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Nicholas Elementary School New School Construction and Modernization Project  
6601 Steiner Drive, Sacramento, CA 95823  
039-0133-011-0000

Sacramento City Unified School District  
5735 47<sup>th</sup> Avenue  
Sacramento, CA 95824

[Developer]  
[Address]

Dated as of \_\_\_\_\_, 20\_\_



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This facilities lease ("Facilities Lease"), dated as of \_\_\_\_\_, 20\_\_ ("Effective Date"), is made and entered into by and between [Name of Developer] ("Developer"), a [California corporation] duly organized and existing under the laws of the State of California, as sublessor, and Sacramento City Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

, the District is authorized under Section 17406 of the Education Code of the State of California to lease a site to a developer and to have that developer develop and construct the project on the site and to lease back to the District the completed project and site; and

, on the date hereof, the District has leased to Developer, a parcel of land located at 6601 Steiner Drive, Sacramento, CA 95823, known as Nicholas Elementary School, particularly described in \_\_\_\_\_ and shown on \_\_\_\_\_ attached hereto and incorporated herein by reference ("Site"); and

, District and Developer have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Site to Developer ("Site Lease"); and

, the District desires to provide for the development and construction of certain work to be performed on portions of the Site which will include construction of improvements to be known as the Nicholas Elementary School New School Construction and Modernization Project("Project") and

, District has retained HMC Architects ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") and to act as the Design Professional in General Responsible Charge for the Project; and

, the Governing Board of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the completed Project and site from Developer and if necessary, make Lease Payments; and

, the District further acknowledges and agrees that it has entered into the Site Lease and the Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously; and

, this Site Lease and Facilities Lease are awarded based a competitive solicitation process pursuant to Education Code section 17406 and in compliance with the required procedures and guidelines for evaluating the qualifications of proposers adopted and published by the Board to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

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and \_\_\_\_\_, the selection of Developer was conducted in a fair and impartial manner;

\_\_\_\_\_, Developer has reviewed the Lease Documents; and

\_\_\_\_\_, Developer represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

\_\_\_\_\_, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent to exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

\_\_\_\_\_, Developer is authorized to lease the Site as lessee and to develop the Project by constructing the Project on the Site and to lease the completed Project and Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease.

\_\_\_\_\_, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

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In addition to the terms and entities defined above or in subsequent provisions, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

" \_\_\_\_\_ " or " \_\_\_\_\_ " means \_\_\_\_\_, a [California corporation], organized and existing under the laws of the State of [California], Contractor's license number \_\_\_\_\_ issued by the State of California, Contractors' State License Board, in accordance with division 3, chapter 9, of the Business and Professions Code, and its successors and assigns.

" \_\_\_\_\_ " means the Managing Member of Developer, or any person authorized to act on behalf of Developer under or with respect to this Facilities Lease.

" \_\_\_\_\_ " are defined in \_\_\_\_\_ to this Facilities Lease.

" \_\_\_\_\_ " or " \_\_\_\_\_ " means the Sacramento City Unified School District, a school district duly organized and existing under the laws of the State of California.

" \_\_\_\_\_ " means the Superintendent of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

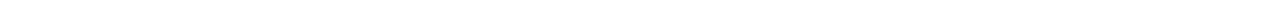
" \_\_\_\_\_ " means, as of any particular time:

Liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

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The leasing by Developer to the District of the completed Project and Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease. Developer shall continue to have and hold a leasehold estate in



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In consideration for the lease of the completed Project and Site by Developer back to the District and for other good and valuable consideration, the District shall make all necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in

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During the Term of this Facilities Lease, the District shall hold fee title to the Site, including the Project, and nothing in this Facilities Lease or the Site Lease shall change, in any way, the District's ownership interest.

During the Term of this Facilities Lease, Developer shall have a leasehold interest in the Site pursuant to the Site Lease.

During the Term of this Facilities Lease, Developer shall hold title to the Project improvements provided by Developer which comprise fixtures, repairs, replacements or modifications thereto.

If the District exercises its Purchase Option pursuant to the Guaranteed Maximum Price Provisions indicated in or if District makes all necessary payments under the

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The District has the full power and authority to enter into, to execute and to deliver

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results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Site, except Permitted Encumbrances.

Developer is not now nor has it ever been in bankruptcy or receivership.

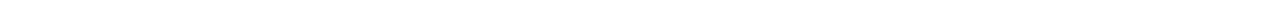
Developer shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Site, and shall not mortgage or encumber the Site, except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Developer's financing the construction of the project.

Developer shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Developer, at or before the latest of the following:

Eighteen (18) months following completion of the Project.

One (1) year following expiration or earlier termination of the Term.

After dismissal and final resolution (161.54 5392 reW\*nBT/F1 9.96 Tf1 0m0 g0 G[( )] TJE





to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

Provide plan review.

Prepare a value-engineering report for District review and approval that:

Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

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as to minimize conflicts within or between components of the design documents.

Confirm Modifications to Design Drawings. If the District accepts Developer's comments, including the value-engineering and/or constructability review comments, review the design documents to confirm that those comments are properly incorporated into the final design documents.

In doing so, it is recognized that Developer is not acting in the capacity of a licensed design professional, and that Developer's

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Bonds and insurance (not more than 2%);  
Close-out documentation (not less than 3%);  
Demolition;  
Installation;  
Rough-in;  
Finishes;  
Testing;  
Owner and Maintenance Manuals (not less than 2%); and  
Punchlist and District acceptance (not less than 3%).

Developer shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiple phases and interrelations of design, constructability review, and estimating. Developer shall also prepare a full construction schedule for the Project detailing the construction activities. Developer shall further investigate, recommend and prepare a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

For all of Developer's activities relating to construction planning and bidding, Developer shall comply with all applicable legal requirements, including but not limited to those set forth in Education Code section 17406.

Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Respondent may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.

Attend meetings at the Site with the Architect and the design team as needed.

Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.

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Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.

Prepare and distribute specifications and drawings provided by District to facilitate bidding to Developer's subcontractors.

Review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

Conduct pre-bid conferences with invitations to Architect and CM firm. Coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.

DSA approved plans shall be utilized to receive subcontractor bids and develop the GMP in accordance with the lease-leaseback agreement forms, including the requirement that Developer engage in competitive bidding for subcontractors for all scopes of work on the Project that constitute more than one half of one percent (0.5%) of the GMP. The District representative shall be present during the receipt of bids from subcontractors.

Each phase GMP shall be presented to the District in the following manner within a three ring binder as well as submitted electronically as a bookmarked PDF on an external USB drive:

Cover sheet, signed by Developer indicating the GMP dollar amount with a certification, indicating that the GMP is all inclusive per the plans, specifications and addenda (contract documents). Also include certification stating, "Developer hereby certifies that they have reviewed all subcontractor proposals and whether the subcontractor excluded portions of their scope Developer has included all costs for a complete GMP in accordance with plans, specifications and addenda."

A bid tabulation sheet indicating the breakdown by subcontractor/trade along with the appropriate general condition amount, other fees (as submitted with the response to the RFQ/P).

Behind the bid tabulation sheet mentioned in subdivision 10.1.5.5.2 above should be a sheet that indicates what is included in the general conditions, which should match what was submitted in the response to the RFQ/P.

Copies of all subcontractor bids received divided by trade that corresponds to the final spread sheet with a cover sheet indicating the scope and subcontractors that provided bids as well as those that were asked to bid, but did not submit a

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termination of this Agreement by either party per the Agreement's terms. Any extension shall be subject to reasonable approval in writing by the Parties.

It is mutually agreed that all materials prepared by Developer under this Agreement shall become the property of the District and Developer shall have no property right therein whatsoever. Developer hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement.

There will be an open book policy with Developer and its 0 1 361.6reW\*6.464W\*nB(D)-11(e)6(v)-9

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dollars (\$2,500) per day as liquidated damages for each and every day's delay beyond the Contract Time.

It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due Developer under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in .

The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant.

Developer will cause the Project to be constructed within the GMP as set forth and defined in the GMP provisions in and Developer will not seek additional compensation from District in excess of ~~as in New W\*nBT/F1 9.9 1 271 0 0 with 3.2~~

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Following delivery of possession of the Project by Developer to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service, data transmission, and all other utilities of any type shall be paid by District.

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All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Site and the improvements thereon, charged to or imposed upon either Developer or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Developer, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Developer, its successors and assigns for the full amount thereof within forty-five (45) days after presentation of proof of payment by Developer.

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Developer shall comply with the insurance requirements as indicated here and in

Developer shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Developer, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from, or in connection with, operations under the Project. This coverage shall be provided in a form at least as broad as Insurance Services (ISO) Form CG 00 01 11 88. Developer shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability coverage, and Automobile Liability coverage including owned, non-owned, and hired automobiles, are included within the above policies and at the required limits, or Developer shall procure and maintain these coverages separately.

Developer's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed five thousand dollars (\$5,000) for deductible or twenty-five thousand dollars (\$25,000) for self-insured retention, respectively, unless approved in writing by District.

All such policies shall be written on an occurrence form.

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or employees engaged in Work on the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Developer shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

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The limits of insurance for those subcontractors whose subcontract does not exceed 10% of Contract Value shall not be less than the following amounts:

COMMERCIAL GENERAL LIABILITY	Product Liability and Completed Operations, Fire Damage Liability - Split Limit	\$2,000,000 per occurrence; \$4,000,000 in annual aggregate
Excess Liability		\$5,000,000 per occurrence; \$5,000,000 annual aggregate
AUTOMOBILE LIABILITY - ANY AUTO	Combined Single Limit	\$2,000,000
WORKERS' COMPENSATION		Statutory limits pursuant to State law
EMPLOYER'S LIABILITY		\$1,000,000

Notwithstanding anything in this Facilities Lease to the contrary, the above insurance requirements may be modified as appropriate for subcontractors,



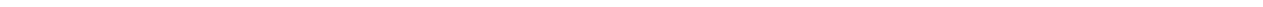




The District shall as soon as practicable after such event, apply the net proceeds of its insurance policy intended to cover that loss ("Net Proceeds"), either to:

Repair the Project to full use.

Replace



Developer may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to the contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Developer to a lender for purposes of financing the Project as long as there are not additional costs to the District.

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Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any necessary payments pursuant to the GMP provisions in \_\_\_\_\_ or any reduction thereof. T5eu00000912 0 0

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Developer persistently disregards laws, or ordinances, or instructions of District as indicated in \_\_\_\_\_, or otherwise in violation of \_\_\_\_\_; or

Developer fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

Developer or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Facilities Lease, including but not limited to a lapse in licensing or registration.

Upon the occurrence at District's sole determination of any of the above conditions, or upon Developer's failure to perform any material covenant, condition or agreement in this Facilities











at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Developer to exercise any remedy reserved to it in this article, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

This Facilities Lease is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

Compensation to Developer shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done,

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That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Developer is responsible; or

That an equitable adjustment is made or denied under another provision of the Site Lease or the Facilities Lease; or

That the suspension of Work was the direct or indirect result of Developer's failure to perform any of its obligations hereunder.

The delay could not have been avoided or mitigated by Developer's reasonable diligence.

Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order in . This amount shall be full compensation for all Developer's and its Subcontractor(s)' changes in the cost of performance of the Facilities Lease caused by any such suspension, delay or interruption.

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District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, lost bonding capacity, arising out of or in connection with this Contract for the services performed in connection with this Contract.

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All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) days after deposit in the United States mail in registered or certified form with postage fully prepaid or one (1) business day after deposit with an overnight delivery service with proof of actual delivery:

Sacramento City Unified School District  
5735 47th Avenue  
Sacramento, CA 95824  
Attn: \_\_\_\_\_

[Developer]  
[Address]  
Attn: [Name, Title]

Deidree Sakai, Esq.  
Dannis Woliver Kelley  
200 California Street, Suite 400  
San Francisco, CA 94111

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

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This Facilities Lease shall inure to the benefit of and shall be binding upon Developer and District and their respective successors, transferees and assigns.

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In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of the invalid provision materially alters the rights

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If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Facilities Lease.

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This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any matter shall be effective for any purpose.

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Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Facilities Lease.

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The Recitals set forth at the beginning of this Facilities Lease and the attached Exhibits are hereby incorporated into its terms and provisions by this reference.

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Time is of the essence with respect to each of the terms, covenants, and conditions of this Facilities Lease.

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A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing that obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, pandemic,

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Project: Nicholas Elementary School New School Replacement Project  
6601 Steiner Drive, Sacramento, CA 95823

APN: 039-0133-011-0000

LOT A, FRUITRIDGE VISTA NO. 14, & POR SEC. 33, T8N, R5E M.D.B. & M. BOUNDED BY W  
BY SD LOT A, E BY VERNACE WY N. & S. BY FRUITRIDGE VISTA NO. 16 EXC ALL THAT POR  
DES AS: BEG AT THE NE COR OF LOT 36, SD FRUITRIDGE VISTA NO. 16, TH S89°46'50"W  
120'; TH N00°13'10"W 50'; TH N89°46'50"E 120'; TH S00°13'10"E 50' TO THE P.O.B.  
CONTG 9.91 AC

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Attached are the terms and provisions related to Site Lease payments, the Facilities Lease, the Guaranteed Maximum Price and other related cost, funding, and payment provisions.

[To Be attached Via Amendment]

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Attached are the general construction terms and conditions for the Project.

[To Be attached Via Amendment]

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This MEMORANDUM OF COMMENCEMENT DATE is dated \_\_\_\_\_, 20\_\_, and is made by and between \_\_\_\_\_ ("Developer"), as Lessor, and the Sacramento City Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of \_\_\_\_\_, 20\_\_, (the "Lease") for the leasing by Developer to District of the completed Project in [City], California, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Developer in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term for the Lease Payments under the Facilities Lease commenced on \_\_\_\_\_, 20\_\_ and will expire at 11:59 P.M. on \_\_\_\_\_, 20\_\_.

on the  
date indicated below:

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

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

Sacramento City Unified School District

[Developer]

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

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

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

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

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

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

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Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

[To Be attached Via Amendment]

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Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

[To Be attached Via Amendment]

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