

WHEN RECORDED RETURN TO:

**Cambrian School District
c/o Clarissa R. Canady, Esq.
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San Francisco, CA 94104**

This document is recorded for the benefit of the Cambrian School District, and recording fee(s) are exempt under Government Code section 6103.

JOINT OCCUPANCY AND LEASE AGREEMENT

For all or a portion of the following District Property:

A portion of Assessor Parcel No: 414-21-062, located in San Jose, California

By and between

Cambrian School District
4115 Jackson Drive
San Jose, California 95124
Attention: Superintendent

And

Silverado CSD, Inc.

Dated as of _____, 2021

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JOINT OCCUPANCY AND LEASE AGREEMENT

This Joint Occupancy and Lease Agreement (“Agreement”) is entered into this [REDACTED] day of [REDACTED], 2021 (“Effective Date”) by and between the Cambrian School District, a public school district of the State of California (“District”) and Silverado CSD, Inc., a [REDACTED] (“Lessee”) under the terms and conditions set forth below. District and Lessee may be referenced individually as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, the District is the fee owner of approximately 1.9 acres of undeveloped property identified as all or a portion of Santa Clara County Assessor Parcel No. 414-21-062, located in San Jose, California, and more particularly described on **Exhibit “A”** attached hereto (“District Property”) of which Lessee has proposed to develop and use not more than approximately 76,764 square feet of the District Property as more particularly described on **Exhibit “B”** attached hereto (“Property”);

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

WHEREAS, subject to approval of the joint occupancy by the District’s Board of Education and approval of all required permits, approvals and entitlements for the development of the Property, the District intends to occupy a portion of the Property for District purposes in conjunction with the contemplated private development by Developer of the remaining portion as a memory care facility (collectively the “Development” or the “Project”);

WHEREAS, the provisions of California Education Code section 17515 et seq. (“Joint Occupancy Statutes”) authorize the District to enter into leases and arrangements relating to real property and buildings to be used jointly by District and any private person, firm, or corporation pursuant to the terms and conditions described therein;

WHEREAS, Education Code section 17515 provides that “building” includes onsite and offsite facilities, utilities and improvements, that, as agreed upon by the Parties, are appropriate for the proper operation or function of the building to be occupied jointly by the District and the private person, firm or corporation;

WHEREAS, on or about May 27, 2020 the District issued a Request for Proposals (“RFP”) for the development of the Project;

WHEREAS, Lessee submitted a proposal in response to the RFP and was selected by the District as the successful proposer with whom District would entertain further negotiations for the development and lease of the Property;

WHEREAS, pursuant to the above-mentioned provisions, District and Lessee desire to enter into an agreement for the joint occupancy, improvement, use, and maintenance of the Property as a

memory care facility; and

WHEREAS, the constructed and improved Property will provide a benefit to the District by generating needed funding for the District’s operating budget, and allow for the District to jointly use and occupy onsite facilities or improvements used for the development of a community garden, and facilities or improvements that can be used by the District as part of its science, outdoor education, and environmental stewardship programs, which will help serve the needs of District students; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the Parties agree as follows:

1. TERM OF AGREEMENT.

1.1 The term of this Agreement shall be for ninety-nine (99) years commencing on the [redacted] day of [redacted], 20__, and shall remain in effect until [redacted], 21__ (“Term End Date”), unless terminated earlier pursuant to the termination provisions set forth in this Agreement.

1.2 Each “Lease Year” shall commence on the first day of the month of [redacted], and end on the last day of the preceding month in the following year.

1.3 Lessee shall be entitled to a period of time of three (3) months from final execution of this Agreement, which execution shall occur no later than March 31, 2021, to perform their due diligence investigation, at their sole cost. In the event the final execution of this Agreement occurs on March 31, 2021, the Lessee’s due diligence period shall run from April 1, 2021 through June 30, 2021. Lessee hereby acknowledges and agrees to provide the District with copies of any reports or due diligence investigation performed by Lessee as no cost to the District. After Lessee’s due diligence investigation period terminates, Lessee shall have a period of time not to exceed twelve (12) months within which to obtain permits and approvals as referenced herein (“Entitlement Period”). In the event Lessee’s due diligence period terminates on June 30, 2021, Lessee’s Entitlement Period shall run from July 1, 2021 through June 30, 2022. Due to on-going Covid-19 health issues impacting public agencies and development timelines, this agreement shall be subject to one (1) option to extend the Entitlement Period by up to three (3) additional months at one (1) month increments, provided Lessee has diligently sought to obtain all approvals with all public agencies. The granting of all required permits and approvals shall constitute the expiration of the Entitlement Period. Lessee shall have two (2) months after the Entitlement Period, from July 1, 2022 through August 31, 2022, to obtain any financing commitments they require (“Financing Contingency”). Lessee shall then have three (3) months to obtain their building permits to construct the facility.

2. OPTION PAYMENT. On the Effective Date of this Agreement, and in no event later than March 31, 2021, Lessee shall deposit with District a non-fundable option payment in the amount of Ten Thousand Dollars and 00/100 Cents (\$10,000.00) which shall be in the form of cash (“Option Payment”). The Option Payment shall compensate the District for term wherein the District agreed to exclusively negotiate with Lessee with respect to the Property and is

intended to cover the legal and consulting costs of preparing this Agreement.

3. ENTITLEMENT PERIOD DEPOSIT. The Parties agree that Lessee shall deposit into escrow an Entitlement Period deposit in the amount of Sixty Thousand Dollars and 00/100 Cents (\$60,000.00) at the conclusion of Lessee's due diligence period, and in no event later than July 1, 2021. The Parties further agree that Lessee shall deposit an additional Sixty Thousand Dollars and 00/100 Cents (\$60,000.00), into the escrow account at the expiration of the Entitlement Period, and in no event later than June 30, 2022, and the full Entitlement Period deposit of One Hundred Twenty Thousand Dollars and 00/100 Cents is no longer refundable to Lessee. In the event Lessee is unable to obtain any acceptable financing commitments, this Agreement shall terminate and Lessee's full Entitlement Period Deposit of One Hundred Twenty Thousand Dollars and 00/100 Cents (\$120,000.00) will be refunded to Lessee.

4. DUE DILIGENCE PERIOD INSPECTIONS AND REVIEW.

4.1 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 the date ninety (90) days after the Effective Date (the "Due Diligence Period"). In the event the final execution of this Agreement occurs on March 31, 2021, the Lessee's due diligence period shall run from April 1, 2021 through June 30, 2021. During the term of the Due Diligence Period, Lessee and its representatives, agents, engineers, consultants, contractors, and designees shall have the right to enter onto the Property, for purposes of examining, inspecting and investigating the Property and the feasibility of using the Property for Lessee'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 Lessee's sole and absolute discretion, determining whether the Property is acceptable to Lessee.

4.2 During the Due Diligence Period, the District shall complete a Phase I environmental site assessment of the Property, and Lessee shall review and approve the Phase 1 assessment prior to the expiration of the Due Diligence Period.

4.3 The District will obtain and transmit to Lessee a preliminary title report for the 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"), and Lessee shall review and approve the Title Reports prior to the termination of the Due Diligence Period.

4.4 District shall also engage a civil engineer to measure the metes and bounds of the Property and draft a legal description and depiction of the Property and Lessee shall review and approve of the Property description and depiction prior to the expiration of the Due Diligence Period.

4.5 Any other tests, studies and assessments desired by Lessee shall be performed in Lessee's sole discretion and obtained at Lessee's expense.

4.6 Lessee and its agents, representatives and designees shall have the right to access the Property during the Due Diligence Period, in accordance with the following terms and conditions:

4.6.1 Lessee shall provide the District with written notice of the dates on which Lessee or its representatives or designees intend to access the property at least two (2) business days in advance of any access to the Property. The District or its representative may be present for any inspections, tests or studies.

4.6.2 Lessee 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.

4.6.3 Lessee 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 Lessee, and following written request will provide the District a copy of documents evidencing these actions.

4.6.4 Lessee agrees to comply with all applicable laws, regulations, rules and permits pertaining to its investigations and testing on and of the 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. Lessee shall obtain or cause its consultants to obtain, at inspecting Lessee'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 Lessee for claims of personal injury or property damage caused during any of inspecting Lessee'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 the District as an additional insured. Lessee hereby agrees to indemnify, defend and hold harmless the District 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 Lessee or its agents, assignees, designees or representatives during their entry on the Property prior to the expiration of the Due Diligence Period; 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 the District, its officers, directors, owners, agents or employees.

4.6.5 Upon a Lessee's completion of any investigations and testing on and of a Property during the Due Diligence Period, Lessee 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 Lessee's access; provided, however, that in no event shall Lessee have any obligation pursuant to this Section to remedy any pre-existing condition on or under the Property. Lessee agrees to promptly pay before delinquency for any and all labor and materials expended or used by Lessee or its agents, representatives or designees in connection with any and all investigations on the Property. In the event any mechanics' liens are placed on the Property resulting from work by Lessee or its agents, representatives or designees, Lessee will take prompt action to remove or bond over such liens at Lessee's sole expense and will indemnify, defend, protect and hold the District harmless from and against all such claims.

5. IMPROVEMENT OF DISTRICT PROPERTY. Lessee agrees to improve the Property by developing a memory care facility and related onsite facilities, utilities, and improvements identified in **Exhibit "C"** hereto ("Lessee Improvements"), and developing or constructing an approximately 6,000 square feet Community Garden with connection to associated utilities for District use at the locations specified in **Exhibit "D"** ("District Improvements")(collectively, "Improvements"). The Lessee Improvements and District Improvements are more particularly described in the plans and specifications attached hereto as **Exhibit "E"**.

6. PERMITS AND APPROVALS. Lessee shall be solely responsible for obtaining all necessary state and local permits and approvals prior to constructing and installing the Improvements on the Property, including, without limitation, all permits and approvals required by the State of California and its subdivisions including, if applicable, the Division of the State Architect. Lessee shall provide copies of the permits and approvals to District prior to commencing construction and installation of any Improvements on the Property. The District shall cooperate with the Lessee and take all reasonable actions necessary to assist the Lessee in obtaining all permits and approvals.

7. ESCROW.

7.1 Within two (2) business days following the execution of this Agreement by District and Lessee, the Parties shall open an escrow to serve as a depository for Lessee's Entitlement Period deposits (the "Escrow") with First American Title Insurance Company ("Escrow Holder"), at its offices located at 333 W. Santa Clara Street, Suite 220, San Jose, CA 95113; Attn: Kiley Demaree; Phone: (408) 487-5000, by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder (the "Opening of Escrow"). Escrow Holder shall provide each of the Parties in Section 19 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.

7.2 Escrow shall close on or prior to the date ten (10) days after the termination of the Financing Contingency period, which contingency period shall terminate no later than August 31, 2022, (the "Closing Date"), unless mutually extended by the Parties.

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

7.4 Escrow Holder shall disburse or hold the Entitlement Period deposits, less prorations chargeable to District, if any, in accordance with the District's instructions.

8. DESIGN OF IMPROVEMENTS.

8.1 Lessee shall prepare complete plans and specifications for the Improvements in accordance with District standards, and in compliance with all legal requirements, including without limitation, review and approval by the Division of State Architect, if applicable. Lessee must receive District's approval of the final plans and specifications before constructing and/or installing any Improvements.

8.2 In preparing complete plans and specifications for the Improvements, Lessee shall coordinate with the District, before constructing and/or installing any Improvements.

9. DEVELOPMENT OF IMPROVEMENTS.

9.1 Lessee agrees, at its sole cost and expense, to purchase, develop, construct, install or cause to be developed, constructed or installed the Improvements in a timely manner and pursuant to the District-approved plans and specifications subject to any applicable federal, state and local site, zoning, and design review and all other required approvals. A Schedule of Performance is attached hereto as **Exhibit "F"**. Lessee's failure to comply with the Schedule of Performance shall constitute a breach of this Agreement.

9.2 Lessee shall purchase, develop, construct, install or cause to be developed, constructed and installed the Improvements in accordance with all applicable local, state and federal laws, regulations and rules.

9.3 Lessee shall comply with all applicable requirements of the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of any of the District Property. Lessee specifically acknowledges that, pursuant to the indemnification provision in this Agreement, the Lessee shall protect, defend, indemnify and hold harmless the District in any CEQA-related claims, lawsuits, or actions of any kind. In addition, Lessee acknowledges that District may be required to prepare and approve documents required by CEQA related to the Improvements including, without limitation, an initial study, a negative declaration, and/or an environmental impact report. Lessee agrees to pay District all costs, fees, and expenses incurred by the District that are related, in any way, to CEQA.

9.4 Not less than fifteen (15) calendar days prior to the development, construction, installation, major repair, renovation, or demolition of any Improvements, Lessee shall provide District with the following:

9.4.1 Information regarding the contractor(s)' financial condition;

9.4.2 Certificates of insurance and endorsement naming the District as an additional insured;

9.4.3 A performance bond and payment bond, each for one hundred percent (100%) of the contractor(s)' contract price and each on a District-approved form; and

9.4.4 Evidence to District's reasonable satisfaction that adequate funds to complete the Improvements are committed and available or that completion has been otherwise adequately assured. No construction shall commence until District has given Lessee written acceptance of all information and assurances.

9.5 Lessee shall give District fifteen (15) days prior written notice before commencing any work on the Property so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate. Lessee shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that Lessee or Lessee's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers' compensation.

9.6 Upon commencement of development, construction and installation of the Improvements, Lessee shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by supply shortages, strikes, or acts of God.

9.7 All work on the Improvements shall be performed in a sound and workmanlike manner, in compliance with the applicable laws and building codes, and in conformance with the plans and specifications approved by District or any modifications thereto which have been approved in writing by District.

9.8 [RESERVED]

9.9 District or District's agent shall have a continuing right at all times during the period that the District Improvements are being developed, constructed and installed on the Property to enter the Property and to inspect the work. Lessee shall require its contractor(s) to reasonably cooperate with District or its agent in such inspections.

9.10 Within ninety (90) days after completion of development and construction of the Improvements, Lessee shall deliver to District two (2) full and complete sets of as-built plans for the work as completed.

9.11 District shall cooperate with Lessee by executing and, if necessary, recording any required applications for zoning or use permits necessary for the operation of Improvements as may be reasonably required to complete the Improvements, however, no costs shall accrue to or be borne by District.

9.12 The Parties expect that the purchase, development, construction and installation of the Improvements shall be completed prior to the expiration of Twenty months (20) following the date of execution of this Agreement.

10. COST OF IMPROVEMENTS

10.1 The Parties intend for the Lessee to pay for the total cost of Improvements, which shall include, without limitation:

10.1.1 All costs attributable to the purchase and installation of the Improvements, including the actual cost incurred by Lessee for all labor and materials required for the purchase and installation of the Improvements;

10.1.2 All costs related to procuring permits, approvals, inspections, and/or environmental clearance;

10.1.3 Maintenance and operation of the Improvements;

10.1.4 Lessee's costs for overhead, staffing, and/or all other indirect expenses incurred pursuant to this Agreement.

11. LEASE PAYMENTS TO DISTRICT.

11.1 Commencing on [REDACTED], 20[REDACTED], Lessee shall pay to District rent based on a land value of Fifty-Nine Dollars and 00/100 Cents (\$59.00) per square foot of the exclusive land area, currently estimated at approximately 76,764 square feet, with a the rate of return of five percent (5%) of the exclusive area land value, currently estimated to be Two Hundred Twenty-Six Thousand, Four Hundred Fifty Dollars and 00/100 Cents (\$226,450.00) for each year's use of the Property, by no later than [REDACTED], annually ("Fixed Lease Payment", collectively with the Fixed Lease Payment, the "Lease Payment"). The Fixed Lease Payment shall be set within sixty (60) days of the Effective Date of this Agreement. The total annual Fixed Lease Payment shall be increased pursuant to the schedule of payments listed below beginning on [REDACTED], 20[REDACTED].

The following is the schedule of payment for the Ground Lease,

Years 1 -3:	50% of the initial ground rent – fixed and commencing 20 months from execution of this Agreement
Years 4 -10:	100% of the initial Ground Lease payment plus a fixed increase of 5%
Years 11-16:	Fixed increase of 10%
Years 17-24:	Fixed increase of 14%
Years 25-29:	Fixed increase of 14%
Years 30-37:	Fixed increase of 8.75%, with a Fair Market Rent increase.
Years 38-45:	Fixed increase of 14%
Years 46-53:	Fixed increase of 14%

Years 54-59:	Fixed increase of 14%
Years 60-67:	Fixed increase of 10.5%, with a Fair Market Rent increase.
Years 68-75:	Fixed increase of 14%
Years 76-83:	Fixed increase of 14%
Years 84-89:	Fixed increase of 14%
Years 90-99:	Fixed increase of 10.5%, with a Fair Market Rent increase.

11.2 [RESERVED]

11.3 Lease Payment Adjustment to Market Rate. At the beginning of the thirtieth (30th), sixtieth (60th) and ninetieth (90th) year of the Term, the annual Fixed Lease Payment for the next year shall be based upon market value of land in the Santa Clara County geographical region, but in no event less than the Rent for the preceding year (Fair Market Value Adjustment, the “FMVA”). The FMVA will be based on the land value only of the site, not accounting for any improvement, assuming permitted use is for Class “B” office. The new Fixed Lease Payment will be 5% of this new land value. In no event will there be more than a twelve percent (12%) increase over the adjusted Fixed Lease Payment including the fixed increase (“Catch-Up Increase”). In no event will there be less than a five percent (5%) increase over the current Fixed Lease Payment including the Catch-Up Increase.

11.4 FMVA Determination. The FMVA value defined in Section 7.3, Lease Payment and Adjustment to Market Rent, will be set by a Member Appraisal Institute (“MAI”) appraiser (“Appraiser”) agreed to by both Parties with experience in valuing commercial development land in the Santa Clara County geographical region. If the Parties cannot agree on an Appraiser, Lessee and District shall each independently engage a MAI appraiser to set the FMVA value based on the land value of the site in the Santa Clara County geographical region. In the event, there is a difference in the FMVA value set between the two independent appraisals solicited by Lessee and District, of more than four percent (4 %), a third MAI appraiser shall be engaged to review the two appraisals and render a decision to set the FMVA value for the Property which shall be binding on both Parties.

11.5 [RESERVED]

11.6 [RESERVED]

11.7 Within thirty (30) days after completion of the Improvements, Lessee shall send District a written notification of completion together with certification that construction is in accordance with the plans and specifications reviewed by District. Lessee shall also send District copies of all construction contracts and payment vouchers related to the purchase and installation of the Improvements and an itemized statement of the cost of equipment purchased and installed, if applicable. Unless within thirty (30) days after receipt of Lessee’s statement District sends Lessee its written notice that it disagrees with Lessee's statement or calculations contained therein, the total submitted to District by Lessee shall be deemed to be the Cost of Improvements.

11.8 [RESERVED]

11.9 Performance Deposit. The Parties agree that Lessee shall deposit with District a performance deposit in the amount of One Hundred Twenty Thousand Dollars and 00/100 Cents (\$120,000.00) which can be in the form of cash, bond, or letter of credit. Fifty percent (50%) of this amount, Sixty Thousand Dollars and 00/100 Cents (\$60,000.00), shall be paid to the District upon execution of this Agreement, and in no event later than July 1, 2021, and shall remain refundable through the release of all contingencies herein, and the balance shall be payable to the District upon release of all contingencies noted herein (“Performance Deposit”). The Performance Deposit shall secure the timely, full and faithful performance by Lessee of each term, covenant, and condition of this Agreement. If, at any time, Lessee fails to make any payment or fails to keep or perform any term, covenant, or condition on its part to be made or performed or kept under this Agreement, District, without waiving or releasing Lessee from any obligation under this Agreement, may, but shall not be obligated to, use, apply, or retain the whole or any part of the Performance Deposit: (i) to the extent of any sum due to District; (ii) to make any required payment on Lessee’s behalf; or (iii) to compensate District for any loss, damage, attorneys’ fees or cost sustained by District due to Lessee’s default. In such event, Lessee shall, within five (5) days of written demand by District, remit to District sufficient funds to restore the Performance Deposit to its original sum. No interest shall accrue on the Performance Deposit. District shall not be deemed a trustee of the Performance Deposit, and may deposit the Performance Deposit with District’s other funds. Should Lessee comply with all terms, covenants, and conditions of this Agreement, and at the end of the term of this Agreement leave the Property in the condition required by this Agreement, then the Performance Deposit, less any sums owing to District, shall be returned to Lessee within thirty (30) days after the termination of this Agreement and vacancy of the Property by Lessee. If the Lessee is in good standing on their obligations, fifty percent (50%) of the Performance Deposit will be refunded on the fifth (5th) year anniversary of the execution of this Agreement. The balance of the Performance Deposit shall be released on the seventh (7th) anniversary of the execution of this Agreement, provided Lessee is in good standing on their obligations, by the way of a Fixed Lease Payment credit.

11.10 Late Charges. Lessee acknowledges that late payment by Lessee to District of the Lease Payments and/or other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any Lease Payment or any other sum due from Lessee by 4:00 p.m. within ten (10) days after that amount is due, Lessee shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Lessee. Acceptance of such late charge by District shall in no event constitute a waiver of Lessee's default with respect to such overdue amount nor prevent District from exercising any of its other rights and remedies granted hereunder.

11.11 Additional Rent. Taxes and Assessments, late charges, costs and expenses which Lessee is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Lessee's failure to pay such amounts, and all damages, costs, and

attorneys' fees and expenses which District may incur by reason of any default of Lessee or failure on Lessee's part to comply with the terms of this Lease, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by Lessee, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the Lease Payments.

12. USE OF IMPROVEMENTS.

12.1 Priority of Use. Lessee's use of the Improvements shall take precedence and priority over any other person's or entity's use, other than the District's right to use as described in subparagraph 8.2, below.

12.2 District's Use. District shall have exclusive use of the District Improvements. Lessee shall have exclusive use of the Lessee Improvements.

12.3 Closure of District Property. The Parties recognize that the District Property may need to be closed from time to time in the interest of public safety or for repairs and maintenance. District shall give notice to Lessee as far in advance as possible in the event the District Property is to be closed. Lessee shall immediately notify District of any conditions necessitating a closure of the District Property or any portion thereof.

12.4 Schedule of Use. District shall maintain the schedule of the District's use of the Lessee Improvements.

12.5 District Rules and Regulations. Lessee shall strictly observe all rules and regulations of the District's Board of Education and all applicable federal, state, and local laws, ordinances and regulations during all periods of use.

13. MAINTENANCE. District agrees to provide, at its own cost and expense, any and all maintenance of the District Improvements. Lessee agrees to provide, at its own cost and expense, any and all maintenance of the Lessee Improvements.

13.1 Lessee's Responsibilities. Lessee shall maintain the Lessee Improvements, at its sole cost and expense. Lessee shall inspect the Improvements regularly and make repairs as needed. Maintenance to be provided by Lessee shall be staffed by Lessee's personnel, be consistent with the normal maintenance levels as applied to other comparable improvements, and shall ensure safe and healthful use.

13.2 Utilities and Maintenance Costs. Separate utility meters shall be installed on Lessee's Improvements and District's Improvements. Lessee shall provide and pay, at its own cost and expense, all maintenance for the Lessee Improvements, including any and all utility costs associated with the Lessee Improvements. District shall provide and pay, at its own cost and expense, all maintenance for the District Improvements, including any and all utility costs associated with the District Improvements. The utility costs associated with the Improvements shall be for, without limitation, the following services: water, sewer, storm water, gas, heat, light, power, telephone, data and cable service, electricity, trash and garbage collecting, refuse removal,

recycling, sewage fees, and all other services supplied to the Property.

13.3 [RESERVED].

13.4 Emergencies and Hazardous Conditions. Lessee or District shall have the right to initiate action to resolve an emergency and/or hazardous condition in the Property on the most effective and efficient means possible with the least disruption to the Parties' use. The Party initiating the action shall give the other Party notice as soon as it is reasonable to do so, and shall provide the other Party notice in writing within five (5) days of initiating action.

13.5 Damage to Property. Lessee shall repair any damages to the Improvements. Lease Payments shall continue during any period that the Improvements have been damaged or destroyed.

14. OWNERSHIP OF IMPROVEMENTS. The Parties agree that the Lessee Improvements shall remain exclusively the personal property of the Lessee during the term of the Agreement and the title to the Lessee Improvements shall vest in the District upon expiration of this Agreement and acceptance thereof by the District. During the term of this Agreement, the District shall hold fee title to the Property and the District Improvements. Nothing in this Agreement shall change, in any way, the District's ownership of the Property. At the expiration of the Lease, the District shall have the option of accepting the improvements in their current condition, or requesting the improvements be demolished at Lessee's sole cost including the costs associated with the removal of any hazardous materials.

15. DISPOSITION OF PROPERTY. The Parties agree that the Lessee shall have the right of first refusal should the District choose to dispose of the Property as part of this Agreement.

15.1 Lessee's Right of First Refusal Prior to the Expiration of this Agreement. Should the District elect to sell the Property during the term of this Agreement, the District shall notify Lessee of its intent to dispose of the Property at least ninety (90) days in advance of the anticipated public offering. Lessee shall have the right of first refusal to purchase the Property to the extent permitted by law.

15.2 Lessee's Right of First Refusal at the Expiration of this Agreement. Should the District elect to sell the Property at the Expiration of this Agreement, the District shall notify Lessee of its intent to dispose of the Property at least ninety (90) days in advance of the anticipated public offering. Lessee shall have the right of first refusal to purchase the Property to the extent permitted by law.

15.3 If Lessee exercises its right of first refusal, the purchase price shall be the fair market value of the Property. The fair market value of the Property shall be determined by an agreement between the Lessee and District. The fair market value shall be based on the highest and best use of the Property. Within sixty (60) days after the District provides written notice to the Lessee of its intent to offer the Property to the Lessee under Lessee's right of first refusal, Lessee and District each, at its own cost and by giving notice to the other party, shall appoint a competent M.A.I. real estate appraiser, unlikely to be duly influenced by either party,

with at least ten (10) years' commercial appraisal experience in Santa Clara County and set the fair market value for the Property.

15.4 If either Lessee or District does not appoint an appraiser within ten (10) days after the other party has given written notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the fair market value. If two (2) appraisers are appointed by Lessee and District, they shall meet promptly following completion of their respective appraisal reports and attempt to set the fair market value. If the two (2) appraisers are unable to agree within thirty (30) days after the second appraiser has been appointed, they shall attempt to select a third appraiser meeting the qualifications stated in subsection 13.4 above within ten (10) days after the last day the two (2) appraisers are given to set fair market value. Lessee and District shall each bear one-half (1/2) of the cost of the third appraiser's fee. The third appraiser, however selected, shall be a person who is unlikely to be unduly influenced by either party. Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers shall set the fair market value.

16. INDEMNIFICATION. To the furthest extent permitted by California law, Lessee shall protect, defend, indemnify and hold harmless District, and its officers, agents, representatives, consultants, employees, trustees and volunteers ("Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suits, and actions ("Claims") of any kind, nature or description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connecting with or resulting from the performance of the Agreement and/or Lessee's or Lessee's agent's presence on the Property or from any activity, work, or thing done, permitted, or suffered by the Lessee or Lessee's agents in conjunction with this Agreement unless the Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. The District shall have the right to accept or reject any legal representation that Lessee proposes to defend the Indemnified Parties. Lessee's indemnification obligations shall survive expiration or termination of this Agreement for any reason whatsoever.

17. INSURANCE.

17.1 Lessee shall, throughout the term of this Agreement, procure and maintain in force the following insurance with the minimum indicated limits:

17.1.1 General Liability/Excess Liability insurance: \$2,000,000 for each occurrence and \$4,000,000 general aggregate with Products and Completed Operations Coverage.

17.1.2 Automobile Liability – including owned, non-owned, and hired automobiles: combined single limit of \$1,000,000.

17.1.3 Excess Liability insurance over General Liability and Automobile Liability: \$5,000,000 per occurrence.

17.1.4 Workers Compensation: Statutory limits; and Employers' Liability: \$1,000,000.

17.1.5 Builder's Risk "All Risk" (Course of Construction) insurance: Issued for the value and scope of the Improvements indicated in this Agreement. Lessee shall procure and maintain Builder's Risk insurance (all-risk, special form with valuation on a replacement cost basis) on a one hundred percent (100%) completed value of the Project for the benefit of the District, and the Lessee and any subtenants, contractors and subcontractor(s), as their interests may appear. The policy shall contain a clause which provides coverage until the Improvements are accepted by the District and Lessee. If the Builder's Risk policy contains an occupancy provision, permission for early occupancy must be obtained from the insurance company. The Policy should include debris removal, collapse, theft, and transit coverage with no coinsurance penalty provisions. The Builders' Risk Policy is primary and no insurance held or owned by the District shall be called upon to contribute to a loss.

17.1.6 Personal Property coverage: for 100% of the insurable replacement value of Lessee's personal property in, about, or on the Property. District is not responsible for personal property losses suffered by the Lessee or Lessee's employees, agents, subtenants, contractors, subcontractors, or volunteers.

17.2 The minimum limits of coverage required by this Agreement may be satisfied by a combination of primary and Excess/Umbrella insurance policies provided that the form of the Excess/Umbrella coverage follows the form of the primary liability insurance.

17.3 All policies, endorsements, certificates shall be subject to approval by the District as to form and content. Lessee agrees to provide the District with a copy of said policies, certificates, and endorsements in a form satisfactory to the District upon execution of this Agreement. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The policy(ies) shall not be terminated, allowed to lapse, amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation or amendment. Except for worker's compensation insurance, the Lessee shall provide the District an endorsement naming District, its officers, agents, representatives, consultants, employees, trustees and volunteers as additional insureds on all policies. The policy or policies shall provide that this insurance shall be primary with respect to any liability or claimed liability arising out of the performance or activities by the Lessee under this Agreement or the Lessee's use of the Property, and that any insurance procured by the District, its officers, agents, representatives, consultants, employees, trustees and volunteers shall be excess and shall not be called upon to contribute until the limits of the insurance provided hereunder shall be exhausted.

17.4 The Lessee's General Liability and Workers' Compensation insurance policies shall provide a Waiver of Subrogation in favor of the District.

17.5 Subtenants, Contractors, and Subcontractors. Lessee shall require all subtenants, contractors and subcontractors of any tier that may work on or in connection with the

Agreement to maintain the insurance coverage required in this Agreement; provided however, that Lessee may vary the limits of such coverage of subcontractors depending on the services provided, but such limits shall be comparable to those customarily provided by others within similar size and scope of business. In no event shall the insurance requirements be deemed to limit the liability or responsibility of Lessee or any of its subtenants, contractors or subcontractors to District.

17.5.1 Lessee shall require all tiers of subtenants, contractors, and subcontractors to waive the rights of recovery against District, its officers, agents, representatives, consultants, employees, trustees and volunteers. Lessee shall be responsible for any loss resulting from the failure of any subtenant, contractor or subcontractor to maintain sufficient insurance.

17.5.2 Subtenants, contractors and subcontractors shall be responsible for and shall bear the risk of loss and damage to any property including but not limited to (1) tools and equipment of subtenant, contractor, or subcontractor (owned or rented) and (2) any property for which it is responsible or that is in its care, custody and control, wherever located.

18. PAYMENT OF ESCROW COSTS.

18.1 District shall pay all title insurance premiums for the CLTA standard owner's form policy for the Property, but Lessee shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by Lessee, including the difference between a CLTA standard owner's policy and an ALTA extended owner's policy. All other one-time costs of Escrow not specifically allocated in this Agreement shall be shall be prorated, if applicable, and otherwise paid in equal amounts by the Parties, provided however that the District shall not be responsible for any ongoing taxes and assessments discussed in section 7.11 above.

19. DEFAULT.

19.1 Except for the notice and cure provisions described herein, the following constitute a breach of the Agreement ("Breach"):

19.2 Default in the payment when due of any Lease Payment or other payment required to be made by Lessee hereunder, and the default shall not have been cured within ten (10) days after written notice from District;

19.3 Lessee's failure to perform any other term, covenant or condition contained in this Agreement and the failure shall have continued for sixty (60) days after District gives written notice of such failure to Lessee; however, should Lessee's default involve a serious risk to the safety of the students or an illegal use of the Property, such cure must occur immediately. In the event the District has notified Lessee of default on the same basis on two prior occasions, the period to cure shall be reduced to ten (10) business days. On the fourth occasion of default, the District may dispense with a cure period and determine that Lessee is in material default and

commence termination of this Agreement.

19.4 The vacating or abandonment of the Property by Lessee before the expiration of the Lease Term.

19.5 The failure by Lessee to utilize the Property for the Project as authorized by this Agreement and the terms and conditions set forth herein.

19.6 Revocation or non-renewal of Lessee's license, permits or other authorization to operate.

19.7 Failure to keep in effect insurance as required herein.

19.8 The sequestration of, attachment of, or execution on, any substantial part of the property of Lessee or on any property essential to the Project, shall have occurred and Lessee shall have failed to obtain a return or release of the property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier.

19.9 The Lessee or any guarantor of Lessee's obligations hereunder shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts.

19.10 Any case, proceeding or other action against the Lessee or any guarantor of the Lessee's obligations hereunder shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and the case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains undismissed for a period of forty-five calendar (45) days.

19.11 If either Party commits a Breach of the Agreement, the non-Breaching Party shall give written notice to the breaching Party, specifying the Breach complained of by the non-Breaching Party.

19.12 The Breaching Party shall cure, correct or remedy the Breach within thirty (30) days after the Breaching Party receives written notice of the Breach as otherwise stated in this Agreement. However, if the period to diligently cure takes longer than thirty (30) days and the Party commences to cure the default within the thirty (30) day notice period, then that Party shall have such additional time as shall be reasonably necessary to diligently effect a complete cure. The Breaching Party shall not be in default of the Agreement during any cure period.

19.13 If a Breach is not cured in accordance with this Article 13, the Breaching Party shall be in default under the Agreement and the non-defaulting Party shall have the right to terminate the Agreement. The remedies in this paragraph are in addition to any additional

remedies available at law or under this Agreement. A decision by a Party not to terminate this Agreement pursuant to this paragraph does not constitute a waiver of any other claims or remedies that either Party may have against the other.

19.14 Remedies. Upon any Event of Default, the occurrence of a dangerous condition on the Property, violation of any applicable law, regulation or rules, or if Lessee's license or insurance lapses, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:

19.14.1 Recovery of Lease Payments. District shall be entitled to keep this Agreement in full force and effect (whether or not Lessee shall have abandoned the Property) and to enforce all of its rights and remedies under this Agreement, including the right to recover Lease Payments, and other sums as they become due, plus interest at the rate of Bank of America's or its successor's reference rate plus three (3%) percent per annum from the due date of each Lease Payment, Additional Rent, or other sum until paid, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by Lessee under this Agreement.

19.14.2 Termination. District may terminate this Agreement by giving Lessee written notice of termination. On the giving of the notice all of Lessee's rights under this Agreement and in the Property shall terminate. Upon the giving of the notice of termination, Lessee shall surrender and vacate the Property in the condition required under this Lease, and District may re-enter and take possession of the Property and all the remaining improvements or property and eject Lessee or any of Lessee's subtenants, assignees or other person or persons claiming any right under or through Lessee or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release Lessee from the payment of any sum then due District or from any claim for damages, Lease Payments previously accrued or then accruing against Lessee. In no event shall any one or more of the following actions by District constitute a termination of this Agreement:

19.14.3 maintenance and preservation of the Property;

19.14.4 efforts to relet the Property;

19.14.5 appointment of a receiver in order to protect District's interest hereunder;

19.14.6 consent to any subletting of the Property or assignment of this Agreement by Lessee, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or,

19.14.7 any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Agreement by Lessee.

19.15 Damages. In the event this Agreement is terminated, District shall be entitled to damages in the following sums:

19.15.1 the worth at the time of award of the unpaid Rent which have been earned at the time of termination; plus,

19.15.2 the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus,

19.15.3 the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and,

19.15.4 any other amount necessary to compensate District for all detriment proximately caused by Lessee's failure to perform Lessee's obligation under this Agreement, or which in the ordinary course of business would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Property; (ii) real estate broker's fees, reasonable advertising costs and other expenses of reletting the Property; (iii) costs of carrying the Property and insurance premiums thereon, utilities and security precautions; (iv) expenses in retaking possession of the Property; (v) reasonable attorneys' fees and court costs; and, (vi) any unamortized real estate brokerage commission paid in connection with this Agreement;

19.15.5 the "worth at the time of award" of the amounts referred to in Subsections 13.15.1 and 13.15.2 of this section, is computed by allowing interest at the rate of Bank of America's or its successor reference rate plus three (3%) percent per annum. The "worth at the time of award" of the amounts referred to in Subsection 13.15.3 of this section is computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one (1%) percent. The term "Rent" as used in this section shall include Lease Payments, Additional Rent and all other sums required to be paid by Lessee to District pursuant to the terms of this Agreement.

20. NOTICES.

20.1 All notices required or permitted to be given under this Agreement shall be in writing, personally delivered or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

DISTRICT:

Cambrian School District
Attention: Superintendent
4115 Jacksol Drive
San Jose, CA 95124

LESSEE:

Silverado CSD, Inc.
Attention: Loren Snook

20.2 Notice shall be deemed effective on the date personally delivered or, if mailed, five (5) days after deposit in the mail. Notice provided by overnight delivery shall be deemed effective the next business day after delivery to the overnight delivery service. The Parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this paragraph.

21. HAZARDOUS MATERIALS.

21.1 Hazardous Materials on Property. District and Lessee agree as follows with respect to the existence or use of Hazardous Materials on the Property including any improvements made by Lessee.

21.2 Definition. As used herein, the term “Hazardous Materials” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term “Hazardous Materials” includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 et seq. (ii) defined as a “hazardous waste” pursuant to Section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a “hazardous substance” pursuant to Section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term “Hazardous Materials Law” shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Toxic Substances Control, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

21.3 Hazardous Materials. Lessee shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the District Property and any Improvements by Lessee or its agents, employees, contractors, subLessees, or invitees, except for limited quantities of standard supplies which shall be used and stored in strict compliance with Environmental Laws. Lessee shall comply with all Environmental Laws.

21.4 Responsibility of Lessee. From and after the Effective Date, Lessee shall be solely responsible for all environmental matters affecting the Premises and Improvements thereon. Lessee has been afforded the opportunity under the Option to enter the Property during the option period for the purpose of conducting tests, engineering studies, to satisfy itself of the condition of the Property with respect to Hazardous Materials. Without limiting the preceding sentence:

21.4.1 Any handling, transportation, storage, treatment, disposal or use of Hazardous Materials in or about the Property and Improvements by any person or entity shall be the responsibility of Lessee and shall strictly comply with all applicable Hazardous

Materials Laws and the provisions of this Agreement.

21.4.2 It shall be the duty of Lessee to insure that the Property and Improvements are at all times in strict compliance with all Hazardous Materials Laws and that all activities conducted in or about the Property and Improvements comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all notification, record keeping, and maintenance requirements of such Laws.

21.4.3 Lessee shall have and discharge all of the duties and obligations of the owner of the Property and Improvements thereon under applicable Hazardous Materials Laws, including, but not limited to, response and remediation; and

21.4.4 Lessee shall be responsible for all liability to any third party who may be harmed or claim harm resulting from an environmental condition on or about the Premises and Improvements.

21.5 Indemnification. Lessee shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District and its trustees, agents and employees from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of the use, storage, treatment, transportation, release, disposal, or presence from any cause or source whatsoever of Hazardous Materials on or about the Property and Improvements.

21.6 Lessee Action. If the presence of Hazardous Materials on the Property and Improvements from any source whatsoever results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the Lessee is responsible therefore under applicable law, then Lessee shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate such contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Property and Improvements or any part thereof. Lessee shall further be solely responsible for, and shall defend, indemnify and hold District and its agents harmless from and against, all claims, costs and liabilities, including attorneys' fees and costs, arising out of or in connection with any investigation and remediation required hereunder to return the Property and Improvements to full compliance with all Hazardous Materials Laws.

21.7 Notice. District and Lessee shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the District Property and Improvements, and (ii) any contamination of the District Property and any improvements by Hazardous Materials which constitutes a violation of any Hazardous Materials Law. Lessee may use small quantities of household chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct business on the Property and such other Hazardous Materials as are necessary for the operation of its Project of which District receives notice prior to such Hazardous

Materials being brought onto the Property and to which District consents in writing. As a condition to its consent, District may require from Lessee or any subtenant additional security and/or indemnification against potential claims or losses resulting from the presence or use of such Hazardous Materials at or on the Property. At any time during the Term, Lessee shall, within thirty (30) days after written request therefore received from District, disclose in writing all Hazardous Materials that are being used by Lessee or subtenants on the Property, the nature of the use, and the manner of storage and disposal.

21.8 Monitoring Wells. In the event that District has reason to believe that Hazardous Materials may be present on the District Property, District may require that, at Lessee's expense, testing wells be installed on the District Property, at locations determined by District, and may cause the ground water to be tested to detect the presence of Hazardous Materials by the use of such tests as are then customarily used for such purposes. Lessee shall comply promptly with any such request.

21.9 Survival. The obligations of Lessee under this Section shall survive the expiration or earlier termination of this Lease. The rights and obligations of District and Lessee with respect to issues relating to Hazardous Materials are exclusively established by this Section. In the event of any inconsistency between any part of this Lease and this Section, the terms of this Section shall control.

21.10 Release or Spill Caused by Lessees. In the event that Lessee causes any Hazardous Materials to be released, spilled or otherwise exposed through its use and occupancy of the Property. Lessee shall be solely responsible for all costs associated with the proper handling, mitigation, remediation and disposal of the Hazardous Materials and all related cleanup.

22. BROKER COMMISSIONS. Lessee and District, hereby each represent and acknowledge that [INSERT NAME OF BROKER] of [INSERT BROKER'S COMPANY NAME] has been engaged by Lessee as brokers or finders to represent them in connection with this Agreement and Lessee will bear the cost of any commission due in accordance with the terms of a separate written agreement executed by the Lessee. Lessee 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.

23. TIME OF THE ESSENCE. Time is expressly declared to be of the essence in this Agreement.

24. ASSIGNMENT. Lessee shall not assign its rights, duties or privileges under this Agreement, nor attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the express written consent of the District.

25. NON-DISCRIMINATION. Lessee shall not employ any discriminatory

practices in its performance hereunder, including its employment practices, on the basis of sex, race, color, religion, national origin, ancestry, age, sexual orientation, or physical or mental disability.

26. INDEPENDENT CONTRACTOR STATUS. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

27. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between 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 both Parties.

28. VERIFICATION OF QUALIFICATIONS. Lessee shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with the Lessee's duties or obligations pursuant to this Agreement or the Lessee's use of the Property.

29. FINGERPRINTING AND CRIMINAL BACKGROUND INVESTIGATIONS. Lessee shall ensure compliance with the fingerprinting requirements of Education Code section 45125.1 for all employees, staff, and/or contractors who could have direct contact with minors, regardless of whether such individuals are paid or unpaid.

30. FORCE MAJEURE. Neither Party shall be held responsible or liable for an inability to fulfill any obligation under this Agreement by reason of an act of God, natural disaster, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or terrorism ("Force Majeure"). Any Party relying on a Force Majeure shall give the other Party reasonable notice thereof, and the Parties shall use their best efforts to minimize potential adverse effects from such Force Majeure, including, without limitation, subcontracting the obligations of the Party claiming such Force Majeure to a third party and extending the time periods for performance.

31. DISPUTE RESOLUTION. If a dispute arises that is related, in any way, to this agreement, the Parties agree to attempt first to resolve the dispute through negotiations. If negotiations are unsuccessful, the Parties agree to mediate the dispute prior to initiating legal action.

32. ATTORNEYS' FEES. If either Party files any action or brings any proceedings against the other arising out of this Agreement, 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. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

33. 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. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the County where the District's administrative offices are located.

34. PROHIBITED ACTIVITIES. Use of tobacco products, intoxicants, or illegal controlled substances is prohibited in or about the Property. Profane language, quarreling, fighting, and/or gambling is also prohibited.

35. CONFLICT OF INTEREST. Lessee agrees that it shall avoid any relationship with the District that constitutes or potentially constitutes a conflict of interest between Lessee, if applicable, and the District. This prohibition shall extend to employment with District, in cases where a conflict of interest may arise from said relationship.

36. WAIVER. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

37. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

38. AMENDMENTS. Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring the revision, and any amendment to the Agreement shall only be effective upon the mutual agreement in writing of both Parties hereto.

39. COUNTERPARTS. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

40. CAPTIONS. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intentions of the Parties hereto.

41. SEVERABILITY. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

42. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

43. APPROVAL. The Parties agree that this Agreement shall not be binding on the Parties until the Agreement is approved by the District's Board of Trustees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

CAMBRIAN SCHOOL DISTRICT

SILVERADO CSD, INC.

Date: _____, 2021

Date: _____, 2021

By: _____

By: _____

Print: _____

Print: _____

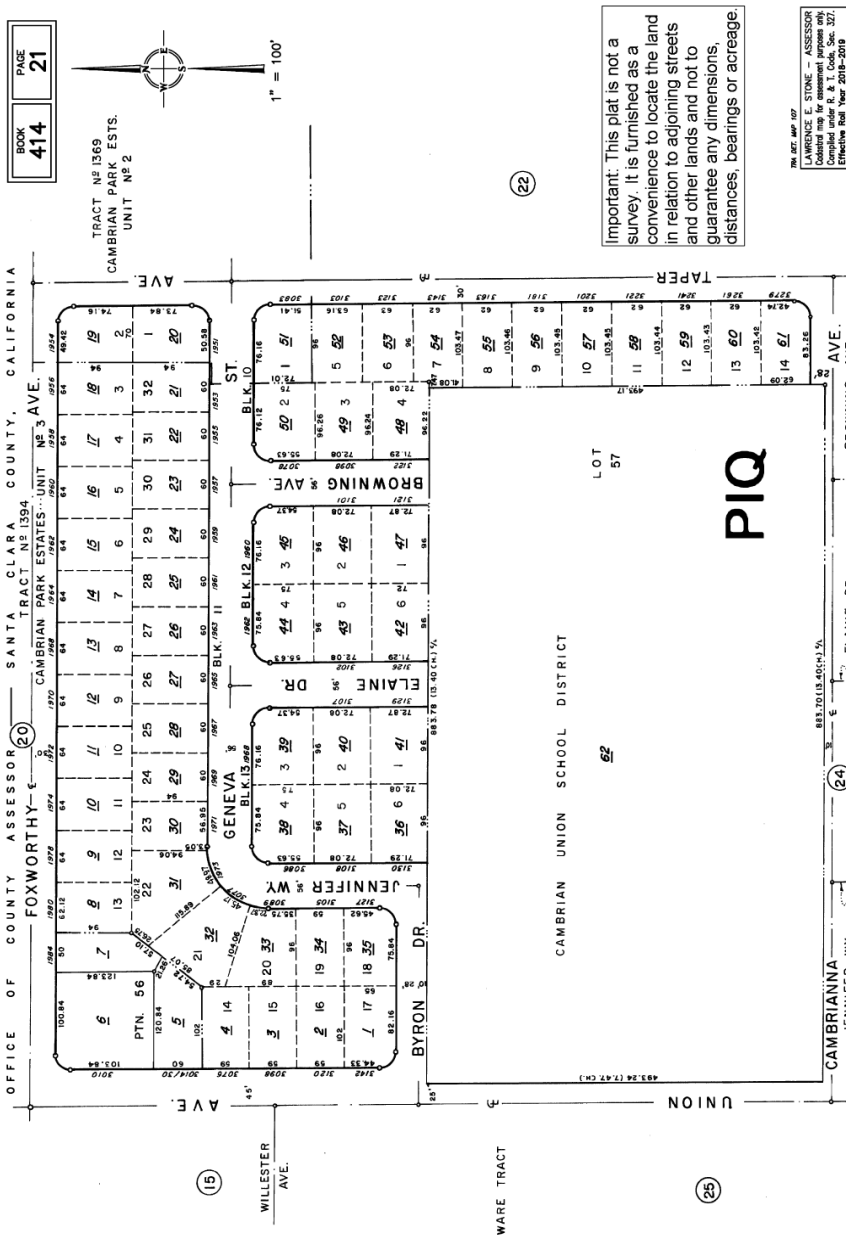
Title: _____

Title: _____

EXHIBIT "A"

DESCRIPTION AND MAP OF DISTRICT PROPERTY

A portion of APN 414-21-062 comprised of approximately 1.9 acres. The land will be surveyed to create a new legal parcel.



METZLER SITE



A

1.9 ACRES

B

4.6 ACRES

C

2.5 ACRES

Line Path Polygon Circle 3D path 3D polygon
Measure the distance or area of a geometric shape on the ground
Perimeter: 2,588.59 Feet
Area: 9.00 Acres
 Mouse Navigation Save Clear

August 1, 2019
Google

Byron Way

Union Ave

Cambrianna Dr

Jennifer Way

© 2019 Google

EXHIBIT "B"

MAP OF PROPERTY SUBJECT TO THIS AGREEMENT

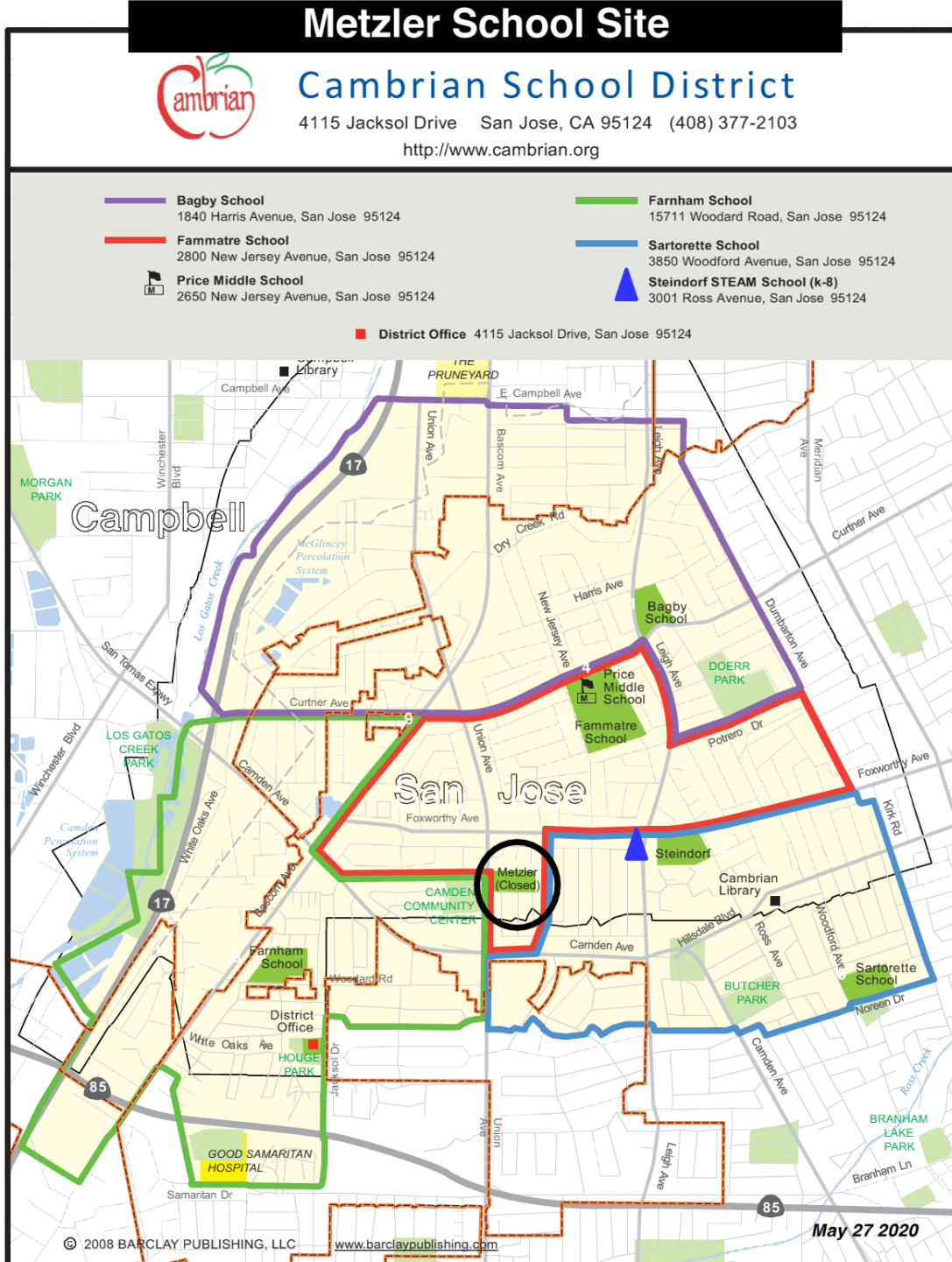


EXHIBIT "C"

DESCRIPTION OF LESSEE IMPROVEMENTS

DRAFT

EXHIBIT “D”

DESCRIPTION OF DISTRICT IMPROVEMENTS

Joint Use Area anticipated to be an approximately 6,000 sq. ft. Community Garden

- 1. A fence to secure the joint use area, approximate dimensions are (60' x 100').
Material TBD.**
- 2. Provide water and sewer service point of connection to the joint use area. Location
TBD.**
- 3. Provide electric power to the joint use area (120/208v). Location TBD.**
- 4. Construct a 10' x 15' tool and storage shed in the joint use area.**
- 5. Endowment to District of one-time \$50,000 payment to maintain and improve the
joint use area.**

EXHIBIT “E”

PLANS AND SPECIFICATIONS – LESSEE AND DISTRICT IMPROVEMENTS

[Attach or, at a minimum, state location of: Plans, drawings, addenda, and specifications.]

DRAFT

EXHIBIT "F"

SCHEDULE OF PERFORMANCE

DRAFT