

TRANSFERABLE DEVELOPMENT RIGHTS
PURCHASE AND SALE AGREEMENT

THIS TRANSFERABLE DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT (this “Agreement”), is made and entered into this ____ day of ____, 2021 (the “Effective Date”), by and between the Los Altos School District, a California public school district (“Seller”), and Merlone Geier Partners IX, L.P., a California limited partnership (“Buyer”). Seller and Buyer are each individually referred to herein as a “party” and collectively as the “parties”.

R E C I T A L S:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. The Memorandum of Understanding Between the City of Mountain View & the Los Altos School District (Transfer of Development Rights Program), effective January 29, 2019, a copy of which is attached hereto as Exhibit A (the “TDR MOU”), established a mechanism to accommodate Seller’s acquisition of the real property located at 2535 California Street and 350 and 506 Showers Drive, Mountain View, California (collectively, the “Property”), for development of a school facility, public park and related uses.

B. The TDR MOU anticipates that the acquisition and development of the Property will be funded in part by Seller’s sale of unutilized development rights related to the Property to third-party purchasers, who will seek approval from the City of Mountain View (the “City”) to apply such transferred development rights to designated receiving sites in order to exceed the floor area that would otherwise be permitted at such sites without triggering additional public benefit requirements. The units of gross floor area that may be so transferred are referred to as “Transferable Development Rights” or “TDR.” A “Unit” of TDR or “TDR Unit” equals one square foot of gross floor area of improvement.

C. Pursuant to the TDR MOU, Seller is authorized to sell up to 610,000 Units of TDR relating to the Property to third-party purchasers. To evidence the availability of the Transferable Development Rights, Seller has recorded the Covenant Restricting Use of Land and Notice of Development Restrictions (Transferable Development Rights Program) dated as of June 12, 2020, with the Clerk-Recorder of the County of Santa Clara as Document No. 24504620, a copy of which is attached hereto as Exhibit B (the “Restrictive Covenant”).

D. Buyer submitted a Gatekeeper request to the City for approval of a project located at the four parcels comprising Block 3 of Phase II of the San Antonio Village project (APNs: 148-22-023, 148-22-006, 148-22-007, and 148-22-005, as more particularly described in Exhibit C attached hereto) (collectively, the “Receiving Site”), to be eligible for the use of TDRs. Buyer’s Gatekeeper application was approved by the City Council on December 3, 2019, subject to a future entitlement process.

E. Buyer subsequently submitted an application to the City to develop the Receiving Site with a seven (7) story, 192,000 square foot office building with ground floor retail-commercial uses (the "Project"), which Project application anticipates the use of 150,000 TDR Units from Seller (the "Desired TDR").

F. The Project application includes requests for the following entitlements: General Plan amendment, San Antonio Precise Plan amendment, Master Plan, Planned Community Permit, and Development Review (the "Project Approvals"), which are currently anticipated to appear on a City Council agenda for consideration on or around April 1, 2021. Final Council Approval (defined in Section 5 hereof) is anticipated thereafter.

G. In connection with obtaining Final Council Approval, Buyer desires to purchase the Desired TDR from Seller, and Seller desires to sell the Desired TDR to Buyer, upon the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the parties and for other good and valuable consideration, the parties agree as follows:

1. Sale and Purchase. Subject to the terms, covenants and conditions set forth in this Agreement, at the Closing (defined below) Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in and to the Desired TDR.

2. Purchase Price. The total purchase price for all of Seller's right, title and interest in and to the Desired TDR is \$19,500,000 (the "Purchase Price"), which is the product of \$130.00 multiplied by 150,000 TDR Units. The Purchase Price (less the Deposit (defined below) and any closing costs in accordance with the terms and provisions of this Agreement), shall be payable in full to Seller at the Closing by wire transfer of immediately available funds.

3. Deposit. Within three (3) business days after the Effective Date, Buyer shall deliver a fully executed copy of this Agreement to First American Title Insurance Company, 333 W. Santa Clara Street, Suite 220, San Jose, CA 95113, Attn: Linda Tugade, as escrow agent ("Escrow Holder"), and deposit with Escrow Holder the sum of \$585,000 (3% of the Purchase Price) as an earnest money deposit (the "Deposit"). The Deposit shall be non-refundable except as set forth in Sections 5.2 and 8.2 hereof and shall be applied to the Purchase Price at the Closing. The Deposit shall be deposited by Escrow Holder into an interest-bearing account, and the term "Deposit" as used in this Agreement shall include any interest earned thereon. Buyer and Seller agree that Escrow Holder shall pay \$250.00 (the "Independent Consideration") from the Deposit to Seller within five business days of the Effective Date. The Independent Consideration has been bargained for and agreed to as additional consideration for Seller's execution and delivery of this Agreement and shall be retained by Seller if this Agreement is terminated for any reason. This instrument shall serve as the instructions to Escrow Holder for the consummation of the transactions contemplated hereby. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict or inconsistency between the terms and provisions of this Agreement and the terms and provisions of any such additional or supplementary escrow instructions, the terms and provisions of this

Agreement shall control, notwithstanding that any such additional or supplemental escrow instructions constitute a later signed writing between the parties.

4. Project Entitlement Update.

4.1 Quarterly Update. Buyer shall, from time to time, but not more often than quarterly, provide to Seller written updates on the status of the Project Approvals (each, a “Project Entitlement Update”), which shall include, at a minimum, the following information: (1) any scheduled or anticipated hearing dates; (2) any material modifications to the Project, whether proposed by the City or Buyer, affecting the amount or suitability of the TDR sought to be used in connection with the Project; and (3) the anticipated date of issuance of the Project Approvals. The Project Entitlement Updates pursuant to and in accordance with this Section 4 shall not be a closing condition or a contingency to Buyer’s or Seller’s obligations hereunder. Buyer’s failure to provide any Project Entitlement Update to Seller shall not be a Buyer breach or default under this Agreement.

4.2 Confidentiality. Seller agrees that the Project Entitlement Updates, and each of them, and each part thereof, shall not be disclosed, published or revealed in any manner whatsoever to others, other than to carry out discussions concerning, and the undertaking of, the transactions contemplated by this Agreement. Notwithstanding the foregoing or anything to the contrary herein, Seller may disclose a Project Entitlement Update, or the applicable part thereof, if but only if: (x) Buyer expressly approves the same in writing, which approval shall be at Buyer’s sole and absolute discretion; (y) disclosure is made by Seller pursuant to the California Public Records Act or any other statute, regulation or any court order; or (z) disclosure is made by Seller pursuant to the order or requirement of a competent court, administrative agency or other governmental body, including but not limited to any supervisory, regulatory or self-regulatory body; provided, however, that Seller shall provide prompt written notice of such order or requirement to Buyer. Buyer may seek, at its sole cost and expense, a protective order or otherwise prevent or restrict a disclosure under Section 4.2(z) hereof, which order or remedy Seller shall not oppose. In the absence of a protective order or other remedy, Seller shall disclose only that portion of the Project Entitlement Update which it is advised, by an opinion of counsel, is legally required to be disclosed and shall exercise good faith efforts to obtain assurance that confidential treatment will be accorded the Project Entitlement Update, or part thereof, so disclosed. Both Buyer and Seller shall bear their own costs in connection with complying with Section 4.2(z) hereof.

5. Buyer’s Conditions Precedent.

5.1. Enumeration of Conditions. Buyer’s obligation to purchase the Desired TDR from Seller shall be subject to the satisfaction (or waiver by Buyer in writing) of the conditions precedent specified below in this Section 5.1 on or before the Closing Date.

5.1.1. Final Council Approval. Buyer shall have received a final determination of the City Council in connection with the Project Approvals and a resolution of all related legal or administrative challenges, if any (the “Final Council Approval”). For the avoidance of doubt, (i) if the Project Approvals include a requirement for a development agreement or ordinance, the

second reading of the ordinance shall constitute Final Council Approval, and (ii) if a lawsuit, referendum, initiative, rescission or any other legal challenge is commenced or an appeal is filed after issuance of the Project Approvals, Final Council Approval shall not occur until the lawsuit, referendum, rescission or other legal challenge or appeal is resolved in a manner that upholds the Project Approvals. For purposes of this Agreement, "Final Council Approval" occurs when, (a) as to each of the Project Approvals, (i) any period for administrative appeal of such approval has expired with no appeal having been filed; (ii) any administrative appeals of such approval have been denied, there is no further right to appeal or seek any other administrative relief from such approval, and the time for legal challenge to such approval has expired; or (iii) any petition, lawsuit or legal challenge against the approval has been conclusively resolved with prejudice in a manner satisfactory to Buyer in its sole and absolute discretion and with no further right to appeal; and (b) as to any Project Approval subject to referendum, (i) any period for submitting to the City signatures on a referendum petition has passed without such petition having been submitted; or (ii) where a referendum petition is timely submitted, certification by the City's election official of a vote of the electorate approving the resolution or ordinance that was the subject of the referendum.

5.1.2. Certificate of Transfer. A Certificate of Transfer transferring all of Seller's right, title and interest in and to the Desired TDR to Buyer, in the form attached hereto as Exhibit D (the "Certificate of Transfer"), duly executed by Seller, shall be deposited with Escrow Holder.

5.1.3. Restrictive Covenant. The Restrictive Covenant shall remain in full force and effect and recorded against the Property.

5.1.4. Representations and Warranties. All of Seller's representations and warranties set forth in this Agreement are true and correct in all material respects.

5.1.5. Seller's Performance. Seller shall have performed all of the obligations to be performed by Seller under this Agreement in all material respects.

5.1.6. Zoning Letter; Endorsement Condition. Buyer shall have received an irrevocable commitment from First American Title Insurance Company (the "Title Company") to issue a modified ALTA 3 Endorsement (Zoning) or its equivalent (which modification(s) and/or equivalent endorsement shall be determined by Buyer in Buyer's sole and absolute discretion) substantially in the form of Exhibit E hereto (the "Endorsement") to Buyer's existing ALTA Owner's Policy of Title Insurance for the Receiving Site or at Buyer's election, an update to Buyer's existing ALTA Owner's Policy of Title Insurance for the Receiving Site (obtained by Buyer at Buyer's sole cost and expense). The Endorsement shall (a) be dated as of the Closing Date (defined herein), (b) be applicable to the Desired TDR, (c) insure against any loss or damage sustained by Buyer in the event that the land use allowed by the Desired TDR is not allowed on the Receiving Site. Wendy Hagen, on behalf of the Title Company, will be the Title Officer for the transactions contemplated by this Agreement. Wendy's contact information is as follows: Wendy Hagen, Vice President and Senior National Underwriter, National Commercial Services, First American Title Insurance Company, 3281 East Guasti Rd., Suite 440, Ontario, CA 91761; Phone No.: (909) 510-6225; Fax No.: (877) 461-2090; email address:

whagen@firstam.com.

5.2. Failure of Buyer's Conditions Precedent. If Buyer's condition precedent set forth in Section 5.1.1 is not satisfied prior to the Closing, then Buyer may terminate this Agreement by promptly giving written notice thereof to Seller, and the Deposit shall be returned to Buyer. Buyer's failure to give such notice prior to the Closing shall be conclusively deemed to mean that such condition is not satisfied. If Buyer notifies Seller in writing, on or before the Closing, that any of the conditions set forth in Sections 5.1.2 through 5.1.6, inclusive, above have not been satisfied due to a Seller default, then, after expiration of the notice and cure period set forth in Section 8.2 hereof, at Buyer's election, Buyer shall have the right, in Buyer's sole and absolute discretion, to either (a) extend the Closing Date until the applicable conditions are satisfied, subject to the provisions of Section 9 of this Agreement, (b) terminate this Agreement, the Deposit, except for the Independent Consideration, shall be returned to Buyer (provided, however, that any such termination shall not relieve either party hereto of any obligations that expressly survive the termination of this Agreement), or (c) seek specific performance pursuant to Section 8.2 hereof.

6. Seller's Conditions Precedent.

6.1. Enumeration of Conditions. Seller's obligation to sell the Desired TDR to Buyer shall be subject to the satisfaction (or waiver by Seller in writing) of the conditions precedent specified below in this Section 6.1 on or before the Closing Date.

6.1.1. Certificate of Transfer. A Certificate of Transfer, duly executed by Buyer, shall be deposited with Escrow Holder.

6.1.2. Buyer's Performance. Buyer shall have performed all of the obligations to be performed by Buyer under this Agreement.

6.1.3. Payment. Buyer shall have delivered to Escrow Holder the Purchase Price (less the amount of the Deposit and any closing costs in accordance with the terms and provisions of this Agreement) in accordance with Section 9.3.1 hereof.

6.2. Failure of Seller's Conditions Precedent. If any of Seller's conditions precedent set forth in Section 6.1 are not satisfied prior to the Closing due to a Buyer default, then, after expiration of the notice and cure period set forth in Section 8.3 hereof, Seller shall be entitled to exercise the remedies set forth in Section 8.3 hereof.

7. Representations and Warranties.

7.1. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties as of the date of this Agreement and again as of the Closing Date:

7.1.1. Due Authorization. Seller is duly authorized to lawfully conduct business in the State of California and has the full right, power and authority to enter into this Agreement and consummate the transactions contemplated hereby. The person signing this Agreement on

behalf of Seller has the power and authority to do so and to bind Seller to this Agreement. All the instruments, agreements and other documents executed by Seller which are delivered to Buyer in connection with the transactions contemplated hereunder are duly authorized, executed and delivered by Seller, are legal, valid and binding obligations of Seller enforceable in accordance with their terms, and do not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller is subject.

7.1.2. Availability of Desired TDR. Seller has not previously assigned, encumbered, pledged, hypothecated, transferred or conveyed (or suffered any of the preceding) TDR Units arising from the Property that would render the Desired TDR, or any part thereof, unavailable for purchase by Buyer prior to the Closing Date.

7.1.3. No Alterations. From and after the Effective Date through the earlier of the Closing Date or the termination of this Agreement as provided herein, Seller covenants that it shall not make or permit to be made any alterations to the Property that would adversely affect the use by Buyer, or the continued existence, of the Desired TDR, or any part thereof.

7.1.4. Proceedings. There are no actions, suits, proceedings, judgments, orders, decrees or defaults pending, outstanding or, to Seller's actual knowledge, threatened against Seller or the Property which would materially and adversely affect Seller's ability to transfer the Desired TDR, or any part thereof, to Buyer, and to perform Seller's obligations under this Agreement or the documents to be executed in connection herewith.

7.1.5. Zoning. There are no pending zoning or other land-use applications by Seller with respect to the Property that would adversely affect the number, use or transferability of the Desired TDR.

7.1.6. Applicable Laws. Seller has received no written notice from any governmental or quasi-governmental authority that the transfer of the Desired TDR, or any part thereof, violates any statutes, ordinances, orders or regulations.

7.1.7. Creditors. No attachment, execution proceedings, assignment for the benefit of creditors, insolvency, bankruptcy, reorganization for the benefit of creditors, or other similar proceedings are pending against Seller. Seller is not in receivership or dissolution, has not made any assignment for the benefit of creditors, has not admitted in writing its inability to pay its debts as they mature, has not been adjudicated a bankrupt, and has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, and does not have any such petition filed against Seller.

7.2. Buyer's Representations and Warranties. Buyer hereby makes the following representations and warranties as of the date of this Agreement and again as of the Closing Date:

7.2.1. Due Authorization. Buyer is a California limited partnership, duly formed, validly existing and in good standing under the laws of the State of California and has the full right, power and authority to enter into this Agreement and has taken all action necessary

to consummate the transactions contemplated hereby. All the instruments, agreements and other documents executed by Buyer which are delivered to Seller in connection with the transactions contemplated hereunder are duly authorized, executed and delivered by Buyer, are legal, valid and binding obligations of Buyer enforceable in accordance with their terms, and do not violate any provisions of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

7.2.2. Proceedings. Except as set forth on Schedule 7.2.2, there are no actions, suits, proceedings, judgments, orders, decrees, defaults, delinquencies or deficiencies pending, outstanding or, to Buyer's actual knowledge, threatened against Buyer which would materially and adversely affect Buyer's ability to perform its obligations under this Agreement or the documents to be executed in connection herewith.

7.3. Actual Knowledge. As used in this Article 7, the term "actual knowledge" means the actual present knowledge (without duty of inquiry or the imputation of constructive knowledge) of Scott McPherson, with respect to Buyer, and of Randy Kenyon, with respect to Seller, being the respective people most likely to know whether and to what extent the representations set forth hereinabove are true, complete and correct. The parties agree that the naming of the individuals herein as the applicable party's representative in no manner creates personal liability of such individual for any breaches of the representations and warranties hereunder.

8. Seller's Disclaimer; Buyer's Remedies; Seller's Breach or Default.

8.1. "As-Is Transfer". Except for the representations and warranties by Seller set forth in Article 7 of this Agreement, Buyer acknowledges and agrees that the transfer of the Desired TDR to Buyer is made without any warranty or representation of any kind by Seller, either express or implied, with respect to any aspect, portion or component of the Desired TDR, including: (i) the condition, nature or quality of the Desired TDR; (ii) the fitness of the Desired TDR for any particular purpose; (iii) whether the Desired TDR can be used, transferred or otherwise provide a benefit to Buyer; or (iv) existing or proposed governmental laws or regulations applicable to the Desired TDR, or changes regarding the existence or use thereof, including laws or regulations dealing with zoning or land use. Buyer further agrees and acknowledges that, as of the Closing Date, Buyer shall have made such feasibility studies, investigations, inquiries of governmental officials, and all other inquiries and investigations that Buyer shall deem necessary to satisfy itself as to the terms of this Agreement, the Certificate of Transfer and the condition, nature and quality of the Desired TDR and as to the suitability of the Desired TDR for Buyer's purposes. Buyer further agrees and acknowledges that, in purchasing the Desired TDR, Buyer shall rely entirely on its own investigation, examination and inspection of the Certificate of Transfer and the Desired TDR, and not upon any representation or warranty of Seller, or any agent or representative of Seller, which is not set forth in Article 7 of this Agreement. THEREFORE, BUYER AGREES THAT, IN CONSUMMATING THE PURCHASE OF THE DESIRED TDR PURSUANT TO THIS AGREEMENT, BUYER SHALL ACQUIRE THE DESIRED TDR "AS IS, WHERE IS" AND WITH ALL FAULTS, AND SOLELY IN RELIANCE ON BUYER'S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS AND EVALUATION OF THE COVENANT RESTRICTING

USE. THE CERTIFICATE OF TRANSFER AND THE DESIRED TDR. The agreements and acknowledgments contained in this Section 8.1 constitute a conclusive admission that Buyer, as a sophisticated, knowledgeable investor in real property, shall acquire the Desired TDR solely upon its own judgment as to any matter germane to the Desired TDR or to Buyer's contemplated use of the Desired TDR, and not upon any statement, representation or warranty by Seller, or any agent or representative of Seller, which is not expressly set forth in this Agreement.

8.2. Seller's Breach Or Default. As a material condition to Seller's entering into this Agreement and agreeing to its terms and conditions, Buyer agrees that in the event of any default or breach hereunder by Seller, Buyer's sole remedy, after giving Seller ten (10) days written notice and opportunity to cure, shall be either to (i) waive the breach and proceed to the Closing to the extent that Seller's breach does not prevent the Closing and transfer of the Desired TDR to occur, (ii) terminate this Agreement and, so long as Buyer is not also in default or breach hereunder, have Escrow Holder return the Deposit to Buyer (except for the Independent Consideration), or (iii) seek specific performance. Seller agrees that the Desired TDR are unique in nature and may be of extreme importance to the Receiving Site or another recipient site and that the receipt of the Deposit will not adequately compensate Buyer for Seller's breach or default, and accordingly, Seller's obligation to proceed to the Closing and transfer the Desired TDR to Buyer is fully capable of being specifically performed.

8.3. Buyer's Breach or Default. If Buyer breaches or defaults on its obligation to proceed with the Closing when and as required by this Agreement, after giving Buyer ten (10) days prior written notice and opportunity to cure, then Seller may, at Seller's option, but as Seller's sole and exclusive remedy for any such breach or default by Buyer, terminate this Agreement by written notice to Buyer and Escrow Holder, in which event Escrow Holder shall disburse the Deposit to Seller as liquidated damages and, from and after Seller's receipt of the Deposit, neither Seller nor Buyer shall have any further rights or obligations under this Agreement unless otherwise expressly provided herein. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S DAMAGES IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE. THAT THE AMOUNT OF THE DEPOSIT IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT OF ANY SUCH BREACH BY BUYER, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT.

INITIALS: Seller: _____ Buyer: JCL

9. Closing.

9.1. Closing. Subject to satisfaction of the conditions set forth in Sections 5 and 6, the consummation of the purchase and sale transaction contemplated by this Agreement (the "Closing") shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, through the escrow established with Escrow Holder, by or before 11 a.m. Pacific Time on the date that is thirty (30) days after Final Council Approval is obtained.

or such earlier date and time as Buyer and Seller otherwise mutually agree in writing (the “Closing Date”), but in no event later than two (2) years after the Effective Date (the “Original Outside Closing Date”); provided, however, that if any action, including without limitation any lawsuit, referendum, initiative, rescission or any other legal challenge is commenced or an appeal is filed, then the Closing Date shall be automatically extended to the date that is three (3) years after the Original Outside Closing Date or such earlier date and time as Buyer and Seller otherwise mutually agree in writing.

9.2. Items to be delivered by Seller at the Closing. On or prior to the Closing Date, Seller shall deliver or cause to be delivered to Escrow Holder each of the following items:

9.2.1. Certificate of Transfer. The Certificate of Transfer, duly executed by Seller.

9.2.2. Escrow Closing Statement. Seller’s escrow closing statement in form and content consistent with this Agreement and otherwise reasonably satisfactory to Seller.

9.2.3. Other Instruments. Such other duly executed and/or acknowledged documents and instruments as may be reasonably required to consummate the transactions contemplated by this Agreement in accordance with the terms and conditions contained in this Agreement, such as appropriate escrow instructions to Escrow Holder.

9.3. Items to be delivered by Buyer at the Closing. On or prior to the Closing Date, Buyer shall deliver or cause to be delivered to Escrow Holder each of the following items:

9.3.1. Payment. The Purchase Price (less the Deposit) and Buyer’s share of any closing costs in accordance with the terms and provisions of this Agreement.

9.3.2. Certificate of Transfer. The Certificate of Transfer, duly executed by Buyer.

9.3.3. Escrow Closing Statement. Buyer’s escrow closing statement in form and content consistent with this Agreement and otherwise reasonably satisfactory to Buyer.

9.3.4. Other Instruments. Such other duly executed and/or acknowledged documents and instruments as may be reasonably required to consummate the transactions contemplated by this Agreement in accordance with the terms and conditions contained in this Agreement, including but not limited to appropriate escrow instructions to Escrow Holder.

9.4. Closing Costs. The escrow fee of Escrow Holder, if any, shall be paid one-half (1/2) by Buyer and one-half (1/2) by Seller (including escrow cancellation charges, if any); notwithstanding the foregoing, if the Closing has not occurred by the Closing Date by reason of a default hereunder, the defaulting party shall bear all escrow cancellation charges. At the Closing, all other costs of closing charged by Escrow Holder shall be paid by Buyer. Each party shall pay its own legal fees.

9.5. Procedure for Closing. Escrow Holder shall be authorized to close escrow when all of the conditions set forth herein have been satisfied or waived in writing by the benefited party and when Escrow Holder is in a position to pay Seller, in immediately available funds, the amount of the Purchase Price, as such amount may be increased or decreased as set forth in Section 9.4.

10. Brokers. Each of Seller and Buyer represents and warrants to the other that it has not authorized any real estate broker, agent or finder to act on its behalf in connection with the transaction contemplated by this Agreement, nor does it have any knowledge of any broker, agent or finder purporting to act on its behalf in respect to this Agreement and the transactions contemplated hereby. Each party agrees that should any claim be made for brokerage commissions or finder's fees by any broker, agent or finder by, through or on account of any acts of said party or its representatives, said party will indemnify and hold the other party free and harmless from and against any and all loss, liability, cost, damages and expense in connection therewith. The provisions of this Section 10 shall survive the Closing or termination of this Agreement.

11. Secondary Market. During the term of the TDR MOU, Buyer shall not transfer, sell or convey all or any portion of the Desired TDR to any third party for less than \$130 per TDR Unit. In the event Buyer enters into any agreement or arrangement for the transfer, sale or conveyance of all or any portion of the Desired TDR, Buyer shall provide Seller with written notice thereof within ten (10) days after entering into such agreement or arrangement. Such notice shall be executed by Buyer and the prospective purchaser of the TDR Units and shall disclose the purchase price of the TDR Units. Notwithstanding the foregoing or anything to the contrary in this Agreement, the provisions of this Section 11 shall not apply to (a) any assignment, encumbrance, pledge, hypothecation, transfer or conveyance before, on or after the Closing Date of some or all of the Desired TDR to (i) an affiliate of Buyer or (ii) a third party in conjunction with the assignment, encumbrance, pledge, hypothecation, transfer or conveyance of the Receiving Site or (b) the application, or proposed application, of some or all of the Desired TDR to another project owned by Buyer or an affiliate thereof. The provisions of this paragraph shall survive the Closing.

12. Successors and Assigns. This Agreement, and the terms, covenants and conditions herein contained, shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and assigns. Notwithstanding anything to the contrary in this Agreement, prior to the Closing, Buyer shall have the right to assign its rights under this Agreement to any third party or entity controlling, controlled by or under common control (directly or indirectly) with Buyer that assumes Buyer's obligations hereunder in writing; provided, however, in no event shall Buyer's assignment of this Agreement relieve Buyer of any obligations under this Agreement.

13. Miscellaneous.

13.1. Notices. All notices, demands or other communications of any type (collectively "Notices") given by Seller to Buyer or by Buyer to Seller, whether required or permitted to be given under this Agreement, shall be sufficient if in writing and delivered by hand, Federal

Express or similar overnight courier service, United States mail as a registered or certified item, return receipt requested, or electronic mail addressed:

if to Buyer, as follows:

Merlone Geier Partners IX, L.P.
4365 Executive Drive, Suite 1400
San Diego, CA 92121
Attn: Bradley A. Geier
Email: bgeier@merlonegeier.com

with a copy to:

Glaser Weil Fink Howard Avchen & Shapiro LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067
Attn: Daniel G. Jordan, Esq.
Email: djordan@glaserweil.com

and if to Seller, as follows:

Los Altos School District
201 Covington Road
Los Altos, CA 94024
Attn: Jeffrey Baier, Superintendent
Email: jbaier@lasdschools.org

with a copy to:

Arent Fox LLP
55 2nd Street, 21st Floor
San Francisco, CA 94105-3470
Attn: Frank R. Petrilli
Email: frank.petrilli@arentfox.com

and if to Escrow Holder, as provided in Section 3 above.

Any Notice so delivered shall be deemed received upon the date of (i) delivery or refusal thereof, if delivered personally or via overnight courier, (ii) delivery, if delivered by electronic mail, or (iii) delivery or refusal to accept delivery as indicated on the return receipt, if deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested. Either party to this Agreement may change the address for Notice specified above by notice given as provided herein to the other party.

13.2. Survival of Provisions and No Merger. Except as otherwise provided in this Agreement, any representation, warranty, covenant or agreement set forth in this Agreement

whether to be performed before or after the Closing shall not be deemed to be merged into or waived by the instruments of the Closing but shall expressly survive the Closing and shall be binding on the party obligated; provided, however, that Buyer's and Seller's representations and warranties set forth in Section 7 shall survive for a period of one (1) year after the Closing Date (the "Survival Period") and thereafter be of no further force or effect. Any claim by Buyer or Seller for the breach of any representation or warranty hereunder by the other party must be made in writing, if at all, on or prior to the expiration of the Survival Period or such claim(s) shall thereafter be forever barred; provided, however, any claim that is made prior to the expiration of the Survival Period shall survive beyond the Survival Period and any such claim timely made in accordance herewith shall survive notwithstanding the fact that the representation or warranty which is the subject of such claim does not survive beyond the Survival Period.

13.3. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

13.4. Amendment. This Agreement may not be modified or amended, except by an agreement in writing signed by the parties to this Agreement. The parties may waive any of the conditions contained in this Agreement or any of the obligations of the other party under this Agreement, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations. For purposes of this section, the Los Altos School District Board has delegated authority to the Superintendent or Assistant Superintendent to agree to amendments or waivers on its behalf.

13.5. Authorization. Each person executing this Agreement warrants and represents that he or she is fully authorized to do so.

13.6. Time of Essence; Cumulative Remedies. Time is of the essence of this Agreement. All rights and remedies set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

13.7. Attorneys' Fees. If either party files a suit to enforce this Agreement or any provisions contained herein, or to seek damages for a breach of this Agreement, the prevailing party (as determined by the court, agency, or other authority before which such suit or proceeding is commenced) shall be entitled to recover, in addition to all other relief or damages, reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by such prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). The term "attorneys' fees" shall also include, without limitation, all fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings (including, without limitation, costs incurred in establishing the right to indemnification), whether or not any action is brought with respect to the matter for which such fees are incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

13.8. Indemnification; Survival of Indemnities. To the fullest extent permitted by law, Buyer agrees to indemnify, defend and hold harmless Seller, and each of its elective or appointive boards, commissions, members, officers, employees or agents (collectively, “Agents”), from and against any losses, expenses, costs, damages, attorneys’ fees, penalties, claims or liabilities which Seller or Agents may incur from third parties in connection with, related to or arising out of the Project Approvals. Termination of this Agreement shall not affect the right of Seller to enforce any and all indemnities given or made to it under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Agreement, if any, Buyer has an immediate and independent obligation to defend Seller from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Buyer by Seller and continues at all times thereafter.

13.9. Captions; No Implied Waiver. The description headings of the several articles, sections and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. No failure by either party to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

13.10. Entire Agreement; Interpretation. This Agreement, including the Exhibits attached to this Agreement, constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties to this Agreement or shall affect or be effective to interpret, change or restrict the provisions of this Agreement. This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Except as otherwise specifically provided herein, wherever in this Agreement one party is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed. Use of the word “including” or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

13.11. Counterparts. A counterpart of this Agreement with separate but fully executed signature pages attached thereto shall have the full force and effect of an original executed instrument. In order to expedite matters, electronic signatures may be used in place of original signatures on this Agreement. The parties hereto intend to be bound by the signatures on the electronic document and hereby waive any defenses to the enforcement of the terms of this

Agreement based on the use of an electronic signature; provided, however, that the parties hereby agree to execute and provide to each other original signatures upon the request made by either party to the other.

13.12. Non-Liability of Individuals. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of Seller shall be personally liable to Buyer, its successors and assigns, in the event of any default or breach by Seller of this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary in this Agreement, no past, present or future disclosed or undisclosed officer, director, employee, agent, trustee, partner, member, manager, principal, parent, subsidiary, shareholder, broker, attorney or other affiliate of Buyer shall be personally liable to the District, its elective or appointive board, commission, member, officer, employee or agent, in the event of any default or breach by Buyer of this Agreement or the transactions contemplated hereby.

13.13. Conflicts of Interest. Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such facts during the term of this Agreement, Buyer shall immediately notify Seller.

13.14. Public Record; Confidentiality. Buyer understands and agrees that under the California Public Records Act (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to Seller hereunder may be public records subject to public disclosure by Seller. Buyer hereby acknowledges that Seller may disclose any records, information, and materials submitted to Seller in connection with this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, Buyer shall maintain as confidential any and all information and materials obtained regarding the Desired TDR, Seller, or the terms of this Agreement and shall not disclose such information or materials to any third party whatsoever, except as may be required by law or court order; provided, however, that Buyer shall have the right to disclose information and materials with respect to the transaction contemplated hereby to its officers, directors, partners, members, employees, advisors, attorneys, accountants, engineers, potential lenders, investors, potential investors and consultants to the extent necessary for Buyer to evaluate its acquisition of the Desired TDR, provided that all such persons are notified that such information is confidential. The provisions of this paragraph shall expire upon the Closing Date.

13.15. No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by Seller or Buyer.

13.16. Severability. If any term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

13.17. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person or entity other than the parties hereto and their respective successors and assigns (such person or entity being a “Third Party”), and nothing in this Agreement is intended to relieve or discharge the obligation or liability of any Third Party to any party to this Agreement, and no provision shall give any Third Party any right of subrogation or action over or against any party to this Agreement.

13.18. Further Assurances. Each party shall, whenever and as often as it shall be reasonably requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Agreement (provided the same do not increase in any material respect the costs to, or liabilities or obligations of, such party in a manner not otherwise provided for herein).

13.19. Counting of Days. Unless expressly specified herein, any reference to “days” shall mean calendar days. To the extent the last day for any act falls on a Saturday, Sunday or legal holiday, the last day for that act shall be extended to the next business day. As used in this Agreement, “business day” shall be deemed to be any day other than a Saturday, Sunday and any day on which banks in the state of California shall be permitted or required to close.

13.20. Exhibits. The following exhibits and schedules to which reference is made in this Agreement are deemed incorporated into this Agreement in their entirety:

- Exhibit A – Copy of TDR MOU;
- Exhibit B – Copy of Recorded Covenant Restricting Use of Property;
- Exhibit C – Legal Description of the Receiving Site;
- Exhibit D – Form of Certificate of Transfer;
- Exhibit E – Form of Endorsement; and
- Schedule 7.2.2 – Litigation.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SELLER:

LOS ALTOS SCHOOL DISTRICT,
a California public school district

By: _____

APPROVED AS TO FORM:

District Counsel

By: _____

BUYER:

Merlone Geier Partners IX, L.P.,
a California limited partnership

By: MGGP IX, L.P.,
a California limited partnership.
its General Partner

By: Merlone Geier IX, LLC,
a California limited liability company,
its General Partner

By: Jonathan C. Lischke
Name: JONATHAN C. LISCHKE
Title: EXECUTIVE MANAGING DIRECTOR

Exhibit A – Copy of TDR MOU

[See Attached]

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MOUNTAIN VIEW & TULLOK ALCOHOLIC
DISTRICT
(TRANSFER OF DEVELOPMENT RIGHTS PROGRAM)**

This Memorandum of Understanding is entered into as of January 19, 2019, and is made in, by and between the City of Mountain View ("City") and the Tullok Alcohol District ("District") to establish a framework for the development of a transferable development rights (TDR) program for the mutual benefit of the City and the District.

DETAILS

A. The District currently serves roughly 1,200 students who reside in the City, with approximately 500 living in the south of El Camino Blvd. The District seeks to acquire property located within the San Antonio District Plan ("SADP") zone of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity. The District understands that the new school facility will not utilize the existing school building(s) affected by the SADP. If the District proceeds to acquire sites, it will have to consider market premium on potential building sites that it cannot use.

B. Acquisition of additional park and open space in the SADP area is a high priority for the City because to meet the needs of current and future residents. The area is entirely built-out and the current real estate market has made the creation of new parks, open space and recreational facilities particularly challenging as the cost of the land continues to increase.

C. The Mountain View 2030 General Plan and San Antonio District Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration in new school development.

D. The City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a School Site, while creating new playing fields and recreational facilities that would also be available for public use.

E. In order to facilitate the District's acquisition of a School Site and create opportunities for new publicly accessible open space and recreational facilities, the District and the City desire to create and implement an innovative program that would allow an institution (transfer the School Site) through TDR to third-party buyers pursuant to a TDR program. The TDR program would allow third parties within designated TDR receiving sites or with designated "receiving sites" to propose development projects for City review and approval to utilize additional development bonuses of applicable zoning regulations in exchange for a financial contribution to project developers in the District. The District will apply the proceeds from the TDR purchases toward the costs of acquiring the new school and open space, and construction of the new school and associated recreational facilities. The District will also become an agreement with the City allowing public access to new recreational facilities that would be constructed on the School Site. To incentivize the purchase of TDRs, the program would allow potential buyers (purchasers) to a shared letter of intent between the buyer and the District to file such letter requests for receiving sites (the "shared letter of intent") of the

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Landkeeper request allow the future development applications to be filed and approved for the City, while also enabling the District to acquire a school site and pursue necessary approvals and permits for a new school to proceed concurrently with the City's development application process for the proposed project(s) with authorized City/County requests.

8. The City also desires to contribute funding to the District toward the City's Park Land Dedication In-Lieu Fee program in an amount to be determined to encourage joint use open space including playing fields and recreational facilities and help offset the costs of the District's construction of the new park and recreational facilities on the school site. The specific terms and conditions of the City's funding contribution will be set forth in a more definitive agreement between the District and the City.

9. The District has already undertaken extensive negotiations with potential TDR providers and entered into letters of intent with eight prospective purchasers. Five of whom have submitted informal City/County development applications to the City.

10. On January 16, 2018, the City Council authorized the City Manager to execute the MOU (as well as an identified preferred School Site) and direct staff to develop a master joint use agreement and funding agreement to implement the objectives set forth above. At the same meeting, the City Council also authorized seven City/County requests from prospective purchasers of TDRs for projects that are, as of the effective date of this MOU, developments with authorized City/County requests have either submitted applications and are undergoing review as part of the City's additional process or are expected to submit applications in the near future.

11. On May 22, 2018, the City Council authorized one additional City/County request from a prospective purchaser of TDRs for a project that is, as of the effective date of this MOU, undergoing review as part of the City's development application process.

12. On June 16, 2018, the City Council authorized a change in the preferred School site identified by the District as the new location on the S&FP site and directed staff to continue pursuing all remaining actions authorized on January 16, 2018 in connection with the proposed TDR program.

13. The parties agree to enter into one Memorandum of Understanding in order to establish the role and responsibilities of the parties concerning the development and implementation of a TDR program to meet the objectives of both the District and the City, including but not limited to providing a measure of predictability and certainty for the District and the City in connection with the acquisition of a particular school site.

AGREEMENT

1. **Purpose of this MOU.** This MOU is intended to provide a programmatic framework and set parameters for the TDR program in order to be able to achieve the following objectives: (i) secure a site for a new District school facility within the City; (ii) and publicly accessible open space including playing fields and recreational facilities on the City's park inventory; (iii) create a program that allows the District to meet its regional development needs associated with a new School Site and to establish the procedure for the distribution and sequence of TDRs as part of the City's development application process.

C.2. Obligations of the District:

- 2.3. The District shall endeavor to good faith to select and accept a School Site within the City sufficient to (i) accommodate its mandate to develop a new center school within the District's attendance boundaries, and (ii) accommodate the City's desire for significant open space and recreational facilities for the public as part of the new school facilities.
- 2.4. The District shall enter into one or more agreements with the City on alternative terms to be agreed upon by the parties for the funding, development and use of the open space and recreational facilities to be developed on the School Site. These agreements shall require the District to allow public use of the open space and recreational facilities on such terms and during such times as mutually agreed upon by the parties. The District shall ensure that an accepted fence or most reasonable for any third party's admission to City of all gatekeeper application requests to enter TDRs.
- 2.5. The District shall be responsible for identifying prospective buyers of TDRs and negotiating a purchase price. The District has further developed a letter letter of intent which the City has reviewed for prospective purchase of TDRs.
- 2.6. The District shall comply with all requirements imposed by the City in order to document the creation of TDRs arising from the School Site, as well as to document the transfer of TDRs to eligible "Receiving Sites." Upon taking title to a School Site, and in connection with the purchase and sale of any TDRs to prospective purchasers with the City, the District shall record a restrictive covenant against the School Site, in a form acceptable to the City, restricting allowable development rights on the School Site, and consistent with applicable provisions of any conditions of approval (including but not limited to conditions to any development agreement) for a TDR Purchase program in the City. The District also restricts its right to sell TDRs to prospective third-party purchasers until the prior to the approval of a specific project using the same City approved form of restrictive covenant. The TDRs may be sold until the District has taken title to a particular School Site and recorded a restrictive covenant restricting allowable development rights on the School Site in a form that is acceptable to the City.
- 2.7. The District shall work in good faith with the City to implement the TDR program and address any issues arising out of the TDR program in this MOU consistent with the objectives set forth in Section 1, including but not limited to developing documentation associated with the creation and redemption of TDRs arising from the School Site (e.g., a form of restrictive covenant and a certificate of purchase).

C.3. Obligations of the City:

- 3.1. During the term of this MOU, the City shall consider granting third-party development project applicants the right to enter into the City's Gatekeeper process, subject to prequalification and a signed letter of intent with the District or purchase of TDRs, and the submission of the required materials for a Gatekeeper request consistent with the City's Zoning Ordinance, and consider including staff and other resources in order to process applications for such third-party projects, including any General Plan

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interim, pending further or other necessary approvals or permits brought forward as part of an application that would be required in order to permit additional density associated with the application of TDRs purchased from the District. During the term of this MOU (and unless such term is extended by resolution or other action of the City Council), the City further agrees to facilitate a secondary market for TDRs by allowing prospective purchasers of undeveloped TDRs to, in the event that a TDR purchase is unable to apply the full amount of any purchased TDR to an approved project or obtain a Grandfather application, submit to providing evidence of a signed letter of intent with the original TDR owner to purchase future TDRs and the submission of the required certificate for a Grandfather notation, consistent with the provisions set forth in Section 11 of this MOU.

22. Authorization of a Grandfather application for an eligible TDR resulting site project allows the project to proceed through the development review process. Neither the authorization of the Grandfather application nor any subsequent City action related to the development and implementation of a TDR program pursuant to this MOU provides any indication of implied "precommitment" to a particular project or project.

23. The City will establish an internal procedure that would allow the trading of TDRs purchased from the District and redeemed by prospective third-party buyers as part of a project located on a Designing Site (hereinafter referred to as the trading system project) associated with any development agreements approved for specific projects utilizing TDRs.

24. The City will consider the purchase of TDRs a community benefit measure it provides necessary to the purchase of a School Site and development of a multi-school site, including accessible open space and recreational facilities, within the City of Mountain View. As such, the City will not impose any additional public benefit requirements on any floor area gained by virtue of the purchase of TDRs. However, nothing in this section shall abrogate the City's right to negotiate the terms of a development agreement for a particular project or development agreement brought by an applicant or impose any other provisions on a particular project provided that such measures do not relate to the granting of additional floor area through the redeeming of TDRs on a TDR receiving site.

25. If the District acquires title to a School Site, then the City shall provide a funding contribution in an amount to be determined by the City to the District to ensure that Land Dedication in Lieu Fee serves to facilitate the acquisition and construction of new open space and recreational facilities as part of the new school that would be available to the public during times when such facilities are not needed for school purposes. The terms and conditions of the City's funding contribution shall be set forth in a separate agreement between the City and the District.

4. Schedule and Milestones

- 4.1. The District will make good faith efforts to select a preferred School Site for acquisition and commence the process of acquiring the School Site, expediting acquisition of the School Site in said TDR and commencing the environmental review and mitigation

projected funds hereafter. Prior to commencement of the entitlement process for the new school, the District shall coordinate with the City regarding the design of playing fields and recreational facilities.

- 4d. The City shall make good faith efforts to commence presenting any applications for projects within designated CDF Receiving Sites or areas that are zoned for development for the purposes of Section 3.1 of this MOU as timely as possible after initiation of the entitlement process in accordance with the City's Zoning Ordinance.

4.3. The City shall also work to provide input on the development of any documentation required to implement the TIRB program.

- 4.4. The parties shall work in good faith to funding separate projects exceeding the City's contribution of funds for new playing fields and recreational facilities in exchange for the joint use of those facilities prior to the District taking title to the new District Site.

5. **Funding.** This MOU is being entered into for the mutual benefit of the parties and each party intends to pursue its objectives as set forth in this MOU. While the parties intend to pursue the objectives outlined in this MOU, this MOU does not constitute a commitment of funding or other resources by either party, and does not create any legally binding obligations. Any commitment of funds or other resources shall be made under a separate agreement or by resolution of the City Council or District Board of Trustees.

6. **Compliance with the California Environmental Quality Act:** The parties acknowledge that implementation of this MOU does not require the District to select or require any particular School Site, nor commit the City to approving any particular project which may be eligible for receiving TIRB. The parties further acknowledge that this MOU does not limit the possibility of the City or the District considering alternatives to any specific proposed potential mitigation measures, or future decisions to disapprove any particular project proposal until after conducting and completing appropriate environmental review under the California Environmental Quality Act ("CEQA"). While this MOU identifies certain essential terms of the proposed TIRB program, it does not bind the City or the District to any specific action or set forth all of the material terms and conditions that the parties anticipate will be developed over time. All future projects involving any District resources owned by the City for project that have signed letters of intent with the District, shall be subject to future environmental review as required by CEQA, as would any proposal submitted by the District once a school site has been selected and a specific school proposal developed. The parties will not take any enforcement actions concerning either the City or the District to a particular course of action with respect to any proposed project until the City and/or the District, in its capacity as a third or responsible agency, has completed environmental documentation required by CEQA and adopted appropriate CEQA findings.

7. **Term and Effectiveness.** This MOU is an oral and may be modified by mutual consent of the City Council and the District Board of Trustees. This MOU shall become effective upon signature by the City Manager and District Superintendent and will remain in effect until terminated by either party from the date of the termination notice if modified or terminated by agreement of the parties by mutual consent or (ii) the District does not require a School Site within a certain number from the Effective Date, to which case this MOU shall terminate.

concomitantly, to the extent that any litigation is filed that delays District's ability to acquire title to a School Site located three years from the effective date, including but not limited to any national design action filed by the District, then District shall be entitled to an automatic day-to-day extension (until final resolution of the litigation, including any appeals) no more than one (1) year from the date of the School Site is determined to function.

4. **Indemnification.** District shall indemnify, defend and hold City and its elected and appointed officers, officials, employees, agents and consultants (collectively, "third parties") harmless from and against any and all claims arising out of or in connection with the implementation of a TDR program pursuant to this MOU, with the exception of any claims that arise out of the approval of specific projects proposed by third party TDR participants provided such participants provide appropriate indemnifications for any claims arising out of such approvals.
5. **Notices and Points of Contact.** The parties hereby designate the following primary contacts for implementation of this MOU. Any notices required to be given under this MOU shall be sufficient if hand-delivered, mailed or sent prepaid by commercial overnight delivery services as follows, or to such other addresses as the affected parties shall specify in writing:

City:

City of Mountain View
Attention: City Manager
300 Castro Street
P.O. Box 7340
Mountain View, CA 94039-7340

With copy to:

City of Mountain View
Attention: City Attorney
300 Castro Street
P.O. Box 7340
Mountain View, CA 94039-7340

District:

Los Altos School District
Attention: Jeffrey Baker, Superintendent
301 Livingston Road
Los Altos, CA 94024
E-mail: jrbaker@lasaltos.k12.ca.us

With copy to:

Armed For All
Attn: Timothy A. Gane
2220 Bryant, 21st Floor

cc: [redacted]

Sent: Friday, 1/16/2015 1:05 PM
To: Mail: 11000000000000000000

10. Miscellaneous Provisions:

- 10.1. Amendment:** This MOU may be amended only by a subsequent writing signed by the Parties.
- 10.2. Counterparts:** This MOU may be executed in any number of counterparts, each of which shall be deemed an original, however all such counterparts shall constitute but one and the same instrument with the effective date hereof being the date last foregoing.
- 10.3. Assignment:** This MOU is personal to the District and shall not be assigned by the District at any time without the written consent of the City. The City reserves the right to approve or deny such an assignment in its sole and absolute discretion.
- 10.4. Authorized Signatures:** Unless otherwise specified in this MOU, the City Manager or his/her written designee shall be the sole party authorized to act on behalf of the City with respect to this MOU. The District's Superintendent or his/her written designee shall be the sole party authorized to act on behalf of the District with regard to this MOU.
- 10.5. Entire Agreement:** This MOU contains the entire understanding between the parties with respect to the subject matter of this MOU. There are no representations, agreements or other understandings between or among the parties relating to the subject matter of this MOU which are not fully expressed above.

(Signatures to Follow/Not Here)

IN WITNESS WHEREOF, this MOU is executed by the City of Mountain View and the Los Altos School District.

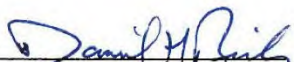
"District"

LOS ALTOS SCHOOL DISTRICT


By: 
Jeffrey Baier, Superintendent

"City"

CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California

By: 
Daniel H. Rich, City Manager

Attest:

By: 
City Clerk, City of Mountain View

Approved as to Form:

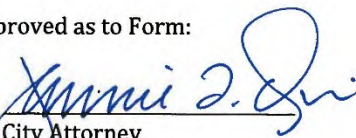
By: 
City Attorney

Exhibit B – Copy of Recorded Covenant Restricting Use of Property

[See Attached]

24504620

Regina Alcomendras
Santa Clara County - Clerk-Recorder

05/12/2020 12:30 PM

Titles: 1 Pages: 82

Fees: \$0.00

Taxes: \$0

Total: \$0.00



*Recording Requested by and when
Recorded Mail To:*

Superintendent
Los Altos School District
201 Covington Road
Los Altos, CA 94024

APNs: 148-22-009
148-22-010
148-22-011
148-22-012
148-22-013

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COVENANT RESTRICTING USE OF LAND AND
NOTICE OF DEVELOPMENT RESTRICTIONS
(TRANSFERRABLE DEVELOPMENT RIGHTS PROGRAM)**

THIS COVENANT RESTRICTING USE OF LAND AND NOTICE OF DEVELOPMENT RESTRICTIONS (TRANSFERRABLE DEVELOPMENT RIGHTS PROGRAM) (this "Restriction") is made this 9 day of June, 2020 by the Los Altos School District, a California public school district (the "District"), for the benefit of the City of Mountain View (the "City") and qualifying participants in the City's transferrable development rights program ("TDR Participants") pursuant to the Memorandum of Understanding Between the City of Mountain View & the Los Altos School District (Transfer of Development Rights Program), effective January 29, 2019, which is attached hereto as Exhibit A (the "TDR MOU"), and provides as follows:

WHEREAS, the TDR MOU facilitates the City's and the District's desire to secure a site for the development of a new school facility within the City of Mountain View and to add publicly-accessible open space, including playing fields and recreational facilities, to the City's park inventory, by creating a program that allows the District to monetize unused development rights associated with the floor area of a new school site (each square foot of floor area, a "TDR Unit") by selling TDR Units to TDR Participants and that provides the procedure for the use of TDR Units by TDR Participants as part of the City's property development application process (collectively, the "TDR Program");

WHEREAS, pursuant to the TDR MOU, the TDR Program would allow TDR Participants to purchase TDR Units from the District and to apply such TDR Units to certain other development projects within the City of Mountain View (each, a "Receiving Site"), potentially allowing for additional floor area and additional building height (proportional to the TDR Units) above the applicable development standards for such Receiving Site, subject to development review and other requirements that have been or may be promulgated by the City;

WHEREAS, the City's San Antonio Precise Plan, East Whisman Precise Plan, and other policies support the use of the TDR Program to encourage the development of public schools;

WHEREAS, on January 16, 2018, the City Council authorized the City Manager to execute the TDR MOU and take related actions to create and implement the TDR Program;

WHEREAS, on January 29, 2019, the District and the City entered into the TDR MOU;

WHEREAS, in furtherance of the TDR Program, the District has acquired the real property located at 2535 California Street and 350 and 506 Showers Drive, Mountain View, California, and more particularly described in Exhibit B-1 attached hereto and substantially depicted in Exhibit B-2 attached hereto (collectively, the "Property"), for the construction of a new school site and publicly-accessible open space;

WHEREAS, the District has undertaken extensive negotiations and entered into letters of intent with TDR Participants, many of whom have submitted applications to the City seeking to utilize TDR Units for Receiving Sites pursuant to the TDR MOU; and

WHEREAS, in furtherance of the TDR Program, the District desires to memorialize the following restrictions on the use of the Property, which restrictions shall be for the benefit of the City and TDR Participants and shall burden and bind the Property, run with the land, and bind successor owners of the Property or any interest therein;

NOW, THEREFORE, the District hereby covenants and agrees as follows:

1. Covenants and Restrictions.

a. Pursuant to the TDR MOU, 610,000 TDR Units, equivalent to 610,000 square feet of unused floor area with respect to the Property (collectively, the "Available TDR Units"), are available for transfer to TDR Participants through the TDR Program.

b. No development of any kind shall occur on the Property that exceeds the maximum floor area permitted by the San Antonio Precise Plan less the Available TDR Units. In furtherance of the restriction set forth in the preceding sentence, the approval by the City or any agency or instrumentality thereof of any development on the Property shall be evaluated on the basis that all of the Available TDR Units are unavailable due to the intended transfer of the Available TDR Units to TDR Participants through the TDR Program, pursuant to the TDR MOU. The covenants and restrictions set forth herein shall not apply to, and the Available TDR Units shall not be reduced by, the two-acre open space portion of the Property to be transferred to the City pursuant to the Open Space Park Property Transfer Agreement dated November 19, 2019, entered into by and between the District and the City and attached hereto and incorporated herein as Exhibit C (the "Property Transfer Agreement").

c. Following the expiration of the TDR MOU, any Available TDR Units that are then held by the District shall automatically revert to the Property without restriction.

d. Use of the Property shall also be restricted as set forth in the Funding and Joint Use Agreement dated April 29, 2019, entered into by and between the District and the City and attached hereto and incorporated herein as Exhibit D.

2. Covenants Running With the Land. Until the expiration of the TDR MOU, the covenants, conditions and restrictions contained herein (collectively, the "Covenants"), shall operate as covenants running with the land comprising the Property and shall be binding upon, and shall inure to the benefit of, the District and its successors in ownership of the Property and all parties having or acquiring any right, title or interest in the Property or any part thereof. The Covenants are given for the benefit of the City and the TDR Participants. The Covenants, or a reference thereto, shall be included within any subsequent deed conveying any interest in the Property.

3. Enforcement of Covenants and Restrictions.

a. If there is a violation or threatened violation of any Covenants or any other breach or threatened breach of the terms of this Restriction, the City or any TDR Participant shall have the right to pursue any and all rights and remedies available at law or in equity, including, without limitation, specific performance and injunctive relief (such special remedies being cumulative and not exclusive of, or intended to limit, any other remedies that would otherwise be available).

b. The failure to enforce a Covenant shall not constitute a waiver of the underlying obligation or of the right to enforce such obligation. The failure to exercise a right afforded by this Restriction shall not constitute a waiver or forfeiture of such right.

c. None of the following shall be asserted or serve as a defense to any action to enforce the terms of this Restriction: (i) that this Restriction lacks appurtenance to an interest in real property; (ii) that this Restriction is not of a character that has been recognized traditionally at common law; (iii) that this Restriction imposes a negative burden; (iv) that this Restriction imposes affirmative obligations upon the owner of any interest in the Property; (v) that the benefit conferred by this Restriction does not touch or concern the Property; (vi) that there is no privity of estate or of contract; or (vii) that this Restriction imposes an unreasonable restraint on alienation. For the avoidance of doubt, acceptance of any interest in the Property (whether actual, constructive, by operation of law or otherwise) shall automatically constitute an irrevocable waiver, release and discharge of any such defense. The term "defense" as used above in this paragraph includes any counterclaim, cross-claim or other assertion of right no matter how characterized arising out of the same facts as would otherwise give rise to any such defense.

4. No Modification. No current or subsequent holder of any right, title or interest in or to the Property may amend or seek to modify this Restriction other than by a written instrument duly authorized and signed by such holder, the District and the City. Notwithstanding the foregoing, upon the transfer of the two-acre open space portion of the Property contemplated by the Property Transfer Agreement, the District shall amend the legal description and depiction of the Property set forth in Exhibit B-1 and Exhibit B-2, respectively, in order to accurately identify the two acres.

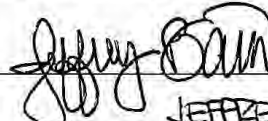
5. Governing Law and Severability. This Restriction shall be governed, interpreted, construed and regulated by the laws of the State of California, without regard to the laws relating to conflicts of laws. If any portion of this Restriction is held invalid or unenforceable, the remainder of this Restriction shall be unaffected and shall remain in full force and effect.

[The Remainder of This Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the District has executed this Restriction as of the day and year first written above.

LOS ALTOS SCHOOL DISTRICT,
a California public school district

By:


JEFFREY BAIER

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

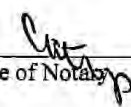
STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

On JUNE 09, 2020, before me, CATHY M. WONG, a Notary Public, personally appeared JEFFREY BAIER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.


Signature of Notary



(Affix seal here)

AFDOCS/21861504.3

Exhibit B

EXHIBIT A

TDR MOU

[See Attached]

AFDOCS/21861504.3

Exhibit B

OPEN SPACE PARK PROPERTY TRANSFER AGREEMENT
By and Between
LOS ALTOS SCHOOL DISTRICT
And
CITY OF MOUNTAIN VIEW

THIS OPEN SPACE PARK PROPERTY TRANSFER AGREEMENT ("Agreement") is made _____, 2019, by and between the LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("City"), herein referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the District is negotiating the acquisition of real property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity; and

WHEREAS, in addition to locating a new school facility in the SAPP, the acquisition of additional park space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents as the area is entirely built-out and the current real estate market has made the creation of new parks and recreational facilities particularly challenging as the cost of the land continues to increase; and

WHEREAS, the Mountain View 2030 General Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development; and

WHEREAS, the City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a school site, while creating new playing fields and recreational facilities that would also be available for neighborhood use; and

WHEREAS, District intends to acquire an approximately 11.65-acre site within the City of Mountain View ("Property") which site will be large enough to provide for an approximate 2.0-acre open space for a community park and recreational facilities ("Open Space Park"), in addition to needed school and community recreational facilities; and

WHEREAS, on or about December 11, 2018, the City of Mountain View City Council authorized the appropriation of Forty-Three Million Dollars toward the acquisition of the Property, including the 2.0-acre Open Space Park, and for use of approximately 4.0-acres of the remaining 9.65-acre District school site for community recreational purposes; and

WHEREAS, under California law, the District must comply with a variety of statutes and regulations governing the planning and design of school facilities, including compliance with and obtaining approvals from, among others, the California Department of Education, the Department of Toxic Substance Control, and the Division of State Architect.

WHEREAS, the Parties entered into that certain Funding and Joint Use Agreement, effective July 16, 2019 ("Joint Use Agreement"), outlining the City's cooperation in facilitating the development of the Property and create opportunities for newly public

accessible open space and recreational facilities and its contribution of funds towards acquisition and development of the Property; and

WHEREAS, the Joint Use Agreement also contemplates the City's acquisition of a 2.0-acre portion of the Property for a dedicated City-owned Open Space Park; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the funding and property transfer provisions for City's acquisition of the Open Space Park; and

WHEREAS, under Section 35160 of the Education Code, the governing board of a school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and City agree as follows:

AGREEMENT

Section 1. Approval of Agreement. This Agreement shall be approved or ratified by the City Council of the City and the District's Board of Trustees ("Board"), and fully executed by both Parties. Notwithstanding the same, this Agreement is subject to the District's acquisition of the Property and shall terminate as set forth in Section 6 below in the event the District is unable to acquire the Property within two (2) years of the Effective Date of this Agreement.

Section 2. Property, School Site and Open Space Park.

(a) Property. The Property consists of an approximate 11.65-acre portion of the San Antonio Center, and is more particularly described and depicted on Exhibit A.

(b) School Site. The District will retain approximately 9.65-acres of the Property to develop as a school site and for joint use recreational purposes, consistent with the terms and conditions of the Joint Use Agreement.

(c) Open Space Park. The Open Space Park will consist of an approximate 2.0-acre portion of the Property, and will be more particularly defined as part of the District and City's master planning process as set forth in Section 8(a) of the Joint Use Agreement.

Section 3. District Acquisition and Title to the Property. The Parties understand and acknowledge that the District is currently negotiating a Purchase and Sale Agreement for the acquisition of the Property. The Parties further acknowledge that if and when the District acquires title Property, including the proposed Open Space Park, title to the entire 11.65-acres will be held by the District until such time as the Parties complete the master planning process contemplated in Section 2(c) above and transfer title to the 2.0-acre Open Space Park as specified in Section 5(b) below.

Section 4. Funding for Open Space Park Acquisition. The Parties agree that the costs of acquisition of the Open Space Park site shall be paid as follows:

(a) Acquisition Cost. The City will advance the amount of Ten Million Dollars (\$10,000,000) per acre toward the purchase of the Open Space Park site, for a total of Twenty Million Dollars (\$20,000,000) for the 2.0-acre parcel. This amount shall be referred to herein as the "Open Space Park Acquisition Cost."

(b) Deposit of Acquisition Cost. The City shall deposit Open Space Park Acquisition Cost into an escrow established by the District a minimum of five (5) days before the close of escrow on the District's acquisition of the Property. In order to facilitate timely transfer of the City's Financial Contribution, the District shall provide the City with twenty-one (21) days' notice of the anticipated date for close of escrow on the Property.

(c) Return of Acquisition Cost.

(i) If the District is unable to complete the close of escrow on the Property within two (2) years of the Effective Date of this Agreement, any portion of the Open Space Park Acquisition Cost held by the District or in escrow for the benefit of the District shall be immediately returned to the City along with any interest that has accrued.

(ii) If the District is unable to transfer title to the City as specified in Section 5(b) below, the District shall return the Open Space Acquisition Cost to the City.

Section 5. Transfer of the Open Space Park.

(a) Pre-Transfer Activities. The Parties acknowledge and agree that a various activities, studies, investigations and reports, must be completed prior to the District's transfer of the Open Space Park site to the City, including the following:

(i) Master Planning. The Parties shall have completed as much of the Master Planning process set forth in Section 8(a) of the Joint Use Agreement such that the Parties have identified the specific location of the 2.0-acre park site. The Parties acknowledge and agree that each Party shall have equal input and decision-making authority with respect to the location of the 2.0-acre park site. To the extent the Parties are unable to mutually agree to the location of the Open Space Park, the Parties shall utilize the alternative dispute resolution procedures established in Section 14 of the Joint Use Agreement.

(ii) Survey and Legal Description. The Parties shall obtain a survey and cause to be prepared by a qualified civil engineer a formal legal description and site map for the 2.0-acre Open Space Park site and the 9.65-acre School Site.

(iii) Clear Title. The District shall ensure that all encumbrances, including all leasehold interests, liens and third-party rights, are extinguished from the Property such that the Property, including the Open Space Park site, can be used for public purposes. Prior to transfer, District shall provide City with a then current Title Report establishing clear title to the designated Open Space Park site, free and clear of all encumbrances.

(iv) Property Evaluations. The Parties shall cooperate in obtaining any and all required Property evaluations, including geotechnical studies, hazardous material investigations and environmental review under the California Environmental Quality Act.

(v) Demolition and Grading. During the joint master planning process set forth in Section 8 of the Joint Use Agreement, the Parties will determine how and when to demolish any improvements that remain on the Property. The parties will also determine who will bear the costs of such demolition and grading activities, but will use all good faith efforts to proceed in a manner that achieves economies of scale for both Parties in connection with demolish and grading timing and costs.

(b) Timing of Transfer. District shall transfer the Open Space Park site to the City by Grant Deed at a minimum no later than ninety (90) days following completion of the activities specified in Sections 5(a)(I) and 5(a)(II) above; provided, however, the Parties may agree to a later transfer date following completion of the activities contemplated in Sections 5(a)(III) and 5(a)(IV).

Section 6. Term. The term of the Agreement shall commence as of the date this Agreement is fully executed by the Parties ("Effective Date"). The term of this Agreement shall expire either: (1) upon the transfer of the Open Space Park site as set forth in Section 3(c) herein, or (2) two (2) years after the Effective Date if the District has not acquired the Property ("Term").

Section 7. Hold Harmless/Indemnification.

To the fullest extent permitted by California law, from the time the District acquires the Property until such time as the District transfers title to the Open Space Park site to the City, the District shall defend, indemnify, and hold harmless the City, its governing body and members thereof, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the District, its agents, contractors, employees, representatives, officers, servants, concessionaires, or volunteers in conjunction with the performance of this Agreement, unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against said Party, the other Party, upon written notice from the other, shall defend the same at its expense by counsel approved in writing by the Indemnified Party.

Section 8. Insurance. Immediately upon District's acquisition of the Property and until the District transfers the Open Space Park site to the City, District shall carry for the following insurances with respect to the Property and this Agreement.

(a) Commercial General Liability Insurance. District shall maintain commercial general liability insurance, covering all of the District's operations regarding this Agreement, with a combined single limit of not less than Two Million Dollars (\$2,000,000).

(b) Motor Vehicle Liability Insurance. District shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned, and hired) used pursuant to this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Workers' Compensation Insurance. If applicable, District maintain a workers' compensation plan covering all of its employees as required by Section 3700 of the Labor Code, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations.

(d) Certificates of Insurance. Upon the District's acquisition of the Property, the District shall file certificates of insurance or consents to self-insure with the City showing that it has in effect the insurance required by this Agreement. The District

shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

Section 9. Authorized Representative. Whenever any action, consent, approval, or agreement is required of either City or District within the terms of this Agreement, the City Manager of the City, or his or her designee, may act on behalf of the City and the Superintendent of the District, or his or her designee, may act on behalf of the District.

Section 10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

LOS ALTOS SCHOOL DISTRICT
Attn: Superintendent
201 Covington Road
Los Altos, CA 94024

CITY OF MOUNTAIN VIEW
Attn: City Manager
500 Castro Street
Mountain View, CA 94041

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective five (5) days after deposit in the United States mail.

Section 11. Entire Agreement of Parties. This Agreement, together with the Funding and Joint Use Agreement, attached as Exhibit B and the Memorandum of Understanding between the City and the District attached as Exhibit C to the Joint Use Agreement, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the County where the Property is located.

Section 13. Attorneys' Fees. The Parties shall each bear their own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with or as a result of this Agreement.

Section 14. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 16. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 17. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.


Section 18. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

Section 19. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

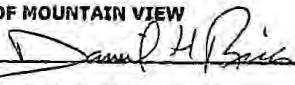
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

ACCEPTED AND AGREED BY:

LOS ALTOS SCHOOL DISTRICT

By: 
 Print Name: Jeffrey Baier
 Print Title: Superintendent
 Date: 11/13/19

CITY OF MOUNTAIN VIEW

By: 
 Print Name: Daniel H. Rich
 Print Title: City Manager
 Date: 11-19-19

By: 
 Jesse Takahashi, Finance Director

ATTEST:

By: 
 City Clerk, City of Mountain View

APPROVED AS TO FORM:

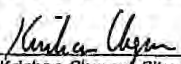
By: 
 Krishan Chopra, City Attorney

EXHIBIT B
FUNDING AND JOINT USE AGREEMENT

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MOUNTAIN VIEW & THE LOS ALTOS SCHOOL
DISTRICT
(TRANSFER OF DEVELOPMENT RIGHTS PROGRAM)**

This Memorandum of Understanding is entered into as of January 29, 2019 (the "Effective Date"), by and between the City of Mountain View ("City") and the Los Altos School District ("District") to establish a framework for the development of a transferrable development rights ("TDR") program for the mutual benefit of the City and the District.

RECITALS

A. The District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real. The District seeks to acquire property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity. The District anticipates that the new school facility will not utilize the majority of the building area allowed by the SAPP. If the District proceeds to acquire a site, it will pay a real estate market premium for potential building area that it cannot use.

B. Acquisition of additional park and open space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents. The area is entirely built-out and the current real estate market has made the creation of new parks, open space and recreational facilities particularly challenging as the cost of the land continues to increase.

C. The Mountain View 2030 General Plan and San Antonio Precise Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development.

D. The City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a School Site, while creating new playing fields and recreational facilities that would also be available for public use.

E. In order to facilitate the District's acquisition of a School Site and create opportunities for new publicly accessible open space and recreational facilities, the District and the City desire to create and implement an innovative program that would allow the District to transfer the School Sites' unutilized FAR to third-party buyers pursuant to a TDR program. The TDR program would allow third-parties within designated TDR receiving sites or with designated "Receiving Sites" to propose development projects for City review and approval to utilize additional floor area in excess of applicable zoning regulations in exchange for a financial contribution by prospective developers to the District. The District will apply the proceeds from the TDR purchases toward the costs of acquiring the new school and open space site, or construction of the new school and associated recreational facilities. The District will also execute an agreement with the City allowing public access to new recreational facilities that would be constructed on the School Site. To incentivize the purchase of TDRs, the program would allow potential buyers (evidenced by a signed letter of intent between the buyer and the District) to file Gatekeeper requests for receiving sites. City Council authorization of the

Gatekeeper requests allows the buyers' development applications to be filed and reviewed by the City, while also enabling the District to acquire a school site and pursue necessary approvals and permits for a new school to proceed concurrently with the City's development application process for receiving site projects with authorized Gatekeeper requests.

F. The City also desires to contribute funding to the District from the City's Park Land Dedication In-Lieu Fee program in an amount to be determined to create new joint use open space, including playing fields and recreational facilities and help offset the cost of the District's construction of the new park and recreational facilities on the School Site. The specific terms and conditions of the City's funding contribution will be set forth in a more definitive agreement between the District and the City.

G. The District has already undertaken extensive negotiations with potential TDR purchasers and entered into letters of intent with eight prospective purchasers, five of whom have submitted informal Gatekeeper development applications with the City.

H. On January 16, 2018, the City Council authorized the City Manager to execute this MOU based on an identified preferred School Site and directed staff to develop a master joint use agreement and funding agreement in furtherance of the objectives set forth above. At the same meeting, the City Council also authorized seven gatekeeper requests from prospective purchasers of TDRs for projects that are, as of the effective date of this MOU, developers with authorized Gatekeeper requests have either submitted applications and are undergoing review as part of the City's entitlement process or are expected to submit applications in the near future.

I. On May 22, 2018, the City Council authorized one additional gatekeeper request from a prospective purchasers of TDRs for a project that is, as of the effective date of this MOU, undergoing review as part of the City's development application process.

J. On June 26, 2018, the City Council authorized a change in the preferred School Site identified by the District to another location in the SAPP Area and directed staff to continue pursuing all remaining actions authorized on January 16, 2018, in connection with the proposed TDR program.

K. The parties desire to enter into this Memorandum of Understanding in order to establish the roles and responsibilities of the parties concerning the development and implementation of a TDR program to meet the objectives of both the District and the City, including but not limited to providing a measure of predictability and certainty for the District before it commits to the acquisition of a particular School Site.

AGREEMENT

1. **Purpose of this MOU:** This MOU is intended to provide a programmatic framework and set parameters for the TDR program in order to try to achieve the following objectives: (i) secure a site for a new District school facility within the City; (ii) add publicly accessible open space, including playing fields and recreational facilities to the City's park inventory; (iii) create a program that allows the District to monetize unused development rights associated with a new School Site; and (iv) outline the procedure for the distribution and requests to use TDRs as part of the City's development application process.

2. Obligations of the District.

- 2.1. The District shall endeavor in good faith to select and acquire a School Site within the City sufficient to (i) accommodate its mandate to develop a new tenth school within the District's attendance boundaries, and (ii) accommodate the City's desire for significant new open space and recreational facilities for the public as part of the new school facilities.
- 2.2. The District shall enter into one or more agreements with the City in a form or forms to be agreed upon by the parties for the funding, development and use of the open space and recreational facilities to be developed on the School Site. These agreements shall require the District to allow public use of the open space and recreational facilities on such terms and during such times as mutually agreed upon by the Parties. The District shall insure that an executed letter of intent is available for any third party's submittal to City of a Gatekeeper application request to utilize TDRs.
- 2.3. The District shall be responsible for identifying prospective buyers of TDRs and negotiating a purchase price. The District has further developed a form "letter of intent" which the City has reviewed for prospective purchasers of TDRs.
- 2.4. The District shall comply with any requirements imposed by the City in order to document the creation of TDRs originating from the School Site, as well as to document the transfer of TDRs to eligible "Receiving Sites." Upon taking title to a School Site, and in connection with the purchase and sale of any TDRs to prospective purchasers with LOIs, the District shall record a restrictive covenant against the School Site, in a form acceptable to the City, restricting allowable development rights on the School Site, and consistent with applicable provisions of any conditions of approval (including but not limited to conditions in any development agreement) for a TDR Purchaser's project on the Receiving Site. The District also reserves the right to sell TDRs to prospective third-party purchasers with LOIs prior to the approval of a specific project using the same City approved form of restrictive covenant. No TDRs may be sold until the District has taken title to a particular School Site and recorded a restrictive covenant restricting allowable development rights on the School Site in a form that is acceptable to the City.
- 2.5. The District shall work in good faith with the City to implement the TDR program and address any issues arising out of the TDR program or this MOU, consistent with the objectives set forth in Section 1, including but not limited to developing documentation associated with the creation and redemption of TDRs arising from the School Site (e.g., a form of restrictive covenant and a certificate of transfer).

3. Obligations of the City.

- 3.1. During the term of this MOU, the City shall consider granting third-party development project applicants the right to enter into the City's Gatekeeper process subject to providing evidence of a signed letter of intent with the District to purchase future TDRs and the submittal of the required materials for a Gatekeeper request consistent with the City's Zoning Ordinance, and consider assigning staff and other resources in order to process applications for such third-party projects, including any General Plan

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amendments, rezoning requests or other necessary approvals or permits brought forward as part of an application that would be required in order to permit additional density associated with the application of TDRs purchased from the District. During the term of this MOU (and unless such term is extended by resolution or other action of the City Council), the City further agrees to facilitate a secondary market for TDRs by allowing prospective purchasers of unredeemed TDRs (e.g., in the event that a TDR purchaser is unable to apply the full amount of any purchased TDRs to an approved project) to submit a Gatekeeper application, subject to providing evidence of a signed letter of intent with the original TDR buyer to purchase future TDRs and the submittal of the required materials for a Gatekeeper request, consistent with the provisions set forth in Section 3.1 of this MOU.

- 3.2. Authorization of a Gatekeeper application for an eligible TDR Receiving Site project allows the project to proceed through the development review process. Neither the authorization of the Gatekeeper application nor any subsequent City actions related to the development and implementation of a TDR program pursuant to this MOU provide any assurance or implied "pre-commitment" to a particular project approval.
- 3.3. The City shall establish an internal procedure that would allow the auditing of TDRs purchased from the District and redeemed by prospective third-party buyers as part of a project located on a Receiving Site, which may include using the annual review process associated with any development agreements approved for specific projects utilizing TDRs.
- 3.4. The City will consider the purchase of TDRs a community benefit because it provides necessary capital for the purchase of a School Site and development of a public school with publically accessible open space and recreational facilities within the City of Mountain View. As such, the City will not impose any additional public benefit requirement on any floor area granted by virtue of the purchase of TDRs. However, nothing in this Section shall abrogate the City's rights to negotiate the terms of a Development Agreement for a particular project if a Development Agreement is sought by an applicant or impose any other exactions on a particular project; provided that such exactions do not relate to the granting of additional floor area through the redemption of TDRs on a TDR Receiving Site.
- 3.5. If the District acquires title to a School Site, then the City shall provide a funding contribution in an amount to be determined by the City to the District from the City's Park Land Dedication In-Lieu Fee reserve to facilitate the acquisition and construction of new open space and recreational facilities as part of the new school that would be available to the public during times when such facilities are not needed for school purposes. The terms and conditions of the City's funding contribution shall be set forth in a separate agreement between the City and the District.

4. Schedule and Milestones.

- 4.1. The District shall make good faith efforts to select a preferred School Site for a new school and commence the process of acquiring the School Site, targeting acquisition of the School Site in early 2019 and commencing the environmental review and entitlement

process shortly thereafter. Prior to commencement of the entitlement process for the new school, the District shall coordinate with the City regarding the design of playing fields and recreational facilities.

- 4.2. The City shall make good faith efforts to commence processing any applications for projects within designated TDR Receiving Sites or zones that are granted Gatekeeper status pursuant to Section 3.1 of this MOU in a timely manner after submittal of the application in accordance with the City's Zoning Ordinance.
- 4.3. The City shall also work in good faith on the development of any documentation required to implement the TDR program.
- 4.4. The parties shall work in good faith to finalize separate agreements addressing the City's contribution of funds for new playing fields and recreational facilities in exchange for the joint use of those facilities prior to the District taking title to the new School Site.
5. **Funding.** This MOU is being entered into for the mutual benefit of the parties and each party intends to pursue the objectives set out in this MOU. While the parties intend to pursue the objectives defined in this MOU, this MOU does not constitute a commitment of funding or other resources by either party, and does not create any legally binding obligations. Any commitment of funds or other resources shall be made under a separate agreement or by resolution of the City Council or District Board of Trustees.
6. **Compliance with the California Environmental Quality Act:** The parties acknowledge that the endorsement of this MOU does not commit the District to select or acquire any particular School Site, nor commit the City to approving any particular project which may be eligible for receiving TDRs. The parties further acknowledge that this MOU does not foreclose the possibility of the City or the District considering alternatives to any specific proposal, potential mitigation measures, or future decisions to disapprove any particular project proposal until after conducting and completing appropriate environmental review under the California Environmental Quality Act ("CEQA"). While this MOU identifies certain essential terms of the proposed TDR program, it does not bind the City or the District to any specific terms or set forth all of the material terms and conditions that the parties anticipate will be developed over time. All future projects, including any Gatekeeper requests granted by the City for projects that have signed letters of intent with the District, would be subject to future environmental review as required by CEQA, as would any proposal advanced by the District once a School Site has been selected and a specific school proposal designated. The parties will not take any discretionary actions committing either the City or the District to a particular course of action with respect to any proposed project until the City and/or the District, in its capacity as a lead or responsible agency, has considered environmental documentation required by CEQA and adopted appropriate CEQA findings.
7. **Term and Effectiveness.** This MOU is at-will and may be modified by mutual consent of the City Council and the District Board of Trustees. This MOU shall become effective upon signature by the City Manager and District Superintendent and will remain in effect for a period of ten years from the Effective Date unless (i) modified or terminated by any one of the partners by mutual consent or (ii) the District does not acquire a School Site within eighteen months after the Effective Date, in which case this MOU shall terminate

automatically. In the event that any litigation is filed that delays District's ability to acquire title to a School Site beyond three years from the Effective Date, including but not limited to any eminent domain action filed by the District, then District shall be entitled to an automatic day-for-day extension (until final resolution of the litigation, including any appeals) for each day that District's acquisition of a School Site is delayed due to litigation.

8. **Indemnification.** District shall indemnify, defend and hold City and its elected and appointed officers, officials, employees, agents, and consultants (collectively, "Indemnitees"), harmless from and against any and all claims arising out of or in connection with the implementation of a TDR program pursuant to this MOU, with the exception of any claims that arise out of the approval of specific projects proposed by third-party TDR purchasers provided such purchasers provide appropriate indemnifications for any claims arising out of such approvals.
9. **Notices and Points of Contact.** The parties hereby designate the following points of contact for implementation of this MOU. Any notice required to be given under this MOU shall be sufficient if hand-delivered, mailed or sent prepaid by commercial overnight delivery services as follows, or to such other addresses as the affected parties shall specify in writing:

City:

City of Mountain View
Attention: City Manager
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

With a copy to:

City of Mountain View
Attention: City Attorney
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

District:

Los Altos School District
Attention: Jeffrey Baier, Superintendent
201 Covington Road
Los Altos, CA 94024
E-mail: jbaier@lasdschools.org

With a copy to:

Arent Fox LLP
Attn: Timothy A. Tosta
55 2nd Street, 21st Floor

AFDOCS/17524985.1

San Francisco, CA 94105
E-Mail: tim.tosta@arentfox.com

10. Miscellaneous Provisions.

- 10.1. Amendment.** This MOU may be amended only by a subsequent writing signed by the Parties.
- 10.2. Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original; however all such counterparts shall constitute but one and the same instrument with the Effective Date hereof being the date set forth above.
- 10.3. Assignment.** This MOU is personal to the District and shall not be assigned by the District at any time without the written consent of the City. The City reserves the right to approve or deny such an assignment in its sole and absolute discretion.
- 10.4. Authorized Signatures.** Unless otherwise specified in this MOU, the City Manager or his/her written designee shall be the sole party authorized to act on behalf of the City with regard to this MOU. The District's Superintendent or his/her written designee shall be the sole party authorized to act on behalf of the District with regard to this MOU.
- 10.5. Entire Agreement.** This MOU contains the entire understanding between the parties with respect to the subject matter of this MOU. There are no representations, agreements or other understandings between or among the parties relating to the subject matter of this MOU which are not fully expressed above.

(Signatures on Following Page)

IN WITNESS WHEREOF, this MOU is executed by the City of Mountain View and the
Los Altos School District.

"District"

LOS ALTOS SCHOOL DISTRICT


By: 
Jeffrey Baier, Superintendent

"City"

CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California

By: 
Daniel H. Rich, City Manager

Attest:

By: 
City Clerk, City of Mountain View

Approved as to Form:

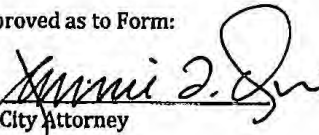
By: 
City Attorney

EXHIBIT B-1

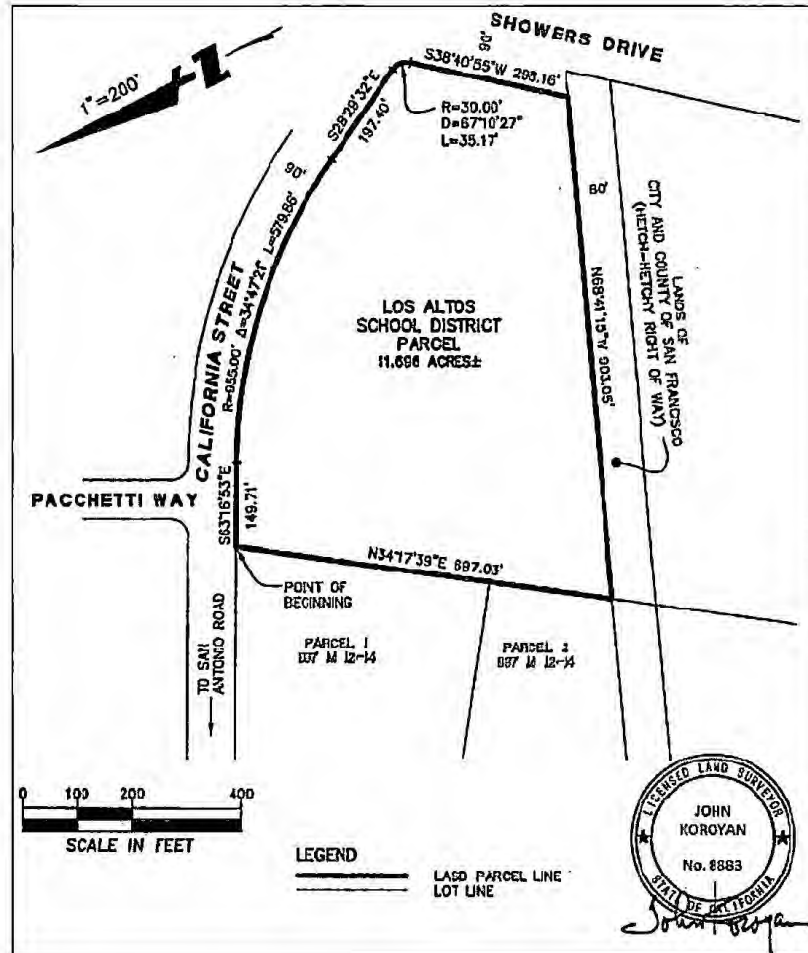
LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Mountain View, County of Santa Clara, State of California, described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF THAT CERTAIN 25.11 ACRE TRACT DESCRIBED IN THE DEED FROM J. W. SEITZ, ET UX, TO GUY W. MEEKS, ET AL, DATED JULY 20, 1955 AND RECORDED JULY 25, 1955 IN BOOK 3233 OF OFFICIAL RECORDS, PAGE 351, WITH THE SOUTHERLY LINE OF CALIFORNIA STREET AS ESTABLISHED BY EASEMENT DEED TO THE CITY OF MOUNTAIN VIEW DATED JANUARY 31, 1961 AND RECORDED APRIL 05, 1961 IN BOOK 5126 OF OFFICIAL RECORDS, PAGE 176, THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID SOUTHERLY LINE OF CALIFORNIA STREET THE FOLLOWING COURSES AND DISTANCES: SOUTH 64° 18' EAST 149.48 FEET; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT, TANGENT TO THE LAST DESCRIBED COURSE, HAVING A RADIUS OF 955 FEET, A CENTRAL ANGLE OF 34° 47' 21", AN ARC DISTANCE OF 579.86 FEET; THENCE SOUTH 29° 30' 30" EAST 197.94 FEET; THENCE SOUTHERLY ALONG A CURVE TO THE RIGHT, TANGENT TO LAST DESCRIBED COURSE, HAVING A RADIUS OF 30 FEET A CENTRAL ANGLE OF 67° 11' 29" AN ARC DISTANCE OF 35.28 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SHOWERS DRIVE AS ESTABLISHED BY EASEMENT DEED TO THE CITY OF MOUNTAIN VIEW, DATED APRIL 12, 1962 AND RECORDED APRIL 19, 1962 IN BOOK 5545 OF OFFICIAL RECORDS, PAGE 475; THENCE ALONG SAID LAST NAMED LINE SOUTH 37° 40' 50" WEST 297.59 FEET TO A POINT ON THE NORTHEASTERLY LINE OF THAT CERTAIN 80 FOOT STRIP OF LAND CONVEYED IN THE DEED FROM JOSEPH W. SEITZ, TO THE CITY AND COUNTY OF SAN FRANCISCO, DATED JULY 13, 1950 AND RECORDED JULY 20, 1950 IN BOOK 2018 OF OFFICIAL RECORDS, PAGE 444, THENCE ALONG THE NORTHEASTERLY LINE OF SAID 80 FOOT STRIP NORTH 69° 43' 31" WEST 903.41 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID 25.11 ACRE TRACT HEREINABOVE REFERRED TO; THENCE ALONG LAST NAMED LINE NORTH 33° 16' 56" EAST 697.12 FEET TO THE POINT OF BEGINNING.

AFDOCS/21861504.3

EXHIBIT B-2
DEPICTION OF PROPERTY



AFDOCS/21861504.3

EXHIBIT C
PROPERTY TRANSFER AGREEMENT
[See Attached]

AFDOCS/21861504.3

Exhibit B

**FUNDING AND JOINT USE AGREEMENT
By and Between
LOS ALTOS SCHOOL DISTRICT
And
CITY OF MOUNTAIN VIEW**

THIS FUNDING AND JOINT USE AGREEMENT ("Agreement") is made April 29, 2019, by and between the LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("City"), herein referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real; and

WHEREAS, the District is negotiating the acquisition of real property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity; and

WHEREAS, in addition to locating a new school facility in the SAPP, the acquisition of additional park space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents as the area is entirely built-out and the current real estate market has made the creation of new parks and recreational facilities particularly challenging as the cost of the land continues to increase; and

WHEREAS, the Mountain View 2030 General Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development; and

WHEREAS, the City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a school site, while creating new playing fields and recreational facilities that would also be available for neighborhood use; and

WHEREAS, District intends to acquire an approximately 11.65 acre site within the City of Mountain View ("Property") which site will be large enough to provide for: (1) an approximate 2.0-acre open space for a community park and recreational facilities ("Open Space Park"); (2) an area for school facilities, buildings, and other improvements to house and further the educational programs of the students ("School Area"); and (3) an additional approximate 4.0 acres for athletic fields, playground structures and facilities to be used by the School in furtherance of the educational programs and by the City for community recreational purposes ("Joint Use Area"); and

WHEREAS, the City desires to facilitate the development of the Property and create opportunities for newly public accessible open space and recreational facilities and to that end will contribute funds towards acquisition and development of the Property ("City's Financial Contribution"), plans to use the Joint Use Area when not in use by the District for its educational program, and intends to develop and operate the Open Space Park for the community; and

WHEREAS, collectively, the School Area and Joint Use Area are referenced as the "School Site." The approximate location of the Property, including general concepts and layout for the School Site are provided on the attached Exhibit A. The Open Space Park will not be part of the School Site and will be acquired by the City from the District for operation as a community park as further detailed in a separate more definitive Transfer Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the funding and joint use provisions for City's use of portions of the School Site for public recreation purposes and to allocate maintenance responsibilities, and to agree to any other terms; and

WHEREAS, under Section 35160 of the Education Code, the governing board of a school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established; and

WHEREAS, Chapter 10 of Division 1 of the Education Code, commencing with Section 10900 (Community Recreation Programs), authorizes cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of community recreation which will contribute to the attainment of general recreational and educational objectives for children and adults of this State and accordingly enter into an agreement to carry out those purposes.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and City agree as follows:

AGREEMENT

Section 1. Approval of Agreement. This Agreement shall be approved or ratified by the City Council of the City and the District's Board of Trustees ("Board"), and fully executed by both Parties. Notwithstanding the same, this Agreement is subject to District's acquisition of the Property and shall be terminated as set forth in Section 15 below in the event the District is unable to acquire the Property within two (2) years of the Effective Date of this Agreement (as defined in Section 6 below).

Section 2. Title to the Property. The Parties acknowledge that title to the School Site, which includes the School Area and Joint Use Area, is or will be held by District during the entire "Term" of this Agreement, as that term is defined below in Section 6. All improvements to the realty installed by either Party on the School Area or Joint Use Area shall be and remain the property of the District.

Section 3. Property, School Site and Open Space Park.

(a) Property. The Property consists of an approximate 11.65 acre portion of the San Antonio Center, and is more particularly described and depicted on Exhibit A.

(b) School Site. The School Site, comprised of the School Area and Joint Use Area, consists of approximately 9.65 acres of the Property.

(i) The School Area of the School Site is generally depicted on Exhibit A, and the facilities shall include all classrooms, buildings, gymnasium(s), improvements, and facilities the District determines, in its sole discretion, is necessary to

provide educational instruction in accordance with its approved educational program for its students, which will include a parking lot and gymnasium.

(II) The Joint Use Area consists of an approximate 4-acre portion of the School Site and is generally depicted on Exhibit A. Any improvements and facilities located on the Joint Use Area shall be at the District's sole, reasonable discretion, with reasonable review by the City. Facilities located on the Joint Use Area will include Athletic fields, including a track, soccer and baseball field and may also include:

- (1) Playground facilities, appropriate for middle school-age students.
- (2) Tot lot, appropriate for toddler-age children.
- (3) Outdoor classroom areas.
- (4) Outdoor basketball courts.

Any specific upgrades to the facilities on the Joint Use Area desired by the City shall be solely funded by the City, outside of City's Financial Contribution, based on the Parties' mutual agreement of plans and cost parameters.

(c) Open Space Park. The Open Space Park consists of an approximate 2.0-acre portion of the Property, and will be more particularly defined as part of the District and City's master planning process set forth in Section 8(a) below. Once the Open Space Park property is transferred to the City pursuant to a separate more definitive Transfer Agreement, it will be designed, developed and operated exclusively by the City, at its sole cost and expense.

Section 4. City Financial Contribution. In consideration for the Parties mutual planning, use and operation of the Property, City agrees to make a financial contribution to the acquisition of the Property as follows:

(a) Contribution Amount. The City will contribute approximately Six Million Dollars (\$6,000,000) per acre toward the purchase of the Joint Use Area of the Property, which amount shall not exceed Twenty-Three Million Dollars (\$23,000,000). This contribution shall be referred to herein as the City's "Financial Contribution."

(b) Deposit of Contribution. The City shall deposit its Financial Contribution into an escrow established by the District a minimum of five (5) days before the close of escrow on the District's acquisition of the Property. In order to facilitate timely transfer of the City's Financial Contribution, the District shall provide the City with twenty-one (21) days' notice of the anticipated date for close of escrow on the Property.

(c) Return of Contribution. If District is unable to complete the close of escrow on the Property within two (2) years of the Effective Date of this Agreement (as defined in Section 6 below), any portion of the City's Financial Contribution held by the District or in escrow for the benefit of the District shall be immediately returned to the City along with any interest that has accrued.

Section 5. Term.

(a) Agreement Term. The term of the Agreement shall commence as of the date this Agreement is fully executed by the Parties ("Effective Date"). The term of this Agreement shall expire in (99) years, or for as long as the District is the owner of the School Site, subject to the City's right of first refusal as set forth in Section 6(a) below ("Term").

(b) Term Binding on Subsequent Lessees. The Parties understand that this Agreement may not be terminated for any reason during the Term, except as set forth in the termination provisions contained herein at Section 15, and that the Parties shall have use of the School Site in accordance with the terms of this Agreement throughout the Term. It is also expressly understood that the City's right to use the Joint Use Recreational Facilities will remain in full force and effect in the event of a lease of the School Site to a third party, which lease shall be subordinate to City's use rights.

Section 6. Disposition of School Site(a) City's Right of First Refusal Prior to Term Expiration

(i) Credit. Should the District elect to sell the School Site during the term of this Agreement, the District shall notify the City of its intent to dispose of the School Site at least ninety (90) days in advance of the anticipated public offering. The City shall have the right of first refusal to purchase the School Site to the extent permitted by law. If the City elects to purchase the School Site, it shall receive a credit towards the fair market value of the Property for the value of the City's Financial Contribution on an amortized basis, as set forth in the Amortization Schedule contained in Exhibit B attached hereto.

(ii) Purchase Price. If the City exercises its right of first refusal, the purchase price for the School Site shall take into consideration the then existing development rights of the School Site, as well as the impact of any transfer of development rights encumbering the School Site pursuant to that certain Memorandum of Understanding Between the City of Mountain View and Los Altos School District (Transfer of Development Rights Program), effective on January 29, 2019, attached hereto as Exhibit C.

(iii) Appraisal Process. The fair market value of the School Site shall be determined by agreement between City and District. The fair market value shall be based on the highest and best use of the property, giving no recognition to any school use, but shall consider the remaining development rights on the property at the time of value. Within sixty (60) days after District provides written notice to City of its intent to offer the property to the City under City's right of first refusal, City and District each, at its cost and by giving notice to the other party, shall appoint a competent M.A.I. real estate appraiser, unlikely to be unduly influenced by either party, with at least ten (10) years' commercial appraisal experience in Santa Clara County and set the fair market value for the School Site.

If either City or District does not appoint an appraiser within then (10) days after the other party has given written notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the fair market value. If two (2) appraisers are appointed by City and District, they shall meet promptly following completion of their respective appraisal reports and attempt to set the Fair Market Value. If the two (2) appraisers are unable to agree within thirty (30) days after the second appraiser has been

appointed, they shall attempt to select a third appraiser meeting the qualifications stated in this subsection within ten (10) days after the last day the two (2) appraisers are given to set fair market value. City and District each shall bear one-half (1/2) of the cost of appointing the third appraisers' fee. The third appraiser, however selected, shall be a person who is unlikely to be unduly influenced by either party. Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers shall set the fair market value.

The appraisal process set forth in this Section shall be conducted by the Parties whether or not the City exercises its right of first refusal to purchase the School Site.

(b) City's Right to Proceeds of Disposition of the School Site. In the event the District disposes of the School Site during the term of this Agreement, and the City does not exercise its first right of refusal to acquire the School Site, then the City shall receive a portion of the proceeds from such disposition in recognition of the City's proportional contribution to the acquisition of the School Site as follows:

(i) If the highest and best use of the School Site is continued use of the then existing facilities, as determined during the appraisal process set forth in Section 6(a)(iii) above, then the City will receive 21% of the gross proceeds from the sale attributable to the value of the land only; provided, however, that to the extent the City contributes toward the cost of construction, replacement and/or Major Maintenance (as defined in Section 11 below) of any improvements located on the School Site, then the City shall receive a pro-rata share of the value of such improvements based on the amount of the City's contribution.

(ii) If the highest and best use of the School Site is something other than continued use of the then existing facilities, as determined during the appraisal process set forth in Section 6(a)(iii) above, then the City will receive 21% of the value of all gross proceeds from the sale.

Section 7. Development of the School Site. The School Site will be used to serve the Mountain View community surrounding the School Site in order to accommodate the increased enrollment from development in the area north of El Camino. To that end, District agrees the school will serve one or a combination of:

- (a) An elementary school open to neighborhood students;
- (b) A junior high school open to neighborhood students; and/or
- (c) A choice or charter school if it has a preference for neighborhood students.

The school should be substantially similar in size/student enrollment to that of other District schools serving the same population in other areas of the District and based on the District's school targets as set forth in its policies. The school developed on the School Site shall be referred to herein as the "School."

The Parties understand and agree that the District shall retain the right to deem the School Site surplus. In the event the School is no longer needed for educational purposes. In the event the District deems the School as surplus or no longer needed for educational purposes, the District shall have the right to lease or sell the School Site pursuant to the applicable surplus property disposition laws and regulations.

Should the District use the School Site for a school use other than described above, the City, in its sole discretion, may elect to terminate the Agreement in accordance with the Termination provision set forth in Section 15 below and be entitled to reimbursement from the District of the applicable pro-rata share of the City's Financial Contribution as specified in Amortization Schedule contained in Exhibit B.

Section 8. Development of the Joint Use Area.

(a) Joint Use Area Master Planning. The District will invite the City of Mountain View to partner with it to master plan the Joint Use Area, including cooperating on preparation of the Environmental Impact Report in compliance with the California Environmental Quality Act. The Parties expressly recognize and agree that any and all improvements constructed on the School Site must be approved by all applicable state agencies, including the California Department of Education, Division of State Architect, Division of Toxic Substance Controls, State Allocation Board and/or Office of Public School Construction.

(b) Early Development of Joint Use Area. In the event the School is not constructed and open by September 30, 2024, the District agrees to develop and permit City use of the Joint Use Area by that time. The improvements to be developed in the Joint Use Area and for this specific purpose do not include the gymnasium ("Gym"). The Gym will be constructed as part of the construction of the School.

Section 9. Use of School Site.

(a) School Area. With the exception of the Gym, the District shall have exclusive use of the School Area of the School Site at any and all times. City may request use of the School Area in accordance with Section 10(b) below.

(b) Joint Use Area and Gym. Use of the Joint Use Area and Gym shall be designated as follows:

(i) District Use. The District shall have exclusive use of: (1) the Gym and (2) all facilities and improvements located on the Joint Use Area of the School Site, collectively referred to as the "Joint Use Recreational Facilities" on all days that school is in session ("School Days"), between the hours of 6:00 a.m. until all school-sponsored activities are concluded, ("School Hours"). During School Hours, District will be solely responsible for scheduling the use of, and for the security of and any liability within the Joint Use Area.

(ii) City Use. The City shall have use of the Joint Use Recreational Facilities during all non-School Days and during all non-School Hours including the summer for operation of recreational programs serving the community. City's right to use and operate the Joint Use Recreational Facilities shall remain in full force and effect throughout the Term of this Agreement.

Section 10. Master Schedule for Use of Facilities.

(a) Scheduling Joint Use Recreational Facilities.

(i) Annual Meetings. District and City shall establish a master schedule of facilities, dates, and times ("Master Schedule") for the use of the Joint Use Recreational Facilities at semi-annual scheduling meetings. The first meeting shall occur on

or before August 1 of each year. The purpose of the first scheduling meeting shall be to coordinate the schedule for each Party's uses of the Joint Use Recreational Facilities in the upcoming academic year for the School Site and to avoid conflict between District, City, and third-party users, to resolve any issues concerning maintenance or renovation of the Joint Use Recreational Facilities, and to address any of the Parties' concerns or issues arising under this Agreement. On or before June 1st of each year, the District shall provide City with the calendar for the school year beginning that fall. On or before January 1 of each year, the District shall notify City of any changes to the calendar for the School Site for the period of January to June. The Parties will also meet as needed to discuss any necessary repairs or maintenance issues, ongoing scheduling and/or use issues associated with the Joint Use Recreational Facilities.

(ii) Scheduling of Public Use of Facilities. City shall have exclusive authority to program and schedule use of the Joint Use Recreational Facilities by members of the public or other third parties during all times that City is permitted to use said Joint Use Recreational Facilities.

(b) Scheduling Use of District's School Area Facilities. The City, when desiring to use a facility on the School Area of the School Site, other than the Gymnasium (i.e., classrooms, multi-purpose rooms, etc.), shall comply with the requirements of the Civic Center Act, or the then existing laws governing use of District facilities.

(c) Further Amendment to Agreement. The Parties recognize and acknowledge that planning and development of the School are in the preliminary stages. As the District has not made a final determination as to the type of School that will be constructed on the School Site, the use provisions contained in the Agreement, including Sections 9 and 10, are likewise preliminary and intended to establish baseline parameters of use. Once the specific type of School that will operate on the School Site is defined and constructed, this Agreement shall be amended to modify the use provisions consistent with applicable school type and projected use.

Section 11. Custodial Services, Maintenance, and Repairs. Each Party agrees to exercise care in the use of and to repair any damage to the School Site, except for damage arising from ordinary wear and tear. The general terms for maintenance, repair, and upkeep are set forth below.

(a) Routine Maintenance and Repairs. Routine maintenance and repairs, as used in this Agreement, includes all routine maintenance and custodial services required to keep and maintain the School Area, Gym and Joint Use Area in good, clean, orderly condition, and shall be allocated between the Parties as follows:

(i) School Area. District shall be solely responsible for custodial services, routine maintenance, operations, and upkeep of the School Area, except the Gym, at its own cost and expense. District's obligations and responsibilities under this Section shall be to District-wide standards and policies and in accordance with applicable laws and regulations.

(ii) Gym. It is the intent of the Parties to share equally in the costs of custodial services, routine maintenance and repairs of the Gymnasium. The parties shall meet annually on or about February 1st to establish and agree to a maintenance plan for the gym. The maintenance plan shall identify the annual routine maintenance obligations of the parties.

(III) Joint Use Area. The City shall provide for the upkeep of the Joint Use Area, including custodial services and routine maintenance, at its sole cost and expense.

(b) Vandalism.

(I) School Area. District shall be responsible for repairing any damage to the School Area, with the exception of the Gym, caused by vandalism.

(II) Joint Use Area. Each Party shall be responsible for repairing any damage to the Joint Use Recreational Facilities by vandalism that occurs during that Parties' use of the Joint Use Recreational Facilities. If the Parties cannot determine when such vandalism occurred, the Parties will share equally the cost of repairing the damage.

(c) Major Repairs and Deferred Maintenance. Major repairs and deferred maintenance, as used in this Agreement, includes major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and flooring systems, the exterior and interior painting of buildings, drainage systems and/or structural elements of permanent improvements ("Major Maintenance"), and shall be allocated between the Parties as follows:

(I) Joint Use Recreational Facilities. During the Annual Meetings described in Section 10(a)(1) above, the District and City shall discuss repair and maintenance needs for the Joint Use Recreational Facilities. If the Parties determine that Major Maintenance is required for any of the Joint Use Recreational Facilities, the Parties shall use good faith efforts to plan, schedule and fund such expenses to the extent financially feasible for each Party and subject to the approval and appropriation by each Party's respective governing body.

(II) School Area. The District shall be responsible, at its sole cost and expense, for all Major Maintenance of the School Area; provided, however, that the Gym shall be included in the planning for Major Maintenance for the Joint Use Recreational Facilities as set forth in Section 11(c)(1) above.

(d) Other Terms.

(I) Each Party shall keep the property in the Joint Use Area and the Joint Use Facilities under its control in neat order, shall promptly remove all trash, refuse, garbage, and debris of any kind from the property and, as needed, shall provide a sufficient number of receptacles in the area for trash disposal.

(II) Each Party shall make available to the other Party any information and/or documents related to accidents, injuries, damage to property, or other incidents occurring on the Property of which it receives notice or becomes aware.

(III) Either Party may, at the expense of the responsible Party, correct or repair any hazardous or dangerous condition of real property in the Joint Use Area after reasonable written notice to the Party responsible for correction of the hazardous or dangerous condition and that the responsible Party's failure to take reasonable measures to correct or repair the condition or to commence the process of correcting or repairing the hazardous or dangerous condition and opportunity to take corrective measures.

(iv) The Parties shall address any concerns or issues regarding maintenance or upkeep during the scheduling meetings referenced at Section 10(a)(1), including discussion about supplementing or replacing equipment located within the Joint Use Area.

Section 12. Utilities. Payment for utility costs to the School Site shall be allocated as follows:

(a) School Area. The District shall pay all utility costs, including irrigation, attributable to the School Area, except the Gym.

(b) Gym.

(i) During the academic year, the Parties shall share equally in the costs of all utilities serving the Gym. The Gym utility costs shall be calculated based on the pro-rata share of the costs of utilities for the entire School Area. Alternatively, the Gym may be separately metered and the costs split equally between the City and District.

(ii) During the non-school days during the summer and holiday periods of one (1) week or more, the City shall be solely responsible for the costs of utilities attributable to the Gym.

(c) Joint Use Area. The City shall be solely responsible for the costs of utilities serving the Joint Use Area. All utilities for the Joint Use Area will be separately metered.

Section 13. Improvements or Alterations. City shall not construct or cause to be constructed on the School Site any improvements or alterations of any kind without the prior written approval of District's Board.

Section 14. Alternative Dispute Resolution.

(a) Designation of Liaisons. Within ninety (90) days of the Effective Date of this Agreement, each Party shall designate a liaison ("Liaison") to act as a representative in resolving any issues or disputes arising out of this Agreement, including, but not limited to, the use, maintenance, repair or other issues related to the Joint Use Recreational Facilities.

(b) Alternative Dispute Resolution Process. Prior to either Party exercising its right to terminate this Agreement pursuant to Section 15 below, the Parties must exhaust all of the steps in this Alternative Dispute Resolution Process.

(c) Informal Meet and Confer. The Liaison for the complaining Party must first initiate an informal meet and confer with the Liaison for the other Party within thirty (30) days of receiving notice from the other party of a material breach of this Agreement.

(d) Formal Meet and Confer. If the Liaisons are unable to resolve a dispute through the informal meet and confer process, then the City Manager or his or her designee shall meet with the District Superintendent to make a good faith effort to resolve the dispute. This meeting shall take place within five (5) business days of the Liaison's meeting.

(e) Formal Dispute Resolution. If the City Manager and the District Superintendent are unable to resolve a dispute through the formal meet and confer process

set forth above, the dispute shall be subject to a dispute resolution process agreed to by the both Parties (i.e., mediation) before either party may initiate any litigation to resolve the dispute. The Parties shall agree upon a dispute resolution process no later than ten (10) business days following the conclusion of an unsuccessful formal meet and confer process.

Section 15. Termination.

(a) Notice and Opportunity to Cure. A party may only terminate this Agreement based on a failure to cure a Material Breach, provide it has provided notice of the material breach to the other party and an opportunity to cure for ninety (90) days following notice of the material breach. In addition the terminating party must participate in all of the steps in the Alternative Dispute Resolution Process.

(b) Termination for Cause. Either Party may terminate this Agreement based on the material violation of this Agreement by the other Party if such violation shall continue for ninety (90) days after written notice is given by either Party to the other Party of such violation. Material violations of this Agreement expressly and solely include violations of Section 5 (City Financial Contribution), Section 6 (Term), Section 7 (Development of School Site), Section 8 (Development of Joint Use Area), Section 9 (Use of School Site), Section 11 (Repair and Maintenance), Section 13 (Improvements and Modifications) and Section 16 (Compliance with Laws) [individually or collectively referred to herein as "Material Violation(s)"].

(c) In the Event of Material Violation and/or Termination:

(i) Available Remedies. In the event of a Material Violation, the aggrieved Party may exercise its right to terminate the Agreement pursuant to Section 15(a) above, or may seek any and all remedies available to it under the law, including, but not limited to, filing an action for specific performance, injunctive or declaratory relief.

(ii) Surrender of Joint Use Area. Upon expiration or earlier termination of this Agreement, City shall be responsible for restoring the Joint Use Area, and other portions of the School Site that were affected by City's occupancy during the Term, to a neat and clean condition with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on District's title.

(iii) District Reimbursement to City. In the event of termination, due to a Material Violation by District, District shall make reimbursement payments to the City, based on the City's Financial Contribution on an amortized basis in accordance with the Amortization Schedule attached hereto as Exhibit B.

Section 16. Compliance With Laws.

(a) Applicable Laws. In using the Joint Use Recreational Facilities under this Agreement, each Party agrees to comply with all applicable laws, rules, regulations, and ordinances. The Parties acknowledge and agree that use of School Site Area, excluding the Gymnasium, shall be in accordance with the procedures and policies established by the District for use of District facilities, including the Civic Center Act (Education Code section 38130 et seq.) and the fingerprinting and criminal background investigation requirements of Education Code section 10911.5, as applicable. Use of the Joint Use Facilities shall be in accordance with Education Code section 10900 et seq. (Community Recreation Programs) and the policies, rules, and ordinances of the City. Neither the Master Schedule, as

amended from time to time, nor any portion of the Agreement shall require or allow use of any of the School Site contrary to the laws governing school property and facilities.

(b) Fingerprinting and Criminal Background Investigations. Prior to each individual's commencement of assignment to or involvement in programs on the School Site whether City programs, City-sponsored activities or events, or activities or events sponsored by a City-affiliated or City-authorized organization, City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements under state law. Verification of compliance with this section shall be provided in writing to the District upon request.

(c) Alcoholic Beverages/ Illegal Drugs/ Noise/ Animals/ Harmful Substances. Any uses which involve the serving and/or sale of alcoholic beverages or illegal drugs and/or the conducting of games of chance are prohibited on the Property, unless such use has received prior written approval in accordance with the provisions of Section 25608 of the Business and Professions Code. City shall comply with the District-wide policy prohibiting the use of tobacco products on the School Site at all times. Parties shall not use or permit the use of the Property or any part thereof for any purpose which is inimical or contrary to public morals and/or welfare or morally objectionable as unsuitable for a public educational facility. City agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the City's programs, Open Space Park or use of the School Site for City purposes. Parties agree to not commit or suffer to be committed, any waste upon the Property, or allow any sale by auction upon the Property, or allow the Property to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property except in trash containers designated for that purpose.

Section 17. Mutual Hold Harmless/Indemnification.

To the fullest extent permitted by California law, each Party shall defend, indemnify, and hold harmless the other Party, its governing body and members thereof, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the other Party, its agents, contractors, employees, representatives, officers, servants, concessionaires, or volunteers in conjunction with the performance of this Agreement, unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against said Party, the other Party, upon written notice from the other, shall defend the same at its expense by counsel approved in writing by the Indemnified Party.

Section 18. Insurance.

(a) Commercial General Liability Insurance. The Parties shall maintain commercial general liability insurance, covering all of the Parties' operations regarding this Agreement, with a combined single limit of not less than Two Million Dollars (\$2,000,000).

(b) Motor Vehicle Liability Insurance. The Parties shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-

owned, and hired) used pursuant to this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Workers' Compensation Insurance. Each Party shall maintain a workers' compensation plan covering all of its employees as required by Section 3700 of the Labor Code, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations.

(d) Employer's Liability Coverage. Each Party shall maintain employer's liability coverage for each employee who is subject to this Agreement. That policy shall provide employer's liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per occurrence. City's Equipment Insurance. City acknowledges that the insurance to be maintained by District on the School Site will not insure any City-owned equipment, property or any improvements made by City on the Joint Use Area or located within the Gym. Accordingly, City shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by City and personal property in, about, or on the Joint Use Area or Gym. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of City's property.

(f) Self-Insurance. If either Party elects to be self-insured, in lieu of providing proof of insurance, that Party shall provide proof of self-insurance satisfactory to the other Party and meeting the requirements imposed herein, which can include a consent to self-insure issued by the State Director of Industrial Relations. Either Party providing proof of self-insurance warrants that the self-insurance provides substantially the same protection as the insurance required herein. Each Party further agrees to notify the other Party in the event any change in self-insurance occurs that would alter the obligations undertaken in this Agreement within thirty (30) days of the change.

(g) Other Requirements. Without limiting the Parties' duties of indemnification, the Parties each shall comply with the following insurance coverage requirements:

(i) Each policy shall be issued by a company authorized by law to transact business in the State of California.

(ii) Each policy shall provide that the Parties shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.

(iii) Comprehensive motor vehicle and commercial general liability policies shall each provide an endorsement naming the other Party, and its officers, agents, representatives and employees as additional insured.

(iv) Each Party shall provide an endorsement that the insurer waives the right of subrogation against the other Party, and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

(v) The required coverage and policy limits shall be maintained in effect throughout the Term and may be adjusted by each Party pursuant to legally required or commercially reasonable practice for property with the same or similar uses.

(vi) Certificates of Insurance. Upon execution of this Agreement, the Parties shall file certificates of insurance or consents to self-insure with each other, showing that they have in effect the insurance required by this Agreement. The Parties shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

Section 19. Cooperation with Other Occupants of the School Site. It is understood and recognized by City that the School Area may be used by other parties, including District, and City shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, and security measures, etc.

Section 20. Hazardous Materials. City and District agree as follows with respect to the existence or use of Hazardous Materials on or within the Joint Use Recreational Facilities:

(a) Definition. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Sections 66261.30 et seq.; (ii) defined as a "hazardous waste" pursuant to Section 6903 of the Federal Resource Conservation and Recovery Act (42 U.S.C., § 6901 et seq.), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C., § 9601 et seq.). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Health Services, and the California Department of Toxic Substances Control), which regulates the use, storage, release, or disposal of any Hazardous Material.

(b) Storage of Hazardous Materials. Neither District nor City shall cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Property by District or City, or their agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom, gardening, and janitorial supplies (which shall be used and stored in strict compliance with the applicable Hazardous Materials Laws) utilized on the respective properties. Both Parties shall comply with all Hazardous Materials Laws.

(c) District Action. If the presence of Hazardous Materials on the School Site (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the District is responsible for that contamination under applicable law, then District shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the School Site or any part thereof.

(d) City Action. If the presence of Hazardous Materials on the Open Space Park (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the City is responsible for that contamination under applicable law, then City shall, at its sole cost and

expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Open Space Park or any part thereof.

(e) **Notice of Hazardous Materials.** District and City shall each give written notice to the other as soon as reasonably practicable of (I) any communication received from any governmental authority concerning Hazardous Materials which relates to the Property, and (II) any contamination of the Property by Hazardous Materials which constitutes a violation of any Hazardous Materials Law.

Section 21. Authorized Representative. Whenever any action, consent, approval, or agreement is required of either City or District within the terms of this Agreement, the City Manager of the City, or his or her designee, may act on behalf of the City and the Superintendent of the District, or his or her designee, may act on behalf of the District.

Section 22. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

LOS ALTOS SCHOOL DISTRICT
Attn: Superintendent
201 Covington Road
Los Altos, CA 94024
Facsimile: (650) 947-0118

CITY OF MOUNTAIN VIEW
Attn: City Manager
500 Castro Street
Mountain View, CA 94041
Facsimile: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective five (5) days after deposit in the United States mail.

Section 23. Sublease and Assignment. City shall not assign its rights, duties or privileges under this Agreement, nor shall City sublease or attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of District. Any such attempt without District written consent shall be void.

Section 24. Independent Contractor Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 25. Entire Agreement of Parties. This Agreement, together with the Memorandum of Understanding attached as Exhibit C and the Transfer Agreement contemplated in Section 3(c) above, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 26. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the County where the Property is located.

Section 27. Attorneys' Fees. The Parties shall each bear their own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with or as a result of this Agreement.

Section 28. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 29. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 30. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 31. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 32. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

Section 33. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

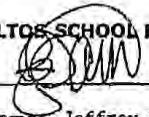
Section 34. Non-Discrimination. Each Party and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, national origin or physical handicap. The Parties shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, age, national origin or physical handicap. Each Party covenants to meet all requirements of pertaining to non-discrimination in employment. If either Party is found in violation of the non-discrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Agreement by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

ACCEPTED AND AGREED BY:

LOS ALTOS SCHOOL DISTRICT

CITY OF MOUNTAIN VIEW

By:  _____

By: _____

Print Name: Jeffrey Baier

Print Name: _____

Print Title: Superintendent

Print Title: _____

Date: April 29, 2019

Date: _____

Attest:

By: _____
City Clerk, City of Mountain View

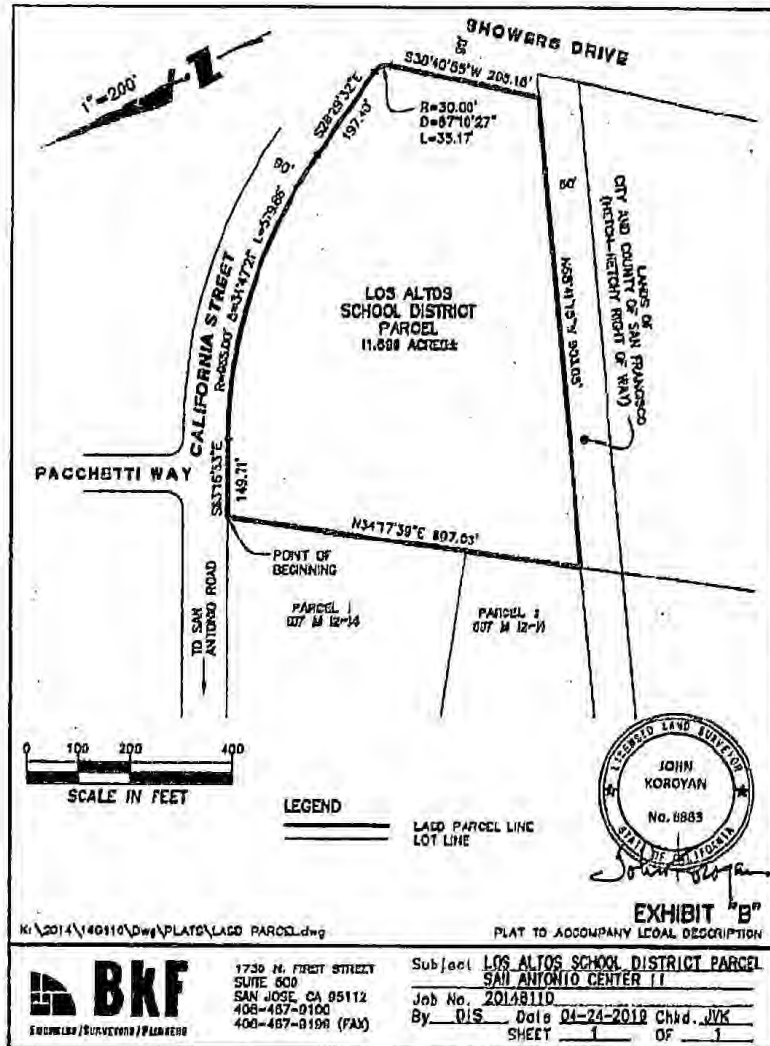
Financial Approval:

By: _____
Financial Director

Approved as to Form:

By: _____
City Attorney

EXHIBIT A
School Site



***School Site, School Area, Joint Use Area and Open Space Park Boundaries to be determined.**

EXHIBIT B
Amortization Schedule

The Parties recognize the City contributed \$23 million to assist the District in acquiring four acres of open space for the School Site to create joint use recreational facilities for a period of 99 years. In the event the City is not able to utilize the Joint Use Area and Joint Use Recreational Facilities for the entire term of the agreement due to a breach of a material term by the District, then the City would be entitled to reimbursement of its contribution in proportion to the number of years it is not able to use the Joint Use Area and Joint Use Recreational Facilities. In addition, if the Agreement is terminated at any time after the City provides funding to the District to acquire the School Site but prior to the City's use of the Joint Use Area and Joint Use Recreational Facilities, then the District would reimburse the City for its entire Funding Contribution. The amortization of the City's contribution will commence once the City begins to use the Joint Use Area and Joint Use Recreational Facilities.

In the event the District disposes of the school site during the term of this agreement and the City exercises its first right of refusal, this amortization schedule will also be used to determine the credit to be applied towards the City's purchase of the school site.

The Parties have agreed to value this contribution by dividing the City's contribution of \$23,000,000 by 75 years for an annual amount of \$306,666.72, in addition to maintenance responsibilities and obligations set forth in the agreement. The table below sets forth the amortization schedule.

Year of Use	Beginning Balance	Amortization	Reimbursement/Credit
1	\$23,000,000.00	\$306,666.72	\$22,693,333.33
2	\$22,693,333.33	\$306,666.72	\$22,386,666.67
3	\$22,386,666.67	\$306,666.72	\$22,080,000.00
4	\$22,080,000.00	\$306,666.72	\$21,773,333.33
5	\$21,773,333.33	\$306,666.72	\$21,466,666.67
6	\$21,466,666.67	\$306,666.72	\$21,160,000.00
7	\$21,160,000.00	\$306,666.72	\$20,853,333.33
8	\$20,853,333.33	\$306,666.72	\$20,546,666.67
9	\$20,546,666.67	\$306,666.72	\$20,240,000.00
10	\$20,240,000.00	\$306,666.72	\$19,933,333.33
11	\$19,933,333.33	\$306,666.72	\$19,626,666.67
12	\$19,626,666.67	\$306,666.72	\$19,320,000.00
13	\$19,320,000.00	\$306,666.72	\$19,013,333.33
14	\$19,013,333.33	\$306,666.72	\$18,706,666.67
15	\$18,706,666.67	\$306,666.72	\$18,400,000.00
16	\$18,400,000.00	\$306,666.72	\$18,093,333.33

17	\$18,093,333.33	\$306,666.72	\$17,786,666.67
18	\$17,786,666.67	\$306,666.72	\$17,480,000.00
19	\$17,480,000.00	\$306,666.72	\$17,173,333.33
20	\$17,173,333.33	\$306,666.72	\$16,866,666.67
21	\$16,866,666.67	\$306,666.72	\$16,560,000.00
22	\$16,560,000.00	\$306,666.72	\$16,253,333.33
23	\$16,253,333.33	\$306,666.72	\$15,946,666.67
24	\$15,946,666.67	\$306,666.72	\$15,640,000.00
25	\$15,640,000.00	\$306,666.72	\$15,333,333.33
26	\$15,333,333.33	\$306,666.72	\$15,026,666.67
27	\$15,026,666.67	\$306,666.72	\$14,720,000.00
28	\$14,720,000.00	\$306,666.72	\$14,413,333.33
29	\$14,413,333.33	\$306,666.72	\$14,106,666.67
30	\$14,106,666.67	\$306,666.72	\$13,800,000.00
31	\$13,800,000.00	\$306,666.72	\$13,493,333.33
32	\$13,493,333.33	\$306,666.72	\$13,186,666.67
33	\$13,186,666.67	\$306,666.72	\$12,880,000.00
34	\$12,880,000.00	\$306,666.72	\$12,573,333.33
35	\$12,573,333.33	\$306,666.72	\$12,266,666.67
36	\$12,266,666.67	\$306,666.72	\$11,960,000.00
37	\$11,960,000.00	\$306,666.72	\$11,653,333.33
38	\$11,653,333.33	\$306,666.72	\$11,346,666.67
39	\$11,346,666.67	\$306,666.72	\$11,040,000.00
40	\$11,040,000.00	\$306,666.72	\$10,733,333.33
41	\$10,733,333.33	\$306,666.72	\$10,426,666.67
42	\$10,426,666.67	\$306,666.72	\$10,120,000.00
43	\$10,120,000.00	\$306,666.72	\$9,813,333.33
44	\$9,813,333.33	\$306,666.72	\$9,506,666.67
45	\$9,506,666.67	\$306,666.72	\$9,200,000.00
46	\$9,200,000.00	\$306,666.72	\$8,893,333.33
47	\$8,893,333.33	\$306,666.72	\$8,586,666.67
48	\$8,586,666.67	\$306,666.72	\$8,280,000.00
49	\$8,280,000.00	\$306,666.72	\$7,973,333.33
50	\$7,973,333.33	\$306,666.72	\$7,666,666.67

51	\$7,666,666.67	\$306,666.72	\$7,360,000.00
52	\$7,360,000.00	\$306,666.72	\$7,053,333.33
53	\$7,053,333.33	\$306,666.72	\$6,746,666.67
54	\$6,746,666.67	\$306,666.72	\$6,440,000.00
55	\$6,440,000.00	\$306,666.72	\$6,133,333.33
56	\$6,133,333.33	\$306,666.72	\$5,826,666.67
57	\$5,826,666.67	\$306,666.72	\$5,520,000.00
58	\$5,520,000.00	\$306,666.72	\$5,213,333.33
59	\$5,213,333.33	\$306,666.72	\$4,906,666.67
60	\$4,906,666.67	\$306,666.72	\$4,600,000.00
61	\$4,600,000.00	\$306,666.72	\$4,293,333.33
62	\$4,293,333.33	\$306,666.72	\$3,986,666.67
63	\$3,986,666.67	\$306,666.72	\$3,680,000.00
64	\$3,680,000.00	\$306,666.72	\$3,373,333.33
65	\$3,373,333.33	\$306,666.72	\$3,066,666.67
66	\$3,066,666.67	\$306,666.72	\$2,760,000.00
67	\$2,760,000.00	\$306,666.72	\$2,453,333.33
68	\$2,453,333.33	\$306,666.72	\$2,146,666.67
69	\$2,146,666.67	\$306,666.72	\$1,840,000.00
70	\$1,840,000.00	\$306,666.72	\$1,533,333.33
71	\$1,533,333.33	\$306,666.72	\$1,226,666.67
72	\$1,226,666.67	\$306,666.72	\$920,000.00
73	\$920,000.00	\$306,666.72	\$613,333.33
74	\$613,333.33	\$306,666.72	\$306,666.67
75	\$306,666.67	\$306,666.72	\$0.00

EXHIBIT C

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MOUNTAIN VIEW & THE LOS ALTOS SCHOOL
DISTRICT
(TRANSFER OF DEVELOPMENT RIGHTS PROGRAM)**

This Memorandum of Understanding is entered into as of January 29, 2019 (the "Effective Date"), by and between the City of Mountain View ("City") and the Los Altos School District ("District") to establish a framework for the development of a transferrable development rights ("TDR") program for the mutual benefit of the City and the District.

RECITALS

A. The District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real. The District seeks to acquire property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity. The District anticipates that the new school facility will not utilize the majority of the building area allowed by the SAPP. If the District proceeds to acquire a site, it will pay a real estate market premium for potential building area that it cannot use.

B. Acquisition of additional park and open space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents. The area is entirely built-out and the current real estate market has made the creation of new parks, open space and recreational facilities particularly challenging as the cost of the land continues to increase.

C. The Mountain View 2030 General Plan and San Antonio Precise Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development.

D. The City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a School Site, while creating new playing fields and recreational facilities that would also be available for public use.

E. In order to facilitate the District's acquisition of a School Site and create opportunity for new publicly accessible open space and recreational facilities, the District and the City desire to create and implement an innovative program that would allow the District to transfer the School Sites' unutilized FAR to third-party buyers pursuant to a TDR program. The TDR program would allow third-parties within designated TDR receiving sites or with designated "Receiving Sites" to propose development projects for City review and approval to utilize additional floor area in excess of applicable zoning regulations in exchange for a financial contribution by prospective developers to the District. The District will apply the proceeds from the TDR purchases toward the costs of acquiring the new school and open space site, or construction of the new school and associated recreational facilities. The District will also execute an agreement with the City allowing public access to new recreational facilities that would be constructed on the School Site. To incentivize the purchase of TDRs, the program would allow potential buyers (evidenced by a signed letter of intent between the buyer and the District) to file Gatekeeper requests for receiving sites. City Council authorization of the

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Gatekeeper requests allows the buyers' development applications to be filed and reviewed by the City, while also enabling the District to acquire a school site and pursue necessary approvals and permits for a new school to proceed concurrently with the City's development application process for receiving site projects with authorized Gatekeeper requests.

F. The City also desires to contribute funding to the District from the City's Park Land Dedication In-Lieu Fee program in an amount to be determined to create new joint use open space, including playing fields and recreational facilities and help offset the cost of the District's construction of the new park and recreational facilities on the School Site. The specific terms and conditions of the City's funding contribution will be set forth in a more definitive agreement between the District and the City.

G. The District has already undertaken extensive negotiations with potential TDR purchasers and entered into letters of intent with eight prospective purchasers, five of whom have submitted Informal Gatekeeper development applications with the City.

H. On January 16, 2018, the City Council authorized the City Manager to execute this MOU based on an identified preferred School Site and directed staff to develop a master joint use agreement and funding agreement in furtherance of the objectives set forth above. At the same meeting, the City Council also authorized seven gatekeeper requests from prospective purchasers of TDRs for projects that are, as of the effective date of this MOU, developers with authorized Gatekeeper requests have either submitted applications and are undergoing review as part of the City's entitlement process or are expected to submit applications in the near future.

I. On May 22, 2018, the City Council authorized one additional gatekeeper request from a prospective purchaser of TDRs for a project that is, as of the effective date of this MOU, undergoing review as part of the City's development application process.

J. On June 26, 2018, the City Council authorized a change in the preferred School Site identified by the District to another location in the SAPP Area and directed staff to continue pursuing all remaining actions authorized on January 16, 2018, in connection with the proposed TDR program.

K. The parties desire to enter into this Memorandum of Understanding in order to establish the roles and responsibilities of the parties concerning the development and implementation of a TDR program to meet the objectives of both the District and the City, including but not limited to providing a measure of predictability and certainty for the District before it commits to the acquisition of a particular School Site.

AGREEMENT

I. **Purpose of this MOU:** This MOU is intended to provide a programmatic framework and set parameters for the TDR program in order to try to achieve the following objectives: (i) secure a site for a new District school facility within the City; (ii) add publicly accessible open space, including playing fields and recreational facilities to the City's park inventory; (iii) create a program that allows the District to monetize unused development rights associated with a new School Site; and (iv) outline the procedure for the distribution and requests to use TDRs as part of the City's development application process.

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2. Obligations of the District.

- 2.1. The District shall endeavor in good faith to select and acquire a School Site within the City sufficient to (i) accommodate its mandate to develop a new tenth school within the District's attendance boundaries, and (ii) accommodate the City's desire for significant new open space and recreational facilities for the public as part of the new school facilities.
- 2.2. The District shall enter into one or more agreements with the City in a form or forms to be agreed upon by the parties for the funding, development and use of the open space and recreational facilities to be developed on the School Site. These agreements shall require the District to allow public use of the open space and recreational facilities on such terms and during such times as mutually agreed upon by the Parties. The District shall insure that an executed letter of intent is available for any third party's submittal to City of a Gatekeeper application request to utilize TDRs.
- 2.3. The District shall be responsible for identifying prospective buyers of TDRs and negotiating a purchase price. The District has further developed a form "letter of intent" which the City has reviewed for prospective purchasers of TDRs.
- 2.4. The District shall comply with any requirements imposed by the City in order to document the creation of TDRs originating from the School Site, as well as to document the transfer of TDRs to eligible "Receiving Sites." Upon taking title to a School Site, and in connection with the purchase and sale of any TDRs to prospective purchasers with LOIs, the District shall record a restrictive covenant against the School Site, in a form acceptable to the City, restricting allowable development rights on the School Site, and consistent with applicable provisions of any conditions of approval (including but not limited to conditions in any development agreement) for a TDR Purchaser's project on the Receiving Site. The District also reserves the right to sell TDRs to prospective third-party purchasers with LOIs prior to the approval of a specific project using the same City approved form of restrictive covenant. No TDRs may be sold until the District has taken title to a particular School Site and recorded a restrictive covenant restricting allowable development rights on the School Site in a form that is acceptable to the City.
- 2.5. The District shall work in good faith with the City to implement the TDR program and address any issues arising out of the TDR program or this MOU, consistent with the objectives set forth in Section 1, including but not limited to developing documentation associated with the creation and redemption of TDRs arising from the School Site (e.g., a form of restrictive covenant and a certificate of transfer).

3. Obligations of the City.

- 3.1. During the term of this MOU, the City shall consider granting third-party development project applicants the right to enter into the City's Gatekeeper process subject to providing evidence of a signed letter of intent with the District to purchase future TDRs and the submittal of the required materials for a Gatekeeper request consistent with the City's Zoning Ordinance, and consider assigning staff and other resources in order to process applications for such third-party projects, including any General Plan

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amendments, rezoning requests or other necessary approvals or permits brought forward as part of an application that would be required in order to permit additional density associated with the application of TDRs purchased from the District. During the term of this MOU (and unless such term is extended by resolution or other action of the City Council), the City further agrees to facilitate a secondary market for TDRs by allowing prospective purchasers of unredeemed TDRs (e.g., in the event that a TDR purchaser is unable to apply the full amount of any purchased TDRs to an approved project) to submit a Gatekeeper application, subject to providing evidence of a signed letter of intent with the original TDR buyer to purchase future TDRs and the submittal of the required materials for a Gatekeeper request, consistent with the provisions set forth in Section 3.1 of this MOU.

- 3.2. Authorization of a Gatekeeper application for an eligible TDR Receiving Site project allows the project to proceed through the development review process. Neither the authorization of the Gatekeeper application nor any subsequent City actions related to the development and implementation of a TDR program pursuant to this MOU provide any assurance or implied "pre-commitment" to a particular project approval.
- 3.3. The City shall establish an internal procedure that would allow the auditing of TDRs purchased from the District and redeemed by prospective third-party buyers as part of a project located on a Receiving Site, which may include using the annual review process associated with any development agreements approved for specific projects utilizing TDRs.
- 3.4. The City will consider the purchase of TDRs a community benefit because it provides necessary capital for the purchase of a School Site and development of a public school with publically accessible open space and recreational facilities within the City of Mountain View. As such, the City will not impose any additional public benefit requirement on any floor area granted by virtue of the purchase of TDRs. However, nothing in this Section shall abrogate the City's rights to negotiate the terms of a Development Agreement for a particular project if a Development Agreement is sought by an applicant or impose any other exactions on a particular project, provided that such exactions do not relate to the granting of additional floor area through the redemption of TDRs on a TDR Receiving Site.
- 3.5. If the District acquires title to a School Site, then the City shall provide a funding contribution in an amount to be determined by the City to the District from the City's Park Land Dedication In-Lieu Fee reserve to facilitate the acquisition and construction of new open space and recreational facilities as part of the new school that would be available to the public during times when such facilities are not needed for school purposes. The terms and conditions of the City's funding contribution shall be set forth in a separate agreement between the City and the District.

4. Schedule and Milestones.

- 4.1. The District shall make good faith efforts to select a preferred School Site for a new school and commence the process of acquiring the School Site, targeting acquisition of the School Site in early 2019 and commencing the environmental review and entitlement

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process shortly thereafter. Prior to commencement of the entitlement process for the new school, the District shall coordinate with the City regarding the design of playing fields and recreational facilities.

- 4.2. The City shall make good faith efforts to commence processing any applications for projects within designated TDR Receiving Sites or zones that are granted Gatekeeper status pursuant to Section 3.1 of this MOU in a timely manner after submittal of the application in accordance with the City's Zoning Ordinance.
- 4.3. The City shall also work in good faith on the development of any documentation required to implement the TDR program.
- 4.4. The parties shall work in good faith to finalize separate agreements addressing the City's contribution of funds for new playing fields and recreational facilities in exchange for the joint use of those facilities prior to the District taking title to the new School Site.
5. **Funding.** This MOU is being entered into for the mutual benefit of the parties and each party intends to pursue the objectives set out in this MOU. While the parties intend to pursue the objectives defined in this MOU, this MOU does not constitute a commitment of funding or other resources by either party, and does not create any legally binding obligations. Any commitment of funds or other resources shall be made under a separate agreement or by resolution of the City Council or District Board of Trustees.
6. **Compliance with the California Environmental Quality Act:** The parties acknowledge that the endorsement of this MOU does not commit the District to select or acquire any particular School Site, nor commit the City to approving any particular project which may be eligible for receiving TDRs. The parties further acknowledge that this MOU does not foreclose the possibility of the City or the District considering alternatives to any specific proposal, potential mitigation measures, or future decisions to disapprove any particular project proposal until after conducting and completing appropriate environmental review under the California Environmental Quality Act ("CEQA"). While this MOU identifies certain essential terms of the proposed TDR program, it does not bind the City or the District to any specific terms or set forth all of the material terms and conditions that the parties anticipate will be developed over time. All future projects, including any Gatekeeper requests granted by the City for projects that have signed letters of intent with the District, would be subject to future environmental review as required by CEQA, as would any proposal advanced by the District once a School Site has been selected and a specific school proposal designated. The parties will not take any discretionary actions committing either the City or the District to a particular course of action with respect to any proposed project until the City and/or the District, in its capacity as a lead or responsible agency, has considered environmental documentation required by CEQA and adopted appropriate CEQA findings.
7. **Term and Effectiveness.** This MOU is at-will and may be modified by mutual consent of the City Council and the District Board of Trustees. This MOU shall become effective upon signature by the City Manager and District Superintendent and will remain in effect for a period of ten years from the Effective Date unless (i) modified or terminated by any one of the partners by mutual consent or (ii) the District does not acquire a School Site within eighteen months after the Effective Date, in which case this MOU shall terminate.

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automatically. In the event that any litigation is filed that delays District's ability to acquire title to a School Site beyond three years from the Effective Date, including but not limited to any eminent domain action filed by the District, then District shall be entitled to an automatic day-for-day extension (until final resolution of the litigation, including any appeals) for each day that District's acquisition of a School Site is delayed due to litigation.

8. **Indemnification.** District shall indemnify, defend and hold City and its elected and appointed officers, officials, employees, agents, and consultants (collectively, "Indemnitees"), harmless from and against any and all claims arising out of or in connection with the implementation of a TDR program pursuant to this MOU, with the exception of any claims that arise out of the approval of specific projects proposed by third-party TDR purchasers provided such purchasers provide appropriate indemnifications for any claims arising out of such approvals.
9. **Notices and Points of Contact.** The parties hereby designate the following points of contact for implementation of this MOU. Any notice required to be given under this MOU shall be sufficient if hand-delivered, mailed or sent prepaid by commercial overnight delivery services as follows, or to such other addresses as the affected parties shall specify in writing:

City:

City of Mountain View
Attention: City Manager
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

With a copy to:

City of Mountain View
Attention: City Attorney
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

District:

Los Altos School District
Attention: Jeffrey Baier, Superintendent
201 Covington Road
Los Altos, CA 94024
E-mail: jbaier@lasdschools.org

With a copy to:

Arcm Fox LLP
Attn: Timothy A. Tosta
55 2nd Street, 21st Floor

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San Francisco, CA 94105
E-Mail: tim.tosia@arentfox.com

10. Miscellaneous Provisions.

- 10.1. Amendment.** This MOU may be amended only by a subsequent writing signed by the Parties.
- 10.2. Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original; however all such counterparts shall constitute but one and the same instrument with the Effective Date hereof being the date set forth above.
- 10.3. Assignment.** This MOU is personal to the District and shall not be assigned by the District at any time without the written consent of the City. The City reserves the right to approve or deny such an assignment in its sole and absolute discretion.
- 10.4. Authorized Signatures.** Unless otherwise specified in this MOU, the City Manager or his/her written designee shall be the sole party authorized to act on behalf of the City with regard to this MOU. The District's Superintendent or his/her written designee shall be the sole party authorized to act on behalf of the District with regard to this MOU.
- 10.5. Entire Agreement.** This MOU contains the entire understanding between the parties with respect to the subject matter of this MOU. There are no representations, agreements or other understandings between or among the parties relating to the subject matter of this MOU which are not fully expressed above.

(Signatures on Following Page)

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IN WITNESS WHEREOF, this MOU is executed by the City of Mountain View and the Los Altos School District.

"District"

LOS ALTOS SCHOOL DISTRICT


By: 
Jeffrey Eiler, Superintendent

"City"

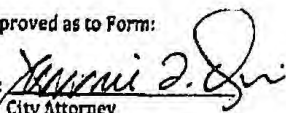
CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California

By: 
Daniel H. Rich, City Manager

Attest:

By: 
City Clerk, City of Mountain View

Approved as to Form:

By: 
City Attorney

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EXHIBIT D
FUNDING AND JOINT USE AGREEMENT
[See Attached]

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Exhibit B

FUNDING AND JOINT USE AGREEMENT
By and Between
LOS ALTOS SCHOOL DISTRICT
And
CITY OF MOUNTAIN VIEW

THIS FUNDING AND JOINT USE AGREEMENT ("Agreement") is made April 29, 2019, by and between the LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("City"), herein referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real; and

WHEREAS, the District is negotiating the acquisition of real property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity; and

WHEREAS, in addition to locating a new school facility in the SAPP, the acquisition of additional park space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents as the area is entirely built-out and the current real estate market has made the creation of new parks and recreational facilities particularly challenging as the cost of the land continues to increase; and

WHEREAS, the Mountain View 2030 General Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development; and

WHEREAS, the City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a school site, while creating new playing fields and recreational facilities that would also be available for neighborhood use; and

WHEREAS, District intends to acquire an approximately 11.65 acre site within the City of Mountain View ("Property") which site will be large enough to provide for: (1) an approximate 2.0-acre open space for a community park and recreational facilities ("Open Space Park"); (2) an area for school facilities, buildings, and other improvements to house and further the educational programs of the students ("School Area"); and (3) an additional approximate 4.0 acres for athletic fields, playground structures and facilities to be used by the School in furtherance of the educational programs and by the City for community recreational purposes ("Joint Use Area"); and

WHEREAS, the City desires to facilitate the development of the Property and create opportunities for newly public accessible open space and recreational facilities and to that end will contribute funds towards acquisition and development of the Property ("City's Financial Contribution"), plans to use the Joint Use Area when not in use by the District for its educational program, and intends to develop and operate the Open Space Park for the community; and

WHEREAS, collectively, the School Area and Joint Use Area are referenced as the "School Site." The approximate location of the Property, including general concepts and layout for the School Site are provided on the attached **Exhibit A**. The Open Space Park will not be part of the School Site and will be acquired by the City from the District for operation as a community park as further detailed in a separate more definitive Transfer Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the funding and joint use provisions for City's use of portions of the School Site for public recreation purposes and to allocate maintenance responsibilities, and to agree to any other terms; and

WHEREAS, under Section 35160 of the Education Code, the governing board of a school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established; and

WHEREAS, Chapter 10 of Division 1 of the Education Code, commencing with Section 10900 (Community Recreation Programs), authorizes cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of community recreation which will contribute to the attainment of general recreational and educational objectives for children and adults of this State and accordingly enter into an agreement to carry out those purposes.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and City agree as follows:

AGREEMENT

Section 1. Approval of Agreement. This Agreement shall be approved or ratified by the City Council of the City and the District's Board of Trustees ("Board"), and fully executed by both Parties. Notwithstanding the same, this Agreement is subject to District's acquisition of the Property and shall be terminated as set forth in Section 15 below in the event the District is unable to acquire the Property within two (2) years of the Effective Date of this Agreement (as defined in Section 6 below).

Section 2. Title to the Property. The Parties acknowledge that title to the School Site, which includes the School Area and Joint Use Area, is or will be held by District during the entire "Term" of this Agreement, as that term is defined below in Section 6. All improvements to the realty installed by either Party on the School Area or Joint Use Area shall be and remain the property of the District.

Section 3. Property, School Site and Open Space Park.

(a) **Property.** The Property consists of an approximate 11.65 acre portion of the San Antonio Center, and is more particularly described and depicted on **Exhibit A**.

(b) **School Site.** The School Site, comprised of the School Area and Joint Use Area, consists of approximately 9.65 acres of the Property.

(i) The School Area of the School Site is generally depicted on **Exhibit A**, and the facilities shall include all classrooms, buildings, gymnasium(s), improvements, and facilities the District determines, in its sole discretion, is necessary to

provide educational instruction in accordance with its approved educational program for its students, which will include a parking lot and gymnasium.

(ii) The Joint Use Area consists of an approximate 4-acre portion of the School Site and is generally depicted on **Exhibit A**. Any improvements and facilities located on the Joint Use Area shall be at the District's sole, reasonable discretion, with reasonable review by the City. Facilities located on the Joint Use Area will include Athletic fields, including a track, soccer and baseball field and may also include:

- (1) Playground facilities, appropriate for middle school-age students,
- (2) Tot lot, appropriate for toddler-age children.
- (3) Outdoor classroom areas,
- (4) Outdoor basketball courts.

Any specific upgrades to the facilities on the Joint Use Area desired by the City shall be solely funded by the City, outside of City's Financial Contribution, based on the Parties' mutual agreement of plans and cost parameters.

(c) **Open Space Park.** The Open Space Park consists of an approximate 2.0-acre portion of the Property, and will be more particularly defined as part of the District and City's master planning process set forth in Section 8(a) below. Once the Open Space Park property is transferred to the City pursuant to a separate more definitive Transfer Agreement, it will be designed, developed and operated exclusively by the City, at its sole cost and expense.

Section 4. City Financial Contribution. In consideration for the Parties mutual planning, use and operation of the Property, City agrees to make a financial contribution to the acquisition of the Property as follows:

(a) **Contribution Amount.** The City will contribute approximately Six Million Dollars (\$6,000,000) per acre toward the purchase of the Joint Use Area of the Property, which amount shall not exceed Twenty-Three Million Dollars (\$23,000,000). This contribution shall be referred to herein as the City's "Financial Contribution."

(b) **Deposit of Contribution.** The City shall deposit its Financial Contribution into an escrow established by the District a minimum of five (5) days before the close of escrow on the District's acquisition of the Property. In order to facilitate timely transfer of the City's Financial Contribution, the District shall provide the City with twenty-one (21) days' notice of the anticipated date for close of escrow on the Property.

(c) **Return of Contribution.** If District is unable to complete the close of escrow on the Property within two (2) years of the Effective Date of this Agreement (as defined in Section 6 below), any portion of the City's Financial Contribution held by the District or in escrow for the benefit of the District shall be immediately returned to the City along with any interest that has accrued.

Section 5. Term.

(a) Agreement Term. The term of the Agreement shall commence as of the date this Agreement is fully executed by the Parties ("Effective Date"). The term of this Agreement shall expire in (99) years, or for as long as the District is the owner of the School Site, subject to the City's right of first refusal as set forth in Section 6(a) below ("Term").

(b) Term Binding on Subsequent Lessees. The Parties understand that this Agreement may not be terminated for any reason during the Term, except as set forth in the termination provisions contained herein at Section 15, and that the Parties shall have use of the School Site in accordance with the terms of this Agreement throughout the Term. It is also expressly understood that the City's right to use the Joint Use Recreational Facilities will remain in full force and effect in the event of a lease of the School Site to a third party, which lease shall be subordinate to City's use rights.

Section 6. Disposition of School Site**(a) City's Right of First Refusal Prior to Term Expiration**

(i) Credit. Should the District elect to sell the School Site during the term of this Agreement, the District shall notify the City of its intent to dispose of the School Site at least ninety (90) days in advance of the anticipated public offering. The City shall have the right of first refusal to purchase the School Site to the extent permitted by law. If the City elects to purchase the School Site, it shall receive a credit towards the fair market value of the Property for the value of the City's Financial Contribution on an amortized basis, as set forth in the Amortization Schedule contained in Exhibit B attached hereto.

(ii) Purchase Price. If the City exercises its right of first refusal, the purchase price for the School Site shall take into consideration the then existing development rights of the School Site, as well as the impact of any transfer of development rights encumbering the School Site pursuant to that certain Memorandum of Understanding Between the City of Mountain View and Los Altos School District (Transfer of Development Rights Program), effective on January 29, 2019, attached hereto as Exhibit C.

(iii) Appraisal Process. The fair market value of the School Site shall be determined by agreement between City and District. The fair market value shall be based on the highest and best use of the property, giving no recognition to any school use, but shall consider the remaining development rights on the property at the time of value. Within sixty (60) days after District provides written notice to City of its intent to offer the property to the City under City's right of first refusal, City and District each, at its cost and by giving notice to the other party, shall appoint a competent M.A.I. real estate appraiser, unlikely to be unduly influenced by either party, with at least ten (10) years' commercial appraisal experience in Santa Clara County and set the fair market value for the School Site.

If either City or District does not appoint an appraiser within then (10) days after the other party has given written notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the fair market value. If two (2) appraisers are appointed by City and District, they shall meet promptly following completion of their respective appraisal reports and attempt to set the Fair Market Value. If the two (2) appraisers are unable to agree within thirty (30) days after the second appraiser has been

appointed, they shall attempt to select a third appraiser meeting the qualifications stated in this subsection within ten (10) days after the last day the two (2) appraisers are given to set fair market value. City and District each shall bear one-half (1/2) of the cost of appointing the third appraisers' fee. The third appraiser, however selected, shall be a person who is unlikely to be unduly influenced by either party. Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers shall set the fair market value.

The appraisal process set forth in this Section shall be conducted by the Parties whether or not the City exercises its right of first refusal to purchase the School Site.

(b) City's Right to Proceeds of Disposition of the School Site. In the event the District disposes of the School Site during the term of this Agreement, and the City does not exercise its first right of refusal to acquire the School Site, then the City shall receive a portion of the proceeds from such disposition in recognition of the City's proportional contribution to the acquisition of the School Site as follows:

(i) If the highest and best use of the School Site is continued use of the then existing facilities, as determined during the appraisal process set forth in Section 6(a)(iii) above, then the City will receive 21% of the gross proceeds from the sale attributable to the value of the land only; provided, however, that to the extent the City contributes toward the cost of construction, replacement and/or Major Maintenance (as defined in Section 11 below) of any improvements located on the School Site, then the City shall receive a pro-rata share of the value of such improvements based on the amount of the City's contribution.

(ii) If the highest and best use of the School Site is something other than continued use of the then existing facilities, as determined during the appraisal process set forth in Section 6(a)(iii) above, then the City will receive 21% of the value of all gross proceeds from the sale.

Section 7. Development of the School Site. The School Site will be used to serve the Mountain View community surrounding the School Site in order to accommodate the increased enrollment from development in the area north of El Camino. To that end, District agrees the school will serve one or a combination of:

- (a) An elementary school open to neighborhood students;
- (b) A junior high school open to neighborhood students; and/or
- (c) A choice or charter school if it has a preference for neighborhood students.

The school should be substantially similar in size/student enrollment to that of other District schools serving the same population in other areas of the District and based on the District's school targets as set forth in its policies. The school developed on the School Site shall be referred to herein as the "School."

The Parties understand and agree that the District shall retain the right to deem the School Site surplus, in the event the School is no longer needed for educational purposes. In the event the District deems the School as surplus or no longer needed for educational purposes, the District shall have the right to lease or sell the School Site pursuant to the applicable surplus property disposition laws and regulations.

Should the District use the School Site for a school use other than described above, the City, in its sole discretion, may elect to terminate the Agreement in accordance with the Termination provision set forth in Section 15 below and be entitled to reimbursement from the District of the applicable pro-rata share of the City's Financial Contribution as specified in Amortization Schedule contained in Exhibit B.

Section 8. Development of the Joint Use Area.

(a) Joint Use Area Master Planning. The District will invite the City of Mountain View to partner with it to master plan the Joint Use Area, including cooperating on preparation of the Environmental Impact Report in compliance with the California Environmental Quality Act. The Parties expressly recognize and agree that any and all improvements constructed on the School Site must be approved by all applicable state agencies, including the California Department of Education, Division of State Architect, Division of Toxic Substance Controls, State Allocation Board and/or Office of Public School Construction.

(b) Early Development of Joint Use Area. In the event the School is not constructed and open by September 30, 2024, the District agrees to develop and permit City use of the Joint Use Area by that time. The improvements to be developed in the Joint Use Area and for this specific purpose do not include the gymnasium ("Gym"). The Gym will be constructed as part of the construction of the School.

Section 9. Use of School Site.

(a) School Area. With the exception of the Gym, the District shall have exclusive use of the School Area of the School Site at any and all times. City may request use of the School Area in accordance with Section 10(b) below.

(b) Joint Use Area and Gym. Use of the Joint Use Area and Gym shall be designated as follows:

(i) District Use. The District shall have exclusive use of: (1) the Gym and (2) all facilities and improvements located on the Joint Use Area of the School Site, collectively referred to as the "Joint Use Recreational Facilities" on all days that school is in session ("School Days"), between the hours of 6:00 a.m. until all school-sponsored activities are concluded. ("School Hours"). During School Hours, District will be solely responsible for scheduling the use of, and for the security of and any liability within the Joint Use Area.

(ii) City Use. The City shall have use of the Joint Use Recreational Facilities during all non-School Days and during all non-School Hours including the summer for operation of recreational programs serving the community. City's right to use and operate the Joint Use Recreational Facilities shall remain in full force and effect throughout the Term of this Agreement.

Section 10. Master Schedule for Use of Facilities.

(a) Scheduling Joint Use Recreational Facilities.

(i) Annual Meetings. District and City shall establish a master schedule of facilities, dates, and times ("Master Schedule") for the use of the Joint Use Recreational Facilities at semi-annual scheduling meetings. The first meeting shall occur on

or before August 1 of each year. The purpose of the first scheduling meeting shall be to coordinate the schedule for each Party's uses of the Joint Use Recreational Facilities in the upcoming academic year for the School Site and to avoid conflict between District, City, and third-party users, to resolve any issues concerning maintenance or renovation of the Joint Use Recreational Facilities, and to address any of the Parties' concerns or issues arising under this Agreement. On or before June 1st of each year, the District shall provide City with the calendar for the school year beginning that fall. On or before January 1 of each year, the District shall notify City of any changes to the calendar for the School Site for the period of January to June. The Parties will also meet as needed to discuss any necessary repairs or maintenance issues, ongoing scheduling and/or use issues associated with the Joint Use Recreational Facilities.

(ii) Scheduling of Public Use of Facilities. City shall have exclusive authority to program and schedule use of the Joint Use Recreational Facilities by members of the public or other third parties during all times that City is permitted to use said Joint Use Recreational Facilities.

(b) Scheduling Use of District's School Area Facilities. The City, when desiring to use a facility on the School Area of the School Site, other than the Gymnasium (i.e., classrooms, multi-purpose rooms, etc.), shall comply with the requirements of the Civic Center Act, or the then existing laws governing use of District facilities.

(c) Further Amendment to Agreement. The Parties recognize and acknowledge that planning and development of the School are in the preliminary stages. As the District has not made a final determination as to the type of School that will be constructed on the School Site, the use provisions contained in the Agreement, including Sections 9 and 10, are likewise preliminary and intended to establish baseline parameters of use. Once the specific type of School that will operate on the School Site is defined and constructed, this Agreement shall be amended to modify the use provisions consistent with applicable school type and projected use.

Section 11. Custodial Services, Maintenance, and Repairs. Each Party agrees to exercise care in the use of and to repair any damage to the School Site, except for damage arising from ordinary wear and tear. The general terms for maintenance, repair, and upkeep are set forth below.

(a) Routine Maintenance and Repairs. Routine maintenance and repairs, as used in this Agreement, includes all routine maintenance and custodial services required to keep and maintain the School Area, Gym and Joint Use Area in good, clean, orderly condition, and shall be allocated between the Parties as follows:

(i) School Area. District shall be solely responsible for custodial services, routine maintenance, operations, and upkeep of the School Area, except the Gym, at its own cost and expense. District's obligations and responsibilities under this Section shall be to District-wide standards and policies and in accordance with applicable laws and regulations.

(ii) Gym. It is the intent of the Parties to share equally in the costs of custodial services, routine maintenance and repairs of the Gymnasium. The parties shall meet annually on or about February 1st to establish and agree to a maintenance plan for the gym. The maintenance plan shall identify the annual routine maintenance obligations of the parties.

(iii) Joint Use Area. The City shall provide for the upkeep of the Joint Use Area, including custodial services and routine maintenance, at its sole cost and expense.

(b) Vandalism.

(i) School Area. District shall be responsible for repairing any damage to the School Area, with the exception of the Gym, caused by vandalism.

(ii) Joint Use Area. Each Party shall be responsible for repairing any damage to the Joint Use Recreational Facilities by vandalism that occurs during that Parties' use of the Joint Use Recreational Facilities. If the Parties cannot determine when such vandalism occurred, the Parties will share equally the cost of repairing the damage.

(c) Major Repairs and Deferred Maintenance. Major repairs and deferred maintenance, as used in this Agreement, includes major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and flooring systems, the exterior and interior painting of buildings, drainage systems and/or structural elements of permanent improvements ("Major Maintenance"), and shall be allocated between the Parties as follows:

(i) Joint Use Recreational Facilities. During the Annual Meetings described in Section 10(a)(1) above, the District and City shall discuss repair and maintenance needs for the Joint Use Recreational Facilities. If the Parties determine that Major Maintenance is required for any of the Joint Use Recreational Facilities, the Parties shall use good faith efforts to plan, schedule and fund such expenses to the extent financially feasible for each Party and subject to the approval and appropriation by each Party's respective governing body.

(ii) School Area. The District shall be responsible, at its sole cost and expense, for all Major Maintenance of the School Area; provided, however, that the Gym shall be included in the planning for Major Maintenance for the Joint Use Recreational Facilities as set forth in Section 11(c)(1) above.

(d) Other Terms.

(i) Each Party shall keep the property in the Joint Use Area and the Joint Use Facilities under its control in neat order, shall promptly remove all trash, refuse, garbage, and debris of any kind from the property and, as needed, shall provide a sufficient number of receptacles in the area for trash disposal.

(ii) Each Party shall make available to the other Party any information and/or documents related to accidents, injuries, damage to property, or other incidents occurring on the Property of which it receives notice or becomes aware.

(iii) Either Party may, at the expense of the responsible Party, correct or repair any hazardous or dangerous condition of real property in the Joint Use Area after reasonable written notice to the Party responsible for correction of the hazardous or dangerous condition and that the responsible Party's failure to take reasonable measures to correct or repair the condition or to commence the process of correcting or repairing the hazardous or dangerous condition and opportunity to take corrective measures.

(iv) The Parties shall address any concerns or issues regarding maintenance or upkeep during the scheduling meetings referenced at Section 10(a)(1), including discussion about supplementing or replacing equipment located within the Joint Use Area.

Section 12. Utilities. Payment for utility costs to the School Site shall be allocated as follows:

(a) School Area. The District shall pay all utility costs, including irrigation, attributable to the School Area, except the Gym.

(b) Gym.

(i) During the academic year, the Parties shall share equally in the costs of all utilities serving the Gym. The Gym utility costs shall be calculated based on the pro-rata share of the costs of utilities for the entire School Area. Alternatively, the Gym may be separately metered and the costs split equally between the City and District.

(ii) During the non-school days during the summer and holiday periods of one (1) week or more, the City shall be solely responsible for the costs of utilities attributable to the Gym.

(c) Joint Use Area. The City shall be solely responsible for the costs of utilities serving the Joint Use Area. All utilities for the Joint Use Area will be separately metered.

Section 13. Improvements or Alterations. City shall not construct or cause to be constructed on the School Site any improvements or alterations of any kind without the prior written approval of District's Board.

Section 14. Alternative Dispute Resolution.

(a) Designation of Liaisons. Within ninety (90) days of the Effective Date of this Agreement, each Party shall designate a liaison ("Liaison") to act as a representative in resolving any issues or disputes arising out of this Agreement, including, but not limited to, the use, maintenance, repair or other issues related to the Joint Use Recreational Facilities.

(b) Alternative Dispute Resolution Process. Prior to either Party exercising its right to terminate this Agreement pursuant to Section 15 below, the Parties must exhaust all of the steps in this Alternative Dispute Resolution Process.

(c) Informal Meet and Confer. The Liaison for the complaining Party must first initiate an informal meet and confer with the Liaison for the other Party within thirty (30) days of receiving notice from the other party of a material breach of this Agreement.

(d) Formal Meet and Confer. If the Liaisons are unable to resolve a dispute through the informal meet and confer process, then the City Manager or his or her designee shall meet with the District Superintendent to make a good faith effort to resolve the dispute. This meeting shall take place within five (5) business days of the Liaison's meeting.

(e) Formal Dispute Resolution. If the City Manager and the District Superintendent are unable to resolve a dispute through the formal meet and confer process

set forth above, the dispute shall be subject to a dispute resolution process agreed to by the both Parties (i.e., mediation) before either party may initiate any litigation to resolve the dispute. The Parties shall agree upon a dispute resolution process no later than ten (10) business days following the conclusion of an unsuccessful formal meet and confer process.

Section 15. Termination.

(a) Notice and Opportunity to Cure. A party may only terminate this Agreement based on a failure to cure a Material Breach, provide it has provided notice of the material breach to the other party and an opportunity to cure for ninety (90) days following notice of the material breach. In addition the terminating party must participate in all of the steps in the Alternative Dispute Resolution Process.

(b) Termination for Cause. Either Party may terminate this Agreement based on the material violation of this Agreement by the other Party if such violation shall continue for ninety (90) days after written notice is given by either Party to the other Party of such violation. Material violations of this Agreement expressly and solely include violations of Section 5 (City Financial Contribution), Section 6 (Term), Section 7 (Development of School Site), Section 8 (Development of Joint Use Area), Section 9 (Use of School Site), Section 11 (Repair and Maintenance), Section 13 (Improvements and Modifications) and Section 16 (Compliance with Laws) [individually or collectively referred to herein as "Material Violation(s)"].

(c) In the Event of Material Violation and/or Termination:

(i) Available Remedies. In the event of a Material Violation, the aggrieved Party may exercise its right to terminate the Agreement pursuant to Section 15(a) above, or may seek any and all remedies available to it under the law, including, but not limited to, filing an action for specific performance, injunctive or declaratory relief.

(ii) Surrender of Joint Use Area. Upon expiration or earlier termination of this Agreement, City shall be responsible for restoring the Joint Use Area, and other portions of the School Site that were affected by City's occupancy during the Term, to a neat and clean condition with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on District's title.

(iii) District Reimbursement to City. In the event of termination, due to a Material Violation by District, District shall make reimbursement payments to the City, based on the City's Financial Contribution on an amortized basis in accordance with the Amortization Schedule attached hereto as **Exhibit B**.

Section 16. Compliance With Laws.

(a) Applicable Laws. In using the Joint Use Recreational Facilities under this Agreement, each Party agrees to comply with all applicable laws, rules, regulations, and ordinances. The Parties acknowledge and agree that use of School Site Area, excluding the Gymnasium, shall be in accordance with the procedures and policies established by the District for use of District facilities, including the Civic Center Act (Education Code section 38130 et seq.) and the fingerprinting and criminal background investigation requirements of Education Code section 10911.5, as applicable. Use of the Joint Use Facilities shall be in accordance with Education Code section 10900 et seq. (Community Recreation Programs) and the policies, rules, and ordinances of the City. Neither the Master Schedule, as

amended from time to time, nor any portion of the Agreement shall require or allow use of any of the School Site contrary to the laws governing school property and facilities.

(b) Fingerprinting and Criminal Background Investigations. Prior to each individual's commencement of assignment to or involvement in programs on the School Site whether City programs, City-sponsored activities or events, or activities or events sponsored by a City-affiliated or City-authorized organization, City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements under state law. Verification of compliance with this section shall be provided in writing to the District upon request.

(c) Alcoholic Beverages/ Illegal Drugs/ Noise/ Animals/ Harmful Substances. Any uses which involve the serving and/or sale of alcoholic beverages or illegal drugs and/or the conducting of games of chance are prohibited on the Property, unless such use has received prior written approval in accordance with the provisions of Section 25608 of the Business and Professions Code. City shall comply with the District-wide policy prohibiting the use of tobacco products on the School Site at all times. Parties shall not use or permit the use of the Property or any part thereof for any purpose which is inimical or contrary to public morals and/or welfare or morally objectionable as unsuitable for a public educational facility. City agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the City's programs, Open Space Park or use of the School Site for City purposes. Parties agree to not commit or suffer to be committed, any waste upon the Property, or allow any sale by auction upon the Property, or allow the Property to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property except in trash containers designated for that purpose.

Section 17. Mutual Hold Harmless/Indemnification.

To the fullest extent permitted by California law, each Party shall defend, indemnify, and hold harmless the other Party, its governing body and members thereof, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the other Party, its agents, contractors, employees, representatives, officers, servants, concessionaires, or volunteers in conjunction with the performance of this Agreement, unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against said Party, the other Party, upon written notice from the other, shall defend the same at its expense by counsel approved in writing by the Indemnified Party.

Section 18. Insurance.

(a) Commercial General Liability Insurance. The Parties shall maintain commercial general liability insurance, covering all of the Parties' operations regarding this Agreement, with a combined single limit of not less than Two Million Dollars (\$2,000,000).

(b) Motor Vehicle Liability Insurance. The Parties shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-

owned, and hired) used pursuant to this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Workers' Compensation Insurance. Each Party shall maintain a workers' compensation plan covering all of its employees as required by Section 3700 of the Labor Code, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations.

(d) Employer's Liability Coverage. Each Party shall maintain employer's liability coverage for each employee who is subject to this Agreement. That policy shall provide employer's liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per occurrence. City's Equipment Insurance. City acknowledges that the insurance to be maintained by District on the School Site will not insure any City-owned equipment, property or any improvements made by City on the Joint Use Area or located within the Gym. Accordingly, City shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by City and personal property in, about, or on the Joint Use Area or Gym. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of City's property.

(f) Self-Insurance. If either Party elects to be self-insured, in lieu of providing proof of insurance, that Party shall provide proof of self-insurance satisfactory to the other Party and meeting the requirements imposed herein, which can include a consent to self-insure issued by the State Director of Industrial Relations. Either Party providing proof of self-insurance warrants that the self-insurance provides substantially the same protection as the insurance required herein. Each Party further agrees to notify the other Party in the event any change in self-insurance occurs that would alter the obligations undertaken in this Agreement within thirty (30) days of the change.

(g) Other Requirements. Without limiting the Parties' duties of indemnification, the Parties each shall comply with the following insurance coverage requirements:

(i) Each policy shall be issued by a company authorized by law to transact business in the State of California,

(ii) Each policy shall provide that the Parties shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.

(iii) Comprehensive motor vehicle and commercial general liability policies shall each provide an endorsement naming the other Party, and its officers, agents, representatives and employees as additional insured.

(iv) Each Party shall provide an endorsement that the insurer waives the right of subrogation against the other Party, and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

(v) The required coverage and policy limits shall be maintained in effect throughout the Term and may be adjusted by each Party pursuant to legally required or commercially reasonable practice for property with the same or similar uses.

(vi) Certificates of Insurance. Upon execution of this Agreement, the Parties shall file certificates of insurance or consents to self-insure with each other, showing that they have in effect the insurance required by this Agreement. The Parties shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

Section 19. Cooperation with Other Occupants of the School Site. It is understood and recognized by City that the School Area may be used by other parties, including District, and City shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, and security measures, etc.

Section 20. Hazardous Materials. City and District agree as follows with respect to the existence or use of Hazardous Materials on or within the Joint Use Recreational Facilities:

(a) Definition. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Sections 66261.30 et seq.; (ii) defined as a "hazardous waste" pursuant to Section 6903 of the Federal Resource Conservation and Recovery Act (42 U.S.C., § 6901 et seq.), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C., § 9601 et seq.). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Health Services, and the California Department of Toxic Substances Control), which regulates the use, storage, release, or disposal of any Hazardous Material.

(b) Storage of Hazardous Materials. Neither District nor City shall cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Property by District or City, or their agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom, gardening, and janitorial supplies (which shall be used and stored in strict compliance with the applicable Hazardous Materials Laws) utilized on the respective properties. Both Parties shall comply with all Hazardous Materials Laws.

(c) District Action. If the presence of Hazardous Materials on the School Site (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the District is responsible for that contamination under applicable law, then District shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the School Site or any part thereof.

(d) City Action. If the presence of Hazardous Materials on the Open Space Park (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the City is responsible for that contamination under applicable law, then City shall, at its sole cost and

expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Open Space Park or any part thereof.

(e) **Notice of Hazardous Materials.** District and City shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the Property, and (ii) any contamination of the Property by Hazardous Materials which constitutes a violation of any Hazardous Materials Law.

Section 21. Authorized Representative. Whenever any action, consent, approval, or agreement is required of either City or District within the terms of this Agreement, the City Manager of the City, or his or her designee, may act on behalf of the City and the Superintendent of the District, or his or her designee, may act on behalf of the District.

Section 22. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

LOS ALTOS SCHOOL DISTRICT
Attn: Superintendent
201 Covington Road
Los Altos, CA 94024
Facsimile: (650) 947-0118

CITY OF MOUNTAIN VIEW
Attn: City Manager
500 Castro Street
Mountain View, CA 94041
Facsimile: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective five (5) days after deposit in the United States mail.

Section 23. Sublease and Assignment. City shall not assign its rights, duties or privileges under this Agreement, nor shall City sublease or attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of District. Any such attempt without District written consent shall be void.

Section 24. Independent Contractor Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 25. Entire Agreement of Parties. This Agreement, together with the Memorandum of Understanding attached as Exhibit C and the Transfer Agreement contemplated in Section 3(c) above, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 26. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the County where the Property is located.

Section 27. Attorneys' Fees. The Parties shall each bear their own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with or as a result of this Agreement.

Section 28. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 29. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 30. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 31. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 32. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

Section 33. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

Section 34. Non-Discrimination. Each Party and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, national origin or physical handicap. The Parties shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, age, national origin or physical handicap. Each Party covenants to meet all requirements of pertaining to non-discrimination in employment. If either Party is found in violation of the non-discrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Agreement by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

ACCEPTED AND AGREED BY:

LOS ALTOS SCHOOL DISTRICT

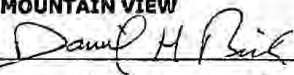
By: 

Print Name: Jeffrey Baier

Print Title: Superintendent

Date: April 29, 2019

CITY OF MOUNTAIN VIEW

By: 

Print Name: Daniel H. Rich

Print Title: City Manager

Date: 7-16-19

Attest:

By: 
City Clerk, City of Mountain View

Financial Approval:

By: 
Financial Director

Approved as to Form:

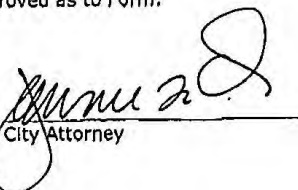
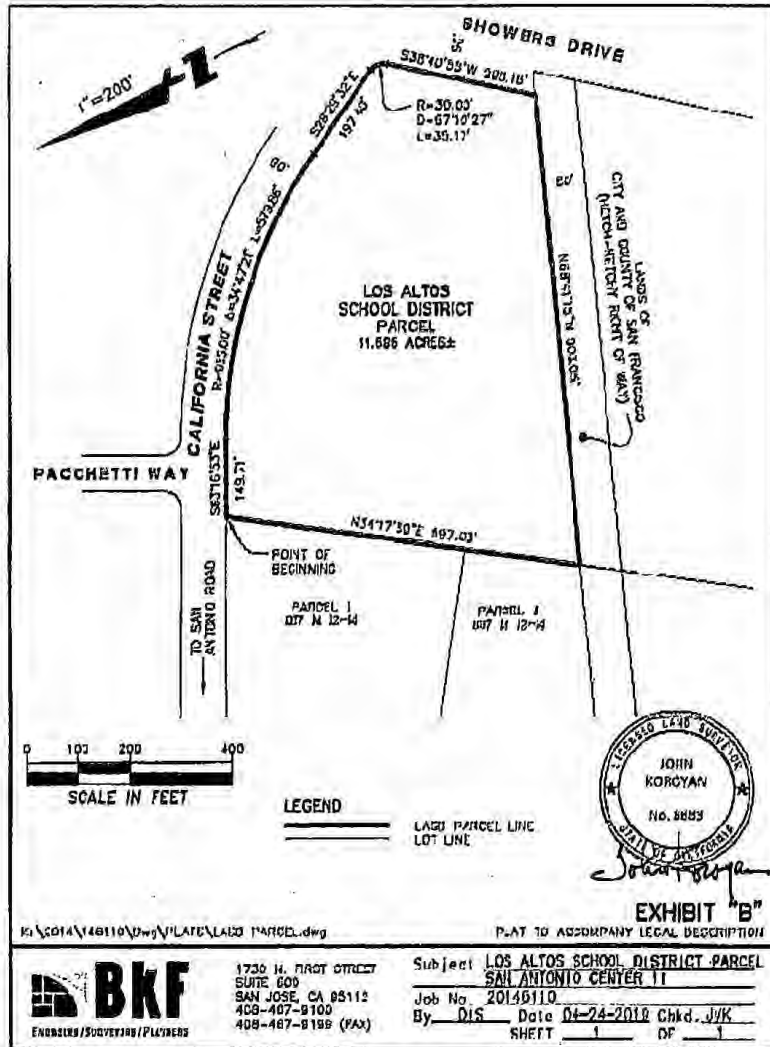
By: 
City Attorney

EXHIBIT A
School Site



***School Site, School Area, Joint Use Area and Open Space Park Boundaries to be determined.**

EXHIBIT B
Amortization Schedule

The Parties recognize the City contributed \$23 million to assist the District in acquiring four acres of open space for the School Site to create joint use recreational facilities for a period of 99 years. In the event the City is not able to utilize the Joint Use Area and Joint Use Recreational Facilities for the entire term of the agreement due to a breach of a material term by the District, then the City would be entitled to reimbursement of its contribution in proportion to the number of years it is not able to use the Joint Use Area and Joint Use Recreational Facilities. In addition, if the Agreement is terminated at any time after the City provides funding to the District to acquire the School Site but prior to the City's use of the Joint Use Area and Joint Use Recreational Facilities, then the District would reimburse the City for its entire Funding Contribution. The amortization of the City's contribution will commence once the City begins to use the Joint Use Area and Joint Use Recreational Facilities.

In the event the District disposes of the school site during the term of this agreement and the City exercises its first right of refusal, this amortization schedule will also be used to determine the credit to be applied towards the City's purchase of the school site.

The Parties have agreed to value this contribution by dividing the City's contribution of \$23,000,000 by 75 years for an annual amount of \$306,666.72, in addition to maintenance responsibilities and obligations set forth in the agreement. The table below sets forth the amortization schedule.

Year of Use	Beginning Balance	Amortization	Reimbursement/Credit
1	\$23,000,000.00	\$306,666.72	\$22,693,333.33
2	\$22,693,333.33	\$306,666.72	\$22,386,666.67
3	\$22,386,666.67	\$306,666.72	\$22,080,000.00
4	\$22,080,000.00	\$306,666.72	\$21,773,333.33
5	\$21,773,333.33	\$306,666.72	\$21,466,666.67
6	\$21,466,666.67	\$306,666.72	\$21,160,000.00
7	\$21,160,000.00	\$306,666.72	\$20,853,333.33
8	\$20,853,333.33	\$306,666.72	\$20,546,666.67
9	\$20,546,666.67	\$306,666.72	\$20,240,000.00
10	\$20,240,000.00	\$306,666.72	\$19,933,333.33
11	\$19,933,333.33	\$306,666.72	\$19,626,666.67
12	\$19,626,666.67	\$306,666.72	\$19,320,000.00
13	\$19,320,000.00	\$306,666.72	\$19,013,333.33
14	\$19,013,333.33	\$306,666.72	\$18,706,666.67
15	\$18,706,666.67	\$306,666.72	\$18,400,000.00
16	\$18,400,000.00	\$306,666.72	\$18,093,333.33

17	\$18,093,333.33	\$306,666.72	\$17,786,666.67
18	\$17,786,666.67	\$306,666.72	\$17,480,000.00
19	\$17,480,000.00	\$306,666.72	\$17,173,333.33
20	\$17,173,333.33	\$306,666.72	\$16,866,666.67
21	\$16,866,666.67	\$306,666.72	\$16,560,000.00
22	\$16,560,000.00	\$306,666.72	\$16,253,333.33
23	\$16,253,333.33	\$306,666.72	\$15,946,666.67
24	\$15,946,666.67	\$306,666.72	\$15,640,000.00
25	\$15,640,000.00	\$306,666.72	\$15,333,333.33
26	\$15,333,333.33	\$306,666.72	\$15,026,666.67
27	\$15,026,666.67	\$306,666.72	\$14,720,000.00
28	\$14,720,000.00	\$306,666.72	\$14,413,333.33
29	\$14,413,333.33	\$306,666.72	\$14,106,666.67
30	\$14,106,666.67	\$306,666.72	\$13,800,000.00
31	\$13,800,000.00	\$306,666.72	\$13,493,333.33
32	\$13,493,333.33	\$306,666.72	\$13,186,666.67
33	\$13,186,666.67	\$306,666.72	\$12,880,000.00
34	\$12,880,000.00	\$306,666.72	\$12,573,333.33
35	\$12,573,333.33	\$306,666.72	\$12,266,666.67
36	\$12,266,666.67	\$306,666.72	\$11,960,000.00
37	\$11,960,000.00	\$306,666.72	\$11,653,333.33
38	\$11,653,333.33	\$306,666.72	\$11,346,666.67
39	\$11,346,666.67	\$306,666.72	\$11,040,000.00
40	\$11,040,000.00	\$306,666.72	\$10,733,333.33
41	\$10,733,333.33	\$306,666.72	\$10,426,666.67
42	\$10,426,666.67	\$306,666.72	\$10,120,000.00
43	\$10,120,000.00	\$306,666.72	\$9,813,333.33
44	\$9,813,333.33	\$306,666.72	\$9,506,666.67
45	\$9,506,666.67	\$306,666.72	\$9,200,000.00
46	\$9,200,000.00	\$306,666.72	\$8,893,333.33
47	\$8,893,333.33	\$306,666.72	\$8,586,666.67
48	\$8,586,666.67	\$306,666.72	\$8,280,000.00
49	\$8,280,000.00	\$306,666.72	\$7,973,333.33
50	\$7,973,333.33	\$306,666.72	\$7,666,666.67

51	\$7,666,666.67	\$306,666.72	\$7,360,000.00
52	\$7,360,000.00	\$306,666.72	\$7,053,333.33
53	\$7,053,333.33	\$306,666.72	\$6,746,666.67
54	\$6,746,666.67	\$306,666.72	\$6,440,000.00
55	\$6,440,000.00	\$306,666.72	\$6,133,333.33
56	\$6,133,333.33	\$306,666.72	\$5,826,666.67
57	\$5,826,666.67	\$306,666.72	\$5,520,000.00
58	\$5,520,000.00	\$306,666.72	\$5,213,333.33
59	\$5,213,333.33	\$306,666.72	\$4,906,666.67
60	\$4,906,666.67	\$306,666.72	\$4,600,000.00
61	\$4,600,000.00	\$306,666.72	\$4,293,333.33
62	\$4,293,333.33	\$306,666.72	\$3,986,666.67
63	\$3,986,666.67	\$306,666.72	\$3,680,000.00
64	\$3,680,000.00	\$306,666.72	\$3,373,333.33
65	\$3,373,333.33	\$306,666.72	\$3,066,666.67
66	\$3,066,666.67	\$306,666.72	\$2,760,000.00
67	\$2,760,000.00	\$306,666.72	\$2,453,333.33
68	\$2,453,333.33	\$306,666.72	\$2,146,666.67
69	\$2,146,666.67	\$306,666.72	\$1,840,000.00
70	\$1,840,000.00	\$306,666.72	\$1,533,333.33
71	\$1,533,333.33	\$306,666.72	\$1,226,666.67
72	\$1,226,666.67	\$306,666.72	\$920,000.00
73	\$920,000.00	\$306,666.72	\$613,333.33
74	\$613,333.33	\$306,666.72	\$306,666.67
75	\$306,666.67	\$306,666.72	\$0.00

EXHIBIT C

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MOUNTAIN VIEW & THE LOS ALTOS SCHOOL
DISTRICT
(TRANSFER OF DEVELOPMENT RIGHTS PROGRAM)**

This Memorandum of Understanding is entered into as of January 29, 2019 (the "Effective Date"), by and between the City of Mountain View ("City") and the Los Altos School District ("District") to establish a framework for the development of a transferable development rights ("TDR") program for the mutual benefit of the City and the District.

RECITALS

A. The District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real. The District seeks to acquire property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity. The District anticipates that the new school facility will not utilize the majority of the building area allowed by the SAPP. If the District proceeds to acquire a site, it will pay a real estate market premium for potential building area that it cannot use.

B. Acquisition of additional park and open space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents. The area is entirely built-out and the current real estate market has made the creation of new parks, open space and recreational facilities particularly challenging as the cost of the land continues to increase.

C. The Mountain View 2030 General Plan and San Antonio Precise Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development.

D. The City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a School Site, while creating new playing fields and recreational facilities that would also be available for public use.

E. In order to facilitate the District's acquisition of a School Site and create opportunities for new publicly accessible open space and recreational facilities, the District and the City desire to create and implement an innovative program that would allow the District to transfer the School Sites' unutilized FAR to third-party buyers pursuant to a TDR program. The TDR program would allow third-parties within designated TDR receiving sites or with designated "Receiving Sites" to propose development projects for City review and approval to utilize additional floor area in excess of applicable zoning regulations in exchange for a financial contribution by prospective developers to the District. The District will apply the proceeds from the TDR purchases toward the costs of acquiring the new school and open space site, or construction of the new school and associated recreational facilities. The District will also execute an agreement with the City allowing public access to new recreational facilities that would be constructed on the School Site. To incentivize the purchase of TDRs, the program would allow potential buyers (evidenced by a signed letter of intent between the buyer and the District) to file Gatekeeper requests for receiving sites. City Council authorization of the

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Gatekeeper requests allows the buyers' development applications to be filed and reviewed by the City, while also enabling the District to acquire a school site and pursue necessary approvals and permits for a new school to proceed concurrently with the City's development application process for receiving site projects with authorized Gatekeeper requests.

F. The City also desires to contribute funding to the District from the City's Park Land Dedication In-Lieu Fee program in an amount to be determined to create new joint use open space, including playing fields and recreational facilities and help offset the cost of the District's construction of the new park and recreational facilities on the School Site. The specific terms and conditions of the City's funding contribution will be set forth in a more definitive agreement between the District and the City.

G. The District has already undertaken extensive negotiations with potential TDR purchasers and entered into letters of intent with eight prospective purchasers, five of whom have submitted informal Gatekeeper development applications with the City.

H. On January 16, 2018, the City Council authorized the City Manager to execute this MOU based on an identified preferred School Site and directed staff to develop a master joint use agreement and funding agreement in furtherance of the objectives set forth above. At the same meeting, the City Council also authorized seven gatekeeper requests from prospective purchasers of TDRs for projects that are, as of the effective date of this MOU, developers with authorized Gatekeeper requests have either submitted applications and are undergoing review as part of the City's entitlement process or are expected to submit applications in the near future.

I. On May 22, 2018, the City Council authorized one additional gatekeeper request from a prospective purchaser of TDRs for a project that is, as of the effective date of this MOU, undergoing review as part of the City's development application process.

J. On June 26, 2018, the City Council authorized a change in the preferred School Site identified by the District to another location in the SAPP Area and directed staff to continue pursuing all remaining actions authorized on January 16, 2018, in connection with the proposed TDR program.

K. The parties desire to enter into this Memorandum of Understanding in order to establish the roles and responsibilities of the parties concerning the development and implementation of a TDR program to meet the objectives of both the District and the City, including but not limited to providing a measure of predictability and certainty for the District before it commits to the acquisition of a particular School Site.

AGREEMENT

1. **Purpose of this MOU:** This MOU is intended to provide a programmatic framework and set parameters for the TDR program in order to try to achieve the following objectives: (i) secure a site for a new District school facility within the City; (ii) add publicly accessible open space, including playing fields and recreational facilities to the City's park inventory; (iii) create a program that allows the District to monetize unused development rights associated with a new School Site; and (iv) outline the procedure for the distribution and requests to use TDRs as part of the City's development application process.

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2. Obligations of the District.

- 2.1. The District shall endeavor in good faith to select and acquire a School Site within the City sufficient to (i) accommodate its mandate to develop a new tenth school within the District's attendance boundaries, and (ii) accommodate the City's desire for significant new open space and recreational facilities for the public as part of the new school facilities.
- 2.2. The District shall enter into one or more agreements with the City in a form or forms to be agreed upon by the parties for the funding, development and use of the open space and recreational facilities to be developed on the School Site. These agreements shall require the District to allow public use of the open space and recreational facilities on such terms and during such times as mutually agreed upon by the Parties. The District shall insure that an executed letter of intent is available for any third party's submittal to City of a Gatekeeper application request to utilize TDRs.
- 2.3. The District shall be responsible for identifying prospective buyers of TDRs and negotiating a purchase price. The District has further developed a form "letter of intent" which the City has reviewed for prospective purchasers of TDRs.
- 2.4. The District shall comply with any requirements imposed by the City in order to document the creation of TDRs originating from the School Site, as well as to document the transfer of TDRs to eligible "Receiving Sites." Upon taking title to a School Site, and in connection with the purchase and sale of any TDRs to prospective purchasers with LOIs, the District shall record a restrictive covenant against the School Site, in a form acceptable to the City, restricting allowable development rights on the School Site, and consistent with applicable provisions of any conditions of approval (including but not limited to conditions in any development agreement) for a TDR Purchaser's project on the Receiving Site. The District also reserves the right to sell TDRs to prospective third-party purchasers with LOIs prior to the approval of a specific project using the same City approved form of restrictive covenant. No TDRs may be sold until the District has taken title to a particular School Site and recorded a restrictive covenant restricting allowable development rights on the School Site in a form that is acceptable to the City.
- 2.5. The District shall work in good faith with the City to implement the TDR program and address any issues arising out of the TDR program or this MOU, consistent with the objectives set forth in Section 1, including but not limited to developing documentation associated with the creation and redemption of TDRs arising from the School Site (e.g., a form of restrictive covenant and a certificate of transfer).

3. Obligations of the City.

- 3.1. During the term of this MOU, the City shall consider granting third-party development project applicants the right to enter into the City's Gatekeeper process subject to providing evidence of a signed letter of intent with the District to purchase future TDRs and the submittal of the required materials for a Gatekeeper request consistent with the City's Zoning Ordinance, and consider assigning staff and other resources in order to process applications for such third-party projects, including any General Plan

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amendments, rezoning requests or other necessary approvals or permits brought forward as part of an application that would be required in order to permit additional density associated with the application of TDRs purchased from the District. During the term of this MOU (and unless such term is extended by resolution or other action of the City Council), the City further agrees to facilitate a secondary market for TDRs by allowing prospective purchasers of unredeemed TDRs (e.g., in the event that a TDR purchaser is unable to apply the full amount of any purchased TDRs to an approved project) to submit a Gatekeeper application, subject to providing evidence of a signed letter of intent with the original TDR buyer to purchase future TDRs and the submittal of the required materials for a Gatekeeper request, consistent with the provisions set forth in Section 3.1 of this MOU.

3.2. Authorization of a Gatekeeper application for an eligible TDR Receiving Site project allows the project to proceed through the development review process. Neither the authorization of the Gatekeeper application nor any subsequent City actions related to the development and implementation of a TDR program pursuant to this MOU provide any assurance or implied "pre-commitment" to a particular project approval.

3.3. The City shall establish an internal procedure that would allow the auditing of TDRs purchased from the District and redeemed by prospective third-party buyers as part of a project located on a Receiving Site, which may include using the annual review process associated with any development agreements approved for specific projects utilizing TDRs.

3.4. The City will consider the purchase of TDRs a community benefit because it provides necessary capital for the purchase of a School Site and development of a public school with publically accessible open space and recreational facilities within the City of Mountain View. As such, the City will not impose any additional public benefit requirement on any floor area granted by virtue of the purchase of TDRs. However, nothing in this Section shall abrogate the City's rights to negotiate the terms of a Development Agreement for a particular project if a Development Agreement is sought by an applicant or impose any other exactions on a particular project, provided that such exactions do not relate to the granting of additional floor area through the redemption of TDRs on a TDR Receiving Site.

3.5. If the District acquires title to a School Site, then the City shall provide a funding contribution in an amount to be determined by the City to the District from the City's Park Land Dedication In-Lieu Fee reserve to facilitate the acquisition and construction of new open space and recreational facilities as part of the new school that would be available to the public during times when such facilities are not needed for school purposes. The terms and conditions of the City's funding contribution shall be set forth in a separate agreement between the City and the District.

4. Schedule and Milestones.

4.1. The District shall make good faith efforts to select a preferred School Site for a new school and commence the process of acquiring the School Site, targeting acquisition of the School Site in early 2019 and commencing the environmental review and entitlement

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process shortly thereafter. Prior to commencement of the entitlement process for the new school, the District shall coordinate with the City regarding the design of playing fields and recreational facilities.

- 4.2. The City shall make good faith efforts to commence processing any applications for projects within designated TDR Receiving Sites or zones that are granted Gatekeeper status pursuant to Section 3.1 of this MOU in a timely manner after submittal of the application in accordance with the City's Zoning Ordinance.
- 4.3. The City shall also work in good faith on the development of any documentation required to implement the TDR program.
- 4.4. The parties shall work in good faith to finalize separate agreements addressing the City's contribution of funds for new playing fields and recreational facilities in exchange for the joint use of those facilities prior to the District taking title to the new School Site.
5. **Funding.** This MOU is being entered into for the mutual benefit of the parties and each party intends to pursue the objectives set out in this MOU. While the parties intend to pursue the objectives defined in this MOU, this MOU does not constitute a commitment of funding or other resources by either party, and does not create any legally binding obligations. Any commitment of funds or other resources shall be made under a separate agreement or by resolution of the City Council or District Board of Trustees.
6. **Compliance with the California Environmental Quality Act:** The parties acknowledge that the endorsement of this MOU does not commit the District to select or acquire any particular School Site, nor commit the City to approving any particular project which may be eligible for receiving TDRs. The parties further acknowledge that this MOU does not foreclose the possibility of the City or the District considering alternatives to any specific proposal, potential mitigation measures, or future decisions to disapprove any particular project proposal until after conducting and completing appropriate environmental review under the California Environmental Quality Act ("CEQA"). While this MOU identifies certain essential terms of the proposed TDR program, it does not bind the City or the District to any specific terms or set forth all of the material terms and conditions that the parties anticipate will be developed over time. All future projects, including any Gatekeeper requests granted by the City for projects that have signed letters of intent with the District, would be subject to future environmental review as required by CEQA, as would any proposal advanced by the District once a School Site has been selected and a specific school proposal designated. The parties will not take any discretionary actions committing either the City or the District to a particular course of action with respect to any proposed project until the City and/or the District, in its capacity as a lead or responsible agency, has considered environmental documentation required by CEQA and adopted appropriate CEQA findings.
7. **Term and Effectiveness.** This MOU is at-will and may be modified by mutual consent of the City Council and the District Board of Trustees. This MOU shall become effective upon signature by the City Manager and District Superintendent and will remain in effect for a period of ten years from the Effective Date unless (i) modified or terminated by any one of the partners by mutual consent or (ii) the District does not acquire a School Site within eighteen months after the Effective Date, in which case this MOU shall terminate

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automatically. In the event that any litigation is filed that delays District's ability to acquire title to a School Site beyond three years from the Effective Date, including but not limited to any eminent domain action filed by the District, then District shall be entitled to an automatic day-for-day extension (until final resolution of the litigation, including any appeals) for each day that District's acquisition of a School Site is delayed due to litigation.

8. **Indemnification.** District shall indemnify, defend and hold City and its elected and appointed officers, officials, employees, agents, and consultants (collectively, "Indemnitees"), harmless from and against any and all claims arising out of or in connection with the implementation of a TDR program pursuant to this MOU, with the exception of any claims that arise out of the approval of specific projects proposed by third-party TDR purchasers provided such purchasers provide appropriate indemnifications for any claims arising out of such approvals.
9. **Notices and Points of Contact.** The parties hereby designate the following points of contact for implementation of this MOU. Any notice required to be given under this MOU shall be sufficient if hand-delivered, mailed or sent prepaid by commercial overnight delivery services as follows, or to such other addresses as the affected parties shall specify in writing:

City:

City of Mountain View
Attention: City Manager
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

With a copy to:

City of Mountain View
Attention: City Attorney
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

District:

Los Altos School District
Attention: Jeffrey Baier, Superintendent
201 Covington Road
Los Altos, CA 94024
E-mail: jbaier@lasdschools.org

With a copy to:

Arent Fox LLP
Attn: Timothy A. Tosta
55 2nd Street, 21st Floor

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San Francisco, CA 94105
E-Mail: tim.tosta@arentfox.com

10. Miscellaneous Provisions.

- 10.1. Amendment.** This MOU may be amended only by a subsequent writing signed by the Parties.
- 10.2. Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original; however all such counterparts shall constitute but one and the same instrument with the Effective Date hereof being the date set forth above.
- 10.3. Assignment.** This MOU is personal to the District and shall not be assigned by the District at any time without the written consent of the City. The City reserves the right to approve or deny such an assignment in its sole and absolute discretion.
- 10.4. Authorized Signatures.** Unless otherwise specified in this MOU, the City Manager or his/her written designee shall be the sole party authorized to act on behalf of the City with regard to this MOU. The District's Superintendent or his/her written designee shall be the sole party authorized to act on behalf of the District with regard to this MOU.
- 10.5. Entire Agreement.** This MOU contains the entire understanding between the parties with respect to the subject matter of this MOU. There are no representations, agreements or other understandings between or among the parties relating to the subject matter of this MOU which are not fully expressed above.

(Signatures on Following Page)

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IN WITNESS WHEREOF, this MOU is executed by the City of Mountain View and the
Los Altos School District.

"District"

LOS ALTOS SCHOOL DISTRICT

By: 
Jeffrey Baler, Superintendent

"City"

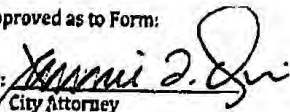
CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California

By: 
Daniel H. Rich, City Manager

Attest:

By: 
City Clerk, City of Mountain View

Approved as to Form:

By: 
City Attorney

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Exhibit C – Legal Description of the Receiving Site

The Land referred to herein below is situated in the City of Mountain View, County of Santa Clara, State of California, and is described as follows:

PARCEL A:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAN ANTONIO ROAD, DISTANT THEREON SOUTH 25° 36' WEST 140 FEET FROM AN OAK STUMP MARKED WITH THREE NOTCHES AT THE MOST NORTHERLY CORNER OF THAT CERTAIN 12 1/2 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM ALICE F. MAXWELL TO E. C. THOITS, ET AL, DATED JANUARY 22, 1949 AND RECORDED JANUARY 26, 1949 IN BOOK 1737 OF OFFICIAL RECORDS, PAGE 233; THENCE FROM SAID POINT OF BEGINNING AND RUNNING PARALLEL WITH THE NORTHERLY BOUNDARY LINE OF SAID 12 1/2 ACRE PARCEL OF LAND SOUTH 64° 13' EAST 200 FEET; THENCE PARALLEL WITH SAID LINE OF SAN ANTONIO ROAD SOUTH 25° 36' WEST 60 FEET; THENCE PARALLEL WITH THE AFORESAID NORTHERLY BOUNDARY LINE OF SAID 12 1/2 ACRE PARCEL OF LAND, NORTH 64° 13' WEST 200 FEET TO THE SAID SOUTHEASTERLY LINE OF SAN ANTONIO ROAD; THENCE ALONG SAID SOUTHEASTERLY LINE, NORTH 25° 36' EAST 60 FEET TO THE POINT OF BEGINNING AND BEING A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO AND FURTHER BEING A PART OF THE 24.62 ACRE TRACT OF LAND SHOWN AND DELINEATED UPON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN BOOK 21 OF MAPS, PAGE 23.

PARCEL B:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF SAN ANTONIO ROAD, AS SAID LINE WAS ESTABLISHED BY DEED FROM RUDOLPH S. MALMGREN ET UX, TO THE CITY OF MOUNTAIN VIEW, A MUNICIPAL CORPORATION, DATED NOVEMBER 17, 1959, RECORDED DECEMBER 14, 1959 IN BOOK 4637 OFFICIAL RECORDS, PAGE 25, SANTA CLARA COUNTY RECORDS WITH THE SOUTHWESTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM E. C. THOITS, ET AL, TO RUDOLPH S. MALMGREN ET UX, DATED APRIL 06, 1951, RECORDED APRIL 06, 1951 IN BOOK 2187 OF OFFICIAL RECORDS, PAGE 177, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 64° 18' EAST ALONG SAID SOUTHWESTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID MALMGREN, FOR A DISTANCE OF 165.00 FEET; THENCE NORTH 25° 36' EAST AND PARALLEL WITH THE CENTER LINE OF SAN ANTONIO ROAD FOR A DISTANCE OF 94.94 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF CALIFORNIA STREET, AS SAID LINE WAS ESTABLISHED IN THE DEED TO SAID CITY OF MOUNTAIN VIEW ABOVE REFERRED TO; THENCE NORTH 64° 18' WEST ALONG SAID SOUTHWESTERLY LINE OF

CALIFORNIA STREET FOR A DISTANCE OF 134.95 FEET;
THENCE WESTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE
PRECEDING COURSE WITH A RADIUS OF 30.00 FEET THROUGH A CENTRAL ANGLE
OF 90° 06' FOR AN ARC DISTANCE OF 47.18 FEET TO A POINT IN THE SAID
SOUTHEASTERLY LINE OF SAN ANTONIO ROAD;
THENCE SOUTH 25° 36' WEST ALONG SAID LAST MENTIONED LINE 64.89 FEET TO
THE POINT OF BEGINNING, AND BEING A PORTION OF THE RANCHO RINCON DE
SAN FRANCISQUITO.

PARCEL C:

A PORTION OF RANCHO RINCON DE SAN FRANCISQUITO, AND A PORTION OF THE
12-1/2 ACRE TRACT OF LAND DESCRIBED IN THE DEED TO E. C. THOITS, ET AL,
RECORDED JANUARY 26, 1949, BOOK 1737 OFFICIAL RECORDS, PAGE 233, SANTA
CLARA COUNTY RECORDS, AND DESCRIBED AS FOLLOWS:
COMMENCING ON THE ORIGINAL SOUTHEAST LINE OF SAN ANTONIO AVENUE AS
IT FORMERLY EXISTED 50 FEET WIDE, DISTANCE THEREON, SOUTH 25° 36' WEST
40 FEET FROM THE NORTHERLY CORNER OF SAID 12-1/2 ACRE TRACT; THENCE
SOUTH 64° 18' EAST PARALLEL WITH THE NORTHEAST LINE OF SAID 12-1/2 ACRE
TRACT, 200 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE
POINT OF BEGINNING, SOUTH 64° 18' EAST PARALLEL WITH THE NORTHEAST
LINE OF SAID 12-1/2 ACRE TRACT, 100 FEET; THENCE SOUTH 25° 36' WEST
PARALLEL WITH SAID SOUTHEAST LINE OF SAN ANTONIO AVENUE, 100 FEET;
THENCE NORTH 64° 18' WEST PARALLEL WITH THE NORTHEAST LINE OF SAID 12-
1/2 ACRE TRACT, 100 FEET, TO THE SOUTHERLY CORNER OF THE PARCEL OF
LAND DESCRIBED IN THE DEED TO SHELL OIL COMPANY, RECORDED JUNE 14,
1961, BOOK 5198 OFFICIAL RECORDS, PAGE 275; THENCE NORTH 25° 36' EAST
ALONG THE SOUTHEAST LINE OF SAID SHELL OIL COMPANY PARCEL AND ITS
NORTHEASTERLY PROLONGATION, 100 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL D:

PARCEL 4 AS SHOWN ON THE PARCEL MAP FILED FOR RECORD SEPTEMBER 28,
2015 IN BOOK 887, PAGES 12-14 OF MAPS, SANTA CLARA COUNTY RECORDS.

PARCEL D-1:

RIGHTS AND EASEMENTS AS GRANTED IN THAT CERTAIN INSTRUMENT
ENTITLED "RECIPROCAL PARKING AGREEMENT" RECORDED APRIL 11, 1974 IN
BOOK 0844, PAGE 698, OFFICIAL RECORDS, AS MODIFIED BY THAT CERTAIN FIRST
AMENDMENT TO RECIPROCAL PARKING AGREEMENT RECORDED OCTOBER 27,
2011 AS INSTRUMENT NO. 21386632 OF OFFICIAL RECORDS.

PARCEL D-2:

ALL RIGHTS IN AND TO THE USE OF THE PARCEL DESCRIBED BELOW, CREATED

AND RESERVED BY THE DEED FROM EDWARD D. THOITS, WILLIS K. THOITS AND WARREN R. THOITS, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF EDWARD C. THOITS, ALIAS, DECEASED AND HAZEL A. THOITS TO CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, DATED NOVEMBER 06, 1951 AND RECORDED JANUARY 21, 1952 IN BOOK 2352 OF OFFICIAL RECORDS, AT PAGE 368, SANTA CLARA COUNTY, RECORDS, FOR THE BENEFIT OF THE GRANTORS THEREIN, SAID PARCEL BEING DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE SET ON THE SOUTHEASTERLY LINE OF SAN ANTONIO AVENUE (50.00 FEET IN WIDTH) DISTANT THEREON SOUTH 25° 36' WEST 518.52 FEET FROM AN IRON PIPE SET AT THE POINT OF INTERSECTION THEREOF WITH THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF MILLER AVENUE AND FROM WHICH POINT OF BEGINNING A CONCRETE MONUMENT BEARS SOUTH 69° 43' 23" EAST 0.27 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 25° 36' EAST ALONG SAID SOUTHEASTERLY LINE OF SAN ANTONIO AVENUE 80.35 FEET TO AN IRON PIPE FROM WHICH A CONCRETE MONUMENT BEARS SOUTH 69° 43' 23" EAST 0.28 FEET; THENCE SOUTH 69° 43' 23" EAST 613.66 FEET TO AN IRON PIPE SET AT THE SOUTHERNMOST CORNER OF LOT NO. 3, AS SAID LOT IS SHOWN UPON THE RECORD OF SURVEY MAP HEREINAFTER REFERRED TO AND FROM WHICH LAST MENTIONED IRON PIPE A CONCRETE MONUMENT BEARS NORTH 69° 43' 23" WEST 0.60 FEET; THENCE SOUTH 33° 16' 56" WEST 82.10 FEET TO AN IRON PIPE WHICH BEARS SOUTH 69° 43' 23" EAST FROM THE POINT OF BEGINNING AND FROM WHICH LAST MENTIONED IRON PIPE A CONCRETE MONUMENT BEARS NORTH 69° 43' 23" WEST 0.55 FEET; THENCE NORTH 69° 43' 23" WEST 602.64 FEET TO THE POINT OF BEGINNING. BEING SHOWN UPON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY PROPERTY OF THOITS BROS. INC., EDWARD D. THOITS, TRUSTEE AND WARREN R. THOITS, TRUSTEE BEING A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, ON FEBRUARY 04, 1957 IN BOOK 78 OF MAPS, AT PAGE 20.

Exhibit D – Form of Certificate of Transfer

CERTIFICATE OF TRANSFER OF DEVELOPMENT RIGHTS

THIS CERTIFICATE OF TRANSFER OF DEVELOPMENT RIGHTS (this “Certificate”) is made as of _____ by and between Los Altos School District, a California public school district (“Seller”), and Merlone Geier Partners IX, L.P., a California limited partnership (“Buyer”).

Pursuant to the Transferable Development Rights Purchase and Sale Agreement dated as of _____, 2021, by and between Seller and Buyer (the “Purchase Agreement”; capitalized terms used but not defined in this Certificate shall have the meanings ascribed to such terms in the Purchase Agreement), Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, all of Seller’s right, title and interest in and to 150,000 TDR Units (the “Desired TDR”) related to the real property located at 2535 California Street and 350 and 506 Showers Drive, Mountain View, California, and more particularly described in Exhibit A attached hereto, as more particularly set forth below.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. Transfer. Seller hereby irrevocably grants, assigns and transfers to Buyer all of Seller’s right, title, interest and claim in, to and under the Desired TDR, subject to the terms of this Certificate and the Memorandum of Understanding Between the City of Mountain View & the Los Altos School District (Transfer of Development Rights Program), effective January 29, 2019 (the “TDR MOU”), and pursuant to the terms of the Covenant Restricting Use of Land and Notice of Development Restrictions (Transferable Development Rights Program) dated June 9, 2020, and recorded June 12, 2020, as Document Number 24504620 in the Official Records of the Santa Clara County Clerk-Recorder. Buyer hereby accepts the foregoing grant, assignment and transfer, subject to the terms of the TDR MOU and this Certificate.

2. Available TDR Units. The transfer of TDR Units pursuant to this Certificate permanently reduces the amount of gross floor area that may be constructed on the Property by the amount of the Desired TDR transferred hereby to Buyer.

3. Secondary Market. During the term of the TDR MOU, Buyer shall not transfer, sell or convey all or any portion of the Desired TDR to any third party for less than \$130 per TDR Unit. In the event Buyer enters into any agreement or arrangement for the transfer, sale or conveyance of all or any portion of the Desired TDR, Buyer shall provide Seller with written notice thereof within ten (10) days after entering into such agreement or arrangement. Such notice shall be executed by Buyer and the prospective purchaser of the TDR Units and shall disclose the purchase price of the TDR Units. Notwithstanding the foregoing or anything to the contrary in this Certificate, the provisions of this Section 3 shall not apply to (a) any assignment, encumbrance, pledge, hypothecation, transfer or conveyance before, on or after the Closing Date of some or all of the Desired TDR to (i) an affiliate of Buyer or (ii) a third party

in conjunction with the assignment, encumbrance, pledge, hypothecation, transfer or conveyance of the Receiving Site or (b) the application, or proposed application, of some or all of the Desired TDR to another project owned by Buyer or an affiliate thereof.

4. No Representation or Warranty. This Certificate is made without representation, warranty or guaranty by, or recourse against, Seller of any kind whatsoever, except as provided in the Purchase Agreement.

5. Indemnification. Buyer shall indemnify, hold harmless and, at Seller's request, defend (with counsel reasonably acceptable to Seller) Seller from and against any and all obligations, liabilities, claims, losses, damages, costs and expenses (including to reasonable attorneys' fees) suffered or incurred by, imposed on or asserted against Seller caused by, resulting from or arising out of Buyer's breach of any of the terms of this Certificate or the TDR MOU. Seller shall indemnify, hold harmless and, at Buyer's request, defend (with counsel reasonably acceptable to Buyer) Buyer from and against any and all obligations, liabilities, claims, losses, damages, costs and expenses (including to reasonable attorneys' fees) suffered or incurred by, imposed on or asserted against Buyer caused by, resulting from or arising out of Seller's breach of any of the terms of this Certificate or the TDR MOU.

6. Miscellaneous.

(a) This Certificate contains all (and supersedes any prior) agreements between the parties with respect to the matters that this Certificate covers.

(b) This Certificate may only be modified or amended by a written agreement duly executed by the parties hereto.

(c) This Certificate is intended for the exclusive benefit of Seller and Buyer and, except as otherwise expressly provided in this Agreement, shall not be for the benefit of, create any rights in or be enforceable by any other person or entity.

(d) Seller and Buyer shall, at any time and from time to time, promptly execute and deliver such further documents and instruments and take such other action as may be reasonably requested by the other party to carry out the purpose and intent of this Certificate.

(e) This Certificate shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflicts of laws).

(f) The headings and captions in this Certificate are for convenience of reference only and shall not affect the meaning or interpretation of this Certificate.

(g) This Certificate may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

(h) This Certificate shall be binding upon and inure to the benefit of Seller, Buyer and their respective successors and assigns.

(i) Seller and Buyer have received all required approvals and consents as are necessary in order to execute and deliver this Certificate and convey the Desired TDR to Buyer.

[Signature Page Follows]

IN WITNESS WHEREOF, Seller and Buyer have executed this Certificate of Transfer of Development Rights as of the date first written above.

SELLER:

Los Altos School District,
a California public school district

By: _____
Name: _____
Title: _____

BUYER:

Merlone Geier Partners IX, L.P.,
a California limited partnership

By: MGGP IX, L.P.,
a California limited partnership,
its General Partner

By: Merlone Geier IX, LLC,
a California limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Mountain View, County of Santa Clara, State of California, described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF THAT CERTAIN 25.11 ACRE TRACT DESCRIBED IN THE DEED FROM J. W. SEITZ, ET UX, TO GUY W. MEEKS, ET AL, DATED JULY 20, 1955 AND RECORDED JULY 25, 1955 IN BOOK 3233 OF OFFICIAL RECORDS, PAGE 351, WITH THE SOUTHERLY LINE OF CALIFORNIA STREET AS ESTABLISHED BY EASEMENT DEED TO THE CITY OF MOUNTAIN VIEW DATED JANUARY 31, 1961 AND RECORDED APRIL 05, 1961 IN BOOK 5126 OF OFFICIAL RECORDS, PAGE 176, THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID SOUTHERLY LINE OF CALIFORNIA STREET THE FOLLOWING COURSES AND DISTANCES: SOUTH 64° 18' EAST 149.48 FEET; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT, TANGENT TO THE LAST DESCRIBED COURSE, HAVING A RADIUS OF 955 FEET, A CENTRAL ANGLE OF 34° 47' 21", AN ARC DISTANCE OF 579.86 FEET; THENCE SOUTH 29° 30' 30" EAST 197.94 FEET; THENCE SOUTHERLY ALONG A CURVE TO THE RIGHT, TANGENT TO LAST DESCRIBED COURSE, HAVING A RADIUS OF 30 FEET A CENTRAL ANGLE OF 67° 11' 29" AN ARC DISTANCE OF 35.28 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SHOWERS DRIVE AS ESTABLISHED BY EASEMENT DEED TO THE CITY OF MOUNTAIN VIEW, DATED APRIL 12, 1962 AND RECORDED APRIL 19, 1962 IN BOOK 5545 OF OFFICIAL RECORDS, PAGE 475; THENCE ALONG SAID LAST NAMED LINE SOUTH 37° 40' 50" WEST 297.59 FEET TO A POINT ON THE NORTHEASTERLY LINE OF THAT CERTAIN 80 FOOT STRIP OF LAND CONVEYED IN THE DEED FROM JOSEPH W. SEITZ, TO THE CITY AND COUNTY OF SAN FRANCISCO, DATED JULY 13, 1950 AND RECORDED JULY 20, 1950 IN BOOK 2018 OF OFFICIAL RECORDS, PAGE 444, THENCE ALONG THE NORTHEASTERLY LINE OF SAID 80 FOOT STRIP NORTH 69° 43' 31" WEST 903.41 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID 25.11 ACRE TRACT HEREINABOVE REFERRED TO; THENCE ALONG LAST NAMED LINE NORTH 33° 16' 56" EAST 697.12 FEET TO THE POINT OF BEGINNING.

Exhibit E – Form of Endorsement

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First American

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ZONING ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.:

File No.: NCS-1024520-ONT1

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. According to applicable zoning ordinances and amendments, the Land is not classified Zone P(40) Planned Development - 40, as affected by that certain Memorandum of Understanding between the City of Mountain View & The Los Altos School District (Transfer of Development Rights Program) dated as of January 29, 2019, a copy of which is attached hereto;
 - b. The following use or uses are not allowed under that classification: Mixed Use, Multifamily residences and Retail
2. There shall be no liability under this endorsement based on
 - a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.
 - b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.
 - c. The refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date:

First American Title Insurance Company

Dennis J. Gilmore, President

Greg L. Smith, Secretary

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Schedule 7.2.2 – Litigation

None