

**SITE LEASE**

**For all or a portion of the following Site:**

Laurel Dell Elementary School New Construction & Modernization Project  
225 Woodland Avenue  
San Rafael, CA 94901  
APN: 013-123-05

**By and between**

San Rafael City Schools  
310 Nova Albion Way  
San Rafael, CA 94903

**And**

Swinerton Builders  
260 Townsend Street  
San Francisco, CA 94107

Dated as of December 20, 2017

## **SITE LEASE**

This site lease ("Site Lease") dated as of December 20, 2017 ("Effective Date"), is made and entered into by and between San Rafael City Schools, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and Swinerton Builders, a California corporation duly organized and existing under the laws of the State, as lessee ("Developer") (together, the "Parties").

## **RECITALS**

**WHEREAS**, the District currently owns a parcel of land located at 225 Woodland Avenue, San Rafael, CA 94901, known as Laurel Dell Elementary School, as more particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by this reference ("School Site"); and

**WHEREAS**, the District desires to provide for the development and construction of certain work to be performed on portions of the School Site ("Project Site") and that work will include construction of improvements to be known as New Construction & Modernization Project ("Project"); and

**WHEREAS**, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Developer agrees to lease the Project Site back to the District and perform the work of the Project ("Facilities Lease"), which Facilities Lease is incorporated herein by this reference; and

**WHEREAS**, the Governing Board of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Developer and by immediately entering into the Facilities Lease under which District will lease back the Project from Developer; and

**WHEREAS**, the District further determines that it has entered into this Site Lease and the Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

**WHEREAS**, this Site Lease and Facilities Lease are awarded based a competitive solicitation process pursuant to Education Code section 17406 and in compliance with the required procedures and guidelines for evaluating the qualifications of proposers adopted and published by the Board to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

**WHEREAS**, the selection of the Developer was conducted in a fair and impartial manner; and

**WHEREAS**, based on the above findings, the District is authorized under Education Code section 17406 to lease the Project Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project Site back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing; and

**WHEREAS**, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with the execution and entering into this Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Site Lease; and

**WHEREAS**, Developer as lessee is authorized and competent to lease the Project Site from District and to develop and cause the construction of the Project on the Project Site, and has duly authorized the execution and delivery of this Site Lease.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

**1. Definitions**

Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.

**2. Exhibits**

The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.

**2.1. Exhibit A - Legal Description of the School Site:** The description of the real property constituting the School Site

**2.2. Exhibit B - Description of the Project Site:** The map or diagram depiction of the Project Site

**3. Lease of the Project Site**

The District hereby leases to the Developer, and the Developer hereby leases from the District the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Developer within three (3) days of execution of this Site Lease.

**4. Leaseback of the Project Site**

The Parties agree that the Project Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.

**5. Term**

The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Developer, or its assignee, all payments which may be due under the Facilities Lease, and

provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.

## **6. Payment**

In consideration for the lease of the Project Site by the District to the Developer and for other good and valuable consideration, the Developer shall pay One Dollar (\$1.00) to the District upon execution of this Site Lease.

## **7. Termination**

### **7.1. Termination Upon Purchase of Project**

If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the District's buy out and termination of the Facilities Lease.

### **7.2. Termination Due to Default by Developer**

If Developer defaults pursuant to the provision(s) of the Facilities Lease and the District terminates the Facilities Lease pursuant to the Facilities Lease provision(s) allowing termination, then the Developer shall be deemed to be in default of this Site Lease and this Site Lease shall also terminate at the same time as the Facilities Lease.

### **7.3. Termination Due to Default by District**

If District defaults pursuant to the provision(s) of the Facilities Lease, the Developer, or its assignee, will have the right, for the then remaining term of this Site Lease, to:

**7.3.1.** Take possession of the Project Site;

**7.3.2.** If it deems it appropriate, cause appraisal of the Project Site and a study of the then reasonable uses thereof;

**7.3.3.** Re-let the Project Site; and

**7.3.4.** Stop all Work associated with the Site Lease.

## **8. Title to School Site**

During the term of this Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the School Site.

## **9. Improvements**

Title to all improvements made on the Project Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

## **10. No Merger**

The leaseback of the Project Site by the Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Developer shall continue to have a leasehold estate in the Project Site pursuant to this Site Lease throughout the term hereof.

#### **11. Right of Entry**

The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Developer.

#### **12. Quiet Enjoyment**

Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site, the District hereby covenants and agrees that it will not take any action to prevent the Developer from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof and will, at the request of the Developer, to the extent that it may lawfully do so, join in any legal action in which the Developer asserts its right to such possession and enjoyment.

#### **13. Waste**

The Developer agrees that at all times that it is in possession of the Project Site, it will not commit, suffer or permit any waste on the Project Site, and that it will not willfully or knowingly use or permit the use of the Project Site for any illegal purpose or act.

#### **14. Further Assurances and Corrective Instruments**

The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

#### **15. Representations of the District**

The District represents, covenants and warrants to the Developer as follows:

##### **15.1. Due Organization and Existence**

The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

##### **15.2. Authorization**

The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

##### **15.3. No Violations**

To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.

#### **15.4. CEQA Compliance**

The District has complied with all assessment requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("CEQA")) in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before the construction of the Project may commence.

#### **15.5. Condemnation Proceedings**

**15.5.1.** District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Site Lease and the Facilities Lease.

**15.5.2.** If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Developer shall be as indicated in the Facilities Lease.

#### **15.6. Use and Zoning**

To the best of the District's actual knowledge, the Project Site is properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

#### **15.7. Taxes**

To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

### **16. Representations of the Developer**

The Developer represents, covenants and warrants to the District as follows:

#### **16.1. Due Organization and Existence**

The Developer is a California company duly organized and existing under the laws of the State of California, has power to enter into this Site Lease and the Facilities Lease; is

possessed of full power to lease, leaseback, and hold real and personal property; and has duly authorized the execution and delivery of all of the aforesaid agreements.

#### **16.2. Authorization**

The Developer has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

#### **16.3. No Violations**

Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Developer is now a party or by which the Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Developer, or upon the Project Site, except for Permitted Encumbrances.

#### **16.4. No Bankruptcy**

Developer is not now nor has it ever been in bankruptcy or receivership.

#### **16.5. No Litigation**

There is no pending or, to the knowledge of Developer, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Developer to perform its obligations under this Site Lease or the Facilities Lease.

### **17. Insurance and Indemnity**

The Developer and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

### **18. Assignment and Subleasing**

This Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Developer only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

### **19. Restrictions on District**

The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Developer's interests indicated in this Site Lease.

### **20. Liens and Further Encumbrances**

Developer agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Facilities Lease, Developer further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

## **21. Notices**

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) days after deposit in the United States mail in registered or certified form with postage fully prepaid or one (1) business day after deposit with an overnight delivery service with proof of actual delivery:

### **If to District:**

San Rafael City Schools  
310 Nova Albion Way  
San Rafael, CA 94903  
Attn: Dr. Daniel Zaich, Senior Director  
Capital Facilities Department

### **With a copy to:**

Lauren M. Charneski , Esq.  
Dannis Woliver Kelley  
275 Battery Street, Suite 1150  
San Francisco, CA 94111

### **If to Developer:**

Swinerton Builders  
260 Townsend Street  
San Francisco, CA 94107  
Attn: Kelly Smith, Vice President & Division  
Manager

### **With a copy to:**

The Developer and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

## **22. Binding Effect**

This Site Lease shall inure to the benefit of and shall be binding upon the Developer and the District and their respective successors and assigns.

## **23. No Additional Waiver Implied by One Waiver**

In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

## **24. Severability**

In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable



any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.

**25. Amendments, Changes and Modifications**

Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

**26. Obligations Absolute**

The Developer agrees that the obligations of the Developer are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

**27. Execution in Counterparts**

This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**28. Developer and District Representatives**

Whenever under the provisions of this Site Lease approval by the Developer or the District is required, or the Developer or the District is required to take some action at the request of the other, such approval or such request shall be given for the Developer by the Developer Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

**29. Applicable Law**

This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the School Site is located.

**30. Attorney's Fees**

If either party brings an action or proceeding involving the School Site or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

**31. Captions**

The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

**32. Prior Agreements**

This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

**33. Further Assurances**

Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.

**34. Recitals Incorporated**

The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.

**35. Time of the Essence**

Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.

**36. Force Majeure**

A party shall be excused from the performance of any obligation imposed in this Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non-performance will not be a default hereunder or a grounds for termination of this Site Lease.

**37. Interpretation**

None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

**IN WITNESS WHEREOF**, the Parties have caused this Site Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

**ACCEPTED AND AGREED** on the date indicated below:

Dated: \_\_\_\_\_, 2017

Dated: Jan 30, <sup>2018</sup>~~2017~~

San Rafael City Schools

Swinerton Builders

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

By: Andrew Pearl

Name: Michael Watenpaugh

Name: Kelly Smith

Title: Superintendent

Title: Vice President and Division Manager

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF SCHOOL SITE**

#### **Attached is the Legal Description for:**

Laurel Dell Elementary School New Construction & Remodel Project  
225 Woodland Avenue  
San Rafael, CA 94901

#### **PARCEL ONE:**

Lots 1 and 2 in Block No. 2, as shown upon that certain entitled "Map of Picnic Valley Tract", filed for record May 19, 1870 in Book 1 of Maps at Page 26 in the office of the County Recorder of the County of Marin, State of California.

#### **PARCEL TWO:**

Lot Number 3 in Block No. 2, as shown upon that certain Map of Picnic Valley Tract, filed for record May 19, 1870 in Book 1 of Maps at Page 26 in the office of the County Recorder of the County of Marin, State of California.

EXCEPTING THEREFROM AND THEREOUT' the following described portion:

BEGINNING at the point of intersection of the Northeasterly line of Picnic Avenue with the subdividing line of Lots 2 and 3 in Block 2, Picnic Valley Tract, filed for record May 19, 1870 in Book 1 of Maps at Page 26; Marin County Records; and running thence along said subdividing line North 43° East 119.40 feet; thence crossing and subdividing Lot 3, North 49° 23' West 50 feet; thence South 42° 57' West 121.60 feet to the Northeasterly line of Picnic Avenue; thence along said Avenue South 52° 05' East 50 feet to the point of beginning. Being a portion of Lot 3 Block 2, Picnic Valley Tract

ALSO EXCEPTING THEREFROM AND THEREOUT all that certain real property as described in the Joint Tenancy Grant Deed from the San Rafael School District of Marin County, State of California, a political subdivision to Joseph J. Antone and Marilyn J. Antone, his wife in Joint Tenancy, recorded February 9, 1976 in Book 2992 at Page 109. Marin County Records.

ALSO EXCEPTING THEREFROM AND THEREOUT' the following described portion:

Beginning at a point on the Northeasterly line of Picnic Avenue, said point being the common corner of Lots 3 and 4 in Block 2, as shown on that certain map entitled, "Picnic Valley Tract, filed for record May 19, 1870 in Book 1 of Maps at Page 26; Marin County Records; thence along the dividing line of Lots 3 and 4, North 42° 59' East 90.00 feet; thence leaving said lot lines, South 49° 21' East 49.86 feet and South 42° 57' West 87.79 feet to the Northeasterly line of Picnic Avenue; thence along said avenue line North 51° 53' West 50 feet to the point of beginning.

#### **PARCEL TWO:**

Beginning at a point on the Southwesterly line of Woodland Avenue, said point being the common corner of Lots 3 and 4 of Block 2, Picnic Valley Tract, filed for record May 19, 1870 in Book 1 of Maps at Page 26. Marin County Records; and running thence along the Southeasterly line of Lot 4, South 42° 59' West 125.21 feet to a point distant North 42° 59'

East 123.64 feet from the intersection of said line of Lot 4, with the Northeasterly line of Picnic Ave., thence crossing and subdividing said Lot 4 North 49° 21' West 103.29 feet to the Southeasterly line of Siebel Avenue; thence along said Avenue line, North 52° 20' East 132.43 feet to its intersection with the Southwesterly line of Woodland Avenue; thence South 46° 08' East 81 feet more or less to the point of beginning.

A.P.N. 013-123-05

**EXHIBIT B**

**DESCRIPTION OF PROJECT SITE**

Attached is a map or diagram showing the location of the School Site that is subject to this Site Lease and upon which Developer will construct the Project.



**Laurel Dell Elementary School  
New Construction & Remodel Project**