

**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

By and Between

**EIGHT MILE DEVELOPMENT, INC.**

**A CALIFORNIA CORPORATION**

("SELLER")

and

**LODI UNIFIED SCHOOL DISTRICT**

("BUYER")

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
AND JOINT ESCROW INSTRUCTIONS OF BUYER AND SELLER**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS OF BUYER AND SELLER ("Agreement"), dated as of \_\_\_\_\_, 2021, is made by and between **Eight Mile Development, Inc., A California Corporation** ("Seller"), and **Lodi Unified School District**, a California public school district ("Buyer"). Seller and Buyer are collectively referred to herein as the "Parties", and individually as a "Party."

**RECITALS**

WHEREAS, Seller entered into that certain Option Agreement dated as of December 23, 2014 (together with all amendments thereto, the "Option Agreement") with Stockton Westlake Investment, LLC, a California limited liability company ("Owner"), whereby Seller holds an exclusive option ("Option") to acquire from Owner an undivided fee simple interest in 19.68 acre parcel of land, located entirely within San Joaquin County Assessor's Parcel Number (APN) 066-050-070, which is located south of Eight Mile Road, just west of I-5. The subject is vacant land located within a 681.70-acre master residential plan area. The subject land area is allocated for a school site and consists of 19.68 acres. It is located on the southwest corner of Regatta Lane and Cosumnes Drive in the City of Stockton, San Joaquin County, State of California, 95219 as more particularly described in **EXHIBIT A** and depicted on **EXHIBIT B**, and incorporated herein by reference (the "Real Property");

WHEREAS, the Parties understand and acknowledge that a myriad of legal requirements must be met in order for a California public school district to acquire property for school purposes;

WHEREAS, the Buyer has already thoroughly investigated the Real Property and completed a portion of the California Department of Education's legal requirements to acquire the Real Property for school purposes;

WHEREAS, Buyer desires to acquire the Real Property, and Seller desires to sell the Real Property, together with all rights, privileges, easements, and improvements thereto (including, without limitation, all easements appurtenant to the Real Property), on and subject to the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and covenants and agreements hereinafter set forth, Seller and Buyer agree as follows:

**ARTICLE 1  
EFFECTIVE DATE**

1.1 **Effective Date.** The date the last Party hereto executes this Agreement, following formal action by the Buyer's Board of Education ("Board") approving the Agreement, shall be the "Effective Date" of this Agreement.

1.2 **Board Approval.** Buyer and Seller acknowledge that this Agreement is subject to approval by the Buyer's Board. Notwithstanding anything in this Agreement to the contrary, Buyer and Seller shall have no obligation hereunder and this Agreement shall not be effective until the Buyer's Board approves this Agreement.

**ARTICLE 2**  
**PROPERTY TO BE PURCHASED**

Seller hereby agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

2.1 The Real Property described in **EXHIBIT A** and shown on **EXHIBIT B** including all mineral and subsurface rights of Seller, if any, to the extent assignable;

2.2 All rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereto or appertaining the Real Property (all of which are collectively referred to as the "Appurtenances");

2.3 All buildings, structures, and other improvements to the Real Property; and

2.4 Any and all of Seller's right, title, and interest in and to any of the following existing at the Closing: (i) all assignable permits, licenses, approvals, and authorizations issued by any governmental authority in connection with the Real Property (collectively, the "Intangibles") as set forth on **EXHIBIT D**.

2.5 The Real Property, the Appurtenances, and the Intangibles are hereinafter collectively referred to as the "Real Property." Seller intends to convey with the Real Property any and all riparian rights to which the Real Property is entitled ("Riparian Rights"), but to retain any and all appropriative rights appurtenant or relating to the surrounding Real Property. While Seller intends to transfer the Riparian Rights with the Real Property, it does not intend to sever the riparian rights of the surrounding properties. With this conveyance Seller intends to retain all Riparian Rights to which the land surrounding the Real Property are entitled.

2.6 Notwithstanding the foregoing, Seller hereby excepts and reserves unto Seller, its successors and assigns, the right to grant and transfer all or a portion of the Riparian Rights, the right and power to utilize, convey, remove, treat, and store the Riparian Rights from the Real Property, to divert or otherwise utilize such Riparian Rights on the Real Property or other property, but without, however any right to enter upon the surface of the Real Property in the exercise of such rights, and such retention shall not dedicate the Riparian Rights to any public use. The rights so reserved will be transferred to the homeowner's association that will be formed on neighboring property for the benefit of the Seller.

**ARTICLE 3**  
**PAYMENT OF PURCHASE PRICE**

3.1 The Purchase Price. The purchase price for the Real Property shall be a total of **Two Million Seven Hundred Forty One Thousand One Hundred Sixty Dollars and 00/100 (\$2,741,160)**.

3.2 Terms. The Purchase Price shall be paid as follows:

a. Deposit. Within ten (10) days after the Opening of Escrow, Buyer shall deposit the sum of **Fifty Thousand Dollars and 00/100 (\$50,000.00)** (the "Deposit"), in cash or other immediately available funds, in escrow with a mutually agreed upon escrow holder identified below:

b. Old Republic Title Company, Attn: Molly Baier at 785 Alamo Drive, Suite 180, Vacaville, California 95688 (the "Escrow Holder").

c. Deposits for Extensions of the Contingency Period. As provided for in Section 5.2 below, the Contingency Period may be extended by up to two (2) extensions of thirty (30) days each. Concurrently with each such extension, Buyer shall deposit Fifty Thousand Dollars (\$50,000) with the Escrow Holder. Any such additional deposit for the extension of the Contingency Period shall be within the definition of "Deposit" as established by Sub-Section 3.2.a, above.

d. The Deposit shall be held in a federally insured, interest bearing account and the interest accruing thereon shall be held for the account of Buyer. At the Close of Escrow, the Deposit and all interest accrued thereon shall be applied toward the Purchase Price.

e. Balance of Purchase Price. The balance of the Purchase Price, plus or minus any applicable prorations pursuant to Article 7 hereof, shall be deposited by Buyer with Escrow Holder for delivery to Seller at the Close of Escrow in cash or other immediately available funds.

#### **ARTICLE 4** **ESCROW**

4.1 Opening of Escrow. Within ten (10) business days after the Effective Date, Buyer and Seller shall open an escrow ("Escrow") with the Escrow Holder to consummate the sale of the Real Property pursuant to this Agreement.

4.2 Delivery of Agreement. Seller and Buyer shall open the Escrow by delivering fully executed counterparts of this Agreement to the Escrow Holder. Escrow Holder shall execute the signature page for Escrow Holder attached hereto with respect to the provisions of this Article 4; provided, however, that (i) Escrow Holder's signature hereon shall not be a prerequisite to the binding nature of this Agreement on Buyer and Seller, and this Agreement shall become fully effective upon the Effective Date in accordance with Article 1, and (ii) the signature of Escrow Holder will not be necessary to amend any provision of this Agreement other than applicable provisions of this Article 4. This Agreement, together with any additional written instructions executed by the Parties as hereinafter provided, shall constitute Escrow Holder's instructions in connection with the Escrow ("Escrow Instructions").

4.3 Duties of Escrow Holder. The duties of Escrow Holder shall be as follows: (i) retain and safely keep all funds, documents and instruments deposited with it pursuant to this Agreement; (ii) upon the Closing, deliver to the Parties entitled thereto all funds, documents and instruments to be delivered through Escrow pursuant to this Agreement; (iii) upon the Closing, cause the recordation of the Grant Deed (as hereinafter defined) in the Office of the San Joaquin County Recorder; (iv) comply with the terms of this Agreement which specifically apply to Escrow Holder and comply with the terms of any additional written instructions jointly executed by Buyer and Seller; (v) handle the Deposit and all other funds deposited with Escrow Holder according to the terms of this Agreement; and (vi) upon the Closing, cause the Title Company to issue the Title Policy to Buyer.

4.4 Additional Provisions. Escrow Holder's rights and obligations shall be further specified in such additional written instructions acceptable to Buyer and Seller and not inconsistent with the terms of this Agreement as Escrow Holder customarily requires in real property escrows administered by it. Any such instructions shall not conflict with, amend, or supersede any portion of this Agreement. If there are any inconsistent terms in such supplemental instructions, the terms of this Agreement shall control.

4.5 Reporting. To the extent the transactions under this Agreement involve a real estate transaction within the purview of Section 6045 of the Internal Revenue Code of 1986

(the "IRC"), Escrow Holder shall have sole responsibility to comply with the requirements of Section 6045 of the IRC (and any similar requirements imposed by state or local law), which in part requires Escrow Holder to report real estate transactions closing after December 31, 1986, by, among other things, preparing and causing to be filed Internal Revenue Service Form 1099-B and any applicable additional statements in connection therewith. For purposes hereof, prior to the Closing, Seller shall provide to Escrow Holder, Seller's tax identification number. Escrow Holder shall hold Buyer, Seller and their counsel, agents, and representatives free and harmless from and against any and all liability, claims, demands, damages and costs (including, without limitation, reasonable attorneys' fees and expenses) arising or resulting from the failure or refusal of Escrow Holder to comply with such reporting requirements.

## **ARTICLE 5** **CLOSE OF ESCROW**

5.1 Close of Escrow. For purposes of this Agreement, "Close of Escrow", "Closing" or the "Closing Date" shall be defined as the date that the Grant Deed (as hereinafter defined) is recorded in the Official Records of San Joaquin County. The Close of Escrow shall occur sixty (60) days after the end of the Contingency Period, unless extended by the Buyer as set forth in Section 5.2 below or otherwise extended by the mutual consent of the Parties. Seller shall exercise the Option and acquire from Owner an undivided fee simple interest in the Real Property at or prior to the Close of Escrow.

5.2 Extension(s) of Contingency Period. The Contingency Period may be extended by up to two (2) extensions of thirty (30) days each at Buyer's option and discretion by giving notice to Seller prior to the then scheduled expiration of the Contingency Period, to allow satisfaction of all necessary conditions and contingencies. Concurrently with each such extension, Buyer shall deposit Fifty Thousand Dollars (\$50,000) with the Escrow Holder. If, at the conclusion of the extension period(s), the necessary conditions and contingencies have not been satisfied, this Agreement shall either terminate, or at the option and mutual agreement of both Parties, continue upon terms as mutually agreed by the Parties.

5.3 Contingency Period. The period commencing on the Effective Date, and expiring ninety (90) days thereafter, collectively with the extension period(s) set forth in Article 5.2, as applicable, shall constitute the "Contingency Period", during which Buyer shall have the right to: (i) review and approve the Title Report, Disclosures, and Property-Related documents further described in Article 8; and (ii) completed other contingencies and conditions to Closing as further described in this Agreement (collectively, the "Contingency Investigation").

5.4 Right of Entry. Between the Effective Date and the Close of Escrow, Buyer and Buyer's employees, agents, consultants, subconsultants, contractors, subcontractors, and representatives shall have the right to perform any Contingency Period investigation activities or to engage in similar activities reasonably related to acquisition or use of the Real Property. Buyer shall provide Seller a written notice, which may be sent electronically, forty-eight (48) hours in advance of proposed entry.

## **ARTICLE 6** **TITLE AND PROPERTY MATTERS**

6.1 Issuance of Title Insurance. At the Close of Escrow, evidence of title to the Real Property shall be the issuance by **Title Officer** Molly Baier at Old Republic Title Company at 785 Alamo Drive, Suite 180, Vacaville, California 95688 (the "Title Company") of a standard CLTA owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple marketable title to the Real Property, subject only to the Permitted Exceptions (as defined below), and containing such endorsements as Buyer shall reasonably require ("Title

Policy”). Buyer shall pay the premium for a standard Title Policy and Seller shall pay the premium for any endorsements desired by Seller. At Buyer’s option, the Title Policy may be issued in ALTA extended coverage form and/or include any endorsements thereto as Buyer may request, provided that all costs of the issuance of the ALTA Policy (including, without limitation, the cost of a survey) in excess of the costs of the issuance of the CLTA Policy shall be borne by Buyer. Seller shall assist Buyer in Buyer’s efforts to obtain an ALTA extended policy (by signing standard affidavits and taking such other action as may be reasonably required by the Title Company).

6.2 Survey. If applicable, Buyer, at its cost, will have prepared an ALTA Survey using a licensed surveyor or civil engineer in sufficient detail to provide for the ALTA Title Policy, certified to Buyer and the Title Company in form satisfactory to Buyer without boundary, encroachment, or survey exceptions, which shall show the location of all easements and improvements (“Survey”).

6.3 Waterline License. Seller and Buyer shall execute a license to be recorded against the Real Property at Closing granting Seller the right to construct and utilize a temporary water line in the area set forth in **Exhibit E-1** (the “Temporary Waterline License”). The Temporary Waterline License shall terminate upon the earlier of: (i) the fifth (5<sup>th</sup>) anniversary of the Closing Date, or (ii) the date upon which Buyer commences construction of the school on the Real Property. Seller shall not be required to remove the water line upon termination of the Temporary Waterline License and the water line will be left in place following disconnection and termination of use. Buyer and Seller shall mutually agree upon the form of the Temporary Waterline License prior to end of the Contingency Period. In the event that Buyer and Seller are unable to agree upon the form of the Temporary Waterline License, then Buyer or Seller shall have the right to terminate this Agreement prior to the expiration of the Contingency Period, in which case the Parties shall jointly pay any cancellation charges, the Deposit and any other consideration paid for an extension of Escrow made to Seller will be returned to Buyer, and neither Party hereto shall have any further rights, obligations or liabilities hereunder except for such obligations under this Agreement as are expressly provided herein to survive the termination of this Agreement. Once finalized, the form of the Temporary Waterline License will be inserted into this Agreement, by amendment as **Exhibit E-2**.

6.4 Design of Westlake Drive. Buyer hereby acknowledges that Westlake Drive is being designed by Seller pursuant to the requirements by the City of Stockton and Seller shall have sole discretion to design Westlake Drive subject to approval by the City of Stockton. Buyer further acknowledges that the design of that portion of Westlake Drive abutting the Real Property may not meet the requirements of Buyer for the purposes of constructing the school site. Any modifications or further improvements of Westlake Drive shall be the sole responsibility of Buyer and Buyer shall not be entitled to any reimbursement of costs associated with such modifications or improvements.

6.5 Construction Staging Area. Seller and its invitees shall have a temporary license to access and use the Real Property as reasonably necessary for Seller and its contractors to complete construction of improvements on Westlake Drive (“Temporary Construction License.”) The term of the Temporary Construction License shall commence upon Close of Escrow and shall expire upon the earlier of: (i) commencement of construction of the school site by Buyer, or (ii) acceptance of dedication of the Westlake Drive improvements abutting the Real Property. Upon expiration of the Temporary Construction License, Seller and its invitees shall return the portion of the Real Property utilized to the condition of such portion of the Real Property at Close of Escrow.

## **ARTICLE 7**

### **COSTS**

7.1 Buyer. Buyer shall pay one-half (1/2) of the Escrow fees and costs, and other closing costs and fees pursuant to this Article 7. At least three (3) days prior to the Closing Date, or as otherwise requested in advance by Escrow Holder, Buyer shall deposit or cause to be deposited with Escrow Holder, a check made payable to Escrow Holder or a confirmed wire transfer of funds, in the amount of Escrow Holder's estimate of Buyer's share of closing costs, prorations and charges payable pursuant to this Agreement. As set forth in Article 6.1, Buyer shall pay the premium for the Title Policy, including, but not limited to, premiums for ALTA or other extended coverage and title endorsements desired by Buyer, if any, and the cost of any survey. Buyer shall be responsible for any of Buyer's attorneys' fees and costs in connection with the negotiation, drafting, and implementation of this Agreement. In addition, any costs for Buyer's due diligence, including costs and fees for Buyer's appraisers or environmental, engineering, architectural, or geotechnical consultants, site investigations, assessments, studies, reports, inspections, surveys, and tests, shall be Buyer's sole responsibility.

7.2 Seller. Seller shall pay one-half (1/2) of the Escrow fees and costs, and other closing costs and fees pursuant to this Article. Any bonds, taxes, assessments or similar liens affecting the Real Property at the time of the Close of Escrow shall be prorated between Buyer and Seller at Closing. Seller will be solely responsible for the payment of the total amount of any bonds, taxes, assessments or similar liens affecting the Real Property for periods prior to the Close of Escrow, including applicable transfer taxes, if any. All delinquent taxes, assessments, or similar liens, including all interest and penalties, if any, on the Real Property shall be paid at the Close of Escrow from funds accruing to Seller. All supplemental taxes billed after the Close of Escrow for periods prior to the Close of Escrow shall be paid by Seller to Buyer in immediately available funds. Seller shall also be responsible for any and all fees, costs and expenses of clearing title assumed by Seller pursuant to Section 10.1, as well as any and all fees, costs, and expenses associated with the termination of existing leases, licenses, rental agreements and/or other rights of possession or encumbrances of title on the Real Property and the removal of all tenants prior to the Close of Escrow, including, but not limited to, relocation benefits, if any, and the removal of Seller's personal property/chattels. Buyer shall not be liable for any costs or expenses associated with the removal of tenants or the termination of any rental agreement, tenancy, property interest, right of possession, lien, or encumbrance of any kind on or related to the Real Property, including, without limitation, the payment of relocation benefits. Furthermore, Seller shall be responsible for all costs and fees of Seller's attorney in connection with the negotiation, drafting, and implementation of this Agreement, all costs and fees of Seller's consultants, as well as all costs and fees of Seller's broker as set forth in Article 17.3.

7.3 Recording Fees. Seller and Buyer shall equally divide all document recording charges with respect to the recording of the Grant Deed, if any.

7.4 Other Fees and Costs. Buyer and Seller shall share equally the Escrow Holder's fees and other customary Escrow charges for document drafting and miscellaneous charges. Buyer and Seller shall each pay all legal and professional fees and costs, and fees and costs of other consultants incurred by Buyer and Seller, respectively. Except as provided in this Agreement all other costs in connection with the Escrow and the Closing shall be allocated between Buyer and Seller in the customary manner for allocation of such costs between a buyer and a seller in a real estate closing in San Joaquin County.

7.5 Preliminary Closing Adjustment. Seller and Buyer shall jointly prepare and approve a preliminary Closing adjustment (the "Closing Statement") on the basis of the foregoing prorations, and shall deliver such computation to Escrow Holder prior to Closing. If any of the aforesaid prorations cannot be definitely calculated on the Closing Date, then they

shall be estimated at the Closing and definitely calculated within thirty (30) days after the Closing Date. As soon as the necessary information is available, Buyer and Seller shall conduct a post-Closing review to determine the accuracy of all prorations. Either Party owing the other Party a sum of money based on such subsequent proration(s) or post-Closing review shall promptly pay said sum to the other Party, together with interest thereon at the lesser of two percent (2%) over the "prime rate" (as announced from time to time in the Wall Street Journal) per annum or the maximum rate allowed by law, from the date of demand to the date of payment if payment is not made within ten (10) days after delivery of a written demand therefore, together with documentation to support such demand. The provisions of this Article 7 related to post-Closing adjustment of prorations shall survive the Closing.

## **ARTICLE 8** **DELIVERABLES**

8.1 Delivery Outside of Escrow. Seller and Buyer shall each deliver to the other outside of Escrow such items as are necessary to consummate the purchase and sale of the Real Property pursuant to this Agreement prior to Closing as specified herein, satisfaction of which shall be a condition precedent to Buyer's obligation to purchase the Real Property at the Close of Escrow:

a. Updated Title Report. Within five (5) days of the Effective Date, Seller shall order from Title Company, and promptly provide to Buyer, a copy of a current title report with respect to the Real Property, together with legible copies of all documents, whether recorded or unrecorded, referred to therein and plot of easements (collectively, "Title Report"). Upon opening of Escrow, Seller shall provide the Escrow Holder with a copy of said Title Report. Buyer's approval or disapproval of the Title Report shall be provided during the Title Review Period pursuant to Article 10.1(a).

b. Disclosures. Within fifteen (15) days of the Effective Date, Seller shall disclose in writing to Buyer, including by way of the Dropbox (defined in 8.1(c) below) any and all material adverse facts, material adverse defects, and/or material adverse conditions relating to the Real Property which are known to Seller's Actual Knowledge.

c. Property-Related Documents. Seller shall, within fifteen (15) days of the Effective Date, deliver to Buyer the Property Materials (as defined below), to the extent in Seller's possession or control, by granting Buyer access to a "due diligence" virtual data room ("Dropbox") during the term of this Agreement, which shall be immediately accessible by Seller, Owner, Buyer, and their respected authorized representatives. Except for any Property Materials actually prepared by Seller, Seller makes no representation or warranty as to the accuracy or completeness of the documents contained in the Dropbox. Due diligence deliveries to the Dropbox shall be deemed delivered when posted and Buyer is notified via electronic transmission (e-mail) of the delivery. Unless the Parties agree otherwise in writing, the Dropbox may not be used for any purpose other than Buyer's feasibility review. The Real Property-related documents ("Property Materials") shall include the following:

1. Copies of any and all documents evidencing interests in the Real Property not shown on the Title Report, if any, and other contracts, matters or restrictions affecting, restricting, or benefiting the Real Property, including, without limitation existing leases, licenses, contracts, rental agreements, covenants, development agreements, tract map conditions of approval, improvement agreements and bonds, easements, profits-à-prendre, party wall agreements, franchises, CC&Rs, commitments, undertakings, liens, water, oil, gas, or mineral rights, and amendments relating to the Real Property, or the performances of services on the Real Property, or the use of the Real Property, or any part of it, by which Buyer would become obligated or liable to any person.



2. Seller will deliver to Buyer without warranty copies of all environmental studies, impact reports, negative declarations, notice of exemptions, or other environmental documents concerning the Real Property, surveys, soil tests, reports, and environmental assessments, grading and engineering studies and plans, traffic, noise, and drainage studies, and any other test results or reports concerning the Real Property. The foregoing shall be provided without warranty by Seller. If so requested by Buyer, Seller will instruct those who prepared any such reports as well as Seller's agents and employees, to divulge any other information they may have about the Real Property to Buyer, provided that Buyer pays any additional costs incurred.

3. Copies of any and all permits, warranties, plans, specifications, licenses, notices of violation of law, releases, settlement and correspondence with enforcement agencies concerning the Real Property.

d. Cooperation. Seller shall reasonably cooperate with Buyer and shall timely take all actions and deliver and execute all documents reasonably necessary for Buyer to perform all required due diligence investigations, studies, tests, assessments, and inspections, prepare all necessary reports, pursue applications for and obtain applicable governmental or regulatory agency permits and approvals, and otherwise as reasonably needed by Buyer to comply with applicable acquisition laws and regulations, including, without limitation, Seller's permission for Buyer to discuss the Real Property with Seller's consultants.

e. Other. Seller and Buyer shall each deliver to the other outside of Escrow any other such items as are necessary to consummate the purchase and sale of the Real Property pursuant to this Agreement.

8.2 Deliveries Through Escrow. Seller and Buyer shall each deliver to the other through Escrow such documents, instruments, and funds consistent with this Agreement as are necessary to consummate the purchase and sale of the Real Property pursuant to this Agreement, satisfaction of which shall be a condition precedent to Buyer's obligation to purchase the Real Property at the Close of Escrow:

a. Deliveries by Seller. Within fifteen (15) days prior to the Close of Escrow, or as otherwise requested by Escrow Holder, Seller shall deliver the following: (1) a Grant Deed in substantially the form of **EXHIBIT C** (the "Grant Deed"), executed and acknowledged by Seller; (2) a Certificate of Non-Foreign Status (the "FIRPTA") on a form acceptable to Escrow Holder, duly executed by Seller under penalty of perjury, setting forth Seller's address and federal tax identification number in accordance with and/or for the purpose of the provisions of Section 7701 and 1445, as may be amended, of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder; (3) a California state form non-foreign status certificate, executed by Seller; (4) a certification acceptable to Escrow Holder that Seller is exempt from the withholding provisions of the California Revenue and Taxation Code, as amended from time to time, and that neither Buyer nor Escrow Holder is required to withhold any amounts from the Purchase Price pursuant to such provisions; (5) a copy of the Closing Statement (as hereinafter defined), in form and content satisfactory to Buyer and Seller, executed by Seller; (6) a General Assignment in substantially the form of **EXHIBIT D** (the "General Assignment") executed by Seller; and (7) such evidence of Seller's authority as the Title Company may reasonably require.

b. Deliveries by Buyer. Buyer shall deliver the following: (1) the Purchase Price in cash or other immediately available funds; (2) a Certificate of Acceptance; (3) a copy of the Closing Statement, in form and content satisfactory to Buyer and Seller, executed by Buyer; (4) the General Assignment executed by Buyer; and (5) such evidence of Buyer's authority as the Title Company may reasonably require.

**ARTICLE 9**  
**TRANSFER OF TITLE**

9.1 Transfer of Title. Title to the Real Property, in fee simple, shall be delivered by Seller to Buyer in substantially the form of the Grant Deed attached hereto as **EXHIBIT C**. Such title to the Real Property shall be subject to the Permitted Exceptions. Prior to the Close of Escrow, Seller shall deposit the executed Grant Deed into Escrow in accordance with Article 8.

**ARTICLE 10**  
**CONDITIONS TO CLOSE**

10.1 Conditions to Buyer's Obligation. The Close of Escrow and Buyer's obligation to purchase the Real Property under this Agreement are subject to the fulfillment of each of the following conditions, each of which is for the benefit of Buyer, and any or all of which may be waived by Buyer in writing at its option, on or prior to the date designated below for the satisfaction of such conditions, or the Close of Escrow in absence of a specified date:

a. Delivery of Title with Permitted Exceptions. Title to the Real Property shall be conveyed by Seller to Buyer at Closing free and clear of any and all liens, encumbrances and any other items affecting title other than the following exceptions (collectively "Permitted Exceptions"):

- (1) a lien for non-delinquent taxes and assessments;
- (2) any exceptions which the Title Report discloses that are accepted in writing by Buyer; and
- (3) the printed exceptions in the Title Policy.

Buyer shall have until the date that is thirty (30) days after the Effective Date, or thirty (30) days after the date of receipt by Buyer of the updated Title Report, whichever date is later ("Title Review Period"), to approve or disapprove, in writing, any exceptions appearing in the Title Report. If Buyer fails to either approve or disapprove any or all the exceptions in the Title Report within the Title Review Period, the Title Report will be deemed accepted and any title contingencies waived. If Buyer gives Seller written notice that Buyer disapproves an item, Seller has the right, but not the obligation, to elect, within ten (10) days after receipt of such written notice, to cure any such objection(s) to title, other than any defects, objections or exceptions which comprise mortgages or liens voluntarily created by Seller, and which can be satisfied by payment of a liquidated amount, which Seller agrees that it shall either pay, discharge or, if it is contesting such lien, make arrangement with the Title Company to insure over such matters (at normal rates) without such objection as an exception in Buyer's Title Policy. Failure by Seller to provide such written notice to Buyer will be deemed an election by Seller not to cure any such disapproved item. If Seller elects or is deemed to have elected not to cure a disapproved item, Buyer shall have ten (10) days thereafter either to waive its prior disapproval or to terminate this Agreement by sending written notice thereof to Seller and Escrow Holder. Failure by Buyer to provide such written notice to Seller to terminate will be deemed a waiver of Buyer's right to terminate this Agreement based on Seller's election not to cure a disapproved item in the Title Report. In the event of an election by Buyer to terminate, the Parties shall jointly pay any cancellation charges, the Deposit and any other consideration paid for an extension of escrow made to Seller will be returned to Buyer, and neither Party hereto shall have any further rights, obligations or liabilities hereunder except for such obligations under this Agreement as are expressly provided herein to survive the termination of this Agreement. Buyer may, prior to Closing, notify Seller in writing of any objection to title arising or otherwise discovered by Buyer after the date hereof. With respect

to any objections to title set forth in such notice, Seller shall have the same options to cure and Buyer shall have the same option to accept title subject to such matters or to terminate this Agreement, as set forth above.

b. Issuance of a Title Insurance Policy. Issuance of the Title Policy for the Real Property by Title Company to Buyer in a form satisfactory to Buyer, insuring fee simple marketable title to the Real Property, in the full amount of the Purchase Price, subject only to the Permitted Exceptions, in accordance with Article 6.1.

c. State and Local Regulatory Agencies' Approval. Unconditional acceptance, conferment and approval of the Real Property for Buyer's use for District's intended purposes by all applicable state and local regulatory agencies, including, but not limited to, any City or County regulatory agency, the California Department of Toxic Substances Control ("DTSC"), the California Department of Education ("CDE"), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Department, the California Department of Fish and Game, the Regional Water Quality Board, the State Allocation Board, Division of the State Architect, the Office of Public School Construction, and other applicable governmental and regulatory agencies. In particular, without limitation of the above, Buyer's obligation to close shall be specifically contingent upon Buyer's ability to obtain approval of the use of the Real Property for its intended purposes, including CDE or DTSC approval if applicable, and that any remediation and clean up can either be accomplished in a manner that is suitable to Buyer prior to the Close of Escrow, or be addressed in a work plan and within cost parameters acceptable to Buyer.

d. Board Acceptance. Final acceptance and approval by Buyer's Board, as provided in Section 1.2 above, of this Agreement and satisfaction of all obligations set forth herein, determination that the Real Property complies with all regulatory requirements, of any final inspections, reports, or analyses prepared by any regulatory agency, including, without limitation, state and local regulatory agencies, of all matters concerning the Real Property, including approval of any requirements imposed by such agencies relating to the remediation or removal of hazardous substances that may be present on the Real Property.

e. Environmental Compliance. Determination by Buyer that the Real Property (including, but not limited to, the condition of the soil, whether existing or imported, as well as the condition of groundwater) complies with all federal, state and local environmental codes, regulations, laws, and requirements applicable for use of the Real Property by Buyer for its intended purposes, including without limitation, the California Environmental Quality Act (including the expiration of any applicable statute of limitations), permits, mitigation and monitoring plans, geological and soil engineering investigations, hazardous waste and hazardous air emissions, and completion of any applicable environmental site assessments in compliance with Education Code sections 17213.1, *et seq.*, including, without limitation, a Phase I and/or Phase II environmental site assessment as required or other applicable site assessments. Any environmental assessment and all other inspections, reports, analyses, studies and tests of the Real Property shall be performed at the expense of Buyer and Buyer, if requested by Seller, will provide a copy thereof to Seller following Buyer's receipt of such final assessment or report (but without warranty to Seller regarding the content thereof). If the Real Property is not acceptable to Buyer because of the results of any environmental assessment required by the aforementioned statutes, the provisions of Article 10.2 shall apply.

f. Approval of Physical Condition of Real Property/Other Studies and Investigations. Buyer's final approval of the physical and economic condition of the Real Property (including, without limitation, Seller's removal of all chattels/personal property to Buyer's satisfaction) and any other required or discretionary studies and investigations not otherwise described herein that Buyer deems necessary to assess the suitability of the Real

Property for Buyer's intended purposes and feasibility for developing the Real Property as needed, including geology, hazardous, seismic, soils, and hydrology reports; environmental studies and investigations with respect to off-site improvements; the boundaries and dimensions of the Real Property; and entitlements and permits relating to the Real Property.

g. FIRPTA Affidavit/Form 590. If required, Seller shall deliver to Escrow Holder prior to the Closing a FIRPTA Affidavit certifying that Seller is a non-foreign person, and a California Form 590.

h. Funding. Close of Escrow is contingent upon Buyer's ability to secure adequate funding for the Purchase Price during the Contingency Period.

i. Record of Survey Map. A Record of Survey Map shall be prepared to establish definitive property boundary lines. The Buyer and Seller shall share the costs of preparation of the Record of Survey Map, however, Seller's share of the costs shall not exceed Four Thousand Five Hundred Dollars and 00/100 Cents, (\$4,500).

j. Title to Real Property. Title to Real Property will be conveyed free and clear of liens, easements or other encumbrances on the Real Property.

k. Other Conditions to Closing. The Close of Escrow and Buyer's obligation to purchase the Real Property under this Agreement is also subject to and conditioned on the following: (i) all of Seller's Representations and Warranties contained in this Agreement shall be true and correct in all material respects as of the Close of Escrow; (ii) and, on the Closing Date, Seller shall have timely complied with all obligations and material covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by Seller as of the Closing Date; and (iii) the delivery of all documents and items specified in Articles 8 and 9.

10.2 Conditions to Benefit Buyer. The conditions contained in Article 10.1 are intended solely for the benefit of Buyer. If the Seller is unable to deliver title to the Real Property in the condition required and/or the contingencies or conditions described in Article 10.1 are not satisfied, Buyer shall have the right at its sole election, either to waive such conditions and to proceed with the purchase of the Real Property in accordance with the terms hereof, or, in the alternative, to terminate this Agreement and obtain a refund of the Deposit, and any other consideration paid by Buyer for an extension of Escrow, plus all interest accrued thereon. In the event Buyer elects to terminate this Agreement for the reasons provided herein, Buyer and Seller shall share equally any title and Escrow charges, including any and all cancellation charges, and neither Party hereto shall have any further rights, obligations or liabilities hereunder except for such obligations under this Agreement as are expressly provided herein to survive the termination of this Agreement.

10.3 Conditions to Seller's Obligation. For the benefit of Seller, the Closing shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or Seller's written waiver thereof, it being agreed that Seller may waive any or all of such conditions): (i) Buyer shall have performed by the Closing, all of the obligations required by the terms of this Agreement to be performed by Buyer for the benefit of Seller, including the deposit of the Deposit, the Purchase Price, and Buyer's portion of the closing costs with the Escrow Holder; and (ii) all representations and warranties made by Buyer to Seller in this Agreement shall be true and correct as of the Closing.

## **ARTICLE 11**

### **REPRESENTATIONS AND WARRANTIES**

11.1 Buyer Representations and Warranties. In consideration of Seller entering into this Agreement, and as an inducement to Seller to sell the Real Property to Buyer, Buyer makes the following representations and warranties, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder):

a. Buyer Authority to Execute Agreement. Buyer is a public school district duly formed under the laws of the State of California, and this Agreement and the execution and delivery thereof by the persons designated below have been specifically authorized by Buyer. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

b. Authority of Executing Officer. Each individual executing this Agreement on behalf of Buyer represents, for the benefit of Seller, that he or she is duly authorized to execute and deliver this Agreement on behalf of Buyer.

c. Validity of Buyer's Representations and Warranties at Closing. The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Closing as if those representations and warranties were made on and as of such time.

11.2 Seller Representations and Warranties. In consideration of Buyer entering into this Agreement, and as an inducement to Buyer to purchase the Real Property from Seller, Seller makes the representations and warranties below, in addition to those described in Article 10, above, each of which is material and is being relied upon by Buyer (the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder). All references herein to Seller's "Actual Knowledge" refers to the Actual Knowledge of Jim Jimison, the project manager, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any other officer, agent, manager, representative or employee of Seller or any affiliate thereof, or to impose any duty to investigate the matter to which such Actual Knowledge, or the absence thereof, pertain. Seller hereby represents that Jim Jimison is the individual within Seller's organization having the most comprehensive knowledge of the Real Property and the matters set forth herein.

a. Seller Authority to Execute Agreement.

1. Seller warrants that Seller is a limited liability corporation duly organized and validly existing and in good standing under the laws of the State of California, with the legal right, full power and authority to enter into, be bound by, and comply with the terms of this Agreement, and all documents executed by Seller in connection with this Agreement, and to consummate the transactions contemplated hereby.

2. Seller warrants that Seller has full right, power, and authority to sell the Real Property to Buyer as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller has/have the legal power, right, and actual authority to bind Seller to the terms hereof and thereof. This Agreement is, and all other instruments, documents and agreements to be executed, and delivered by Seller in connection with this Agreement shall be, duly authorized, executed, and delivered by Seller and shall be valid, binding, and enforceable obligations of Seller.

3. Seller warrants that the execution, delivery and performance of this Agreement, and all documents executed by Seller in connection with this Agreement, have been duly authorized, and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

4. Seller warrants that this Agreement, and all documents executed by Seller in connection with this Agreement, are, or at Closing will be, legal, valid, and binding obligations of Seller and do not, and at the time of Closing will not, violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller is subject.

b. Title. Seller has good and marketable title to the Real Property, free and clear of any and all adverse liens, encumbrances, special assessments, claims to, covenants, conditions, and restrictions, easements, licenses, rights of way, third party interests in or rights of possession to the Real Property, or other matters or restrictions affecting the Real Property except as disclosed in writing to Buyer as set forth in Article 8 and the Permitted Exceptions.

c. No Pending Litigation. To Seller's Actual Knowledge, there are no pending or currently threatened actions, claims, litigation, suits, material claims (including based on labor or services performed), tenant's claims or disputes, legal proceedings (including proceedings in eminent domain or otherwise) or other proceedings pending or currently threatened against or affecting the Real Property in any court at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality relating to or affecting the Real Property and if prior to the Close of Escrow Seller learns of any such claims or proceedings, Seller shall notify Buyer within three (3) business days. Likewise, to Seller's Actual Knowledge, no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Seller or Seller's interest in the Real Property, nor are any such proceedings contemplated by Seller and if prior to the Close of Escrow Seller learns of any such attachments or proceedings, Seller shall notify Buyer within three (3) business days.

d. Contracts Concerning the Real Property.

1. Except as disclosed in Permitted Exceptions, to Seller's Actual Knowledge no long-term lease(s) affect the Real Property, nor are there any leases, subleases, rental agreements, occupancies, tenancies, contracts, licenses, commitments, or undertakings pertaining to the Real Property, the performance of services on the Real Property, or the use of the Real Property or any part of it by which Buyer would become obligated or liable to any person or entity.

2. Seller further represents and warrants that the terms and conditions of this Agreement, including the purchase and sale of the Real Property, and transfer of title to the Real Property to Buyer, does not violate any provisions of any agreement or document to which Seller is a party or to which Seller is bound. Seller has not previously sold, transferred, or conveyed the Real Property, and has not entered into executory contracts for the sale of all or any part of the Real Property (other than this Agreement), nor do there exist any rights of first refusal, or option to purchase the Real Property, other than this Agreement. No other agreements have been made by Seller with any person or entity to possess, lease, or purchase the Real Property or any interest therein.

e. Violations. Seller has not received any written notice from any governmental or regulatory agency with jurisdiction pertaining to violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding with respect to the Real Property or any Improvements on the Real Property, whether or not appearing in public records. Nor, to Seller's Actual Knowledge is the Real Property in violation of any zoning, land use, building code, environmental, public health, or safety laws and if prior to the Close of Escrow Seller learns of any such violations, Seller shall notify Buyer within three (3) business days.

f. Imported Soil. Seller has not imported soil onto the Real Property; or, if Seller has imported soil onto the Real Property, that the imported soil was approved by the California Department of Toxic Substances Control for school site purposes.

g. Material Defects. Seller has not received any written notice that any material defect in the Real Property exists at present or as of the Closing.

h. Easements Not of Record. Seller has no Actual Knowledge and has not received any written notice of the title to be conveyed to Buyer being encumbered by any easements, licenses, or other rights not disclosed by the public record.

i. Condition of Property/Hazardous Material. Seller represents and warrants that, to Seller's Actual Knowledge, it is not aware of the existence of any defect or condition which would prevent the use of the Real Property, including but not limited, to, the condition of the soil, the existence of geologic hazards or groundwater contamination on the Real Property. In accordance with California Health and Safety Code Section 25359.7, Seller represents that to its Actual Knowledge, no release of Hazardous Materials (as defined below), of any type or nature, solid, liquid, or gaseous, has come to be located on, above, upon or under the Real Property. Seller further confirms that to its Actual Knowledge, no underground storage tanks are located at the Real Property. As used in this Agreement, "Hazardous Materials" is intended by the Parties to be interpreted in its most comprehensive and cumulative sense, and includes, without limitation:

(1) Those substances including within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in CERCLA, RCRA, TSCA, HMTA, any Environmental Laws, Cal. Water Code Sections 13050(d) and 13050(p)(1), respectively or California Code of Civil Procedure Section 736(f)(3);

(2) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(3) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, county, or local laws or regulations;

(4) A petroleum hydrocarbon, pesticide, or any substance that is regulated and/or defined as a hazardous waste, pollutant or contaminant under any federal, state and local law, ordinance, regulation, judicial or administrative order, permit or similar requirement of any governmental authority pertaining to the protection of human health and safety or the environment; and

(5) Any material, waste, or substance that is:

- (i) a petroleum or refined petroleum product,
- (ii) asbestos,
- (iii) polychlorinated biphenyl,
- (iv) designated as a hazardous substance pursuant to 33 U.S.C. Sections 1321 or listed pursuant to 33 U.S.C. Section 1317,
- (v) a flammable explosive,
- (vi) a radioactive material,
- (vii) radon gas,
- (viii) lead, or

(ix) cyanide

j. Environmental Matters. Seller hereby discloses that the Real Property has been used for farming for many years and that one or more releases of Hazardous Materials (as defined above), may have come to be located on, under, about or in the vicinity of the Real Property; in particular, various petroleum products, fuel, gasoline, and chemicals, including fertilizers, herbicides and pesticides, customarily used in farming, some of which may, as of the date hereof, be considered to be hazardous or toxic, and such may have been used, stored, mixed and applied to the Real Property in the course of the farming activities conducted thereon or on adjacent property. To Seller's Actual Knowledge Seller has not received any written notices from any governmental agency, that there has been any production, use, treatment, storage, transportation, or disposal of any Hazardous Materials on the Real Property in violation of any Environmental Laws.

k. Validity of Seller's Representations and Warranties at Closing. The representations and warranties of the Seller set forth in this Agreement shall be true on and as of the Closing as if those representations and warranties were made on and as of such time, and shall survive Closing and the recordation of the Grant Deed for a period equal to one (1) year.

l. Foreign Person. Seller warrants and represents that Seller is not and will not be at the Closing a "foreign person" within the meaning of section 1445 of the Internal Revenue Code of 1986, as amended. If required, Seller will deposit in escrow concurrent with the deposit of the Grant Deed, Seller's notarized, completed affidavit to such effect, including a California Form 593-C.

m. Future Changes. If, prior to Closing, to Seller's Actual Knowledge any of Seller's representations or warranties become inaccurate in any material respect, Seller shall promptly give Buyer written notice of such changed circumstance and state whether such changed circumstance is susceptible of cure, and if so, whether Seller elects to cure such changed circumstance. In the event that Seller elects to cure a changed circumstance disclosed in such notice, then: (i) Seller shall promptly commence such cure and diligently prosecute such cure to completion; (ii) this Agreement shall remain in full force and effect; and (iii) the Closing shall take place on the date set therefor, or as soon thereafter as Seller is reasonably able to complete such cure; provided, however, that the Closing shall not be delayed more than fifteen (15) days to allow Seller to complete such cure. In the event that (A) either a changed circumstance disclosed to Buyer by written notice from Seller as set forth above is not susceptible of cure, Seller elects not to cure such changed circumstance, or Seller elects to cure such changed circumstance but fails to promptly commence or diligently prosecute such cure to completion prior to Closing, and (B) Buyer determines in its reasonable discretion that such changed circumstance materially and adversely affects Buyer's ability to operate the Real Property for its intended purposes or materially and adversely affects the value of the Real Property, then Buyer shall have the right to terminate this Agreement by delivering written notice to Seller and the Escrow Holder not later than five (5) business days after Buyer's receipt of written notice from Seller that Seller is not able or willing to cure such changed circumstance. If Buyer elects to terminate this Agreement by providing Seller written notice, then the provisions of Article 12.1 shall apply. In the event Buyer elects to accept a changed circumstance disclosed to Buyer in writing, then this Agreement shall remain in full force and effect, and Seller's representations and warranties shall be deemed to have been modified by the changed circumstance as if such changed circumstance had originally been described in this Agreement. No claim for a breach of representation or warranty of Seller shall be actionable or payable if the breach in question results from a fact which was (x) actually known to Buyer prior to Closing, (xi) disclosed in the Real Property-Related documents, (xii) disclosed in any other documents provided to Buyer and/or (xiii) otherwise disclosed by Buyer to Seller in writing.



11.3 Real Property Condition. Without limiting the foregoing, Buyer hereby acknowledges that, except as expressly provided in this Agreement or any of the documents to be executed and delivered by Seller to Buyer at or prior to Closing, the Real Property will be sold to Buyer "AS IS", "WHERE AS", and "WITH ALL FAULTS", and except for the express Seller representations and warranties contained in this Agreement and the documents to be executed and delivered by Seller to Buyer at or prior to Closing, there are no representations and/or warranties, express or implied, made by Seller in connection with the purchase and sale of the Real Property contemplated in this Agreement. Buyer acknowledges and agrees that, except as otherwise expressly provided in this Agreement, Buyer shall rely on Buyer's own due diligence in determining whether the Real Property is suitable for Purchase by Buyer, Buyer shall conduct its own independent inspection, investigation, and analysis of the Real Property as it deems necessary or appropriate in so acquiring the Real Property from Seller, and Buyer is acquiring the Real Property based exclusively upon Buyer's own investigations and inspections thereof and the express representations and warranties of Seller contained in this Agreement and in the documents to be executed and delivered by Seller to Buyer at or prior to Closing.

11.4 Mutual Indemnification.

a. To the fullest extent permitted under California law, and in addition to any other applicable rights under this Agreement, Seller agrees to indemnify, defend, and hold Buyer and its officers, employees, agents, attorneys, Board, members of its Board, and representatives ("Buyer's Indemnified Parties") harmless from and against any and all claims, liens, demands, liabilities, costs, expenses, suits, penalties, damages and losses, including, without limitation, reasonable attorneys' fees and costs, arising out of or in any way connected or related to: (i) the ownership, maintenance, or operation of the Real Property and accruing prior to Closing and first becoming known to Buyer after Closing; or (ii) any liability arising because of a breach of lease, breach of contract or other matter related to the Real Property which occurred or arose or is alleged to have occurred or arisen prior to Closing and which is not solely due to actions taken by Buyer and which first becomes known to Buyer after Closing.

b. To the fullest extent permitted under California law, and in addition to any other applicable rights under this Agreement, Buyer shall indemnify, defend, and hold Seller and its officers, employees, agents, and representatives harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees and costs, resulting from: (i) the ownership, maintenance, or operation of the Real Property and accruing after Closing. Buyer's failure or inability to satisfy the Conditions to Buyer's Obligations shall not constitute a breach or nonperformance under this Agreement.

c. The indemnification provisions of this Article 11.4 shall survive the delivery of the Grant Deed and transfer of title or, if title is not transferred pursuant to this Agreement, any termination of this Agreement.

**ARTICLE 12**  
**TERMINATION**

12.1 Termination. Notwithstanding anything contained in this Agreement to the contrary: (i) if this Agreement is terminated on account of the default by any Party, then the defaulting Party shall pay any cancellation or termination fees chargeable by Escrow Holder or the Title Company; (ii) if this Agreement is terminated by Buyer pursuant to any provision of this Agreement giving Buyer the right to terminate, other than Seller's default, then the termination procedures set forth in Article 10.1(a) or 10.2, as applicable, shall apply; (iii) if this Agreement is terminated by Seller pursuant to any provision of this Agreement giving

Seller the right to terminate, other than Buyer's Default, Buyer and Seller shall share equally any cancellation or termination fees chargeable by the Escrow Holder or Title Company, except as expressly provided in this Agreement otherwise; and (iv) if, as a result of no fault of Buyer or Seller, Escrow fails to close, Buyer and Seller shall share equally all of Escrow Holder's fees and charges. This paragraph shall survive termination of this Agreement.

**ARTICLE 13**  
**REMEDIES**

13.1 Remedies for Buyer's Breach. IN THE EVENT THE PURCHASE AND SALE OF THE REAL PROPERTY CONTEMPLATED BY THIS AGREEMENT IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER OR BREACH OF THIS AGREEMENT ON THE PART OF THE BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO SELLER. THE PARTIES HAVE DETERMINED AND AGREE THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER AS A RESULT OF ANY SUCH DEFAULT OR BREACH IS EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT, AND THEREFORE BUYER AND SELLER AGREE THAT THE AMOUNT OF THE DEPOSIT TOGETHER WITH ALL INTEREST ACCRUED THEREON (COLLECTIVELY, "DAMAGES AMOUNT"), IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF THE PURCHASE AND SALE IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT OR BREACH, SELLER SHALL BE ENTITLED TO RETAIN AS LIQUIDATED DAMAGES THE DAMAGES AMOUNT, WHICH SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY, EITHER AT LAW OR IN EQUITY. THE FOREGOING DOES NOT LIMIT BUYER'S LIABILITY UNDER ANY INDEMNITY OR OTHER PROVISION OF THIS AGREEMENT WHICH BY ITS TERMS SURVIVES A TERMINATION OF THIS AGREEMENT. TO SIGNIFY THEIR AWARENESS AND AGREEMENT TO BE BOUND BY THE TERMS AND PROVISIONS OF THIS ARTICLE 13.1, BUYER AND SELLER HAVE SEPARATELY INITIALED THIS PARAGRAPH BELOW.

**BUYER**

**SELLER**

Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

13.2 Remedies for Seller's Breach. IF THE CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF SELLER'S DEFAULT UNDER OR BREACH OF THIS AGREEMENT, BUYER SHALL HAVE THE OPTION, AS ITS SOLE AND EXCLUSIVE REMEDY AT LAW OR IN EQUITY, TO EITHER (1) TERMINATE THIS AGREEMENT BY DELIVERY OF WRITTEN NOTICE TO SELLER, IN WHICH EVENT THE DEPOSIT SHALL BE RETURNED TO BUYER AND THE PARTIES SHALL THEREAFTER HAVE NO OBLIGATIONS UNDER THIS AGREEMENT OR ADDITIONAL LIABILITY TO ONE ANOTHER (EXCEPT FOR THOSE PROVISIONS WHICH RECITE THAT THEY SURVIVE TERMINATION); OR (2) MAINTAIN THIS AGREEMENT IN EFFECT AND PURSUE AN ACTION FOR THE EQUITABLE REMEDY OF SPECIFIC PERFORMANCE. TO SIGNIFY THEIR AWARENESS AND AGREEMENT TO BE BOUND BY THE TERMS AND PROVISIONS OF THIS ARTICLE 13.2, BUYER AND SELLER HAVE SEPARATELY INITIALED THIS PARAGRAPH BELOW.

**BUYER**

**SELLER**

Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

**ARTICLE 14**  
**REIMBURSEMENT**

Upon acceptance of dedication to the City of Stockton of the public improvements that benefit the Real Property (including, but not limited to improvements on Westlake Drive, wet and dry utilities stubbed to the Real Property, and the traffic signals at Regatta Lane and Westlake

Drive), Buyer shall, within sixty (60) days of receipt of notice of acceptance of dedication, reimburse Seller a proportionate share of the costs of such improvements. The proportionate share of such costs shall be mutually agreed upon by Buyer and Seller prior to the expiration of the Contingency Period. In the event that Buyer and Seller are unable to agree upon the proportionate share of costs, then Buyer or Seller shall have the right to terminate this Agreement prior to the expiration of the Contingency Period, in which case the Parties shall jointly pay any cancellation charges, the Deposit and any other consideration paid for an extension of Escrow made to Seller will be returned to Buyer, and neither Party hereto shall have any further rights, obligations or liabilities hereunder except for such obligations under this Agreement as are expressly provided herein to survive the termination of this Agreement.

## **ARTICLE 15 DESTRUCTION**

Prior to the Close of Escrow, the entire risk of loss or damage by earthquake, flood, landslide, fire or other casualty shall be borne and assumed by Seller, except as otherwise provided in this Article. If, prior to the Close of Escrow, any part of the Real Property is damaged or destroyed by earthquake, flood, landslide, fire or other casualty, Seller shall immediately notify Buyer of such fact. If such damage or destruction is "material", Seller or Buyer shall have the option to terminate this Agreement. For purposes hereof, "material" shall be deemed to be any damage exceeding Fifty Thousand and No/100ths Dollars (\$50,000.00) or more. If the damage is not material, this Agreement shall remain in full force and effect, and at Seller's election, Seller shall (a) repair such damage to the Buyer's satisfaction and may extend the Close of Escrow for up to sixty (60) days in order to complete such repair, or (b) provide a credit to Buyer at Closing against the Purchase Price.

## **ARTICLE 16 ACQUISITION UNDER THREAT OF CONDEMNATION**

The Parties acknowledge and agree that the Buyer, as a California public school district, has the authority to exercise the power of eminent domain to acquire property necessary for public purposes. In-lieu of commencing formal eminent domain proceedings, the Parties have reached a voluntary agreement for the Buyer's acquisition of the Real Property under the threat of condemnation. Buyer will cooperate with Seller in processing any request for an Internal Revenue Code section 1031 or 1033 exchange; provided, however, that Seller shall pursue any such exchange at its sole cost and expense.

## **ARTICLE 17 GENERAL PROVISIONS**

17.1 Time of Essence. Time is of the essence for each provision of this Agreement in which time is an element.

17.2 Notice. Any notice, consent, or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given, served and received upon: (i) receipt when served by hand delivery during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person authorized to receive deliveries on behalf of the receiving Party at such address that the notice has been received); (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery providing for "tracking" of delivery; (iii) upon successful transmission and receipt by electronic mail or email to all applicable email address(es) below (except that if the date of such electronic mail or email transmission is not a business day, or if such transmission is made after 5:00 p.m. recipient's local time on a business day, then such notice shall be deemed to be given on the first business day following such transmission), however, unless

the receiving Party acknowledges, in writing, receipt of said transmission, the sending Party shall also be required to deposit a courtesy copy of said notice in an authorized receptacle of the United States Postal Service as first class, registered, or certified mail, postage prepaid, return receipt required, and in such case, notice shall be deemed to be given three (3) business days thereafter; or (iv) three (3) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

IF TO SELLER:

**Eight Mile Development, Inc.**  
10100 Trinity Parkway, Fifth Floor  
Stockton, CA 95319  
Attn: Alexandros Economou  
[aeconomou@agspanos.com](mailto:aeconomou@agspanos.com)

IF TO BUYER:

**Lodi Unified School District**  
1305 E Vine Street  
Lodi, CA 95240  
Attn: Leonard Kahn  
Chief Business Officer

With a copy to:

Eight Mile Development, Inc.  
10100 Trinity Parkway, Fifth Floor  
Stockton, CA 95319  
Attn: Rosie Ruppel  
General Counsel  
[rruppel@agspanos.com](mailto:rruppel@agspanos.com)

With a copy to:

**Dannis Woliver Kelley**  
Attn: Samuel Santana  
[ssantana@DWKesq.com](mailto:ssantana@DWKesq.com)

With a copy to:

Freeman Firm  
1818 Grand Canal Blvd., Suite 4  
Stockton, CA 95207  
Attn: Michael L. Gurev  
[mgurev@freemanfirm.com](mailto:mgurev@freemanfirm.com)

IF TO ESCROW HOLDER:

Old Republic Title Company  
785 Alamo Drive, Suite 180  
Vacaville, CA 95688  
Attn: Molly Baier, Sr. Escrow Officer  
[mbaier@ortc.com](mailto:mbaier@ortc.com)

17.3 Broker. Each Party represents and warrants that it has not retained a broker in connection with this transaction. Neither Party has had any contact or dealings regarding the Real Property, or any communication in connection with the subject matter of this Agreement, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein. Each Party shall indemnify, defend and hold harmless the other on account of any claims, demands, causes of action, or judgments respecting payment of any sales commission, brokerage commission or finder's fee, including attorneys' fees and court costs, arising or brought by any third party who has dealt or claims to have dealt with such indemnifying Party pertaining to the Real Property. The provisions of this paragraph shall survive Closing or termination of this Agreement.

17.4 Sophistication of the Parties. Buyer and Seller are sophisticated in the buying and selling of property similar to the Real Property and each has engaged its own sophisticated real estate counsel and advisors. Buyer and Seller each has knowledge and experience in financial and business matters to enable them each to evaluate the merits and risks of the

transactions contemplated hereby. Neither Buyer nor Seller is in a disparate bargaining position with respect to the other. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

17.5 Entire Agreement of Parties. This Agreement constitutes the entire Agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written with respect to the subject matter hereof. This Agreement may be amended or modified only by a written instrument executed by the Seller and Buyer.

17.6 California Law. This Agreement shall be governed by, and the rights, duties, and obligations of the Parties shall be determined and enforced in accordance with, the laws of the State of California.

17.7 Attorneys' Fees. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees and costs.

17.8 Waiver. No waiver by any Party of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision.

17.9 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

17.10 Counterparts – Electronic Signatures. This Agreement and all amendments and supplements to it, if any, may be executed in counterparts, and all counterparts together shall be construed as one document. A transmittal by facsimile or electronically (PDF) bearing the signature of one or more of the Parties to this Agreement shall also be deemed an original of each such Party's signature to this Agreement, except for when wet signatures are required for recordation purposes.

17.11 Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

17.12 Disputes. Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in San Joaquin County, and each Party hereto expressly waives its right, under part II, title IV of the California Code of Civil Procedure, to cause any such actions or proceedings to be instituted or prosecuted elsewhere.

17.13 Time. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

17.14 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

17.15 Review of Form of Agreement. Submission of this Agreement for examination or signature by Seller does not constitute an agreement to purchase all, or any portion of, the

Real Property and it is not effective as an Agreement, or otherwise, until execution and delivery by both Buyer and Seller and approval by Buyer's Board.

17.16 Incorporation of Recitals and Exhibits. The recitals and each exhibit attached hereto are hereby incorporated herein by reference.

17.17 Cooperation: Further Documents. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the acquisition of the Real Property. Both Buyer and Seller hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

17.18 Notice and Opportunity to Cure. Various provisions of this Agreement permit or require a written response by Buyer or Seller to certain matters, with the further provision that failure by a Party to respond will be deemed disapproval of the matter in question, resulting in termination of this Agreement. Buyer and Seller acknowledge that they do not want the Agreement to be terminated due to a non-monetary default until and unless the non-responding Party has been put on notice of its failure to respond and given an opportunity to cure. Buyer and Seller therefore agree that with respect to any provision of this Agreement other than the timely payment of money hereunder, this Agreement will not be deemed terminated due to the lack of response by a Party until and unless such lack of response continues for a period of five (5) business days following receipt by the non-responding Party of written notice from the other Party that such a response is due and has not been received.

17.19 Representation by Counsel. Notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty shall not be construed against either Seller or Buyer based upon authorship of any of the provisions hereof. Seller and Buyer each hereby warrant, represent and certify to the other as follows: (a) that the contents of this Agreement have been completely and carefully read by the representing Party and counsel for the representing Party; (b) that the representing Party has been separately represented by counsel and the representing Party is satisfied with such representation; (c) that the representing Party's counsel has advised the representing Party of, and the representing Party fully understands, the legal consequences of this Agreement; and (d) that no other person (whether a party to this Agreement or not) has made any threats, promises or representations of any kind whatsoever to induce the execution hereof, other than the performance of the terms and provisions hereof.

17.20 Assignment.

a. Seller shall not voluntarily or by operation of law, assign or otherwise transfer any of its rights or obligations under this Agreement, including, without limitation, transferring ownership of the Real Property to another party, without obtaining the prior written consent of the Buyer. Such consent may only be withheld based upon objective factors which relate to the discharge of obligations set forth herein and in no event shall such consent be unreasonably withheld or delayed.

b. Buyer shall not voluntarily, assign or otherwise transfer any of its rights or obligations under this Agreement to another party, without obtaining the prior written consent of the Seller, unless Buyer is directed, ordered, or regulated to make such an assignment by operation of law, by any state or federal agency, entity, or consortium that has jurisdiction over the Buyer and its operations, by court order, or by conversion, realignment or division of its operations or boundaries. For example (without limitation), Seller understands and acknowledges that should the Buyer become a party to a State receivership, Buyer may be ordered to make a general assignment for the benefit of creditors

or a similar arrangement in furtherance of the receivership. Buyer will provide notice to Seller of such directed, ordered, or regulated assignment, as soon as practicable.

[SIGNATURE BLOCK APPEARS ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the last date set forth below following approval by Buyer's Board.

**BUYER:**

Lodi Unified School District

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT TITLE

\_\_\_\_\_  
DATE

**SELLER:**

Eight Mile Development, Inc. a California Corporation

By:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME:

\_\_\_\_\_  
PRINT TITLE:

\_\_\_\_\_  
DATE



**RECEIPT BY ESCROW HOLDER**

Escrow Holder hereby acknowledges receipt of a fully executed copy of the foregoing Agreement on this date and agrees to abide by the escrow instructions contained therein, and hereby confirms that the Effective Date of the Agreement is as set forth below.

Escrow Holder: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL PROPERTY**  
**(CONFIRM BEFORE FINALIZING)**

**EXHIBIT B**  
**MAPS OF REAL PROPERTY**

**CONFIRM MAP BEFORE FINALIZING**

**EXHIBIT C**  
**Form of Grant Deed**

**RECORDING REQUESTED BY**

**AND WHEN RECORDED MAIL  
DOCUMENT TO:**

Space Above This Line for Recorder's Use Only \_\_\_\_\_

A.P.N.: 066-050-070

File No.:

**GRANT DEED**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX **THE UNDERSIGNED GRANTOR(S) DECLARE(S): THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVT. CODE 27383 AND FROM DOCUMENTARY TRANSFER TAX (REV.AD TAXATION CODE 11922); CITY TRANSFER TAX \$NONE; SURVEY MONUMENT FEE \$N/A**

- [        ]    computed on the consideration or full value of property conveyed, OR
- [        ]    computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- [        ]    unincorporated area; [ X ] City of Stockton

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Eight Mile Development Inc., a California corporation ("**Grantor**"), hereby GRANTS to **Lodi Unified School District**, a California public school district ("**Grantee**"), the real property located in the City of Stockton, County of San Joaquin, State of California, described on **Exhibit A**, attached hereto and made a part hereof (the "**Property**").

SUBJECT, HOWEVER, to all zoning and building laws, ordinances, maps, resolutions and regulations of all governmental authorities having jurisdiction which affect the Property and the use and improvement thereof; all matters of record; and any state of facts which an accurate survey made of the Property as of the date hereof would show.

Grantor intends to convey with the Property any and all riparian rights to which the Property is entitled ("**Riparian Rights**"), but to retain any and all appropriative rights appurtenant or relating to the surrounding Property. While Grantor intends to transfer the Riparian Rights with the Property, it does not intend by this grant to sever the riparian rights of the surrounding properties. With this conveyance Grantor intends to retain to any and all land surrounding the Property all riparian rights to which those lands are entitled.

Notwithstanding the above grant, Grantor hereby excepts and reserves unto Grantor, its successors and assigns, the right to grant and transfer all or a portion of the Riparian Rights, the right and power to utilize, convey, remove, treat, and store the Riparian Rights from the Property, to divert or otherwise utilize such Riparian Rights on the Property or other property, but without, however any right to enter upon the surface of the Property in the exercise of such rights, and such retention shall not dedicate the Riparian Rights to any public use. The rights so reserved will be transferred to the homeowner's association for the benefit of the Grantee.

**EIGHT MILE DEVELOPMENT, INC.  
A CALIFORNIA CORPORATION**

---

By:  
Title:

**EXHIBIT A**

**[Legal Description]**



**EXHIBIT D**  
**Form of General Assignment**

THIS General Assignment ("Assignment") is made as of \_\_\_\_\_, 2021, by and between Eight Mile Development Inc., a California corporation ("**Assignor**"), and Lodi Unified School District, a California public school district ("**Assignee**") in connection with the purchase by Assignee from Assignor of certain land and improvements located in the City of Stockton, San Joaquin County, California, and more particularly described on Exhibit A, attached hereto (the "**Property**").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Assignor hereby agree as follows:

Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's right, title and interest in, to and under the following (collectively, the "**Assigned Materials**"), only insofar as the Assigned Materials directly relate to the Property, without any representations or warranties from Seller whatsoever, free and clear of all liens and encumbrances, and in each case, subject to the express limitations contained in such Assigned Materials:

- (a) all licenses and permits in connection with the Property; and
- (b) all entitlements, development rights, and approvals in connection with the Property.

Anything to the contrary herein notwithstanding, to the extent any of the Assigned Materials and other rights being assigned herein relate to the Property and other property owned by Assignor, such rights shall be assigned on a non-exclusive basis, and in the event the items being assigned in this Assignment relate solely to the Property, such rights shall be assigned on an exclusive basis.

This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

(Signatures on the following page)



IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

**ASSIGNOR:**

**EIGHT MILE DEVELOPMENT INC.,**  
a California corporation

By: \_\_\_\_\_  
Name: Alexandros Economou  
Its: President

**ASSIGNEE:**

**LODI UNIFIED SCHOOL DISTRICT,**  
a California public school district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT E-1**  
**TEMPORARY WATERLINE LICENSE AREA**

*Delivered electronically*

**EXHIBIT E-2**  
**FORM OF TEMPORARY WATERLINE LICENSE**

*To be inserted*