

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

THIS EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is entered into this 16th day of June, 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 ENGSTROM PROPERTIES, INC., a California corporation ("**Engstrom**"). District and Engstrom 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 .55 gross acres of improved land identified as all of Santa Clara County Assessor Parcel No. 414-06-034, 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 ("**Firehouse Property**") of which Engstrom has proposed to acquire.

**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**, Engstrom is a property development company organized in California and headquartered in Sacramento, California, that desires to acquire the **Firehouse Property** for the development of a Starbucks (the "**Starbucks Store**").

**WHEREAS**, the District desires to exchange the Firehouse 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 B**). The Firehouse Property and the Exchange Property are sometimes hereinafter referred to collectively as the "Properties" or each a "Property."

**WHEREAS**, on June 2, 2022, at a duly called Board meeting, the District's Board approved, by a two-thirds vote of its members, a resolution stating its intention to move forward with the exchange of a fee interest in the Firehouse Property for a grant of a fee interest in the Exchange Property as detailed in this Agreement, 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 FIREHOUSE 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 Engstrom agree to exchange the Firehouse 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 Engstrom Due Diligence Period, Engstrom shall provide the names of three (3) real estate brokers with extensive experience in commercial/residential income producing properties and with whom Engstrom has previously transacted business. The District, at its discretion, may utilize the services of all, some or none of the named brokers to identify potential exchange properties. Engstrom may also identify one or more income producing properties currently owned by Engstrom (the "Engstrom Properties" or a "Engstrom Property") for consideration by the District in accordance with Section 2 of this Agreement. Engstrom shall provide the District with the Due Diligence Materials for the Engstrom Properties, if any, and Engstrom's valuation of the fair market value of the interest to be acquired by the District in the Engstrom Properties, if any. Although Engstrom 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 Engstrom Properties) is of equal value to the Firehouse Property. If the Exchange Property ultimately selected by the District is not a Engstrom Property, the District, shall be solely responsible for contracting directly with the Property Owner of such Exchange Property. Engstrom does not intend to, and is not required by this Agreement to, ever take title to any Exchange Property. Therefore, Engstrom 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, Engstrom 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 Firehouse Property, and the Firehouse Property shall be conveyed in consideration for the Exchange Property. The value of the Exchange Property (the "EP Exchange Value") shall not exceed the Firehouse 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 Firehouse Property Exchange Value. In the event the Exchange Property is worth less than the Firehouse Property Exchange Value, Engstrom shall pay to the District in cash the difference between the Firehouse Property Exchange Value and the EP Exchange Value (the "Additional Cash"). In the event the Exchange Property is worth more than the Firehouse Property Exchange Value, the District shall be responsible for the payment of the difference between the EP Exchange Value and the Firehouse 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 Engstrom Property by the Outside Closing Date, Engstrom shall have the right to acquire the Firehouse Property for the cash consideration of the Firehouse Property Exchange Value; provided, however, that the Firehouse 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 Firehouse 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 Firehouse Property to Engstrom.

1.3.1 Firehouse Property Exchange Value; No Additional Consideration. Engstrom 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 Firehouse Property valuation (the "MAP Exchange Value") is One Million, Six Hundred Thousand Dollars, (\$1,600,000.00).

1.4 Earnest Money Deposit. Within three (3) business days after the Opening of Escrow, Engstrom shall deposit into Escrow the sum of Forty-Five Thousand Dollars (\$45,000.00) (the "Deposit"). The Deposit constitutes, in addition to the covenants and conditions contained in this Agreement, consideration for entering into this Agreement with Engstrom and giving Engstrom the opportunity to examine the feasibility of acquiring the Firehouse Property. The Deposit shall remain refundable to Engstrom until the end of the Engstrom Due Diligence period set forth in this Agreement, at which time the Deposit will become nonrefundable to Engstrom. In the event of the Close of Escrow, the Parties agree that the Deposit (including any Additional Deposits) will apply toward the MAP Exchange Value.

## **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 Engstrom, 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 Firehouse 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 Firehouse 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 Firehouse Property or the construction of improvements thereon as well as community and neighborhood outreach; (iii) the most recent survey, if any, pertaining to the Firehouse 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 Firehouse Property; (v) copies of all documents evidencing interests in or affecting the Firehouse 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 Firehouse Property. Within ten (10) days after Engstrom has identified the Engstrom Properties, Engstrom 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 Engstrom 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 December 13, 2022

(the "Engstrom Due Diligence Period"). During the term of the Agreement, including without limitation during the Engstrom Due Diligence Period, Engstrom and its representatives, agents, engineers, consultants, contractors, and designees shall have the right to enter onto the Firehouse Property, for purposes of examining, inspecting and investigating the Firehouse Property and the feasibility of using the Firehouse Property for Engstrom'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 Engstrom's sole and absolute discretion, determining whether the Firehouse Property is acceptable to Engstrom. During the term of the Agreement, including without limitation during the Engstrom Due Diligence Period, Engstrom may, in Engstrom'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 Engstrom; (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 Engstrom in its sole discretion and obtained at Engstrom'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. Engstrom shall provide the District with copies of any third party inspection report prepared pursuant to this section. If any report prepared on behalf of Engstrom 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 Engstrom 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 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, Engstrom shall have the right to terminate this Agreement.

During the Engstrom Due Diligence Period, Engstrom shall obtain permits and entitlements from the required agencies. Due to on-going Covid-19 health issues impacting public agencies and development timelines, Engstrom may extend the Engstrom Due Diligence Period by up to three (3) additional months at one (1) month increments, provided Engstrom has diligently sought to obtain all approvals with all public agencies. Each extension of the Engstrom Due Diligence Period required an additional deposit of Ten Thousand Dollars (\$10,000.00) ("Additional Deposit") at the beginning of each thirty (30) day extension. The granting of all required permits and approvals shall constitute the expiration of the Engstrom Due Diligence Period.

The District shall have the same inspection rights, including a one hundred eighty (180) day due diligence period (the "District Due Diligence Period"), with respect to the Exchange Property (ies) (including the Properties). If the Exchange Property is an Engstrom 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 Engstrom. 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 Firehouse Property and Exchange Property for Inspections. Engstrom and its agents, representatives and designees shall have the right with respect to the Firehouse 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 an Engstrom 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 Engstrom 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, Engstrom, in its sole and absolute discretion is dissatisfied with the Firehouse Property, Engstrom shall notify District and Escrow Holder in writing ("Engstrom's Termination Notice") on or before the expiration of the Engstrom Due Diligence Period of Engstrom's desire to terminate this Agreement and cancel the Escrow. Engstrom's failure to deliver Engstrom's Termination Notice on or before the expiration of the Engstrom Due Diligence Period shall be conclusively deemed Engstrom's waiver of its right to terminate pursuant to this provision. Should Engstrom elect to terminate the Agreement before or at the conclusion of Engstrom's Due Diligence Period, then Escrow Holder shall immediately return the \$45,000.00 Earnest Money Deposit to Engstrom.

District shall notify Engstrom 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 a timely Close of Escrow. However, if the District does not identify or is not prepared to close on the Exchange Property by the Close of Escrow, 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"). Engstrom shall notify District

in writing ("Engstrom's Objection Notice") on or before the expiration of the Engstrom Due Diligence Period of any objections Engstrom may have to the title exceptions contained in the Title Report for the Firehouse Property. Engstrom's failure to provide District with a Engstrom's Objection Notice within said period shall constitute Engstrom's approval of all exceptions to title shown on the Title Report for the Firehouse Property, provided District provides Engstrom ten (10) days written notice of said failure to deliver Engstrom's Objection Notice within said period. District shall have a period of ten (10) days after receipt of Engstrom's Objection Notice in which to deliver written notice to Engstrom ("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, Engstrom'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 Engstrom 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 Engstrom. Any extension of the time to review the Title Report for the Firehouse 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 Deposit and any interest thereon shall be refunded to Engstrom, this Agreement shall thereupon be null and void and of no force or effect and Engstrom and the District shall have no further obligations or liabilities hereunder. Notwithstanding the foregoing, District represents, warrants and agrees with respect to the Firehouse Property that as of the Close of Escrow the Firehouse 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 Firehouse 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 Firehouse 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 Firehosue 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 Engstrom's initial period of review and approval or disapproval of any such additional exceptions shall be limited to fifteen (15) business days following Engstrom'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 Engstrom 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 an Engstrom Property (within the meaning of Section 1.2), then, in reciprocal nature with the foregoing, District shall notify Engstrom 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 Engstrom Property. District's failure to provide Engstrom 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 Engstrom Property, provided Engstrom

provides District ten (10) days written notice of said failure to deliver District's Objection Notice within said period. Engstrom shall have a period of ten (10) days after receipt of District's Objection Notice in which to deliver written notice to District ("Engstrom's Notice") of Engstrom'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 Engstrom 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 Engstrom within ten (10) days after District's receipt of Engstrom's Notice, to agree to either (i) accept the Engstrom 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 Engstrom may acquire the Firehouse Property for cash in accordance with Section 1.3 of this Agreement. Furthermore, for the purpose of this paragraph, Engstrom's cure may include the acquisition by Engstrom at Engstrom'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 Existing Leases or Contracts on the Firehouse 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 Firehouse Property and all tenants and occupants shall vacate the Firehouse 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 Engstrom, 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: Teri Morales, 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 the date thirty (30) days after the termination of the Engstrom Due Diligence Period (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. 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 DP 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 Engstrom to Escrow Holder as well as an agreement between District and Engstrom. 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 Engstrom. No later than 1:00 p.m. on the business day preceding the Closing Date, Engstrom shall deliver to Escrow Holder:

- (a) If the Exchange Property is an Engstrom Property, a grant deed in the form of **Exhibit "C"** 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 an Engstrom Property, 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 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 Engstrom's portion of prorations, if any. Without limiting the foregoing, if the Exchange Property is not an Engstrom Property, the balance of the DP Exchange Value (i.e. less the Deposits) and if the Exchange Property is an Engstrom Property, the Deposits would be refunded to Engstrom as 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 "E"** attached to this Agreement (the "Grant Deed") conveying to Engstrom the District's fee simple title to the Firehouse 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 "F"**;
- (c) a certificate of non-foreign status in the form attached hereto as **Exhibit "G"** 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 DP 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 Engstrom. 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 Engstrom (with respect to the Firehouse Property) agree to pay the fees. District shall pay all title insurance premiums for the CLTA standard owner's form policy for the Firehouse Property, but Engstrom shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by Engstrom, 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, Engstrom shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed for the Firehouse Property and the District shall pay all applicable documentary transfer taxes and costs associated with recording the Grant Deed for the Exchange Property. 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 Firehouse 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, Engstrom may acquire the Firehouse Property for cash in accordance with Section 1.3 of this Agreement.

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

4.1.4 Engstrom Deliveries Made. Engstrom has deposited with Escrow Holder all documents required of Engstrom 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 Engstrom in this Agreement are true and correct as of the Closing as though made at that time.

4.2 Conditions to Engstrom's Obligations. Engstrom's obligation to exchange for the Firehouse Property, upon the Close of Escrow, shall be subject to the satisfaction or written waiver by Engstrom 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 Engstrom alleges that District is in default, Engstrom 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 Engstrom a CLTA standard, or at Engstrom'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 Firehouse Property vested in Engstrom, 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 Engstrom 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 Engstrom 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 Firehouse Property and shall terminate all leases, rental agreements and other rights of occupancy encumbering the Firehouse Property and shall be ready, willing and able to deliver the Firehouse Property to Engstrom at Close of Escrow free and clear of all leases, agreements, occupancies and occupants.

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 Firehouse Property all personal property currently located on

the Firehouse Property. However, if there is any personal property on the Firehouse Property as of the date scheduled for the Close of Escrow, then in addition to all other rights and remedies available to Engstrom at law or in equity (a) if Engstrom nevertheless elects to close Escrow, then upon the Close of Escrow, such personal property shall be deemed abandoned by the District.

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 Firehouse 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 Firehouse 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 Engstrom Due Diligence Period, Engstrom determines that the Firehouse Property, or any portion thereof, is in violation of said Environmental Laws, Engstrom 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 DP 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 Engstrom, 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 Engstrom. Engstrom 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 Engstrom 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 Engstrom, each of which (i) is material and relied upon by Engstrom 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 Engstrom 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 Engstrom good and marketable title to the Firehouse 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 Firehouse Property or relating to the ownership, maintenance, use or operation of the Firehouse 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 Firehouse 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 Firehouse Property by any person or entity, except for matters of record approved by Engstrom pursuant to Section 2.5 above.
- (e) District is not actually aware that the Firehouse Property, or District, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the Firehouse Property or construction of any improvement thereon. District has received no written notice of any such violation of applicable law. Engstrom shall make its

own independent determination of the feasibility of the use of the Firehouse Property for Engstrom'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 Firehouse Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the Firehouse Property, or any portion thereof.
- (g) The District 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 Firehouse 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 Firehouse Property, 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 Engstrom, 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 Schweibert personally, and does not include her or any of District's agents, advisors or consultants.

5.2 Engstrom's Representations and Warranties. Engstrom 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 Engstrom 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 Engstrom (i.e., one of the Engstrom Properties as defined in Section 1.2):

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

- (c) Engstrom 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.
- (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.
- (e) Engstrom is not actually aware that the Exchange Property, or Engstrom, 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. Engstrom 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) Engstrom 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, 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) Engstrom 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 Engstrom.
- (h) Engstrom 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 Engstrom, other than as expressly stated in this Agreement

If Engstrom becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Engstrom hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, Engstrom will give immediate written notice of such changed fact or circumstance to District, but such notice shall not release Engstrom 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 Engstrom's designated person in a form which would provide actual notice to a person without a duty of inquiry. Engstrom's designated person is solely limited to Mark Engstrom, personally, and does not include any of Engstrom's agents, advisors or consultants.

5.3 Brokerage Commissions. Engstrom and District, hereby each represent and acknowledge that James Teare of Cushman & Wakefield has been engaged by Engstrom as a broker or finder to represent Engstrom in connection with this Agreement and Engstrom will bear the cost of any commission due in accordance with the terms of a separate written agreement executed by the Engstrom. Engstrom 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 FIREHOUSE 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 ENGSTROM AND PROVIDED THAT THERE HAS BEEN NO FAILURE OF SATISFACTION OF A CONDITION PRECEDENT TO CLOSE BENEFITING ENGSTROM UNDER THIS AGREEMENT AND ENGSTROM 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 ENGSTROM 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 FIREHOUSE PROPERTY (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY SHALL BE RELEASED TO THE DISTRICT. ENGSTROM 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 ENGSTROM. 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 ENGSTROM'S OBLIGATION TO PURCHASE THE FIREHOUSE 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 ENGSTROM. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT ENGSTROM'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 ENGSTROM 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 \_\_\_\_\_

ENGSTROM'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), Engstrom 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 Engstrom shall be entitled to the immediate refund of any funds deposited by Engstrom into Escrow or released to District for or related to the Firehouse 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 Firehouse Property. For clarification, Engstrom shall have the right to terminate this Agreement and receive a return of the Deposits without prejudice to Engstrom'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: Kerri Schweibert, Superintendent  
Email: schweibertk@cambridsd.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 Engstrom: Engstrom Properties, Inc.  
837 Jefferson Blvd.  
West Sacramento, CA 95691  
Attn: Mark Engstrom  
Email: marke@epropinc.com

With copy to: Cushman & Wakefield  
400 Capitol Mall, Suite 1800  
Sacramento, CA 95814  
Attn: James Teare  
Email: James.Teare@cushwake.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. Except for a Permitted Transfer (defined below), 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. For purposes of this Agreement a "Permitted Transfer" shall be the assignment of Engstrom's interest in this Agreement to an entity controlled by Engstrom or Mark Engstrom individually.

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 Firehosue 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, Engstrom shall have until the close of escrow within which to elect to either cancel this Agreement and receive a refund of Engstrom's Earnest Money Deposit, together with all interest thereon, or to close escrow without reduction in the purchase price, in which event the District shall assign to Engstrom 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 Engstrom 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:**

**ENGSTROM:**

CAMBRIAN SCHOOL DISTRICT

ENGSTROM PROPERTIES, INC.

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

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

Print Name: Kristi Schweibert

Print Name: Mark Engstrom

Print Title: Superintendent

Print Title:

**EXHIBIT A**  
**Legal Description of the Firehouse Property**

A PORTION OF THAT CERTAIN PARCEL OF LAND DEEDED BY JOHN BARKER TO B. CASEY, A. JOHNSON AND WILLIAM QUENTEL, TRUSTEES OF CAMBRIAN SCHOOL DISTRICT, NOVEMBER 28, 1863 AND RECORDED IN BOOK "R" OF DEEDS AT PAGE 672, RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF ABOVE DESCRIBED PARCEL OF LAND WITH A LINE PARALLEL WITH AND 50.00 FEET DISTANT NORTHWEST MEASURED AT RIGHT ANGLES FROM THAT CERTAIN MONUMENT LINE ESTABLISHED FOR RECORD IN THAT PARTICULAR MAP ENTITLED "RECORD OF SURVEY OF A MONUMENT LINE OF SOUTH BASCOM AVENUE FROM UNION AVENUE TO LARK AVENUE" FILED FOR RECORD IN BOOK 264 OF MAPS OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AT PAGES 49 TO 54; THENCE FROM SAID POINT OF BEGINNING NORTHERLY ALONG SAID WESTERLY LINE, NORTH  $00^{\circ}55'44''$  WEST, 264.46 FEET TO THE POINT OF INTERSECTION WITH A LINE PARALLEL WITH AND 20.00 FEET DISTANT SOUTHERLY MEASURED AS RIGHT ANGLES FROM THE MONUMENTED LINE OF CURTNER ROAD (FORMERLY CASEY ROAD) AS SHOWN ON THE ABOVE DESCRIBED RECORD OF SURVEY; THENCE ALONG SAID PARALLEL LINE NORTH  $89^{\circ}36'30''$  EAST, 181.93 FEET TO THE POINT OF INTERSECTION WITH A LINE PARALLEL AND 50.00 FEET DISTANT NORTHWESTERLY FROM SAID MONUMENT LINE OF SOUTH BASCOM AVENUE THENCE ALONG SAID PARALLEL LINE OF SOUTH BASCOM AVENUE, SOUTH  $33^{\circ}46'00''$  WEST, 319.73 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

# Depiction of the Firehouse Property

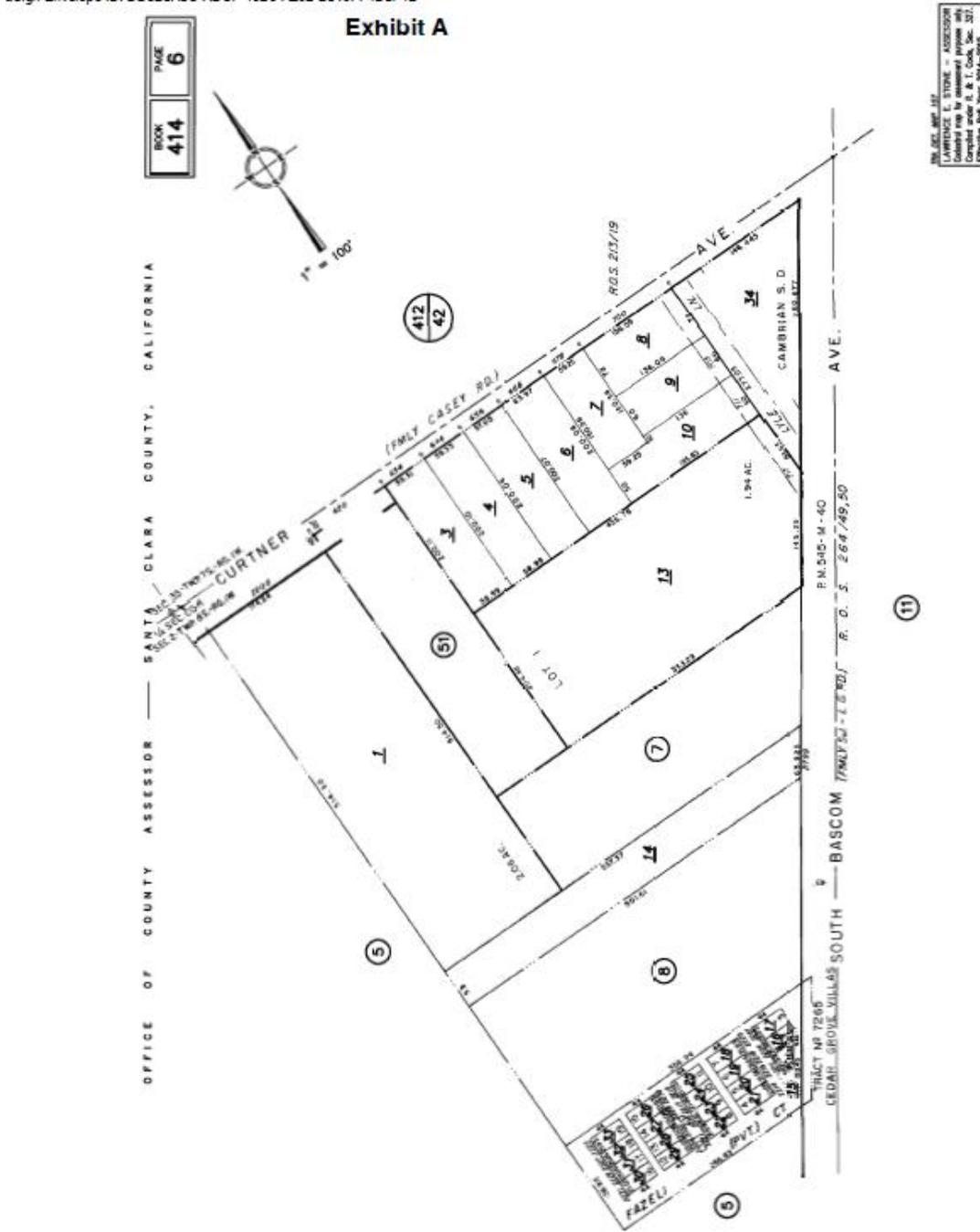


EXHIBIT A

**EXHIBIT B**  
**Legal Description of Exchange Property**

**EXHIBIT C**  
**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 **Engstrom Properties, Inc., a California corporation,**

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:**

**Engstrom Properties, Inc.,** a California corporation,

\_\_\_\_\_  
By: Mark Engstrom  
Title:



**EXHIBIT D**  
**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 Engstrom Properties, Inc. (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 837 Jefferson Blvd., West Sacramento, CA 95691.

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.

ENGSTROM PROPERTIES, INC.

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

Name: \_\_Mark Engstrom\_\_\_\_\_

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

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

**EXHIBIT E**  
**Grant Deed – Firehouse Property**

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

**AND WHEN RECORDED MAIL  
DOCUMENT TO:**  
Engstrom Properties, Inc.  
837 Jefferson Blvd.  
West Sacramento, CA 95691

Space Above This Line for Recorder's Use Only  
File No.:

A.P.N.: 414-06-034

**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 **Engstrom Properties, Inc., a California corporation,**

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

A PORTION OF THAT CERTAIN PARCEL OF LAND DEEDED BY JOHN BARKER TO B. CASEY, A. JOHNSON AND WILLIAM QUENTEL, TRUSTEES OF CAMBRIAN SCHOOL DISTRICT, NOVEMBER 26, 1863 AND RECORDED IN BOOK "R" OF DEEDS AT PAGE 672, RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF ABOVE DESCRIBED PARCEL OF LAND WITH A LINE PARALLEL WITH AND 50.00 FEET DISTANT NORTHWEST MEASURED AT RIGHT ANGLES FROM THAT CERTAIN MONUMENT LINE ESTABLISHED FOR RECORD IN THAT PARTICULAR MAP ENTITLED "RECORD OF SURVEY OF A MONUMENT LINE OF SOUTH BASCOM AVENUE FROM UNION AVENUE TO LARK AVENUE" FILED FOR RECORD IN BOOK 264 OF MAPS, OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AT PAGES 49 TO 54; THENCE FROM SAID POINT OF BEGINNING NORTHERLY ALONG SAID WESTERLY LINE, NORTH 00°55'44" WEST, 264.46 FEET TO THE POINT OF INTERSECTION WITH A LINE PARALLEL WITH AND 20.00 FEET DISTANT SOUTHERLY MEASURED AS RIGHT ANGLES FROM THE MONUMENTED LINE OF CURTNER ROAD (FORMERLY CASEY ROAD) AS SHOWN ON THE ABOVE DESCRIBED RECORD OF SURVEY; THENCE ALONG SAID PARALLEL LINE NORTH 89°36'38" EAST, 181.93 FEET TO THE POINT OF INTERSECTION WITH A LINE PARALLEL AND 50.00 FEET DISTANT NORTHWESTERLY FROM SAID MONUMENT LINE OF SOUTH BASCOM AVENUE; THENCE ALONG SAID PARALLEL LINE OF SOUTH BASCOM AVENUE, SOUTH 33°46'00" WEST, 319.73 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

**Dated:**

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

By: Kristi Schweibert  
Title: Superintendent



**EXHIBIT F**  
**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 June 16, 2022, and as described more specifically in the Grant Deed from Engstrom Properties, Inc., 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: \_\_\_\_\_

\_\_\_\_\_  
Carol Presunka, 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 G**  
**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 Engstrom Properties, Inc. (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: \_\_\_\_\_