual Enrollment Maximum recommended by The Branson School and thereafter issue in writing, by March 1 of each year, the Town's determination of the Annual Enrollment Maximum for the upcoming academic calendar year, which determination shall be final.

Actual student enrollment at The Branson School in excess of the then allowable Annual Enrollment Maximum shall constitute a separate and distinct violation of this condition for each and every student enrolled in excess of said Annual Enrollment Maximum and for each and every instructional day of the then applicable academic calendar year that said student or students are enrolled.

2. That no building permit, except as may be required for the ordinary maintenance or repair of existing facilities, shall be issued for any construction at the Project Site which is not described and identified in the master plan for The Branson School, as amended on April 3, 1978.

3. That The Branson School shall, at its sole cost and expense, take all steps required to implement the provisions of the Transportation Demand Management Plan, labeled Final Plan - December 2021, prepared by Parisi Transportation Consulting ("TDMP"), as amended by these Amended and Restated Conditions of Approval, to maintain compliance with the Average Daily Trip Limit, as defined in the TDMP as amended, as long as the Project Site is being used in reliance upon the terms and conditions of this use permit. The TDMP is hereby amended as follows:

- a. The Executive Summary of the TDMP is hereby amended to revise the last two sentences of the fourth paragraph in their entirety to read as follows:

~~"To ensure the efficacy of this plan, Branson has committed to a traffic monitoring program with annual independent compliance reviews for 10 years. Thereafter, the monitoring shall continue unless otherwise deferred, reduced or terminated by the Town, following a meeting with the Town Council and Branson."~~

- b. Strategy 1: Create A Neighborhood Partnership Group, within Chapter 3, Transportation Demand Management Measures of the TDMP, is hereby amended to revise the first bullet following the first paragraph in its entirety to read as follows:

"Organize an ongoing Neighborhood Partnership Group to enhance community relations and communications which shall be open to all households residing on Circle Drive, Fernhill Avenue, Glenwood Avenue, Norwood Avenue, Hillqirt Drive, and Bolinas Avenue and representatives of the Town of Ross. Branson commits to meetings with the Neighborhood Partnership Group once each semester, following the Fall Monitoring Period and Spring ~~traffic~~ Monitoring Periods, and shall use best efforts to publicize the meetings on their website and other online tools and notify the Town Manager, Town Police Chief and Town Planning Director at least one week in advance of the date, time and location of the meetings."

- c. Strategy 2A: Increased Remote Drop Off And Pick Up (Remote Parent Drop Off & Pick Up), within Chapter 3, Transportation Demand Management Measures of the TDMP, is hereby amended to revise the first and second bullet following the second paragraph in its entirety to read as follows:

"No parent drop offs of solo student trips to campus between 8:00 am and 9:00 am one half hour before and one half hour after the beginning of the regular school day."

No parent pick-ups of solo students on campus between ~~2:30 pm and 3:30 pm~~ one half hour before and one hour after the end of the regular school day."

- d. Chapter 4, TDM Monitoring Plan of the TDMP, is hereby amended to delete the Chapter in its entirety and revise it to read as follows:

"4. TDM Monitoring Plan

This Transportation Demand Management Plan ("TDMP") will be implemented by the Branson Administration subject to the review and oversight of the Town of Ross, at the sole cost and expense of The Branson School, in accordance with the Amended and Restated Conditions of Approval approved by the Ross Town Council pursuant to Resolution No. 2233, adopted February 15, 2022 ("Conditions of Approval") (Appendix 4). Defined terms as set forth in the Conditions of Approval shall have the same meaning as and are hereby incorporated into this TDMP by this reference.

QUANTITATIVE MONITORING AND ANNUAL ENROLLMENT

An Annual Monitoring Report will be prepared to assess the TDMP in accordance with Condition No. 18 of the Conditions of Approval. For the purposes of the Annual Monitoring Report, a violation of the "Average Daily Trip Limit" is defined as follows:

- An average Monday through Friday daily trip count above 912 trips (i.e., the average of 860 trips plus a 6 percent buffer, approximately one-half standard deviation).

In the event the Annual Monitoring Report identifies a violation of the Average Daily Trip Limit defined above, the Annual Enrollment Maximum shall be adjusted as provided pursuant to Condition No. 1 of the Conditions of Approval.

ADDITIONAL MONITORING METHODS

In addition to quantitative trip count monitoring outlined above and at the suggestion of the neighborhood working group, Branson shall deploy a minimum of three qualified traffic monitors to patrol neighborhood streets impacted by School traffic and campus vehicle access points, including but not limited to the School's front gate and back parking lot entrance, the intersection of Fernhill and Shady Lane, the intersection of Bolinas and Shady Lane, and the intersection of

Bolinas and Waverly to enforce parking limitations and transportation demand management measures during the morning and afternoon peak period Monday through Friday and during all weekend special events. Branson may deploy more than three monitors to the extent it is deemed necessary by Branson. Monitors shall park on property owned or otherwise controlled by The Branson School.

Furthermore, Branson will meet with the Neighborhood Partnership Group once each semester to receive neighborhood concerns and develop measures to address their issues (Strategy 1)."

Within thirty (30) calendar days following the adoption of Resolution No. 2233 by the Ross Town Council, The Branson School shall revise the TDMP, as amended by this Condition of Approval No. 3, label it "Final Plan – February 15, 2022", amend the Table of Contents to add "Appendix 4: Ross Town Council Resolution No. 2233", add said Resolution No. 2233 as Appendix 4 to the TDMP, and submit the TDMP as revised to Town Staff. Town Staff shall thereafter review the TDMP as revised for conformance with this Condition of Approval No. 3, and upon confirmation that the TDMP as revised conforms to this Condition of Approval No. 3, said TDMP as revised shall constitute the TDMP for the Project Site.

4. That The Branson School shall use its best efforts to operate the school in such manner as to prevent disruption or disturbance of the peace, quiet, comfort and safety of the immediate neighborhood.
5. That by October 15th of each year, The Branson School shall provide and file with the Town a signed affidavit under penalty of perjury that is true and correct indicating the number of students enrolled in The Branson School does not exceed the students as provided in Condition 1, and the number of said students who are residents of the Town; a schedule of the approximate dates of all special events planned for the academic calendar year, and for the summer, insofar as they are known; a schedule of the games for each Branson School athletic team for the academic calendar year insofar as known; and a copy of a memorandum, letter, or directive to students, employees, and parents, advising them of the terms and conditions of the use permit, insofar as applicable, and requesting their compliance with each of the terms of said use permit.
6. [Intentionally Left Blank]
7. That The Branson School mark and clearly designate at least five (5) parking spaces on the Project Site for visitor's parking only.
8. That The Branson School continue to use its best efforts to discourage parking on public streets adjacent to The Branson School by students, parents, employees and faculty.

9. That The Branson School use its best efforts to discourage access to the Project Site via Hillgirt Drive through memorandum and communications to students, parents, guests, employees and faculty advising them of such policy.
10. That weather permitting, The Branson School provide temporary on-campus parking on the athletic playing field for all special events expected to draw a large number of visitors to the Project Site through the use of special officers or traffic monitors to direct traffic to those areas through The Branson School's main entrance.
11. Use of the outdoor athletic field facilities by Branson teams for regularly scheduled practice and by Branson teams and their competitors for regularly scheduled games shall be subject to the following conditions:
 - a. Hours of use shall be limited to 8 a.m. to 7:30 p.m. on Monday through Friday, and 9 am to 6 p.m. on Saturday during the academic calendar year.
 - b. Hours of use shall be limited to 9 am to 7:30 p.m. Monday through Friday during the summer.

Use of the indoor gym facilities by Branson teams for regularly scheduled practice and by Branson teams and their competitors for regularly scheduled games shall be subject to the following conditions:

 - a. Hours of use shall be limited to 7 a.m. to 9 p.m. Monday through Friday and 8 a.m. to 9 p.m. on Saturday during the academic calendar year.
 - b. Hours of use shall be limited to 8 a.m. to 9 p.m. Monday through Saturday during the summer.
12. Use of athletic facilities by outside organizations shall be subject to the following conditions:
 - a. The use of the field and gyms by outside organizations shall be limited to youth-oriented (school-aged, i.e. 18 years of age and under) athletics organizations by permission of Town Staff on a case by case basis. If in question, the determination as to whether an organization is considered youth-oriented will be made by the Ross Town Manager in consultation with the Branson Athletic Director.
 - b. Users of the field or gyms will be directed to use Branson parking spaces and to not park on public streets.
 - c. Use of the outdoor athletic field facilities by outside organizations will be limited to 3:30 p.m. to 7:30 p.m. on Monday through Friday and from 9 a.m. to 5 p.m. on Saturday and Sunday during the academic calendar year.
 - d. Use of the indoor gym facilities by outside organizations will be limited to 3:30 p.m. to 8 p.m. on Monday through Friday and 9 a.m. to 5 p.m. on Saturday and Sunday during the academic calendar year.
 - e. No use of the athletic facilities by outside organizations shall occur during the summer.

13. That no temporary or permanent grandstands or bleachers, amplifying equipment or sound systems, including megaphones and portable stereo systems, or temporary or permanent outside lighting be constructed, maintained or used in connection with any outdoor athletic events held on the Project Site or any other use of outdoor facilities on the Project Site unless otherwise stated below.
 - a. Amplified equipment or sound systems, including megaphones and portable stereo systems, shall be allowed during use of outdoor facilities on the Project Site, excluding use related to outdoor athletic events, for no more than ten (10) outdoor special events each year, seven (7) of which may end no later than 7 p.m., and three (3) of which may end no later than 10 pm. The Branson School shall use best efforts to disclose on their website the events that will use amplified sound as soon as the timing of such events is determined.
 - b. The foregoing notwithstanding, The Branson School's existing emergency sound systems, including amplified speakers inside buildings and a megaphone on the field, may be used in time of emergencies and emergency drills.
14. That the tennis courts constructed adjacent to the parking lot shall be restricted to use by students and faculty of The Branson School, officially sponsored groups or teams of Ross Recreation, Ross Valley Little League or Ross Valley Soccer League, that use of the tennis courts be restricted to the hours of 8:15 A.M. to 8:00 P.M., Monday through Sunday, and that appropriate signs be constructed and maintained on said tennis courts regarding these restrictions.
15. That the auditorium be restricted to use for The Branson School assemblies, special alumni, faculty, and parents or friends thereof of The Branson School, but in no event, for the scheduling of special events to which members of the general public or outside guests unassociated with The Branson School are invited.
16. The Branson School and/or owners of the Project Site shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the Project or alleging any other liability or damages based upon, caused by, or related to the approval of the Project. The Town shall promptly notify The Branson School and the owners of the Project Site, if different, of any action. The Town, in its sole discretion, may tender the defense of the action to The Branson School and/or owners of the Project Site or the Town may defend the action with its attorneys with all attorneys' fees and litigation costs incurred by the Town in either case paid for by The Branson School and/or owners of the Project Site.

17. As provided pursuant to Section 18.44.040 of the Ross Municipal Code, the use of the Project Site, as permitted and authorized pursuant to the terms of this use permit, shall be established and conducted in conformity with the terms of this use permit and these Amended and Restated Conditions of Approval. Pursuant to Section 18.64.040 of the Ross Municipal Code, any violation of one or more of these Amended and Restated Conditions of Approval is a public nuisance, as defined in Section 9.04.100 (6) of the Ross Municipal Code, for each such violation, which may be abated as provided by law, including but not limited to the provisions of Chapter 9.04 of the Ross Municipal Code, which provides for the abatement of public nuisances, imposition of administrative penalties, and recovery of costs of abatement and attorneys' fees.
18. Commencing with the 2022/2023 academic calendar year, in order to implement the TDMP, The Branson School shall, at its sole cost and expense, cause an independent third party transportation consultant, approved by the Town, to conduct the monitoring of campus-wide vehicle trips during (i) the fall term of each academic year for a total of forty (40) days between mid-September and mid-November, and in no event later than the last Friday before the week of Thanksgiving holiday ("**Fall Monitoring Period**"), and (ii) the spring term of each academic year for a total of forty (40) days between the beginning of February and end of April ("**Spring Monitoring Period**"), for as long as the Project Site is being used in reliance upon the terms and conditions of this use permit. In no event shall either the Fall Monitoring Period or Spring Monitoring Period include daily trip data from Saturdays, Sundays, or days when The Branson School is not in session, such as during state or federal holidays or extended breaks in instruction implemented by The Branson School, such as, by way of example, winter break, mid-winter break or spring break as currently provided in The Branson School's 2021-2022 academic calendar, as said calendar may be amended by The Branson School from time to time.

The Town, with the assistance of a transportation consultant to be retained by the Town, subject to reimbursement by Branson in accordance with Condition of Approval No. 19 below, shall approve the vehicle trip monitoring protocol and methodology to be used by the independent transportation consultant retained by Branson, including the locations of collection of trip data which shall generally be consistent with the location(s) forming the basis of the data in Chapter 2, Existing Campus Trip Generation, of the TDMP. Further, the vehicle trip monitoring protocol and methodology shall provide for the independent transportation consultant retained by Branson to release trip monitoring data collected during the Fall Monitoring Period and Spring Monitoring Period to Branson, preferably on a weekly rolling basis, or as soon thereafter as is reasonably feasible, following inspection and review of the data, to provide Branson an opportunity to make adjustments in the implementation of TDMP strategies, as it may deem advisable.

Commencing February 1, 2023, and each February 1 of each calendar year thereafter, The Branson School shall submit and file with the Town a report, prepared by the independent

third-party transportation consultant retained by Branson, which (i) describes the vehicle trip monitoring protocol and methodology used by the consultant and approved by the Town, (ii) contains all of the vehicle trip monitoring data collected during the most recent Fall Monitoring Period and Spring Monitoring Period, (iii) provides an analysis and determination of the average daily Monday through Friday vehicle trips generated during the combined period of the most recent Fall Monitoring Period and Spring Monitoring Period, excluding ten (10) days from each of said periods with the five (5) highest and five (5) lowest vehicle trips, (iv) identifies any irregularities that occurred with any vehicle trip data collected, whether any such data was or was not included in the determination of the average daily Monday through Friday vehicle trips generated during the combined period of the most recent Fall Monitoring Period and Spring Monitoring Period, and the justification for including or excluding such data, (v) provides a determination of the number of average daily Monday through Friday vehicle trips generated during the combined period of the most recent Fall Monitoring Period and Spring Monitoring Period that are in excess of the Average Daily Trip Limit set forth in the TDMP, if any, and (vi) labels the report as "Calendar Year [Insert Appropriate Year] Annual Monitoring Report" (the "**Annual Monitoring Report**"). It is acknowledged that the Annual Monitoring Report for calendar year 2022 to be provided by The Branson School to the Town by February 1, 2023, shall only contain vehicle trip monitoring data collected during the Fall Monitoring Period of calendar year 2022.

19. On or about January 31st and July 31st of each calendar year, the Town will submit to The Branson School an invoice for the direct costs incurred by the Town for the services of a transportation consultant retained by the Town, as provided in Condition of Approval Nos. 1 and 18, as well as for the cost of Town staff providing oversight of the implementation of the TDMP, for the preceding six (6) month period. The invoice shall provide (i) a breakdown of the direct costs incurred by the Town for the services of the transportation consultant, as supported by invoices received and paid by the Town, as well as (ii) the date, number of hours, name and title of Town staff providing services, a general description of the activities performed, and billing rate. The Town shall not add any markup on the direct costs incurred by the Town for the transportation consultant. The cost for time of Town staff shall be billed at the then applicable cost recovery rate for the applicable staff. Branson shall pay the Town the amount identified in the invoice within forty-five (45) calendar days from the date of the invoice. In the event said invoice remains outstanding, in whole or in part, after the expiration of said forty-five (45) calendar day period, the amount outstanding shall bear interest at the rate of ten percent (10%) per annum, from the date of the invoice until paid in full. Any invoice submitted by the Town to The Branson School pursuant to this Condition of Approval No. 19, on or about July 31, 2022, shall cover the period from the date of the adoption of Resolution No. 2233 by the Ross Town Council, until June 30, 2022.

ATTACHMENT 1

By way of example, assume The Branson School has reached its maximum enrollment of 420 students at the end of the 2025/2026 academic calendar year and has operated without violating the Average Daily Trip Limit for one year thereafter as shown in the 2026 Annual Monitoring Report.

Thereafter, assume the Calendar Year 2030 Annual Monitoring Report identifies a violation of the Average Daily Trip Limit, such violation shall be addressed as follows:

- As this is a first violation, The Branson School shall be subject to the payment of a fine of \$100,000 to the Town if, and only if, the Calendar Year 2031 Annual Monitoring Report continues to identify a violation of the Average Daily Trip Limit.
- If the Calendar Year 2031 Annual Monitoring Report does not identify a violation of the Average Daily Trip Limit, then The Branson School shall not be subject to the fine for the violation identified in the Calendar Year 2030 Annual Monitoring Report.
- If the Calendar Year 2031 Annual Monitoring Report identifies a continued violation of the Average Daily Trip Limit, then The Branson School shall pay the fine of \$100,000 to the Town within 60 days after the date of the Calendar Year 2031 Annual Monitoring Report.

If, as explained in our example above, the Calendar Year 2031 Annual Monitoring Report identifies a violation of the Average Daily Trip Limit, this will constitute a second violation identified in an Annual Monitoring Report. A second violation of the Average Daily Trip Limit identified in the Calendar Year 2031 Annual Monitoring Report will be subject to a proportional reduction in the maximum enrollment of 420 students for the 2032/2033 academic calendar year as follows:

- Assume that the Calendar Year 2031 Annual Monitoring Report shows a violation of the Average Daily Trip Limit of 912 trips by 27 trips. The enrollment would be reduced by 10 students (i.e. 27 trips in excess of the 912 trips divided by 2.69 trips per student), and the maximum enrollment of 420 students for the 2032/2033 academic calendar year would be reduced by 10 to a total of 410.

If, the Calendar Year 2032 Annual Monitoring Report identifies a violation of the Average Daily Trip Limit, this will constitute a third violation identified in an Annual Monitoring Report, which shall subject The Branson School to the payment of a fine, if and only if, the Calendar Year 2033 Annual Monitoring Report identifies a violation. The maximum enrollment for the 2033/2034 academic calendar year would remain the same as the 2032/2033 academic calendar year as a result of the ongoing violation.

If, the Calendar Year 2032 Annual Monitoring Report does not identify a violation of the Average Daily Trip Limit, The Branson School shall not be subject to the fine for the violation identified in

the Calendar Year 2031 Annual Monitoring Report, and the maximum enrollment for the 2033/2034 academic calendar year would revert to the maximum of 420 students.

If, the Calendar Year 2032 Annual Monitoring Report identifies a violation of the Average Daily Trip Limit, which as noted previously would constitute a third violation, and the Calendar Year 2033 Annual Monitoring Report identifies a continuing violation of the Average Daily Trip Limit, this will constitute a fourth violation identified in an Annual Monitoring Report. This fourth violation would require The Branson School to pay the fine of \$100,000 to the Town within 60 days after the date of the Calendar Year 2033 Annual Monitoring Report. Further, the maximum enrollment for the 2034/2035 academic calendar year would be subject to a further proportional reduction in then maximum enrollment of 410 students, as established for the 2032/2033 academic calendar year, as a result of the ongoing violation shown in the Calendar Year 2033 Annual Monitoring Report as follows:

- Assume that the Calendar Year 2033 Annual Monitoring Report shows a violation of the Average Daily Trip Limit of 912 trips by 14 trips. The enrollment would be reduced by 5 students (i.e. 14 trips in excess of the 912 trips divided by 2.69 trips per student), and the maximum enrollment of 410 students, as established for the 2032/2033 academic calendar year, would be reduced by an additional 5 students as a result of the ongoing violation, for a maximum enrollment of 405 students for the 2034/2035 academic calendar year.

If, the Calendar Year 2032 Annual Monitoring Report identifies a violation of the Average Daily Trip Limit, which as noted previously would constitute a third violation, and the Calendar Year 2033 Annual Monitoring Report does not identify violation of the Average Daily Trip Limit, then The Branson School shall not be subject to the fine for the violation identified in the Calendar Year 2032 Annual Monitoring Report, and the maximum enrollment for the 2034/2035 academic calendar year would revert to the maximum of 420 students.