
AGREEMENT FOR EXCHANGE OF REAL PROPERTY

BETWEEN

**EUREKA CITY SCHOOLS
AND
AMG COMMUNITIES – JACOBS, LLC**

PREAMBLE

This Agreement for Exchange of Real Property (“Agreement”) is entered into as of December 14, 2023 (“Effective Date”), between Eureka City Schools, a California Public School District (“District”), and AMG Communities – Jacobs, LLC a California limited liability company (the “Developer”) on the terms and conditions, which follow.

RECITALS

WHEREAS, the District is the owner in fee simple of ±8.3 acres of land located in Humboldt County (“County”), State of California, Assessor's Parcel No.: 009-111-006-000 and a portion of 009-101-018-000, and is more particularly described and depicted in Exhibit A attached hereto and made a part hereof (the “District Exchange Property”); and

WHEREAS, the Developer is the owner in fee simple of certain real property consisting of approximately .15 acres located at 3553 I Street, Eureka, CA 95503, Assessor Parcel Number 011-221-018, in the County of Humboldt, California, and is more particularly described and depicted in Exhibit B attached hereto and made a part hereof (hereinafter “Developer Property”); and

WHEREAS, District desires Developer Property for the purpose of housing for District employees; and

WHEREAS, the parties acknowledge that the District Exchange Property’s fair market value (“FMV”) is greater than the Developer Property; and

WHEREAS, in consideration for the conveyance of District Exchange Property, Developer is willing to convey the Developer Property and pay the District additional monetary compensation to account for the difference in fair market value between District’s Exchange Property and the Developer’s Property; and

WHEREAS, District is empowered to exchange real property, upon such terms and conditions as the District finds acceptable, under California Education Code sections 17536 and 17537; and

WHEREAS, the District Exchange Property is a portion of a larger site owned by District, with an elementary school and playfields in operation by District on property joining the District Exchange Property (the entirety of the District owned site that includes the District Exchange Property is referred to hereafter as the “Jacobs Site”);

WHEREAS, the subdivision of the Jacobs Site being effectuated by this Agreement is exempt from the requirements of the Subdivision Map Act pursuant to California Government Code section 66428(a)(2) in that the District is a public agency; and

WHEREAS, the parties believe that a property exchange of the District Exchange Property and the Developer Property as described above would be in the best interest of both parties.

NOW, THEREFORE the parties agree as follows:

TERMS, CONDITIONS. AND COVENANTS

ARTICLE I DEFINED TERMS

For the purpose of this Agreement, the terms set forth below have the following meanings:

1.01 Escrow. “Escrow” means that escrow to be opened with Escrow Holder pursuant to section 5.01 below.

1.02 Escrow Holder. “Escrow Holder” means Humboldt Land Title, 930 Sixth Street, Suite 200, Eureka, California 95501, telephone no. (707) 443-0837, facsimile no. (707) 445-5952. The Escrow Officer is Roxie Christiansen.

1.03 Escrow Instructions. “Escrow instructions” means (a) the provisions of this Agreement requiring any action by, or compliance on the part of, Escrow Holder, (b) escrow instructions known as “general provisions” which are pro forma escrow instructions of Escrow Holder (to the extent such escrow instructions do not conflict with the escrow instructions specifically set forth in this Agreement) and (c) any other supplemental instructions as may from time-to-time hereafter be signed and delivered by the parties to the Escrow Holder. In the event of any conflict between this Agreement and the “general provisions” of the Escrow Holder’s pro forma escrow instructions, the escrow instructions contained in this Agreement will govern.

1.04 Preliminary Title Reports. “Preliminary Title Reports” means those Preliminary Title Reports to be prepared by the Title Company pursuant to section 5.03 below.

1.05 District Exchange Property and Developer Property. “District Exchange Property” means the real property that is described in the depiction and legal description set forth in **Exhibit A**, consisting of approximately 8.3 acres. “Developer Property” means the real property that is described in the depiction and legal description set forth in **Exhibit B**, consisting of approximately 0.15 acres.

1.06 Title Company. “Title Company” means Humboldt Land Title.

1.07 Title Policies. “Title Policies” means owner’s policies of title insurance, CLTA Standard Coverage Policy, issued by the Title Company in the amounts shown in section 5.11 below.

1.08 Total Consideration. “Total Consideration” means the consideration set forth in section 2.02 below, for the conveyance of the District Exchange Property to the Developer and for the conveyance of the Developer Property to the District.

1.09 Parties. “Parties” means both District and Developer.

ARTICLE II EXCHANGE AGREEMENT

2.01 Exchange. Subject to the terms and provisions of this Agreement, Developer agrees to convey the Developer Property, along with cash in the amount set forth section 2.02(c) below, to the District in exchange for the District Exchange Property, and the District agrees to convey the District Exchange Property to the Developer in exchange for the Developer Property and said cash amount. The conveyances include all right, title and interest in and to the District Exchange Property and the Developer Property, respectively.

2.02 Total Consideration. The Total Consideration for the conveyance of the Developer Property consists of the District Exchange Property, and the performance of the terms and conditions of this Agreement. The Total Consideration for the conveyance of the District Exchange Property consists of the Developer Property, cash in the amount set forth below, and the performance of the terms and conditions of this Agreement.

(a) Fair Market Value of the District Exchange Property. The Parties agree that the fair market value of the District Exchange Property is Six Million Dollars (\$6,000,000.00).

(b) Fair Market Value of Developer Property. The Parties agree that the fair market value of the Developer Property is Six Hundred Fifty Thousand Dollars (\$650,000.00).

(c) Cash Payment to District. As a condition of closing of the exchange called for in this Agreement, Developer shall pay to District the difference in the Fair Market Value between the District Exchange Property and the Developer Property, or Five Million Three Hundred Fifty Thousand Dollars (\$5,350,000.00)

2.03 Due Diligence and Feasibility.

(a) The feasibility period set forth in this section shall be referred to hereafter as the “Feasibility Period,” and shall apply equally to both Parties. The Feasibility Period shall be fourteen (14) days from the Effective Date of the Agreement.

(b) District shall, during the Feasibility Period, have the opportunity to review the condition of the Developer Property and conduct any and all appropriate geological, engineering, safety and other inspections it determines necessary or as required by state and local law so as to ensure that the Developer Property complies with all state and local requirements applicable to District’s proposed use of the Developer Property. In addition to the Conditions Precedent set forth in Article V below, District’s obligation to exchange the District Exchange Property is conditioned upon the following:

(1) District’s approval of and satisfaction with the physical condition of the Developer Property and all tests, inspections, and studies to be conducted by

District, or Developer, including, without limitation, any environmental assessments.

- (2) District's determination that the Developer Property is suitable for District's intended uses.

District's failure to disapprove of the above conditions within the Feasibility Period shall be deemed District's approval of such conditions. In the event that District disapproves of any of the above conditions, District shall provide written notice to Developer prior to the end of the Feasibility Period, including any extension thereof. Developer shall have fourteen (14) days from receipt of said notice to cure the disapproved condition(s) to District's satisfaction; otherwise, the Agreement shall terminate.

During the Feasibility Period, Developer shall permit District, and its authorized representatives ("District's Agents") to enter onto the Developer Property, at reasonable times and upon reasonable notice, for the purpose of making engineering, geological, planning, development, structural and other studies, inspections and tests. District shall conduct such entry and any inspections in connection therewith so as not to cause any disruption at the Developer Property and otherwise in a manner reasonably acceptable to Developer. In the event District performs testing or destructive investigation of the Developer Property, District shall be responsible for returning the Developer Property to the condition existing prior to District's testing or destructive investigation of the Developer Property.

District and District's Agents shall keep the Developer Property reasonably clean and clear of equipment, building materials, debris and similar materials brought onto Developer Property by District or District's Agents, except as such materials and equipment are necessary for inspecting or testing the Developer Property for the purposes set forth in this Agreement. District shall at all times during its entry onto the Developer Property comply with any and all laws and regulations to the extent applicable to activities on the Developer Property and shall require the same of District's Agents. District shall indemnify, defend, and hold Developer and its agents, officers, and employees free and harmless from all demands, losses, and liabilities, including, without limitation, attorneys' fees, arising out of or connected with District's or District's Agents' entry onto the Developer Property pursuant to this section.

District acknowledges that the Developer Property is currently subject to one or more residential lease agreements, and that, should District accept the Developer Property, the District would assume Developer's rights and obligations under those lease agreements. District further acknowledges that the existence of such lease agreements shall not be a basis for the District's disapproval of the Developer Property.

(c) Developer shall, during the Feasibility Period, have the opportunity to review the condition of the District Exchange Property and conduct any and all appropriate geological, engineering, safety and other inspections it determines necessary or as required by state and local law so as to ensure that the District Exchange Property complies with all state and local requirements applicable to Developer's proposed use of the District Exchange Property. In addition to the Conditions Precedent set forth in Article V below, Developer's obligation to exchange the Developer Property is conditioned upon the following:

- (1) Developer's approval of and satisfaction with the physical condition of the District Exchange Property and all tests, inspections, and studies to be conducted by Developer, or District, including, without limitation, any environmental assessments.
- (2) Developer's determination that the District Exchange Property is suitable for District's intended uses.

Developer's failure to disapprove of the above conditions within the Feasibility Period shall be deemed Developer's approval of such conditions. In the event that Developer disapproves of any of the above conditions, Developer shall provide written notice to District prior to the end of the Feasibility Period, including any extension thereof. District shall have fourteen (14) days from receipt of said notice to cure the disapproved condition(s) to Developer's satisfaction; otherwise, the Agreement shall terminate.

During the Feasibility Period, District shall permit Developer, and its authorized representatives ("Developer's Agents") to enter onto the District Exchange Property, at reasonable times and upon reasonable notice, for the purpose of making engineering, geological, planning, development, structural and other studies, inspections and tests. Developer shall conduct such entry and any inspections in connection therewith so as not to cause any disruption at the Jacobs Site and otherwise in a manner reasonably acceptable to District. In the event Developer performs testing or destructive investigation of the District Exchange Property, Developer shall be responsible for returning the District Exchange Property to the condition existing prior to Developer's testing or destructive investigation of the District Exchange Property.

Developer and Developer's Agents shall keep the District Exchange Property reasonably clean and clear of equipment, building materials, debris and similar materials brought onto District Exchange Property by Developer or Developer's Agents, except as such materials and equipment are necessary for inspecting or testing the District Exchange Property for the purposes set forth in this Agreement. Developer shall at all times during its entry onto the District Exchange Property comply with any and all laws and regulations to the extent applicable to activities on the District Exchange Property and shall require the same of Developer's Agents. Developer shall indemnify, defend, and hold District and its Board members, agents, officers, and employees free and harmless from all demands, losses, and liabilities, including, without limitation, attorneys' fees, arising out of or connected with Developer's or Developer's Agents' entry onto the District Exchange Property pursuant to this section.

2.04 Independent Consideration.

(a) Concurrently with the execution of this Agreement, District shall pay and deliver to Developer the sum of One Hundred Dollars (\$100.00) as separate and independent consideration ("Independent Consideration") for Developer's execution of this Agreement and agreement to exchange the Developer Property for the District Exchange Property on and subject to the terms and conditions of this Agreement, including, without limitation, District's right to terminate this Agreement prior to the expiration of the Feasibility Period in connection with its investigations. The Independent Consideration is non-refundable to the District in the event this Agreement terminates prior to the Close of Escrow under any and all circumstances.

(b) Concurrently with the execution of this Agreement, Developer shall pay and deliver to District the sum of One Thousand Dollars (\$1000.00) as separate and independent consideration (“Independent Consideration”) for District’s execution of this Agreement and agreement to exchange the District Exchange Property for the Developer Property on and subject to the terms and conditions of this Agreement, including, without limitation, Developer’s right to terminate this Agreement prior to the expiration of the Feasibility Period in connection with its investigations. The Independent Consideration shall not be applicable to the cash payment to the District and is non-refundable to the Developer in the event this Agreement terminates prior to the Close of Escrow under any and all circumstances.

ARTICLE III RIGHT OF FIRST REFUSAL

3.01 Right of First Refusal. If, following Close of Escrow, Developer elects to sell or lease all or any portion of the District Exchange Property to a third party not affiliated with Developer, after receiving a written offer to purchase (“Offer”) Developer shall first provide written notice to District at least ninety (90) days prior to such sale or lease. Developer shall, to the extent legally permitted, first afford District the first right of refusal to purchase or lease the District Exchange Property or any portion thereof at the same purchase price and terms stated. The District’s right of first refusal shall terminate ninety (90) days after receipt of such notice. The grant deed shall identify the right of first refusal as a deed restriction. The District’s right of first refusal set forth herein shall automatically terminate upon the date that is five (5) years after Close of Escrow.

The provisions of this section 3.01 shall not apply to any portion of the District Exchange Property that is sold or leased to individual homebuyers or renters following further subdivision of the District Exchange Property and/or development of residential units.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.01 Developer’s Representations and Warranties. Developer covenants, represents, and warrants the following:

(a) Full Authority to Convey All Interest in the Developer Property. Developer has the full right, power, and authority to execute this Agreement, and related title documents, has the full right, power, and authority to perform all of the obligations hereunder, and has the full right, power and authority to dispose of or otherwise convey the Developer Property as described herein. Developer represents that it has secured, or will secure before Close of Escrow, all appropriate consents that are necessary to consummate the Agreement, if any. The Title Company will satisfy itself that the Developer has full right, power and authority to execute this Agreement and to convey all right, title and interest set forth herein.

(b) Compliance with Applicable Law and No Pending Litigation Against the Developer Property. To Developer’s knowledge, there is no violation of federal, state, or local law, code, ordinance, rule, regulation or requirement, nor is there any pending or threatened litigation in connection with the Developer Property which would prohibit the conveyance of the Developer Property or prohibit the development of the Developer Property for the District’s intended purposes.

(c) No liens Securing Payment or Other Obligations on Developer Property.

Developer warrants that the Developer Property is not encumbered, or will not be encumbered by the time of Close of Escrow, by liens securing payment or other obligations which, if not performed, would entitle a third party or entity to foreclose on the Developer Property as collateral.

(d) No Hazardous Waste on Developer Property. To Developer's knowledge,

(1) the Developer Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Developer Property, including but not limited to soil and groundwater conditions, and (2) neither Developer nor any other persons have used, generated, manufactured, stored or disposed of on, under or about the Developer Property or transported to or from the Developer Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials ("Hazardous Substances"). For the purpose of this Agreement, Hazardous Substances include, without limitation, oil, natural gas or other petroleum or hydrocarbon substances; substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes" or "restricted hazardous wastes" or stated to be known to cause cancer or reproductive toxicity under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. section 1801, et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. section 1317, et seq.; the California Hazardous Substance Act, Health & Safety Code sections 28740, et seq.; the California Hazardous Waste Control Act, Health & Safety Code sections 25100, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health & Safety Code sections 24249.5, et seq.; the Porter-Cologne Water Quality Act, Water Code sections 1300, et seq.; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws.

(e) "As-Is."

(i) Disclaimer. Except as set forth in section 3.01, Developer has not made, and District acknowledges that Developer has not made, any warranty or representation, express or implied, written or oral, statutory or otherwise concerning the Developer Property, including, but not limited to, the following: (i) the condition of title to the Developer's Property; (ii) the nature, physical condition or other aspect of the Developer's Property; (iii) the existence of hazardous substances in, on, about, under or affecting the Developer's Property; (iv) the suitability of the Developer's Property for District's intended uses; or (v) the compliance of the Developer's Property with any federal, state or local laws, ordinances, statutes, rules or regulations, including, without limitation, any environmental laws.

4.02 The District's Representations and Warranties. The District covenants, represents and warrants the following:

(a) Full Authority to Convey All Interest in the District Exchange Property.

District has the full right, power, and authority to execute this Agreement, and related title documents, has the full right, power, and authority to perform all of the obligations hereunder, and has the full right, power and authority to dispose of or otherwise convey the District Exchange Property as described herein. District represents that it has secured, or will secure before Close of Escrow, all appropriate consents that are necessary to consummate the Agreement, if any. The Title

Company will satisfy itself that the District has full right, power and authority to execute this Agreement and to convey all right, title and interest set forth herein.

(b) Compliance with Applicable Law and No Pending Litigation Against the District Exchange Property. To the best of District's actual knowledge, there is no violation of federal, state, or local law, code, ordinance, rule, regulation or requirement, nor is there any pending or threatened litigation in connection with the District Exchange Property which would prohibit the conveyance of the District Exchange Property or prohibit the development of the District Exchange Property for Developer's intended purposes.

(c) No liens Securing Payment or Other Obligations on District Exchange Property. District warrants that the District Exchange Property is not encumbered, or will not be encumbered by the time of Close of Escrow, by liens securing payment or other obligations which, if not performed, would entitle a third party or entity to foreclose on the District Exchange Property as collateral.

(d) No Hazardous Waste on School District Exchange Property. To District's actual knowledge, (1) the District Exchange Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the District Exchange Property, including but not limited to soil and groundwater conditions, and (2) neither District nor any other person has used, generated, manufactured, stored or disposed of on, under or about the District Exchange Property or transported to or from the District Exchange Property any Hazardous Substances as defined in section 4.01(d) above.

(e) "As-Is."

(i) Disclaimer. Except as set forth in section 4.01, District has not made, and Developer acknowledges that District has not made, any warranty or representation, express or implied, written or oral, statutory or otherwise concerning the District Exchange Property, including, but not limited to, the following: (i) the condition of title to the District's Exchange Property; (ii) the nature, physical condition or other aspect of the District's Exchange Property; (iii) the existence of hazardous substances in, on, about, under or affecting the District's Exchange Property; (iv) the suitability of the District Exchange Property for Developer's intended uses; or (v) the compliance of the District's Exchange Property with any federal, state or local laws, ordinances, statutes, rules or regulations, including, without limitation, any environmental laws.

ARTICLE V CONDITIONS PRECEDENT

The obligations of the District and the Developer to complete this transaction pursuant to this Agreement are subject to the satisfaction, at or before the Close of Escrow, of the conditions contained herein. The District and Developer agree that each party will, in good faith, endeavor to remove all said contingencies and conditions which are within the control of the respective party. The following are conditions precedent to the performance of the Agreement:

5.01 Condition that Funds and Closing Costs be Deposited in Escrow. Performance of this Agreement is conditioned on the deposit into escrow by the Developer of the (a) the amount of cash pursuant to section 2.02 above, and (b) all of the title and escrow costs, fees, and charges necessary to complete the exchange of properties contemplated under this Agreement, under the following schedule: within ten (10) days of demand by the Escrow Holder, Developer will deposit funds with the Escrow Holder sufficient to defray all of said costs, fees, and charges.

5.02 Conveyance of Good Title. Except as otherwise provided, each party will convey good and marketable title to its property by Grant Deed free and clear of all debts, liens, assessments and encumbrances, unless specifically allowed or permitted by section 5.03.

5.03 Title Review. As soon as possible, but in no event later than five (5) days after the Effective Date of this Agreement, Escrow Holder shall (a) provide the District with a preliminary report issued by the Title Company as to the title condition of the Developer Property, along with copies of all underlying title exception documents and a map of plotted easements, and (b) provide Developer with a preliminary report issued by the Title Company as to the title condition of the District Exchange Property, along with copies of all underlying title exception documents and a map of plotted easements (the "Property Title Reports"). Each party then has thirty (30) days thereafter (the "Title Review Deadline") to approve or disapprove the status of title to the respective property it will be receiving hereunder. If before the Title Review Deadline a party disapproves of any of the exceptions to title shown in the Title Report or any land survey ("Disapproved Title Exceptions") by giving written notice of its disapproval to Escrow Holder and the other party, then within two weeks after the Title Review Deadline the other party shall notify the first party of those Disapproved Title Exceptions that the other party expects to be absent from the Title Policy, as defined below (the "Removable Exceptions"). In any event, any mortgages and deeds of trust, liens to secure debts, taxes or assessments (whether delinquent or not), any special taxes, or other financing or monetary encumbrances on either of the exchange properties are deemed Disapproved Title Exceptions and Removable Exceptions, and need not be identified on any notices under this paragraph. By written notice to Escrow Holder and the other party within one week after the Party's receipt of a notice described in the preceding sentence, either party may terminate this Agreement if any Disapproved Title Exceptions are not included in the Removable Exceptions, in which case the party that has been unable or unwilling to remove a Disapproved Title Exception must pay any escrow cancellation fees.

5.04 Miscellaneous Conditions. The following are also conditions precedent to the Close of Escrow, which must be satisfied before the Close of Escrow can occur:

(a) The District's Governing Board will have accepted and ratified this Agreement.

(b) The Title Company will be prepared to issue Title Policies in the names of the respective parties for marketable title, free of restrictions, liens, and encumbrances except as to those restrictions, liens, and encumbrances specifically allowed by or otherwise approved in writing pursuant to section 4.03 above.

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ARTICLE VI
ESCROW PROVISIONS

6.01 Escrow. The transfer of documents contemplated herein for the exchange of the properties will be affected through the Escrow.

6.02 Escrow Closing Costs. Developer shall be responsible for all title and escrow costs, fees, and charges necessary to complete the exchange of properties contemplated under this Agreement.

6.03 Conditions to Close of Escrow. The following are conditions precedent to the Close of Escrow (i.e., the transfer of the properties), which can be waived only by written waiver executed by Developer or the District as applicable:

- (a) The District will have deposited with the Escrow Holder all of the items required of it under this Agreement;
- (b) The District will not be in breach or default of any provision herein;
- (c) The District's warranties and representations as set forth herein are true as of the Close of Escrow;
- (d) Developer will have deposited with Escrow Holder all of the items required of it under this Agreement. Developer shall deposit all funds, title and escrow costs, fees and charges necessary to complete the exchange of properties contemplated under this Agreement;
- (e) Developer will not be in breach or default of any provision herein;
- (f) Developer's warranties and representations as set forth herein are true as of the Close of Escrow;
- (g) The Title Company will be committed to issue and will issue as of the Close of Escrow the Title Policies without the exceptions noted or objected to by the parties as set forth in this Agreement.

6.04 Developer's Deliveries to the Escrow Holder. On or before the Close of Escrow, Developer will deliver, or cause to be delivered, to the Escrow Holder, the following:

- (a) A grant deed or deeds to the Developer Property in a form approved by the Title Company;
- (b) Such other documents as, in the opinion of the Escrow Holder, are required from Developer to carry out the provisions of this Agreement.

6.05 The District's Deliveries to the Escrow Holder. On or before the Close of Escrow, the District will deliver, or cause to be delivered, to the Escrow Holder, the following:

- (a) A grant deed or deeds to the District Exchange Property in a form approved by the Title Company.

(b) A certificate of acceptance pursuant to section 27281 of the California Government Code, substantially in the form attached as **Exhibit C**; and

(c) Such other documents as, in the opinion of the Escrow Holder, are reasonably necessary to carry out the provisions of this Agreement.

6.06 Close of Escrow. Escrow for the District Exchange Property and the Developer Property shall close upon the recordation of the grant deeds in accordance with the terms and conditions hereof (“Close of Escrow” or “Closing Date” or “Closing”). Close of Escrow will occur no later than fifteen (15) days after the expiration of the Feasibility Period, or as extended by mutual written agreement of the parties, provided that if the Closing Date falls on a Saturday, Sunday, or legal holiday, it shall be extended to the next business day that is not a Saturday, Sunday, or legal holiday. Any extension of the Close of Escrow shall not be effective unless and until a fully executed (by District and Developer) original of any such written extension is provided to the Escrow Holder. In any event, the Close of Escrow shall only occur after all conditions set forth in this Agreement have been satisfied or waived. In any event, the Close of Escrow shall only occur after all conditions set forth in the Agreement have been satisfied or waived.

6.07 Failure to Close Escrow. If the District or Developer determines that all conditions set forth in this Agreement for the Close of Escrow cannot be met, then this Agreement may be terminated and the escrow cancelled. The District or Developer will provide written notice to the other party and the Escrow Holder of such termination and cancellation. If the termination and cancellation is through no fault of the other party, then the terminating party will pay any escrow cancellation charges. Parties agrees that this sum will fully compensate the non-terminating party for any and all damages related to the termination of this Agreement and cancellation of the escrow and hereby waives any and all claims for additional compensation in connection therewith.

6.08 The Escrow Holder’s Duties on the Close of Escrow.

(a) The Escrow Holder will provide the parties, at least 5 days before the Close of Escrow, pro forma closing statements in addition to providing pro forma Title Policies to the parties as provided herein.

(b) The Escrow Holder will give notice to both the District and Developer at least 5 days before the Close of Escrow of its intention to close escrow 5 days thereafter, and will provide pro forma documents including grant deeds with legal descriptions. Escrow Holder will notify the parties at least 5 days before the Close of Escrow of any other deposits required of them. Escrow Holder will follow up on approval of the grant deed documents and of the pro forma closing statements with the parties at least 5 days before Close of Escrow.

(c) At the Close of Escrow, the Escrow Holder will:

(i) Prepare any preliminary or change of ownership statements as required by law.

(ii) Deliver the Title Policies to the parties.

(iii) Perform such other duties as, in the opinion of the Escrow Holder, are necessary to carry out the terms and provisions of this Agreement.

6.09 Distribution of Escrow Documents. Escrow Holder will deliver and distribute the following documents:

(a) To Developer, a proposed and final closing statement and pro forma policy of title insurance;

(b) To the District, a proposed and final closing statement and pro forma policy of title insurance;

(d) To the District and Developer, after recordation, the original of the respective grant deed or deeds and the Title Policies to be mailed to the addresses set forth below.

(e) To the District and Developer, copies of such other documents, if any, not referenced herein and which are recorded at the Close of Escrow.

6.10 Supplemental Escrow Instructions. The parties agree to execute supplemental escrow instructions to carry out the provisions of this Agreement, provided the supplemental instructions are not inconsistent with this Agreement as written or as it may hereafter be amended.

6.11 Title Insurance. At the Close of Escrow, the Escrow Holder will cause the Title Company to issue the Title Policies for the Developer Property and the District Exchange Property to the parties, subject only to those exceptions permitted herein. Before Close of Escrow, the Escrow Holder will provide pro forma Title Policies to the District and Developer. The Title Policies to be issued to the Developer for the School District Exchange Property and to the District for the Developer Property shall be for the amounts set forth in Section 2.02 (b) and (c) above, respectively.

ARTICLE VII IMPROVEMENTS FOLLOWING CLOSE OF ESCROW

7.01 Fence Construction. No later than six (6) months after Close of Escrow Developer shall erect a fence meeting the requirements set forth in Exhibit D along the following boundary lines of the property separating the District Exchange Property from the remainder of the Jacobs Site.

Developer shall also install signage on the fence and Property which clearly informs members of the public that the Property is owned and maintained by Developer. The signage shall include instructions and a phone number for reporting Property-related complaints or incidents to Developer. The condition of this section 6.01 shall be recorded as part of the grant deed for the District Exchange Property.

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**ARTICLE VIII
NOTICES**

Any notice, demand, approval, consent, or other communication between the parties will be mailed to the following addressees:

- To Developer: **AMG Communities – Jacobs, LLC**
47 Main Street
Sutter Creek, CA 95685
Telephone: (209) 267-9217
Facsimile: (209) 992-4077
Attention: Thomas Swett
- with copy to: **Burton & Swett, LLP**
47 Main Street
Sutter Creek, CA 95685
Telephone: (209) 267-9217
Facsimile: (209) 992-4077
Attention: Thomas Swett
- To District: **Eureka City Schools**
2100 J Street
Eureka, CA 95501
Telephone: (707) 441-2400
Facsimile: (707) 476-1725
Attention: Superintendent Fred Van Vleck, Ed.D.
- with copy to: **Lozano Smith, LLP**
2001 North Main Street, Suite 500
Walnut Creek, California 94596
Telephone: 925.953.1620
Facsimile: 925.953.1625
Attention: Harold Freiman
- To Escrow Holder: **Humboldt Land Title**
930 Sixth Street, Suite 200
Eureka, California 95501
Telephone: (707) 443-0837
Facsimile: (707) 445-5952
Attention: Roxie Christiansen

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

9.01 Damage and Condemnation. If, before Close of Escrow, the District Exchange Property or any portion thereof, or the Developer Property or any portion thereof, is destroyed or damaged, the District or Developer, as applicable, shall apply all proceeds of any insurance policy applicable to the loss to the restoration of the applicable property. If before Close of Escrow, the District Exchange Property or Developer Property becomes subject to a taking by virtue of eminent domain, either or both of the Parties shall have a right to contest the taking of the property in question as the highest and best use of that property, or shall have the right to terminate this Agreement.

9.02 Binding Effect. This Agreement is binding upon the heirs, successors, and assigns of the parties.

9.03 Waiver of Provisions. The waiver by the Developer, or the District, of any breach by the District or the Developer, as the case may be, of any term, covenant or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach by the District or the Developer, as the case may be, of the same or of any other term, covenant or condition contained in this Agreement. Waiver of any provision of this Agreement must be in writing.

9.04 Commissions. The parties represent that they have not engaged any agents or brokers in connection with the transaction that is the subject of this Agreement.

9.05 Further Documents. The parties hereto agree to make, execute and deliver such documents and undertake such other and further acts as may be reasonably necessary or convenient to carry out this Agreement and its purpose and intent.

9.06 Entire Agreement. This Agreement, plus such ancillary agreements as may be executed by the parties in connection with this Agreement, sets forth the entire Agreement between Developer and the District and supersedes any and all prior negotiations and agreements, written or oral, concerning or relating to the conveyance of the Developer Property and District Exchange Property.

9.07 Invalidity of Any Provision. If any provision of this Agreement as applied to either party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

9.08 Amendments in Writing. No addition to or modification of any provision contained in this Agreement will be effective unless fully set forth in writing and signed by both parties hereto.

9.09 Time is of the Essence. Time is of the essence in this Agreement and each and every provision hereof. Although time is of the essence in this Agreement, this provision will not cause an automatic forfeiture and will be construed in accordance with traditional principles of equity.

9.10 Governing Law. The laws of the State of California will govern all questions with respect to the construction of this Agreement and the rights and liabilities of the parties.

9.11 Headings. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not to be construed as enlarging or limiting the language following said headings.

9.12 Construction. Whenever the context of this Agreement requires, the singular will include the plural and the masculine, feminine and neuter will include the others. This Agreement will not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared this Agreement. This Agreement consists of not only this Agreement but also any and all related documents necessary to consummate the exchange of the Developer Property and the District Exchange Property.

9.13 Survival of Warranties and Covenants. All of the covenants, representations and warranties set forth herein which are intended to bind the parties after the vesting of title to the properties will survive the Close of Escrow and delivery of the deed(s).

9.14 Execution in Counterpart. The execution of any document, including this Agreement, may be made in counterpart such that each document, when all signatures are appended together, will constitute a fully executed original or copy thereof.

9.15 Calendar Days. All time limits and related provisions herein will be counted in calendar days unless otherwise specifically provided.

9.16 Exhibits Incorporated by Reference. All Exhibits attached to this Agreement are hereby incorporated into the Agreement by this reference as if set forth in full.

(Signatures on next page)

EXECUTION

WHEREFORE, the District and the Developer, by their signatures below, enter into this Agreement effective on the date shown on page one of this Agreement.

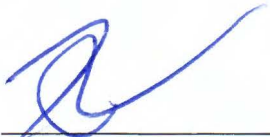
THE DEVELOPER:

THE SCHOOL DISTRICT:

AMG COMMUNITIES – JACOBS, LLC

EUREKA CITY SCHOOLS

By  _____

By  _____

ACKNOWLEDGMENT AND ACCEPTANCE

We acknowledge receipt of an original of the foregoing Escrow Instructions and the enclosures listed, and we agree to act as Escrow Holder under the terms and conditions of the instructions.

Humboldt Land Title

By _____

Dated _____, 20__

Its: Authorized Officer, Roxie Christensen

LIST OF EXHIBITS

- Exhibit A - Depiction and Legal Description of District Exchange Property
- Exhibit B - Developer Property
- Exhibit C - Certificate of Acceptance
- Exhibit D - Fence Requirements

EXHIBIT A

DEPICTION AND LEGAL DESCRIPTION OF DISTRICT EXCHANGE PROPERTY



EXHIBIT A

LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B

DEVELOPER PROPERTY

CITY OF EUREKA

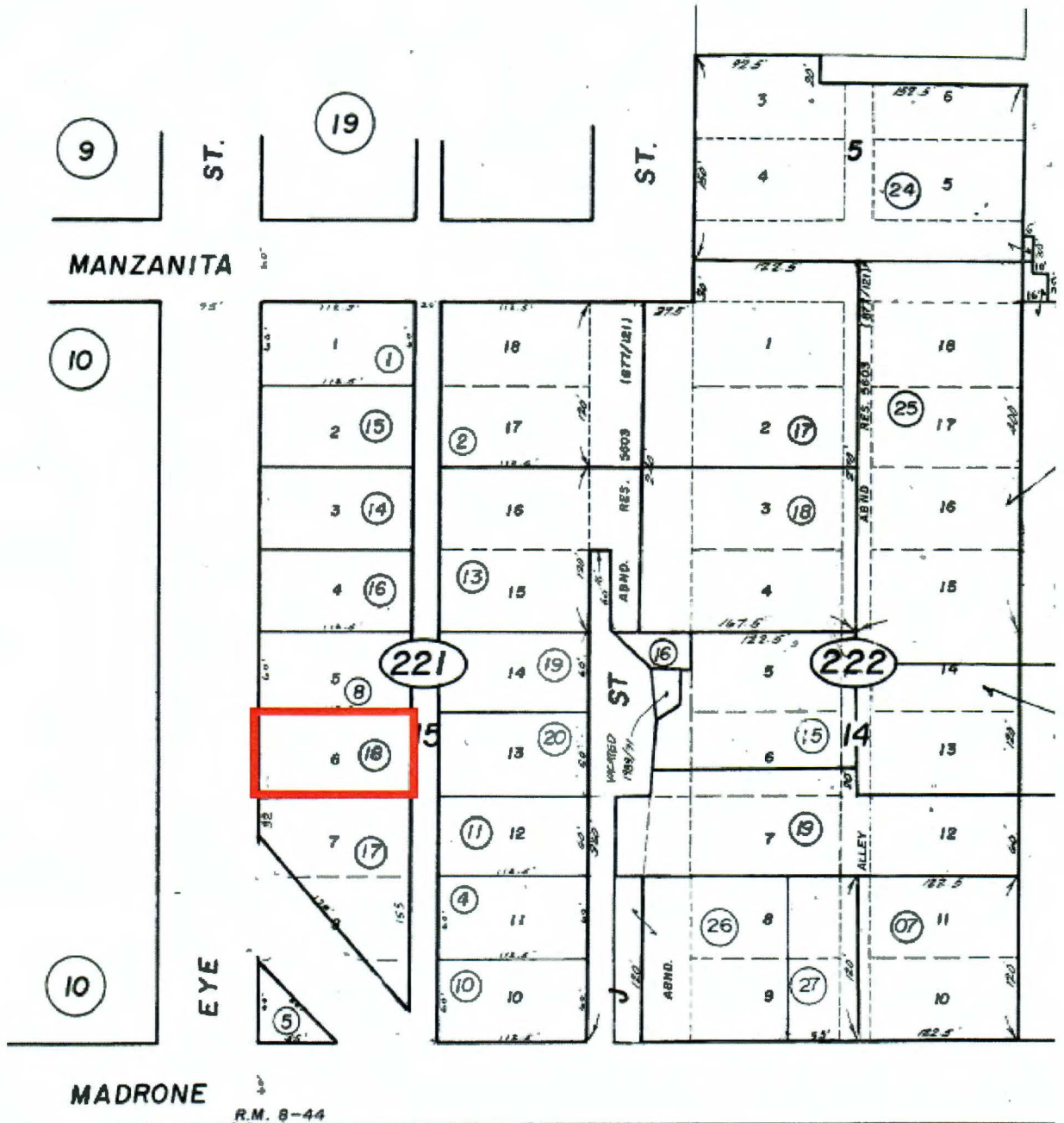


EXHIBIT C

CERTIFICATE OF ACCEPTANCE OF GRANT DEED

This is to certify that the interest in Real Property conveyed by grant deed dated _____, 202 __, from DEVELOPER, to EUREKA CITY SCHOOLS, a California public school district, is hereby accepted by _____, on behalf of EUREKA CITY SCHOOLS pursuant to the authority conferred by the Board of Trustees on _____, 202 __, and EUREKA CITY SCHOOLS, as grantee, consents to recordation of the grant deed by its duly authorized officer, _____, of EUREKA CITY SCHOOLS.

DATED: _____, 202 __

EUREKA CITY SCHOOLS
a California public school district

By: _____

[ATTACH NOTARY ACKNOWLEDGMENT]

EXHIBIT D

FENCE REQUIREMENTS

Pursuant to section 6.01 of this Agreement, Developer shall construct a fence between the District Exchange Property and adjacent District owned property, in conformance with the following specifications:

- Developer must construct a 6-foot black poly coated chain link fence using 2-8-6-foot black bonded chain link.
- Concrete mow strip/footings with a minimum width of 10" and heights ranging from 3 ½ inch to 36 inch as necessary and appropriate for the slope of ground.
- Corner and gate posts must be 2 7/8 inch Black poly coated CR 20 x 9'
- Section posts must be 2 3/8 inch Black poly coated CR 20 x 9'
- Top Rails must be 1 5/8 inch Black poly coated CR 20 x 24' and connected with 1 5/8 inch Black poly coated rail sleeves
- Black poly coated tension bars must be 3/16 inch x 3/4 inch
- Black poly coated clamps and hardware