



**CAMBRIAN SCHOOL DISTRICT  
BOARD OF TRUSTEES**

**Resolution 21-22-07**

**AUTHORIZING AND APPROVING THE EXCHANGE OF REAL PROPERTY  
(Metzler A Site)**

**WHEREAS**, the Cambrian School District ("District") is the owner in fee of approximately 2.5 acres of land located at 1975 Cambrianna Drive, San Jose, CA 95124, and known as a portion of the Metzler Elementary School ("Exchange Property");

**WHEREAS**, Silverado San Jose, LLC ("Silverado") is a Delaware limited liability company who owns properties in and around the District's boundaries;

**WHEREAS**, the Exchange Property is not needed by the District for classroom buildings or educational facility purposes;

**WHEREAS**, the District desires to 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 Silverado have entered into an agreement to have the District dedicate the Exchange Property to Silverado in exchange for Silverado dedicating a property to the District as described below ("Exchange Agreement"), attached hereto as Exhibit A, and incorporated herein by this reference;

**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 shall constitute the entire and complete exchange agreement between the District and Silverado for the Exchange Property and therefore, pursuant to Education Code section 17536 et seq., the Exchange Agreement shall be 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 Silverado pursuant to the terms of the Exchange Agreement.

**Section 4.** That, in consideration for the Exchange Property, the District may choose from the three “exchange alternatives” set forth in the Exchange Agreement, and are summarized generally as follows:

- A. If the District identifies a property owned by Silverado that it would like to obtain and Silverado is willing to exchange such property, Silverado 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, Silverado will work with the District so that the District will receive the third party property, Silverado will receive the Exchange Property, and the third party will receive payment from Silverado 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 Silverado’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 Title Company 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 5.** That the Board of Trustees hereby approves the Exchange Agreement with Silverado, in substantially the form attached hereto as Exhibit A.

**Section 6.** That the Board hereby delegates authority to the District Superintendent, or her designee, to take any action and/or execute any documents which are necessary to finalize the Exchange Agreement and carry out, give effect to, and comply with the terms and intent of this Resolution.

**Section 7.** That this Resolution shall take effect upon adoption.

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**NOW, THEREFORE, IT IS RESOLVED**, that the Superintendent, or her designee, is hereby authorized to execute the Exchange Agreement, and any other necessary documents, to effectuate the property exchange.

**APPROVED, PASSED, AND ADOPTED** by the Board of Trustees of Cambrian School District, this 17th day of March, 2022, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Carol Presunka, President  
Board of Trustees

Attended To:

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Donald Rocha, Clerk  
Board of Trustees

**EXHIBIT A**

PROPERTY EXCHANGE AGREEMENT

[REMAINDER OF PAGE BLANK; EXHIBIT FOLLOWS]

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

THIS EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is entered into this 17th day of March, 2022 ("**Effective Date**") by and between the CAMBRIAN SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**District**") and SILVERADO SAN JOSE, LLC, a California Delaware limited liability company ("**Silverado**"). District and Silverado are sometimes hereinafter referred to individually as a "Party" and collectively as the "**Parties.**"

### **RECITALS**

**WHEREAS**, the District is the owner in fee, of approximately 1.85 gross acres of undeveloped property identified as all or a portion of Santa Clara County Assessor Parcel No. 414-21-062, located in San Jose, California, and as more particularly described in the legal description attached to this Agreement as **Exhibit A** incorporated herein by reference ("**Metzler Property**") of which Silverado has proposed to acquire approximately 76,764 square feet of the Metzler Property as more particularly described on Exhibit "B" attached hereto ("**Metzler A Property or "MAP"**").

**WHEREAS**, in addition to acquiring the Metzler A Property, Silverado will develop and construct a 6,000 square foot community garden on an identified portion of the Metzler A Property, as further described in Exhibit B;

**WHEREAS**, prior to the termination of the due diligence period set forth in this Agreement, the District shall engage a civil engineer to measure the metes and bounds of the Property described in Exhibit B and draft a legal description and depiction of the Property for later incorporation into this Agreement;

**WHEREAS**, section 17536 of the Education Code authorizes the District's Governing Board ("**Board**") to exchange any of its real property for real property of another person or private business firm upon such terms and conditions as the Parties may agree, and in accordance with the procedural requirements of Education Code section 17536 et seq.

**WHEREAS**, Silverado is a memory care assisted living development company organized in California Delaware and headquartered in Irvine, California, that desires to acquire the **Metzler A Property** for the development of an assisted living facility (the "**Assisted Living Facility**").

**WHEREAS**, the District desires to exchange the Metzler A Property for income producing real property to be selected by the District as set forth in this Agreement (the "**Exchange Property**") in accordance with the terms and conditions of this Agreement. 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-3**). The Metzler A Property and the Exchange Property are sometimes hereinafter referred to collectively as the "Properties" or each a "Property."

**WHEREAS**, on March 17, 2022, the District's Board approved a resolution stating its intention to move forward with the exchange of real property detailed in this Agreement, pursuant to sections 17536 and 17537 of the Education Code.

**WHEREAS**, on March 17, 2022, the Board approved the final agreed upon form of this Agreement by Board action at a duly called Board meeting approving exchange of a fee interest in the Metzler A Property and the grant of a fee interest in the Exchange Property by two-thirds vote of its members, in accordance with Education Code section 17537 (collectively, the two Board resolutions are referred to herein as the, "**Resolution of Intention**").

## **AGREEMENT**

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties agree as follows:

### **ARTICLE 1 EXCHANGE OF METZLER A 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 Silverado agree to exchange the Metzler A 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.

1.2 Identification of Exchange Property. During the term of this Agreement, the District shall use good faith efforts to identify the Exchange Property. Within thirty (30) days after the expiration of the Silverado Due Diligence Period, Silverado shall provide the names of three (3) real estate brokers with extensive experience in commercial/residential income producing properties. The District, at its discretion, may utilize the services of all, some or none of the named brokers to identify potential exchange properties. Silverado may also identify one or more income producing properties currently owned by Silverado (the "Silverado Properties" or a "Silverado Property") for consideration by the District in accordance with Section 2 of this Agreement. Silverado shall provide the District with the Due Diligence Materials for the Silverado Properties, if any, and Silverado's valuation of the fair market value of the interest to be acquired by the District in the Silverado Properties, if any. Although Silverado agrees to cooperate with the District in the selection of the Exchange Property, it is the responsibility of the District to identify the Exchange Property pursuant to this Agreement and to determine whether the fair market value of the Exchange Property (including the Silverado Properties) is of equal value to the Metzler A Property. If the Exchange Property ultimately selected by the District is not a Silverado Property, the District, not Silverado, shall be solely responsible for contracting directly with the Property Owner of such Exchange Property. Silverado does not intend to, and is not required by this Agreement to, ever take title to any Exchange Property. Therefore, Silverado shall not have any liability or obligation with respect to any circumstance or condition on any Exchange Property, whether before or after the Close of Escrow. Without limiting the foregoing, Silverado shall not have any liability for any act, condition or circumstance that the District or any of its employees, agents, representatives or contractors commits, creates or discovers on or at any Exchange Property, nor any obligation or liability to any Property Owner other than as expressly set forth in this Agreement.

1.3 Consideration. It is the intent of the Parties that the Exchange Property shall be of equal value to the Metzler A Property, and the Metzler A Property shall be conveyed in consideration for the Exchange Property. The value of the Exchange Property (the "EP

Exchange Value") shall not exceed the Metzler A Property Exchange Value, as defined in Section 1.3.1 below, unless the District determines, in its sole discretion, that it is willing to acquire a property worth more than the Metzler A Property Exchange Value. In the event the Exchange Property is worth less than the Metzler A Property Exchange Value, Silverado shall pay to the District in cash the difference between the Metzler A Property Exchange Value and the EP Exchange Value (the "Additional Cash"). In the event the Exchange Property is worth more than the Metzler A Property Exchange Value, the District shall be responsible for the payment of the difference between the EP Exchange Value and the Metzler A Property Exchange Value. Notwithstanding the foregoing, in the event that the District has not identified the Exchange Property in sufficient time to permit the simultaneous closing of the Exchange Property with the closing of the Metzler A Property by the Outside Closing Date, Silverado shall have the right to acquire the Metzler A Property for the cash consideration of the Metzler A Property Exchange Value; provided, however, that the Metzler A Property Exchange Value 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 Metzler A Property Exchange Value 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 or a condition to the District's obligation to close on the transfer of the Metzler A Property to Silverado.

1.3.1 Metzler A Property Exchange Value; No Additional Consideration. Silverado and the District agree that there is sufficient consideration for the exchange of real property under the terms and conditions in this Agreement, and no further consideration or compensation is required by either Party. The Metzler A Property valuation (the "MAP Exchange Value") is Four Million, Six Hundred Eighty-Two Thousand, Six Hundred Four Dollars, (\$4,682,604), said valuation is based on a land value of Sixty-One Dollars and 00/100 Cents (\$61.00) per square foot of the exclusive land area, currently estimated at approximately 76,764 square feet. The MAP Exchange Value will be adjusted accordingly when the final map land area is determined.

#### 1.4 Earnest Deposit Schedule.

1.4.1 Execution Consideration. In addition to the Deposits referenced below, within three (3) business days after the Opening of Escrow, Silverado shall deposit into Escrow the sum of One Thousand Dollars (\$1,000) (the "Execution Consideration"). The Execution Consideration constitutes, in addition to the covenants and conditions contained in this Agreement, consideration for entering into this Agreement with Silverado and giving Silverado the opportunity to examine the feasibility of acquiring the Metzler A Property. In the event of the Close of Escrow, the Parties agree that the Execution Consideration will not apply toward the MAP Exchange Value. However, notwithstanding anything to the contrary contained in this Agreement, if this Agreement is terminated for any reason whatsoever, the District shall receive the Execution Consideration.

1.4.2 First Earnest Money Deposit. Within three (3) business days after the Opening of Escrow, Silverado shall deposit into Escrow the sum of Ninety Thousand Dollars (\$90,000) (the "Initial Deposit"). For clarity, Sixty Thousand Dollars (\$60,000) of this Initial Deposit will be a transfer of funds from the Ground Lease Agreement escrow account into Escrow.

1.4.3 Second Earnest Money Deposit. Within one (1) business day after the end of the Due Diligence Period, and in no event later than February 1, 2023, Silverado shall deposit into Escrow the sum of Sixty Thousand Dollars (\$60,000).

The earnest money deposits, as set forth in Section 1.4.2, and 1.4.3 above, will be nonrefundable to Silverado except under those circumstance under which earnest money is refundable to Silverado as described in the Agreement, such as without limitation a default by the District, and will be applicable to the MAP Exchange Value at the Close of Escrow.

## **ARTICLE 2 INSPECTIONS AND REVIEW**

2.1 Delivery of Due Diligence Materials. Within ten (10) days of the Effective Date, the District shall deliver to Silverado, without representation or warranty as to the accuracy of the information contained therein, any and all documents, reports, agreements, or other items in its possession or control relating to the Metzler A Property or within its agents' or representatives' possession or control, including but not limited to (collectively, the "Due Diligence Materials"): (i) all licenses, leases, and permits affecting or relating to the ownership, subdivision, possession or development of the Metzler A Property 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 Metzler A Property or the construction of improvements thereon as well as community and neighborhood outreach; (iii) the most recent survey, if any, pertaining to the Metzler A Property or any portion thereof; (iv) soils reports, engineering data, environmental reports, development agreements, tract map conditions of approval, grading and engineering studies and plans, impact reports or negative declarations, traffic, noise, and drainage studies, improvements plans, improvement agreements and bonds, if any, and other data or studies pertaining to the Metzler A Property; (v) copies of all documents evidencing interests in or affecting the Metzler A Property that are not shown on a title report, if any; and (vi) all documents regarding the existence, use, application or removal of Hazardous Materials (as defined below) on, from, in and/or under the Metzler A Property. Within ten (10) days after Silverado has identified the Silverado Properties, Silverado shall deliver to the District, without representation or warranty as to the accuracy of the information contained therein, copies of the Due Diligence Materials relating to the Silverado Properties. Any Due Diligence Materials shall be provided to the other Party without any recourse or liability of any type or nature. 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. The due diligence period shall begin on the date that all Parties have fully executed the Agreement and last until 5:00 pm Pacific Standard Time on January 31, 2023 (the "Silverado Due Diligence Period"). However, if District has not delivered to Silverado (a) a copy of the Resolution of Intention, and (b) the written notice of satisfaction of the contingency set forth in Section 4.1.1 of this Agreement, the Silverado Due Diligence Period set forth in the first sentence above in this section shall extend day for day that either (a) or (b) above is not delivered, up to a maximum extension of thirty (30) additional days. During the term of the Agreement, including without limitation during the Silverado Due Diligence Period, Silverado and its representatives, agents, engineers, consultants, contractors, and designees shall have the right to enter onto the Metzler A Property, for purposes of examining, inspecting and investigating the Metzler A Property and the feasibility of using the Metzler A Property for Silverado's intended purposes, 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 Silverado's sole and absolute discretion, determining whether the Metzler A Property is acceptable to Silverado. During the



term of the Agreement, including without limitation during the Silverado Due Diligence Period, Silverado may, in Silverado's sole and absolute discretion and cost, perform without limitation: (i) completion of environmental tests and studies, such as without limitation, a Phase I and Phase II environmental site assessments, and any additional tests, studies and assessments desired by Silverado; (ii) engineering evaluations, including geotechnical evaluation, if needed or desired; (iii) compliance with the California Environmental Quality Act ("CEQA") if applicable; (iv) any other surveys, engineering and soils tests and other tests, studies or inspections deemed necessary by Silverado in its sole discretion and obtained at Silverado's expense; and (v) review of any information and materials provided by the District pursuant to Section 2.1 above or elsewhere in this Agreement. Silverado shall provide the District with copies of any third party inspection report specific to the condition of the Metzler A Property, including but not limited to, a report or opinion prepared by a licensed engineer, land surveyor, geologist, or contractor, prepared pursuant to this section. If any report prepared on behalf of Silverado recommends that certain remedial measures be implemented as part of the land development work, including by way of example only, over-excavation of soils or installation of any type of vapor barrier (each, "Remedial Measures"), then Silverado shall notify the District of any such report demonstrating a need for Remedial Measures and provide any related documentation to the District for review. Upon mutual written agreement by the Parties before the expiration of the Silverado Due Diligence Period, the Parties may agree the MAP Exchange Value shall be reduced by the estimated amount of the Remedial Measures which shall be based on the lowest of three qualified bids for such Remedial Measures. Should the Parties not mutually agree to reduce the MAP Exchange Value for such Remedial Measures, Silverado shall have the right to terminate this Agreement.

After the Silverado Due Diligence Period terminates, Silverado shall have a period of time not to exceed four (4) months within which to obtain permits and approvals as referenced herein ("Permit Period"). Due to on-going Covid-19 health issues impacting public agencies and development timelines, the Permit Period may be extended by Silverado for up to three (3) additional months at one (1) month increments, provided Silverado has diligently sought to obtain all approvals with all public agencies. In the event Silverado's Due Diligence Period terminates on January 31, 2023, Silverado's Permit Period shall run from February 1, 2023 through May 31, 2023 and may be extended through August 30, 2023. At the end of the Due Diligence Period, all deposits shall become non-refundable to Silverado. The granting of all required permits and approvals shall constitute the expiration of the Permit Period.

The District shall have the same inspection rights, including a ninety (90) day due diligence period (the "District Due Diligence Period"), with respect to the Exchange Property (including the Properties). If the Exchange Property is a Silverado Property, the District's review of the physical condition and feasibility of the Exchange Property(ies), may at the District's sole and absolute discretion and cost, include without limitation: (i) completion of environmental tests and studies, such as without limitation, a Phase I and Phase II environmental site assessments, and any additional tests, studies and assessments desired by the District; (ii) engineering evaluations, including geotechnical evaluation, if needed or desired; (iii) compliance with the CEQA if applicable; (iv) any other surveys, engineering and soils tests and other tests, studies or inspections deemed necessary by the District in its sole discretion and obtained at such the District's expense; and (v) review of any information and materials provided by other Parties pursuant to Section 2.5 below or elsewhere in this Agreement. The District Due Diligence Period shall begin on the date the Exchange Property is identified by the District, as confirmed in writing to Silverado. 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 to each such Exchange Property.

2.2.1 Conditions of Access to Metzler A Property and Exchange Property for Inspections. Silverado and its agents, representatives and designees shall have the right with respect to the Metzler A Property, and the District and its agents, representatives and designees shall have the right with respect to the Exchange Property, if the Exchange Property is a Silverado Property, to access such property during the term of this Agreement, including the Due Diligence Periods, in accordance with the following terms and conditions:

2.2.1.1 Such Party shall provide the Party that owns the applicable Property ("**Property Owner**") with written notice of the dates on which the noticing Party or its representatives or designees intend to access the property at least two (2) business days in advance of any access to the Property. Property Owner or its representative may be present for any inspections, tests or studies.

2.2.1.2 Each Party will permit only employees, agents, licensed contractors, consultants or other individuals who have a reasonable reason to be on the Property to enter upon the Property as a result of such Party's actions.

2.2.1.3 Each Party will assume full responsibility for proper characterization, manifesting, storage and disposal of any materials or wastes generated as a result of any sampling conducted by or for such Party, and following written request will provide the Party that owns the Property a copy of documents evidencing these actions.

2.2.1.4 Each Party agrees to comply with all applicable laws, regulations, rules and permits pertaining to its investigations and testing on and of a Property or any part thereof, including, but not limited to, the Occupational Health & Safety Act and all applicable environmental, health and safety laws and regulations, whether federal, state or local. Each inspecting Party shall obtain or cause its consultants to obtain, at inspecting Party's sole cost and expense prior to commencement of any investigative activities on the Property, a policy of commercial general liability insurance covering liability of said Party for claims of personal injury or property damage caused during any of inspecting Party's investigative activities. Such policy of insurance shall be an occurrence policy and shall have liability limits of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability. Such insurance policy shall name Property Owner as an additional insured. Inspecting Party hereby agrees to indemnify, defend and hold harmless Property Owner from any and all damages, claims, losses, liabilities, causes of action, proceedings, costs and expenses of any kind whatsoever (including, without limitation, attorneys' fees and fees of expert witnesses) for physical damage or personal injury to the extent caused by inspecting Party or its agents, assignees, designees or representatives during their entry on the Property prior to the Close of Escrow; provided, however, the foregoing indemnity shall not apply with respect to any claims arising out of the mere discovery of any adverse condition at the Property, any preexisting conditions at the Property or any acts or omissions of Property Owner, its officers, directors, owners, agents or employees. The foregoing indemnity shall survive the Close of Escrow or the earlier termination of this Agreement.

2.2.1.5 Upon a Party's completion of any investigations and testing on and of a Property, such Party shall promptly restore the Property to substantially the condition it was in prior to engaging in the work, including the repair or replacement of any and all physical damage to the Property to the extent caused by and during that Party's access; provided, however, that in no event shall any Party have any obligation pursuant to this Section to remedy any pre-existing condition on or under another Party's property. Each Party agrees to promptly pay before delinquency for any and all labor and materials expended or used by such Party or its agents, representatives or designees in connection with any and all

investigations on a Property. In the event any mechanics' liens are placed on a Property resulting from work by a Party or its agents, representatives or designees, that Party will take prompt action to remove or bond over such liens at that Party's sole expense and will indemnify, defend, protect and hold each other Party harmless from and against all such claims.

2.3 As-Is. Based on the inspection rights set forth in the preceding paragraphs and in reliance on the due diligence of each Party, the District and Silverado 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 thorough 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 Termination During Due Diligence Period. If, for any reason, Silverado, in its sole and absolute discretion determines it will not proceed with purchase of the Metzler A Property, Silverado shall notify District and Escrow Holder in writing ("Silverado's Termination Notice") on or before the expiration of the Silverado Due Diligence Period of Silverado's desire to terminate this Agreement and cancel the Escrow. Silverado's failure to deliver Silverado's Termination Notice on or before the expiration of the Silverado Due Diligence Period shall be conclusively deemed Silverado's waiver of its right to terminate pursuant to this provision. Should Silverado elect to terminate the Agreement before or at the conclusion of Silverado's Due Diligence Period, then Escrow Holder shall immediately return the \$90,000 Initial Deposit to Silverado.

District shall notify Silverado 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 Exchange Property, the condition of the Exchange Property and District's investigations with respect thereto. District's disapproval of any of said items shall constitute District's election to terminate the Exchange Property Agreement and cancel that Escrow. District's failure to deliver District's Due Diligence Notice on or before the expiration of the District Due Diligence Period shall be conclusively deemed District's approval thereof. In the event the District disapproves of the Exchange Property, the District shall continue to use good faith efforts to identify the Exchange Property in sufficient time to permit the Closing to occur by the Outside Closing Date. However, if the District does not identify or is not prepared to close on the Exchange Property by the Outside Closing Date, the provisions of Section 1.3 of this Agreement shall control.

2.5 Title Review. During each Parties' respective Due Diligence Period, 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"). Silverado shall notify District in writing ("Silverado's Objection Notice") on or before the expiration of the Silverado Due Diligence Period of any objections Silverado may have to the title exceptions contained in the Title Report for the Metzler A Property. Silverado's failure to provide District with a Silverado Objection Notice within said period shall constitute Silverado's approval of all exceptions to

title shown on the Title Report for the Metzler A Property, provided District provides Silverado ten (10) days written notice of said failure to deliver Silverado's Objection Notice within said period. District shall have a period of ten (10) days after receipt of Silverado's Objection Notice in which to deliver written notice to Silverado ("District's Notice") of District'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. If the District is unable or unwilling to eliminate the Defect (or to commit to do so by Close of Escrow) during such time period, then except with respect to Forbidden Defects, Silverado's sole remedy shall be to elect, by written notice to the District and Escrow Agent on or before the date ten (10) business days after the later of the expiration of such 10-day period or the date the District gives Silverado and Escrow Agent written notice that the District will not eliminate the Defect on or before the Close of Escrow, to either (a) terminate this Agreement, or (b) waive the Defect. 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 reasonably acceptable to Silverado. Any extension of the time to review the Title Report for the Metzler A Property shall only occur in strict accordance with the following paragraph. Except as otherwise provided in this Agreement, if this Agreement is cancelled pursuant to this paragraph, the earnest money and any interest thereon shall be refunded to Silverado, this Agreement shall thereupon be null and void and of no force or effect and Silverado and the District shall have no further obligations or liabilities hereunder. Notwithstanding the foregoing, District represents, warrants and agrees with respect to the Metzler A Property that as of the Close of Escrow the Metzler A Property shall not be subject to any of the following (hereinafter referred to as "Forbidden Defects"): (a) any mortgages, deeds of trust, security agreements, judgments, liens, or claims of lien, except for the lien of current real property taxes not yet due and payable; (b) any options, rights of first refusal or other title matters customarily deemed in the County in which the Metzler A Property is located to render real property unmarketable, and (c) any Defects that the District has committed to eliminate on or before the Close of Escrow. In addition, District represents, warrants and agrees that as of the Close of Escrow, the Metzler A Property shall not be subject to any leases, rental agreements or other rights of occupancy of any kind, whether oral or written.

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

If the Exchange Property (i.e., the property acquired by the District) is a Silverado Property (within the meaning of Section 1.2), then, in reciprocal nature with the foregoing, District shall notify Silverado 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 Silverado Property. District's failure to provide Silverado 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 Silverado Property, provided Silverado provides District ten (10) days written notice of said failure to deliver District's Objection Notice within said period. Silverado shall have a period of ten (10) days after receipt of District's Objection Notice in which to deliver written notice to District ("Silverado's Notice") of Silverado' 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. If Silverado notifies

District of its election to decline to remove and cure the objected to items, District shall have the right, by written notice delivered to Silverado within ten (10) days after District's receipt of Silverado's Notice, to agree to either (i) accept the Silverado Property as the Exchange Property subject to the objected to items, in which event District shall take title at the Close of Escrow subject to the objected to items, without any adjustment to or credit against the EP Exchange Value or (ii) to continue to use good faith efforts to identify other Exchange Property for which the condition of title is acceptable to District in sufficient time to permit the Closing to occur by the Closing Date, then Silverado may acquire the Metzler A Property for cash in accordance with Section 1.3 of this Agreement. Furthermore, for the purpose of this paragraph, Silverado's cure may include the acquisition by Silverado at Silverado's expense a title insurance endorsement related to the objected to exception reasonably acceptable to the District. Any extension of the time to review the Title Report for the Exchange 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 Exchange Property which adds additional exceptions, or adds any 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 exceptions shall be limited to fifteen (15) business days following District's and its counsel's receipt of the instrument(s) creating such additional exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new 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.

2.6 Surveys. Silverado shall have the right with respect to the Metzler A Property, and the District shall have the right with respect to the Exchange Property, to cause an ALTA/ACSM survey of such Property to be performed by an engineer licensed in the State of California. The District shall review the survey and approve the legal description of the Metzler A Property within ten (10) business days of receipt from Silverado. Once the District has reviewed and given written approval of the legal description of the Metzler A Property as set forth in the survey prepared by Silverado's engineer it shall then constitute the legal description of the Metzler A Property and shall be attached to this Agreement as **Exhibit A-2**.

2.7 Governmental Permits and Approvals. The Parties understand and acknowledge that during the Escrow period and prior to the Close of Escrow, Silverado, at its expense, intends to obtain such governmental permits and approvals as Silverado deems necessary or appropriate in order to separate the Metzler A Property from the Meltzer Property as well as develop the Metzler A Property in the manner desired by Silverado. Without limiting the foregoing, the Parties understand and agree that Silverado shall have the right to, and following the Due Diligence Period intends to, seek such entitlements, permits and approvals from the City as Silverado deems necessary or appropriate to permit the development of an assisted living facility. The District agrees to cooperate fully in all such attempts by Silverado to obtain such governmental permits and approvals as are necessary for the development of the Metzler A Property in the manner desired by Silverado and the District agrees to execute, both before and after the Close of Escrow, any and all applications and documents reasonably requested by Silverado in order to obtain such permits and approvals; provided, however, that the District shall not, other than as stated above, be required to bear any expense for such permits or approvals or take any action that it is not lawfully entitled to take. Immediately prior to the close of escrow on the Metzler A Property, Silverado shall have the right to record in the official records of the Santa Clara County the parcel map once it has been approved by the City and the District. Notwithstanding the foregoing, Silverado's failure to obtain any entitlements shall not entitle Silverado to a return of their deposits after the expiration of the Due Diligence Period set forth in this Article 2 unless such failure is caused

by the default or breach of the District as expressly set forth in another provision of this Agreement. The District represents and warrants that there are no existing agreements and the District will not, during the term of this Agreement, enter into any such agreements that prohibit or interfere with the rights of Silverado as described in this Section or that require any third party consent to such rights.

2.8 Existing Leases or Contracts on the Metzler A Property. After the Effective Date and prior to the Close of Escrow, the District shall, at the District's expense, terminate all leases and rights of occupancy and any other contract on the Metzler A Property and all tenants and occupants shall vacate the Metzler A Property on or before the date thirty (30) days prior to the date of the close of escrow.

### **ARTICLE 3 ESCROW**

3.1 Opening of Escrow. Within two (2) business days following the execution of this Agreement by District and Silverado, the Parties shall open an escrow (the "Escrow") with First American Title Insurance Company ("Escrow Holder"), at its offices located at 333 W. Santa Clara Street, Suite 220, San Jose, CA 95113; Attn: Kiley Demaree; Phone: (408) 487-5000, 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 7.4 with written confirmation of the date of the Opening of Escrow. 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 September 15, 2023 (the "Closing Date"), provided that the conditions to Closing described in Section 4 below have been satisfied. The terms the "Close of Escrow", and/or the "Closing" are used herein to mean the date the Grant Deeds (as the term is defined in Section 3.4 herein) are recorded in the Office of the County Recorder of the County(s) in which the Properties are located. Possession of the Metzler A Property shall be delivered to Silverado 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 4.1.5 herein. At the Close of Escrow, either (i) possession of the Exchange Property (and the Additional Cash Consideration, 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 4.2.4 herein, or (ii) the MAP Exchange Value 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.

3.3 Escrow Instructions. This Agreement, together with any standard instructions of Escrow Holder, shall constitute the joint escrow instructions of District and Silverado to Escrow Holder as well as an agreement between District and Silverado. In the event of any conflict between the provisions of this Agreement and Escrow Holder's standard instructions, this Agreement shall prevail.

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

- (a) If the Exchange Property is a Silverado Property, a grant deed in the form of Exhibit "B" attached to this Agreement (the "Grant Deed") conveying to District

fee simple title to the Exchange Property, duly executed and acknowledged by the Property Owner;

- (b) If the Exchange Property is a Silverado Property, 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 the Property Owner;
- (c) any and all other sums and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including Silverado's portion of prorations, if any. Without limiting the foregoing, if the Exchange Property is not a Silverado Property, the balance of the MAP Exchange Value (i.e. less the Deposits) and if the Exchange Property is a Silverado Property, the Deposits would be refunded to Silverado at the Closing.

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-1" attached to this Agreement (the "Grant Deed") conveying to Silverado District's fee simple title to the Metzler A Property, duly executed and acknowledged by District;
- (b) a Public Agency Certificate of Acceptance for the Exchange Property Grant Deed in the form attached hereto as Exhibit "C";
- (c) a certificate of non-foreign status in the form attached hereto as Exhibit "D" and California Franchise Tax Board Form 590-RE, each executed by District;
- (d) 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.

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 Deeds to be recorded in the Official Records of Santa Clara County, California.

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

3.6.3 Title Policy. Escrow Holder shall deliver to both Parties a commitment to issue Title Policies for the respective Properties, as referred to in Section 4.1.5 of this Agreement.

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

3.6.6 Non-Foreign Certificate. On or before Close of Escrow, each Party will deposit with Escrow Agent certificates in form reasonably satisfactory to Escrow Agent that provides the information required by Section 1445 of the Internal Revenue Code of 1986, as amended, and by Sections 18805 and 26131 of the California Revenue and Taxation Code, for an exemption to the withholding of taxes under those Sections, if and to the extent that such federal and/or state Sections are applicable. If a Party fails to provide any such required certificate, funds may be withheld from it in accordance with those Sections.

3.7 Payment of Costs. Pursuant to Government Code section 27387, the Parties anticipate no recording fees will be payable with respect to the recording of the grant deeds. However, if there are any fees associated with the recordation, the District (with respect to the Exchange Property) and Silverado (with respect to the Metzler A Property) agree to pay the fees. District shall pay all title insurance premiums for the CLTA standard owner's form policy for the Metzler A Property, but Silverado shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by Silverado, including the difference between a CLTA standard owner's policy and an ALTA extended owner's policy. No documentary transfer tax will be payable, pursuant to California Revenue and Taxation Code section 11922. However, if there are any, District shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed for the Metzler A Property and Silverado shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed for the Exchange Property if owned by Silverado. To the extent agreed to by the Property Owner, the Property Owner shall pay all title insurance premiums for the CLTA standard owner's form policy for the 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 a CLTA standard owner's policy and an ALTA extended owner's policy. 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 prorated as of the Close of Escrow, if applicable, and otherwise paid in equal amounts by the Parties.

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

4.1 Conditions to District's Obligations. District's obligation to exchange for the Metzler A 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 Section 1.2 of this Agreement, the District shall have identified the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date; provided, however that if the District has not identified the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date, or if the condition set forth in Section 4.1.5 is not satisfied by the Closing Date, Silverado will acquire the Metzler A Property for cash in accordance with Section 1.3 of this Agreement.

4.1.3 Silverado's Performance. Silverado shall have performed all of the obligations required by the terms of this Agreement to be performed by Silverado on or before the Close of Escrow. In the event District alleges that Silverado is in default, District shall notify



Silverado in writing and describe in reasonable detail the alleged default in detail. Silverado shall have a reasonable time, but not more than fifteen (15) business days, to cure any alleged default.

4.1.4 Silverado Deliveries Made. Silverado has deposited with Escrow Holder all documents required of Silverado by this Agreement.

4.1.5 Title Policy. The Title Company has committed to issue to District a CLTA 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 2.5 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 "Permitted Exceptions".

4.1.6 Representations and Warranties. All representations and warranties made by Silverado in this Agreement are true and correct as of the Closing as though made at that time.

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

4.2.1 District's Performance. The District shall have performed all of the obligations required by the terms of this Agreement to be performed by the District on or before the Close of Escrow. In the event Silverado alleges that District is in default, Silverado shall notify District in writing and describe in reasonable detail the alleged default in detail. District shall have a reasonable time, but not more than fifteen (15) business days, to cure any alleged default.

4.2.3 District Deliveries Made. District has deposited with Escrow Holder all documents required of District by this Agreement.

4.2.4 Title Policy. Title Company has committed to issue to Silverado a CLTA standard, or at Silverado'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 Metzler A Property vested in Silverado, 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 Silverado pursuant to Section 2.5 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 Silverado in its sole and absolute discretion.

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

4.2.5 Representations and Warranties. All representations and warranties made by District in this Agreement shall be true and correct as of the Closing as though made at that time. All such representations and warranties by the District shall survive the Close of Escrow and recording of the grant deed for a period equal to the statute of limitations that would be applicable to each such representation and warranty.

4.2.6 Existing Leases. Prior to the Close of Escrow, the District shall vacate all portions of the Metzler A Property and shall terminate all leases, rental agreements and other rights of occupancy encumbering the Metzler A Property and shall be ready, willing and able to deliver the Metzler A Property to Silverado at Close of Escrow free and clear of all leases, agreements, occupancies and occupants.

4.2.7 Metzler A Property. The parcel map creating the Metzler A Property shall have been recorded.

4.2.8 Exchange Property Owner Obligations. If the Exchange Property has been identified, the Property Owner shall have performed all of the obligations to be performed by the Property Owner pursuant to or required by the terms of this Agreement as well as any other agreement relating to the transfer of the Exchange Property.

4.2.9 Personal Property. Prior to the Close of Escrow, the District shall remove or cause to be removed from the Metzler A Property all personal property currently located on the Metzler A Property. However, if there is any personal property on the Metzler A Property as of the date scheduled for the Close of Escrow, then in addition to all other rights and remedies available to Silverado at law or in equity (a) if Silverado nevertheless elects to close Escrow, then upon the Close of Escrow, such personal property shall be deemed abandoned by the District and, at the election of Silverado, shall be the property of Silverado, and (b) upon written demand from Silverado, whether before or after the Close of Escrow, the District, at the District's expense, immediately shall remove any such personal property from the Metzler A Property.

4.3 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 Metzler A 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 Metzler A 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 Silverado Due Diligence Period, Silverado determines that the Metzler A Property, or any portion thereof, is in violation of said Environmental Laws, Silverado may elect to terminate this Agreement and

cancel the Escrow by delivering written notice to that effect to the District and Escrow Holder, thereby rendering this entire Agreement invalid, void, and unenforceable. If at any time prior to the expiration of the District Due Diligence Period, the District determines that the Exchange Property, or any portion thereof, is in violation of said Environmental Laws, the District shall have the right to continue to locate an alternative Exchange Property or, at the District's sole discretion, have the MAP Exchange Value retained in escrow at the Closing pursuant to Section 1.3, 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.

4.4 Satisfaction of Conditions. Where satisfaction of any of the foregoing conditions requires action by District or Silverado, 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.

4.5 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 Silverado. Silverado 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 Silverado and delivered to District.

4.6 Compliance with California Law. The Close of Escrow shall be conditioned upon compliance with all applicable California laws relating to the acquisition of property.

4.7 Failure of Contingency. No Party shall be obligated to close Escrow pursuant to this Agreement unless and until all contingencies in its favor set forth in this Agreement are satisfied or waived. To the extent that the failure of a contingency in a Party's favor is the result of a breach or default by another Party, the non-defaulting Party (ies) shall have all rights and remedies provided in this Agreement against the defaulting Party.

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

5.1 District's Representations and Warranties. District hereby makes the following representations and warranties to Silverado, each of which (i) is material and relied upon by Silverado in making its determination to enter into this Agreement, (ii) is to the actual

knowledge of District true in all respects as of the Effective Date and shall be true in all respects on the Closing Date, and (iii) shall survive the Close of Escrow for eighteen (18) months:

- (a) The District is a school district duly organized and validly existing under the laws of the State of California, and this Agreement and the execution and delivery thereof by the person designated below have been specifically authorized by the Board. District has full right, power, and authority to enter into this Agreement and to perform District's obligations hereunder. This Agreement and all other documents delivered by District to Silverado 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, sufficient to convey to Silverado good and marketable title to the Metzler A Property, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which District is a party.
- (b) There are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the Metzler A Property or relating to the ownership, maintenance, use or operation of the Metzler A Property.
- (c) The 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 Metzler A Property.
- (d) There are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy and/or use of or otherwise affecting the Metzler A Property by any person or entity, except for matters of record approved by Silverado pursuant to Section 2.5 above.
- (e) District is not actually aware that the Metzler A Property, or District, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the Metzler A Property or construction of any improvement thereon. District has received no notice written or otherwise of any such violation of applicable law. Silverado shall make its own independent determination of the feasibility of the use of the Metzler A Property for Silverado's intended use.
- (f) District has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.3 of this Agreement) to occur on, at, about, or within the Metzler A Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the Metzler A Property, or any portion thereof.
- (g) The District has not received any notice written or otherwise from any governmental agency or entity of, and has no knowledge of, any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking in connection with the Metzler A Property.
- (h) The District has no knowledge of any existing, pending, threatened or contemplated actions or circumstances that would materially interfere with the

development of the Metzler A Property for residential purposes, other than as expressly stated in this Agreement

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 Silverado, but such notice shall not release District of any liabilities or obligations with respect thereto. For the purpose of the foregoing 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 Kristi Schwiebert personally, and does not include her or any of District's agents, advisors or consultants.

5.2 Silverado's Representations and Warranties. Silverado 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 Silverado true in all respects as of the Effective Date and shall be true in all respects on the Closing Date, and (iii) shall survive the Close of Escrow for eighteen (18) months. With respect to any warranty or representation set forth in Section 5.2(b) through (f), inclusive, related to the "Exchange Property" such representation and warranty shall only apply if the Exchange Property (i.e. the property acquired by the District) is owned by Silverado (i.e., one of the Silverado Properties as defined in Section 1.2):

- (a) Silverado has full right, power, and authority to enter into this Agreement and to perform Silverado's obligations hereunder. This Agreement and all other documents delivered by Silverado to District now or at the Close of Escrow, have been or will be duly executed and delivered by Silverado and are legal, valid, and binding obligations of Silverado, sufficient to convey to District good and marketable title to the Exchange Property, if it is a Silverado Property, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which Silverado is a Party.
- (b) 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 if the Exchange Property is owned by Silverado.
- (c) Silverado 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 if the Exchange Property is owned by Silverado.
- (d) 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 2.5 above if the Exchange Property is owned by Silverado.
- (e) Silverado is not actually aware that the Exchange Property, or Silverado, 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 if the Exchange Property

is owned by Silverado. Silverado 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.

- (f) Silverado has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.3 of this Agreement) to occur on, at, about, or within the Exchange Property, if owned by Silverado, 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.
- (g) Silverado has not received any written notice from any governmental agency, or entity of, and has no knowledge of, any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking in connection with the Exchange Property, if the Exchange Property is owned by Silverado.
- (h) Silverado has no knowledge of any existing, pending, threatened or contemplated actions or circumstances that would materially interfere with the District's use of the Exchange Property, if the Exchange Property is owned by Silverado, other than as expressly stated in this Agreement

If Silverado becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Silverado hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, Silverado will give immediate written notice of such changed fact or circumstance to District, but such notice shall not release Silverado of any liabilities or obligations with respect thereto. For the purpose of the foregoing warranties and representations, the knowledge requirement shall be based on actual written notice to Silverado's designated person in a form which would provide actual notice to a person without a duty of inquiry. Silverado's designated person is solely limited to Loren B. Shook, personally, and does not include his/her or any of Silverado's agents, advisors or consultants.

5.3 Brokerage Commissions. Silverado and District, hereby each represent and acknowledge that Chris Twardus and Mark Kuiper of Colliers International have been engaged by Silverado as brokers or finders to represent them in connection with this Agreement and Silverado will bear the cost of any commission due in accordance with the terms of a separate written agreement executed by Silverado. Silverado and District hereby indemnify and hold the other free and harmless from and against any and all costs and liabilities including, without limitation attorneys' fees, for causes of action or proceedings which may be instituted by any other broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying Party in connection with this Agreement. The foregoing representation and indemnity shall survive the termination of this Agreement.

## **ARTICLE 6 DEFAULT**

6.1 Liquidated Damages. 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 DEPOSITS TRANSFERRED TO THE ESCROW FOR THE EXCHANGE PROPERTY (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY, 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, IN THE EVENT OF ANY DEFAULT BY SILVERADO AND PROVIDED THAT THERE HAS BEEN NO FAILURE OF SATISFACTION OF A CONDITION PRECEDENT TO CLOSE BENEFITING SILVERADO UNDER THIS AGREEMENT AND SILVERADO HAS FAILED TO CURE ITS DEFAULT WITHIN THE 15-DAY CURE PERIOD SET FORTH IN SECTION 4.1.3, DISTRICT SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT, AS ITS SOLE AND EXCLUSIVE REMEDY, BY GIVING WRITTEN NOTICE TO SILVERADO 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 DEPOSITS TRANSFERRED TO THE ESCROW FOR THE EXCHANGE PROPERTY (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY SHALL BE RELEASED TO THE DISTRICT. SILVERADO AND THE DISTRICT AGREE THAT THE DISTRICT'S RIGHT TO RETAIN THE DEPOSITS THAT HAVE BEEN RELEASED TO THE DISTRICT (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY, SHALL BE THE SOLE REMEDY OF THE DISTRICT IN THE EVENT OF SUCH A DEFAULT UNDER THIS AGREEMENT BY SILVERADO. 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 SILVERADO'S OBLIGATION TO PURCHASE THE METZLER A 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 OR ANY OTHER DAMAGES OR REMEDY FOR SUCH A BREACH BY SILVERADO. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT SILVERADO'S LIABILITY TO THE DISTRICT UNDER THE INDEMNIFICATION IN SECTION 2.2 ABOVE OR FOR ATTORNEYS' FEES AND COSTS AS PROVIDED IN SECTION 7.3 BELOW. ANY AND ALL BREACHES OR DEFAULTS BY SILVERADO OF ANY NATURE OR KIND SHALL BE SUBJECT TO NOTICE AND RIGHT TO CURE WITHIN THE 15-DAY CURE PERIOD SET FORTH IN SECTION 4.1.3.

DISTRICT'S INITIALS \_\_\_\_\_

SILVERADO'S INITIALS \_\_\_\_\_



6.2 District's Default. In the event the District shall breach or default under any of the terms and provisions of this Agreement (after any applicable notice and 15-day cure period set forth in Section 4.2.1), Silverado 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 (a) terminate this Agreement and the Escrow created hereby, in which event the Deposits plus all interest thereon, and Silverado shall be entitled to the immediate refund of any funds deposited by Silverado into Escrow or released to District for or related to the Metzler A Property, including all interest earned thereon; 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 Metzler A Property. For clarification, Silverado shall have the right to terminate this Agreement and receive a return of the Deposits without prejudice to Silverado's claims against the District for the District's breach of this Agreement.

**ARTICLE 7  
MISCELLANEOUS**

7.1 Costs of Inspections. 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.

7.2 California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California.

7.3 Attorneys' Fees. If any Party files any action or brings any proceedings against the other(s) arising out of this Agreement, or is made a party to any action or proceeding brought by a third party in connection with this Agreement, then, as between the Parties, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment.

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

To District: Cambrian School District  
4115 Jacksol Drive  
San Jose, CA 95124  
Attn: Kristi Schweibert, Superintendent  
Email: schweibertk@cambriansd.com

With copy to: Dannis Woliver Kelley  
200 California Street, Suite 400  
San Francisco, CA 94111  
Attn: Clarissa R. Canady, Esq.  
Email: ccanady@dwkesq.com

To Silverado: Silverado San Jose, LLC  
6400 Oak Canyon, Suite 200  
Irvine, CA 92618  
Attn: Loren B. Shook  
Email: LBShook@silverado.com

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) business days after deposit in the United States mail. Copied recipients of notices may be provided their copies via email. If transmitted by email (with a PDF attachment), notice shall be given effective upon confirmation of transmission during normal business hours or, if transmission after normal business hours, then on the following business day.



7.5 Authority. The person(s) executing this Agreement warrant on behalf of the Parties hereto 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.

7.6 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.

7.7 Assignment. No Party shall, voluntarily or by operation of law, assign, sublease, or otherwise transfer any of its rights or obligations under this Agreement, including, without limitation, transferring ownership of any Property to another Party (except as provided in this Agreement), without obtaining the prior written consent of the other Parties, which consent may be withheld by the other Parties in their sole discretion. The preceding sentence shall not apply to retaining agents, consultants or subcontractors to perform some of a Party's obligations under this Agreement for and on behalf of such Party.

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

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

7.10 Time of the Essence. Time is of the essence for each provision of this Agreement in which time is an element.

7.11 Time. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday or state or national holiday.

7.12 Cooperation with Further Documents. The Parties each acknowledge that it may be necessary to execute documents other than those specifically referred to in this Agreement to complete the transaction. All Parties hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

7.13 Condemnation. In the event the Metzler A Property is taken, in whole or in part, or designated to be taken by condemnation proceedings, or proceedings in lieu thereof, prior to the Close of Escrow, Silverado shall have until the close of escrow within which to elect to either cancel this Agreement and receive a refund of Silverado's deposit, together with all interest thereon, or to close escrow without reduction in the purchase price, in which event the District shall assign to Silverado all rights to condemnation awards.

7.14 Entire Agreement of Parties. This Agreement constitutes the entire Agreement among the parties and supersedes all prior discussions, negotiations and agreements, whether oral

or written. This Agreement may be amended or modified only by a written instrument executed by the Parties.

7.15 Waiver. No waiver by any Party of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a Party of any remedy provided in this Agreement or at law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or at law or in equity, except as otherwise expressly provided in this Agreement.

7.16 District's Board Approval. The District shall provide written notice to the other Parties and Escrow Agent of the adoption of the Resolution of Intention, along with a true and correct copy of the Resolution of Intention, as soon as reasonably possible following its adoption. Escrow Agent is authorized by the Parties to insert as the Effective Date on the first page hereof the date Escrow Agent receives fully executed counterparts of this Agreement.

7.17 Incorporation of Recitals and Exhibits. The recitals and each attached exhibit are hereby incorporated herein by reference.

7.18 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.

7.19 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.

7.20 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.

7.21 Venue. Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the County of Santa Clara, State of California, and each Party expressly waives its right, under part II, title IV of the California Code of Civil Procedure, to cause any such actions or proceedings to be instituted or prosecuted elsewhere.

7.22 Covenants to Survive Escrow. The covenants and agreements contained in this Agreement shall survive the Close of Escrow.

7.23 Conflicts of Interest. No director, officer, official, representative, agent or employee of District shall have any financial interest, direct or indirect, in this Agreement.

7.24 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.

7.25 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.

7.26 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.

7.27 Parties Represented by Counsel. The Parties acknowledge that: (a) no Party is in a significantly disparate bargaining position in relation to any other party; and (b) the District and Silverado are each represented by legal counsel in connection with the transactions contemplated by this Agreement.

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

**DISTRICT:**

CAMBRIAN SCHOOL DISTRICT

Signed: \_\_\_\_\_

Print Name: Kristi Schweibert

Print Title: Superintendent

**SILVERADO:**

SILVERADO SAN JOSE, LLC.

Signed: \_\_\_\_\_



Print Name: Loren B. Shook

Print Title: President, CEO, COB

**EXHIBIT A**  
**Legal Description of Metzler Property**

For [APN/Parcel ID\(s\): 414-21-062](#)

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 57, as shown upon the Map entitled, "Map of the Subdivision of the Ware Tract", which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on February 10, 1888 in [Book C of Maps, at Page 45](#).

**EXHIBIT A-1**  
**Visual Depictions of Metzler Property**



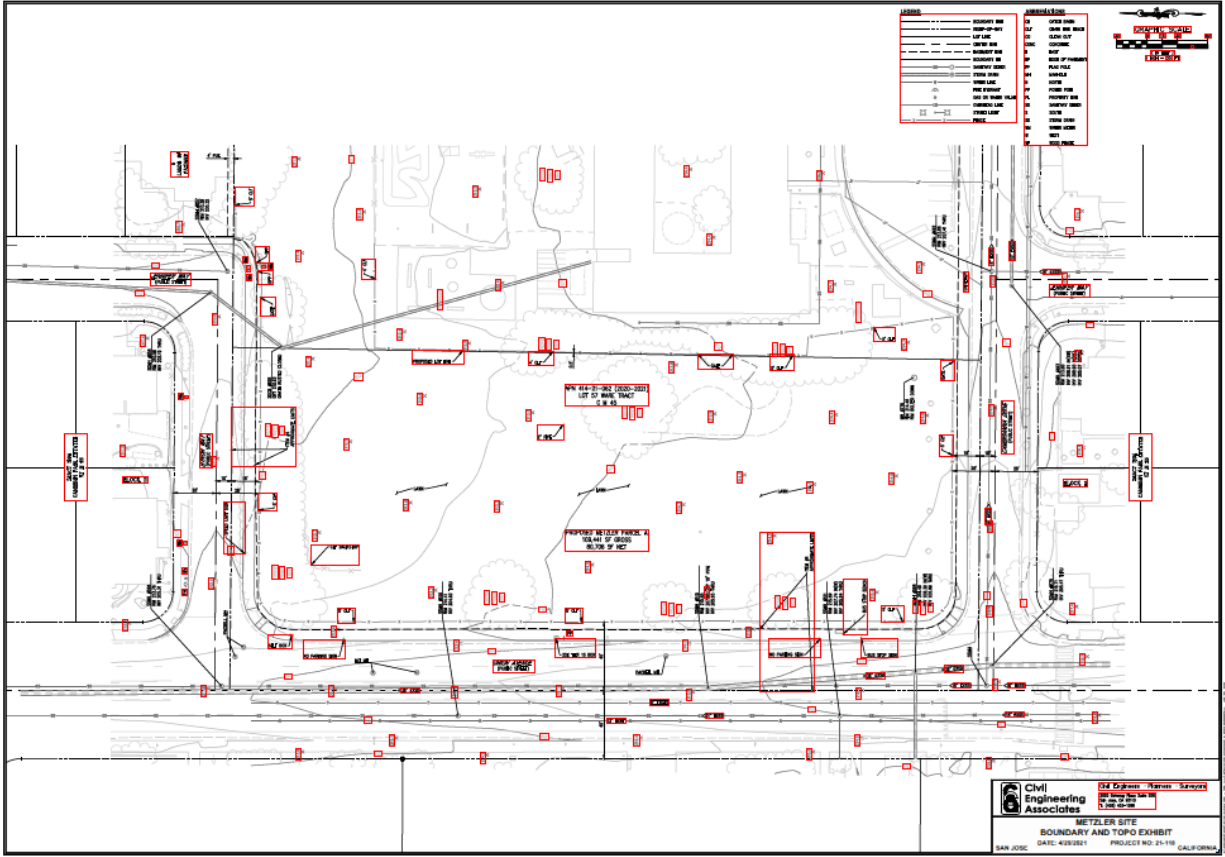


EXHIBIT A-1

**EXHIBIT A-2**  
**Legal Description of Metzler A Property**

**EXHIBIT A-3**  
**Legal Description of Exchange Property**



**EXHIBIT B**  
**Grant Deed - Exchange Property**

**RECORDING REQUESTED BY**  
First American Title Company National  
Commercial Services

**AND WHEN RECORDED MAIL  
DOCUMENT TO:**  
Cambrian School District  
4115 Jacksol Drive  
San Jose, CA 95124

Space Above This Line for Recorder's Use Only

A.P.N.:

File No.:

**GRANT DEED**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX **THE UNDERSIGNED GRANTOR(S) DECLARE(S):**  
**THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVT. CODE 27383 AND FROM DOCUMENTARY TRANSFER**  
**TAX (REV.AD TAXATION CODE 11922; CITY TRANSFER TAX \$NONE; SURVEY MONUMENT FEE \$N/A**

- [  ] computed on the consideration or full value of property conveyed, OR  
[  ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[  ] unincorporated area; [  ] City of **San Jose**, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, to **Silverado San Jose, LLC, a California limited liability,**

hereby GRANTS to **Cambrian School District, a California public school district**, the following described property in the City of **San Jose**, County of **Santa Clara**, State of **California**:

**See attached legal description.**

**Dated:**

**Silverado San Jose, LLC**, a California limited liability company,

\_\_\_\_\_  
By: Loren B. Shook  
Title: President



**EXHIBIT B-1**  
**Grant Deed – Metzler A Property**

**RECORDING REQUESTED BY**  
First American Title Company National  
Commercial Services

**AND WHEN RECORDED MAIL  
DOCUMENT TO:**  
Cambrian School District  
4115 Jackson Drive  
San Jose, CA 95124

Space Above This Line for Recorder's Use Only

A.P.N.:

File No.:

**GRANT DEED**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX **THE UNDERSIGNED GRANTOR(S) DECLARE(S):**  
**THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVT. CODE 27383 AND FROM DOCUMENTARY TRANSFER**  
**TAX (REV. AD TAXATION CODE 11922); CITY TRANSFER TAX \$NONE; SURVEY MONUMENT FEE \$N/A**

- [  ] computed on the consideration or full value of property conveyed, OR  
[           ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[           ] unincorporated area; [  ] City of **San Jose**, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, to **Cambrian School District, a California public school district,**

hereby GRANTS to **Silverado San Jose, LLC, a California limited liability corporation,**

the following described property in the City of **San Jose**, County of **Santa Clara**, State of **California**:

**See attached legal description.**

**Dated:**

**Cambrian School District**, a California public school district,

\_\_\_\_\_  
By: Kristi Schweibert  
Title: Superintendent

**California All-Purpose Certificate of Acknowledgment**

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

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SANTA CLARA )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

\_\_\_\_\_  
Signature of Notary

**EXHIBIT C**  
**Public Agency Certificate of Acceptance - District**

ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property located in the City of San Jose, County of Santa Clara, California, conveyed by that certain Exchange Agreement and Joint Escrow Instructions, dated \_\_\_\_\_, 2022, and as described more specifically in the Grant Deed from Silverado San Jose, LLC, to the **Cambrian School District**, a California public school district of Santa Clara County (hereinafter referred to as "School District"), is hereby acknowledged and accepted by said School District pursuant to the action taken by the Board President of said School District per District Resolution No. \_\_\_\_\_ approved on \_\_\_\_\_, 20\_\_, and the School District consents to recordation thereof by its duly authorized officer.

**School District:**  
**Cambrian School District**

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

\_\_\_\_\_  
Randy Scofield, President, Board of Trustees

Approved as to Form:  
District Counsel

\_\_\_\_\_  
(Signature)  
**Clarissa R. Canady**  
Type/Print Name

Dated: \_\_\_\_\_, 20\_\_

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA    )  
COUNTY OF SANTA CLARA    )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

**EXHIBIT D**  
**Non-Foreign Affidavit – Metzler A Property**

**AFFIDAVIT OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a buyer of a United States real property interest must withhold tax if the seller is a foreign person. To inform Silverado San Jose, LLC (the "Buyer") that withholding of tax is not required upon the disposition of a United States real property interest owned by the Cambrian School District (the "Seller"), the undersigned hereby certifies the following on behalf of the Seller:

1. The Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. The United States employer identification number of the Seller is \_\_\_\_-\_\_\_\_\_.
3. The home office address of the Seller is 4115 Jacksol Drive, San Jose, CA 95124.

It is understood that this certification may be disclosed to the Internal Revenue Service by the Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties 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 Seller.

CAMBRIAN SCHOOL DISTRICT

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

Name: \_\_Kristi Schweibert\_\_

Title: \_\_Superintendent\_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D-1**  
**Non-Foreign Affidavit – Exchange Property**

**AFFIDAVIT OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a buyer of a United States real property interest must withhold tax if the seller is a foreign person. To inform Cambrian School District (the "Buyer") that withholding of tax is not required upon the disposition of a United States real property interest owned by the Silverado San Jose, LLC (the "Seller"), the undersigned hereby certifies the following on behalf of the Seller:

1. The Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
  
2. The United States employer identification number of the Seller is \_\_\_\_-\_\_\_\_\_.
  
3. The home office address of the Seller is 6400 Oak Canyon, Irvine, Suite 200, Irvine, CA 92618.

It is understood that this certification may be disclosed to the Internal Revenue Service by the Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties 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 Seller.

SILVERADO SAN JOSE, LLC

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

Name: \_\_Loren B. Shook\_\_\_\_\_

Title: \_\_\_\_President\_\_\_\_\_

Date: \_\_\_\_\_