

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS BETWEEN
BIG HORN RBVP, L.P. AND
ELK GROVE UNIFIED SCHOOL DISTRICT
(APN 132-0290-052)**

PREAMBLE

This Purchase and Sale Agreement and Joint Escrow Instructions (“Agreement”) is entered into as of March 23, 2021 (“Effective Date”) between **BIG HORN RBVP, L.P.** a California limited partnership (“Seller”) and the **ELK GROVE UNIFIED SCHOOL DISTRICT**, a California school district (“Buyer”), with Seller and Buyer each a “Party,” and together, the “Parties,” on the terms and conditions which follow.

RECITALS

WHEREAS, Seller desires to sell real property consisting of approximately 10 gross acres in the County of Sacramento, as more particularly described in *Exhibit A* and depicted in *Exhibit B*, attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, Buyer desires to acquire the Property more particularly described herein for an elementary school site and related facilities to serve the student needs of the District (the “Project”); and

WHEREAS, Seller recognizes the value to the community of educational facilities and in particular the Project, to be constructed and operated by Buyer on the Property; and

WHEREAS, Seller maintains that it would not sell the Property to a private Party for the Purchase Price agreed upon, as set forth in section 2.02 herein, and intends that the difference, if any, between the Purchase Price and Seller’s appraised value be a donation to Buyer; and

WHEREAS, Buyer represents that it is a qualified organization as that term is defined in section 170(c) of the Internal Revenue Code (“IRC”); and

WHEREAS, Buyer is willing to execute the Donee Acknowledgment in IRS form 8283 (Noncash Charitable Contributions) and such other documents, as necessary, to acknowledge a donation, to the extent the fair market value exceeds the purchase price, to Buyer, and that Buyer is a qualified organization within the meaning of section 170(c) of the IRC; and

WHEREAS, Seller shall solely be responsible for determining the amount of the donation, which is not required, by law, to be determined by Buyer; and

WHEREAS, Seller is willing to sell said real property under the terms and conditions of this Agreement; and

WHEREAS, this Agreement, and related documents, sets forth the complete understanding and terms of the Parties.

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TERMS, CONDITIONS, AND COVENANTS

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I DEFINED TERMS

For the purpose of this Agreement, the terms set forth below shall have the following meanings:

1.01 Close of Escrow. “Close of Escrow” shall be as set forth in Section 6.06 below.

1.02 Deed. “Deed” means a grant deed, or similar instrument, conveying title to the Real Property described herein from Seller to Buyer.

1.03 Donation Value. “Donation Value” means the difference between the Purchase Price and the appraised value of the Property in an appraisal obtained by Seller, to be established under Section 3.01.

1.04 Escrow. “Escrow” means that escrow to be opened with Escrow Holder pursuant to Section 6.01 below.

1.05 Escrow Holder. “Escrow Holder” means Stewart Title of Sacramento, 555 Capitol Mall, Suite 545, Sacramento, CA 95814; Phone No. 916-256-1252; Facsimile No. 916-564-5840. The escrow officer shall be Antigone Vaccaro.

1.06 Escrow Instructions. “Escrow Instructions” mean (a) the provisions of this Agreement requiring any action by or compliance on the part of Escrow Holder, (b) escrow instructions known as “general provisions” which are *pro forma* escrow instructions of First American Title Insurance Company (to the extent such escrow instructions do not conflict with the escrow instructions specifically set forth in this Agreement) and (c) any other supplemental instructions as may from time to time hereafter be signed and delivered by the Parties to Escrow Holder. In the event of any conflict between this Agreement and the “general provisions” of First American Title Insurance Company escrow instructions, or any “amended” or “supplemental” escrow instructions or “amended purchase agreement” drafted by Stewart Title of Sacramento, the escrow instructions contained herein shall govern.

1.07 Existing Above-ground Improvements. “Existing Above-ground Improvements” means all those above-ground improvements existing on the Property as of the Effective Date, including a farmhouse with a street address of 8551 Poppy Ridge Road, Elk Grove, CA 95757, and additional structures including a detached garage, pump house, and oil tank, ancillary to the house.

1.08 Preliminary Report. “Preliminary Report” shall refer to the Preliminary Title Report for the Property dated January 2, 2020, and attached hereto as **Exhibit C**.

1.09 Purchase Price. “Purchase Price” means the price, set forth in section 2.02 below, to be paid by the Buyer to the Seller as total consideration for the purchase and sale of the Property.

1.10 Real Property or Property. “Real Property” and “Property” refer to the real property consisting of approximately 10 acres and located at 8551 Poppy Ridge Road, Elk Grove, California 95757, located at the northwest corner of Poppy Ridge Road and Lousada Drive within the City of Elk Grove, California, and reserved as an elementary school. Said Property is identified as Sacramento County Assessor’s Parcel No. 132-0290-052 and is more particularly described in the attached **Exhibit A** and depicted in the attached **Exhibit B**.

1.11 Title Company. “Title Company” means Stewart Title of Sacramento.

1.12 Title Policy. “Title Policy” means an owner’s policy of title insurance, CLTA Standard Coverage Policy, to be issued at close of escrow by Title Company in the amount of the Purchase Price.

ARTICLE II **AGREEMENT OF SALE**

2.01 Purchase and Sale. Subject to the terms and provisions of this Agreement, Seller sells to Buyer and Buyer purchases from Seller all of Seller’s right, title, and interest in the Property, including any real property improvements thereon.

2.02 Purchase Price. The purchase price for the Property will consist of cash payments paid through escrow, as described below, totaling Two Million Nine Hundred Thousand Dollars (\$2,900,000).

2.03 Deposit. No later than ten (10) business days after the Effective Date of this Agreement, the Buyer shall deposit into Escrow, as a deposit, an amount of Twenty Thousand Dollars (\$20,000) (the “Deposit”) subject to Article V and Section 6.07(B). Unless the District unilaterally and without cause terminates the Escrow, provided the conditions are satisfied as described in Article V, the Deposit shall be credited to the Total Purchase Price. The Deposit shall remain in Escrow until Close of Escrow, unless escrow is terminated for any reason before Close of Escrow, in which case the Deposit shall be returned to Buyer, less Buyer’s share of escrow costs and fees, except in the case of a Buyer’s default, in which case the Deposit shall be released to Seller pursuant to Section 6.07(B).

2.04 Right of Entry. Buyer and its agents and contractors may enter the Property on reasonable notice to Seller to make inspections, surveys, and tests of the Property that Buyer considers necessary or desirable. Buyer must use reasonable care in connection with any inspection and testing. Buyer will indemnify Seller from all claims, damages, costs (including, without limitation, reasonable attorneys’ fees), losses, and expenses arising out of or resulting from Buyer’s entry or activities on the Property prior to Close of Escrow. However, this agreement of indemnification does not extend to any damage or liability Seller may suffer because of the presence or discovery of pre-existing hazardous waste or materials on the Property (including any perceived or actual loss of value of the Property arising therefrom) except to the extent Buyer exacerbates same.

2.05 Termination of Tenancy. If any tenant is on the Property, Seller must terminate the tenancy, all tenants must be completely vacated, and the belongings of all tenants must be completely removed from the Property before the Close of Escrow. The requirements of this Section 2.05 is material to this Agreement. No tenant has any right to any part of the Purchase Price and Buyer will pay the Purchase Price only to the Seller. If any tenant is on the Property, other than the Seller, Seller will indemnify and defend Buyer against any claims for any share in the Purchase Price based on that tenancy.

ARTICLE III **DONATION; DONATION ACKNOWLEDGEMENT**

3.01 Donation Value and Acknowledgment. Seller, at its discretion, may obtain an appraisal of the Property which also serves as a “qualified appraisal” pursuant to 170 of the IRC, and if such qualified appraisal values the Property higher than the Purchase Price, then Buyer agrees to execute Part V (“Donee Acknowledgment”) of Internal Revenue Service Form 8283 acknowledging its status as a charitable organization qualified under the Internal Revenue Code to receive a charitable contribution in the form of donated property equal to the difference between the Seller’s appraisal value and the Purchase Price. As provided in Form 8283, the Donee Acknowledgment does not represent agreement, or disagreement, with the claimed fair market value determination of the Property as established by a qualified appraisal pursuant to IRC

section 170. Seller solely bears the responsibility of qualifying for a non-cash charitable contribution under both State and Federal law in order to qualify the donation acknowledged herein. The provisions of this Section 3.01 shall survive close of escrow.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES**

4.01 The Seller's Representations and Warranties. The Seller covenants, represents, and warrants the following:

(a) Full Authority to Convey All Interest in the Property. The Seller has the full right, power, and authority to execute this Agreement, and related title documents, has the full right, power, and authority to perform all of the obligations hereunder, and has the full right, power, and authority to dispose of or otherwise convey the Property as described herein. The Seller represents that it has secured, or will secure before close of escrow, all appropriate consents that are necessary to consummate the Agreement, if any. The Title Company will satisfy itself that the Seller has full right, power, and authority to execute this Agreement and to convey all right, title and interest set forth herein.

(b) Compliance with Applicable Law and No Pending Litigation against the Property. To Seller's actual knowledge, there is no violation of federal, state, local law, code, ordinance, rule, regulation, or requirement, nor is there any pending or threatened litigation in connection with the Property which would prohibit the sale or Buyer's development of the Property.

(c) No Liens Securing Payment or Other Obligations on Property. Excluding any liens or encumbrances caused by Buyer, Seller warrants that the Property is not encumbered, or will not be encumbered by the time of close of escrow, by liens securing payment or other obligations which, if not performed, would entitle a third party or entity to foreclosure on the Property as collateral. The Seller agree to pay any general and special taxes that are due or delinquent on the Property and to pay any special assessments due on the Property as of the date of close of escrow.

(d) No Hazardous Waste on Property. To Seller's actual knowledge, other than as disclosed below, (1) the Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including but not limited to soil and groundwater conditions, and (2) neither the Seller nor any other person has used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials ("Hazardous Substances"). For the purpose of this Agreement, Hazardous Substances include, without limitation, oil, natural gas or other petroleum or hydrocarbon substances; substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes" or "restricted hazardous wastes" or stated to be known to cause cancer or reproductive toxicity under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317, et seq.; the California Hazardous Substance Act, Health and Safety Code sections 28740, et seq.; the California Hazardous Waste Control Act, Health and Safety Code sections 25100, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code sections 24249.5, et seq.; the Porter-Cologne Water Quality Act, Water Code sections 1300, et seq.; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws.

(e) Tenants on Property; Relocation. The Parties agree that the Purchase Price as set forth in Section 2.02 is inclusive of relocation payments and assistance, if any, that might be due.

4.02 The Buyer's Representations and Warranties. The Buyer covenants, represents, and warrants the following:

(a) Authority to Acquire Property. The Buyer represents and warrants that, upon ratification of this Agreement by the Buyer's Governing Board, and subject to the conditions precedent set forth in Article V, the Buyer will have full authority to carry out the provisions of this Agreement.

(b) Compliance with Subdivision laws. The Buyer represents and warrants to the Seller and Escrow Holder that the Buyer, as a public school district, is not required to comply with the Subdivision Map Act, or Parcel Map Ordinance, or any related subdivision law in connection with the acquisition of the Property.

4.03 Seller's Disclosures.

(a) Hazardous Substances. Seller represents that in providing those Environmental Reports pursuant to Section 5.04 it has provided Buyer with a description of hazardous substance releases on the Property, if any, within Seller's actual knowledge. Buyer acknowledges that in providing the Environmental Reports, Seller has complied with its disclosure obligation under California Health & Safety Code Sec. 25359.7(a) which requires:

Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath real property shall, prior to the sale, lease or rental of the real property by that owner, give written notice of that condition to the buyer, lessee or renter of the Real Property.

(b) Natural Hazards. As used herein, the term "Natural Hazard Area" shall mean those areas identified as natural hazards in the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4, and 51183.5, and California Public Resources Code Sections 2621.9, 2694, and 4136, and any successor statutes or laws (the "**Act**"). Pursuant to Section 5.04, Seller shall provide Buyer with a Natural Hazard Disclosure Statement in a form required by the Act. Buyer acknowledges that the Disclosure Statement fully and completely discharges Seller from its disclosure obligations under the Act, and, for the purpose of this Section 4.03(b), the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors or omissions not within its personal knowledge shall be deemed to apply. Buyer acknowledges and agrees that nothing contained in the Disclosure Statement shall release Buyer from its obligation to fully investigate the condition of the Property, including, without limitation, whether the Property is located in any Natural Hazard Area, and that Buyer has the expertise to perform such investigations and has agreed to do so under the terms of this Agreement.

4.04 As-Is. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS WHERE IS AND WITH ALL FAULTS" BASIS AND THAT THE PROVISIONS OF THIS SECTION 4.04. ARE A MATERIAL INDUCEMENT TO SELLER ENTERING INTO THIS TRANSACTION. Buyer agrees that except with regard to Seller's representations, warranties and covenants contained in this Agreement, Buyer will accept the Property in its condition at Closing AS-IS, WHERE-IS and WITH ALL ITS FAULTS, including, without limitation, any faults and conditions specifically referenced in this Agreement. Buyer acknowledges and agrees that, except as specifically provided in this Agreement, Seller (including, without limitation, any employee, representative, consultant, contractor or agent of Seller) has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, or past, present or future, concerning or with respect to the Property.

ARTICLE V

CONDITIONS PRECEDENT

The obligations of Buyer and Seller to complete this transaction pursuant to this Agreement are subject to the satisfaction, at or before the Closing, of the conditions contained herein. Buyer and Seller agree that each Party will, in good faith, endeavor to remove all said contingencies and conditions which are within the control of the respective Party. The following are conditions precedent to the performance of the Agreement:

5.01 Condition that the Purchase Price be Deposited in Escrow. Performance of this Agreement is conditioned on the Buyer's deposit into escrow of the Purchase Price, together with title and escrow closing costs for which the Buyer is responsible. Escrow Holder shall notify Buyer in sufficient time to permit Buyer to draw a warrant for closing costs required in addition to the Purchase Price at least five (5) calendar days before the estimated date of close of escrow.

5.02 Conveyance of Good Title. The Seller will convey good and marketable title to the Property by Deed free and clear of all debts, liens, assessments and encumbrances, unless specifically allowed by section 5.03 or permitted by the Buyer in writing as set forth in section 5.03.

5.03 Title Report and Review.

(a) Seller must convey title to the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Seller, subject only to the following title exceptions ("Permitted Exceptions"): title exceptions numbered 1 to 12, inclusive, as described in Schedule B to the Preliminary Title Report. A copy of the Title Report is attached hereto as **Exhibit B** and incorporated herein by this reference. Prior to Close of Escrow, Title Company shall issue a *pro forma* title policy based on the legal description of the Property attached hereto as **Exhibit A**, and shall remove all of the title exceptions except for Permitted Exceptions.

(b) At the Close of Escrow, the Title Company must be prepared to issue the Title Policy in the name of the Buyer for marketable title, free of restrictions, liens, and encumbrances except as to those restrictions, liens, and encumbrances specifically allowed by this section 5.03, or otherwise approved in writing by the Buyer.

5.04 Due Diligence Period; Right of Entry. Following the opening of Escrow, and until the date that is seven (7) days after the Effective Date, Buyer may investigate and research the suitability and feasibility of the Property for use as a school site ("Due Diligence Period"). The matters subject to Buyer's investigation and testing under this Section include land use, entitlement, financing, regulatory, and legal due diligence, engineering studies, geotechnical studies (which may include the taking of soil and other samples), physical inspections, and environmental surveys with respect to the Property provided. To facilitate Buyer's investigation and analysis under this paragraph, Seller grants Buyer and its consultants the right to enter the Property at any time during normal business hours during the Due Diligence Period to conduct such inspections, reviews, examinations, and tests on the Property as Buyer deems necessary or desirable to investigate the physical condition of the Property, as well as access to all material documents relating to the physical and title condition of the Property within Seller's possession (but Seller makes no representation regarding the accuracy or completeness of the documents and Buyer relies on same at its sole risk) as listed below. The purchase is contingent upon Buyer's completion of various feasibility studies required by the California Department of Education and the California Environmental Quality Act and Buyer's written approval of the condition of the Property. At the expiration of the Due Diligence Period, Buyer may, at its sole discretion, either accept the condition of the Property and close escrow, or reject the condition of the Property and cancel escrow with no further obligation other than payment of any escrow fees incurred, after which Deposit shall be returned to the Buyer. The Parties may extend the Due Diligence Period and the Close of Escrow by written agreement for an additional period as needed in order for Buyer to complete its investigation and testing under this section. Buyer

reserves the right to reduce the Due Diligence Period to less than seven (7) days in order to expedite the close of escrow.

Within two (2) days of opening of escrow, Seller shall provide Buyer with the following documents:

- i. Existing Phase I Environmental Site Assessment Report prepared by ERC Diligence dated August 19, 2013
- ii. Jurisdictional Delineation & Special- Status Species Assessment Report prepared by Gibson & Skordal, LLC, dated January 2014.
- iii. Initial Arborist Report and Tree Inventory Summary prepared by Sierra Nevada Arborist dated February 15, 2014
- iv. Geotechnical Engineering Report prepared by Wallace Kuhl & Associates dated April 8, 2014.
- v. Asbestos Survey prepared by Adam Laboratories, Inc., dated May 8, 2019
- vi. Asbestos Report dated August 8, 2019

(a) In conducting any inspection of the Property or otherwise accessing the Property during the Due Diligence Period, Buyer and Buyer's representatives shall at all times comply with all laws and regulations of all applicable governmental authorities, and neither Buyer nor any of Buyer's representatives shall (i) interfere with the business of Seller conducted at the Property or disturb the use or occupancy of any occupant of the Property other than, in each case, to a *de minimis* extent; (ii) damage the Property; or (iii) reveal or disclose any information obtained by Buyer prior to Close of Escrow concerning the Property or documents related thereto, except as may be otherwise required by law. Seller acknowledges that Buyer is a public school district, and is subject to certain public disclosure requirements under the Education Code, the Brown Act, the California Public Records Act, and other applicable laws and regulations.

(b) Buyer and Buyer's representatives shall not be permitted to conduct borings of the Property or drilling in or on the Property, or any other invasive testing, in connection with the preparation of an environmental audit or in connection with any other inspection of the Property without the prior written consent of Seller, which consent shall not be unreasonably withheld.

(c) Buyer shall schedule and coordinate all inspections of the Property or other access thereto during the Due Diligence Period with Seller and shall give Seller at least twenty-four (24) hours' prior notice thereof. Seller shall be entitled to have a representative present at all times during each such inspection or other access. Buyer agrees to pay to Seller promptly upon demand the reasonable cost of repairing and restoring any damage or disturbance that Buyer or Buyer's representatives shall cause to the Property, if any. All inspection fees, appraisal fees, engineering fees, and other costs and expenses of any kind incurred by Buyer or Buyer's representatives relating to such inspection and its other access shall be at the sole expense of Buyer.

(d) If the Close of Escrow shall not occur for any reason whatsoever, Buyer shall promptly return to Seller all due diligence materials delivered by Seller to Buyer and shall destroy all copies (including electronic copies) and abstracts thereof, to the extent allowed by law.

5.05 Miscellaneous Conditions. Close of Escrow shall not occur until Buyer has received required approvals, as applicable, from the California Department of Education and California Department of Toxic Substances Control to use the Property for its campus Project, or have made progress on obtaining such approvals as satisfactory to the Buyer, and shall have achieved compliance with CEQA for the Project, or deferred such action as allowed by law.

ARTICLE VI
ESCROW PROVISIONS

6.01 Escrow. Except as otherwise provided, the transfer of documents and funds contemplated herein for the purchase and sale of the Property will be effected through the Escrow.

6.02 Escrow Closing Costs. Except as the Parties may otherwise agree in writing, they will split all escrow and title costs, fees, and charges for this purchase in accordance with the customary practice in Sacramento County. The Buyer is exempt from certain charges such as recording fees and documentary transfer taxes pursuant to Section 27383 of the Government Code.

6.03 Conditions to Close of Escrow. The following are conditions precedent to the close of escrow (i.e., the transfer of the Property) that can be waived only by written waiver executed by the Seller or the Buyer as applicable:

- (a) The Buyer will have deposited with the Escrow Holder the Purchase Price, the Buyer's share of escrow costs and fees described herein, and all of the items required under this Agreement;
- (b) The Buyer will have completed the necessary feasibility studies required by the California Department of Education and the California Environmental Quality Act;
- (c) The Buyer will not be in breach or default of any provision herein;
- (d) The Buyer's warranties and representations as set forth herein are true as of the close of escrow;
- (e) The Seller will have deposited with Escrow Holder all of the items required under this Agreement;
- (f) The Seller will inspect the Property and confirm in writing to Escrow Holder that all current residents and/or tenants and their belongings are completely vacated from the Property;
- (g) The Seller will not be in breach or default of any provision herein;
- (h) The Seller's warranties and representations as set forth herein are true as of the close of escrow;
- (i) The Title Company will be committed to issue and will issue as of the close of escrow the Title Policy without the exceptions noted or objected to by the Buyer as set forth in this Agreement;

6.04 The Seller's Deliveries to the Escrow Holder. On or before the close of escrow, the Seller will deliver, or cause to be delivered, to the Escrow Holder, the following:

- (a) A Deed to the Property in a form approved by the Title Company;
- (b) Written confirmation that all tenants and their belongings have completely vacated the Property;
- (c) Such other documents as, in the opinion of the Escrow Holder, are required from the Seller to carry out the provisions of this Agreement.

6.05 The Buyer's Deliveries to the Escrow Holder. On or before the close of escrow, the Buyer will deliver, or cause to be delivered, to the Escrow Holder:

- (a) A warrant or check sufficient to pay the Purchase Price of the Property (less the Deposit), drawn against the funds of the Buyer. Unless otherwise instructed by the Escrow Holder, the warrant will be drawn to the order of the Title Company;
- (b) Amounts, in addition to the Purchase Price, due from the Buyer such as escrow fees and costs in accordance with this Article V;
- (c) A certificate of acceptance pursuant to section 27281 of the California Government Code, substantially in the form attached as *Exhibit D*; and
- (d) Such other documents which, in the opinion of the Escrow Holder, are reasonably necessary to carry out the provisions of this Agreement.

6.06 Close of Escrow. Escrow will close as soon as is practicable but in no event later than ten (10) days after all conditions to close set forth are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the Deed(s). The escrow will be considered closed on the date that the Title Company records the Deed(s).

6.07 Default.

A. **Seller's Default.** The Seller will be in default under this Agreement if: (i) the Seller fails to perform any of the Seller's covenants, obligations or agreements under this Agreement; or (ii) if any of its representations and warranties contained in this Agreement are, or become, untrue or inaccurate in any material respect; provided that the Seller will have five (5) business days to cure such a default (or such longer period as is required in the exercise of due diligence, not to exceed twenty (20) business days, if the Seller commence such cure within the initial five (5) business day period) after the Seller receives written notice of such default from the Buyer ("Seller's Default").

In the event of a Seller's Default, the Buyer may, as the Buyer's sole and exclusive remedies for such Seller's Default: (i) waive the effect of such matter and proceed to consummate the Close of Escrow (provided that in no event will the Buyer have the right to waive any of the Seller's conditions precedent hereunder); (ii) cancel this Agreement and escrow, with the Seller to pay any escrow cancellation charges; or (iii) bring an appropriate lawsuit for specific performance of this Agreement without any right to damages in or with respect to such action for specific performance. All rights and remedies contained in this paragraph are non-cumulative and exclusive.

B. **The Buyer's Default.** Buyer shall be in default if the Buyer fails to complete this purchase after the expiration of the due diligence period as set forth herein, for a reason other than an event of a Seller's Default ("Buyer Default"). In the event of a Buyer Default, Seller shall be entitled to retain the deposit actually paid as liquidated damages. The Parties have agreed that Seller's actual damages, in the event of a failure to consummate this sale due solely to Buyer's default hereunder would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the amount of the deposit is a reasonable estimate of the damages that Seller would incur under this Agreement.

6.08 The Escrow Holder's Duties on the Close of Escrow.

(a) The Escrow Holder will provide the Parties, at least five (5) days before the close of escrow, pro forma closing statements in addition to providing a pro forma Title Policy to the Buyer as provided herein.

(b) The Escrow Holder will give notice to both the Buyer and the Seller at least five (5) days before the close of escrow of its intention to close escrow five (5) days thereafter, and will provide pro forma documents including a Deed or Deeds with legal description to be provided by the Buyer for review and approval by the Seller. Escrow Holder will notify the Buyer at least five (5) days before the close of escrow of any other deposits required of the Buyer. Escrow Holder will follow up on approval of the Deed documents and of the pro forma closing statements with the Parties at least three (3) days before close of escrow.

(c) At the close of escrow, the Escrow Holder will:

(1) Ascertain any unpaid or delinquent taxes or assessments due for general, supplemental, and special taxes and for special assessments. Upon ascertainment of any such amount, the Escrow Holder will require the Seller to deposit such amounts or deduct from the Purchase Price the equivalent amount for such unpaid or delinquent taxes or assessments and pay them. As the Buyer is a public agency, the Escrow Holder shall comply with the provisions of California Revenue and Taxation Code Sections 5081, et. seq. regarding cancellation of taxes on exempt property. In no event shall taxes be collected, or collectible, from the Buyer.

(2) To the extent there is any special assessment on the Property, the Escrow Holder will notify the Buyer of its share due with regard to any such assessment district before the time of the close of escrow.

(3) Prepare any preliminary or change of ownership statements as required by law.

(4) Deliver the Title Policy to the Buyer.

(5) Deliver the Purchase Price to the Seller, less Seller's share of escrow and title costs, fees, commissions, and any adjustments, if applicable, as described in subsections (c) (1) and (2) above and less amounts, as necessary, to remove any liens and encumbrances described in section 5.03 above.

(6) Perform such other duties as, in the opinion of the Escrow Holder, are necessary to carry out the terms and provisions of this Agreement.

6.09 Distribution of Escrow Documents. Escrow Holder will deliver and distribute the following documents:

(a) To the Seller, a proposed and final Seller's closing statement;

(b) To the Buyer, a proposed and final Buyer's closing statement and pro forma policy of title insurance;

(c) To the Seller, if requested, recorded copies of the Deed, which will be mailed to the Seller at the address set forth below;

(d) To the Buyer, after recordation, the originals of the Deed and the Title Policy, to be mailed to the address shown below;

(e) To the Buyer and the Seller, copies of such other documents, if any, not referenced herein and which are recorded at the close of escrow.

6.10 Supplemental Escrow Instructions. The Parties agree to execute supplemental escrow instructions to carry out the provisions of this Agreement, provided the supplemental instructions are not inconsistent with this Agreement as written or as it may hereafter be amended.

6.11 Title Insurance. At the close of escrow, the Escrow Holder will cause the Title Company to issue the Title Policy for the Property to the Buyer, subject only to those exceptions permitted by the Buyer herein. Before close of escrow, the Escrow Holder will provide a *pro forma* Title Policy to the Buyer and the Buyer's counsel for review.

ARTICLE VII

POSSESSION FOR CONSTRUCTION PURPOSES

7.01 In the event that Buyer needs to commence construction of the Project before Close of Escrow, Seller hereby grants to Buyer, its agents, employees, permittees, contractors, and assigns, the right to, at reasonable times, enter upon, over, across, and under the Property for purposes of constructing the Project and accomplishing all necessary incidents thereto, including, without limitation, (i) making such inspections, surveys and tests of the Property as may be reasonably necessary or desirable in Buyer's judgment; (ii) Tree removal; (iii) installing a chain-link fence equipped with dust/privacy screen and controlled/lockable gates to secure the Property; (iv) taking soils samples; (v) excavation and stockpiling of areas with identified lead, arsenic and pesticide contamination; (vi) loading and transporting excavated soil (approximately 551 yards) to appropriate landfill; and (vii) making excavations safe in preparation for remaining building demolition and future grading activities (collectively, "Construction Access"). Any and all such activities shall be taken at Buyer's sole cost and expense. District shall provide twenty-four (24) hours' notice to Owner before the entry upon the Property for Construction Access. District's Construction Access shall be limited to the 7:00 a.m. to 7:00 p.m. or as otherwise agreed to in writing by the Parties. The Purchase Price includes compensation for such right of entry. Buyer shall provide twenty-four (24) hours prior notice prior to exercising its right of entry pursuant to this Article, shall use reasonable care in connection with any such entry upon the Property, and (i) shall indemnify and hold Seller harmless from and against any and all third party claim(s) for damages arising out of or resulting from such entry and/or activities upon the Property, and (ii) shall indemnify Seller from any damages, costs, and expenses directly incurred by Seller as a result of any such entry upon the Property, except with respect to changes to the Property in connection with construction of the Project if Buyer ultimately acquires the Property. Provided, however, the indemnification specified herein does not extend to any damage Seller may suffer by reason of the presence or discovery of hazardous waste on the Property (including any perceived or actual loss of value of the Property) except to the extent Buyer exacerbates same, nor does it indemnify Seller from any liability as a consequence of the presence or discovery of hazardous waste on the Property. Without otherwise modifying the foregoing, should Buyer close on the Property, Buyer assumes all liability for the remediation of any hazardous waste on the Property and shall investigate and remediate same at its sole cost and expense with no recourse to Seller and expressly waives any and all rights to do so.

This provision covers any and all work performed by the District on the Property whether performed hereunder or under that prior "Amended Site Access Agreement," for the Property entered into by Buyer and Seller, which is hereby terminated.

Except as otherwise provided, the obligations of this Section shall survive Close of Escrow or the earlier termination of this Agreement.

ARTICLE VIII
NOTICES

8.01 Notices. Any notice, demand, approval, consent, or other communication between the Parties will be mailed to the following addressees:

To Buyer: Elk Grove Unified School District
Attn: Robert Pierce, Deputy Superintendent, Business Services and Facilities
9510 Elk Grove-Florin Road
Elk Grove, CA 95624
Phone: (916) 686-7722
Email: rdpierce@egusd.net

with a copy to:

Lozano Smith
Attn: Daniel Maruccia
One Capital Mall, Suite 640
Sacramento, CA 95814
Phone: (916) 329-7433
Facsimile: (916) 329-9050
Email: dmaruccia@lozosmith.com

To Seller: Big Horn RBVP, L.P.
Attn: Debbie Perry
940 Emmett Avenue, Suite 200
Belmont, CA 94002
Phone: 415-227-2206
Facsimile: 415-546-0569
Email: debbie@villageprop.com

with a copy to:

Big Horn RBVP, L.P.
Attn: Mary Haber
940 Emmett Avenue, Suite 200
Belmont, CA 94002
Phone: 415-227-2261
Facsimile: 415-546-0569
Email: mary@villageprop.com

Escrow Holder:

Stewart Title of Sacramento
Attn: Antigone Vaccaro
555 Capitol Mall, Suite 545,
Sacramento, Ca. 95814
Phone: 916-256-1252
Facsimile: 916-564-5840
Email: av@stewartsac.com

Notice is duly given to another Party upon: (a) hand delivery to the other Party; (b) three business days after the Notice has been deposited with the United States Postal Service as first class certified mail, return receipt requested, postage prepaid, and addressed to the Party as set forth in this Article VII; (c) the next business day after the Notice has been deposited with a reputable overnight delivery service, postage prepaid, addressed to the Party as set forth in this Article VII with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery-service-provider; or (d) when received by the other Party if transmitted by facsimile, so long as such transmittal is evidenced by electronic confirmation and the notice is concurrently dispatched by one of the other three (3) methods described above. A Party may change its address or facsimile number for purposes of this Article by giving the other Party written notice of a new address or facsimile number in the manner set forth above.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.01 **Brokers.** Each party represents and warrants to the other party that it has not hired, retained or dealt with any real estate broker, firm or salesman in connection with the transaction contemplated by this Agreement.

9.02 **Binding Effect.** This Agreement is binding upon the heirs, successors, and assigns of the Parties.

9.03 **Waiver of Provisions.** Waiver by the Seller, or the Buyer, of any breach of any term, covenant or condition by the Buyer or the Seller, as the case may be, contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant or condition contained in this Agreement by the Buyer or the Seller as the case may be. Waiver of any provision of this Agreement must be in writing.

9.04 **Further Documents.** The Parties hereto agree to make, execute, and deliver such documents and undertake such other and further acts as may be reasonably necessary or convenient to carry out this Agreement and its purpose and intent.

9.05 **Entire Agreement.** This Agreement, plus such ancillary agreements as may be executed by the Parties in connection with this Agreement, sets forth the entire Agreement between the Seller and the Buyer and supersedes any and all prior negotiations and agreements, written or oral, concerning or relating to the purchase and sale of the Property.

9.06 **Invalidity of Any Provision.** If any provision of this Agreement as applied to either Party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

9.07 **Amendments in Writing.** No addition to or modification of any provision contained in this Agreement will be effective unless fully set forth in writing and signed by both Parties hereto.

9.08 **Time is of the Essence.** Time is of the essence in this Agreement and each provision hereof. Although time is of the essence in this Agreement, this provision will not cause an automatic forfeiture and will be construed in accordance with traditional principles of equity.

9.09 **Governing Law.** The laws of the State of California will govern all questions with respect to the construction of this Agreement and the rights and liabilities of the Parties.

9.10 Headings. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not to be construed as enlarging or limiting the language following said headings.

9.11 Construction. Whenever the context of this Agreement requires, the singular will include the plural and the masculine, feminine and neuter will include the others. This Agreement will not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared this Agreement. This Agreement consists of not only this Agreement but also all related documents necessary to consummate the purchase and sale of the Property.

9.12 Survival of Warranties and Covenants. All of the covenants, representations and warranties set forth herein which are intended to bind the Parties after the vesting of title in the Buyer will survive the close of escrow and delivery of the deed(s).

9.13 Execution in Counterparts. The Parties may sign any document, including this Agreement, in counterpart such that each document, when all signatures are appended together, will constitute a fully signed original or copy thereof.

9.14 Calendar Days. All time limits and related provisions herein will be counted in calendar days unless otherwise specifically provided. If any of the time periods herein end on a weekend or a holiday, said time period shall be extended to the next business day.

9.15 Individuals Signing Below. Each of the individuals signing below purportedly as an agent for the Buyer, or Seller, individually represents and warrants that he or she is authorized to execute this Agreement and bind the Buyer or Seller (as applicable).

9.16 Seller's Knowledge. "Seller's knowledge," "Seller's actual knowledge," "the best Seller's knowledge," or any other similar term, shall mean the actual knowledge of Mark Sanchez an authorized representative of Seller, without any duty of inquiry. Seller represents and warrants that Mark Sanchez is the individual associated with Seller most knowledgeable of the Property.

9.17 1031 Exchange. Buyer or Seller may elect to structure the acquisition or sale of the Property as a like-kind exchange under Internal Revenue Code Section 1031 at the sole cost and expense of the electing party. The non-electing party shall reasonably cooperate therein, provided that: (a) the Closing Date shall in no event be extended as a result of the exchange, (b) the non-electing party shall incur no additional costs, expenses or liabilities in connection with the exchange, (c) the non-electing party shall not be required to take title to or contract for the purchase or sale of any other property, (d) the electing party shall remain fully liable hereunder, and (e) the electing party shall indemnify, defend, protect and hold the non-electing party and its Indemnitees harmless from and against any and all loss, cost, damage or expense (including attorneys' fees incurred by the non-electing party relating to or arising out of its participation in such exchange). If electing party uses a qualified intermediary to effectuate the exchange, any assignment of the rights or obligations of electing party hereunder shall not relieve, release or absolve the electing party of its obligations to the non-electing party.

9.18 Limited Liability. No limited partner or general partner of the limited partnership comprising Seller, nor any officer, director or shareholder of any partner comprising Seller shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or in connection with this Agreement, and Buyer and Buyer's successors and assigns shall look solely to Seller's interest in the Property, or Seller's interest in the net sales proceeds from the sale of the Property following a close of escrow, for the payment of any claim or for any performance hereunder, and Buyer hereby waives any and all claims for personal liability against any limited partner, manager, or member, or general partner of

Seller, and any officer, director or shareholder of any partner comprising Seller, and any employee or agent of Seller or of any of Seller's partners.

EXECUTION

WHEREFORE, the Parties hereto, by their signatures hereinbelow, enter into this Agreement effective on the date hereinabove inscribed.

SELLER:

BUYER:

BIG HORN RBVP, L.P., a California limited partnership

ELK GROVE UNIFIED SCHOOL DISTRICT, a California School District

By: Delaware Retail Control, LLC,
a Delaware limited liability company,
its general partner

By: _____
Robert Pierce
Deputy Superintendent, Business Services and
Facilities

By: VPI 2004, Inc., a
California corporation,
its manager

By: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

The land referred to herein is located in the City of Elk Grove, County of Sacramento, State of California and is more particularly described as follows:

Parcel 1, as shown on that certain Parcel Map entitled "The Northwest one-quarter of the Northwest one-quarter of Section 12, Township 6 North, Range 5 East, Mount Diablo Base and Meridian, filed for record November 25, 2002, in Book 169 of Parcel Maps, Map No. 5, records of said county.

Excepting therefrom:

That portion of Parcel 1, in the City of Elk Grove, County of Sacramento, State of California as shown on Parcel Map filed in Book 169 at Page 5 of Parcel Maps, records of Sacramento County described as follows:

Beginning at the northwest corner of said Parcel 1, also being the Northwest corner of Section 12, Township 6 North, Range 5 East, M.D. B & M; thence along the north line of said Parcel North 89°25'05" East a distance of 662.35 feet to the northeast corner of said parcel; thence leaving said north line along the east line of said parcel South 00°17'30" East a distance of 613.15, feet; thence leaving said east line South 89°19'45" West a distance of 662.95 feet to the west line of said parcel; thence along said west line North 00°14'10" West a distance of 614.18 feet to the True Point of Beginning.

APN: 132-0290-052

EXHIBIT B
PROPERTY DIAGRAM
(Attached)

EXHIBIT C
PRELIMINARY TITLE REPORT
(Attached)

EXHIBIT D
CERTIFICATE OF ACCEPTANCE OF GRANT DEED

This is to certify that the interest in real property conveyed by grant deed dated _____ from Big Horn RBVP, L.P., a California limited partnership, to ELK GROVE UNIFIED SCHOOL DISTRICT a school district duly organized and existing under the laws of the State of California, is hereby accepted by the undersigned officer on behalf of the ELK GROVE UNIFIED SCHOOL DISTRICT pursuant to authority conferred by the California Constitution and California Education Code sections 1240, et seq., and the ELK GROVE UNIFIED SCHOOL DISTRICT consents to the recordation thereof by its duly authorized officer.

DATED: _____

ELK GROVE UNIFIED SCHOOL DISTRICT,
a California School District

By: _____

Robert Pierce
Deputy Superintendent, Business Services and Facilities

[Attach Notary Acknowledgment]