

PURCHASE AND SALE AGREEMENT

by and between

**SBH NATOMAS LLC
(Seller)**

and

**NATOMAS UNIFIED SCHOOL DISTRICT
(Buyer)**

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (“**Agreement**”), dated for reference purposes as of January _____, 2022 (“**Agreement Date**”), is entered into by and among the NATOMAS UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California (“**Buyer**” or “**District**”), and SBH NATOMAS LLC (“**Seller**”). This Agreement constitutes an agreement of purchase and sale between the parties, and joint escrow instructions to the escrow holder identified in this Agreement. Seller and Buyer may be referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

A. Seller is the fee owner of approximately 183.7 acres of real property located in Sacramento County, California APN 225-0070-076, 225-0070-059, 225-0070-060, 225-0070-067, 225-0070-063 (the “**Overall Property**”).

B. Seller is in the process of subdividing the Overall Property into lots. As part of this subdivision, Seller intends to create Lot 24, as an approximately 12 acre lot more specifically described in Exhibit A and depicted in Exhibit B, both attached hereto. Buyer intends to purchase said Lot 24, which shall be referred to as the “**Property**”.

C. California Education Code § 17385 authorizes District, under the direction of its Board of Trustees (the “**Board**”), to acquire and hold real property.

D. The Board has authorized the purchase of the Property at its board meeting on _____, 202_.

E. District desires to purchase the Property and Seller desires to sell the Property pursuant and subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement and other good and valuable consideration, the receipt and adequacy of which are acknowledged, Seller and Buyer agree as follows.

1. PURCHASE AND SALE

1.1 Purchase and Sale. Seller shall sell to District and District shall purchase from Seller all of Seller’s rights, title, and interest in and to the Property under the terms and conditions of this Agreement.

1.2 Description of Property. Upon Close of Escrow (defined in Section 3.4 below), Seller shall deliver to District clear, fee simple title to the Property, free and clear of all monetary liens, mortgages, and deeds of trust created by, through or on behalf of Seller, and subject to (a)

matters of title approved by District and (b) those matters constituting Permitted Exceptions, as defined below.

2. PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Property shall be Six Million Dollars (\$6,000,000.00) ("**Purchase Price**"). The Purchase Price shall be payable through Escrow as described in Sections 3 and 6 of this Agreement.

3. ESCROW

3.1 Escrow Holder. For convenience, Escrow Holder's contact information is identified below:

Escrow Holder: Fidelity National Title Company

Escrow Officer: Paul Avila
8525 Madison Avenue, Suite 110
Fair Oaks, CA 95628
(916) 646-6018

3.2 Opening of Escrow; Deposit and Consideration. Within three (3) business days after the Agreement Date, a fully executed copy of this Agreement shall be delivered to Escrow Holder by Seller or Buyer. Additionally, Buyer shall deposit One Hundred and Eighty Thousand Dollars (\$180,000.00) as a deposit, which deposit (including any interest thereon, the "**Deposit**") shall be credited against the remaining portion of the Purchase Price at the Closing. "**Opening of Escrow**" means the date Escrow Holder receives this Agreement. Escrow Holder shall acknowledge the Opening of Escrow and its agreement to act as Escrow Holder by promptly delivering a written confirmation of the date of Opening of Escrow to Seller and Buyer. Notwithstanding any other provision of this Agreement, a portion of the Deposit in the amount of One Hundred Dollars (\$100.00) shall be nonrefundable as independent consideration for keeping the Property off the market and the rights extended to Buyer under this Agreement, including without limitation, the rights to terminate this Agreement as provided in this Agreement, and such nonrefundable portion of the Initial Deposit shall be retained by Seller in all events, even when any provision where this Agreement calls for the Deposit to be returned to Buyer, and such provision shall be deemed to mean that such nonrefundable portion of the Deposit shall be retained by Seller.

3.3 Escrow Instructions. Escrow Holder is hereby directed to disburse funds held by it in accordance with the terms of this Agreement, or as otherwise instructed in a writing signed by both Buyer and Seller. This Agreement shall constitute initial escrow instructions to Escrow Holder. The Parties shall execute any additional escrow instructions reasonably required by Escrow Holder to consummate the transaction; provided, however, such additional escrow instructions shall not modify the provisions of this Agreement unless they state the modification in full and the specific modification is initialed by both parties.

3.4 Close of Escrow and Extension. “Close of Escrow” or “Closing” means the date Escrow Holder records the Grant Deed (as defined in Section 3.5.1 below) in favor of Buyer and delivers the Purchase Price to Seller. Subject to satisfaction or waiver of all conditions to Closing set forth in Section 6.1 and Section 6.3 of this Agreement, Escrow shall close on the date (the “Closing Date”) which is the later of: thirty (30) days from the end of the Due Diligence Period (defined below), or thirty (30) days following the final approval of the Subdivision (i.e., after the expiration of all rights to appeal or challenge such Subdivision), unless otherwise extended by Parties’ written agreement.

3.5 Deliveries to Escrow. Prior to the Closing Date, each Party shall timely deliver to Escrow all funds and documents required to complete the Closing under the terms of this Agreement, including but not limited to prorated amounts and other payments required under this Agreement, and the Joint Use Agreement. Such documents to be deposited into Escrow by Seller shall include, but not be limited to:

3.5.1 Grant Deed. Prior to Close of Escrow, Seller shall execute, acknowledge and deliver to Escrow a grant deed in a form substantially similar to the form attached as **Exhibit C**, conveying the Property to Buyer subject to any restrictions or reservations (“Grant Deed”).

3.5.2 Development Agreement. Prior to Close of Escrow, Buyer and Seller shall execute a partial assignment of the Development Agreement (as defined below) currently being negotiated by Seller and City in accordance with the terms of such Development Agreement, if any, in place on the Land at that time (or, if the Development Agreement is not final prior to Closing, as soon after Closing as practicable). This covenant shall survive the Close of Escrow

3.6 Completion of Documents. Escrow Holder is authorized to collate counterparts of documents deposited in Escrow, and to otherwise complete such documents where appropriate and consistent with this Agreement.

3.7 Prorations. All prorations shall be made on the basis of the actual days in the applicable month and a 365-day year, unless the Parties otherwise agree in writing. With respect to general and supplemental ad valorem real property taxes, because Buyer is a public agency, such taxes terminate on the Closing Date and therefore such taxes will not be prorated. To the extent Seller has pre-paid taxes for the period after the Closing Date, Seller may seek a refund from the appropriate taxing agency; in the event Buyer receives all or any portion of any refund, Buyer shall transfer to Seller the refund it receives within five (5) business days after receipt. Escrow Agent shall base such prorations, credits and debits on a proration statement (“Proration Statement”) executed by Seller and Buyer and delivered to Escrow Agent prior to the Closing Date. Escrow Agent shall prepare a Proration Statement and have a copy delivered to Seller and Buyer at least ten (10) business days prior to the Closing Date for approval and execution.

3.8 Escrow Fees and Costs.

3.8.1 Seller’s Payments. Seller shall pay: (1) that portion of the cost of the Title Policy equal to the cost of a standard CLTA Form Owner’s Title Insurance

Policy; (2) one-half of Escrow Holder's escrow fee or escrow cancellation charge; (3) one hundred percent (100%) of any County transfer tax and ½ of any City transfer tax; (4) fees for the release of any encumbrances; and (5) other Seller's charges and expenses, in accordance with the customary practices in Sacramento County.

3.8.2 Buyer's Payments. Buyer shall pay: (1) that portion of the cost of the Title Policy which exceeds the amount payable by Seller as described above, including the cost of any title endorsements requested by Buyer; (2) one-half of Escrow Holder's escrow fee or escrow cancellation charge; (3) ½ of any City transfer tax; and (4) other Buyer's charges and expenses, in accordance with the customary practices in Sacramento County.

3.8.3 Default. Notwithstanding the foregoing, in the event of a default by Buyer or Seller, all cancellation and other Escrow charges shall be paid by the defaulting party unless otherwise stated in this Agreement.

3.9 Existing Encumbrances. As of Close of Escrow, Seller shall cause the release of any existing monetary encumbrances or other monetary security interests in the Property.

3.10 Distribution of Funds and Documents. At the Close of Escrow, Escrow Holder shall do each of the following:

3.10.1 Payment of Encumbrances. Pay any existing monetary encumbrances in accordance with the demand approved by Seller, utilizing funds deposited by Buyer in Escrow.

3.10.2 Recordation of Documents. Cause the Grant Deed for the Property to be recorded by the County Recorder of Sacramento County and each other document to be recorded under the terms of this Agreement and, after recordation, cause the County Recorder to mail the Grant Deed to Buyer and each other document to the Party for whose benefit said document was recorded.

3.10.3 Non-Recorded Documents. Deliver by Federal Express or other overnight courier (or hold for personal pick-up, if requested): (1) the Title Policy to Buyer; and (2) every other non-recorded document to the Party for whose benefit said document was acquired.

3.10.4 Distribution of Funds. Distribute, pursuant to instructions to be given by the recipient: (1) to Seller, the cash portion of the Purchase Price, adjusted for prorations, charges and other credits and debits provided for under the terms of this Agreement; and (2) to Buyer, any excess funds delivered to Escrow Holder by Buyer.

3.10.5 Conformed Copies. Deliver to Seller and Buyer copies of all fully executed, recorded documents and escrow instructions. Each recorded document shall be conformed to show the recording date and file number.

3.10.6 Closing Statement. As soon as reasonably practical after the Closing, Escrow Holder shall prepare a final accounting and closing statement for this transaction and send a copy to Seller and Buyer.

4. DUE DILIGENCE

4.1 Due Diligence Period.

4.1.1 The “**Due Diligence Period**” shall mean the period commencing on the Agreement Date and ending on the later of the sixtieth (60th) day following the Agreement Date or the date specified in the “**Extension Notice**” defined below. Buyer shall have a one-time right to extend the Due Diligence Period by an additional thirty (30) days beyond the sixtieth (60th) day following the Agreement Date, so that the Closing shall occur not later than an aggregate of ninety (90) days after the Agreement Date, provided that Buyer’s right to such extension shall be exercisable if and only if:

(a) Buyer gives Seller and Escrow Holder written notice of such extension (“**Extension Notice**”) at least three (3) business days prior to the end of the Due Diligence Period.

(b) Buyer delivers to Escrow Holder, simultaneously with the Extension Notice, an additional amount equal to \$90,000.00 (together with any interest thereon, the “**Extension Deposit**”) to be added to and to be treated for all purposes as the original Deposit, and upon such delivery, the term “**Deposit**” shall mean the original Deposit (other than the nonrefundable portion pursuant to the last sentence of Section 3.2) and the Extension Deposit described in this Section 4.1.1(b). For the avoidance of doubt, the failure to timely deliver the Extension Deposit to Escrow Holder simultaneously with the Extension Notice shall mean that the Due Diligence Period has not been extended and the provisions of Section 4.1.2 shall be applicable.

4.1.2 If for any reason the Extension Notice is not given or the Extension Deposit is not delivered to Escrow Holder on or before said third (3rd) business day, then the Due Diligence Period shall not be extended beyond the sixtieth (60)) day following the Agreement Date, unless otherwise agreed to by the Parties in writing.

4.2 Property Review. During the Due Diligence Period, Buyer shall have the right to investigate, inspect, study, test, review, obtain, and approve (or waive) all of the following matters (or provide a Due Diligence Termination Notice, as provided below), at Buyer’s sole cost and expense, and in Buyer’s sole and absolute discretion (collectively, the “**Due Diligence Conditions**”):

4.2.1 Governmental Regulations. Approval by appropriate governmental entities of zoning, land use, and other governmental regulations, laws, permits, and approvals that apply to the Property, including, but not limited to, the

California Department of Education and the California Department of Toxic Substances Control.

4.2.2 Department of Education and Title 5 Review. Approvals by the California Department of Education ("CDE") and any other government agencies with authority over site selection for public schools. Implementation and review of studies required for compliance with California Education Code Section 17521 and California Code of Regulations ("CCR") Title 5, sections 14001-14012 for suitability as a school site, including but not limited to a Phase 1 environmental study, California Department of Toxic Substances Control ("DTSC") review, soils studies, engineering studies, surveys and geological work.

4.2.3 Environmental Review. District's approval of environmental studies and any required documentation regarding the environmental condition of the Property as required by law, including any actions necessary under the California Environmental Quality Act ("CEQA"), if any are required.

4.2.4 Documents. Receipt and review of documents delivered by Seller to Buyer, including but not limited to (1) a copy of the most recent Phase I Environmental Assessment of the Property, if any, in the possession of Seller or under its control; and (2) copies of all existing: soils/geotechnical reports, engineering reports, surveys, and other environmental reports applicable to the Property that are in Seller's possession or under its control ("**Documents**").

4.2.5 Survey. Preparation and review of a survey, at Buyer's discretion, and at Buyer's sole cost and expense.

4.2.6 Subdivision. If Buyer and Seller are unable to subdivide the Overall Property (including to create a separately subdivided Lot 24) by the end of the Due Diligence Period, then Seller shall have the right to extend the Closing Date from time to time by up to an aggregate of one hundred eighty (180) days from the last day of the Due Diligence Period (as extended by Buyer), and if the Parties remain unable to subdivide the Overall Property within such one hundred eighty (180) days, then this Agreement shall terminate on the earlier of the end of the period that Seller has elected to extend the Closing Date or the date of denial or disapproval of the subdivision plan submitted by Seller. If this Agreement is terminated pursuant to this Section 4.2.6, then Buyer shall not be liable to Seller for any costs stemming from this Agreement or arising from Termination, other than the amounts set forth in Section 3.8.2(2) which Buyer shall be liable for.

4.3 Buyer Reliance

4.3.1 . Buyer acknowledges that, except for the representations, warranties and covenants of Seller expressly set forth in this Agreement (the "**Express Representations**"), Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Documents or the source(s) thereof. Buyer further acknowledges that some if not all of the Documents

were prepared by third parties other than Seller. Except for the Express Representations, Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Documents, or in any other written or oral communications transmitted or made available to Buyer. Except for the Express Representations, Buyer shall rely upon its own investigation with respect to the Property, including the Property's physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto. Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and is providing the Property Documents solely as an accommodation to Buyer.

4.4 Due Diligence Termination.

(a) If, prior to the expiration of the Due Diligence Period, Buyer, in its sole discretion, determines not to proceed with the purchase of the Property, Buyer shall not be in default and shall have the right to terminate this Agreement by delivering written notice of such election ("**Due Diligence Termination Notice**") to Seller and Escrow Holder prior to the expiration of the Due Diligence Period. In such event, Buyer and Seller shall have no further rights or obligations hereunder, except that so long as Buyer is not otherwise in default under this Agreement, Buyer shall be entitled to the return of the Deposit (other than the nonrefundable portion pursuant to the last sentence of Section 3.2).

(b) If for any reason, Buyer fails to deliver a Due Diligence Termination Notice prior to the expiration of the Due Diligence Period, then Buyer shall be deemed to have approved all of the Due Diligence Conditions and Buyer shall have no further right to terminate this Agreement based upon its disapproval or objection of any matter arising prior to the expiration of the Due Diligence Period, and Buyer shall not be entitled to a return of the Deposit (including, without limitation, any Extension Deposit, but excluding the nonrefundable portion pursuant to the last sentence of Section 3.2) for any reason other than the intentional default by Seller under this Agreement that causes the Closing not to occur.

4.5 Due Diligence Approval. If Buyer has been deemed to approve or gives written notice of such approval of the Due Diligence Conditions prior to the expiration of the Due Diligence Period, then the transactions contemplated hereunder shall proceed, the Deposit (including without limitation, the Extension Deposit), to the extent deposited, will become non-refundable (except as otherwise provided in this Agreement), Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to Section 4.3, and Buyer shall be deemed to have acknowledged that it has received or had access to all Documents and conducted such inspections and tests of the Property as Buyer considers sufficient and necessary to proceed. Buyer agrees to execute and deliver to Escrow Holder such escrow instructions as Escrow Holder may request, authorizing and instructing the Escrow Holder to complete the transaction on or before the date of expiration of the Due Diligence Period, as required by Section 3.4 above, provided that Buyer's failure to execute or deliver such instructions shall not affect in any way Buyer's obligations under this Agreement, or Seller's rights hereunder (including, without

limitation, the right, if any, to the Deposit (including, without limitation, the Extension Deposit, but excluding the nonrefundable portion pursuant to the last sentence of Section 3.2)). If for any reason Buyer does not execute and deliver to Escrow Holder instructions to complete the transaction on or before the date of expiration of the Due Diligence Period, as set forth above and in Section 3.4, then only Seller shall have the right to terminate this Agreement, and if Seller terminates this Agreement, neither Party shall have any further rights or obligations under this Agreement.

5. TITLE

5.1 Preliminary Title Report. Within seven (7) business days after the Agreement Date, Seller or Buyer shall instruct Fidelity National Title Company (“**Title Company**”) to provide Buyer with an updated preliminary title report on the Property (“**Preliminary Report**”) reflecting the current status of title to the Property, together with copies of all of the documents listed in Schedule B as exceptions thereto (“**Schedule B Exceptions**”) (with the Preliminary Report, collectively, the “**Title Documents**”) and upon receipt the Escrow Holder shall cause the Title Documents to be delivered to Buyer. The standard printed exceptions contained in the Preliminary Report and the Title Policy (as defined in Section 5.4 below) are referred to herein as the “**Printed Exceptions**.”

5.2 Title Review.

5.2.1 Buyer shall have the right to either approve of the exceptions contained in the Preliminary Report, or to notify Seller of disapproval by providing written notice of such disapproval, specifying any exceptions to title to which Buyer objects, within 10 business days of the Agreement Date (“**Buyer’s Title Notice**”), which notice shall set forth in reasonable detail the exceptions to title disapproved by Buyer in the Title Documents. If the Parties mutually agree to extend the Preliminary Report review timeline, then the 10 business day deadline shall be extended by the same amount of days agreed upon for the extended review period. If for any reason Buyer fails or neglects to deliver Buyer’s Title Notice to Seller within said ten-business day (10-business day) period (or any extended period), then Buyer shall be deemed to have approved all title exceptions. Any title exception not disapproved in the Buyer’s Title Notice shall be deemed approved by Buyer.

5.2.2 Upon receipt of Buyer’s Title Notice, Seller shall have the right, by giving Buyer written notice (“**Seller’s Title Notice**”) within five (5) business days after its receipt of Buyer’s Title Notice, to either approve all matters disapproved by Buyer in the Buyer’s Title Notice, or approve some of the matters disapproved by Buyer in the Buyer’s Title Notice, or disapprove all of the matters disapproved by Buyer in the Buyer’s Title Notice. If for any reason Seller fails or neglects to deliver a Seller’s Title Notice to Buyer within said five-business day (5-business day) period, then Seller shall be deemed to have approved all of the matters disapproved in the Buyer’s Title Notice.

5.2.3 If Seller’s Title Notice is given within the foregoing five-business day (5-business day) period, and Seller approves all or some of the matters disapproved by Buyer in Buyer’s Title Notice or if Seller is deemed to have approved all of the

matters disapproved in Buyer's Title Notice pursuant to Section 5.2.2 above ("**Seller-Approved Title Objections**"), then the removal or elimination of the effect of such matters from the Title Policy (by way of endorsement or deletion) shall constitute a condition to Closing in favor of Buyer; provided, however, that the removal or elimination (by way of endorsement or deletion) of such matters shall not constitute a covenant of Seller and if all such matters are not removed or eliminated and the Buyer does not agree, in its sole discretion, to waive the removal or elimination of such matters, by the scheduled Closing Date, Seller shall not be in breach and either Party may terminate this Agreement, and the Parties shall not have any further obligations under this Agreement.

5.2.4 If Seller's Title Notice is given within the foregoing five-business day (5-business day) period, and Seller does not approve of all matters disapproved by Buyer in Buyer's Title Notice pursuant to Section 5.2.3 above, then the matters not approved by Seller shall be referred to as the "**Disputed Title Objections.**" Within five (5) calendar days after Buyer receives Seller's Title Notice, Buyer shall have the right, by giving Seller written notice ("**Buyer's Title Response**"), to either waive all of the Disputed Title Objections or terminate this Agreement. If Buyer's Title Response waives all of the Disputed Title Objections, then such matters shall constitute Permitted Exceptions (as set forth in Section 5.2.5 below) and Buyer shall not have any further right to disapprove or object to the Title Documents. If Buyer terminates this Agreement pursuant to Buyer's Title Response, then neither Seller nor Buyer shall have any further duties or obligations under this Agreement. If for any reason Buyer fails or neglects to deliver Buyer's Title Response within the aforesaid five-business day (5-business day) period, then Buyer shall be deemed to have waived all of the Disputed Title Objections which shall become Permitted Exceptions (as set forth in Section 5.2.5 below).

5.2.5 For purposes of this Agreement, the term "**Permitted Exceptions**" shall mean and include all of the following: (a) all title exceptions approved or deemed approved by Buyer or not disapproved by Buyer in the Buyer's Title Notice; (b) all Disputed Title Objections waived or deemed to be waived by Buyer; (c) all liens and encumbrances caused, placed, created or suffered by Buyer or Buyer's lenders; (d) current real property taxes and current installments of special assessments which are liens not yet delinquent; (e) the exceptions (including exceptions that are part of the promulgated title insurance form) in the Title Commitment that the Title Company has not agreed to remove from the Title Commitment; (f) items shown on any Survey which Seller has not otherwise agreed in writing to cure or remove prior to Closing (or if Buyer does not obtain a Survey, all matters that a current, accurate survey of the Property would show as of the end of the Inspection Period); (g) the items listed in 5.2.6 and (h) all Seller-Approved Title Objections with respect to which an endorsement has been issued by the Title Company.

5.2.6 Buyer and Seller have agreed that the following documents shall be Permitted Exceptions to Buyer's Title Policy:

(a) Buyer shall execute and deliver to the Title Company prior to Closing, a recordable original Joint Use Agreement in favor of the City of Sacramento substantially similar to the form attached hereto as **Exhibit D**, wherein Buyer agrees to make their school playground and other outdoor recreation areas available to the general public during non-school hours.

(b) As part of the Master Entitlements, Seller intends to form an additional Sacramento Enhanced Infrastructure Community Facilities District for public infrastructure (“EIFD”) which may be created prior to or following the Closing for the purpose of financing public infrastructure for the benefit of the Overall Property. Seller is also negotiating a Development Agreement with the City as part of the Master Entitlements (the “Development Agreement”), and the Development Agreement will be recorded prior to or following the Closing. Seller will provide Buyer with draft versions of the EIFD and Development Agreement when available for review as part of its investigation of the Property. The Land is agreed to be subject to the EIFD and Development Agreement, and (i) in the event such Development Agreement is finalized and/or district is formed prior to Closing, they shall be part of the Permitted Exceptions, (ii) in the event the Development Agreement is finalized and/or such district is formed after Closing, Buyer agrees to execute all necessary documentation to facilitate such recordation and formation as a covenant that survives the Closing; and (iii) the Development Agreement will be assigned in relevant part to the Buyer on or following Closing pursuant to its terms. The covenants herein to be performed post-Closing shall survive the Close of Escrow.

5.3 Liens. Seller shall convey to Buyer clear, fee-simple title to the Property free of all mortgages, deeds of trust, mechanics’ liens, and all other monetary liens other than current real estate taxes and current installments of special assessments which are liens not yet delinquent and other Permitted Exceptions described above. Except as provided herein, Seller shall not, after the Agreement Date, cause or give permission for any new liens, covenants, conditions, restrictions, easements or any other matter to encumber title to the Property by record or otherwise except for real estate taxes and assessments which are not delinquent and required utility easements, and all documents in connection with the subdivision and development of the Overall Property, including the EIFD.

5.4 Title Policy. At the Closing, Seller shall convey all of its right, title and interest in and to the Property to Buyer by Grant Deed subject only to the Permitted Exceptions. At the Closing, Title Company shall issue to Buyer a CLTA owner’s policy of title insurance (“**Title Policy**”), together with any endorsements designated by Buyer, in the amount of the Purchase Price, subject only to the Permitted Exceptions. In the event that Buyer elects to obtain an ALTA owner’s policy of title insurance, it shall so notify Title Company provided that Buyer shall not have the right to obtain an ALTA owner’s policy of title insurance if the same will result in a delay of the Closing. In such event, (i) Buyer shall be responsible for any ALTA survey (including the cost thereof) and (ii) Buyer shall be responsible for the cost of such extended coverage; and (iii) the term “Title Policy” shall include such ALTA owner’s policy of title insurance.

5.5 As-Is Sale. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BUYER ACKNOWLEDGES AND AGREES THAT, SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN “AS-IS”, “WHERE IS”, “WITH ALL FAULTS” BASIS, AND THAT EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 7 BELOW, SELLER HAS NOT MADE AND BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION: (I) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING SOILS, GEOLOGY AND ANY GROUNDWATER, (II) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (III) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY’S USE, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE, (IV) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PROPERTY, (V) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (VI) THE PRESENCE OF HAZARDOUS MATERIALS (AS DEFINED BELOW) ON, UNDER OR ABOUT THE PROPERTY, THE SELLER RETAINED PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, (VII) THE CONDITION OF TITLE TO THE PROPERTY, AND (VIII) THE ECONOMICS OF THE OPERATION OF THE PROPERTY.

5.6 Waiver. Without limiting the provisions of Section 5.5 above, upon the Closing, Buyer on its own behalf and on behalf of each of its members, partners, officers, directors, employees, agents, parents, affiliates and subsidiaries, waives its right to recover from Seller and each of its members, partners, officers, directors, employees, agents, parents, affiliates, subsidiaries and their respective successors and assigns (collectively, the “Released Parties”), and forever releases, covenants not to sue and discharges Released Parties from, any and all damages (of any nature whatsoever), demands, claims (including, without limitation, third party claims), losses, liabilities, penalties, suits, fines, liens, judgments, costs or expenses whatsoever, including, without limitation, attorneys’ fees and costs (collectively, “Claims”), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Property, including, without limitation, the physical, environmental and structural condition of the Property, or any law or regulation, including without limitation, the federal Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C.A. Section 9601 et seq., applicable thereto; provided, however, in no event shall such waiver apply to Claims to the extent relating to (a) the breach of the representations or warranties made by Seller in this Agreement which are not waived (or deemed waived) by Buyer, and (b) the default by Seller of its obligations under this Agreement which survive Closing or termination of this Agreement.

5.7 Release. The release set forth in Section 5.5 includes Claims, and other matters of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer’s willingness to enter into the release of

Released Parties set forth in Section 5.5. In this connection and to the fullest extent permitted by law, Buyer on its own behalf and on behalf of each of its members, partners, officers, directors, employees, agents, parents, affiliates and subsidiaries hereby agrees, represents and warrants that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants that the release set forth in Section 5.5 has been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses, except for any liability of Seller for any default of any of its covenants, obligations representations or warranties set forth herein, which liability shall survive the Closing subject to the terms and conditions of this Agreement. In connection with the release set forth in Section 5.5 above, to the fullest extent not prohibited by law, Buyer expressly hereby waives the benefits of Section 1542 of the California Civil Code (“Section 1542”) and any successor laws. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer acknowledges that this waiver and release is voluntary and without any duress or undue influence, and is given as part of the consideration for the agreements set forth herein. Buyer expressly acknowledges that it may hereafter discover facts different from or in addition to those, which it now believes to be true with respect to the release of claims. Buyer agrees that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts.

Buyer has been advised by its legal counsel and understands the significance of this waiver of Section 1542 relating to unknown, unsuspected and concealed claims, and Buyer hereby specifically acknowledges that Buyer has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement. By its initials below, Buyer acknowledges that it fully understands, appreciates and accepts all of the terms of this subsection and release.

BUYER’S INITIALS: _____

6. CONDITIONS TO CLOSE OF ESCROW

6.1 Buyer’s Closing Conditions. Close of Escrow and the obligations of Buyer to purchase the Property are contingent upon satisfaction or waiver of each of the following conditions (“Closing Conditions”) on or prior to the Closing Date (or with respect to the

condition set forth in Section 6.1.1, prior to the expiration of the Due Diligence Period), unless waived by Buyer in writing or otherwise extended by the Parties' written agreement:

6.1.1 Due Diligence. Prior to the expiration of the Due Diligence Period, Buyer's satisfaction or waiver of the Due Diligence Conditions pursuant to the provisions of Section 4.

6.1.2 Title Insurance. (A) The removal or elimination (by way of endorsement or deletion) of the Seller-Approved Title Objections, if any; and (B) the Title Insurer's issuance of the Title Policy to Buyer effective as of the Closing, subject to Permitted Exceptions.

6.1.3 No Breach by Seller. All warranties and representations of Seller set forth in this Agreement shall be true and correct in all material respects as of the Closing.

6.1.4 Governmental Approvals. Buyer's receipt of all necessary approvals described in Sections 4.2.1 and 4.2.2 from appropriate government entities on or prior to the end of the Due Diligence Period.

6.2 Failure of Conditions (Buyer).

6.2.1 In the event the condition set forth in Section 6.1.3 above is not satisfied, or waived by Buyer in writing, and provided Buyer is not then in default, then, upon written notice by Buyer to Seller and after three (3) business days during which Seller shall have the ability to cure the default (if any), this Agreement and the Escrow established hereunder shall terminate, all documents deposited into Escrow shall be returned to the Party who deposited the same without further instructions by either Party to Escrow Holder. In the event of any termination pursuant to this Section, neither Party shall have any further obligation hereunder except as otherwise determined in this Agreement.

6.2.2 In the event any of the conditions set forth above (other than the condition set forth in Section 6.1.3) are not satisfied or waived by Buyer in writing within the time periods set forth therein, and provided Buyer is not in default, then this Agreement and the Escrow established hereunder shall terminate upon written notice by Buyer to Seller and Escrow Holder, and all documents deposited into the Escrow shall be returned to the Party who deposited the same without further instructions by either Party to Escrow Holder. Any termination by Buyer as a result of non-satisfaction of any of the Due Diligence Conditions shall be effective only if Buyer's written notice of termination is delivered to Seller and Escrow Holder prior to expiration of the Due Diligence Period. In the event of any termination pursuant to this Section, neither Party shall have any further obligation hereunder except as otherwise determined in this Agreement.

6.3 Seller's Closing Conditions. Close of Escrow and the Seller's obligation to complete the sale of the Property are subject to satisfaction of each of the following conditions at

or prior to the Closing Date, each of which is for the sole benefit of Seller, unless waived by Seller in writing.

6.3.1 Buyer's Other Conditions. The conditions referred to in Sections 6.1.1 and 6.1.2 shall have been satisfied or waived by Buyer in writing within any time periods specified therein.

6.3.2 Buyer's Obligations. Buyer shall have timely performed all of Buyer's obligations under this Agreement.

6.3.3 Warranties and Representations. All warranties and representations of Buyer set forth in this Agreement shall be true and correct in all material respects on the Agreement Date through the date of Closing.

6.3.4 Governmental Approvals. (a) The subdivision of the Overall Property (i) shall have become effective and not be appealable, and (ii) shall not be subject to any litigation or appeal, (b) the time period for filing of any litigation or appeal shall have passed, (c) a subdivision map in respect of the Overall Property in compliance with all applicable laws shall have been recorded, and (d) Buyer shall have delivered the joint use agreement in the form attached as Exhibit D, in form and substance acceptable to City and shall have made an irrevocable offer of dedication of such fields as part of the Master Entitlements.

6.4 Failure of Conditions (Seller).

6.4.1 In the event the conditions set forth in Section 6.3.1, 6.3.2 or 6.3.5 above are not satisfied prior to the expiration of any time periods specified therein, Seller shall have the right to terminate this Agreement, in which event all documents deposited into Escrow shall be returned to the Party who deposited the same without further instructions by either Party to Escrow Holder.

6.4.2 In the event any of the conditions set forth in Section 6.3.2 or Section 6.3.3 above are not satisfied or waived by Seller in writing, and provided Seller is not then in default, then upon written notice by Seller to Buyer and after three (3) business days during which Buyer shall have the ability to cure the default (if any), this Agreement and the Escrow established hereunder shall terminate, all documents deposited into Escrow shall be returned to the Party who deposited the same without further instructions by either Party to Escrow Holder and Seller shall be entitled to the Deposit (including, without limitation, the Extension Deposit)).

6.5 Return of Documents. If this Agreement is terminated for non-satisfaction of a condition or as a result of Buyer's default, Buyer shall deliver to Seller, within ten (10) business days after such termination, all Documents and any and all other soils reports, maps, engineering studies, improvement plans, environmental or hazardous materials reports, appraisals and other information or documents relating to the Property which were provided by Seller to Buyer pursuant to this Agreement. Buyer's obligation to deliver the Documents and the foregoing reports to Seller shall survive the termination of this Agreement

6.6 Subdivision and other Mutual Contingencies.

The obligations of Buyer and Seller to purchase and sell the Property, and the consummation of the Closing (as defined below), are expressly contingent upon:

(a) Either: (i) City approves one or more parcel maps or lot line adjustments to be processed by Seller such that the Property constitutes one (1) or more contiguous, separate, lawfully created parcels under the Subdivision Map Act as described in 6.6.1 below, in which case Buyer shall assume the responsibility for the bonding, infrastructure and any other subdivision conditions imposed by City in connection with such subdivision; or (ii) Buyer elects to and is able to properly claim an exemption from the Subdivision Map Act in order for the Property to be a legal parcel (in which case Buyer shall still comply with any requirements of Seller's subdivision map recorded in connection with the Master Entitlements which are applicable to the Property; the successful creation of a legal parcel shall be referred to herein as the "**Subdivision**");

(b) the release of the Property from certain rights held by Seller's lenders and partners (the "**Rights Release**") as described in 6.6.3 below; and

(c) the approval of this Agreement by the Board of Trustees or Directors (or similar governing body) for both Buyer and Seller, in their sole and absolute discretion within 15 business days following the Agreement Date (the "**Board Approval Date**") as described in 6.6.3 below.

6.6.1 Prior to and following Closing, Seller intends to pursue master programmatic entitlements for the Overall Property (the "**Master Entitlements**"), which are expected to include, but not limited to, a master Environmental Impact Report ("**EIR**"), master tentative map, general plan amendment, rezone, development agreement and planned unit agreement and finance plan. While this Agreement is effective, Seller's proposed Master Entitlements shall, among other things, allow for school and educational uses at the Property (subject to receipt of project level entitlements) and include seeking approval for the Subdivision. The completion of the Subdivision (including, without limitation, that (a) the Subdivision shall not be subject to any challenges, (b) the period for any challenges and appeals to the Subdivision shall have irrevocably passed, and (c) all challenges and contests have been resolved in favor of Seller beyond any applicable appeals periods), causing the Property to be one or more separate legal parcels before or at the time of Closing, is a Closing Condition that, notwithstanding any other provision of this Agreement to the contrary, may not be waived by either Buyer or Seller (the "**Subdivision Condition**"). If the Subdivision is processed by Seller, Seller shall notify Buyer promptly once the Subdivision Condition is satisfied. In the event the Subdivision Condition is not satisfied within the time periods set forth in 4.2.6, and continuing until the Subdivision Condition is satisfied, Buyer shall have the right (as its sole remedy) to terminate this Agreement by written notice to Seller thereof, and receive a refund of the Deposit pursuant to Section 4.2.6 and 6.2 above and Buyer and Seller shall have no further obligations to the other, except for obligations which specifically survive termination hereof. Notwithstanding the foregoing, Buyer shall be directly responsible for all project-level entitlements and

infrastructure for the Property, and all costs and expenses related to project-level entitlements for the Property (the “**School Project Entitlements**”), including, without limitation, for any project level CEQA review, the site plan and design review, a Conditional Use Permit and any other project specific approvals. Buyer and Seller will cooperate with each other (at no more than *de minimus* expense) with respect to Seller’s efforts to obtain Master Entitlements and Buyer’s efforts to obtain School Project Entitlements as reasonably requested by the other party before and following Closing. Such cooperation shall include executing documents as necessary to evidence the Master Entitlements, School Project Entitlements and related infrastructure on title to the Property and/or Overall Property. The covenants in this Section 6.6.1 shall survive Closing, but not a termination of this Agreement.

6.6.2 Seller shall notify Buyer within 5 days prior to the expiration of the Due Diligence Period whether it has obtained the Rights Release. If Seller has not notified Buyer of the Rights Release by such time, then unless the parties mutually agree in writing to extend the time period for receipt, this Agreement shall automatically terminate and the Deposit shall be returned to Buyer pursuant to Section 6.2 above and Buyer and Seller shall have no further obligations to the other, except for obligations which specifically survive termination hereof.

6.6.3 Buyer and Seller shall notify each other on or before the Board Approval Date as to whether this Agreement has been so approved. If either party’s governing body disapproves this Agreement, or fails to notify the other of its approval by the Board Approval Date (which shall be deemed disapproval), then this Agreement shall automatically terminate, and Buyer and Seller shall have no further obligations to the other, except for obligations which specifically survive termination hereof, and Buyer will receive a refund of its Deposit pursuant to Section 6.2 above.

7. REPRESENTATIONS AND WARRANTIES

7.1 Definitions. For purposes of this Section 7, the following terms shall have the meanings set forth below.

7.1.1 Environmental Laws. As used in this Agreement, “**Environmental Laws**” shall mean all laws and regulations purporting to regulate or restrict Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”; 42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act (“RCRA”; 42 U.S.C. Sections 6901, et seq.), the Clean Water Act (33 U.S.C. Sections 466, et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (“HMTA”; 49 U.S.C. Sections 1801, et seq.), the Toxic Substance Control Act (“TSCA”; 15 U.S.C. Sections 2601-26293), the California Hazardous Waste Control Act (California Health and Safety Code Sections 25100-25600), and the Porter-Cologne Water Quality Control Act (California Health and Safety Code Sections 13000, et seq.), as any of the foregoing may be amended from time to time, and all regulations and publications implementing or promulgated pursuant to the foregoing.

7.1.2 Hazardous Materials. As used in this Agreement, “**Hazardous Materials**” includes, without limitation: (i) those materials included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, HMTA, TSCA, or under any other applicable Environmental Law; (ii) those materials listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 C.F.R. Part 302]; (iii) other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (iv) any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317, a flammable explosive, or a radioactive material.

7.1.3 Seller’s Knowledge. References to “Seller’s knowledge,” matters “known to Seller”, or words of like import mean the actual, current knowledge of Jeff Dorso, but no duty of inquiry or investigation is required; provided, however, that if, as of the Close of Escrow, one or more different individuals are serving in any of the positions described above or are exercising on behalf of such entity substantially the same functions as one or more of the individuals specified above with respect to this transaction, then inquiry shall be made of such successor officer(s) as of the Close of Escrow.

7.2 Buyer’s Representations. Buyer agrees, represents and warrants, as of the Agreement Date and as of Close of Escrow, as follows: (i) Buyer is a public school district organized and existing under the laws of the State of California; (ii) Buyer has the legal right, power and authority to execute and perform its obligations under this Agreement; and (iii) the persons executing this Agreement and other documents required hereunder on behalf of Buyer are the duly designated agents of Buyer and are authorized to do so.

7.3 Seller’s Representations and Warranties. As used herein, the term “Seller’s Knowledge” shall mean the actual current knowledge of Jeffrey K. Dorso, who holds the title of Seller’s Senior Vice President and General Counsel (any inconsistency in a representation(s) and warranty(ies) made by any listed individual shall be limited to a recovery against Seller subject to the provisions this Agreement). Said term does not include constructive knowledge, imputed knowledge, or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. Seller makes the following representations and warranties as of the Agreement Date and, subject to Seller’s right to modify the same by additional disclosures, as of Close of Escrow:

7.3.1 Authority. Seller represents that: (i) it has the legal right, power and authority to execute and perform its obligations under this Agreement pursuant to its governing instrument(s), without the need for any further action; and (ii) the persons executing this Agreement and other documents on behalf of Seller are the duly designated agents of Seller and are authorized to do so.

7.3.2 Non-Foreign Affidavit. Seller is not a foreign person and is a United States person as defined in the United States Internal Revenue Code, as amended.

7.3.3 Litigation. To Seller's knowledge, there is no litigation pending or threatened against Seller that might materially adversely affect the ability of Seller to perform its obligations under this Agreement. If there is any such litigation pending or threatened, Seller will provide a reasonably detailed summary of such matters to Buyer.

7.3.4 Hazardous Materials. Except as otherwise disclosed to or discovered by Buyer prior to Closing (via the Property Documents, Buyer's investigations or otherwise), to Seller's knowledge: (i) Seller has received no notice that the Property is in violation of any Environmental Laws, (ii) Seller, has not used, manufactured, generated, treated, stored, disposed of, or leased any Hazardous Material on, under or about the Property or transported any Hazardous Material over the Property; (iii) neither Seller, nor any third party, has installed, used or removed any storage tanks or wells on, from or under the Property except in full compliance with all Environmental Laws.

7.3.5 Ownership of the Property. No third party has any option or right of refusal or first opportunity to acquire any interest in any of the Property that has not expired.

7.3.6 No Bankruptcy. Seller has not filed or been the subject of any filing of a petition under the Federal Bankruptcy Law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

7.3.7 Compliance with Law. To Seller's knowledge, Seller has not received any written notice that the Property is in violation of any federal, state or local statute, law, ordinance or regulation.

7.3.8 No Contracts. At the Closing, there will be no contracts respecting maintenance of the Property or performance of services on the Property by which Buyer would become obligated or liable to anyone except for the Documents.

7.4 Change in Representation or Warranty. The representations of Seller set forth above are made as of the date of execution of this Agreement and are intended to be true and correct as of the Close of Escrow. If, subsequent to the Agreement Date and prior to the Close of Escrow, Seller determines that, as a result of facts or subsequent events discovered or arising after the Agreement Date, any of the representations or warranties of Seller set forth in Section 7.3 of this Agreement are no longer true and correct as of such subsequent date, Seller shall not be in breach of this Agreement, provided that Seller promptly and prior to Close of Escrow notifies Buyer in writing ("**Change Notice**") of such facts or subsequent events and the effect on the applicable representation or warranty. Seller shall have the option, but not the obligation, to take steps to cure or correct the situation so that the affected representation or warranty will be true and correct as of the Close of Escrow, and, if Seller exercises such option, Seller shall identify the corrective action in the Change Notice. If Seller elects to undertake corrective action

such that the affected representation or warranty will be true and correct as of the Close of Escrow, the Parties shall proceed with performance under this Agreement and the Closing, provided Seller completes such corrective action prior to the Close of Escrow; provided, however, that if such corrective action is not completed as of the Close of Escrow, the Seller shall not be in breach of any of its obligations under this Agreement, and Buyer shall have the option to either terminate this Agreement or proceed to close of escrow. If Seller does not elect to undertake such corrective action, then, within five (5) days after Buyer's receipt of the Change Notice, but in no event later than the Closing Date, Buyer shall elect, by delivering written notice to Escrow Holder (with a copy to Seller) either to: (1) proceed with performance of this Agreement and the Closing; or (2) terminate this Agreement and the Escrow for non-satisfaction of a condition. In the event of termination pursuant to this Section, neither Party shall have any further obligation or liability hereunder except for those obligations and liabilities specified in this Agreement as surviving termination of this Agreement and/or Close of Escrow.

7.5 Seller's Indemnification; Seller's Disclaimers.

7.5.1 Seller agrees to indemnify and hold Buyer free and harmless from any losses, damages, costs, or expenses (including attorneys' fees) resulting from any breach of any representation or warranty of Seller set forth in Section 7.3 of this Agreement and any breach or default by Seller under any of Seller's covenants or agreements under this Agreement, provided, however, that Buyer may not make a claim pursuant to this Section 7.5.1 for any claim reasonably valued to be worth \$25,000 or less (exclusive of legal fees and costs) and liability under this Section 9.3 shall be limited to two percent (2%) of the Purchase Price (exclusive of legal fees and costs).

7.5.2 Except as expressly set forth in Section 7.3 of this Agreement, Seller makes no representations, express or implied, regarding the Seller or the Property. Buyer hereby acknowledges and agrees that it has not relied upon any representation or warranty, express or implied, made by or on behalf of Seller, except for those expressly set forth in Section 7.3 of this Agreement.

7.6 Buyer's Indemnification. Buyer agrees to indemnify and hold harmless Seller from any losses, damages, costs, or expenses (including attorney's fees) resulting from any breach of any representation or warranty of Buyer set forth in Section 7.2 of this Agreement and any breach or default by Buyer under any of Buyer's covenants or agreements under this Agreement.

7.7 Real Estate Commissions. Each Party represents and warrants to the other Party that no brokers have been employed or are entitled to a commission or compensation in connection with this transaction. Each Party agrees to indemnify, hold harmless, protect and defend the other Party (and its governing board or council members, administrators, managers, agents, successors and assigns) from and against any obligation or liability to pay any other commission or compensation to any other brokers arising from the act or agreement of the indemnifying Party.

7.8 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Closing and shall survive the Closing for a period of ninety (90) days following the Closing Date.

8. ADDITIONAL OBLIGATIONS

8.1 Access to Property. During the Due Diligence Period, Seller shall allow Buyer and its employees, agents, representatives and contractors (collectively, "Buyer's Agents") reasonable access to the Property during normal business hours, upon written notice to Seller, for the purpose of performing all studies, tests and evaluations, and all other engineering studies, surveys, geological work or other studies desired by Buyer, at Buyer's sole cost. In connection with any such entry, Buyer: (i) shall perform all work in a safe manner; (ii) shall not bring any hazardous condition onto the Property; (iii) shall repair any damage or disturbance to the Property which it causes; (iv) shall keep the Property free and clear of all mechanics' or materialmen's liens arising out of Buyer's activities; and (v) shall provide Seller with a certificate of liability insurance acceptable to Seller in Seller's reasonable discretion naming Seller, its affiliates, members, managers, partners employees and agents as additional insureds. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, causes of action, liabilities, losses, liens or other damages arising out of or in any way related to Buyer's and Buyer's Agents' entry onto the Property.

8.2 Damage or Destruction. If, prior to the Closing Date, any part of the Property is materially damaged or destroyed by fire or other casualty, Seller shall promptly give notice thereof to Buyer, in which event Seller may elect, by delivering written notice to Buyer, to terminate this Agreement and the Escrow, and neither Party shall have any further rights or obligations hereunder except as otherwise stated in this Agreement. If Seller does not deliver such written notice of termination, then: (a) neither Party shall have a right to terminate this Agreement; and (b) the Parties shall continue performance under this Agreement and the Escrow, without modification of any of its terms and without any reduction in the Purchase Price. Seller shall have no liabilities or obligations to Buyer, and Buyer shall have no claims for damages or other remedies against Seller, as a result of such damage or destruction of the Property.

8.3 Condemnation. If, at or prior to Closing, the Property or any portions of it are condemned or taken pursuant to any governmental or other power of eminent domain, or, if any written notice of any such taking or condemnation is issued, or proceeding instituted, then in any such events, Seller or Buyer shall have the option to terminate this Agreement. In the event neither Party terminates this Agreement and the Parties Close under this Agreement, Buyer shall be entitled to receive the entire condemnation award. In the event of such termination, neither party shall have any further rights or obligations hereunder except as specifically stated in this Agreement.

8.4 Possession. Possession of the Property shall be delivered by Seller to Buyer on the Closing Date after recordation of the Grant Deed. All risk of loss and damage to the Property from whatever source shall be the sole responsibility of Buyer after the Close of Escrow.

8.5 Notice of Violations. In the event that, prior to Closing, Seller becomes aware of any Hazardous Materials or any other matter affecting the Property which violates any applicable law, Seller shall immediately give Buyer notice of such matter.

9. GENERAL PROVISIONS

9.1 Approvals. Whenever any consent, approval or verification of a Party is required, such Party shall not unreasonably withhold or delay such consent, approval or verification unless this Agreement expressly provides that such consent, approval or verification may be given or withheld in such Party's sole discretion.

9.2 Assignment. Neither Seller nor Buyer may assign this Agreement in whole or in part, voluntarily or involuntarily, without the prior written consent of the other.

9.3 Attorneys' Fees. If a legal action or arbitration proceeding is brought by Buyer or Seller to enforce or interpret any of the provisions of this Agreement, or otherwise with regard to the Escrow or the Property, the prevailing party shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection therewith. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who brings an action against the other after the other party is in breach or default, if such action is dismissed upon the other party's payment of the sums allegedly due or performance of the covenant allegedly breached, or if the party commencing such action or proceeding obtains substantially the relief sought by it in such action whether or not such action proceeds to a final judgment or determination.

9.4 Computation of Time Periods. 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. The term "business days" means days other than Saturdays, Sundays and state or national holidays. Unless otherwise expressly provided in this Agreement, if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next business day.

9.5 Confidentiality. Unless such disclosure is otherwise required under applicable law, neither party shall disclose the Purchase Price to any third party without the prior written consent of the other party, provided that such disclosure may be made to attorneys for a Party, existing or proposed lenders, appraisers, the Escrow Holder, the Title Company, the County Recorder, and any other person or the public in general if such disclosure is reasonably necessary to perform a Party's obligations or to consummate the transaction provided for herein, recognizing that the Buyer is a California public education agency.

9.6 Gender; Number. As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.

9.7 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

9.8 Construction. The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the

construction or interpretation of any term or provision. This Agreement shall not be construed as if it had been prepared by only Buyer or Seller, but rather as if both Buyer and Seller had prepared the same.

9.9 Counterparts. This Agreement or any escrow instructions pursuant to this Agreement may be executed in multiple copies, electronic or otherwise, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed a counterpart document.

9.10 Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the purchase and sale of the Property. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded. No subsequent agreement, representation, or promise made by either Party shall be of any effect unless it is in writing and executed by the Party to be bound.

9.11 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

9.12 Modification. No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both Buyer and Seller. The escrow instructions shall be considered a part of this Agreement, and no provision in the escrow instructions shall supersede or contradict the provisions of this Agreement, unless the Parties agree in writing to such change. The exercise of any remedy provided by the provisions of this Agreement or at law or in equity shall not exclude any other remedy, unless it is expressly excluded.

9.13 No Other Inducement. The making, execution and delivery of this Agreement by the Parties has been induced by no representations, statements, warranties or agreements other than those expressed herein.

9.14 Notice. All notices, demands, requests, elections, approvals, consents or other communications under this Agreement shall be in writing and shall be personally delivered or sent by commercial overnight courier, electronic mail, facsimile, or certified mail, return receipt requested, addressed to the respective parties as follows:

SELLER

SBH Natomas LLC
500 J St. 4th Floor
Sacramento, CA 95814
Attn: Jeffrey K. Dorso, Esq.
Senior Vice President and General Counsel
jdorso@kings.com

With a copy to each of:

BUYER

Natomas Unified School District
Chris Evans
Superintendent
1901 Arena Blvd.
Sacramento, CA 95834
cevens@natomasunified.org

With a copy to:

Pioneer Law Group LLP
1122 S Street
Sacramento, California 95811
Attn: Joel Patrick Erb, Esq.
joel@pioneerlawgroup.net

Fagen Friedman & Fulfroft, LLP
Attn: Paul G. Thompson
520 Capitol Mall Suite 400
Sacramento, CA 95814
pthompson@f3law.com

Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067-3012
Attn: Benny Westreich, Esq.
benny.westreich@katten.com

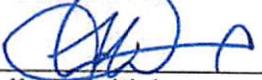
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
Attn: Adam Klein, Esq.
adam.klein@katten.com

Either Party may change its address for notice by delivering written notice to the other Party. Buyer, Seller, and their respective counsel hereby agree that notices from Buyer or Seller may be given by their respective counsel and that for the purpose of giving such notice, either Party's counsel may communicate directly with the other Party.

9.15 Remedies. In the event the Closing and the completion of the transaction contemplated by this Agreement do not occur as a result of a material default by Seller, where Seller does not cure such default within 10 days following receipt of written notice thereof from Buyer, then Buyer shall be entitled to an immediate return of the Deposit and any other monies delivered to Escrow Holder by Buyer, and shall have the right, as its sole and exclusive remedies to either: (i) terminate this Agreement and seek reimbursement from Seller for its reasonable out-of-pocket costs in connection with this transaction, not to exceed \$25,000; or (ii) pursue the specific performance of this Agreement.

IN THE EVENT THE CLOSING FAILS TO OCCUR SOLELY DUE TO A MATERIAL DEFAULT UNDER THIS AGREEMENT BY BUYER, WHERE BUYER FAILS TO CURE SUCH DEFAULT WITHIN TEN (10) DAYS AFTER RECEIPT OF WRITTEN NOTICE THEREOF FROM SELLER, SELLER SHALL BE ENTITLED, AS SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, TO TERMINATE THIS AGREEMENT AND RETAIN THE DEPOSIT. SELLER EXPRESSLY WAIVES ANY OTHER REMEDY AT LAW OR IN EQUITY AGAINST BUYER. THE PARTIES AGREE THAT AS OF THE EFFECTIVE DATE, SELLER'S ACTUAL DAMAGES IN THE EVENT ESCROW FAILS TO CLOSE SOLELY DUE TO A MATERIAL DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE AND THAT THE TOTAL AMOUNT OF THE DEPOSIT CONSTITUTES A REASONABLE AND FAIR APPROXIMATION OF SUCH DAMAGES AND IS NOT A PENALTY. SELLER'S RETAINING THE DEPOSIT IS NOT INTENDED AS A FORFEITURE OR PENALTY UNDER CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369. SELLER HEREBY WAIVES THE PROVISIONS OF

CALIFORNIA CIVIL CODE SECTION 3389 WITH RESPECT TO ANY DEFAULT BY BUYER OF ITS OBLIGATION TO CLOSE THE TRANSACTION. NOTWITHSTANDING THE FOREGOING, THE LIMITATION ON SELLER'S REMEDIES SET FORTH IN THIS SECTION), SHALL NOT LIMIT BUYER'S OBLIGATIONS UNDER ANY INDEMNITY OR ATTORNEYS' FEES PROVISIONS OF THIS AGREEMENT.



Seller's Initials



Buyer's Initials

9.16 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable to any extent by any court of competent jurisdiction, the remainder of this Agreement shall not be affected, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.17 Successors. Subject to the restriction on assignment contained herein, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective heirs, legal representatives, successors, and assigns.

9.18 Timing. Time is of the essence for each provision of this Agreement in which time is a factor, including without limitation all time deadlines for satisfying conditions and Close of Escrow.

9.19 Exhibits. The following exhibits are attached to and part of this Agreement, and incorporated herein by reference:

Exhibit A	Legal Description of Property
Exhibit B	Depiction of Property
Exhibit C	Form of Grant Deed
Exhibit D	Form of Joint Use Agreement

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Agreement Date.

SELLER

SBH NATOMAS LLC

By: 

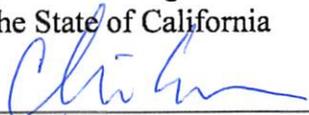
Name: Jeffrey Dorso

Title: Senior Vice President and General Counsel

Date: January 5, 2022

BUYER

NATOMAS UNIFIED SCHOOL DISTRICT,
a public school district organized and existing under
the laws of the State of California

By: 

Name: Chris Evans

Title: Superintendent

Date: 1/5/2022 

Exhibit A to PSA

LEGAL DESCRIPTION

Shall be provided by seller prior to the close of escrow

Exhibit B to PSA
Visual Depictions of Property To BE UPDATED

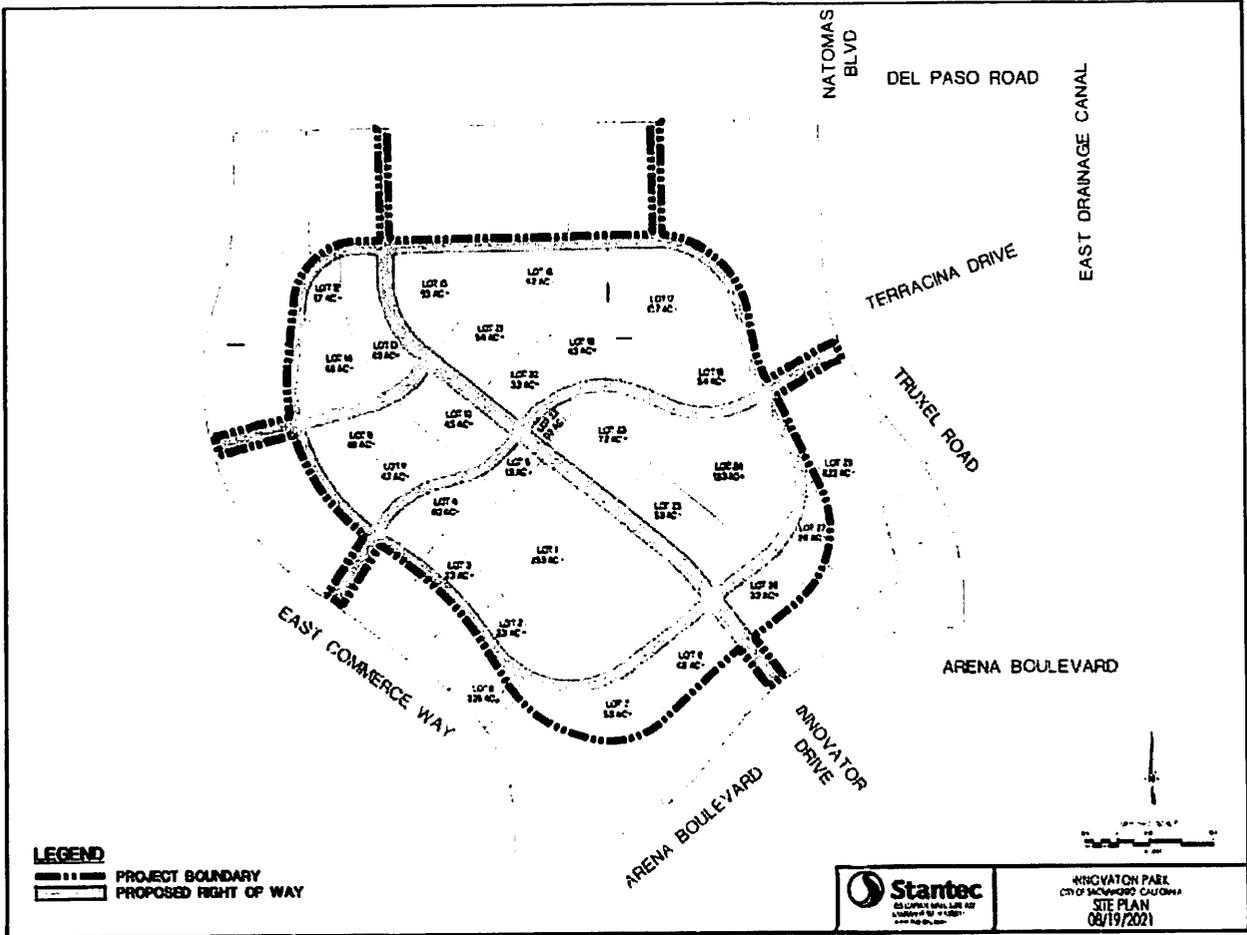


Exhibit C to PSA

Form of Grant Deed

RECORDING REQUESTED BY:
[INSERT]

AND ONCE RECORDED, RETURN TO:
[District Info]

APN(s): _____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

NO DOCUMENTARY TRANSFER TAX DUE
EXEMPT PER REVENUE AND TAXATION CODE § 11922

Exempt from filing fees per Government Code § 6103

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, **SBH NATOMAS, LLC ("Grantor")** hereby grant(s) to **NATOMAS UNIFIED SCHOOL DISTRICT ("Grantee")** all that real property legally described on Exhibit A, subject to all matters of record.

Grantor has cause this Grant Deed to be duly executed on _____, 2022.

GRANTOR:

SBH NATOMAS LLC

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

Exhibit A to Grant Deed

LEGAL DESCRIPTION

EXHIBIT D
SCHOOL FIELDS USE AGREEMENT

THIS SCHOOL FIELDS USE AGREEMENT (“Agreement”) is made and entered into as of _____ (“Execution Date”), by and between the NATOMAS UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California (“District”), and the CITY OF SACRAMENTO, a municipal corporation (“City”). District and City are sometimes hereinafter referred to collectively as the “Parties” or each individually as a “Party.”

Background

- A. Chapter 10 of Part 7 of the California Education Code (“Community Recreation Programs Law”) authorizes school districts and cities to organize, promote, and conduct programs of community recreation that will contribute to the attainment of general educational and recreational objectives for children and adults of the state.
- B. Pursuant to Education Code section 38131, District may grant the use of school facilities as a civic center for uses including educational and recreational uses.
- C. Pursuant to Education Code section 38133, the management, direction, and control of school facilities are vested in the District’s governing Board (“Board”), who may provide for the use of school facilities as a civic center where uses are consistent with school purposes and do not interfere with the regular conduct of schoolwork.
- D. District is the owner of a School site located within the Innovation Park PUD _____, Sacramento, CA _____, in the County of Sacramento (the “School”). The School will need to be improved in the future and it is planned to include approximately 4 acres of playfield and playground area (the “Fields”).
- E. City desires to use a portion of the School site consisting of the Fields as more particularly depicted in the schematic plan attached as Exhibit “A” (the “Premises”) for the purpose of providing active recreational facilities for community use and enjoyment.
- F. District and City have entered into a Master Memorandum of Use Agreement dated February 19, 2009 (City Agreement No. 2009-0163), (the “Joint Use Agreement”) to provide for joint-use of their respective recreational facilities. District and City seek to continue that joint-use partnership for the Fields at the School to provide recreational opportunities to the community after school and on weekends.

Agreement

NOW, THEREFORE, DISTRICT AND CITY HEREBY MUTUALLY AGREE AS FOLLOWS:

ARTICLE I
License

1.1 Grant of License. In consideration of the terms of this Agreement, District agrees to grant City (including its employees and agents) a revocable license (“License”) to use the Premises for the sole purpose of providing recreational opportunities and general community use and enjoyment (“Approved Use”) during non-school hours beginning at 4:30 p.m. or after school activities have completed, whichever occurs earlier, to dusk Monday through Friday and from dawn to dusk on Saturdays, Sundays, and school holidays (the “Approved Schedule”). This timeframe will accommodate all school site programming, including extended day activities. District will continue to have rights to Premises for school-related functions during the Approved Schedule hours. The rights granted to and the obligations imposed on the City herein shall extend to the City’s officers, agents, employees, volunteers, invitees, and independent contractors. The License granted hereunder does not provide City with the right to allow outside organizations or groups to use the Premises. All requests for City use of Premises, beyond the purpose of providing recreational facilities for unstructured community use and enjoyment, shall submit District Facility Use Permit forms for District approval.

1.2 Physical Extent of Right to Enter. The License granted hereunder with respect to carrying out the Approved Use shall extend to the Premises. The License includes City’s (and its employees’ and agents’) non-exclusive right of pedestrian ingress to and egress from the Premises through the School site, unless the School site is fenced so that access is available from a public street. Such rights shall not extend to any of the buildings, restroom facilities, or parking lots on the School site. District shall have no liability for damages related to motor vehicles parked on city streets. City shall comply with all applicable laws with respect to its access and use of the Premises. City staff shall be responsible for ensuring community access to the Premises during the non-school hours, as outlined above. City and District staff shall not provide any facility or gate keys to any community member at any time in order to ensure student and site safety.

The License granted herein shall be limited to City’s rights set forth in this Section 1.2, including the right to use the Premises and for ingress and egress thereto and therefrom. Except as otherwise expressly authorized by this Agreement, City shall have no right to access or use the portions of the School that are not included Premises (the “Remainder Portion”). City acknowledges that the Remainder Portion is not currently suitable for City’s use, that such entry is not authorized by this License, and that if City, its employees, agents, representatives, or invitees, enter the Remainder Portion, they will be trespassing on District property and they do so at their own risk. District shall not be liable for any damages to person or property resulting from said parties’ unauthorized access to or use of the Remainder Portion.

1.3 Permitted Use/ City’s Responsibilities. City shall use the Premises solely for the Approved Use set forth in Section 1.1, and City shall be responsible for all costs and services relating thereto, above and beyond general maintenance of the Premises, which shall be

governed by Section 2.7. City shall be solely responsible for providing all equipment and furnishings for the Approved Use, if any, subject to the terms of this Agreement.

1.4 License Fee. In consideration of the Parties existing Joint Use Agreement, no license fee shall be owed.

1.5 Damage to Premises. District and City shall conduct a joint site visit following the completion of construction of the School to inspect the Premises. All damage to the Premises thereafter caused by community use of the Premises shall be the responsibility of the City. The City shall reimburse the District for any costs associated with addressing such damages, beyond general maintenance.

1.6 Term, Termination and Revocation of the License.

(a) The term of this Agreement and the License shall commence on the date mutually agreed to by the Parties after the School is constructed (the "Commencement Date"), and shall continue in effect year after year, subject to its earlier termination as provided herein ("Term"). The License granted under this Agreement shall be deemed automatically revoked upon termination of this Agreement for Cause and City shall cease to access and use the Premises.

(b) This Agreement may be terminated by either Party at any time for cause. "Cause" shall consist of a breach of any material provision of this Agreement, and the failure of the breaching Party to cure the breach within fifteen (15) days of being notified of the breach (unless a different cure period is specifically required by the terms of this Agreement). Such a termination shall become effective immediately upon the expiration of the fifteen (15) day cure period, unless such cure is completed to the reasonable satisfaction of the non-breaching Party.

1.7 Liens and Claims. City shall promptly pay in full all costs associated with City's use of the Premises, and any equipment, furnishings, furniture, trade fixtures or other items for the Premises that City shall cause to be delivered to the Premises and shall timely pay in full all persons who perform labor for the City's use of the Premises. If any mechanic's or materialmen's liens or any other liens or claims for any work done or items furnished at City's request are filed against the Premises or the School, City shall promptly remove the liens and claims at City's own expense. If City fails to remove the liens or claims and any judgment is entered thereon or thereunder, City shall pay that judgment. Should City fail, neglect, or refuse to remove any such liens or claims or to pay any judgment, District shall have the right to pay any amount required to release any such liens or claims, or to defend any actions brought on the liens or claims and to pay any judgment entered on the liens or claims, and City shall be liable to District for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefor. District may record, post, and maintain upon the facilities a notice of non-responsibility. City shall not encumber by any security instrument, all or a part of City's interest

under this License or Agreement without the prior written consent of District, and upon such terms and conditions as District may require.

ARTICLE II Restrictions and Conditions

2.1 AS IS Condition. Except as set forth in this Agreement, District makes no representations of any kind as to the conditions of, on or under the Premises. District and City will inspect the premises once school construction is complete and takes the Premises in its "as is" condition. District has no responsibility to make any modifications to the Premises that may be required to prepare the Premises City to carry out the Approved Use. City will be responsible to address any damage to the Premises and beyond general maintenance needs. Furthermore, District makes no representations or warranties regarding the fitness or suitability of the Premises for City's intended use.

2.2 City Conduct.

(a) City shall act in a professional manner and shall not do or permit anything to be done on the Premises which would obstruct or interfere with the rights of anyone on the School, or that would injure or annoy them.

(b) City shall not obstruct access to or passage across the School.

(c) City shall not use or permit the Premises, or any portion thereof to be improved, used or occupied in any manner or for any purpose that is in any way in violation of any applicable law, ordinance, policy, or regulation of any Federal, State, County, or Local Government agency, body or entity, including the Natomas Unified School District. This includes no smoking or alcohol consumption in or on Premises. City shall also not permit anything to be done in or about the Premises which will increase the existing rate of insurance upon the Premises, or cause the cancellation of any insurance policy covering the, and City shall be responsible for paying any increase in insurance caused thereby.

(d) City, its agents, employees, invitees, volunteers and independent contractors shall observe and comply fully and faithfully with all rules and regulations (including all Board policies) (collectively, "Rules") adopted by District for the care, protection, cleanliness and operation and use of the Premises, including any modification or addition to such Rules adopted by District, provided District shall give written notice thereof to City.

2.3 Alterations and Furnishings. No structures, improvements, alterations or facilities (collectively, "Alterations") shall be placed, constructed, erected, altered, or made at the Premises without District's prior written approval. Title to equipment, furniture, furnishings, trade fixtures and other items placed by City upon the Premises shall become the property of District.

2.4 Compliance With Laws.

(a) City shall, at City's own cost and expense, comply with all applicable statutes, ordinances, regulation, and requirements of all governmental entities, including federal, state, county or municipal, and whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises for the Approved Use, City shall procure and maintain at its sole cost any such license, permit or other governmental authorization prior to the commencement of the Approved Use and throughout the term of this Agreement. City shall indemnify, and hold District and the Premises free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from City's failure to comply with and perform the requirements of this Section, except to the extent that any such liability is caused by District or any person or entity under its explicit direction or control. Upon request, City shall provide copies of all licenses which District may require to verify that City is in compliance with the requirements of this Section.

(b) In addition to complying with any other District policies applicable to use of District property, City shall, at City's own cost and expense, comply with all Rules and Regulations for Public Use of NUSD Facilities as outlined on the District's Civic Permit Form attached hereto and incorporated herein as Exhibit "B". Additionally, City shall, at City's own cost and expense, take all steps and actions necessary or required to comply with all current and future orders, laws and recommendations issued by any applicable government agency (including the California Department of Public Health, the California Department of Education, the Sacramento County Health Officer and the State or the Federal Government) related to COVID-19 that are applicable to the City's use of the Premises. City, its employees, agents, representatives, or invitees shall comply with existing or future policies and practices adopted by the District related to preventing the spread of disease. This includes, without limitation, that the City agrees to practice the personal prevention measures pursuant to the mitigation requirements of any NUSD Return to Health plan provided to City.

2.5 Assessments, Fees, Charges, and Utilities. District shall be responsible to set up and pay for all utility services provided to the Premises, including, but not limited to, water, sewage, and any security and similar services used or consumed on the Premises. District shall not be liable in damages or otherwise for any interruption in the supply of any utility service.

2.6 Maintenance; Repairs. District shall, at its own expense, keep the Premises in good repair and maintain them in a condition suitable for City's use. During City's use of the Premises, City shall maintain the Premises in a safe, clean, wholesome, and sanitary condition, in compliance with all applicable laws, and shall keep the Premises and the surrounding areas free and clear of rubbish and litter by removing trash on weekends and school holidays. City shall pay for any repairs to the Premises (more than ordinary wear and tear) arising from City's fault or the fault of any person or entity under its explicit direction or control within thirty (30) days of receipt from District of any invoice for the costs of the repairs.

2.7 Payments by District. Should City fail to pay any assessments, fees or other charges required to be paid by City, District may, without notice to or demand on City, pay, discharge, or adjust that assessment, bill, or other charge for the benefit of City. In that event, City shall promptly, on written demand of District, reimburse District for the full amount properly paid by District in paying, discharging, or adjusting that tax, assessment, bill or other charge, including but not limited to the cost of any late fees, penalties or other charges assessed and paid for by District resulting from City's untimely or incomplete payment.

2.8 Insurance.

(a) **Coverage Required.** Before the commencement of the License rights under this Agreement and during the Term of this Agreement, City shall obtain and maintain, at its expense, with insurance companies acceptable to District, the following insurance policies covering the Premises, which coverage may be covered under a self-insurance and excess insurance program:

(1) Commercial general liability insurance for bodily injury, personal injury and property damage and including products and completed operation and non-owned and hired automobile coverage, with liability limits of not less than \$1,000,000 combined single limit. Bodily injury shall not be less than \$1,000,000, combined single limit of \$1,000,000 per person and per accident. The policy shall provide coverage for broad form property damage not less than \$1,000,000 per loss. If the policy contains a General Aggregate, then the liability limit must be not less than \$2,000,000.

(2) Automobile liability insurance for bodily injury, personal injury and property damage for vehicles owned, non-owned, or hired, with policy limits or not less than \$1,000,000 combined single limit.

(b) **Insurance Provisions.**

(1) The policies described in Subsection (a) above shall: (i) name District as an additional insured and be provided on an occurrence basis; (ii) state that such policy is primary, excess, and non-contributing with any other insurance carried by District; (iii) state that the naming of an additional insured shall not negate any right the additional insured would have had as claimant under the policy if not so named; and (iv) state that not less than thirty (30) days written notice shall be given to District before the cancellation or reduction of coverage or amount of such policy.

(2) A certificate issued by the carrier of the policies described in Subsection (a) above shall be delivered to District prior to City's, its employees, volunteers and/or its independent contractors first entry onto the Premises. Each such certificate shall set forth the limits, coverage, and other provisions required under this Section. A renewal certificate for

each of the policies described above shall be delivered to District not less than thirty (30) days before the expiration of the term of such policy. Coverage shall be subject to District's approval and shall carry a rating of A:X or higher, unless otherwise agreed to in advance by District, and insurance company shall be admitted and licensed in California to transact insurance coverage and issue policies.

(3) The policy described in Subsection (a) above may be made part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required in this Section and does not reduce the coverage, impair District's rights under this Agreement, or negate or decrease City's obligations under this Agreement.

(4) City agrees that if City does not take out and maintain such insurance as required by this Section, then District may (but shall not be required to) procure said insurance on City's behalf and charge City the premiums, together with a 10% handling charge, payable upon demand.

(c) **Worker's Compensation Insurance and Employer's Liability Insurance.** Before the commencement of the Term, City shall provide a certificate(s) of insurance and endorsements on forms acceptable to District with full worker's compensation insurance coverage for no less than the statutory limits, and employer's liability insurance coverage with limits not less than \$1,000,000 for all persons whom it employs or may employ under this Agreement. This insurance shall be in strict accordance with the requirements of the most current and applicable State Worker's Compensation Insurance Laws. Such coverage shall remain in effect throughout the Term of this Agreement.

2.9 No Property Interest Created. The License and this Agreement do not create any interest for City in the Premises or any property owned or maintained by District, and is not coupled with any property interest or other interest. The License is personal to City and is not assignable without first obtaining District's consent, which consent may be withheld in District's sole discretion.

2.10 Safety. City shall be solely and completely responsible for conditions of the Premises when in use by City, including safety of all persons and property. City, its agents, employees, invitees, volunteers and independent contractors shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety. All materials, equipment, and supplies provided for the Premises shall fully conform to all applicable State, local and Federal safety laws, rules, regulations, and orders.

2.11 Indemnity By City. Except to the extent caused by the gross negligence or willful misconduct of District or any person or entity under its explicit direction or control, City shall indemnify and hold District, its officers, agents, employees, members of its Board of Trustees and the property of District, including but not limited to the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from City's occupation and use

of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including any of City's employees, guests, invitees, or agents, from any cause whatsoever as a direct result of the City's use and/or occupancy of the Premises while that person is in, on, or about the Premises or in any way connected with the Premises or with any of City's personal property on the Premises;

(b) The death or injury of any person, including any of City's employees or agents, or by reason of the damage to or destruction of any property, including property owned by City or any person who is an employee or agent of City, caused or allegedly caused by either (1) any condition of the Premises created by City or its employees or agents, or (2) any act or omission on the Premises by City or any person in, on or about the Premises with the permission and consent of City;

(c) The damage to or destruction of any property, including property owned by City or by any person who is an employee or agent of City, from any cause whatsoever as a direct result of the City's use and/or occupancy of the Premises while that property is in, on or about the Premises or in any way connected with the Premises or with any of City's personal property on the Premises;

(d) Any work performed on the Premises or materials furnished to the Premises at the instance or request of City or any person or entity acting for or on behalf of City; and

(e) City's failure to perform any provision of this License or to comply with any requirement of applicable law or any requirement imposed on City or the Premises by any duly authorized agency or political subdivision.

2.12 Entry by District. District reserves and shall at any and all reasonable times have the right to enter the Premises to inspect same, to determine whether City is complying with this Agreement, to supply any service to be provided by District to City hereunder, to use the Premises as desired by District, and to alter, improve, maintain or repair the Premises, in each case consistent with the terms of this Agreement. City waives any claim for damages for injury, inconvenience or interference with City's use, or any loss of occupancy or quiet enjoyment, caused by such entry, except to the extent caused by the gross negligence, recklessness or willful misconduct of District or any person or entity under its explicit direction or control.

2.13 Limitation of Liability. District's officers, agents, employees, and members of its Board of Trustees shall not be personally liable in any manner or to any extent under or in connection with this Agreement. City and its successors and assigns hereby waive any and all such personal liability. Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect, or incidental damages, including but not limited to lost profits in connection with this Agreement.

2.14 Surrender of Premises. On the date or termination of this Agreement, City shall surrender to District the Premises and any then-existing improvements in good order, condition, and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances. Said condition shall be similar to that existing as of the Commencement Date of this Agreement, excepting normal wear and tear and any alterations or improvements approved by District subsequent to the Commencement Date. City shall remove from the Premises all of City's personal property, trade fixtures, and any improvements made by City which City and District agree would be removed by City. All property not so removed shall be deemed abandoned by City. If the Premises are not so surrendered at the termination of this Agreement, City shall indemnify District against loss or liability resulting from delay by City in so surrendering the Premises.

ARTICLE III General Terms and Provisions

3.1 Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter dealt with in this Agreement and all understandings, oral or written, with respect to the subject matter of this Agreement are hereby superseded.

3.2 Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by both District and City.

3.3 Waiver. The failure by either Party to enforce any term or provision of this Agreement shall not constitute a waiver of that term or provision, or any other term or provision. No waiver by either Party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

3.4 Severability. If any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.

3.5 Force Majeure. Neither Party shall be liable for its failure to fulfill any term or condition of this Agreement if such fulfillment has been delayed, hindered or prevented by any event of force majeure. For the purposes of this Agreement, the term "force majeure" shall be defined to mean strikes, lockouts, labor or industrial disputes, acts of nature, enemy or hostile government action, general emergency condition, civil commotion, fire, natural disaster,

extreme weather conditions or other casualty or any other cause beyond the reasonable control of the Party.

3.6 Governing Law and Venue. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sacramento.

3.7 Property Taxes. Notwithstanding anything contained herein to the contrary, in the event that City's possession and use of the Premises under this Agreement is determined to create a "possessory interest" in said Premises in City and City may be subject to the assessment of property taxes based upon such a possessory interest, then City shall be solely responsible for the timely payment of any and all such property taxes levied on such interest, including any penalties and interest in connection therewith.

3.8 Independent Contractor. City is an independent contractor, not an officer, employee or agent of District.

3.9 Notices. Any notice required or desired to be given pursuant to this Agreement shall be in writing, duly addressed to the Parties below. By written notice in conformance herewith, either Party may change the address to which notices to said Party must be delivered. Any notice deposited with the United States Postal Service shall be deemed to have been duly given upon confirmed receipt, if sent by certified or registered mail, postage prepaid, addressed as set forth below or as changed as set forth herein. Notice sent by any other manner shall be effective only upon actual receipt thereof.

District:
Director of Facilities
1901 Arena Blvd
Sacramento, CA 95834

City:
City of Sacramento

Attn: _____

3.10 **Signature In Counterparts.** This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute the same instrument. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.

3.11 **Non-Discrimination.** City expressly agrees that it will not discriminate in the employment of persons or in carrying out the Approved Use on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

3.12 **Warranty of Authority.** Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DISTRICT:

CITY:

By: _____

By: _____

ARTICLE 1 NAME: _____

NAME: _____

ARTICLE 2 ITS: _____

ITS: DIRECTOR, DEPT YOUTH, PARKS & COMMUNITY ENRICHMENT

For: _____, City Manager

Approved as to Form:

By: _____

Senior Deputy City Attorney

Attest:

By: _____

Assistant City Clerk

2.1 **Exhibit "A"**

DEPICTION OF PREMISES

To be added after parcel subdivision completion.

Exhibit "B"

CIVIC PERMIT FORM

VISIT NATOMASUNIFIED.ORG FOR CIVIC PERMIT APPLICATION

2.2