

PURCHASE AND SALE AGREEMENT

by and between

Alameda Unified School District

(Seller)

and

Housing Authority of the City of Alameda

(Buyer)

PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("**Agreement**"), dated for references purposes as _____, 2021 ("**Agreement Date**"), is entered into by and among the ALAMEDA UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("**Seller**" or "**District**") and HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a 501(c)(3) nonprofit, ("**Buyer**"). This Agreement constitutes (1) an agreement of purchase and sale between the parties and (2) 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 a property consisting of a maintenance yard used by the District located at 2615 Eagle Avenue, Alameda California 94501 (the "**Land**"); and any existing improvements thereon ("**Improvements**"), legally described on the attached Exhibit A and depicted on Exhibit B (collectively, the "**Property**").

B. District desires to purchase the Property, and Seller desires to sell the Property under the terms and conditions of this Agreement.

C. The Parties previously entered into a Memorandum of Understanding ("MOU") dated May 22, 2018. The MOU established the terms under which Buyer and Seller would cooperate to increase the supply of low-income housing within the City of Alameda, while addressing housing needs of the District's qualifying employees. The Parties wish to acknowledge the existence of the MOU, and recognize that the terms of this PSA are not intended to, and shall not modify the terms of the MOU.

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.

ARTICLE 1

PURCHASE AND SALE

1.1 **Purchase and Sale**. Seller shall sell to Buyer and Buyer shall purchase from Seller, the Property, under the terms and conditions of this Agreement.

ARTICLE 2

PURCHASE PRICE

2.1 **Purchase Price.** The purchase price for the Property shall be Two Million and Five Hundred Thousand Dollars (\$2,500,000) ("**Purchase Price**"). The Purchase Price shall be payable through Escrow as described in Article 5 of this Agreement.

2.2 **Deposit.** Concurrently with the opening of escrow, Buyer shall deposit the sum of one hundred thousand dollars (\$100,000.00) ("**Deposit**") into an escrow ("**Escrow**") to be opened at First American Title Company ("**Escrow Holder**") located in Alameda, California. The Deposit shall be applied against the Purchase Price at Close of Escrow. The Deposit shall be returned to Buyer if the Agreement and the Escrow are terminated due to non-satisfaction of any Due Diligence Condition, or for any other reason whatsoever other than Buyer's default, and thereafter neither Party shall have any further rights or obligations except as otherwise stated in this Agreement. The Deposit shall be paid to Seller as liquidated damages pursuant to Section 2.4 if Escrow fails to close as a result of a "Buyer Default" (defined in Section 2.4 below).

2.3 **Balance of Purchase Price.** Buyer shall deliver the balance of the Purchase Price to Escrow Holder in cash by wire transfer of immediately available funds, in sufficient time prior to the Close of Escrow to permit disbursement of such funds on the Closing Date under applicable law and Escrow Holder's standard practice.

2.4 **LIQUIDATED DAMAGES.** THE PARTIES ACKNOWLEDGE AND AGREE THAT SELLER WILL SUFFER SUBSTANTIAL DAMAGES IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THE PROVISIONS HEREIN AS A RESULT OF A BREACH BY BUYER OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT ("**BUYER DEFAULT**"). GIVEN FLUCTUATIONS IN LAND VALUES, THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENTAL REGULATIONS, THE FLUCTUATING MONEY MARKET FOR REAL ESTATE LOANS AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY, THE PARTIES REALIZE THAT IT WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY THE ACTUAL AMOUNT OF SELLER'S DAMAGES IN THE EVENT OF SUCH BUYER DEFAULT. THEREFORE, THE PARTIES HEREBY AGREE THAT THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF SUCH DAMAGES, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF EXECUTION OF THIS AGREEMENT, AND THAT SELLER SHALL HAVE THE RIGHT TO RECEIVE AND RETAIN THE FULL AMOUNT OF THE DEPOSIT AS LIQUIDATED DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, AS SELLER'S SOLE RIGHT TO DAMAGES AS A RESULT OF THE BUYER DEFAULT AND AS ITS SOLE REMEDY FOR SUCH BUYER DEFAULT. SELLER WAIVES ALL RIGHTS SELLER OTHERWISE MAY HAVE PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1677 OR OTHERWISE TO SPECIFICALLY ENFORCE THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THIS SECTION SHALL NOT LIMIT OR LIQUIDATE ANY OBLIGATIONS OR LIABILITIES OF BUYER PURSUANT TO ARTICLE 7. BY SIGNING

THEIR INITIALS BELOW, EACH PARTY CONFIRMS ITS CONSENT TO AND AGREEMENT WITH THE PROVISIONS OF THIS PARAGRAPH:

Seller's Initials

VC

Buyer's Initials

ARTICLE 3

ESCROW

3.1 **Escrow Holder.** For convenience, Escrow Holder's contact information is repeated here:

Escrow Holder: First American Title

Escrow Officer: Diane Burton

3.2 **Opening of Escrow.** 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. "Opening of Escrow" means the date Escrow Holder receives the Agreement. Escrow Holder shall acknowledge the Opening of Escrow and its agreement to act as the Escrow Holder by promptly delivering a written confirmation of the date of Opening of Escrow to Seller and Buyer.

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 or before the tenth (10th) business day following the date of expiration of the "Due Diligence Period" (as this term is defined in Section 4.1 below) ("**Closing Date**").

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. Such funds and documents to be deposited into Escrow by Seller shall include, but not necessarily be limited to:

3.5.1 **Purchase Price.** Prior to Close of Escrow, Buyer shall deposit the Purchase Price; and

3.5.2 **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**");

3.6 **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**. Although Seller is a public entity and thus generally exempt from all general and special real property taxes, the parties agree that any and all taxes levied on the Property shall be pro-rated. 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. 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 within ten (10) days prior to the Closing Date and have a copy delivered to Seller and Buyer 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 (unless Buyer elects to use an ALTA policy as discussed below); (2) one-half of Escrow Holder's escrow fee or escrow cancellation charge; (3) fees for the agreed upon release of monetary encumbrances; (4) one hundred percent (100%) of any documentary transfer tax; and (5) other Seller's charges and expenses, in accordance with the customary practices in Alameda 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 additional title endorsements requested by Buyer; (2) one-half of Escrow Holder's escrow fee or escrow cancellation charge; and (3) other Buyer's charges and expenses, in accordance with the customary practices in Alameda 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.

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 Alameda 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 Seller, and provide 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) each 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 Purchase Price, adjusted for prorations, charges and other credits and debits provided for; 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.

ARTICLE 4

DUE DILIGENCE

4.1 **Due Diligence Period.** The “**Due Diligence Period**” shall mean the period commencing on the Agreement Date and ending on the later of the ninetieth (90th) day following the Agreement Date or the date specified in an “**Extension Notice**” referred to below. Buyer shall have a right to extend the Due Diligence Period beyond the ninetieth (90th) day following the Agreement Date, for up to an aggregate of one hundred thirty (150) days, in increments of thirty (30) days, if and only if:

- (a) Buyer gives Seller and Escrow Holder written notice of such extension (“**Extension Notice**”) at least five (5) business days prior to the end of the Due Diligence Period, or any extension thereof, which Extension Notice shall set forth the number of thirty (30) day extensions being exercised (with each thirty (30) period being referred to herein as an “**Extension Period**”); and
- (b) Pays to Seller the sum of twenty thousand dollars (\$20,000) for each 30-day Extension Period (with the aggregate amount thereof being referred to herein as the “**Extension Payment**”), which Extension Payment must be paid to Seller in a lump sum on the same day as the Extension Notice is given to Seller. The Extension Payment shall be paid to Seller outside of Escrow and shall not constitute part of the Deposit.
- (c) The Extension Payment shall constitute consideration for extending the Due Diligence Period and shall be non-refundable, except in the event the Escrow does not close by reason of a default by Seller in its obligations under this

Agreement. If Seller defaults and the Escrow does not close by reason of such default, then Buyer shall be entitled to recover the Extension Payment from Seller without interest.

- (d) If Escrow closes, the amount of the Extension Payment made by Buyer shall be credited against the Purchase Price payable at the Closing.

If for any reason the Extension Notice is not given on or before said fifth business day, or if for any reason, the Extension Payment is not paid by Buyer to Seller on or before the date the Extension Notice is given to Seller, then any attempt to extend the expiration of the Due Diligence Period beyond the original Due Diligence Period following the Agreement Date shall not be effective.

4.2 **Property Review.** During the Due Diligence Period, Buyer shall have the right to investigate, inspect, 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 **Documents.** Receipt and review of documents delivered by Seller to Buyer, including but not limited to copies of all reports, surveys, and other environmental reports applicable to the Property which are in Seller's possession or under its control ("**Documents**").

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

4.2.4 **Other Matters.** All other matters relating to the condition, value, fitness, suitability or use of the Property, including any and all matters Buyer in its sole discretion may deem necessary or appropriate. Notwithstanding the foregoing, concerns of title shall be governed by Article 5.

If, prior to the expiration of the Due Diligence Period (or any extension), 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, and Escrow Holder shall refund the Deposit to Buyer. For avoidance of doubt, even if Buyer terminates the Agreement pursuant to a Due Diligence Termination Notice, Seller shall be entitled to retain for its own account the Extension Payment(s), if any, paid by Buyer to Seller.

If for any reason, Buyer fails to deliver a Due Diligence Termination Notice prior to the expiration of the Due Diligence Period, or any Extension 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.

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 if, and only if Buyer executes and delivers to Escrow Holder such escrow instructions as Escrow Holder may request authorizing and instructing the Escrow Holder to disburse the Deposit to Seller within three (3) business days after expiration of the Due Diligence Period and to complete the transaction within ten (10) business days as required by Section 3.4 above. If the Due Diligence Period (including any Extension Period) expires, the Deposit shall be non-refundable and shall be retained by Seller for its own account, provided, however, that if the Close of Escrow does not occur solely by reason of a default by Seller of its obligations under this Agreement, then Seller shall return the Deposit to Buyer within 10 business days. If for any reason, Buyer does not execute and deliver to Escrow Holder instructions to release the deposit within three business days after expiration of the Due Diligence Period and complete the transaction within ten business days as set forth above and in section 3.4, then Seller shall have the right to terminate this Agreement, in which event the Deposit shall be returned by the Escrow Holder to Buyer, Seller shall retain the Extension Payment, if any, made by Buyer to Seller, and neither Party shall have any further rights or obligations under this Agreement.

ARTICLE 5

TITLE

5.1 **Preliminary Report.** Within three (3) business days after the Agreement Date, Seller shall instruct the Escrow Holder to order a preliminary title report on the Property ("**Preliminary Report**") from First American Title Company ("**Title Insurer**") 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 this term is defined in Section 5.4 below) are referred to herein as the "**Printed Exceptions.**"

5.2 **Title Review.**

5.2.1 Reserved.

5.2.2 Buyer shall have the right to either approve of the exceptions contained in the Preliminary Report, or to notify Seller in writing, specifying any exceptions to title to which Buyer objects by giving Seller written notice of such disapproval on or before the thirtieth (30th) day following the Agreement Date ("**Buyer Title Notice**"), which notice shall set forth in reasonable detail the exceptions to title disapproved by Buyer in the Title Documents. If for any reason Buyer fails or neglects to deliver a Buyer Title Notice to Seller within said 30-day period, then Buyer shall be deemed to have approved all title exceptions. Any title exception not disapproved in the Buyer Title Notice shall be deemed approved by Buyer.

5.2.3 Upon receipt of a Buyer Title Notice, Seller shall have the right, by giving Buyer written notice ("**Seller Title Notice**") within fifteen (15) calendar days after its receipt of the Buyer Title Notice, to either approve all matters disapproved by Buyer in the Buyer Title

Notice, or approve some of the matters disapproved by Buyer in the Buyer Title Notice, or disapprove all of the matters disapproved by Buyer in the Buyer Title Notice. If for any reason Seller fails or neglects to deliver a Seller Title Notice to Buyer within fifteen (15) calendar day period, then Seller shall be deemed to have approved all of the matters disapproved in the Buyer Title Notice.

5.2.4 If a Seller Title Notice is given within the foregoing fifteen (15) calendar day period, and Seller approves all or some of the matters disapproved by Buyer in the Buyer Title Notice or if Seller is deemed to have approved all of the matters disapproved in the Buyer Title Notice pursuant to Section 5.2.3 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 not be in breach and either party may terminate this Agreement, in which event the Deposit will be returned to Buyer, Seller shall return the Extension Payment, if any, made by Buyer to Seller, and the parties shall not have any further obligations under this Agreement.

5.2.5 If a Seller Title Notice is given within the foregoing fifteen (15) calendar day period, and Seller does not approve all of the matters disapproved by Buyer in the Buyer Title Notice pursuant to Section 5.2.4 above, then the matters not approved by Seller shall be referred to as the “**Disputed Title Objections.**” Within fifteen (15) calendar days after Buyer receives the Seller Title Notice, Buyer shall have the right, by giving Seller written notice (“**Buyer Title Response**”), to either waive all of the Disputed Title Objections or terminate this Agreement. If the Buyer Title Response waives all of the Disputed Title Objections, then such matters shall constitute “Permitted Exceptions” as set forth in Section 5.2.6 below and Buyer shall not have any further right to disapprove or object to the Title Documents. If Buyer terminates this Agreement pursuant to a Buyer Title Response, then the Deposit shall be returned to Buyer and neither Seller nor Buyer shall have any further duties or obligations under this Agreement. If for any reason Buyer fails or neglects to deliver a Buyer Title Response within the aforesaid fifteen (15) calendar day period or delivers a Buyer Title Response within the aforesaid fifteen (15) calendar day period but such Buyer Title Response does not contain an election by Buyer to terminate this Agreement, then Buyer shall be deemed to have waived all of the Disputed Title Objections which shall become “Permitted Exceptions” as set forth in Section 5.2.6 below.

5.2.6 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 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; and (e) all Seller Approved Title Objections with respect to which an endorsement has been issued by the Title Company.

5.2.7 Notwithstanding the foregoing, Seller agrees to cause to be removed from record title to the Property at the Closing all monetary liens and monetary encumbrances, except for non-delinquent real property taxes and assessments and any liens or encumbrances created or suffered by Buyer.

5.3 **Liens.** Seller shall convey to Buyer fee 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. 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.

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. 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 any such ALTA owner's policy of title insurance.

ARTICLE 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**") at 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), each of which is for the sole benefit of Buyer, unless waived by Buyer in writing:

6.1.1 **Due Diligence.** Prior to the expiration of the Due Diligence Period, the approval, satisfaction, or waiver of the Due Diligence Conditions pursuant to the provisions of Article 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 or commitment to issue the Title Policy to Buyer effective at the Closing, subject to the Permitted Exceptions.

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

6.1.4 **Deposit of Grant Deed.** Seller has deposited an executed and recordable Grant Deed into Escrow.

6.2 **Failure of Conditions (Buyer).**

6.2.1 In the event the condition set forth in Section 6.1.3 above (Seller breach) 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, 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, the Deposit and the Extension Payment shall promptly be returned to Buyer within ten (10) business days, and 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, 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 conditions set forth above (other than the condition set forth in Section 6.1.3) 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, the Deposit shall promptly be returned to Buyer, Seller shall retain the Extension Payment, if any, paid by Buyer to Seller, and 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 of the warranties and representations of Buyer set forth in this Agreement shall be true and correct in all respects on the Agreement Date and the Closing.

6.3.4 **Delivery of Purchase Price.** Buyer shall have deposited with Escrow Holder all funds necessary to complete the transaction, including but not necessarily limited to the Purchase Price.

6.4 **Failure of Conditions (Seller).**

6.4.1 In the event the conditions set forth in Section 6.3.1 above are not satisfied, prior to the expiration of any time periods specified therein, then 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 and the Deposit shall be returned to Buyer and Seller shall retain the Extension Payment(s), if any, made by Buyer to Seller.

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, 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 retain the Deposit as liquidated damages pursuant to Section 2.4 of this Agreement, and Seller shall retain the Extension Payment, if any, made by Buyer to Seller.

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) days after such termination, all of the 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 at no cost to Buyer.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 **Definitions.** For purposes of this Article 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 applicable to the physical condition of the Property or the presence of any substance thereon, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et seq.), the Resources Conservation and Recovery Act (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 (49 U.S.C. Sections 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), 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) any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance, law, ruling, regulation or decision, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; Refuse Act, 33 U.S.C. §§ 407 et seq.; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 et seq.; Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. to the extent it includes the emission of any Hazardous Material and includes any Hazardous Material for which hazard communication standards have been established; California Hazardous Substance Account Act, California Health & Safety Code §§ 25300 et seq.; California Asbestos Notification Laws, California Health & Safety Code §§ 25915 et seq.; California Hazardous Waste Control Law, California Health & Safety Code §§ 22100 et seq.; California Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code §§ 25500 et seq.; California Clean Air Act, California Health & Safety Code §§ 39608 et seq.; California Toxic Pits Cleanup Act, California Health & Safety Code §§ 25208 et seq.; California Pipeline Safety Act, California Government Code §§ 51010 et seq.; California Toxic Air Contaminants Law, California Health & Safety Code §§ 39650 et seq.; California Porter-Cologne Water Quality Act, California Water Code §§ 13000 et seq.; California Toxic Injection Well Control Act, California Health & Safety Code §§ 25159.10 et seq.; California Underground Storage Tank Act, California Health & Safety Code §§ 25280 et seq.; California Occupational Carcinogens Control Act, California Labor Code §§ 9000 et seq.; or any regulation, order, rule or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.

7.1.3 **Seller's Knowledge.** References to "Seller's Actual Knowledge", matters "known to Seller," or words of like import mean the actual, current knowledge of Seller (as opposed to imputed or constructive knowledge), after inquiry of the Seller's Chief Business Officer, but no other duty of inquiry or investigation by Seller is implied or required. No duty of inquiry or investigation on the part of Seller or its representatives will be required or implied in instances when Seller's Actual Knowledge is referenced herein, and in no event shall Seller's representatives have any liability for representations or warranties or covenants of Seller that involve Seller's Actual Knowledge.

7.2 **Buyer's Representations.** Buyer agrees, represents and warrants, as of the Agreement Date and as of Close of Escrow, as follows:

7.2.1 Buyer is a 501(c)(3) nonprofit 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.

7.2.1 This Agreement does not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

7.2.2 **Buyer's Investigation.**

(a) Buyer acknowledges and agrees that under the terms of this Agreement it will have, before the end of the Due Diligence Period, a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation:

(i) All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.

(ii) The physical condition and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property shall include an examination for the presence or absence of Hazardous Materials, which shall be performed or arranged by Buyer at Buyer's sole expense; provided however, Buyer shall not conduct any "Phase II" environmental testing (or any testing equivalent to that required for a "Phase II" environmental report) without Seller's prior written approval and consent, which Seller shall not unreasonably withhold.

(iii) Any other documents or agreements of significance affecting the Property.

(iv) All other matters of material significance affecting the Property.

(b) **BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS BUYING THE PROPERTY ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND THAT SELLER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY EXCEPT FOR ANY WARRANTIES, REPRESENTATIONS AND AGREEMENTS EXPRESSLY SET FORTH HEREIN, AND SUBJECT TO THE LIMITATIONS HEREIN, OR IN THE GRANT DEED OR OTHER DOCUMENT SIGNED BY SELLER AND DELIVERED TO BUYER AT CLOSE OF ESCROW. WITHOUT LIMITING THE FOREGOING, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT FOR ANY WARRANTIES, REPRESENTATIONS AND AGREEMENTS EXPRESSLY SET FORTH HEREIN, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO,**

CONCERNING OR WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION: (1) THE PRESENCE OF HAZARDOUS MATERIALS IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY; (2) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, AND LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND FAULTING; (3) WHETHER OR NOT AND THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (4) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORE; (5) USAGES OF ADJOINING PROPERTIES; (6) THE VALUE, COMPLIANCE WITH PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OPERATION, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, (7) DEVELOPMENT RIGHTS, FEES AND EXACTIONS; (8) COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; AND/OR (9) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (BUYER AFFIRMING THAT BUYER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE), EXCEPT IN THE EVENT THAT THE SAME RESULTS FROM THE INACCURACY OR BREACH OF AN EXPRESS REPRESENTATION OR WARRANTY OF SELLER CONTAINED HEREIN.

(c) By the end of the Due Diligence Period, Buyer acknowledges that it will have had an opportunity to perform all desired physical and financial examinations relating to the acquisition of the Property hereunder and, at the Close of Escrow, will acquire the same solely on the basis of such examinations, the title insurance protection afforded by the Title Policy, and Seller's representations, warranties and covenants contained herein not on any other information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information except as otherwise provided herein, and makes no representations as to the accuracy or completeness of such information. Seller shall not be liable for any failure to investigate the Property nor shall Seller be bound in any manner by any verbal or written statements, representations, appraisals, environmental assessment reports, or other information pertaining to the Property or the operation thereof, furnished by Seller, or by any real estate broker, agent, representative, employee, servant or other person acting on Seller's behalf, except in the event that the same results from the inaccuracy and/or breach of express warranty, representation or warranty, representation or warranty of Seller contained herein. It is understood and agreed that the Property is sold by Seller and purchased by Buyer subject to the foregoing and that Seller's sole source of liability, if any,

to Buyer with respect to the condition of the Property and other matters referenced above shall be Seller's express representations, warranties and covenants contained in this Agreement.

(d) Without limiting the above, and subject to the express representations and warranties of Seller and covenants of Seller in this Agreement, effective on the Closing, Buyer, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, Seller, Seller's affiliates, Seller's investment manager, the trustees, beneficiaries, employees, volunteers and agents of each of them, and their respective heirs, successors, personal representatives and assigns (collectively, the "Seller Related Parties"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with errors, omissions or other conditions affecting the Property, including, but not limited to (i) the physical condition of the Property, the environmental condition of the Property and Hazardous Materials on, under or about the Property, or (ii) any law or regulation applicable to the Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6903, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and any other federal, state or local law, except in the event that the same results from the inaccuracy and/or breach of express warranty, representation or warranty, representation or warranty of Seller contained herein.

(e) **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE AMOUNT OF THE PURCHASE PRICE REFLECTS, AND THE PROPERTY IS BEING SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING DISCLAIMERS AND ABOVE RELEASE OF CERTAIN KNOWN AND UNKNOWN CLAIMS. AS PART OF THE PROVISIONS OF THIS SECTION BUT NOT AS A LIMITATION THEREON, BUYER HEREBY AGREES THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR SUSPECTED, AND AS TO THE MATTERS RELEASED HEREIN BUYER HEREBY WAIVES (EFFECTIVE ON THE CLOSING) ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH 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 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7.3 Seller's Representations and Warranties. 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 is a public school district that has the legal right, power and authority to execute and perform its obligations under this Agreement; and 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.

7.3.3 **Litigation.** To Seller's Actual Knowledge, there is no litigation pending or threatened against Seller that: (1) arises out of the ownership of the Property, or (2) might detrimentally affect the ability of Seller to perform its obligations under this Agreement. As of the Agreement Date, to Seller's Actual Knowledge, there is no pending or threatened litigation involving the ownership or use of the Property. If there is any such litigation pending or threatened, Seller will provide a reasonably detailed summary of such matters to Buyer. If any such litigation arises after the Agreement Date and before the Close of Escrow, then Seller shall have the right to terminate this Agreement, in which event the Deposit shall be returned to Buyer (and the Extension Payment, if any, made by Buyer to Seller shall be returned to Buyer).

7.3.4 **Hazardous Materials.** Except as may otherwise be disclosed in a Phase 1 Environmental Document or other form, to Seller's Actual Knowledge: (1) the Property is not in violation of any Environmental Laws, (2) neither Seller, nor to Seller's Actual Knowledge any third party, has 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; (3) neither Seller, nor to Seller's Actual Knowledge any third party, has installed, used or removed any storage tank on, from or under the Property except in full compliance with all Environmental Laws; (4) to Seller's Actual Knowledge, there are no storage tanks or wells (whether existing or abandoned) on or under the Property; and (5) to Seller's Actual Knowledge there are no Hazardous Materials on or under the Property.

7.3.5 **Ownership of the Property.** Seller is the owner of fee title to the Property, with full right to convey the same, subject to all matters of record, and except as to those matters excluded under the Title Policy. Seller has not granted to any party any option or right of refusal or first opportunity to acquire any interest in any of the Property

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 Actual Knowledge, the Property is not in violation of any federal, state or local statute, law, ordinance or regulation.

7.3.8 **Documents.** To Seller's Actual Knowledge, all copies of Documents delivered to Buyer pursuant to this Agreement are or will be true and correct copies of originals;

7.3.9 **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, in which event the Deposit shall be returned to Buyer, or proceed to close of escrow. If Seller does not elect to undertake such corrective action, then, within fifteen (15) 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 nonsatisfaction of a condition. In the event of termination pursuant to this Section, the Deposit shall be returned to Buyer, and 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. In any event, Seller shall retain the Extension Payment, if any, made by Buyer to Seller.

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 attorney's 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.

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 Seller free and harmless 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, except to the extent of the gross negligence or willful misconduct of Seller.

7.7 **Real Estate Commissions.** Each Party represents and warrants to the other Party that only the brokers referred to in this Section below 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.

The Seller shall pay a Brokerage Commission Fee ("Fee") to the following two California-licensed real estate brokers:

Two and One-Half Percent (2.5%) to CBRE, Inc., 4301 La Jolla Village Dr. Suite 3000 San Diego, CA 92122; and,

7.7 **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 six (6) months following the Closing Date.

ARTICLE 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 two (2) business days prior notice to Seller, for the purpose of performing reasonable studies, tests and evaluations desired by Buyer for its Due Diligence, at Buyer's sole cost. Buyer shall notify Seller and obtain its written consent prior to performing any tests which could cause property damage beyond normal wear and tear. 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; and (iv) shall keep the Property free and clear of all mechanics' or materialmen's liens arising out of Buyer's activities. 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. Prior to any entry by Buyer or Buyer's Agents onto the Property, Buyer shall deliver to Seller a certificate or other evidence of public liability insurance in the amount of Two Million Dollars (\$2,000,000) per incident, naming Seller as additional insured, insuring against any loss, property damage and/or injuries incurred by any person on the Property related to such inspections and testing herein set forth. Said policy shall remain in effect for the remaining term of the escrow and thereafter, as required, in order to insure against any incident on the Property

related to Buyer and Buyer's Agents prior to the Close of Escrow. Notwithstanding any provision of this Agreement to the contrary, Buyer's obligations under this Section shall survive for a period of one (1) year after termination of this Agreement and Close of Escrow.

8.2 **Damage or Destruction.** If, prior to the Closing Date, any part of the Improvements on the Property are 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, in which event the Deposit shall be immediately returned to Buyer, 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; (b) Seller shall restore the Property to its full pre-damage or pre-casualty state; and (c) 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, Buyer shall have the option to terminate this Agreement, or, in the alternative, Buyer may elect to proceed to close, with the Buyer 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 and the Escrow Holder shall refund the Deposit to Buyer.

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. On the Closing Date Seller shall deliver to Buyer (a) keys, codes and combinations for locks or security devices for the building Improvements, to the extent under Seller's control; and (b) any as-built plans in Seller's possession prior to 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.

ARTICLE 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 provided.

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.

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 **Reserved.**

9.6 **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.

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

9.8 **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.

9.9 **Exhibits.** All exhibits referred to are attached and incorporated herein by reference.

9.10 **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.

9.11 **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.

9.12 **Governing Law/Venue.** This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California. Any suit to interpret or enforce this Agreement shall be brought in Alameda County.

9.13 **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.

9.14 **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.

9.15 **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:

Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501
SKahn@alamedaunified.org
jtraber@f3law.com

BUYER:

Housing Authority of the City of Alameda
701 Atlantic Ave
Alameda, CA 94501
smartinez@alamedahsg.org

Either Party may change its address for notice by delivering written notice to the other Party. Buyer and 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.

9.16 **Remedies.** Seller's remedies in the event of a default by Buyer shall be limited to the extent provided in Section 2.4. In the event of a default by Seller, subject to the provisions of Article 9, Buyer shall have the right to specifically enforce this Agreement, to recover damages or to pursue any other remedy available at law or in equity.

9.17 **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.

9.18 **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.

9.19 **Time**. 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.

9.20 **Retention of Extension Payment**. For avoidance of doubt, and except as stated in 6.2.1 and 7.3.3, the Seller shall be entitled to retain the Extension Payment, if any, made by Buyer to Seller, unless the Close of Escrow does not occur on or before the Closing Date by reason of a breach by Seller of any of its obligations or covenants under this Agreement or by reason of a breach by Seller of its representations and warranties set forth in this Agreement.

9.21 **Exhibits**. The following exhibits are attached to and part of this Agreement:

Exhibit A	Legal Description of Property
Exhibit B	Depiction of Property
Exhibit C	Form of Grant Deed

[Rest of page intentionally blank]
[Signatures on following pages]

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

SELLER

ALAMEDA UNIFIED SCHOOL DISTRICT
A public school district organized and existing
under the laws of the State of California

By: _____ Date: _____

Name: _____

Title: _____

BUYER

HOUSING AUTHORITY OF THE CITY OF ALAMEDA

By: DocuSigned by: Vanessa Cooper Date: 6/7/2021
5AFA57239EC2484...

Name: Vanessa Cooper

Title: Executive Director

Exhibit "A"
Legal Description

[insert legal description]

Exhibit "B"
The Property

[insert plat]

EXHIBIT C – To Purchase and Sale Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ASSESSOR'S PARCEL NO: NO DOCUMENTARY TRANSFER TAX DUE EXEMPT PER REVENUE AND TAX CODE 11922	(ABOVE SPACE FOR RECORDER'S USE ONLY) Exempt per Government Code section 6103
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GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged,

ALAMEDA UNIFIED SCHOOL DISTRICT

hereby Grants to

Housing Authority of the City of Alameda

all that real property legally described on Exhibit A, subject to all matters of record.

Dated: _____

GRANTOR

ALAMEDA UNIFIED SCHOOL DISTRICT

By: _____
Title: _____
Date: _____

GRANTEE
HOUSING AUTHORITY OF THE CITY OF ALAMEDA

By: _____
Title: _____
Date: _____

EXHIBIT A TO GRANT DEED

LEGAL DESCRIPTION

314-245/6099935.1