

PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS

BY AND BETWEEN

**Napa Valley Unified School District, a school district duly  
organized and existing under the laws of the State of  
California, as Seller**

**(“Seller”)**

AND

**Town of Yountville, a California municipal corporation, as  
Buyer**

**(“Buyer”)**

PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this “**Agreement**”) is made and entered into as of March \_\_\_\_, 2024, by and between the **Napa Valley Unified School District**, a school district duly organized and existing under the laws of the State of California (“**Seller**”), and the **Town of Yountville**, a California municipal corporation (“**Buyer**”), with reference to the following:

- A. Seller is the owner of that certain real property in the Town of Yountville, County of Napa, State of California, commonly known as the Yountville Elementary School site, 6554 Yount Street, Yountville, CA 94599, A.P.N. 036-070-026-000, and as more particularly described in **Exhibit A** attached hereto and incorporated herein (the “**Real Property**”), improved with an elementary school, parking and recreational facilities (as improved, the “**Property**”).
- B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged as set forth in Section 3, the parties hereto agree as follows:

**1. BASIC TERMS AND DEFINITIONS; REFERENCES**

**1.1 Basic Terms and Definitions.**

(a) Effective Date. The effective date of this Agreement shall be the date first set forth above (the “**Effective Date**”).

(b) Closing Date. The closing date (“**Closing Date**”) shall be ten (10) days following the later of (i) the date the California Department of Housing and Community Development (“**HCD**”) shall have confirmed that the Real Property is Exempt Surplus Land pursuant to the Surplus Land Act (Government Code Section 54220, et seq.), or (ii) the date that Buyer delivers to Seller written determination that it has completed all inspections and investigations it deems necessary in order to purchase the Property (which date shall not be later than the expiration of the Due Diligence Period, as defined below).

(c) Title Review Period. The “**Title Review Period**” shall end at 5:00 p.m. on the date which is twenty (20) days after Buyer’s receipt of an updated supplemental Preliminary Title Report describing, on Schedule A thereof, the Real Property.

(d) Due Diligence Period. The “**Due Diligence Period**” shall end at 5:00 p.m. on the date which is thirty (30) days after the Effective Date, unless extended in accordance with this Agreement.

(e) Exempt Surplus Land. To sell the Real Property, Seller shall have determined that the Real Property is “**Exempt Surplus Land**” under the Surplus Land Act

and shall have complied with all applicable requirements for disposal of surplus property. Upon satisfaction of such requirements, Seller shall give written notice to Buyer that such requirements have been met. Further, prior to the sale of the Real Property, HCD shall have confirmed that the Real Property is Exempt Surplus Land.

(f) Escrow Holder. The escrow holder shall be WFG National Title, 4160 Dublin Blvd., #100, Dublin, CA 94568; Escrow Officer: Evelyn Bowens; Telephone: (925) 847-9570; Email: Ebowens@wfgtitle.com (“**Escrow Holder**”).

(g) Title Company. The title company shall be WFG National Title; Title Officer: Evelyn Bowens; Telephone: (925) 847-9570; Email: Ebowens@wfgtitle.com (“**Title Company**”).

(h) Recitals. All recitals are hereby incorporated as agreements.

1.2 References. All references to Exhibits refer to Exhibits attached to this Agreement, and all such Exhibits are incorporated herein by this reference as though fully set forth herein. The words “herein,” “hereof,” “hereinafter” and words of similar import refer to this Agreement as a whole and not to any particular Section hereof.

## 2. PURCHASE AND SALE.

Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign and transfer to Buyer and Buyer agrees to purchase from Seller, for the purchase price set forth in Section 3, all of Seller’s right, title and interest in and to the Property.

## 3. PURCHASE PRICE AND DEPOSIT.

3.1 Purchase Price. The purchase price for the Property is Eleven Million Dollars (\$11,000,000.00) (the “**Purchase Price**”).

3.2 Payment of Purchase Price. The Purchase Price shall be payable as follows:

3.2.1 Deposit. No later than five (5) days after the Effective Date, and as a condition precedent to the effectiveness hereof, Buyer shall deposit in escrow with Escrow Holder, in cash or current funds, the sum of One Hundred Thousand Dollars (\$100,000.00) (the “**Deposit**”). Prior to expiration of the Due Diligence Period, Buyer may terminate this Agreement for any reason or for no reason by delivering written notice of termination to Seller. Upon such termination, the Deposit, less One Dollar (\$1.00) for independent consideration, shall be returned to Buyer. After expiration of the Due Diligence Period, and upon the earlier of (i) the date that Buyer delivers to Seller written determination that it has completed all inspections and investigations it deems necessary in order the purchase the Property, or (ii) expiration of the Due Diligence Period, if Buyer has not previously terminated this Agreement by its terms, then: (A) the Deposit shall become nonrefundable, (B) Seller shall be entitled to have the Deposit released to it and Escrow Holder is hereby directed to remit the Deposit to Seller without further instruction from Buyer or Seller, and (C) at Escrow Holder’s request, Buyer shall promptly sign and deliver to Escrow Holder such written instructions as Escrow Holder may request confirming that the Deposit may

be released to Seller. Buyer acknowledges and agrees that there shall not be any interest earned on the Deposit.

3.2.2 **Balance of Purchase Price.** Provided all the conditions in **Section 7.1** hereof have been satisfied or waived by Buyer, Buyer shall deposit in cash or current funds with Escrow Holder no later than 2:00 p.m. (local time) one (1) business day prior to the Closing Date (as defined in **Section 1.1(b)**) an amount equal to the Purchase Price less the Deposit plus the escrow, title charges and closing costs set forth in **Section 9.2** and applicable prorations pursuant to **Section 10.**

4. **PROPERTY INFORMATION; TITLE REVIEW; INSPECTIONS AND DUE DILIGENCE.**

4.1 **Property Information.** Within three (3) business days after the Effective Date, Seller shall make available to Buyer the information set forth on **Exhibit D** attached hereto, each to the extent within Seller's knowledge or possession and not protected by the attorney-client privilege, and all of which shall be made available for review and copying (at Buyer's cost and expense) (collectively, the "**Property Information**"). At least five (5) days prior to the expiration of the Due Diligence Period, Seller shall also disclose to Buyer any other information that a reasonable purchaser would want or need to know in order to make an informed decision as to whether and on what terms to purchase the Property, provided that information is known by or in the possession of the District.

4.2 **Title and Survey Review; Title Policy.**

4.2.1 **Delivery of Title Report.** Within five (5) business days after the Effective Date, Title Company shall deliver to Buyer and Seller a preliminary report or title commitment covering the Real Property (the "**Title Report**"), together with copies of all documents (collectively, the "**Title Documents**") referenced in the Title Report. Buyer, at its option and expense, may obtain a survey for the Real Property. Buyer understands and acknowledges that if Buyer elects to obtain a survey for the Real Property, the completion and/or delivery of the survey shall not be a condition precedent to the Close of Escrow. Notwithstanding the foregoing, Buyer further acknowledges that Seller makes no representations or warranties, and Seller shall have no responsibility, with respect to the completeness of the Title Report or the Title Documents made available to Buyer by the Title Company. Nevertheless, on or before the expiration of the Title Review Period defined below, Seller shall notify Buyer in writing of any inconsistencies, inaccuracies, or omissions in the Title Report or the Title Documents, if Seller knows or reasonably should know of the same.

4.2.2 **Title Review and Cure.** Commencing on the Effective Date and continuing through and until the expiration of the Title Review Period, Buyer shall have the right to approve or disapprove the condition of title to the Real Property. On or before the expiration of the Title Review Period, Buyer shall deliver to Seller and Escrow Holder written notice ("**Buyer's Title Notice**") of Buyer's unconditional approval or disapproval of the matters reflected in the Title Report and any survey obtained by Buyer; Buyer's Title Notice delivered by Buyer to Seller must state that it is a "***Buyer's Title Notice being delivered in accordance with the provisions of Section 4.2.2 of the Purchase Agreement.***"

The failure of Buyer to deliver to Seller Buyer's Title Notice on or before the expiration of the Title Review Period shall be deemed to constitute Buyer's approval of the condition of title to the Real Property. If Buyer disapproves any matter of title shown in the Title Report or any survey(s) obtained by Buyer for the Real Property, then Seller may, but shall have no obligation to, within ten (10) days after Seller's receipt of the Buyer's Title Notice for the Real Property ("**Seller's Election Period**"), elect to eliminate or ameliorate to Buyer's reasonable satisfaction the disapproved title matters by giving Buyer written notice ("**Seller's Title Notice**") of those disapproved title matters, if any, which Seller agrees to so eliminate or ameliorate by the Closing Date. If Seller either causes such exception to be removed from the Title Policy (as defined in **Section 4.2.3**) or to be affirmatively insured over, Buyer shall have three (3) business days to consider whether such action ameliorates, to Buyer's satisfaction, the Buyer's original objection/disapproval. If Seller does not elect to, or is unable to, eliminate or ameliorate any disapproved title matters, Buyer reasonably disapproves Seller's Title Notice, or Seller fails to timely deliver Seller's Title Notice, then Buyer shall have the right, upon delivery to Seller and Escrow Holder (on or before five (5) days following the expiration of Seller's Election Period) of a written notice, to either: (a) waive its prior disapproval, in which event said disapproved matters shall be deemed approved; or (b) terminate this Agreement and the Escrow (as defined in **Section 9.1**). Failure to take either one of the actions described in (a) and (b) above shall be deemed to be Buyer's election to take the action described in clause (a) above. Notwithstanding anything to the contrary in this Agreement, if Buyer elects to terminate this Agreement as provided in clause (b) above, this Agreement shall automatically terminate, and the parties shall be released from all further obligations under this Agreement (except for any provisions which by their terms survive a termination of this Agreement), the Deposit shall be immediately returned to Buyer and Buyer shall immediately return all Property Information to Seller. Buyer shall have been deemed to have approved any title exception that Seller is not obligated to remove and to which either Buyer did not object as provided above, or to which Buyer did object, but with respect to which Buyer did not terminate this Agreement. In the event that Buyer terminates this Agreement pursuant to this **Section 4.2.2**, Buyer shall pay all escrow and title fees or similar charges of Escrow Holder and Title Company incurred in connection with the transactions described herein, which obligation shall survive the termination of this Agreement, and Buyer hereby authorizes Escrow Holder to deduct Buyer's portion of such amounts from the Deposit.

**4.2.3 Delivery of Title Policy at Closing.** As a condition precedent to the Close of Escrow, the Title Company shall have issued and delivered to Buyer, or shall have committed to issue and deliver to Buyer, with respect to the Real Property, a Standard Coverage Owner's Policy of Title Insurance (the "**Title Policy**") issued by the Title Company as of the date and time of the recording of the Deed (as defined in **Section 6.1**) for the Real Property in the amount of the Purchase Price insuring Buyer as owner of good, marketable and indefeasible fee simple title to the Real Property, subject only to the Permitted Exceptions (as hereinafter defined). For purposes of this Agreement, "**Permitted Exceptions**" shall mean and include (a) any lien to secure payment of real estate taxes, including special assessments, not delinquent, (b) the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, (c) all matters which are created by or with the written consent of Buyer or which do not materially and deleteriously affect Buyer's contemplated use of the Real Property in Buyer's sole discretion, (d) all exceptions disclosed by the Title Report relating

to the Real Property and which are approved or deemed approved by Buyer in accordance with **Section 4.2.2**, and (e) all applicable laws, ordinances, rules and governmental regulations (including, without limitation, those relating to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Real Property.

#### **4.3 Inspections; Due Diligence Period; Other Disclosures.**

**4.3.1 Inspections in General.** Commencing on the Effective Date and continuing through and including the expiration of the Due Diligence Period, Buyer, its agents, and employees shall have a limited license (the “**License**”) for unlimited access to the Property for the purpose of making inspections at Buyer’s sole risk, cost and expense. All those entering the Property at the direction of Buyer shall have adequate insurance to cover their activities. Buyer agrees to restore the Property, as required, to substantially the same condition that existed prior to Buyer’s entry and inspection. The License shall be deemed revoked upon termination of this Agreement. The provisions of this paragraph shall survive the Close of Escrow or the earlier termination of this Agreement.

**4.3.2 Environmental Inspections.** The parties acknowledge that a Phase I environmental inspection of the Real Property has to be performed, and that depending on the findings in the Phase I environmental report, a Phase II environmental inspection may have to be performed. Seller hereby consents to Buyer performing a Phase II environmental inspection, as required. At Seller’s request, Buyer shall deliver to Seller (at no cost to Seller) copies of any Phase II or other environmental reports to which Seller consents as provided above.

**4.3.3 Termination During Due Diligence Period.** If Buyer determines, in its sole discretion, before the expiration of the Due Diligence Period or any extension thereof, that the Property is unacceptable for Buyer’s purposes, Buyer shall have the right to terminate this Agreement by giving to Seller notice of termination (a “**Termination Notice**”) before the expiration of the Due Diligence Period or extension thereof, in which event the Deposit shall be immediately refunded to Buyer, Buyer shall immediately return all Property Information to Seller and, except for those provisions of this Agreement which expressly survive the termination of this Agreement, the parties hereto shall have no further obligations hereunder. If Buyer fails to deliver a Termination Notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then Buyer shall be deemed to be satisfied with all aspects of all the Property, including, without limitation, the condition and suitability of all of the Property for Buyer’s intended use, and Buyer shall be obligated to acquire the Property in accordance with the provisions of this Agreement. Buyer’s delivery of a Termination Notice to Seller with respect to the Property shall constitute Buyer’s election to terminate this Agreement with respect to the Property as provided above in this **Section 4.3.3**. In the event that Buyer terminates this Agreement pursuant to this **Section 4.3.3**, Buyer shall pay all escrow and title fees or similar charges of Escrow Holder and Title Company incurred in connection with the transactions described herein, which obligation shall survive the termination of this Agreement, and Buyer hereby authorizes Escrow Holder to deduct such amounts from the Deposit, provided the remainder of the Deposit shall be refunded to Buyer as provided above.

**4.3.4 Termination After Expiration of the Due Diligence Period.** If

Buyer determines, in its sole discretion, for any reason or for no reason, after the expiration of the Due Diligence Period, Buyer shall have the right to terminate this Agreement by giving to Seller a Termination Notice, in which event the Deposit shall be immediately paid to Seller, Buyer shall immediately return all Property Information to Seller and, except for those provisions of this Agreement which expressly survive the termination of this Agreement, the parties hereto shall have no further obligations hereunder. Payment of the Deposit to Seller pursuant to this subsection shall constitute payment of “liquidated damages” pursuant to **Section 14**.

4.3.5 **Natural Hazards Disclosure.** Within three (3) days following the Effective Date, Seller shall provide Buyer, at Seller’s cost, a Natural Hazards Disclosure Statement for the Real Property prepared by Property I.D. Natural Hazard Disclosures (the “**Natural Hazard Expert**”) covering special flood hazard areas, areas of potential flooding caused by dam failure, very high fire hazard severity zones, wild land areas of forest fire risk, earthquake fault zones, seismic hazard zones, and Mello-Roos Special Assessment Tax District Disclosure, as applicable. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller from its disclosure obligations referred to herein, and, for the purposes of this Agreement, the provisions of California Civil Code Section 1102.4 regarding the non-liability of Seller for errors and/or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Seller have any responsibility for matters not actually known to Seller or for matters for which Buyer has assumed the risk under any other provision of this Agreement.

4.3.6 **Indemnity for Inspection Damages.** Buyer agrees to indemnify, defend, and hold harmless Seller, its officers, employees and agents from and against any and all third party claims for bodily injury or property damage to persons or property which result from the on-site inspection activities of Buyer, its officers, employees, agents, representatives, contractors, subcontractors and/or consultants, but shall have no obligation to do so to the extent that any claims result from pre-existing conditions that may exist on the Property, or claims that result from the Seller’s gross negligence or willful misconduct.

4.4 **Daily Monitoring.** Commencing on the Effective Date and continuing through the Close of Escrow, Seller shall be responsible for securing and monitoring the Property, including the improvements thereon, to protect against damage or destruction of the Property and the improvements thereon, and to ensure that no persons have taken up residency on the Property.

4.5 **Seller’s Tasks Before Expiration of Due Diligence Period.** Within fifteen (15) business days after the Effective Date, Buyer and Seller shall conduct a walk-through of the Property, during which Buyer shall identify to Seller all items that Buyer desires Seller to remove from the Property, and other tasks that Buyer desires Seller to complete, prior to the expiration of the Due Diligence Period. Seller may agree or disagree to remove the items and complete the tasks requested by Buyer, provided that the parties shall continue to negotiate in good faith to compile a list of items to be removed and tasks to be completed

that is agreeable to both parties. If the parties are unable to agree and compile such list prior to the expiration of the Due Diligence Period, then the Due Diligence Period shall be automatically extended an additional thirty (30) days. If the parties are unable to agree and compile such list at least five (5) business days prior to the expiration of this automatic extension of the Due Diligence Period, then either party shall have the right to terminate the Agreement. In the event that the parties agree upon a list of items to be removed from the Property and tasks to be completed by Seller, then Seller shall use best efforts to remove such items and complete such tasks prior to the expiration of the Due Diligence Period. In the event that any of the items cannot be feasibly removed prior to the expiration of the Due Diligence Period, the parties shall agree upon a reasonable estimate of the cost to remove the remaining items, which amount shall be held back in Escrow after Closing for the benefit of Buyer, unless and until the items are removed by Seller, which amounts shall be returned to Buyer ninety (90) days after the Closing Date in proportion to the cost of removing any items not so removed.

## 5. RISK OF LOSS

5.1 Damage or Condemnation. Subject to the terms of this Section 5.1, risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened against the Property before the Close of Escrow, and risk of loss to the Property due to fire, flood or any other cause before the Close of Escrow, shall remain with Seller. If, before the Close of Escrow, the Property or any portion thereof shall be “materially damaged”, or if the Property or any “material portion” thereof shall be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, then Buyer may elect to terminate this Agreement by delivering written notice of such election to Seller within five (5) days after Seller provides written notice to Buyer of the damage or taking, in which event Buyer shall no longer be obligated to purchase, and Seller shall no longer be obligated to sell, the Property. Notwithstanding anything to the contrary in this Agreement, if Buyer elects to terminate this Agreement pursuant to this Section 5.1, the parties shall be released from all further obligations under this Agreement (except for any provisions which by their terms survive a termination of this Agreement), the Deposit shall be immediately returned to Buyer and Buyer shall immediately return all Property Information to Seller. If the Closing Date is within the aforesaid five (5) day period, then the Close of Escrow shall be extended to the next business day following the end of said five (5) day period. If Buyer does not timely deliver such notice of termination, and in any event if the damage is not material, this Agreement shall remain in full force and effect, the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustment, and upon the Close of Escrow, Seller shall assign, transfer and set over to Buyer all of the right, title and interest of Seller in and to any awards that have been or that may thereafter be made for such taking, and Seller shall assign, transfer and set over to Buyer any insurance proceeds that may thereafter be made for such damage or destruction. For purposes of this Section 5.1, the phrase(s) (i) “**Material damage**” or “**Materially damaged**” means damage reasonably exceeding twenty percent (20%) of the Purchase Price, and (ii) “**material portion**” means any portion of the Property that has a “fair market value” exceeding twenty percent (20%) of the Purchase Price.



6. **SELLER'S AND BUYER'S DELIVERIES**

6.1 **Seller's Deliveries into Escrow.** No less than one (1) business day prior to the Closing Date, Seller shall deliver into Escrow to the Escrow Holder the following:

(a) **Deed.** A Grant deed for the Real Property (the "**Deed**") in the form customarily supplied by Title Company, and in all events subject to Section 4.2.2, executed and acknowledged by Seller, conveying to Buyer Seller's title to the Real Property.

(b) **Bill of Sale.** Two (2) originals of a Bill of Sale for the improvements and furniture, fixtures and equipment on the Property (the "**Bill of Sale**") in the form attached hereto as **Exhibit B**, executed by Seller, if applicable.

(c) **State Law Disclosures.** Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of the Property.

(d) **FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit executed by Seller substantially in the form attached hereto as **Exhibit C**.

6.2 **Buyer's Deliveries into Escrow.** No less than one (1) business day prior to the Closing Date, Buyer shall deliver into Escrow to the Escrow Holder the following:

(a) **Purchase Price.** The Purchase Price, less the Deposit that is applied to the Purchase Price, plus applicable escrow, title charges and closing costs set forth in **Section 9.2** and prorations pursuant to **Section 10**, deposited by Buyer with the Escrow Holder in immediate, same-day federal funds wired for credit into the Escrow Holder's escrow account and deposited in Escrow Holder's escrow account no later than 2:00 p.m. (local time) one (1) business day prior to the Closing Date. The Purchase Price shall earn interest at standard rates while deposited with the Escrow Holder.

(b) **Bill of Sale.** Two (2) originals of the Bill of Sale executed by Buyer.

(c) **State Law Disclosures.** Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of the Property.

(d) **Additional Documents.** Any additional documents that Escrow Holder or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

6.3 **Closing Statements/Escrow Fees.** Concurrently with the Close of Escrow, Seller and Buyer shall deposit with the Escrow Holder executed closing statements consistent with this Agreement in the form required by the Escrow Holder.

7. **CONDITIONS TO BUYER'S AND SELLER'S OBLIGATIONS.**

7.1 **Conditions to Buyer's Obligations.** The Close of Escrow and Buyer's obligation to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof,

it being agreed that Buyer may waive any or all of such conditions) on or prior to the Closing Date or on the dates designated below for the satisfaction of such conditions:

(a) As of the Closing Date, Seller shall have performed its respective obligations hereunder and all deliveries to be made at Close of Escrow by Seller shall have been tendered;

(b) All of Seller's representations and warranties contained herein and pursuant hereto shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date;

(c) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against (i) Seller that would materially and adversely affect Seller's ability to perform its respective obligations under this Agreement, or (ii) the Property; and

(d) There shall exist no pending or threatened action, suit or proceeding with respect to Seller or the Property before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, the Property, this Agreement or the consummation of the transaction contemplated hereby.

#### **7.2 Conditions to Seller's Obligations.**

The Close of Escrow and Seller's obligations to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) on or prior to the Closing Date or the dates designated below for the satisfaction of such conditions:

(a) All of Buyer's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date;

(b) As of the Closing Date, Buyer has performed its obligations hereunder and all deliveries to be made at Close of Escrow by Buyer shall have been tendered including, without limitation, the deposit with Escrow Holder of the amounts set forth in **Section 6.2(a)**;

(c) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against Buyer that would materially and adversely affect Buyer's ability to perform its obligations under this Agreement; and

(d) There shall exist no pending or threatened action, suit or proceeding with respect to Buyer before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transaction contemplated hereby.

8. **CLOSE OF ESCROW; POSSESSION.**

8.1 **Close of Escrow.** “Close of Escrow” shall mean and refer to Seller’s receipt of the Purchase Price and the other amounts due Seller in accordance with the provisions of **Section 9.1(c)**. The Escrow and Buyer’s right to purchase the Property will terminate automatically if the Close of Escrow does not occur on or before 5:00 p.m. (local time) on the Closing Date, unless otherwise agreed by the parties.

8.2 **Possession.** Possession of the Property, subject only to the Permitted Exceptions, shall be delivered to Buyer on the Closing Date.

9. **ESCROW.**

9.1 **Closing.** The escrow (the “Escrow”) for the consummation of this transaction shall be established with Escrow Holder at the address indicated in **Section 1.1** by the deposit of a signed copy of this Agreement with Escrow Holder contemporaneously with the execution hereof. This Agreement shall constitute both an agreement among Buyer and Seller and escrow instructions for Escrow Holder. If Escrow Holder requires separate or additional escrow instructions which it deems necessary for its protection, Seller and Buyer hereby agree promptly upon request by Escrow Holder to execute and deliver to Escrow Holder such separate or additional escrow instructions (the “**Additional Instructions**”). In the event of any conflict or inconsistency between this Agreement and the Additional Instructions, this Agreement shall prevail and govern, and the Additional Instructions shall so provide. The Additional Instructions shall not modify or amend the provisions of this Agreement unless otherwise agreed to in writing by Seller and Buyer.

On the Closing Date, provided that the conditions set forth in **Sections 7.1** and **7.2** have been satisfied or waived, Escrow Holder shall take the following actions in the order indicated below:

(a) With respect to all closing documents delivered to Escrow Holder hereunder, and to the extent necessary, Escrow Holder is authorized to insert into all blanks requiring the insertion of dates the date of the recordation of the Deed or such other date as Escrow Holder may be instructed in writing by Seller and Buyer;

(b) Record the Deed in the official records of the County in which the Property is located;

(c) Deliver to Seller, in cash or current funds, (i) the Purchase Price, plus or minus, as the case may be, the amounts determined in accordance with the provisions of **Sections 9.2** and **10**, (ii) those items referred to in **Section 6.2** and (iii) a conformed copy of the recorded Deed;

(d) Deliver to Buyer those items referred to in **Section 6.1**;

(e) Cause the Title Company to issue the Title Policy for the Property in accordance with the provisions of **Section 4.2.3**; and

(f) Deliver to Seller and Buyer a final closing statement which has been

certified by Escrow Holder to be true and correct.

**9.2 Escrow and Title Charges.**

(a) Upon the Close of Escrow, escrow, title charges and other closing costs shall be allocated between Seller and Buyer as follows:

(i) Seller shall pay: the premium for the Title Policy, and the County transfer tax, if any, for the Property.

(ii) Buyer shall pay for endorsements to the Title Policy it requests;

(iii) Buyer shall pay all costs incurred in connection with Buyer's obtaining any surveys for the Real Property.

(iv) Buyer and Seller shall each be responsible to pay for one-half of any other costs of escrow.

(v) Except to the extent otherwise specifically provided herein, all other expenses incurred by Seller and Buyer with respect to the negotiation, documentation and closing of this transaction, including, without limitation, Buyer's and Seller's attorneys' fees, shall be borne and paid by the party incurring same.

(b) If the Close of Escrow does not occur by reason of Buyer's or Seller's default under this Agreement, then all escrow and title charges (including cancellation fees) shall be borne by the party in default.

**9.3 Procedures Upon Failure of Condition.** Except as otherwise expressly provided herein, if any condition set forth in **Section 7.1 or 7.2** is not timely satisfied or waived for a reason (other than the default of Buyer or Seller in the performance of its respective obligations under this Agreement):

(a) This Agreement, the Escrow and the respective rights and obligations of Seller and Buyer hereunder shall terminate (except for the rights and obligations arising pursuant to any provisions of this Agreement which by their terms shall survive a termination of this Agreement) at the written election of the party for whose benefit such condition was imposed, which written election must be made (i) within five (5) business days after the date such condition was to be satisfied, or (ii) on the date the Close of Escrow was to occur, whichever occurs first, but in no event later than the Closing Date;

(b) Escrow Holder shall deliver to Seller the Deposit and all funds of Seller in its possession;

(c) Escrow Holder shall return to Buyer all funds of Buyer in its possession;

(d) Escrow Holder shall return to Seller and Buyer all documents

deposited by them respectively, which are then held by Escrow Holder;

(e) Buyer shall return to Seller the Property Information, and Buyer shall deliver to Seller all Work Product (as defined in **Section 16.3**); and

(f) Any escrow cancellation and title charges shall be borne equally by Seller and Buyer.

10. **PRORATIONS.** Unless otherwise agreed in writing, the following items shall be paid current and then Seller and Buyer agree that, subject to the provisions of this **Section 10**, each of the items listed in this **Section 10** (the "**Proration Items**") shall be apportioned in respect of the Property as of 11:59 p.m. on the Closing Date. Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the Closing Date, and Buyer will be charged and credited for all of the Proration Items relating to the period after the Closing Date.

10.1 **Taxes and Assessments.** Real estate taxes, if any, and assessments imposed by any governmental authority, including but not limited to payments on Mello-Roos, and other Special Assessment District bonds and assessments that are now a lien ("**Taxes**") with respect to the Property for the relevant tax year in which the Property is being sold and that are not yet due and payable or that have not yet been paid shall be prorated as of the Close of Escrow based upon the most recent ascertainable assessed values and tax rates and based upon the number of days Buyer and Seller will have owned the Property during such relevant tax year. Seller shall receive a credit for any Taxes paid by Seller and applicable to any period after the Close of Escrow.

10.2 **Owner Deposits.** Seller shall receive a credit at the Close of Escrow for all bonds, deposits, letters of credit, set aside letters or other similar items, if any, that are outstanding with respect to the Property that have been provided by Seller or any of its affiliates to any governmental agency, public utility, or similar entity (collectively, "**Owner Deposits**") to the extent assignable to Buyer. To the extent any Owner Deposits are not assignable to Buyer, Buyer shall replace such Owner Deposits and obtain the release of Seller (or its affiliates) from any obligations under such Owner Deposits. To the extent that any funds are released as a result of the termination of any Owner Deposits for which Seller did not get a credit, such funds shall be delivered to Seller immediately upon their receipt.

10.3 **Intentionally Omitted.**

10.4 **Final Adjustment After Closing.** If final prorations cannot be made at the Close of Escrow for any item being prorated under this **Section 10**, then, provided Buyer or Seller identify any such proration ("**Post Closing Proration**") in writing before the Close of Escrow, Buyer and Seller agree to allocate such items on a fair and equitable basis as soon as invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Close of Escrow (but in no event later than eight (8) months after the Close of Escrow). Payments in connection with the final adjustment shall be due no later than forty-five (45) days after such amount is known and provided to the owing party. Seller shall have reasonable access to, and the right to inspect and audit, Buyer's books to confirm the final prorations for a period of eight (8) months after the Close of Escrow. Notwithstanding anything to the contrary stated in this **Section 10**, except for any

Post Closing Prorations, all prorations made under this **Section 10** shall be final as of the Close of Escrow and shall not be subject to further adjustment (whether due to an error or for any other reason) after the Close of Escrow, except as stated above.

11. **RESERVED.**

12. **AS-IS.** As of the expiration of the Due Diligence Period, Buyer will have:

(a) examined and inspected the Property and will know and be satisfied with the physical condition, quality, quantity and state of repair of the Property in all respects and by proceeding with this transaction following the expiration of the Due Diligence Period shall be deemed to have determined that the same is satisfactory to Buyer;

(b) reviewed the Property Information and all instruments, records and documents which Buyer deems appropriate or advisable to review in connection with this transaction, including, but not by way of limitation, any and all surveys and any licenses, contracts, warranties and guarantees relating to the Property, and Buyer, by proceeding with this transaction following the expiration of the Due Diligence Period, shall be deemed to have determined that the same and the information and data contained therein and evidenced thereby are satisfactory to Buyer;

(c) reviewed all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relating to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property, and Buyer, by proceeding with this transaction following the expiration of the Due Diligence Period, shall be deemed to have determined that the same are satisfactory to Buyer; and

(d) at its own cost and expense, made its own independent investigation respecting the Property and all other aspects of this transaction, and shall have relied thereon and on the advice of its consultants in entering into this Agreement, and Buyer, by proceeding with this transaction following the expiration of the Due Diligence Period, shall be deemed to have determined that the same are satisfactory to Buyer.

13. **BUYER'S AND SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES; ERISA; INDEMNIFICATION.**

In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following covenants, representations and warranties:

13.1 **Authority.** Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein. There is no agreement to which Buyer is a party or to Buyer's knowledge binding on Buyer which is in conflict with this Agreement. Buyer is duly organized, validly existing and in good standing under the laws of the state of its formation and is, or will be as of the Closing Date, qualified to do business and in good standing in the state in which the Property is located, with full power and

authority to enter into and execute this Agreement and to consummate the transactions contemplated hereby. The consummation of the transaction contemplated hereby and this Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions. Neither the execution of this Agreement nor the performance by Buyer of its obligations hereunder will violate, be in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under any applicable law.

13.2 **ERISA.** Buyer is not purchasing any of the Property with "plan assets" of an Employee Benefit Plan subject to Title I of the Employee Retirement Income Security Act of 1974 (as amended from time to time, the "**Act**," and together with any regulation, rule or judicial or administrative case, order, or pronouncement arising under or connected with the Act, "**ERISA**") or of a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"). Buyer shall take all actions reasonably requested by Seller for the purpose of ensuring, to Seller's satisfaction, that the transactions contemplated herein will comply with ERISA and not result in an imposition of an excise tax under Section 4975 of the Code; such actions shall include, without limitation, the making of such further representations and warranties as Seller's counsel reasonably deems necessary to ensure that neither this Agreement nor any of the transactions contemplated herein will violate ERISA or result in an imposition of an excise tax under Section 4975 of the Code. In the event that this Agreement, or any transaction or other action by Seller in connection herewith, shall be deemed to violate ERISA or result in an imposition of an excise tax under Section 4975 of the Code, Seller may immediately terminate this Agreement (without any liability to Seller) in accordance with, and subject to the terms and conditions of, Section 9.3 as if such termination arose from a failed condition under Section 9.3.

13.3 **Terrorism Laws.** Neither Buyer nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and their respective employees, officers, directors, representatives or agents, is a person or entity described by Section 1 of the Executive Order (No. 13,224) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (September 24, 2001), or engages in any dealings or transactions, and is not otherwise associated, with any such persons or entities or any Forbidden Entity. A "**Forbidden Entity**" is defined as (i) the governments of Cuba, Iran, North Korea, Myanmar, Syria and Sudan (each, a "**Prohibited Country**") and any of their agencies, including but not limited to political units and subdivisions (each, a "**Prohibited Government**"); (ii) any company that (1) is wholly or partially managed or controlled by a Prohibited Government, (2) is established, organized under, or whose principal place of business is in any Prohibited Country, (3) has failed to submit an affidavit following request therefor averring that it does not own or control any property or asset in and has not and does not transact business with any Prohibited Country; and (iii) any publicly traded company identified by an independent researcher specializing in global security as (1) owning or controlling property or assets or having employees or facilities located in, (2) providing goods or services to or obtaining goods or services from, (3) having distribution agreements with, issuing credits or loans to or purchasing bonds or commercial paper issued by, or (4) investing in any Prohibited Country or any company domiciled in any Prohibited

Country. For purposes of this section, a “**company**” is any entity whether publicly traded or privately owned capable of affecting commerce, including but not limited to, a government, government agency, natural person, legal person, sole proprietorship, partnership, firm, corporation, subsidiary, affiliate, franchisor, franchisee, joint venture, trade association, financial institution, utility, public franchise, provider of financial services, trust, or enterprise and any association thereof.

**13.4 Representation and Warranty.** Seller represents and warrants that it has not disposed, released or deposited Hazardous Materials on the Property, including in the soil, surface water or groundwater. Seller further represents and warrants that it has not caused any Hazardous Materials to migrate from the Property via soil, surface water or groundwater. Seller also represents and warrants that it is in compliance in all material respects with applicable environmental laws in relation to the Property, including any Hazardous Materials in the soil, surface water and/or groundwater on the Property. Seller also represents and warrants that it has no knowledge, upon diligent search, of any other party disposing, releasing, or depositing Hazardous Materials on the Property or causing any Hazardous Materials to migrate from the Property via soil, surface water or groundwater. Seller represents and asserts, to the best of Seller’s knowledge: (1) The Property has only been used for public and private school or child care purposes during Seller’s ownership or occupancy of the Property; (2) Seller is not aware of any Hazardous Materials currently or in the past used, generated, stored, transported to, transported from or disposed of on the Property (whether legal or illegal, accidental or intentional), except for any materials used in the normal operation of a school, including school bus operations; (3) Seller has disclosed, or will disclose prior to the expiration of the Due Diligence Period, all documents or information in Seller’s possession relating to: (i) any and all uses of the Property by any prior “Owner or Operator” of the Property (as that phrase is defined in CERCLA (as defined in Section 13.5 of the Agreement)); (ii) the location or former location on or under the Property of all storage tanks, leach pits, clarifier pits and other storage or treatment facilities, if any; (iii) the location of any Hazardous Materials disposed of on the Property, if any (whether legal or illegal, accidental or intentional); (iv) the location of any Hazardous Materials from the Property disposed of off-site, if any (whether legal or illegal, accidental or intentional); and (v) the location of any release (as that term is defined under the Environmental Laws (as defined in Section 13.5 of the Agreement)) of any Hazardous Materials either on the Real Property or within two thousand (2,000) feet of the Real Property.

**13.5 Seller Environmental Indemnity.** Seller, on behalf of itself and all of its representatives, trustees and heirs hereby expressly agrees, at its sole cost and expense, to indemnify, protect, hold harmless and defend Buyer from any and all claims, liabilities, suits, demands, obligations, duties, acts, omissions, causes of action, damages, losses, and indemnification obligations of every type, kind, nature, description or character whatsoever (“**Claims**”), to the extent that such Claims relate to any past or present **Hazardous Materials** on, under or about the Property or with respect to any past or present violation of any rules, regulations or laws regulating or governing the use, handling, storage or disposal of Hazardous Materials, and of which Seller had knowledge as of the Closing Date but failed to disclose to Buyer. For purposes of this Agreement, Seller “had knowledge” if the following Seller employees have at any time possessed or received information,



complaints, writings, records, reports, studies, or notice regarding or related to any such Hazardous Materials or Claims: Rosanna Mucetti, Superintendent; Rob Mangewala, Assistant Superintendent, Business Services, and/or Mike Pearson, Assistant Superintendent, Operational Services. Such Claims shall include, without limitation, (i) any liability the Seller may have under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.) (“**CERCLA**”), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.), all as amended, and any similar state, local or federal environmental law, rule or regulation (the “**Environmental Laws**”), and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Real Property under Section 107 of CERCLA (42 U.S.C.A. Section 9607). As used herein, the term “**Hazardous Material(s)**” includes, without limitation, any hazardous or toxic materials, substances or wastes, such as (1) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, or any agency of the United States government, (2) any other material, substance, or waste which is defined or regulated as a hazardous material, extremely hazardous material, hazardous waste or toxic substance pursuant to any laws, rules, regulations or orders of the United States government, or any state or local governmental body, (3) asbestos, (4) petroleum and petroleum based products, (5) formaldehyde, (6) polychlorinated biphenyls PCBs, and (7) freon and other chlorofluorocarbons.

Seller’s indemnity, hold harmless, and defense obligation shall not apply to any and all claims, liabilities, suits, demands, obligations, duties, acts, omissions, causes of action, damages, losses, and indemnification obligations of every type, kind, nature, description or character whatsoever, which in any way arise out of, are connected with, pertain or relate to, any violation of any rules, regulations or laws regulating or governing the use, handling, storage or disposal of Hazardous Materials committed solely by Buyer, or any release or deposit of Hazardous Materials on the Property committed solely by same. To the extent any such claims, liabilities, suits, demands, obligations, duties, acts, omissions, causes of action, damages, losses, and/or indemnification obligations are caused by or attributed to the acts of both Buyer and Seller, Seller’s indemnity obligation shall be reduced in proportion to the Buyer’s comparative fault. Seller’s indemnity, hold harmless, and defense obligation shall survive the Close of Escrow.

#### 14. **DEFAULT AND DAMAGES.**

14.1 **DEFAULT BY BUYER; TERMINATION BY BUYER.** BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT, IN THE EVENT THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A BUYER DEFAULT PRIOR TO THE EXPIRATION OF THE DUE DILIGENCE PERIOD, OR THE CLOSE OF ESCROW FAILS TO OCCUR BECAUSE BUYER ISSUES A TERMINATION NOTICE

AFTER EXPIRATION OF THE DUE DILIGENCE PERIOD, SELLER WILL SUFFER DAMAGES IN AN AMOUNT WHICH WILL, DUE TO THE SPECIAL NATURE OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THE SPECIAL NATURE OF THE NEGOTIATIONS WHICH PRECEDED THIS AGREEMENT, BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN. IN ADDITION, BUYER WISHES TO HAVE A LIMITATION PLACED UPON THE POTENTIAL LIABILITY OF BUYER TO SELLER IN THE EVENT THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A BUYER DEFAULT, AND WISHES TO INDUCE SELLER TO WAIVE OTHER REMEDIES WHICH SELLER MAY HAVE IN THE EVENT OF A BUYER DEFAULT. BUYER AND SELLER, AFTER DUE NEGOTIATION, HEREBY ACKNOWLEDGE AND AGREE THAT THE AMOUNT OF THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL SUSTAIN IN THE EVENT OF SUCH BUYER DEFAULT. BUYER AND SELLER HEREBY AGREE THAT SELLER MAY, IN THE EVENT THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A BUYER DEFAULT, TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO BUYER AND ESCROW HOLDER, CANCEL THE ESCROW AND RECEIVE OR RETAIN (IF SELLER ALREADY HOLDS THE DEPOSIT) THE DEPOSIT AS LIQUIDATED DAMAGES AND ESCROW HOLDER SHALL IMMEDIATELY DELIVER (UNLESS IT HAS ALREADY DONE SO) THE DEPOSIT TO SELLER. SUCH RETENTION OF THE DEPOSIT BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE, OR ANY SIMILAR PROVISION.

SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS **SECTION 14.1** AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_

14.2 **Default by Seller.** If Seller defaults in its obligations to sell and convey the Property to Buyer pursuant to this Agreement (all of the conditions to Seller's obligations to close having been satisfied or waived), Buyer's sole and exclusive remedy shall be to elect one of the following: (a) to terminate this Agreement and recover the Deposit in full, or (b) to bring a suit for specific performance.

15. **BROKERS.**

In the event of any claim for brokers or finders fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then (a) Buyer shall indemnify, save harmless and defend Seller from and against any such claims, if it shall have been based upon any statement, representation or agreement alleged to have been made by Buyer and (b) Seller shall indemnify, save harmless and defend Buyer from and

against any such claims, if it shall have been based upon any statement, representation or agreement alleged to have been made by Seller including, without limitation, any agreement between Seller and Dominic Dutra and/or 3D Strategies, Inc., a California corporation.

16. **MISCELLANEOUS PROVISIONS.**

16.1 **Notices.** All written notices or demands of any kind which either party hereto may be required or may desire to serve on the other in connection with this Agreement shall be served by personal service, by registered or certified mail, recognized overnight courier service or e-mail transmission. Any such notice or demand so to be served by registered or certified mail, recognized overnight courier service or e-mail transmission shall be delivered with all applicable delivery charges thereon fully prepaid and, if the party so to be served be Buyer, addressed to Buyer as follows:

Town of Yountville  
6550 Yount Street  
Yountville, California 94599  
c/o Town Manager  
Telephone No: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy thereof to:

Colantuono, Highsmith & Whatley PC  
333 University Ave., Suite 200  
Sacramento, CA 95825  
Attention: Gary B. Bell  
Telephone No: (916) 898-0049  
Email: GBell@chwlaw.us

and, if the party so to be served be Seller, addressed to Seller as follows:

Napa Valley Unified School District  
2425 Jefferson Street  
Napa, CA 94558  
Attention: Superintendent  
Telephone No.: (707) 754-0985  
Email: rmucetti@nvusd.org

with a copy thereof to:

Lozano Smith, LLP  
2001 N. Main Street, Suite 500  
Walnut Creek, CA 94596  
Attention: Kelly M. Rem  
Telephone No.: (925) 953-1620  
Email: krem@lozanosmith.com

and, if the party to be served be Escrow Holder, to the address set forth in Section 1.1(e).

Service of any such notice or demand so made by personal delivery, registered or certified mail, recognized overnight courier or e-mail transmission shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt (provided that a copy of such notice or demand is delivered by any of the other methods provided above within one (1) business day following receipt of such e-mail transmission), as applicable, or at the expiration of the third (3rd) business day after the date of dispatch, whichever is earlier in time. Either party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

16.2 **Assignment; Binding on Successors and Assigns.** Buyer shall not assign, transfer or convey its rights or obligations under this Agreement or with respect to the Property without the prior, written consent of Seller, which consent Seller may withhold in its sole, absolute and subjective discretion. Any attempted assignment without the prior written consent of Seller shall be void and Buyer shall be deemed in default hereunder. Any permitted assignments shall not relieve the assigning party from its liability under this Agreement. Subject to the foregoing, and except as provided to the contrary herein, the terms, covenants, conditions and warranties contained herein and the powers granted hereby shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property.

16.3 **Work Product.** Effective upon and in the event of a termination of this Agreement for any reason and upon Seller's request, Buyer shall assign and deliver to Seller (at no cost to Seller), and does hereby assign without the need for any further act or instrument (at no cost to Seller), all reports, plans, studies, documents, written information and the like which has been generated by Buyer in-house or by Buyer's third party consultants, whether prior to the Opening of Escrow or during the period of Escrow in connection with Buyer's proposed acquisition, development, use or sale of the Property (collectively, the "**Work Product**"). In such event, Buyer shall deliver the Work Product which has been assigned to Seller not later than five (5) days after the date of the termination of this Agreement. The Work Product shall be fully paid for and shall not be subject to any lien, encumbrance or claim of any kind. Buyer shall also return all materials and information (including, without limitation, the Property Information) given to it by Seller or its consultants during Escrow, in the same condition as delivered to Buyer. The provisions of this paragraph shall survive the termination of this Agreement.

16.4 **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by Seller or Buyer, Seller and Buyer hereby agree to perform, execute and deliver, or cause to be performed, executed and delivered, on the Closing Date or thereafter any and all such further acts, deeds and assurances as Buyer or Seller, as the case may be, may reasonably require in order to consummate fully the transactions contemplated hereunder.

16.5 **Attorneys' Fees.** If any legal action or any arbitration or other proceeding

(including a bankruptcy proceeding) is brought or if an attorney is retained for the enforcement of this Agreement or any portion thereof, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other reimbursement for the reasonable fees of attorneys and other costs (including court costs and witness fees) incurred by it, in addition to any other relief to which it may be entitled. The term “prevailing party” means the party obtaining substantially the relief sought, whether by compromise, settlement or judgment. The provisions of this paragraph shall survive the Close of Escrow or the earlier termination of this Agreement.

16.6 **Survival.** Except as otherwise expressly set forth or limited herein, the covenants, representations, warranties and agreements contained in this Agreement shall not survive the Close of Escrow or the termination of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, (i) the indemnification provisions of Section 4.3.1 (Inspections in General) and 15 (Brokers); (ii) the provisions of Section 10.1 (Taxes and Assessments), Section 10.4 (Final Adjustment After Closing), Section 12 (As-Is), Section 13.2 (ERISA), Section 13.3 (Terrorism Laws), Section 13.5 (Seller Environmental Indemnity), Section 14.2 (Default by Seller), Section 16.3 (Work Product), Section 16.5 (Attorneys’ Fees), Section 16.8 (Governing Law and Venue), Section 16.17 (Indemnification), and Section 16.20 (No Recordation); and (iii) Buyer’s obligation to pay all escrow and title fees or similar charges of Escrow Holder and Title Company incurred in connection with the transactions described herein as set forth in Section 4.2.2 (Title Review and Cure) and 4.3.3 (Termination During Due Diligence Period) shall survive the termination of this Agreement or the Close of Escrow without limitation, and shall not be merged with the recording of the Deed.

16.7 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties in respect to the subject matter hereof, and the parties intend for the literal words of this Agreement to govern and for all prior negotiations, drafts, and other extrinsic communications, whether oral or written, to have no significance or evidentiary effect. The parties further intend that neither this Agreement nor any of its provisions may be changed, amended, discharged, waived or otherwise modified orally except only by an instrument in writing duly executed by the party to be bound thereby. The parties hereto fully understand and acknowledge the importance of the foregoing sentence and are aware that the law may permit subsequent oral modification of a contract notwithstanding contract language which requires that any such modification be in writing; but Buyer and Seller fully and expressly intend that the foregoing requirements as to a writing be strictly adhered to and strictly interpreted and enforced by any court which may be asked to decide the question. Each party hereto acknowledges that this Agreement accurately reflects the agreements and understandings of the parties hereto with respect to the subject matter hereof and hereby waive any claim against the other party which such party may now have or may hereafter acquire to the effect that the actual agreements and understandings of the parties hereto with respect to the subject matter hereof may not be accurately set forth in this Agreement.

16.8 **Non-Binding Mediation.** In the event of any dispute or claim arising out of or related to this Agreement, the parties shall first attempt to resolve the same through non-binding mediation with a mutually agreeable mediation service. The cost of such non-

binding mediation shall be borne equally by the parties with the parties bearing their own attorneys' fees. In the event the dispute(s) or claim(s) are not resolved, or a mediation service cannot be mutually agreed upon, the aggrieved party may file an action in court in accordance with this Agreement.

16.9 **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. In the event of a dispute arising from or related to this Agreement, venue shall be in the Superior Court of California for the County of Napa, which shall have exclusive jurisdiction over the same.

16.10 **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16.11 **Headings; Construction.** The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and the neuter and vice versa. The use in this Agreement of the term "including" and related terms such as "include" shall in all cases mean "without limitation." All references to "days" in this Agreement shall be construed to mean calendar days unless otherwise expressly provided and all references to "business days" shall be construed to mean days on which California state chartered banks are open for business.

16.12 **Time of Essence.** Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and failure to perform timely any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of, and non-curable (but waivable) default under this Agreement by the party so failing to perform.

16.13 **Partial Validity; Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16.14 **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto and their respective permitted successors and assigns, and no third party is intended to, or shall have, any rights hereunder.

16.15 **Waiver of CC Section 1662.** Seller and Buyer each expressly waive the provisions of California Civil Code Section 1662 and hereby agree that the provisions of **Section 5.1** shall govern their obligations in the event of damage or destruction to the Property or condemnation of all or part of the Property.

16.16 **Joint Product of Parties.** This Agreement is the result of arms-length negotiations between Seller and Buyer and their respective attorneys. Accordingly, neither

party shall be deemed to be the author of this Agreement and this Agreement shall not be construed for or against either party.

16.17 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included at, unless such last day is a Saturday, Sunday or legal holiday for California state chartered banks, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Unless otherwise expressly provided herein, the last day of any period of time described herein shall be deemed to end at 5:00 p.m., local time.

16.18 **Indemnification.**

(a) Buyer agrees to indemnify, defend with counsel approved by Seller, and hold harmless Seller, its officers, trustees, agents, employees, contractors, representatives, governing board and members thereof, and volunteers from and against any and all claims, demands, actions, suits, liabilities, losses, damages, injuries to or death or persons, costs and expenses (including without limitation any fines, penalties, judgments, litigation costs, or attorneys' fees) caused by Buyer's negligence or willful misconduct, or the negligence or willful misconduct of Buyer's officers, agents, employees, contractors, representatives, or volunteers, in connection with or arising from this Agreement, except to the extent arising out of or resulting from the negligence or willful misconduct of Seller, its officers, trustees, agents, employees, contractors, representatives, or volunteers in connection with or arising from this Agreement.

(b) Seller agrees to indemnify, defend with counsel approved by Buyer, and hold harmless Buyer, its officers, agents, employees, contractors, representatives, town council and members thereof, and volunteers from and against any and all claims, demands, actions, suits, liabilities, losses, damages, injuries to or death to persons, costs and expenses (including without limitation any fines, penalties, judgments, litigation costs, or attorneys' fees) caused by Seller's negligence or willful misconduct, or the negligence or willful misconduct of Seller's officers, trustees, agents, employees, contractors, representatives, or volunteers, in connection with or arising from this Agreement, except to the extent arising out of or resulting from the negligence or willful misconduct of Buyer, its officers, agents, employees, contractors, representatives, and volunteers in connection with or arising from this Agreement. Seller's obligations to indemnify, defend and hold harmless shall apply, without limitation, to any claims, demands, actions, suits, liabilities, losses, damages, injuries to or death to persons, costs, and expenses (including without limitation any fines, penalties, judgments, litigation costs, or attorneys' fees) arising from or related to Seller's failure or alleged failure to comply with applicable requirements for disposal of surplus property and any actual or alleged conflict of interest on the part of Seller or Seller's officer's, trustees, agents, employees, contractors, representatives, or volunteers.

16.19 **Reporting Person.** Buyer and Seller hereby designate Title Company as the "reporting person" pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986, as amended.

16.20 **No Recordation**. Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum hereof by Buyer without the prior written consent of Seller shall constitute a default hereunder by Buyer, whereupon this Agreement shall, at the option of Seller, terminate and be of no further force and effect and the Deposit hereunder shall be immediately delivered to Seller, whereupon the parties shall have no further duties or obligations one to the other, except as otherwise expressly provided herein. Notwithstanding any such termination, Buyer shall be obligated to execute an instrument in recordable form releasing this Agreement, and Buyer's obligations pursuant to this **Section 16.20** shall survive any termination of this Agreement as a surviving obligation.

[SIGNATURE PAGE FOLLOWS]



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

**BUYER:**

Town of Yountville, a California  
municipal corporation

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

**SELLER:**

Napa Valley Unified School District, a  
School District organized and existing  
under the laws of the State of California

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

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

***\*\*Seller to initial Section 14.1.***

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Colantuono, Highsmith & Whatley, P.C.  
Special Counsel to the Town of  
Yountville

***\*\*Buyer to initial Section 14.1.***

**AGREED TO AS TO PROVISIONS RELATING TO ESCROW HOLDER:**

**ESCROW HOLDER:**

WFG NATIONAL TITLE

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

## LIST OF EXHIBITS

- |                  |    |                              |
|------------------|----|------------------------------|
| <u>EXHIBIT A</u> | -- | Description of Real Property |
| <u>EXHIBIT B</u> | -- | Form of Bill of Sale         |
| <u>EXHIBIT C</u> | -- | Form of FIRPTA Affidavit     |
| <u>EXHIBIT D</u> | -- | Property Information         |

## **EXHIBIT A**

### Description of Real Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF YOUNTVILLE, COUNTY OF NAPA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

REMAINING LANDS OF NAPA VALLEY UNIFIED SCHOOL DISTRICT, AS SHOWN ON THE MAP ENTITLED, "PARCEL MAP OF THE LANDS OF NAPA VALLEY UNIFIED SCHOOL DISTRICT" FILED JANUARY 5, 1977 IN [BOOK 8 OF PARCEL MAPS AT PAGE\(S\) 54](#), IN THE OFFICE OF THE COUNTY RECORDER OF NAPA COUNTY.

APN: 036-070-026-000

**EXHIBIT B**

Form of Bill of Sale

(Attached)

## **BILL OF SALE**

This Bill of Sale (this “**Bill of Sale**”) is executed and delivered as of the \_\_\_\_ day of \_\_\_\_\_, 2024 pursuant to that certain Purchase and Sale Agreement and Escrow Instructions (the “**Agreement**”) dated \_\_\_\_\_, 2024, by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Seller**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”), covering the property described in Exhibit A attached hereto (“**Property**”).

1. **Sale of Personality.** For good and valuable consideration, Seller hereby sells, transfers, sets over and conveys to Buyer all the right, title and interest of Seller, if any, in and to assignable licenses and permits relating to the operation of the Property, assignable guaranties and warranties from any contractor, manufacturer or other person in connection with the construction or operation of the Property (collectively, the “**Personality**”).

2. **Agreement Applies.** Except as may otherwise be provided in the Agreement, the Personality is being transferred, to Buyer on an “as is,” and “where is” basis, with all faults, and without any representation or warranty, all of which Seller hereby disclaims, all as more particularly set forth in Section 12 of the Agreement, which Section shall be, and hereby is, incorporated herein by reference.

3. **Counterparts.** This Bill of Sale may be executed in two (2) or more counterparts, each of which shall be deemed an original, but any of which together shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page.

4. **Attorneys’ Fees.** In any action between the parties to enforce any of the terms or provisions of this Bill of Sale, the prevailing party in the action shall be entitled to recover from the non-prevailing party, in addition to damages, injunctive relief or other relief, and its reasonable costs and expenses, including, without limitation, costs and reasonable attorneys’ fees (including on appeal).

5. **Merger.** This Bill of Sale and the Agreement contain the entire understanding between the parties relating to their subject matter. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Bill of Sale and the Agreement. This Bill of Sale may only be modified in writing executed by both Buyer and Seller. Nothing contained in this Bill of Sale is intended to terminate or affect the validity of any of the representations or warranties contained in the Agreement.

6. **Miscellaneous.** This Bill of Sale shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successor-in-interest and assigns. If any term or provision of this Bill of Sale shall be held invalid or unenforceable, the remainder of this Bill of Sale shall not be affected. This Bill of Sale shall be construed in accordance with and governed by the laws of the State in which the Property is located. Nothing in this Bill of Sale shall impair, limit or lessen any of the rights of the parties with respect to the provisions of the Agreement which were intended, to survive the Closing Date. Nothing in this Bill of Sale, express or implied, is intended to

confer upon any person or entity, other than the parties hereto and their respective successors and assigns, any rights or remedies.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first written above.

**BUYER:**

**SELLER:**

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

**EXHIBIT A**  
**TO BILL OF SALE**

DESCRIPTION OF PROPERTY

[ATTACHED]

**EXHIBIT C**

Form of FIRPTA Affidavit

(Attached)



## **SELLER'S FIRPTA CERTIFICATE**

To inform \_\_\_\_\_, a \_\_\_\_\_ (the "**Transferee**") that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("**Code**") will not be required by \_\_\_\_\_, a \_\_\_\_\_ (the "**Transferor**"), the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder).

2. The Transferor's U.S. employer or tax (social security) identification number is \_\_\_\_\_.

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the 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 have authority to sign this document on behalf of the Transferor.

---

**TRANSFEROR:**

\_\_\_\_\_,  
a \_\_\_\_\_

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

Name:

Its:

## **EXHIBIT D**

### **Property Information**

- (1) To the extent in Seller's possession, copies of all:
  - (a) surveys;
  - (b) as-built plans, grading plans, and the plans, specifications and design documents related to the Improvements;
  - (c) drawings, specifications, engineering and architectural studies and similar documents, maps, topographical maps, soils reports, and water reports;
  - (d) warranties and guarantees;
  - (e) its insurance policies;
  - (f) draft and final studies, reports, surveys and assessments relating to the environmental condition of the Property or any property within the vicinity of the Property, including, without limitation, any soils, toxics and hazardous waste (including, without limitation, asbestos) reports;
  - (g) correspondence, applications, permits and other communications to or from any governmental or quasi-governmental agency in connection with any Hazardous Materials (as hereinafter defined) or the environmental condition of the Property or any property within the vicinity of the Property;
  - (h) notifications required by applicable law to be provided to any tenant or any other party as a result of the condition of the Property, if applicable (including, without limitation, (i) the asbestos notification required pursuant to California Health & Safety Code Section 25915, et seq., and (ii) the notification required pursuant to California Health & Safety Code Section 25249.6, et seq.); and
  - (i) building, occupancy and use permits and approvals and any other governmental licenses, permits or approvals for the Property or the equipment used in connection with the Property;
- (2) A schedule setting forth an inventory of any personal property to be delivered to Buyer at the Close of Escrow; and
- (3) Such other documents or information regarding the Property in Seller's possession or readily available to Seller as Buyer reasonably requests