

**CYPRESS SCHOOL DISTRICT  
Cypress, CA 90630**

**RESOLUTION NO. 178-03**

**RESOLUTION OF THE BOARD OF TRUSTEES  
OF THE CYPRESS SCHOOL DISTRICT  
AUTHORIZING AND APPROVING THE EXCHANGE OF REAL PROPERTY  
(A portion of the District Office Property)**

**WHEREAS**, the Cypress School District (“District”) owns approximately 6.1 acres of land located at 9470 Moody Street, Cypress, California 90630 known as the Cypress School District Office (“District Office Site”);

**WHEREAS**, the District does not have a need for approximately 3.7 acres of the District Office Site for classroom buildings or educational facility purposes (the “Exchange Property”);

**WHEREAS**, Melia Homes, Inc. is a California corporation (“Melia”) who owns properties in and around the District’s boundaries;

**WHEREAS**, the District desires obtain a property that can produce a steady income for the District but has determined, based on its independent analysis, that the Exchange Property cannot meet the District’s needs;

**WHEREAS**, the District and Melia desire to enter into an “exchange agreement” whereby the District agrees to give the Exchange Property to Melia in exchange for a property and/or payment, pursuant to the terms and conditions of an Exchange Agreement and Joint Escrow Instructions between the parties (“Exchange Agreement”), which is attached hereto as Exhibit “A” and incorporated herein by this reference and presented to the Board for approval;

**WHEREAS**, Education Code Section 17536, et seq. provides that the governing board of a school district or county office of education, upon a two-thirds vote of its members, may exchange any of its real property for real property of another person or private business firm upon such terms and conditions as the parties thereto may agree, without complying with any of the disposal of surplus property provisions set forth in the Education Code; and

**WHEREAS**, the Exchange Agreement constitutes the entire and complete agreement between the District and Melia for the Exchange Property and therefore, pursuant to Education Code Section 17536, et seq., the Exchange Agreement is presented to the Board for approval.

**NOW, THEREFORE**, the Board hereby finds, determines, declares, orders and resolves as follows:

**Section 1.** That all of the recitals set forth above are true and correct.

**Section 2.** That the Exchange Property is not or will not be needed by the District for classroom buildings or educational facility purposes.

**Section 3.** That the Exchange Property shall be exchanged with Melia pursuant to the terms of the Exchange Agreement.

**Section 4.** That the Board approves the Exchange Agreement set forth herein as Exhibit A and authorizes the execution of the Exchange Agreement.

**Section 5.** That, in consideration for the Exchange Property, the District may choose from the three “exchange alternatives” as set forth in the Exchange Agreement and as summarized generally as follows:

- A. If the District identifies a property owned by Melia that it would like to obtain and Melia is willing to exchange such property, Melia shall agree to exchange said property for the Exchange Property, along with any cash considerations necessary to make the exchange of equal value;
- B. If the District identifies an exchange property that is owned by a third party, Melia will work with the District so that the District will receive the third party property, Melia will receive the Exchange Property, and the third party will receive payment from Melia for the third party property, along with any cash considerations necessary to make the exchange of equal value; or
- C. If the District is unable to identify an acceptable Exchange Property prior to Melia’s desire to close escrow pursuant to the terms of the Exchange Agreement, the District shall keep the Exchange Amount (consideration) in escrow or a trust account with First American Trust until such time as the District identifies the appropriate property to finalize the exchange of property, or provides other direction for such Exchange Amount.

**Section 6.** That the exchange of the Exchange Property shall be upon the following additional salient terms and conditions:

- A. The Exchange Property will be delivered in an “As-Is” condition.
- B. That each of the parties to the Exchange Agreement releases the other from any and all claims whatsoever related to the Exchange Property, including any prior negotiations or agreements related thereto.
- C. District’s obligation to consummate the exchange is contingent upon Melia not being in default of any term or condition of the Exchange Agreement.

- D. Melia's obligation to consummate the exchange is contingent upon the District not being in default of any term or condition of the Exchange Agreement, and approval of the Exchange Property as stated in the Exchange Agreement.
- E. Melia's obligation to consummate the exchange is also contingent upon approval of Melia's planned use of the Exchange Property by a majority vote of the residents of the City of Cypress at the November Election

**Section 7.** That the Board hereby delegates authority to the District Superintendent, or a designee, to do any and all things and to execute and deliver any and all documents which, in consultation with legal counsel and District staff, they may deem necessary or advisable in order to effectuate the exchange of the Exchange Property and the requirements set forth herein or to further the purpose and intent of this Resolution, and any such actions previously taken by such officers are hereby approved, ratified and confirmed.

**Section 8.** That this Resolution shall take effect upon adoption.

ADOPTED, SIGNED AND APPROVED this 13th day of September, 2017.

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Brian Nakamura, President  
Cypress School District Board of Trustees

I, Sandra Lee, Clerk of the Board of Trustees of the Cypress School District, do hereby certify that the foregoing Resolution was adopted by said Board at a meeting of the Board held on the 13th day of September 2017, and that it was so adopted by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Sandra Lee, Clerk  
Cypress School District Board of Trustees



**Exhibit A**

**EXCHANGE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

**Between**

**CYPRESS SCHOOL DISTRICT**

**and**

**MELIA HOMES**

**Effective Date: September 13, 2017**

## **EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is entered into this 13 day of September, 2017 (“Effective Date”) by and between the **CYPRESS SCHOOL DISTRICT**, a public school district duly organized and validly existing under the Constitution and the laws of the State of California (“District”) and **MELIA HOMES, INC.**, a California corporation (“Melia”). District and Melia are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

A. The District is the owner in fee, of approximately 6.1 acres of land located at 9470 Moody St. Cypress, CA 90630 known as the Cypress School District Office, and as more particularly described in the legal description attached to this Agreement as Exhibit “A-1” incorporated herein by reference (“District Office Site”).

B. The District desires to exchange approximately 3.7 acres of the District Office Site (the “District Property”) for income producing property of equal value (the “Exchange Property”) in accordance with the terms and conditions of this Agreement. The District Property is identified through the map attached in Exhibit “A-1.” Upon selection of the Exchange Property, pursuant to the terms of this Agreement, a legal description of the Exchange Property shall be attached to this Agreement as Exhibit “A-2”). The District Property and the Exchange Property are sometimes hereinafter referred to collectively as the “Properties.”

### **AGREEMENT**

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the District and Melia agree as follows:

#### **1. EXCHANGE OF DISTRICT PROPERTY AND EXCHANGE PROPERTY.**

1.1 Agreement to Exchange. Subject to all the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, District and Melia agree to exchange the District Property and the Exchange Property, respectively, each including, without limitation, such Party’s interest in all mineral, oil, gas and other hydrocarbon substances on and under the Properties as well as all development rights, air rights, water, water rights and water stock relating to the Properties and any other easements, rights-of-way or appurtenances, used in connection with the beneficial use and enjoyment of the Properties.

For purposes of this Agreement, the exchange shall be accomplished through one of the following three alternatives, subject to the terms and provisions of this Agreement:

1.1.1 Melia Exchange Properties Alternative. Melia has the option, but is not required, to identify one or more properties it currently owns for the exchange as contemplated in Section 1.2 below. If Melia elects to identify any such “Melia Property”, and if the District approves such Melia Property during the District Due Diligence Period as contemplated in Section 2.2 below, then the Melia Property shall be the “Exchange Property.” In such event, the exchange of the Exchange Property (that is, the Melia Properties) and the District Property shall occur concurrently through the Escrow in accordance with Section 3 below. The transaction described in this Section 1.1.1 is referred to as the “Melia Exchange Properties Alternative.” The Melia Exchange Properties Alternative shall be irrevocably deemed to have been rejected by the Parties and all provisions of this Agreement concerning the Melia Exchange Properties Alternative shall be null and void and of no further force or effect unless, within five (5) business days after Melia's approval of the District Property during the Melia Due Diligence Period, the District and Melia send written notice to the Escrow Holder that the Parties have agreed to proceed under the Melia Exchange Properties Alternative. In no event shall this provision, or any provision in this Agreement, be construed as obligating Melia to identify any Melia Property pursuant to this Melia Exchange Property Alternative. In the event Melia does not identify a Melia Property, the Melia Exchange Property Alternative shall automatically be deemed rejected at no cost or penalty to Melia.

1.1.2 District-Designated Exchange Property Alternative. If the District identifies and approves an Exchange Property that is owned by a third party (the "Third Party Owner") for the exchange (the "District-Designated Exchange Property") and delivers written notice thereof to Melia and Escrow Holder at least thirty (30) days prior to the Closing Date (the "Exchange Notice"), and provided that the Melia Exchange Properties Alternative is deemed to be rejected as provided in Section 1.1.1 above, then the District-Designated Exchange Property shall be the "Exchange Property." The transaction described in this Section 1.1.2 is referred to as the “District-Designated Exchange Alternative”. The District-Designated Exchange Alternative shall be irrevocably deemed to have been waived by the District and the provisions of this Agreement concerning the District-Designated Exchange Alternative shall be null and void and of no further force or effect (I) if the District fails to timely deliver the Exchange Notice to Escrow Holder and Melia as provided above, or (II) if for any reason the conveyance of the District-Designated Exchange Property is not in a position to close concurrently with the Closing no later than the Closing Date (or, if District has timely exercised its right to extend the then-scheduled Closing Date pursuant to Section 3.2 below, the Outside Closing Date). The District-Designated Exchange Alternative may occur in one of two ways:

- (a) Direct District-Designated Exchange Alternative. The District shall negotiate and enter into a property exchange agreement with the Third Party Owner of the Exchange Property, and provided that the District and the Third Party Owner have authorized the transfer of the District-Designated Exchange Property to close concurrently with the Closing, then Melia will reasonably cooperate with District and the Third Party Owner by agreeing (subject to the written consent of the District) to instruct the Escrow Holder to deliver the Exchange Amount upon the Close of Escrow to the Third Party Owner, it being the District's intention that the Third Party Owner will convey title to the District-Designated Exchange Property to the District, the District will convey the District

Property to Melia (or its permitted assignee) as provided in this Agreement and the proceeds of the Exchange Amount will be paid to the Third Party Owner.

- (b) Indirect District-Designated Exchange Alternative. If the District gives Melia and Escrow Agent written notice at least sixty (60) days prior to the then scheduled Closing Date that the District desires to proceed under this subsection (b), then the District and Melia shall use reasonable good faith efforts to negotiate and enter into a separate trustee agreement on mutually acceptable terms (“Trustee Agreement”) with First American Trust (“FAT”), or a wholly owned entity of FAT. The Parties agree that the Trustee Agreement shall provide for a concurrent closing on the Exchange Property and the District Property, and include provisions that (i) require the District to indemnify and hold FAT harmless from any claims arising from the District Property or Exchange Property, excluding claims resulting from FAT’s negligence, misconduct or default under the Trustee Agreement; (ii) require Melia to indemnify and hold FAT harmless from any claims arising from the Melia Property or District Property, excluding claims resulting from FAT’s negligence, misconduct or default under the Trustee Agreement; (iii) provide FAT a Seven Thousand Five Hundred Dollar (\$7,500) trustee fee to be paid equally by the Parties; (iv) require the Parties to provide FAT with information required under the Patriot Act; (v) provide for the exchange to occur as follows on the Closing Date (or the Outside Closing Date, if District timely exercises its right to extend the then-scheduled Closing Date as provided below): (I) Melia will deliver the Exchange Amount to FAT, (II) the Third Party Owner will deed the Exchange Property to FAT, (III) FAT will deed the Exchange Property to the District, (IV) the District will deed the District Property to FAT, (V) FAT will deed the District Property to Melia, and (VI) FAT will release the Exchange Amount to the Third Party Owner, all in accordance with the terms of this Agreement and the Trustee Agreement. Both Parties acknowledge FAT’s limited role as a trustee/exchanger in the transaction.
- (c) Notwithstanding the foregoing, however, whether a Direct District-Designated Exchange Alternative or Indirect District-Designated Exchange Alternative in no event shall (i) Melia be required to increase or add to Melia’s obligations over those otherwise contained in this Agreement, or to incur any additional liability or financial obligation, or to accept title to any property other than the District Property, or (ii) the Closing be contingent on or be postponed (subject to District’s right to extend the Closing Date to the Outside Closing Date as provided in this Agreement) to allow for the concurrent consummation of the District’s acquisition of the District-Designated Exchange Property.

1.1.3 Exchange Consideration. If the Melia Exchange Properties Alternative is deemed rejected under Section 1.1.1 above and if the District-Designated Exchange Alternative is waived or deemed to have been waived by the District or if for any reason (other than due

solely to a default by Melia under this Agreement or [if applicable] under the Trust Agreement) the consummation of the District-Designated Exchange Alternative does not occur on the Closing Date (or the Outside Closing Date, if District timely exercises its right to extend the then-scheduled Closing Date as provided below), or if the Parties have otherwise agreed to proceed with the Closing pursuant to this Section 1.1.3, then in any such event Melia shall have the right to acquire and the District shall be obligated to convey to Melia the District Property for the cash consideration of the Exchange Amount at Closing and in such event the Exchange Amount shall remain in Escrow, or FAT, as may be directed by the District, after the Closing until such time as the District identifies and acquires the Exchange Property or the District determines, at its absolute sole discretion, that the Exchange Amount shall be released to the District. The transaction described in this Section 1.1.3 is referred to as the “Exchange Consideration Alternative”.

1.2 Identification of Exchange Property. During the term of this Agreement, the District shall use good faith efforts to identify the Exchange Property. Melia may, but is not required to, also identify one or more income producing properties currently owned by Melia (the “Melia Property” or “Melia Properties”) for consideration by the District in accordance with Section 2 of this Agreement. If Melia identifies any Melia Properties by written notice to the District, then Melia shall provide the District with the Due Diligence Materials for the Melia Properties and Melia’s valuation of the fair market value of the interest to be acquired by the District in the Melia Properties. Although Melia agrees to cooperate with the District in the selection of the Exchange Property as provided in this Agreement, it is the responsibility of the District to identify any District-Designated Exchange Property pursuant to this Agreement and to determine whether the fair market value of the Exchange Property (whether Melia Properties (if any) or District-Designated Exchange Property) is of equal value to the District Property. In the event that the District has not identified and approved the Exchange Property in sufficient time to exchange the Exchange Property for the District Property concurrently on the Closing Date (as defined in Section 3.2 below) or, if District timely extends the then-scheduled Closing Date as provided in Section 3.2 below, the Outside Closing Date (as defined by Section 3.2), as applicable, either the Parties may mutually agree in their respective sole and absolute discretion to extend the Outside Closing Date to permit more time to identify and approve the Exchange Property or the Closing shall proceed under the Exchange Consideration Alternative. The District shall not be subject to any penalty, fine, or additional charge for failure to identify the Exchange Property by the Outside Closing Date. The District’s failure to identify the Exchange Property shall not be construed as a breach of this Agreement.

1.3 Consideration. Subject to Section 1.1 above, the District Property and the Exchange Property shall be of equal value and shall be conveyed in consideration for the other as provided in this Agreement. The value of the Exchange Property shall not exceed TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$12,500,000.00) (“Exchange Amount”), unless the District determines, in its sole discretion, that it is willing to acquire a property worth more or less than the Exchange Amount. In the event the Exchange Property is Melia Property and is worth less than the Exchange Amount, Melia shall make up the difference in cash (the “Additional Cash”). In the event the Exchange Property is worth more than the Exchange Amount or the Exchange Property is not Melia Property and is worth more than the Exchange Amount, the District shall make up the difference in cash. Notwithstanding the foregoing, in the event that the Melia Exchange Properties Alternative is deemed rejected under

Section 1.1.1 above and the District-Designated Exchange Alternative is waived or deemed to have been waived by the District, or if the Parties have otherwise agreed, Melia shall have the right to acquire the District Property for the cash consideration of the Exchange Amount as contemplated in Section 1.1.3 above (that is, the Exchange Consideration Alternative) and in such event the Exchange Amount shall remain in Escrow after the Closing until such time as the District identifies and acquires the Exchange Property or the District determines, at its absolute sole discretion, that the Exchange Amount shall be released to the District. The District shall not be subject to any penalty, fine, or additional charge for failure to identify the Exchange Property by the Outside Closing Date. The District's failure to identify the Exchange Property shall not be construed as a breach of this Agreement.

1.4 Initial Deposit by Melia. Melia shall place into escrow, with the Escrow Holder as identified in Section 3.1, FIVE THOUSAND DOLLARS (\$5,000.00) as a good faith deposit ("Initial Deposit") within five (5) business days of the Parties' mutual execution of this Agreement. If Melia timely delivers the Melia's Due Diligence Notice approving the District Property as set forth in Section 2.2, then within five (5) business days after expiration of the Melia Due Diligence Period the Initial Deposit shall be increased by an additional TEN THOUSAND DOLLARS (\$10,000.00) (the "Additional Deposit"). The Initial Deposit and the Additional Deposit (collectively, the "Deposit") shall remain in escrow until: 1) if the Melia Exchange Properties Alternative applies, the District identifies the Exchange Property and takes possession of the Exchange Property as set forth in Section 3.2 (that is, the Close of Escrow occurs as to the Melia Properties and the District Property), in which case the Deposit shall be credited against the Exchange Amount at Closing or 2) if the Melia Exchange Properties Alternative is rejected as set forth in Section 1.1.1 and the District-Designated Exchange Alternative is waived or deemed waived, in which case, the Exchange Consideration Alternative shall apply and at the Close of Escrow the Exchange Amount shall be released to the District as consideration for the District Property or (at District's sole option) held in Escrow, or 3) the Close of Escrow does not occur on or before the Closing Date (or, if District has timely exercised its right to extend the then-scheduled Closing Date pursuant to Section 3.2 below, the Outside Closing Date), in which event the Deposit shall be disposed of as provided in Section 1.5 below. In the event the Melia Exchange Properties Alternative applies, prior to Closing Melia shall deposit the funds necessary to increase the amount in escrow to the total Exchange Amount, if applicable, and the total Exchange Amount shall be released to the District concurrently with the Closing, subject to the terms and conditions herein. The Deposit, and any interest accrued thereon, shall be immediately released to District, through escrow as provided in Section 6.1 below, and shall be non-refundable to Melia should Melia not acquire the District Property by exchanging it for the Exchange Property or paying the Exchange Amount at Closing in default of this Agreement (and not because of the failure of any condition precedent to Melia's obligation to close, the District's default or other legal excuse).

1.5 Disposition of Deposit. The Deposit shall be refundable to Melia and Escrow Holder shall refund the Deposit to Melia if (a) Melia timely terminates this Agreement due to a District default as provided in Section 6.2 below, (b) Melia terminates this Agreement due to the failure of the Close of Escrow to occur as provided in this Agreement, which failure is due in whole or in part due to the failure of any of the conditions precedent to Melia's obligation to proceed with the Close of Escrow, or (c) this Agreement terminates pursuant to any other provision that expressly provides for the Deposit to be returned to Melia. If this Agreement is

terminated for any other reason after the Melia Due Diligence Period, then the District shall be entitled to the Deposit. If the Closing occurs, Escrow Holder shall credit the Deposit against the Exchange Amount.

1.6 Independent Consideration. In addition to the Deposit to be delivered by Melia upon its execution and delivery of this Agreement, Melia shall deliver to Escrow Holder funds in the amount of One Hundred Dollars (\$100) (the "Independent Consideration"), as separate and independent consideration for the District's execution of this Agreement and agreement to convey the District Property to Melia on and subject to the terms and conditions of this Agreement, including, without limitation, the grant to Melia of the right to conduct its due diligence investigation of the District Property and the grant to Melia of the right to terminate this Agreement on or before the expiration of the Melia Due Diligence Period in connection with such due diligence investigation. The Independent Consideration is not part of the Deposit, is not applicable to the Exchange Amount and shall be retained by the District in the event of the Close of Escrow or any termination of this Agreement.

## **2. INSPECTIONS AND REVIEW.**

2.1 Delivery of Due Diligence Materials. Within five (5) days of the Effective Date, the District shall deliver to Melia without representation or warranty of completeness or accuracy, except as expressly set forth in this Agreement, copies of the documents, reports, agreements, or other items in its possession or control relating to the District Property and which may include the following (collectively, the "Due Diligence Materials"): (i) all licenses, leases, and permits affecting or relating to the ownership, subdivision, possession or development of the properties or the construction of improvements thereon, and all amendments and modifications thereto; (ii) applications and correspondence or other written communications to or from any governmental entity, department or agency other than District regarding any permit, approval, consent or authorization with respect to the development of the properties or the construction of improvements thereon; (iii) the most recent survey, if any, pertaining to the properties or any portion thereof; and (iv) soils reports, engineering data, environmental reports, and other data or studies pertaining to the properties or any portion thereof that have not been previously delivered to the other Party or their consultants. Within ten (10) days after Melia has identified the Melia Properties (if any), Melia shall deliver to the District without representation or warranty of completeness or accuracy, except as expressly set forth in this Agreement, copies of the Due Diligence Materials relating to the Melia Properties. Any Due Diligence Materials shall be provided to the other Party without any recourse or liability of any type or nature, except as expressly set forth in this Agreement. Each Party assumes all risk of any kind with regard to the use of and reliance upon any of the Due Diligence Materials provided by the other Party. Neither Party is relying upon the other Party for any information related to, concerning, or involving the respective properties for this transaction, including, without limitation, the fair market value of the Properties.

2.2 Inspections. Melia and its representatives, agents, engineers, consultants, contractors, and designees shall have the right to enter onto the District Property from and after the date of this Agreement through and including the date which is the later of sixty (60) days after the Effective Date (the "Melia Due Diligence Period") and the termination of this Agreement, for purposes of examining, inspecting and investigating the District Property,

including the site, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, hazardous materials or wastes, if any, and, at Melia's sole and absolute discretion, determining whether the District Property is acceptable to Melia.

The District shall have the same inspection rights, including a sixty (60) day due diligence period (the "District Due Diligence Period"), with respect to any Exchange Property that consists of Melia Properties. The District Due Diligence Period shall begin on the date the Melia Properties are identified by Melia to the District. The Parties acknowledge and agree that the District may conduct due diligence for more than one potential Exchange Property and that the provisions set forth in this Section 2.2 shall apply only to the District Property and any Exchange Property that is a Melia Property. Each Party shall, in a timely manner, repair any and all damage to the respective Properties caused by any such inspection or investigation described herein, to a condition substantially the same as the condition of the respective Property prior to such inspection or investigation. Each Party shall hold harmless, defend and indemnify the other Party and all of the principals, members, partners, representatives and successors and assigns of the other Party from any loss, expense (including reasonable attorney's fees), liability or cost (collectively, "Claims") which arises due to or out of any inspection by the indemnifying Party of the other Party's property, except for any Claims (including, without limitation, any Claims that the District Property or the Melia Property has declined in value) arising out of (i) pre-existing conditions, (ii) any negligence or intentional misconduct of the indemnifying Party or the indemnifying Party's principals, members, partners, representatives, successors or assigns or (iii) the indemnifying Party's discovery of any information potentially having a negative impact on the Exchange Property owned by the other Party. The foregoing indemnity, defense and hold harmless obligations shall survive the close or the termination of this transaction.

2.3 As-Is. Based on the inspection rights set forth in the preceding paragraph and in reliance on the due diligence of each Party, the District and Melia acknowledge and agree that except for the limited warranties and representations expressly set forth in this Agreement, the exchange of the Properties is made solely on an AS IS WHERE IS BASIS, WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED. But for the foregoing understanding and agreement, the Parties would not have entered into this transaction. Each Party acknowledges that due to the expertise, experience and business acumen of both Parties and their respective consultants, each Party has the ability to conduct a complete and through due diligence of the respective Properties and would not close the transaction unless totally satisfied with the respective Property, and has otherwise conducted an exhaustive and complete due diligence which would enable the taking of the respective Property in an AS IS WHERE IS BASIS WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.

2.4 Disapproval/Termination. Melia shall notify District and Escrow Holder in writing ("Melia's Due Diligence Notice") on or before the expiration of the Melia Due Diligence Period of Melia's approval or disapproval of the Due Diligence Materials applicable to the District Property, the condition of the District Property and Melia's investigations with respect thereto. Melia's disapproval of any of said items shall constitute Melia's election to terminate this Agreement and cancel the Escrow (in which event the Deposit shall be refunded to Melia).

Melia's failure to deliver Melia's Due Diligence Notice on or before the expiration of the Melia Due Diligence Period shall be conclusively deemed Melia's disapproval thereof.

This paragraph shall apply only to Melia Properties (if any). The District shall notify Melia and Escrow Holder in writing ("District's Due Diligence Notice") on or before the expiration of the District Due Diligence Period of District's approval or disapproval of the Due Diligence Materials applicable to the Melia Properties, the condition of the Melia Properties and District's investigations with respect thereto. District's disapproval of any of said items shall constitute District's election to terminate this Agreement as to the Melia Properties and the Melia Exchange Properties Alternative (in which event neither Party shall have any rights or obligations under this Agreement as to the Melia Properties but such disapproval shall not terminate this Agreement or cancel the Escrow as to the District Property). District's failure to deliver District's Due Diligence Notice on or before the expiration of the Due Diligence Period shall be conclusively deemed District's approval thereof, provided District fails to deliver District's Due Diligence Notice within ten (10) days after District's receipt of written notice by Melia of said failure to deliver District's Due Diligence Notice on or before the expiration of the Due Diligence Period.

In the event the District disapproves the Melia Properties, the District shall continue to use good faith efforts to identify the District-Designated Exchange Property in sufficient time to permit the Closing to occur by the Closing Date. However, if the District is unable to identify, approve and close on the District Designated Exchange Property on or before the Closing Date, the provisions of Section 1.3 of this Agreement shall control.

2.5 Title Review. During each Parties' respective Due Diligence Period under this Agreement (that is, the District's due diligence period as to the Melia Properties [if any] and Melia's due diligence period as to the District Property), each Party shall obtain a preliminary title report for each respective Property, together with copies of all written instruments creating the exceptions specified therein, and plat maps plotting all easements specified therein (collectively, the "Title Reports"). Melia shall notify District in writing ("Melia's Objection Notice") on or before the expiration of the Melia Due Diligence Period of any objections Melia may have to the title exceptions contained in the Title Report for the District Property. Melia's failure to provide District with a Melia's Objection Notice within said period shall constitute Melia's disapproval of all exceptions to title shown on the Title Report for the District Property. District shall have a period of ten (10) days after receipt of Melia's Objection Notice in which to deliver written notice to Melia ("District's Notice") of District's election to either (i) agree to remove the objected to items prior to the Close of Escrow, or (ii) decline to remove any such title exceptions and terminate Escrow and this Agreement (in which event the Deposit shall be refunded to Melia). If District notifies Melia of its election to terminate Escrow rather than remove the objected to items, Melia shall have the right, by written notice delivered to District within ten (10) days after Melia's receipt of District's Notice, to agree to accept the District Property subject to the objected to items, in which event District's election to terminate the Escrow shall be of no effect, and Melia shall take title at the Close of Escrow subject to such objected to items without any adjustment to or credit against the Exchange Amount. Furthermore, for the purpose of this paragraph, District's cure may include the acquisition by District, at District's expense, of a title insurance endorsement related to the objected to exception acceptable to Melia in Melia's sole and absolute discretion. Any extension of the time

to review the Title Report for the District Property shall only occur in strict accordance with the following paragraph.

Upon the issuance of any amendment or supplement to the Title Report for the District Property which adds additional or materially changes any existing exceptions, or adds any new or materially changes any existing requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Melia's initial period of review and approval or disapproval of any such additional exceptions shall be limited to fifteen (15) business days following Melia's and its counsel's receipt of the instrument(s) creating such additional or changed exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new or materially changed matter and Melia shall not be entitled to object to any previously known exception or requirement for which the time for objection has already come and passed.

In reciprocal nature with the foregoing, District shall notify Melia in writing ("District's Objection Notice") on or before the expiration of the Due Diligence Period of any objections District may have to the title exceptions contained in the Title Report for the Melia Property (if applicable). District's failure to provide Melia with a District's Objection Notice within said period shall constitute District's approval of all exceptions to title shown on the Title Report for the Melia Property; provided Melia provides District ten (10) days written notice of said failure to deliver District's Objection Notice within said period. Melia shall have a period of ten (10) days after receipt of District's Objection Notice in which to deliver written notice to District ("Melia's Notice") of Melia's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions and terminate Escrow and this Agreement as to the Melia Property (in which event, the Melia Exchange Property Alternative shall be null and void and of no further force or effect but the Agreement shall remain in effect as to the District Property). If Melia notifies District of its election to terminate Escrow and this Agreement as to the Melia Properties rather than remove and cure the objected to items, District shall have the right, by written notice delivered to Melia within ten (10) days after District's receipt of Melia's Notice, to agree to accept the Melia Property subject to the objected to items, in which event Melia's election to terminate the Escrow as to the Melia Properties shall be of no effect, and District shall take title at the Close of Escrow subject to such objected to items without any adjustment to or credit against the Exchange Amount. Furthermore, for the purpose of this paragraph, Melia's cure may include the acquisition by Melia at Melia's expense a title insurance endorsement related to the objected to exception acceptable to the District in its sole and absolute discretion. Any extension of the time to review the Title Report for the Melia Properties shall only occur in strict accordance with the following paragraph.

Upon the issuance of any amendment or supplement to the Title Report for the Melia Properties which adds additional or materially changes any existing exceptions, or adds any or materially changes any existing new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that District's initial period of review and approval or disapproval of any such additional or materially changed exceptions shall be limited to fifteen (15) business days following District's and its counsel's receipt of the instrument(s) creating such additional or materially exchanged exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new or materially

changed matter and District shall not be entitled to object to any previously known exception or requirement for which the time for objection has already come and passed.

Notwithstanding any of the foregoing, Monetary Liens on the District Property need not be formally disapproved by Melia but shall be discharged and removed from title to the District Property by the District through Escrow upon Close of Escrow, which discharge and removal shall be a condition precedent to Melia's obligation to proceed with the Closing. Similarly, Monetary Liens on the Melia Properties that are Exchange Property (if any) need not be formally disapproved by the District but shall be discharged and removed from title to the Melia Properties by Melia through Escrow upon Close of Escrow, which discharge and removal shall be a condition precedent to the District's obligation to proceed with the Closing as to the Melia Properties. "Monetary Liens" shall mean monetary liens (e.g., delinquent real property taxes, deeds of trust, security agreements, any other collateral assignments, claims for monetary amounts and mechanics' liens, judgment or similar non-consensual liens evidencing indebtedness of the owner of the applicable property (that is, the District as to the District Property, and Melia as to the Melia Properties [if any]) and any other matters that can be cured solely by the payment of money by the owner of such property).

### **3. ESCROW.**

3.1 Opening of Escrow. Within two (2) business days following the execution of this Agreement by District and Melia, the Parties shall open an escrow (the "Escrow") with First American Title Insurance Company ("Escrow Holder"), at its offices located at 18500 Von Karman Avenue, Suite 600, Irvine, CA 91612; Attn: Jeanne Gould; Phone: (714) 250-8351, by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder (the "Opening of Escrow"). Escrow Holder shall provide each of the Parties in Section 8.3 with written confirmation of the date of the Opening of Escrow and an original of this Agreement executed in the place indicated below by Escrow Holder. First American Title Insurance Company (the "Title Company") shall also provide title insurance services related to this Agreement.

3.2 Close of Escrow; Closing Date. Escrow shall close on or prior to February 6, 2019, which is ninety (90) days after the November 6, 2018 election (the "November Election"). As set forth in Section 4 below, the obligations upon Close of Escrow shall only be in effect if the Conditions Precedent to Close of Escrow are met, as set forth in Section 4, which include, but are not limited to, the condition that Melia's planned use of the District Property is approved by a majority vote of the residents of the City of Cypress at the November Election.

The terms the "Close of Escrow", and/or the "Closing" are used herein to mean the date on which the grant deed conveying the District Property to Melia as required under this Agreement and (if the Melia Exchange Property Alternative applies) the Melia Grant Deed is or are recorded in the Office of the County Recorder of the County(s) in which the Properties are located. By delivering of written notice to Melia and the Escrow Holder at least ten (10) business days prior to the then-scheduled Closing Date, District shall have the right to extend the Close of Escrow for up to one hundred twenty (120) days after the Closing Date (the "Outside Closing Date") to identify and approve the Exchange Property and the Parties may agree (in their respective sole

and absolute discretion) to further extend the Outside Closing Date in the event the Exchange Property is not identified and approved by District as set forth in Section 1.2. Possession of the District Property shall be delivered to Melia at the Close of Escrow free and clear of all tenancies, lessees, occupants, licensees, and all possessory rights of any kind or nature, except for any Permitted Exceptions, as set forth and defined in Section 4.2.3 herein. At the Close of Escrow, either (i) if the Melia Exchange Properties Alternative applies, possession of the Exchange Property (and the Additional Cash, if applicable) shall be delivered to District free and clear of all tenancies, lessees, occupants, licensees, and all possessory rights of any kind or nature, except for any Permitted Exceptions, as set forth and defined in Section 4.1.4 herein, or (ii) the Exchange Amount shall be delivered to District or held in Escrow until an Exchange Property is identified and acquired, in the sole and absolute discretion of District, which shall be made evident by appropriate instructions to the Escrow Holder.

Notwithstanding any other provision of this Agreement, if the Close of Escrow for the acquisition of the District Property by Melia as determined pursuant to the preceding paragraph or other provision of this Agreement would not fall on a Tuesday, Wednesday or Thursday, then the date for the Close of Escrow as so determined shall automatically be extended to and shall be the following Tuesday.

3.3 Escrow Instructions. This Agreement, together with the General Escrow Instructions of Escrow Holder attached hereto as Exhibit “F”, shall constitute the joint escrow instructions of District and Melia to Escrow Holder as well as an agreement between District and Melia. The Parties agree to execute such additional instructions not inconsistent with the provisions of this Agreement which may reasonably be required by Escrow Holder. In the event of any conflict or inconsistency between the provisions of the body of this Agreement and Escrow Holder’s General Escrow Instructions or any supplemental escrow instructions, the body of this Agreement shall prevail.

3.4 Deliveries by Melia. No later than 1:00 p.m. on the business day preceding the Closing Date, Melia shall deliver to Escrow Holder:

- (a) If and only if the Melia Exchange Properties Alternative applies:
  - (i) a grant deed in the form of Exhibit “B-1” attached to this Agreement (the “Melia Grant Deed”) conveying to District Melia’s fee simple title to the Melia Property, duly executed and acknowledged by Melia;
  - (ii) a certificate of non-foreign status in the form attached hereto as Exhibit “D-1” and California Franchise Tax Board Form 590-RE, each executed by Melia;
- (b) an executed Assignment and Bill of Sale in the form attached hereto as Exhibit “E-1” with respect to the District Property; and
- (c) any and all other sums and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including Melia’s portion of prorations, if any.

3.5 Deliveries by District. No later than 1:00 p.m. on the business day preceding the Closing Date, District shall deliver to Escrow Holder:

- (a) a grant deed in the form of Exhibit “B-2” attached to this Agreement (the “District Grant Deed”) conveying to Melia District’s fee simple title to the District Property, duly executed and acknowledged by District; provided, however, that if the requirements for the District-Designated Exchange Alternative have been timely satisfied as provided in Section 1.1.2 above, then no later than 1:00 p.m. on the business day preceding the Closing Date, the District shall deliver to Escrow Holder (i) a District Grant Deed conveying to the Third Party Owner or FAT, as applicable, District’s fee simple title to the District Property, duly executed and acknowledged by District; (ii) a grant deed in the form of Exhibit “B-3” attached to this Agreement (the “Third Party Grant Deed”) conveying to Melia fee simple title to the District Property subject only to the Permitted Exceptions, duly executed and acknowledged by the Third Party Owner or FAT, as applicable; and (iii) authorization and instructions from the District and the Third Party Owner or FAT, as applicable, to record the District Grant Deed and the applicable Third Party Grant Deed on the Closing Date (or, if District has timely exercised its right to extend the then-scheduled Closing Date pursuant to Section 3.2 below, the Outside Closing Date);
- (b) a certificate of non-foreign status in the form attached hereto as Exhibit “D-2” and California Franchise Tax Board Form 590-RE, each executed by District and (if the requirements for the District-Designated Exchange Alternative have been timely satisfied as provided in Section 1.1.2 above and Section 3.5(a)(i) through (iii) above) a separate set of such documents executed by the Third Party Owner or FAT, as applicable;
- (c) an executed Assignment and Bill of Sale in the form attached hereto as Exhibit “E-2” if Melia purchases the District Property;
- (d) If and only if the Melia Exchange Properties Alternative applies or the District-Designated Exchange Alternative applies, a Public Agency Certificate of Acceptance for the Exchange Property Grant Deed in the form attached hereto as Exhibit “C”; and
- (e) All other sums and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including the Escrow fees and District’s portion of prorations, if any, and any owner’s affidavits or other documents reasonably requested by the Title Company to issue the Title Policy.

3.6 Closing, Recording and Disbursements. On or before the Closing Date, and when all of the conditions precedent to the Close of Escrow set forth in Section 4 of this Agreement have been satisfied or waived in writing, Escrow Holder shall take the actions set forth in this Section 3.6.

3.6.1 Recording. Escrow Holder shall cause the Grant Deed(s) to be recorded in the Official Records of Orange County, California.

3.6.2 Disbursement of Funds. Escrow Holder shall disburse or hold the Exchange Amount, less prorations chargeable to District, if any, in accordance with this Agreement and the District's instructions.

3.6.3 Title Policy. Escrow Holder shall deliver to both Parties the Title Policies for the respective Properties, if and as required by Section 4.1.4 and Section 4.2.3 of this Agreement.

3.6.4 Delivery of Documents to District and Melia. Escrow Holder shall deliver to the respective Parties, a conformed copy of the respective Grant Deed(s), and any other documents (or copies thereof) deposited by the other Party with Escrow Holder pursuant to this Agreement. The original of the Grant Deed(s) shall be returned to the respective Parties after recordation.

3.6.5 Real Property Taxes. All non-delinquent general and special real property taxes and assessments shall be prorated as of the Close of Escrow.

3.7 Payment of Costs. The District shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed(s) for the District Property. District shall pay all title insurance premiums for the ALTA standard owner's form policy for the District Property, but Melia shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by Melia, including the difference between an ALTA standard owner's policy and an ALTA extended owner's policy. District shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed for the Exchange Property. Melia shall pay all title insurance premiums for the ALTA standard owner's form policy for the Melia Properties (if any) that constitute Exchange Property, but District shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by District, including the difference between an ALTA standard owner's policy and an ALTA extended owner's policy. Melia shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed for the Melia Properties (if any) that constitute Exchange Property. The District shall pay all costs and charges associated with the closing of the District-Designated Exchange Alternative. The Parties shall pay the Escrow fees or Escrow Holder's termination fees, in equal shares, unless one Party is solely in default and upon such default the defaulting Party shall be solely liable for all Escrow costs and fees. The Parties shall each be responsible for their respective attorneys' fees. All other costs of Escrow not specifically allocated in this Agreement shall be shall be prorated as of the Close of Escrow, if applicable, in accordance with local custom and otherwise paid by the Parties.

#### **4. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

4.1 Conditions to District's Obligations. District's obligation to exchange for the District Property, upon the Close of Escrow, shall be subject to the satisfaction or written waiver by District of each of the conditions precedent set forth in this Section 4.1.

4.1.1 Identity of Exchange Property. Subject to Sections 1.1 and 1.2 (and subsections) of this Agreement, the District shall have identified the Exchange Property in sufficient time to permit the exchange of the applicable Exchange Property for the District to occur by the Closing Date (or, if District has timely exercised its right to extend the then-scheduled Closing Date pursuant to Section 3.2 above, the Outside Closing Date). If the District has timely extended the Closing Date to the Outside Closing Date as provided above but has not identified the Exchange Property by the Outside Closing Date, the Parties may mutually agree in writing (in their respective sole and absolute discretion) to extend the Outside Closing Date. If the Parties do not agree to extend the Outside Closing Date, then this condition shall be deemed satisfied if Melia pays the Exchange Amount pursuant to Section 1.3.

4.1.2 Melia's Performance. Melia is not in material default of any term or condition of this Agreement. In the event District alleges that Melia is in material default, District shall notify Melia in writing and describe the alleged default in detail. Melia shall have a reasonable time, but not less than fifteen (15) days or more than thirty (30) days, to cure any alleged default.

4.1.3 Melia Deliveries Made. Melia has deposited with Escrow Holder all documents required of Melia by this Agreement to close the Escrow.

4.1.4 Title Policy. If the Melia Exchange Properties Alternative applies, the Title Company has committed to issue to District an ALTA standard, or at District's choice, an ALTA extended coverage owner's policy of title insurance ("Title Policy"), with liability in the amount of the Exchange Amount, or greater if required in District's sole discretion, showing fee title to the Exchange Property vested in the District, subject only to:

- (a) the standard printed exceptions and exclusions contained in the form of the Title Policy commonly used by Title Company;
- (b) title exceptions approved by District pursuant to Section 2.4 of this Agreement;
- (c) title exceptions resulting from documents being recorded or delivered through Escrow pursuant to this Agreement; and
- (d) any other exceptions approved in writing by District in its sole and absolute discretion.

The terms of sub-sections (a) through (d), inclusive, being herein collectively referred to as the District's "Permitted Exceptions".

4.1.5 Representations and Warranties. All representations and warranties made by Melia in this Agreement, to Melia's actual knowledge, are true and correct in all material respects as of the Closing as though made at that time.

4.1.6 Hazardous Materials; Environmental Compliance. As a result of the Parties' respective inspections pursuant to Section 2.2 herein, each Party intends to satisfy itself that the District Property and Exchange Property, as applicable, is not in violation of any federal,

state, or local law, ordinance, or regulation relating to Hazardous Materials, industrial hygiene, or to the environmental conditions on, under, or about the respective District Property or Exchange Property, or any portion thereof, including, but not limited to, soil and groundwater conditions (“Environmental Laws”). If, at any time prior to the expiration of the Melia Due Diligence Period, Melia determines that the District Property, or any portion thereof, is in violation of said Environmental Laws, Melia may elect to terminate this Agreement and cancel the Escrow by delivering written notice to that effect to the other Party and Escrow Holder, thereby rendering this entire Agreement invalid, void, and unenforceable (except for the obligation for the Deposit to be refunded to Melia). If at any time prior to the expiration of the District Due Diligence Period, the District determines that the Melia Property, or any portion thereof, is in violation of said Environmental Laws, the District shall have the right to continue to locate the Exchange Property or, at the District’s sole discretion, pursue the Exchange Consideration Alternative, but in no event shall the District be permitted to terminate this Agreement. The term “Hazardous Materials” when used in this Agreement shall mean any hazardous waste, hazardous substance, hazardous materials or toxic substances as defined, as of the Closing Date, in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395), Hazardous Waste Control Law (Health and Safety Code section 25100-25250.25); the Hazardous Materials Transportation Act, as amended (Title 49 United States Code Sections 1801-1819); and any substance defined as “hazardous waste” in Health and Safety Code Section 25117 or as a “hazardous substance” in Health and Safety Code Section 25316, and in the regulations adopted and publications promulgated under these laws. “Hazardous Materials” shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation as of the Closing Date.

4.1.7 No Moratorium. If the Melia Exchange Properties Alternative applies, there has not been adopted or enacted, nor is such adoption or enactment pending with respect to, any moratorium or restrictions with respect to the development of the Exchange Property after the District Due Diligence Period.

4.1.8 Material Adverse Change. If the Melia Exchange Properties Alternative applies, there is no material adverse change in the condition of the Exchange Property after the District Diligence Period (including without limitation the environmental condition of the Exchange Property).

4.2 Conditions to Melia’s Obligations. Melia’s obligation to exchange for the District Property, upon the Close of Escrow, shall be subject to the satisfaction or written waiver by Melia of each of the conditions precedent set forth in this Section 4.2.

4.2.1 District’s Performance. District is not in material default of any term or condition of this Agreement. In the event Melia alleges that District is in material default, Melia shall notify District in writing and describe the alleged default in reasonable detail. District shall

have a reasonable time, but not less than fifteen (15) days or more than thirty (30) days, to cure any alleged default.

4.2.2 District Deliveries Made. District has deposited with Escrow Holder all documents required of District by this Agreement to close the Escrow.

4.2.3 Title Policy. Title Company shall be irrevocably committed to issue to Melia an ALTA standard, or at Melia's choice, an ALTA extended coverage owner's policy of title insurance ("Title Policy"), with liability in the amount of the Exchange Amount, showing fee title to the District Property vested in Melia, subject only to:

- (a) the standard printed exceptions and exclusions contained in the form of the Title Policy commonly used by Title Company;
- (b) title exceptions approved by Melia pursuant to Section 2.4 of this Agreement;
- (c) title exceptions resulting from documents being recorded or delivered through Escrow pursuant to this Agreement other than in connection with the consummation of the District-Designated Exchange Alternative; and
- (d) any other exceptions approved in writing by Melia in its sole and absolute discretion.

The terms of sub-sections (a) through (d), inclusive, being herein collectively referred to as the Melia "Permitted Exceptions".

4.2.4 Representations and Warranties. All representations and warranties made by District in this Agreement, to District's actual knowledge, are true and correct in all material respects as of the Closing as though made at that time.

4.2.5 Approval of Entitlements. The Entitlements for the Project shall have been Approved by the Authorities (as defined in Section 7 below) which include the condition that Melia's planned use of the District Property is approved by a majority vote of the residents of the City of Cypress at the November Election.

4.2.6 No Moratorium. There has not been adopted or enacted, nor is such adoption or enactment pending with respect to, any moratorium or restrictions with respect to the development of the District Property after the Melia Due Diligence Period.

4.2.7 Hazardous Materials; Environmental Compliance. Melia has not determined that the District Property, or any portion thereof, is in violation of said Environmental Laws, as set forth in Section 4.1.6 above.

4.2.8 Material Adverse Change. There is no material adverse change in the condition of the District Property after the Melia Due Diligence Period (including without limitation the environmental condition of the District Property).

4.3 Satisfaction of Conditions. Where satisfaction of any of the foregoing conditions requires action by District or Melia, each Party shall use its diligent best efforts, in good faith, and at its own cost, to satisfy such condition. Where satisfaction of any of the foregoing conditions requires the approval of a Party, such approval shall be in such Party's sole and absolute discretion.

4.4 Waiver. District may at any time or times, at its election, waive any of the conditions set forth in Section 4.1 above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by District and delivered to Melia. Melia may at any time or times, at its election, waive any of the conditions set forth in Section 4.2 above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Melia and delivered to District.

4.5 Termination. In the event each of the conditions set forth in Section 4.1 are not fulfilled within the time provided by the terms of this Agreement or waived by District pursuant to Section 4.4, District may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the Parties from further obligations related to the exchange of the Properties hereunder (except the obligation to deliver the Deposit as provided in this Agreement). Notwithstanding the foregoing, in the event that the condition set forth in Section 4.1.1 has not been satisfied by the Closing Date (or, if District has timely exercised its right to extend the then-scheduled Closing Date pursuant to Section 3.2 below, the Outside Closing Date), the District shall not have the right to terminate this Agreement and Melia shall have the right to acquire the District Property for the Exchange Amount under the Exchange Consideration Alternative, unless the Parties elect to extend the Outside Closing Date. In the event that the conditions set forth in Section 4.2 are not fulfilled within the time periods provided by this Agreement or waived prior to the Closing Date, Melia may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the Parties from further obligations related to the exchange of the Properties hereunder (except for the obligation for the Deposit to be refunded to Melia). Furthermore, in the event this Agreement is terminated by either Party, all documents delivered by any Party to Escrow Holder shall be returned within a reasonable time to the original Party. Nothing in this Section 4.5 shall be construed as releasing any Party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder.

## **5. REPRESENTATIONS AND WARRANTIES-BROKERAGE COMMISSIONS.**

5.1 District's Representations and Warranties. District hereby makes the following representations and warranties to Melia, each of which (i) is material and relied upon by Melia in making its determination to enter into this Agreement, (ii) is to the actual knowledge of District true in all material respects as of the Effective Date and shall be true in all material respects on the Closing Date, and (iii) shall survive the Close of Escrow for one (1) year:

- (a) District has full right, power, and authority to enter into this Agreement and to perform District's obligations hereunder and no notice to, consent or approval of any other person or entity, judicial or administrative body, governmental authority or other party is required in connection therewith.

This Agreement and all other documents delivered by District to Melia now or at the Close of Escrow, have been or will be duly executed and delivered by District and are legal, valid, and binding obligations of District, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which District is a party. The entering into of this Agreement and District's performance of its obligations hereunder does not and will not constitute a default (or an event which, with the giving of notice or the passage of time or both, would constitute a default) under any agreement to which the District is a party or by which the District Property is bound.

- (b) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, there are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the District Property or relating to the ownership, maintenance, use or operation of the District Property.
- (c) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, District has not received any written notices nor has any actual knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the District Property.
- (d) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, there are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy of the District Property by any person or entity, except for matters of record approved by Melia pursuant to Section 2.4 above. As of the Closing, the District has granted no person, firm, or entity other than Melia pursuant to the terms and provisions of this Agreement any valid and enforceable option, right of first refusal or other right to purchase or acquire all or any part of the District Property or any interest in the District Property.
- (e) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, District is not actually aware that the District Property, or District, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the District Property or construction of any improvement thereon. District has received no written notice of any such violation of applicable law. Melia shall make its own independent determination of the feasibility of the use of the District Property for Melia's intended use.
- (f) District has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.1.6 of this Agreement) to occur on, at, about, or within the District Property, or any portion thereof, or otherwise knows of any such contamination of

Hazardous Materials on, at, about, or within the District Property, or any portion thereof.

- (g) Except as disclosed to Melia by the District in writing prior to the Effective Date, to the District's knowledge no written or verbal commitments have been made to any governmental authority or quasi-governmental authority, utility company, school board, church or other religious body, or any homeowners' association, or to any other organization, group, or individual, relating to the District Property which would impose an obligation upon Melia or its successors or assigns to make any contribution or dedications of money or land, or to construct, install or maintain any improvements of a public or private nature on or off the District Property, or which may materially and adversely affect the District Property or may materially increase the cost of the development, use or sale of the District Property;
- (h) To the District's knowledge, the District Property is not inhabited by, nor will the development of the District Property involve the taking of, any endangered or threatened species of animals, plants or insects nor has any portion of the District Property been designated as habitat or a biological corridor for any endangered or threatened species nor is any such designation pending;
- (i) To the District's knowledge, there are no archaeological or paleontological resources or Native American burial grounds on the District Property;
- (j) To the District's knowledge, except as set forth in the PTR or the District's Materials, neither the District Property nor any part thereof is within an assessment district, communities facilities district or any other special taxing district, nor has any application been made or submitted for the creation of any special taxing district with respect to the District Property or the annexation of the District Property thereto. To the District's knowledge, the District has not received notice, either oral or written, and has no knowledge that any governmental authority or quasi-governmental authority intends to commence construction of any special or off-site improvements affecting the District Property or impose any special or other assessment against the Property in connection therewith. To the District's knowledge, the District has not received any oral or written notification from any governmental authority or quasi-governmental authority having jurisdiction over the District Property requiring any work to be done on or affecting the District Property;
- (k) To the District's knowledge, there is no moratorium or like governmental order in effect with respect to the District Property and to the District's knowledge no such moratorium or similar ordinance is now contemplated;

- (l) To the District's knowledge, no Stormwater Pollution Prevention Plan is pending or in effect with respect to any portion of the District Property; and
- (m) To the District's knowledge, the District has made available to Melia true, correct and complete copies of the Due Diligence Materials in the District's possession or control.

If District becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by District hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, District will give immediate written notice of such changed fact or circumstance to Melia, but such notice shall not release District of any liabilities or obligations with respect thereto. For the purpose of the warranties and representations, the knowledge requirement shall be based on actual written notice to District's designated person in a form which would provide actual notice to a person without a duty of inquiry. The District's designated person is solely limited to Anne Silavs personally, and does not include his or any of District's agents, advisors or consultants. There shall be no personal liability on the part of such named person arising out of any representations or warranties made herein. If Melia has actual knowledge prior to the Closing Date of any inaccuracy in any representation or warranty of the District but Melia nonetheless proceeds with the Closing, then the District's representations and warranties shall be deemed qualified and amended or modified to the full extent of Melia's knowledge of such inaccuracy and Melia shall have no right or remedy and the District shall have no obligation or liability on account of such inaccuracy.

5.2 Melia's Representations and Warranties. Melia hereby makes the following representations and warranties to District, each of which (i) is material and relied upon by District in making its determination to enter into this Agreement, (ii) is to the actual knowledge of Melia true in all material respects as of the Effective Date and shall be true in all material respects on the Closing Date, and (iii) shall survive the Close of Escrow for one (1) year:

- (a) Melia has full right, power, and authority to enter into this Agreement and to perform Melia's obligations hereunder and (subject to Melia's approval of the District Property as provided in Section 2.2 above) no notice to, consent or approval of any other person or entity, judicial or administrative body, governmental authority or other party is required in connection therewith. This Agreement and all other documents delivered by Melia to District now or at the Close of Escrow, have been or will be duly executed and delivered by Melia and are legal, valid, and binding obligations of Melia, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which Melia is a party. The entering into of this Agreement and Melia's performance of its obligations hereunder does not and will not constitute a default (or an event which, with the giving of notice or the passage of time or both, would constitute a default) under any agreement to which the Melia is a party or by which the Melia Properties (if any) are bound.

- (b) The following representations apply only as to Melia Property (if any):
- (i) Other than those matters known and disclosed by the Parties as of the Effective Date, there are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the Exchange Property or relating to the ownership, maintenance, use or operation of the Exchange Property.
  - (ii) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, Melia has not received any written notices nor has any actual knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the Exchange Property.
  - (iii) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, there are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy of the Exchange Property by any person or entity, except for matters of record approved by District pursuant to Section 2.4 above.
  - (iv) Other than those matters known and disclosed by the Parties in writing as of the Effective Date, Melia is not actually aware that the Exchange Property, or Melia, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the Exchange Property or construction of any improvement thereon. Melia has received no written notice of any such violation of applicable law. District shall make its own independent determination of the feasibility of the use of the Exchange Property for District's intended use.
  - (v) Melia has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.1.6 of this Agreement) to occur on, at, about, or within the Exchange Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the Exchange Property, or any portion thereof.
  - (vi) Except as disclosed to District by Melia in writing prior to the Effective Date, to Melia's knowledge no written or verbal commitments have been made to any governmental authority or quasi-governmental authority, utility company, school board, church or other religious body, or any homeowners' association, or to any other organization, group, or individual, relating to the Exchange Property which would impose an obligation upon

District or its successors or assigns to make any contribution or dedications of money or land, or to construct, install or maintain any improvements of a public or private nature on or off the Exchange Property, or which may materially and adversely affect the Exchange Property or may materially increase the cost of the development, use or sale of the Exchange Property;

- (vii) To Melia's knowledge, the Exchange Property is not inhabited by, nor will the development of the Exchange Property involve the taking of, any endangered or threatened species of animals, plants or insects nor has any portion of the Exchange Property been designated as habitat or a biological corridor for any endangered or threatened species nor is any such designation pending;
- (viii) To Melia's knowledge, there are no archaeological or paleontological resources or Native American burial grounds on the Exchange Property;
- (ix) To Melia's knowledge, except as set forth in the PTR or Melia's Materials, neither the Exchange Property nor any part thereof is within an assessment district, communities facilities district or any other special taxing district, nor has any application been made or submitted for the creation of any special taxing district with respect to the Exchange Property or the annexation of the Exchange Property thereto. To Melia's knowledge, Melia has not received notice, either oral or written, and has no knowledge that any governmental authority or quasi-governmental authority intends to commence construction of any special or off-site improvements affecting the Exchange Property or impose any special or other assessment against the Exchange Property in connection therewith. To Melia's knowledge, Melia has not received any oral or written notification from any governmental authority or quasi-governmental authority having jurisdiction over the Exchange Property requiring any work to be done on or affecting the Exchange Property;
- (x) To Melia's knowledge, there is no moratorium or like governmental order in effect with respect to the Exchange Property and to Melia's knowledge no such moratorium or similar ordinance is now contemplated; and
- (xi) To Melia's knowledge, no Stormwater Pollution Prevention Plan is pending or in effect with respect to any portion of the Exchange Property.

If Melia becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Melia hereunder, whether

as of the Effective Date or any time thereafter through the Closing Date, Melia will give immediate written notice of such changed fact or circumstance to District, but such notice shall not release Melia of any liabilities or obligations with respect thereto. For the purpose of the warranties and representations, the knowledge requirement shall be based on actual written notice to Melia's designated person in a form which would provide actual notice to a person without a duty of inquiry. Melia's designated person is solely limited to Richard S. Robinson and Jeffrey Logan, personally, and does not include either such person's or any of Melia's agents, advisors or consultants. There shall be no personal liability on the part of such named persons arising out of any representations or warranties made herein. If the District has actual knowledge prior to the Closing Date of any inaccuracy in any representation or warranty of Melia but the District nonetheless proceeds with the Closing, then Melia's representations and warranties shall be deemed qualified and amended or modified to the full extent of the District's knowledge of such inaccuracy and the District shall have no right or remedy and Melia shall have no obligation or liability on account of such inaccuracy.

5.3 Brokerage Commissions. District and Melia each represents and warrants to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transactions contemplated by this Agreement. Each Party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages, and expenses, including without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee. This Section 5.3 shall survive the termination of this Agreement and the Close of Escrow.

## 6. **DEFAULT.**

6.1 Melia's Default. The occurrence of any of the following prior to the Close of Escrow shall be a material default by Melia of its obligations under this Agreement: (i) the failure by Melia to deposit any funds, documents or other items into Escrow as required by this Agreement; (ii) any of Melia's representations and warranties set forth in this Agreement being untrue in any material respect as and when made; and (iii) the failure of Melia to perform any other material act to be performed by Melia or to refrain from performing any material prohibited act under this Agreement where such failure is not cured within the relevant time periods set forth below. With the exception of any Melia default under (i) above, which shall not be subject to the following notice and cure provisions, Melia shall not be in default if Melia cures any failure within ten (10) business days after receipt of written notice from the District of such failure (or, if such failure is of such a nature that is curable but cannot reasonably be cured within such ten (10) business day period, if Melia commences a cure within such ten (10) business day period and diligently pursue such cure to completion within a reasonable time thereafter but in no event later than two (2) business days prior to the Closing Date.

In the event Melia defaults under any of the terms and provisions of this Agreement (after any applicable notice and cure periods), District shall have the right, but not the obligation, as its sole remedy for such default, to terminate this Agreement and the Escrow created hereby. In the event of such termination by District: (a) District shall be entitled to the immediate refund of any funds deposited by District into Escrow or released to Melia for or related to the Melia Exchange Property, including all interest earned thereon; and (b) Melia shall not be entitled to the refund of any amounts paid to District or any other amounts paid by Melia relating to the District Property

and any processing of the Entitlements for the District Property; and (c) Melia shall deliver to District all work product prepared by or on behalf of Melia for the Project but excluding internally prepared financial analysis, work product subject to proprietary rights of third parties or work product protected by attorney client privilege, and without representation or warranty or right to rely thereon.

**Liquidated Damages.** THE PARTIES HAVE DISCUSSED AND NEGOTIATED IN GOOD FAITH THE QUESTION OF DAMAGES TO BE SUFFERED BY THE DISTRICT IN THE EVENT OF A DEFAULT BY MELIA AS DEFINED ABOVE (INCLUDING IF MELIA FAILS TO PURCHASE THE DISTRICT PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT IN BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT). BOTH PARTIES ACKNOWLEDGE AND AGREE THAT DAMAGES THE DISTRICT SHALL SUSTAIN AS A RESULT OF ANY SUCH A DEFAULT WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. THE PARTIES HEREBY AGREE THAT LIQUIDATED DAMAGES IN THE AMOUNT OF THE DEPOSIT IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES THE DISTRICT WOULD SUFFER IN SUCH EVENT AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. ACCORDINGLY, IF THE ESCROW FAILS TO CLOSE DUE TO SUCH A DEFAULT BY MELIA AND PROVIDED THAT THERE HAS BEEN NO FAILURE OF SATISFACTION OF A CONDITION PRECEDENT TO CLOSE BENEFITING MELIA UNDER THIS AGREEMENT, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE TO PURCHASER AND ESCROW HOLDER. IF THIS AGREEMENT IS TERMINATED AS SET FORTH HEREIN, THE PARTIES SHALL BE RELIEVED OF THEIR OBLIGATIONS HEREUNDER EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, AND THE DEPOSIT SHALL BE RELEASED TO THE DISTRICT AND MELIA AND THE DISTRICT AGREE THAT THE DISTRICT'S RIGHT TO RETAIN THE DEPOSIT SHALL BE THE SOLE REMEDY OF THE DISTRICT AT LAW IN THE EVENT OF SUCH A DEFAULT UNDER THIS AGREEMENT BY MELIA. THE PAYMENT OF SUCH AMOUNT IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE §3275 OR §3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE DISTRICT UNDER CALIFORNIA CIVIL CODE §§1671, 1676 AND 1677. THE DISTRICT WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE MELIA'S OBLIGATION TO PURCHASE THE DISTRICT PROPERTY (INCLUDING WITHOUT LIMITATION THE PROVISIONS OF CIVIL CODE SECTIONS 1680 AND 3389), AND WAIVES ANY RIGHT TO SEEK, CLAIM OR OBTAIN PUNITIVE DAMAGES OR SPECIAL OR CONSEQUENTIAL DAMAGES FOR SUCH A BREACH BY MELIA. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT MELIA'S LIABILITY TO THE DISTRICT UNDER THE INDEMNIFICATION IN SECTION 2.2 ABOVE OR FOR ATTORNEYS' FEES AND COSTS AS PROVIDED IN SECTION 8.2 BELOW.

**TO SIGNIFY THEIR AWARENESS OF AND AGREEMENT TO BE BOUND BY THE TERMS AND PROVISIONS OF THIS SECTION, MELIA AND THE DISTRICT HAVE SEPARATELY INITIALED THIS SECTION.**

**ACCEPTED AND AGREED TO:**

\_\_\_\_\_  
**Melia**

\_\_\_\_\_  
**District**

6.2 District's Default. The occurrence of any of the following prior to the Close of Escrow shall be a material default by the District of its obligations under this Agreement: (i) the failure by the District to deposit any funds, documents or other items into Escrow as required by this Agreement; (ii) any of the District's representations and warranties set forth in this Agreement being untrue in any material respect as and when made; and (iii) the failure of the District to perform any other material act to be performed by the District or to refrain from performing any material prohibited act under this Agreement where such failure is not cured within the relevant time periods set forth below. With the exception of any District default under (i) above, which shall not be subject to the following notice and cure provisions, the District shall not be in default if District cures any failure within ten (10) business days after receipt of written notice from Melia of such failure (or, if such failure is of such a nature that is curable but cannot reasonably be cured within such ten (10) business day period, if the District commences a cure within such ten (10) business day period and diligently pursue such cure to completion within a reasonable time thereafter but in no event later than two (2) business days prior to the Closing Date.

In the event the District shall default under any of the terms and provisions of this Agreement (after any applicable notice and cure period), Melia shall have the right, but not the obligation, in addition to any other rights or remedies which it may have at law or in equity, to either (a) terminate this Agreement and the Escrow created hereby, in which event the Deposit shall be refunded to Melia and Melia shall be entitled to the immediate refund of any other funds deposited by Melia into Escrow or released to District for or related to the District Property, including all interest earned thereon, plus the District shall reimburse Melia, up to a maximum of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), for all reasonable out-of-pocket actual and verified expenses incurred by Melia in connection with its review of the District Property and/or the negotiation, documentation and performance of this Agreement (including without limitation legal, entitlement, environmental and engineering consultants' fees and expenses) and entitlement application costs, and thereafter neither Party will have any further rights or obligations hereunder except those which are expressly stated to survive such termination, or (b) pursue the right of specific performance to obtain the District Property. Melia must provide written back up documentation to verify such expenses.

7. **APPROVAL OF ENTITLEMENTS.** Melia intends to seek approval of a residential development on the District Property (the "**Project**"). The density, product mix, site plan, mapping and other elements of the Project shall be determined by Melia in its sole and absolute discretion. During the term of this Agreement, Melia shall have the right but not the obligation to prepare, process, file, seek, process, obtain, approve and accept (including without limitation conditions of approval) and execute the land use approvals required by the Authorities for the

Project as determined by Melia, including, without limitation, a specific plan, a tentative tract map (the "**Tentative Map**"), CEQA compliance and a site plan with Melia's conceptual elevations, all other applications, plans, specifications, maps, agreements, reports, studies and other documents necessary or appropriate in order to subdivide the District Property into multiple lots for purposes of developing the Project and selling residences to members of the public, including without limitation, the following (to the extent Melia determines they are necessary or appropriate): (i) the adoption of a general plan amendment; (ii) the adoption of a zoning ordinance or application for a zone change; (iii) compliance with any State, County or local law, ordinance or regulation, including the California Environmental Quality Act, that are necessary prerequisites for the development of the District Property; (iv) any environmental approvals required to enable Melia to develop the District Property, including without limitation, a Section 401 Water Quality Certification issued by the applicable California Regional Water Quality Control Board or the State Water Resources Control Board, a Clean Water Act Section 404 permit issued by the U.S. Army Corps of Engineers and a Section 1602 Stream Bed Alteration Agreement with the California Department of Fish and Game, a Section 2081 Permit (or the equivalent thereof) issued by the California Department of Fish and Game, and an incidental take permit issued by the U.S. Fish and Wildlife Service under Section 7 or Section 10 of the Federal Endangered Species Act; (v) the execution and approval of a development agreement and any other discretionary approvals; (vi) all approvals necessary for delivery of water, sewer, gas, telephone and electric utility services to the District Property and to allow Melia to connect the proposed improvements to such system, (vii) any and all required affordable housing agreements, (viii) if any portion of the District Property is designated as being located in a flood plain, any and all requirements necessary to remove the District Property from such flood plain designation, (ix) Melia's planned use of the District Property is approved by a majority vote of the residents of the City of Cypress at the November Election and (x) the processing of such other discretionary land use approvals as Melia deems necessary or appropriate in connection with the development of the District Property, and so as to allow Melia to construct the Project on and sell such residences to members of the public (collectively, the "**Entitlements**") Melia shall be responsible for processing all applications ("**Entitlement Applications**") to obtain approval of the Entitlements, including, without limitation, any fees for engineering and consultants' work to provide necessary data, reports, maps and other documents required by the Authorities as part of the Entitlement Applications. In furtherance and in no way limiting for foregoing, District acknowledges that Melia may disapprove any condition of its Entitlement Application(s) approval that is to be performed on or otherwise involves real property other than (a) the District Property or (b) real property that is owned or controlled either by District or by the Authority that imposed such condition. Until ownership of the District Property is completely transferred to Melia pursuant to this Agreement, Melia shall not cause any physical changes or damages to the District Property without the District's written permission. Melia shall indemnify and hold the District harmless from any claims, damages, penalties, fines, or costs arising from the Entitlement Applications. The District agrees to cooperate with Melia, to the extent such cooperation is at no cost to the District, in Melia's efforts to obtain such Entitlements. Such cooperation of the District shall include the prompt execution, acknowledgment and delivery of any applications, submittals, permits, maps and other documents pertinent thereto as may be reasonably requested and necessary for Melia to obtain the Entitlements and upon reasonable notice to the District to the extent the District is able to provide the requested information without incurring cost. The District may also, but is not

required to, attend meetings with City officials upon the request of Melia, at the convenience of the District. To the extent it is necessary for the District to deliver documents to Melia as provided above, the District shall endeavor to make such delivery, where reasonably possible, within seventy-two (72) hours after the request therefore. Again, provided Entitlements pursued by Melia are at no cost to the District, District agrees that it will not take any action adverse to, or in opposition of, the Project and/or Melia's efforts to obtain the Entitlements or develop the Project and market and sell residences to members of the public. For purposes of this Agreement, and in the context of the Entitlements and any other matter relating to Melia's proposed development of the Property, the term "**Approval of the Authorities**", "**Approved by the Authorities**" or words of similar import shall mean that the City, County, and any other applicable government or quasi-governmental agency, body or authority and City Council (individually an "**Authority**," and collectively, the "**Authorities**") having jurisdiction over the Property voted to approve the Entitlements and all time periods for initiating a legal challenge (by administrative or legal appeal, writ, initiative, referendum or otherwise) (a "**Challenge**") of the approval of such Entitlements have passed without a Challenge having been initiated, or, if a Challenge has been initiated, the Challenge has been finally resolved in a manner acceptable to Melia in its sole and absolute discretion. As used in this Agreement, the Tentative Map shall be deemed to be Approved when: (i)(a) the Tentative Map has been prepared in compliance with the California Subdivision Map Act (commencing at Section 66410 of the Government Code), (b) the Tentative Map provides for the development of the Property into no fewer than forty-six (46) for-sale market rate residential dwelling units in accordance with Melia's development plans for the District Property, (c) the City has issued its final written decision approving the Tentative Map and establishing all of the conditions of approval for the final map conforming to the Tentative Map and such conditions of approval have been approved by Melia in its sole and absolute discretion, (e) the District Property is zoned to permit single family or townhome residential use with a density of at least the number of residential lots included in the Tentative Map, and (f) all time periods for initiating a Challenge of the City's approval of the Tentative Map have passed without a Challenge having been initiated, or, if a Challenge has been initiated, it has been resolved on terms and conditions satisfactory to Melia in its sole and absolute discretion. Nothing within this Section shall be construed as creating an affirmative obligation of the District relating to the approval of the Entitlement Applications beyond the District's commitment to use commercially reasonable efforts to cooperate with Melia in the Entitlement Applications process subject to the conditions set forth in this Section.

7.1 Entitlement Costs. Melia shall reimburse the District for all costs incurred by the District for the November Election, including any charges incurred by the District from the City to put the Melia's planned use of the District Property on the ballot for vote at the November Election within ten (10) days of written request from the District. The District shall provide an invoice to Melia for the November Election costs and any such incidental costs, which invoice shall not exceed Ten Thousand Dollars (\$10,000). Melia shall be solely responsible for all other costs incurred and related to the Entitlements as set forth in Section 7 above and in no event shall the District be required to pay or charged for any efforts to acquire the Entitlements except as expressly stated herein.

**8. MISCELLANEOUS.**

8.1 Costs of Conveyance. All costs related to the Parties' due diligence inspections and testing, and production of and/or reproduction of the Due Diligence Materials shall be the sole responsibility of the Party expending such costs.

8.2 Attorneys' Fees; Litigation. In the event either Party to this Agreement should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses in any action for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained and the nondefaulting Party shall be the prevailing Party in such action, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the nondefaulting Party.

8.3 Notices. All notices required to be delivered under this Agreement to the other Party must be in writing and shall be effective (i) when personally delivered by the other Party or messenger or courier thereof (if delivered before 5:00 p.m. on a business day and otherwise on the next business day); (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) the next business day after deposit before the daily deadline time with a reputable overnight courier or service for next business day delivery; or (iv) upon receipt of a telecopy or fax transmission (if received on or before 5:00 p.m. on a business day and otherwise on the next business day), provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective Parties as set forth below or to such other address and to such other persons as the Parties may hereafter designate by written notice to the other Parties hereto:

**To District:** CYPRESS SCHOOL DISTRICT  
9470 Moody Street  
Cypress, CA 90630  
Attn: Anne Silavs, Superintendent  
Facsimile No.: (714) 220-6909

With copy to: ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
12800 Center Court Drive, Suite 300  
Cerritos, CA 90703  
Attn: Andreas C. Chialtas, Esq.  
Facsimile No.: (562) 653-3333

**To Melia:** MELIA HOMES  
Attn: BJ Delzer and Amy Harrell  
8951 Research Drive, Ste 100  
Irvine, CA 92618  
Facsimile No.: (949) 988-7179

With copy to:                   BROWNING LAW GROUP  
3200 Park Center Drive, Suite 500  
Costa Mesa, CA 92626  
Attn: John R. Browning, Esq.  
Facsimile No.: (949) 234-6265

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

8.4    Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

8.5    Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart.

8.6    Assignment. Except as set forth below, Melia shall not assign this Agreement or any right or privilege Melia might have under this Agreement without the prior written consent of District, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to District to carry out and observe each of Melia's obligations hereunder, including all Exhibits hereto. Notwithstanding the foregoing, prior to Closing Melia may assign and delegate all of its rights, interests and obligations under this Agreement without the prior approval of the District to either (a) any entity of which Melia has responsibility for day-to-day management and in which Melia has a financial interest or (b) a third party with which Melia (or a permitted assignee under subsection (a) above) enters into an option agreement on or around the closing granting Melia (or such permitted assignee) the option to acquire the Property from such third party. District shall not assign this Agreement or any right or privilege District might have under this Agreement without the prior written consent of Melia, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to Melia to carry out and observe each of District's obligations hereunder, including all Exhibits hereto.

8.7    Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

8.8    Binding on Heirs. This Agreement shall be binding upon the Parties hereto and their respective heirs, representatives, transferees, successors, and assigns.

8.9    Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.

8.10   Condemnation. In the event the Melia Properties (if any) or District Property is taken, in whole or in part, or designated to be taken by condemnation proceedings other than condemnation proceedings instigated by District, or proceedings or deed in lieu thereof, prior to

the Close of Escrow, each Party shall have the right to terminate this Agreement and cancel Escrow by delivering to the other Party and Escrow Holder written notice thereof.

8.11 Entire Agreement, Waivers and Amendments. This Agreement (including the exhibits attached hereto) incorporate all of the terms and conditions mentioned herein, or incidental hereto, and supersede all negotiations and previous agreements between the Parties with respect to all or part of the subject matter thereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged. Any amendment or modification to this Agreement must be in writing and executed by both Parties.

8.12 Exhibits. Exhibits "A-1," "A-2," "B-1," "B-2," "B-3," "C," "D-1," "D-2," "E," "E-2," and "F" attached to this Agreement are incorporated herein by this reference and made a part hereof. Said Exhibits are identified as follows:

"A-1"	LEGAL DESCRIPTION OF DISTRICT PROPERTY
"A-2"	LEGAL DESCRIPTION OF EXCHANGE PROPERTY
"B-1"	GRANT DEED - EXCHANGE PROPERTY
"B-2"	GRANT DEED – DISTRICT PROPERTY (MELIA)
"B-3"	GRANT DEED – DISTRICT PROPERTY (THIRD PARTY OWNER/FAT)
"C"	PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE- DISTRICT
"D-1"	NON-FOREIGN AFFIDAVIT - EXCHANGE PROPERTY
"D-2"	NON-FOREIGN AFFIDAVIT - DISTRICT PROPERTY
"E-1"	ASSIGNMENT AND BILL OF SALE
"E-2"	ASSIGNMENT AND BILL OF SALE
"F"	GENERAL ESCROW INSTRUCTIONS

8.13 Effect of Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and the Parties acknowledge and agree that they are each bound by same.

8.14 Section References. Any reference to any section of this Agreement cited without a decimal includes all sections following the cited section. For example, a reference to Section 5 includes 5.1, 5.1(a) et seq.

8.15 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.16 Interpretation: Governing Law; Calculation of Days. This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect on the Effective date. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act hereunder falls on a day other than a business day, such payment may be made or act performed on the next succeeding business day. A "business day" shall mean Saturday, Sunday

or any other day on which the banks in California are required or permitted to be closed. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a not a business day, in which case the time shall be extended to the next business day.

8.17 Covenants to Survive Escrow. Except as otherwise provided in this Agreement, the covenants and agreements contained in this Agreement which imply or require performance after the Close of Escrow shall survive the Close of Escrow.

8.18 Conflicts of Interest. No director, officer, official, representative, agent or employee of District or Melia shall have any financial interest, direct or indirect, in this Agreement. Notwithstanding the above, the Parties acknowledge that to the extent the development of the District Property results in revenue for Melia, such revenue may contribute to bonuses, income or distributions received by Melia employees, officers and/or shareholders. Melia is solely responsible for complying with any applicable disclosure and/or conflict requirements applicable to its participation in this transaction.

8.19 Nondiscrimination. There shall be no discrimination by the Parties against any person on account of race, color, religion, sex, marital status, national origin, or ancestry in the performance of their respective obligations under this Agreement.

8.20 Rights and Remedies are Cumulative. Except as may be otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party.

8.21 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the Agreement shall forthwith be physically amended to make such insertion or correction. The foregoing shall not be read in a manner which works to strike or modify a negotiated term of this Agreement.

8.22 Cooperation. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the exchange of the District Property and Exchange Property and/or to accomplish the objectives and requirements that are set out in this Agreement. Both Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement and attached Exhibits hereto.

[SIGNATURES ON THE FOLLOWING PAGE]

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

<p><b>DISTRICT:</b></p> <p>CYPRESS SCHOOL DISTRICT a public school district</p> <p>By: _____ Its: _____</p>	<p><b>MELIA:</b></p> <p>MELIA HOMES, INC., a California corporation</p> <p>By: _____ BJ Delzer, President</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>ATKINSON, ANDELSON, LOYA, RUUD &amp; ROMO</p> <p>By: _____ Andreas C. Chialtas, legal counsel for District</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>BROWNING LAW GROUP</p> <p>By: _____ John R. Browning, legal counsel for Melia</p>

ACCEPTANCE BY ESCROW HOLDER

First American Title Insurance Company hereby acknowledges that it has received a fully executed copy of the Exchange Agreement and Joint Escrow Instructions and agrees to act as the Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to the Escrow Holder. Escrow Holder shall execute two originals of this Acceptance and deliver one original to each of the District and Melia promptly following the Opening of Escrow for attachment to their execution originals of this Agreement.

Dated as of \_\_\_\_\_, 2017

FIRST AMERICAN TITLE INSURANCE COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A-1"**

**LEGAL DESCRIPTION OF DISTRICT PROPERTY**

[To Be Inserted]

**EXHIBIT "A-2"**

**LEGAL DESCRIPTION OF EXCHANGE PROPERTY**

[To Be Inserted]

**EXHIBIT "B-1"**

Cypress School District  
9470 Moody Street  
Cypress, CA 90630  
Attn: Anne Silavs, Superintendent

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(Space Above For Recorder's Use)

The undersigned grantor(s) declare(s):  
This conveyance is exempt from the payment of  
a documentary transfer tax pursuant to Revenue  
and Taxation Code Section 11922.

This document is being recorded for the benefit  
of the Cypress School District and is exempt  
from the payment of a recordation fee pursuant  
to Govt. Code Section 6103.

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**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MELIA HOMES, INC., a corporation duly organized and validly existing under the Constitution and the laws of the State of California, hereby grants to the CYPRESS SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California, that certain real property located in the City of [REDACTED], County of [REDACTED], State of California, described in the legal description and depicted in the map attached hereto as Exhibit "A," and incorporated herein by this reference.

Dated: \_\_\_\_\_

**Melia Homes, a California corporation**

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

Its: \_\_\_\_\_

**EXHIBIT “A” TO GRANT DEED**  
**LEGAL DESCRIPTION OF EXCHANGE PROPERTY**

[To Be Inserted]

**EXHIBIT "B-2"**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Melia Homes, Inc.  
4695 MacArthur Court, 8<sup>th</sup> Floor  
Newport Beach, Ca 92660  
Attn: \_\_\_\_\_

\_\_\_\_\_  
(Space Above For Recorder's Use)

In accordance with Section 11932 of the California Revenue and Taxation Code, Grantor has declared the amount of transfer tax which is due by a separate statement which is not being recorded with this Grant Deed

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CYPRESS SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California, hereby grants to MELIA HOMES, INC., a California corporation, duly organized and validly existing under the Constitution and the laws of the State of California, that certain real property located in the City of Cypress, County of Orange, State of California, described in the legal description and depicted in the map attached hereto as Exhibit "A," and incorporated herein by this reference.

**Dated:** \_\_\_\_\_

**CYPRESS SCHOOL DISTRICT, a public school district**

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

**ATTEST:**

By: \_\_\_\_\_  
Clerk of the Governing Board of the  
Cypress School District

**EXHIBIT "A" TO GRANT DEED**  
**LEGAL DESCRIPTION OF DISTRICT PROPERTY**

[To Be Inserted]

**EXHIBIT "B-3"**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

(The Area Above Is Reserved For Recorder's Use)

The undersigned grantor declares:  
Documentary Transfer Tax not shown  
pursuant to Section 11932 of the  
California Revenue and Taxation Code

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
\_\_\_\_\_, LLC, a \_\_\_\_\_ limited liability company ("Grantor"), hereby grants to ***[Insert either Melia Homes, Inc., a California corporation, or its assignee, as applicable]*** ("Grantee"), the real property in the City of Cypress, County of Orange, State of California, more particularly described on Schedule "1" attached hereto and incorporated hereby by this reference (the "Property").

**SUBJECT TO:**

1. General and special real property taxes and assessments and supplemental assessments, if any, for the current fiscal year.
2. All other covenants, conditions, restrictions, reservations, rights, rights-of-way, dedications, offers of dedication and easements of record, which are discoverable by an inspection or survey of the Property as of the date that this Grant Deed is recorded in the Official Records of Orange County, California.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed on the day and year hereafter written.

Dated: \_\_\_\_\_, 201\_

"Grantor" \_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MAIL TAX STATEMENTS TO THE RETURN ADDRESS ABOVE**



Schedule "1"

Legal Description

That certain real property located in the City of Cypress, County of Orange, State of California which is described as follows:

Document No.: \_\_\_\_\_  
Recorded: \_\_\_\_\_

STATEMENT OF TAX DUE AND REQUEST THAT TAX DECLARATION NOT BE MADE A PART OF THE PERMANENT RECORD IN THE OFFICE OF THE COUNTY RECORDER (PURSUANT TO SECTION 11932 OF THE REVENUE AND TAXATION CODE)

TO: Recorder, County of Orange

Request is hereby made in accordance with the provisions of the Documentary Transfer Act that the amount of the tax due not be shown on the original document which names:

Grantor: \_\_\_\_\_, a \_\_\_\_\_

Grantee: \_\_\_\_\_, a \_\_\_\_\_

The property described in the accompanying document is located in the City of Cypress, County of Orange, State of California.

The amount of tax due on the accompanying document is \$\_\_\_\_\_ computed on full value of the property conveyed.

\_\_\_\_\_  
(Signature of Grantor or Agent)

\_\_\_\_\_  
(Firm Name)

Note: After the permanent record is made, this form will be affixed to the conveying document and returned with it.

**EXHIBIT "C"**

**PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE**  
**(Government Code Section 27281)**

This is to certify that the interest in real property conveyed by the Grant Deed dated \_\_\_\_\_, from \_\_\_\_\_, a \_\_\_\_\_, to the CYPRESS SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California, is hereby accepted by the undersigned officer on behalf of the CYPRESS SCHOOL DISTRICT pursuant to authority conferred by the California Constitution and Board action dated \_\_\_\_\_, 2017, and the grantee consents to recordation thereof by its duly authorized officer.

**Dated:** \_\_\_\_\_

CYPRESS SCHOOL DISTRICT

\_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Clerk of the Governing Board of the  
Cypress School District

**EXHIBIT "D-1"**

**NON-FOREIGN AFFIDAVIT**

Section 1445 of the Internal Revenue Code provides that the transferee of an interest in real property located in the United States must withhold tax if the transferor is a foreign person. To inform the CYPRESS SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California, ("Transferee"), that withholding of tax is not required upon the sale by MELIA HOMES, INC., a California corporation duly organized and validly existing under the Constitution and the laws of the State of California ("Transferor"), of its fee simple interest in that certain real property sold pursuant to the Exchange Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 2017 which real property is described in the legal description and depicted in the map attached to this Agreement as Exhibit "A," and incorporated herein by this reference, the undersigned hereby certifies the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and the income tax regulations promulgated thereunder);
2. The Transferor's United States Taxpayer Identification Numbers are \_\_\_\_\_;
3. The Transferor's office address is \_\_\_\_\_; and
4. The Internal Revenue Service has not issued any notice with respect to Transferor or listed Transferor as a person whose affidavit may not be relied upon for purposes of Section 1445 of the Internal Revenue Code.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I am the \_\_\_\_\_ of the Transferor, and that I have authority to sign this document on behalf of the Transferor.

Dated: \_\_\_\_\_

**Melia Homes, Inc., a California corporation**

By: \_\_\_\_\_  
BJ Delzer, President

**EXHIBIT "A" TO NON-FOREIGN AFFIDAVIT**  
**LEGAL DESCRIPTION OF EXCHANGE PROPERTY**

[To Be Inserted]

**EXHIBIT "D-2"**

**NON-FOREIGN AFFIDAVIT**

Section 1445 of the Internal Revenue Code provides that the transferee of an interest in real property located in the United States must withhold tax if the transferor is a foreign person. To inform MELIA HOMES, INC., a California corporation duly organized and validly existing under the Constitution and the laws of the State of California ("Transferee"), that withholding of tax is not required upon the sale by CYPRESS SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("Transferor"), of its fee simple interest in that certain real property sold pursuant to the Exchange Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 2017 which real property is described in the legal description and depicted in the map attached to this Agreement as Exhibit "A," and incorporated herein by this reference, the undersigned hereby certifies the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and the income tax regulations promulgated thereunder);
2. The Transferor's United States Taxpayer Identification Numbers are \_\_\_\_\_;
3. The Transferor's office address is \_\_\_\_\_; and
4. The Internal Revenue Service has not issued any notice with respect to Transferor or listed Transferor as persons whose affidavit may not be relied upon for purposes of Section 1445 of the Internal Revenue Code.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I am the \_\_\_\_\_ of the Transferor, and that I have authority to sign this document on behalf of the Transferor.

**Dated:** \_\_\_\_\_

**CYPRESS SCHOOL DISTRICT**

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

Its: \_\_\_\_\_

**ATTEST:**

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

Clerk of the Governing Board of the  
Cypress School District

**EXHIBIT "A" TO NON-FOREIGN AFFIDAVIT**  
**LEGAL DESCRIPTION OF DISTRICT PROPERTY**

[To Be Inserted]

**EXHIBIT "E-1"**

**ASSIGNMENT AND BILL OF SALE (IF NECESSARY)**

This ASSIGNMENT AND BILL OF SALE ("Assignment and Bill of Sale") to the Exchange Agreement and Joint Escrow Instructions ("Exchange Agreement") by and between CYPRESS SCHOOL DISTRICT, a public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California ("District" or "Buyer" depending on context), and MELIA HOMES, INC., a California corporation ("Seller"), dated \_\_\_\_\_, is hereby entered into this \_\_\_\_ day of \_\_\_\_\_ ("Effective Date") as follows:

A. WHEREAS, District and Buyer have entered into the Exchange Agreement for the sale by Seller to Buyer of that certain real property consisting of approximately \_\_\_\_ acres of land located at \_\_\_\_\_ (the "Property") as more particularly set forth in the Exchange Agreement; and

B. WHEREAS, the execution and delivery of this Assignment and Bill of Sale is required to consummate the Close of Escrow of the purchase of the Property. Capitalized terms used herein and not otherwise defined shall have the meanings provided to them in the Exchange Agreement.

NOW, THEREFORE, in consideration of the benefits set forth herein and in the Exchange Agreement, the Parties hereto hereby agree as follows:

Seller hereby grants, sells, conveys, assigns, transfers, sets over to, and vests in the Buyer, its successors and assigns, all of the right, title, and interest, legal or equitable, of the Seller in and to any and all improvements and fixtures associated with the Property, excepting all of Seller's personal property, furnishing, equipment, and materials, which shall be removed from the Property prior to the Effective Date.

Seller hereby assigns all of its right, title and interest in and to the Property to Buyer, including in the "Property" without limitation all Entitlements (as defined in the Exchange Agreement) and all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by governmental authorities with jurisdiction over the Property, or otherwise in connection with the Property; any and all development rights and other intangible rights, titles, interests, privileges and appurtenances owned by Seller and in any way related to or used in connection with the Property and its operation; and all licenses, consents, easements, rights of way and approvals required from private parties to make use of the utilities (collectively, "Licenses and Permits"); and

Seller hereby assigns, sells, transfers, sets over and delivers unto Buyer all of Seller's estate, right, title and interest in and to the Licenses and Permits, and Buyer hereby accepts such Assignment and Bill of Sale.

Although the Property is being sold by Seller and Buyer in an “AS-IS” condition subject only to the representations and warranties as may be expressly set forth in the Exchange Agreement, as a courtesy to Buyer, and without any indemnification or representation regarding the extent, nature, quality or even existence of any Licenses and Permits, Seller hereby covenants that Seller will, from time to time as reasonably necessary, upon written request therefore, execute and deliver to Buyer, Buyer’s successors, nominees and assigns, any new or confirmatory instruments which Buyer, Buyer’s successors, nominees and assigns may reasonably request in order to fully assign and transfer to and vest in Buyer, or Buyer’s successors, nominees and assigns right, title and interest in and to the Licenses and Permits, if any, or to otherwise realize upon or enjoy such rights in and to the Licenses and Permits, if any.

This Assignment and Bill of Sale shall be binding upon and inure to the benefit of the successors, personal representatives, heirs and legatees of all the respective Parties hereto.

This Assignment and Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of California.

This Assignment and Bill of Sale shall only be effective upon the recordation of the Grant Deed in the Official Records of Orange County, conveying the Property to Buyer.

IN WITNESS WHEREOF, District and Seller have executed and delivered this Assignment and Bill of Sale as of the day and year first written above.

“District”:  
CYPRESS SCHOOL DISTRICT

“Seller”:  
MELIA HOMES, INC.

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

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

Name: \_\_\_\_\_

Name: BJ Delzer

Its: \_\_\_\_\_

Its: President

**EXHIBIT "E-2"**

**ASSIGNMENT AND BILL OF SALE (IF NECESSARY)**

This ASSIGNMENT AND BILL OF SALE ("Assignment and Bill of Sale") to the Exchange Agreement and Joint Escrow Instructions ("Exchange Agreement") by and between CYPRESS SCHOOL DISTRICT, a public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California ("District" or "Seller" depending on context), and MELIA HOMES, INC., a California corporation ("Buyer"), dated \_\_\_\_\_, is hereby entered into this \_\_\_\_ day of \_\_\_\_\_ ("Effective Date") as follows:

A. WHEREAS, District and Buyer have entered into the Exchange Agreement for the sale to Buyer of that certain real property consisting of approximately 3.7 acres of land located at located at 9470 Moody St. Cypress, CA 90630 ("Land") more particularly known as a portion of the Cypress School District Office Site (the "Property") as more particularly set forth in the Exchange Agreement; and

B. WHEREAS, the execution and delivery of this Assignment and Bill of Sale is required to consummate the Close of Escrow of the purchase of the Property. Capitalized terms used herein and not otherwise defined shall have the meanings provided to them in the Exchange Agreement.

NOW, THEREFORE, in consideration of the benefits set forth herein and in the Exchange Agreement, the Parties hereto hereby agree as follows:

Seller hereby grants, sells, conveys, assigns, transfers, sets over to, and vests in the Buyer, its successors and assigns, all of the right, title, and interest, legal or equitable, of the Seller in and to any and all improvements and fixtures associated with the Property, excepting all of Seller's personal property, furnishing, equipment, and materials, which shall be removed from the Property prior to the Effective Date.

Seller hereby assigns all of its right, title and interest in and to the Property to Buyer, including in the "Property" without limitation all Entitlements (as defined in the Exchange Agreement) and all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by governmental authorities with jurisdiction over the Property, or otherwise in connection with the Property; any and all development rights and other intangible rights, titles, interests, privileges and appurtenances owned by District and in any way related to or used in connection with the Property and its operation; and all licenses, consents, easements, rights of way and approvals required from private parties to make use of the utilities (collectively, "Licenses and Permits"); and

Seller hereby assigns, sells, transfers, sets over and delivers unto Buyer all of District's estate, right, title and interest in and to the Licenses and Permits, and Buyer hereby accepts such Assignment and Bill of Sale.

Although the Property is being sold by Seller and Buyer in an “AS-IS” condition subject only to the representations and warranties as may be expressly set forth in the Exchange Agreement, as a courtesy to Buyer, and without any indemnification or representation regarding the extent, nature, quality or even existence of any Licenses and Permits, Seller hereby covenants that Seller will, from time to time as reasonably necessary, upon written request therefore, execute and deliver to Buyer, Buyer’s successors, nominees and assigns, any new or confirmatory instruments which Buyer, Buyer’s successors, nominees and assigns may reasonably request in order to fully assign and transfer to and vest in Buyer, or Buyer’s successors, nominees and assigns right, title and interest in and to the Licenses and Permits, if any, or to otherwise realize upon or enjoy such rights in and to the Licenses and Permits, if any.

This Assignment and Bill of Sale shall be binding upon and inure to the benefit of the successors, personal representatives, heirs and legatees of all the respective Parties hereto.

This Assignment and Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of California.

This Assignment and Bill of Sale shall only be effective upon the recordation of the Grant Deed in the Official Records of Orange County, conveying the Property to Buyer.

IN WITNESS WHEREOF, District and Buyer have executed and delivered this Assignment and Bill of Sale as of the day and year first written above.

“District”:  
CYPRESS SCHOOL DISTRICT

“Buyer”:  
MELIA HOMES, INC.

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

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

Name: \_\_\_\_\_

Name: BJ Delzer

Its: \_\_\_\_\_

Its: President

**EXHIBIT “F”**  
**GENERAL ESCROW INSTRUCTIONS**

[To Be Inserted]