AGREEMENT BETWEEN THE CITY OF SAN JOSE,
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
AND
OAK GROVE SCHOOL DISTRICT
FOR THE LEASE, DEVELOPMENT, OPERATION AND JOINT USE OF A COMMUNITY CENTER
AT THE CAROLINE DAVIS INTERMEDIATE SCHOOL

THIS AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 2008 ("Effective Date"), by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), the REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public agency ("Agency"), and OAK GROVE SCHOOL DISTRICT, a political subdivision of the State of California ("District"). Each of City, Agency and District are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

A. Section 10900 *et seq.* of the Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, design, construct, improve, maintain and operate recreation centers, including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums.

B. Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public authority for the purpose of organizing, promoting and conducting community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system.

C. Agency is presently engaged in redevelopment activities in the Edenvale Great Oaks Strong Neighborhoods Initiative Redevelopment Project Area ("E/GO SNI Area").

D. The Parties are vitally concerned with the social needs and general welfare of the students of the Caroline Davis Intermediate School, the residents of the adjacent neighborhood including the E/GO SNI Area, and the citizens of the City of San Jose as a whole.

E. The Parties share the common objectives of increasing student academic performance; reducing neighborhood crime, delinquency and truancy; enhancing recreational opportunities for the students and neighbors of the Caroline Davis

Intermediate School; and eliminating blight in the E/GO SNI Area for the greater overall benefit of all citizens of the City of San Jose.

F. District is the owner of certain real property located at 5035 Edenview Lane, in San Jose, California as described and depicted on Exhibit A-1 (the "Property"). The Property is improved with an intermediate school facility commonly referred to as Caroline Davis Intermediate School ("Davis School"), as well as a facility and grounds leased by the District to the Boys and Girls Club ("BGC"). The "Site" is that portion of the Property upon which the Center and Grounds, as described below, shall be located, which Site is described and depicted on Exhibit A-2.

G. The Parties believe that they can best achieve such common objectives by the construction and operation of a community center on the Property as shown on the site map attached hereto as Exhibit A-2.

H. The purpose of this Agreement is to provide for the following:

(1) Design and construction of a new community center and parking area for the users of such center (collectively the center and parking area shall be referred to as "Center") and landscaped grounds adjacent to the Center (which are designated on the plans and specifications for the Center) ("Grounds"). The Center and Grounds shall be located on Site, as shown in Exhibit A-2; and

(2) Joint use, operation and maintenance of the Center and Grounds by District and City. District and City intend to share use of the Center and City shall be responsible for certain maintenance costs as described in this Agreement; and

(3) Use of existing Davis School parking lots for events at the Center, during non-school hours, where the Center's parking lot is full. Such use shall not be available when scheduled summer school and Davis School activities are being held after normal school hours; and

(4) Relocation of BGC outdoor hardcourts to property BGC leases from District pursuant to the "Boys and Girls Club of Santa Clara County Lease Agreement" dated June 11, 1992 ("BGC Lease"); and

(5) Installation of certain fence around the perimeter of the property BGC leases from the District, pursuant to approved construction drawings.

The above components 1, 4 and 5, and any necessary ancillary work, shall comprise the "Project". The proposed Project is consistent with educational purposes and objectives.

I. The Parties intend by this Agreement to provide Agency with all necessary access to the Property in order to construct the Project, City with all necessary access to the Center and Grounds for operation, maintenance and use of the Center and Grounds, and the District with access to the Center gymnasium from the City, as set forth in this Agreement.

J. The Parties further intend that the District's consideration for this Agreement is the provision of the Site, that the Agency's consideration for this Agreement is funding and the construction of the Project, and that the City's consideration for this Agreement is funding and allowing the District to use the Center gymnasium.

In view of the above, the Parties agree as follows:

SECTION 1. WARRANTIES AND ACKNOWLEDGEMENTS/EASEMENTS.

A. District warrants that District owns the Property in fee simple, and that the Property is not burdened by any easements or restrictions which would prevent the use of the Site for the purpose of this Agreement, other than the BGC Lease and the easements described in Section 1B below. To the best of District's knowledge as of the Effective Date, the Property has no environmental conditions which will prevent the use of the Site for the stated purpose and objectives of this Agreement. District will cooperate with City and Agency in obtaining copies of a title report for the Property, and any Hazardous Materials (as defined below in Section 10) assessments, studies or tests of the Property which currently exist. District has delivered to City and Agency complete copies of the BGC Lease and communications site land license agreement affecting the Property, together with all amendments thereto.

B. District warrants that there are two (2) City public utility easements (one of which is a 27" sanitary sewer line) on the Site as depicted in Exhibit B. District will cooperate with City or Agency in the vacation of these easements. However, all costs associated with such vacation shall be borne by City or Agency. District represents that it shall secure any and all authorization necessary to allow the City and Agency access to the portion of the Property leased to BGC, for the purpose of installing a sanitary sewer line between the Center and the sewer connection located on Edenview Road, and for other necessary purposes as required to effectuate the Project. District agrees to convey any and all necessary easements, within the boundaries of the Property, required for the Project to be completed. Such easements may include (1) conveyance of an easement to allow for the installation of the 27" sanitary sewer line at its new location following the vacation of such in its current location, as referenced above; and (2) conveyance of an easement to allow for the installation of a storm drain to tie into the City line, the approximate locations of which are depicted in

Exhibit B. The form of the easement conveyance(s) shall be in a form reasonably acceptable to the City and District, and the purpose and locations of easements other than those specifically delineated above for sewer and storm drain shall be reasonably acceptable to District. City and Agency shall indemnify the District for any damage or loss to the District caused by the installation of the sanitary sewer line or storm drain tie-in, unless District was negligent or willful in creating the condition that caused any damage or loss.

C. District's Governing Board has approved District entering into this Agreement and has made a finding as set forth in California Health and Safety Code section 33445(a)(2) that no other reasonable means of financing the Center other than as set forth herein is available to District. A signed copy of the resolution of the District's Governing Board's finding under California Health and Safety Code section 33445(a)(2) shall be provided to City and Agency.

D. City and Agency, combined, have established an estimated Project budget in an amount of $18,500,000.00 ("Project Budget"). District acknowledges that City and Agency do not possess the full amount of the Project Budget as of the Effective Date, and that construction of the Project is dependent upon City and Agency obtaining adequate funding to award the construction contract ("Adequate Funding") by January 1, 2009. Agency will use the Project Budget to pay for the design and construction of the Project. No District funds are required to be used for the Project. Following receipt of Adequate Funding, and unless the Agreement is earlier terminated, Agency will commence construction of the Project by no later than January 1, 2011. In the event that Adequate Funding is not available by January 1, 2009, or Agency has not commenced construction of the Project by January 1, 2011, this Agreement may be terminated pursuant to Section 16D(1).

E. The Parties acknowledge that City funding of the operation and maintenance obligations under this Agreement shall be on a fiscal year basis (July 1 to June 30), and is subject to annual appropriations by the City Council. The Parties acknowledge that the Parties are public entities and, as such, are precluded by the California State Constitution and other laws from entering into obligations which financially bind future governing bodies, and that, therefore, except to the extent permitted by law, nothing in this Agreement shall constitute an obligation of future legislative bodies of the Parties to appropriate funds for the purposes of this Agreement.

F. District acknowledges that it has entered into the BGC Lease. District acknowledges and agrees that the terms of such lease will not interfere with any purposes, terms, duties, or obligations under this Agreement. Further, District acknowledges and agrees that, prior to commencement of construction (but in any event on or before September 1, 2008, irrespective of whether construction has commenced), it shall at its sole cost obtain, and shall thereafter enforce,

BGC's consent for, and agreement to fully and timely cooperate regarding, any and all work contemplated pursuant to this Agreement, including without limitation the granting of the sewer and storm drain easements noted in Section 1B, and any other easements reasonably requested. Such consent and agreement to cooperate shall be in form and content reasonably acceptable to City and Agency.

SECTION 2. TERM/COMPLETION.

A. **Agency**

1. Subject to the provisions of Section 16 of this Agreement, any and all terms, duties, and obligations for the Agency under this Agreement shall be effective on the Effective Date and shall remain in effect until the Project Completion Date, as defined below in Section 2C, unless such obligations explicitly survive termination.

B. **City and District**

1. Subject to the provisions of Section 16 of this Agreement, (1) District shall lease to the City, and City shall lease from the District, the Site, for a term of fifty (50) years following the Project Completion Date, as defined below in Section 2C ("Initial Term"); (2) Initial Term shall automatically extend for an additional term of twenty (20) years (the "Term Extension"), unless the City and District, in their respective sole discretions, upon at least one hundred eighty (180) days written notice to the City or District prior to end of the Initial Term, elect to have the Initial Term expire; and (3) any and all other terms, duties, and obligations for the City and District under this Agreement shall be effective on the Effective Date and shall remain in effect through the Initial Term and any subsequent extension as provided in this Section 2B. The Initial Term and Term Extension are collectively the "City Lease".

C. During the City Lease, title to the Site will remain with District and title to the Center, upon Project Completion Date, shall remain with City, subject to the provisions of this Agreement. Upon expiration or earlier termination (as described in Section 16 of this Agreement) of the City Lease, title to the Center shall automatically transfer to District. The Project shall be considered complete for purposes of (1) District's ability to use the gymnasium located within the Center as lessee; and (2) commencement of the City Lease, upon the later to occur of: i) the issuance of a certificate of compliance by the State Department of General Services, and ii) subject to reasonable verification thereof by City and District, written notification from Agency to City and District that it has completed all on-site construction and commissioning activities ("Project Completion Date").

If Adequate Funding of the Project Budget is secured by January 1, 2009, the Parties anticipate the Project Completion Date to be in Summer 2010.

D. After the Project Completion Date, District's use of the Center gymnasium will be as a non-exclusive lessee of the Center, as is more particularly described herein.

E. District shall provide use of the Existing Parking Areas, as defined in Section 9 below, for patrons of the Center during non-School Hours except when scheduled summer school and Davis School activities are being held during non-School Hours. The terms of such use are more particularly described in Section 9. For purposes of this Agreement, "School Hours" shall mean the District-designated school year, typically between the dates of approximately August 20 and June 20th, every Monday, Tuesday, Wednesday, Thursday and Friday between the hours of 7:00 a.m. and 3:00 p.m., excluding District holidays. Such use of the Existing Parking Areas will serve as a supplement to the Center's parking area being constructed as part of the Project.

F. City shall record a short form of this lease in the real property records of Santa Clara County.

SECTION 3. COMMUNICATION.

A. The Director of Parks, Recreation and Neighborhood Services ("Director") and the District Superintendent, or their respective designees, shall meet on a quarterly basis each calendar year, to confer on programming, scheduling, maintenance and repair issues related to the Center and Grounds.

B. City shall seek input from the local community on the proposed uses of the Center. City and District shall not use, or permit the Center to be used, in any manner that violates any State, federal, or local law, ordinance, rule or policy.

C. City, as owner of the Center, shall make the final decision regarding the scheduling of rooms and programs in the Center (with the exception of the District's use of the Center gymnasium as set forth in Section 8), and for maintenance and repair of the Center and Grounds, as further provided in Sections 5, 6, 7 and 8 of this Agreement.

SECTION 4. DESIGN AND CONSTRUCTION OF CENTER.

A. Agency intends to be the Project lead for the design and construction of the Project.

B. District, City and Agency have jointly selected a Project architect in compliance with Agency procedures and shall have jointly approved schematic drawings for

the Project. Agency shall be responsible for managing the design and construction of the Project. Without limiting the generality of the foregoing, Agency shall be responsible for hiring the design professionals for the preparation of drawings, plans, and specifications for the construction of the Project; compliance with all legal requirements, including without limitation the Field Act, Americans with Disabilities Act, Division of the State Architect ("DSA") requirements, prevailing wage requirements, the California Environmental Quality Act ("CEQA"), and storm water requirements; conducting and administering the bidding process for construction; awarding the construction contract; supervision and administration of construction; payment of amounts due to the architect, the contractor and other persons under contract with Agency providing services; and administration and resolution of any claims or disputes in connection with the design and construction of the Project.

Agency shall provide, at District's request, District with a copy of the construction contract for informational purposes only, at least ten (10) business days prior to commencing construction on the Project.

District shall cooperate with all reasonable requests of Agency in order to facilitate design and construction of the Project, including without limitation requests to permit construction staging on the Property during construction activities (presently contemplated to be required in the area northwest of the Site).

C. If any claims for any work done or materials furnished by parties under contract with Agency are filed against the Project or the Site, Agency shall resolve the claims at its own expense. If Agency fails to resolve the claims and any judgment is entered thereon or thereunder, Agency shall pay that judgment. Should Agency fail, neglect, or refuse to remove any meritorious claim or to pay any judgment thereon, District shall have the right to pay any amount required to release any such claims, or to defend any action brought on the claims and to pay any judgment entered on the claims; and Agency shall be liable to District for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said claims or any judgment obtained therefore. Agency's obligations pursuant to this section shall not apply to any claim that is caused by the action or inaction of the District. Agency's obligations under this Section shall survive the termination of this Agreement.

D. Subject to the terms of this Section 4D, Agency shall attempt to secure City and District's written approval if design modifications after joint approval of the schematic drawings will increase the footprint of the Center or Grounds. Agency shall coordinate with District to obtain District's approval. District shall provide its written approval or disapproval of the footprint modification within twenty (20) business days from receipt of Agency's written request which shall be sent certified, return receipt mail, to District Superintendent or designee. If District

fails to provide its written response within twenty (20) business days from the District's receipt of the City's written request, the modification shall be deemed approved by District. Agency, District and City shall not unreasonably withhold their approval.

E. The Parties acknowledge that pursuant to Education Code Section 17280 and California Code of Regulations, Title 24, section 4.315, the State Architect and State Fire Marshall are required to inspect and approve all plans and specifications for the Project. Agency is responsible for obtaining these and any other necessary approvals.

F. City shall comply, to the extent applicable, with the fingerprinting requirements set forth in Education Code section 45125.1 and 45125.2. Agency shall comply with the requirements set forth in Education Code section 45125.2 during construction of the Project by either of the methods noted in Education Code section 45125.2(a) (1) (i.e. barrier) or (2) (i.e. supervision).

G. The Parties understand that the Project design and construction schedule may be impacted by unforeseen events, and agree that until construction is ninety percent (90%) complete, the Parties should not plan for occupancy or use of the Center or Grounds by a date certain. Agency shall provide the City and District with written notice when the construction is ninety percent (90%) complete, and of the projected Project Completion Date.

H. The City shall name the Center the "Edenvale Community Center".

SECTION 5. MAINTENANCE, REPAIRS AND UTILITIES AT CENTER.

A. Agency will have no obligations whatsoever for the operation, maintenance or use of the Center and Grounds, the Existing Parking Areas or the outdoor hardcourts leased by District to BGC ("BGC Hardcourts"). City shall be responsible for performing or contracting for a third party to perform all Routine Maintenance and Capital Maintenance of the Center and Grounds. The terms "Routine Maintenance" and "Capital Maintenance" are defined below. City's use, operation and maintenance requirements shall exclude the Existing Parking Areas and the BGC Hardcourts. Notwithstanding this Section 5A, District acknowledges and agrees it shall be responsible for the use, operation, and clean-up of the Center gymnasium during District Time as further described in Section 5C and Section 8 of this Agreement.

1. Routine Maintenance shall mean the work necessary to keep the Center and Grounds clean and in proper working condition. Routine Maintenance includes all tasks reasonably necessary to clean and preserve the Center and Grounds so as to extend the life of their components and systems and avoid untimely Capital Maintenance, including without limitation,

compliance with all procedures set forth in operating manuals and warranty documentation for the care and preservation of any of the components and systems within the Center and Grounds.

2. Capital Maintenance shall mean the renovation, repair or replacement of any part of the structure of the Center and Grounds, and any mechanical or operating system contained within the Center and Grounds, including without limitation, heating, ventilation and cooling systems, solar systems (if any), plumbing systems and electrical systems.

B. The City in consultation with the District shall develop standards for both Routine Maintenance and Capital Maintenance of the Center and Grounds ("City's Maintenance Plan"). The standards shall include, at a minimum, the operation and maintenance standards required for the Center and Grounds during any construction contract warranty period which begins upon the Project Completion Date. All conditions applicable to District's rights under Section 4C of this Agreement shall apply to Capital Maintenance performed on the Center and/or Grounds, substituting therein, however, City for Agency.

C. District shall use, operate and maintain the Center gymnasium in a secure, clean, and safe condition during District Time, as that term is defined in Section 8 of this Agreement. District shall be responsible for any and all damages (other than reasonable wear and tear) caused during District Time to any components or improvements of the Center by (1) District's negligence; (2) students or other individual's use of the Center gymnasium; or (3) any unauthorized uses in the Center gymnasium. Any repairs required under this Section 5C shall be performed within ten (10) days or by a date mutually agreed upon between the City and District.

D. All utilities for the Center and Grounds, including telephone, cable, water, gas, electricity, and garbage and sewer service shall be metered separately from utilities serving other buildings at the Davis School site. City shall be responsible for the monthly payment of the costs of all utilities serving the Center and Grounds.

SECTION 6. STAFFING OF CENTER.

A. City shall select and retain a Center Director, responsible for overall management of the Center and all operational and programming issues for the Center. City shall be responsible for the compensation of the Center Director and all Center support staff.

B. City may enter into one or more agreements with third parties to provide for the management, maintenance or operation of the Center and Grounds.

C. City shall ensure that the Center Director, maintenance staff, and all staff based at the Center, pass the security and fingerprinting background checks required by Sections 45125.1 and 45125.2 of the Education Code, to the extent applicable.

SECTION 7. PROGRAMMING.

A. City, through the Center Director, shall be responsible for coordination and monitoring of the social, City-operated educational, leisure and recreation programs and services to be provided by or through City at the Center. Subject to the provisions of Sections 8 and 9 of this Agreement, the Center Director shall be responsible for determining the appropriate locations and scheduling of the various programs, services and activities offered by or through City.

B. The Center Director shall endeavor to secure a high degree of participation in the Center by the various public and private agencies providing educational, leisure, health and social services within the City of San Jose to meet the diverse needs of the community. Such participation may include programs relating to special education, special counseling, cultural and linguistic needs, special programs for "at risk" youth, and social services based on community needs.

C. Pursuant to Health and Safety Code section 104350, Business and Profession Code section 25608, and Education Code sections 48900 and 48901, and any successor statues thereto, the consumption of alcoholic beverages and cigarette smoking shall not be permitted on Davis School property, including the Site. The Parties, and their agents, employees, volunteers, and independent contractors shall observe strict fire and smoking precautions on the Site. The Parties, and their agents, employees, volunteers and independent contractors shall not light any fires on the Site and shall not carry any firearms, illegal drugs or intoxicating beverages onto the Site. The Parties shall ensure compliance with this Section throughout the duration of the term of this Agreement (including but not limited to during construction of the Project, and the subsequent use of the Center and Grounds), except that Agency's obligations shall terminate upon the Project Completion Date.

SECTION 8. USE OF CENTER.

City shall endeavor to provide a comprehensive program of sports, recreational and cultural activities within the Center pursuant to the following principles, policies and guidelines:

A. Preference should be given to programs which will make the Center available to the maximum number of participants. Except for District's exclusive use of the

Center gymnasium described below, the City shall have exclusive use of the Center.

B. District shall have exclusive use of the Center gymnasium for recreational activities or general student body assemblies during School Hours and for four (4) additional days per year on dates to be determined annually by District, following consultation with the City (the School Hours plus the four additional days shall be hereinafter referred to as "District Time"), except as such schedule may be modified by mutual consent of District and City pursuant to Section 3 of this Agreement. District's provision of the Site for construction of the Project shall constitute full payment for use of the gymnasium during District Time, which use shall therefore be at no cost to District. District's use of the gymnasium for times other than District Time or of other parts of the Center shall be subject to any standard terms, fees and conditions which the City establishes for its third party users of the Center and shall be on an as available basis. District may extend District Time from 3:00 p.m. to 6:00 p.m. up to twelve (12) days per year at no charge if, at the City's sole discretion, both of the following criteria are met: (1) any City contracted use can be accommodated in a District facility, such as the existing onsite multipurpose room located at Davis School; and (2) District provides City or the contracting party access to the facility at no charge.

C. District shall assume full responsibility for the following:

1. Setting up and returning any bleachers, mats, or other gymnasium equipment needed for Davis School activities during District Time;
2. Returning bleachers to the stacked position and storing mats or other gymnasium equipment in a designated storage area after each day's use of the gymnasium and during District Time;
3. Supervision of any student or other persons entering the Center from the gymnasium during District Time;
4. Any damage above and beyond normal wear and tear to the Center gymnasium, or City equipment in the Center gymnasium as a result of Davis School use or otherwise occurring during District use, excluding damage occurring during City's period of use;
5. Disarming and arming the gymnasium security alarm system before and after District Time, understanding, however, that it shall be City's responsibility to ensure that the interior doors connecting the Center to the Center gymnasium shall be locked from the Center side so that these doors cannot be opened from the Center side to allow access from the Center to the Center gymnasium without the use of a key; and
6. Ensuring that the gymnasium is returned to a broom swept condition after District Time. For purposes of this Agreement, "broom swept" shall mean that all paper, bottles, posters, balloons and other debris are removed from the gymnasium floor, walls, bleachers and ceiling and disposed of in District-owned containers located outside of Center.

D. City shall be entitled to charge and collect fees for any activity or program organized by City and conducted at the Center in such amounts as approved by the San Jose City Council and as permitted by law. All fees collected shall be the sole property of City.

E. District shall be responsible for supplying, maintaining and storing mats or other equipment it uses in the gymnasium in a location designated by the City within the gymnasium's "Gym Storage Room". District is responsible for providing a keyed lock to its designated storage area within the Gym Storage Room.

SECTION 9. USE OF EXISTING DAVIS SCHOOL PARKING LOTS.

A. City shall be entitled, at no cost or expense to City except as provided in this Section, to the use of no more than fifteen (15) parking spaces in the existing Davis School parking lot (see Exhibit A-1) and designated pedestrian pathways ("Existing Parking Area") for parking in connection with a Center function after School Hours and after summer school or Davis School activities which may occasionally be held after School Hours. Such use shall start to be available upon Project Completion Date. District shall cooperate with City in providing District-approved signage at City cost to direct guests, staff and other Center users along the designated route to the Center.

B. City shall be responsible for litter/trash pick up in the Existing Parking Area after a City event in the Center where the City uses the Existing Parking Area, and District shall be responsible for litter/trash pick up at all other times. City and Agency may not use the Existing Parking Area at all during the construction period.

C. Each Party shall be responsible for providing security in the Existing Parking Area to the extent that respective Party is using the Existing Parking Area, or in absence of such information, to the extent that each respective Party is using the Center.

SECTION 10. ENVIRONMENTAL CONDITIONS.

A. **Pre-Existing Conditions.** Except as is expressly provided to the contrary in Section 10B below, District, at District's sole cost and expense, shall be responsible for remediation of any Hazardous Materials, as defined in Exhibit C, existing at, in, on, or under the Property prior to the date the Agency commences construction of the Project. District's obligations extend to any investigation, assessment, or remediation that may be required by any government authority with jurisdiction over such Hazardous Materials.

B. **City/Agency's option/Return of Site to Prior Condition.** Notwithstanding the provisions of Section 10A. to the contrary, in the event that, during the

construction of the Project, Hazardous Materials are found to exist at, in, on, or under the Property, which Hazardous Materials are required by applicable law to be remediated to complete the Project and/or use the Center and were not known to the District as of the Effective Date (or thereafter caused or permitted by District), Agency's and City's remedies shall be limited to either: i) Agency's remediating such Hazardous Materials, as required by applicable law to complete the Project and/or use the Center, at its own cost, or ii) terminating this Agreement pursuant to Section 16D(2), in event of which termination the Agency shall vacate the Site and use reasonable diligence to restore the Site to its condition prior to construction subject to the following provisions. If Agency or City elect to so terminate this Agreement, neither City nor Agency shall have any further responsibilities whatsoever with respect to such Hazardous Materials, except to provide temporary containment thereof, as required by applicable law, during such period as is reasonably required in order to permit the District to assume responsibility for management of such Hazardous Materials. Further, to the extent that restoration of the Site to its condition prior to construction is not permitted under applicable law until such Hazardous Materials have been remediated, Agency shall be relieved of such obligation to restore. The provisions of this Section 10B shall also apply to any remediation required by applicable law which arises in connection with excavation of serpentine rock.

C. **Mutual Responsibilities/Indemnification.** City, Agency and District agree that none of them will cause or permit any Hazardous Materials to be released at, on, under, or placed upon, under or around the Property, except as permitted by law. Each of the Parties hereto shall indemnify and hold each of the other Parties harmless from any loss, claim, or expense occurring by reason of its acts or omissions in violation of this Section 10C. Notwithstanding anything stated in this Agreement, except to the extent that Agency has elected to remediate the same under Section 10B above, City and Agency shall not assume any liability or responsibility whatsoever for the presence of any Hazardous Materials at, in, on, or under the Property as of the date the Agency commences construction of the Project or the presence of any Hazardous Materials at, in, on or under the Property that have been caused or created by any third party other than the City and Agency, or their respective agents, contractors or consultants. The Parties' obligations under this Section shall survive the termination of this Agreement.

D. **District's Cooperation.** In the event that any investigation, assessment or remediation is required to complete the Project, District shall cooperate with City and Agency in the investigation and remediation of any Hazardous Materials existing at, in, on, or under the Property and District shall provide all required access to the Property to complete the investigation, assessment or remediation. The District shall not be responsible for the costs of any investigations or assessments.

SECTION 11. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata, but instead, the Parties agree that pursuant to Government Code Section 895.4, each Party hereto shall fully defend, indemnify and hold harmless the other Party, the Party's officers, elected or appointed officials, employees, volunteers, invitees and agents ("Indemnitees") from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, agents or employees, under or in connection with or arising from any work, authority or jurisdictions delegated to such Party under this Agreement. No Indemnitee thereof shall be responsible for any claim, expense or cost, damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, their officers, agents or employees under or in connection with or arising from any work, authority or jurisdictions delegated to such Party under this Agreement, including but not limited to any non-compliance by a Party.

This Section shall survive the termination of this Agreement and shall remain in effect for a period of time equal to any applicable statute of limitations for a cause of action to be brought against any of the Parties in relation to this Agreement or the subjects addressed herein.

SECTION 12. INSURANCE.

A. Without limiting the provisions of Section 11 above, each Party to this Agreement shall maintain its own commercial general liability insurance in an amount not less than $1,000,000.00 per occurrence for Bodily Injury, Personal Injury and Property Damage and shall furnish to the other, on request, a certificate of such insurance. The above requirement may be satisfied by a Party through reasonable self-insurance practices; further, any Party may require the other Parties to periodically meet and confer regarding the need to increase the amounts of insurance set forth therein. Following such time as legal ownership of the Center is transferred to the City, City will insure the completed Center for casualties, or self-insure the same for such risks, in accordance with the City's Risk Management program in place from time to time. Each Party shall provide to the other not less than thirty (30) days' notice of any cancellation or material change in coverage. In addition, the City may insure or self-insure the Center from other risks at limits determined appropriate by the City's Risk Manager.

B. During the course of construction, Agency shall require that the contractor for the Project provide the minimum insurance coverages set forth in Exhibit E. Agency shall not commence work on the Project nor shall it allow any contractor, or consultant to commence work under this Agreement until all insurance certificates and endorsements required thereby have been obtained and

delivered in duplicate to the City and District for approval. In the event that the Project Completion Date has not occurred within three (3) years from the Effective Date, the District, Agency or City may require the other Parties to meet and confer regarding the need to increase the amounts of insurance set forth therein.

C. The foregoing insurance requirements are subject to amendment or waiver if so approved in writing by the City's and District's risk managers.

SECTION 13. ASSIGNMENTS.

A. No Party to this Agreement shall assign any of its rights or duties hereunder, in whole or in part, without the prior written consent of the other Parties, which shall not be unreasonably withheld or delayed.

B. All covenants, promises, conditions, representations, and agreements expressed in this Agreement shall be binding on the Party who makes them and on that Party's representatives, successors, and permitted assigns.

SECTION 14. DAMAGE OR DESTRUCTION

A. Following Project Completion Date, in the event that the Center is damaged or destroyed by fire or other casualty, City may, at its sole option, elect to repair the damage to the Center, or to terminate this Agreement pursuant to subsection C below. City shall give the District written notice of its election within ninety (90) days of the damage or destruction of the Center.

B. If City elects to repair the Center, all conditions applicable to District's rights concerning the construction of the Project shall apply to repairs to the Center under this Section. Upon City's election to repair the Center, it may repair the Center to such reasonable standards as determined by City and the District. City shall be responsible for all expenses of placing fences, enclosures or other structures as City and District mutually agree are reasonable to prevent people from accessing the Site or Center until the repair or demolition is complete.

C. If City elects to terminate this Agreement, City shall demolish the Center and remove any rubble or debris from the Site and restore the Site to the condition in which it existed as of the commencement of construction, if requested by District within 30 days of City's delivery of notice of termination of this Agreement. If District does not request City to demolish the Center and remove the rubble or debris, City shall vacate the Center no later than forty-five (45) days after delivery of City's notice of termination, leaving the Site in good condition, and the District shall own everything that remains on the Site, including but not limited to the buildings, equipment, and materials. Upon such termination and vacation or demolition, as appropriate, City and District shall have no further obligations

under this Agreement, except for the Agreement provisions that expressly survive termination of this Agreement. City may retain all insurance proceeds it receives.

SECTION 15. CONDEMNATION.

A. If the whole Site shall be taken pursuant to any condemnation proceeding, this Agreement shall terminate as of the date that actual physical possession of the Site is taken, and after that date, this Agreement shall terminate and the Parties shall be released from all duties, obligations and responsibilities under this Agreement, except for those provisions that explicitly survive termination.

B. If only a part of the Site is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which City or Agency, as applicable, was using the Site prior to the taking, then this Agreement shall, at that Party's option, either terminate in its entirety, or, terminate only as to the part so taken as of the date that actual physical possession of such portion of the Site is taken, and after that date, this Agreement shall terminate with respect to such portion of the Site taken and the Parties shall be released from all duties, obligations and responsibilities under this Agreement, except for those provisions that explicitly survive termination. In the event of a partial taking, the District shall be entitled to the portion of the condemnation award that equates to the value of the real property that was taken and all remaining condemnation award amount, including the condemnation award attributable to the Center, and any other improvements, shall be entirely awarded to the City or Agency, as applicable.

C. Nothing herein contained shall be deemed or construed to prevent City or District from interposing and prosecuting in any condemnation proceedings any claim or defense, including but not limited to a claim for the value of any fixtures or improvements installed in or made to the Site by such Party, or for its costs of moving or loss of business by reason of such condemnation.

SECTION 16. DISPUTE RESOLUTION/TERMINATION.

A. Dispute Resolution. The Parties shall first attempt to resolve any dispute arising under this Agreement through consultation and mediation, before other dispute resolution methods are employed.

1. A failure or delay by any Party to perform any material term or provision of this Agreement constitutes a breach ("Breach") under this Agreement. The Party who commits a Breach shall promptly commence to cure, correct or remedy with reasonable diligence, and during any period of curing shall not be in default of this Agreement unless such cure is not completed within a reasonable period of time. The Breach shall be cured within thirty (30) calendar days of the Notice of Breach (as defined below) or if unable to be

cured within such thirty (30) day period, shall commence to be cured within such thirty (30) day period with the cure to be completed within a reasonable time period.

2. In the event of a Breach by any Party, the injured Party shall give written notice of Breach ("Notice of Breach") to the Party in Breach with a copy to the remaining Party.

3. Within five (5) working days of receiving the Notice of Breach, the Parties in dispute shall meet and attempt to resolve their dispute in good faith and consistent with the underlying purposes of the Agreement.

4. If the meeting between the Parties does not resolve their dispute, the Parties agree to negotiate in good faith to set the matter for mediation with a mutually agreed mediator, with said mediation to be held within thirty (30) calendar days of the Notice of Breach, unless the Parties agree to extend the deadline. The Parties to any such mediation shall share equally in the costs of the mediation.

5. If the mediation following Notice of Breach does not resolve the dispute or the Parties cannot reach agreement upon a mediator within the time period set forth above, the Parties shall have the right to exercise any and all remedies available to it at law or under equity, including, without limitation, the right to terminate this Agreement upon written notice to the breaching Party.

B. Pre-Completion of the Center.

If this Agreement is terminated pursuant to Section 16A as a result of District's Breach at any time prior to the Project Completion Date, the District shall reimburse Agency and City within a reasonable period of time all costs or expenses reasonably expended or incurred under or in furtherance of this Agreement to the date of the Notice of Breach.

If this Agreement is terminated pursuant to Section 16A as a result of City's or Agency's Breach at any time prior to the Project Completion Date, City and Agency shall vacate the Site and, unless otherwise requested by the District, restore the Site to its condition prior to commencement of construction.

C. Post-Completion of the Center. Without limiting any rights or remedies hereunder, City and District agree for purposes of determining damages hereunder in the event this Agreement is terminated pursuant to Section 16A as a result of District's Breach at any time on or after the Project Completion Date, that the City's and Agency's contribution of $18,500,000.00 shall be prima facie evidence of the original value of Center. City and District further agree that such amount shall be considered as amortizing over a fifty (50) year term, on a straight line basis.

D. Elective Termination.

1. In the event that: i) City and Agency fail to secure Adequate Funding on or before January 1, 2009; or ii) Agency fails to commence construction on the Project on or before January 1, 2011, any Party may terminate this Agreement with no less than thirty (30) calendar days written notice to the other respective Parties of its intention to terminate this Agreement, and no Party shall have any further obligations hereunder unless such obligations explicitly survive termination.

2. Prior to Project Completion Date, City or Agency may elect to terminate this Agreement for convenience. City or Agency shall give District not less than thirty (30) calendar days written notice of termination under this provision of the Agreement. Notice by either City or Agency shall act as notice for both. Following such notice, the Agency shall vacate the Site and, unless otherwise requested by the District, shall use reasonable diligence to restore the Site to its condition prior to construction, subject to Section 10 above, if applicable, and neither the City nor Agency shall have any further obligations hereunder unless such obligations explicitly survive termination.

3. Following Project Completion Date, City may elect to terminate this Agreement for City's convenience, in which event City shall give District not less than thirty (30) days written notice of a termination under this provision of the Agreement. Following such notice, City shall vacate the Center and Site, and neither District nor City shall have any further obligations hereunder unless such obligations explicitly survive termination.

4. District may terminate this Agreement, without cause, upon giving not less than eighteen (18) months written notice of termination. If District chooses to terminate the Agreement, the amount of $18,500,000.00, as amortized according to the amortization schedule set forth in the attached Exhibit D, shall be immediately paid to the City by District following the effective date of termination (which payment obligation shall survive such termination). Following the effective date of termination, neither District nor City shall have any further obligations hereunder unless such obligations explicitly survive termination. District's right under this Subsection D4 (i.e. to provide such termination notice) shall become effective only upon the fifth anniversary of the Project Completion Date.

SECTION 17. WAIVER.

In no event shall any action by any Party hereto constitute or be construed to be a waiver by City, Agency or District of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City, Agency or District,

and the taking of any such action while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to City, Agency or District with respect to such breach or default. The waiver by one Party of any breach by any other Party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

SECTION 18. INDEPENDENT CONTRACTOR.

Under no circumstances shall this Agreement be construed as one of agency partnership, joint venture or employment among the Parties, their officers, elected or appointed officials, employees or agents. Each Party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other Party in any way.

SECTION 19. AMENDMENTS; ACTIONS.

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of (1) each of the Parties hereto, if the amendment is requested before or on the Project Completion Date, or (2) the District and the City, if the amendment is requested after the Project Completion Date. The Executive Director of the Agency, the City Manager of the City, and the Superintendent of the District, or their respective designee(s) shall have the authority to act on behalf of, respectively, the Agency, the City and the District with regard to any and all actions required of, respectively, the Agency, the City or the District under this Agreement. Such actions include, but are not limited to the issuance of approvals and disapprovals, and execution of all documents except amendments to this Agreement.

SECTION 20. SURRENDER OF PROPERTY.

Upon termination of this Agreement, City shall surrender to District the Center in good order, condition and repair (except for reasonable wear and tear, damage or destruction, and except as specified in this Agreement, and except to the extent the Project is taken by eminent domain) and free and clear of all liens and encumbrances (other than those, if any, permitted hereby or otherwise created or consented to by District), and if requested to do so, shall execute, acknowledge and deliver to District such instruments of further assurance as in the opinion of District are necessary or desirable to confirm or perfect District's right, title and interest in and to the Center and the Grounds.

SECTION 21. TIME OF ESSENCE.

Time is expressly declared to be of the essence of each and every provision of this Agreement.

SECTION 22. NOTICES.

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Party hereto by the other Party shall be in writing and shall be deemed duly served and given when personally delivered to the Party to whom it is directed, or, in lieu of personal service, when deposited in the United States mail, first class, postage prepaid, addressed to:

Agency:	Redevelopment Agency of the City of San Jose 200 East Santa Clara Street San Jose, CA 95113 Attn: Harry Mavrogenes, Executive Director (or successor)
with a corresponding copy to:	Redevelopment Agency of the City of San Jose 200 East Santa Clara Street San Jose, CA 95113 Attn: Bill Ekern, Director of Project Management (or successor)
City:	City of San Jose Department of Parks, Recreation and Neighborhood Services 200 East Santa Clara Street, T-9, San Jose, CA 95113 Attn: Albert Balagso, Director (or successor)

with corresponding copies to:	City Manager's Office 200 East Santa Clara Street San Jose, CA 95113 and Department of Public Works Real Estate Division 200 East Santa Clara Street San Jose, CA 95113 Attn: Neil Stone, Division Manager (or successor)
District:	Oak Grove School District 6578 Santa Teresa Blvd San Jose, CA 95119 Attn: Chris Jew, Asst. Superintendent (or successor)

Any Party to this Agreement may change its address for purposes of this Section by giving notice of the change to the other Party in the manner provided in this Section.

SECTION 23. FORCE MAJEURE.

If any Party shall be delayed or prevented from the performance of any act required by this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, without fault and beyond the reasonable control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION 24. ENTIRE AGREEMENT.

This Agreement, including the exhibits listed below which are attached to this Agreement and incorporated herein, constitutes the entire Agreement among the Parties respecting the Project, the Agency's construction of the Project, and City's use and occupancy of the Center and other portions of Davis School, and correctly sets forth the obligations of City, Agency and District to each other as of the Effective Date. Any agreements or representations not expressly set forth in this Agreement shall be null and void.

Exhibit A-1	Legal Description and Depiction of the Property (including Existing Parking Areas)
Exhibit A-2	Legal Description and Depiction of the Site (including proposed Center and Grounds)

Exhibit B	Location of existing and proposed Utility Easements
Exhibit C	Definition of Hazardous Materials
Exhibit D	Amortization Schedule
Exhibit E	Insurance Requirements

SECTION 25. PARTIAL INVALIDITY.

If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and unimpaired by the holding.

SECTION 26. GOVERNING LAW.

This Agreement shall be governed by and in accordance with the laws of the State of California.

SECTION 27. NONDISCRIMINATION.

The Parties shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, creed, martial status, sexual orientation, disability, ethnicity, ancestry or national origin, in connection with or related to the performance of this Agreement.

SECTION 28. HEADINGS.

The headings of the Sections in this Agreement are merely for the convenience of the Parties.

SECTION 29. COUNTERPARTS.

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.

SECTION 30. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein; if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 31. WARRANTY OF AUTHORITY.

Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement.

APPROVED AS TO FORM:

_____
Johnny V. Phan
Deputy City Attorney

CITY OF SAN JOSE

By_____
_____
Assistant to the City Manager

APPROVED AS TO FORM:

_____
Harold Freiman
Lozano Smith

OAK GROVE SCHOOL DISTRICT, a political subdivision of the State of California

By_____
Chris Jew
Assistant Superintendent

APPROVED AS TO FORM

_____
Kenneth Johnson
Senior Associate Counsel

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

By:_____
Harry Mavrogenes
Executive Director

EXHIBIT A-1

LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY (INCLUDING EXISTING PARKING AREAS)

(ATTACHED)

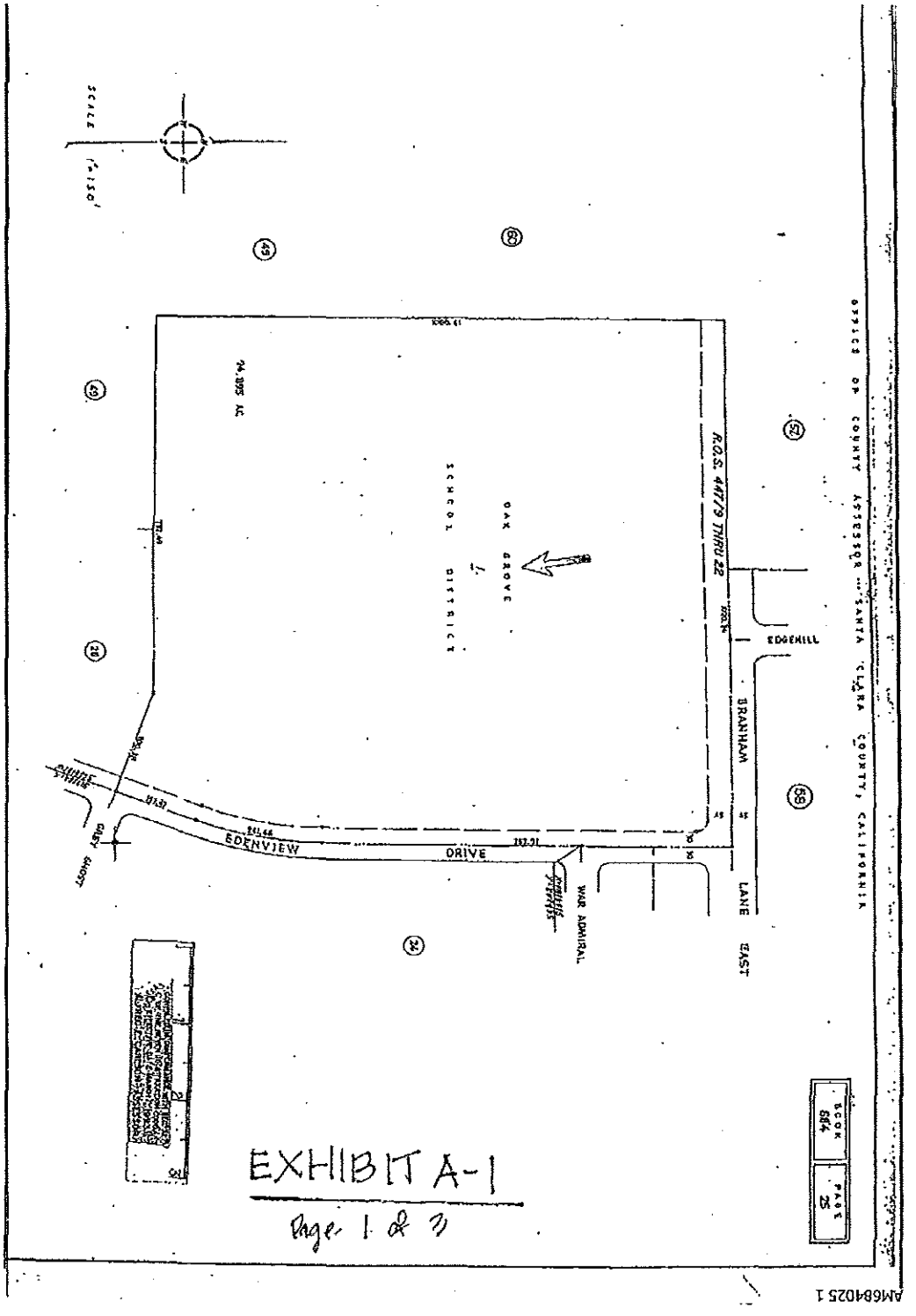


EXHIBIT A-1

Page 1 of 3

T-12544/488633

EXHIBIT A-1

SCHEDULE C
LEGAL DESCRIPTION

All that certain real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Beginning at a point in the Easterly line of that certain parcel of land conveyed by Deed from Leonard Danna and Gaetano Danna to Valley Title Company of Santa Clara County, a Corporation, dated January 7, 1960 and recorded January 12, 1960 in Book 4662 of Official Records, Page 199, Santa Clara County Records, distant thereon N. 0° 13' 46" E. 1419.01 feet from the most Southerly corner thereof and at the intersection thereof with the center line of Monterey Road; thence along said Easterly line of above mentioned parcel of land N. 0° 13' 46" E. 1050.71 feet to a Southerly line of that certain 68.68 acre parcel of land conveyed by Deed from Mary Elizabeth d'Artenay, et at to Gaetano Danna and Leonardo L. Danna, dated February 20, 1951 and recorded February 28, 1951, in Book 2161 of Official Records, Page 51, Santa Clara County Records; thence along said last mentioned line and the Easterly of said Dana parcel of land the following courses and distances, S. 81° 35' 39" E. 69.61 feet and N. 0° 20' 15" W. 26.30 feet; thence leaving said last mentioned line N. 89° 27' 57" E. 537.45 feet; thence S. 0° 14' 12" W. 757.21 feet to the beginning of a curve; thence along a curve to the right with a radius of 700 feet through a central angle of 19° 45' 48" an arc distance of 241.45 feet; thence S. 20° W. 157.47 feet; thence N. 70° W. 200.38 feet; thence N. 89° 45' 48" W. 322.86 feet to the point of beginning and being a portion of Lot 9 of the Partition of the Santa Teresa Rancho.

PARCEL TWO:

Beginning at a point from which the Northwest corner of lands conveyed by Leonard Danna, et al, to First Stockton Corporation by Deed dated January 6, 1960, and recorded in Book 4662 of Official Records, Page 199, Santa Clara County Records, bears North 81° 35' 39" West a distance of 50.00 feet; thence along the boundary between said lands and lands of Danna and Danna, South 0° 13' 46" West for a distance of 1050.71 feet; thence leaving said boundary, North 89° 45' 48" West for a distance of 414.63 feet; thence North 0° 13' 46" East for a distance of 1060.61 feet; thence North 89° 27' 57" East for a distance of 483.29 feet to a point in said boundary between lands of First Stockton Corporation and lands of Danna and Danna; thence along said boundary South 0° 20' 15" East for a distance of 26.30 feet; thence North 81° 35' 39" West for a distance of 69.61 feet to the point of beginning.

EXHIBIT A-1
Page 2 of 3

ARB No: 684-25-001
APN No: 684-25-001

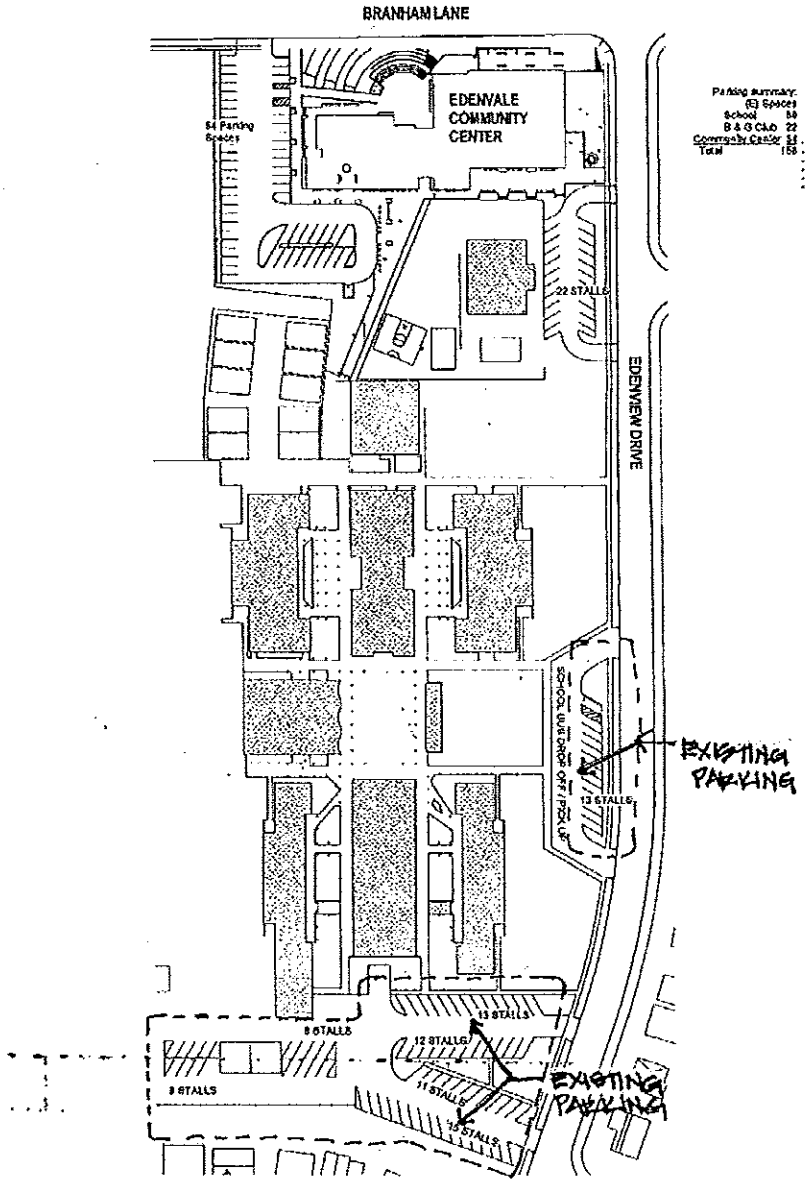


EXHIBIT A-1

Page 1 of 3

carrierjohnson

architecture for urban environments

NORTH

494 9TH STREET
OAKLAND, CALIFORNIA
94607

TEL 510 893 4400
FAX 510 893 4401
C.R. CARRIER, ARCHITECT

EXHIBIT A-2

LEGAL DESCRIPTION AND DEPICTION OF THE SITE (INCLUDING PROPOSED CENTER AND GROUNDS)

(ATTACHED)

EXHIBIT "A-2"
LEGAL DESCRIPTION

A portion of that certain parcel of land situate in the City of San Jose, County of Santa Clara, State of California, described as Parcel One and recorded on November 23, 1962 as Document No. 2299426 in book 5802 at page 175, in the Records of said County of Santa Clara, more particularly described herein as follows:

Beginning at a point on the southerly right of way line of Branham Lane East which bears North 89°20'40" East 581.28 feet from the northeasterly corner of Lot 22 as said lot is shown on the map of Tract 6223 Recorded December 17, 1971 in Book 409 of maps at Page 17, Santa Clara County Records; thence from said point of beginning a bearing taken for the purposes of this description as, North 89°20'40" East 389.19 feet along last said Branham Lane East right of way to the beginning of a curve concave to the southwest and having a radius of 20.00 feet; thence easterly and southerly 31.68 feet along said curve through a central angle of 90°46'15" to a point on the westerly right of way line of Edenview Drive; thence South 00°06'55" West 117.12 feet along last said Edenview Drive right of way to a point; thence leaving last said westerly right of way line, North 88°00'47" West 11.45 feet to the beginning of a curve concave to the southeast and having a radius of 33.71 feet, a radial line to the beginning of said curve bears North 06°21'48" East; thence westerly and southerly 37.51 feet along said curve through a central angle of 63°45'12"; thence South 12°54'07" West 2.12 feet; thence North 90°00'00" West 135.23 feet; thence South 22°39'56" West 187.33 feet; thence North 89°40'57" West 4.93 feet; thence North 67°21'05" West 26.86 feet; thence North 05°54'17" East 67.85 feet; thence North 84°05'43" West 111.04 feet; thence North 00°00'00" East 215.61 feet; thence North 90°00'00" West 24.51 feet; thence North 00°00'00" East 17.66 feet to a point on the southerly right of way line of Branham Lane East and the **Point of Beginning.**

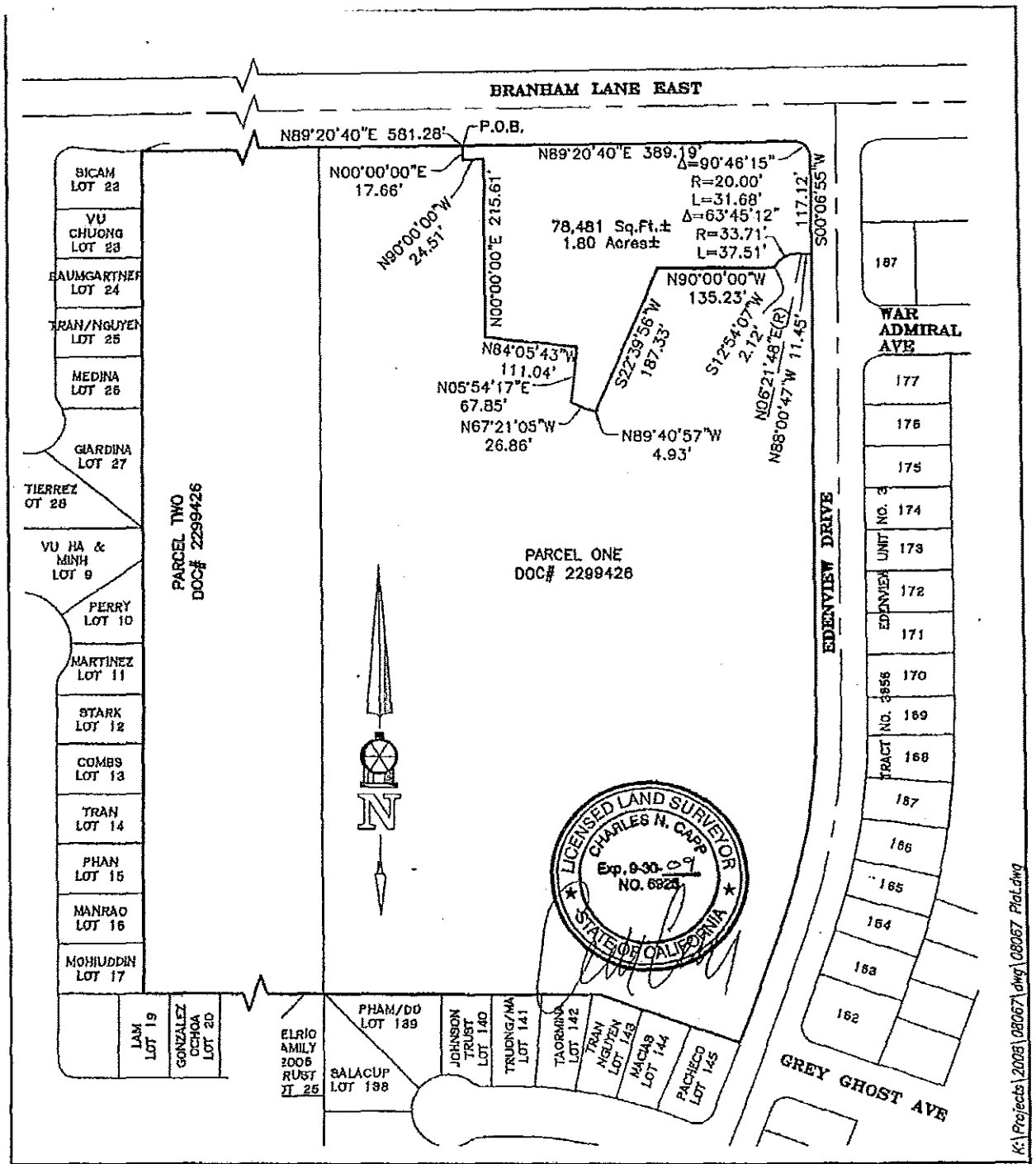
Containing an area of 78,481 Sq.Ft. 1.80 Acres more or less.

Attached hereto is a plat labeled "EXHIBIT A-2", hereby referred to and made a part hereof.

LICENSED LAND SURVEYOR
CHARLES N. CAPP
Exp. 9-30-09
NO. 6923
STATE OF CALIFORNIA

K:\Projects\2008\08067\docs\Lease Area.doc

Page 1 of 1



BELLECCI & ASSOCIATES, INC.
CIVIL ENGINEERING LAND PLANNING LAND SURVEYING
2290 DIAMOND BLVD, SUITE 100, CONCORD, CA 94520
PHONE: (925) 685-4569 FAX: (925) 685-4838

DATE: June 2008	SCALE: 1"=150'
PROJECT NO.: 08067	SHEET 1 OF 1

EXHIBIT A-2A

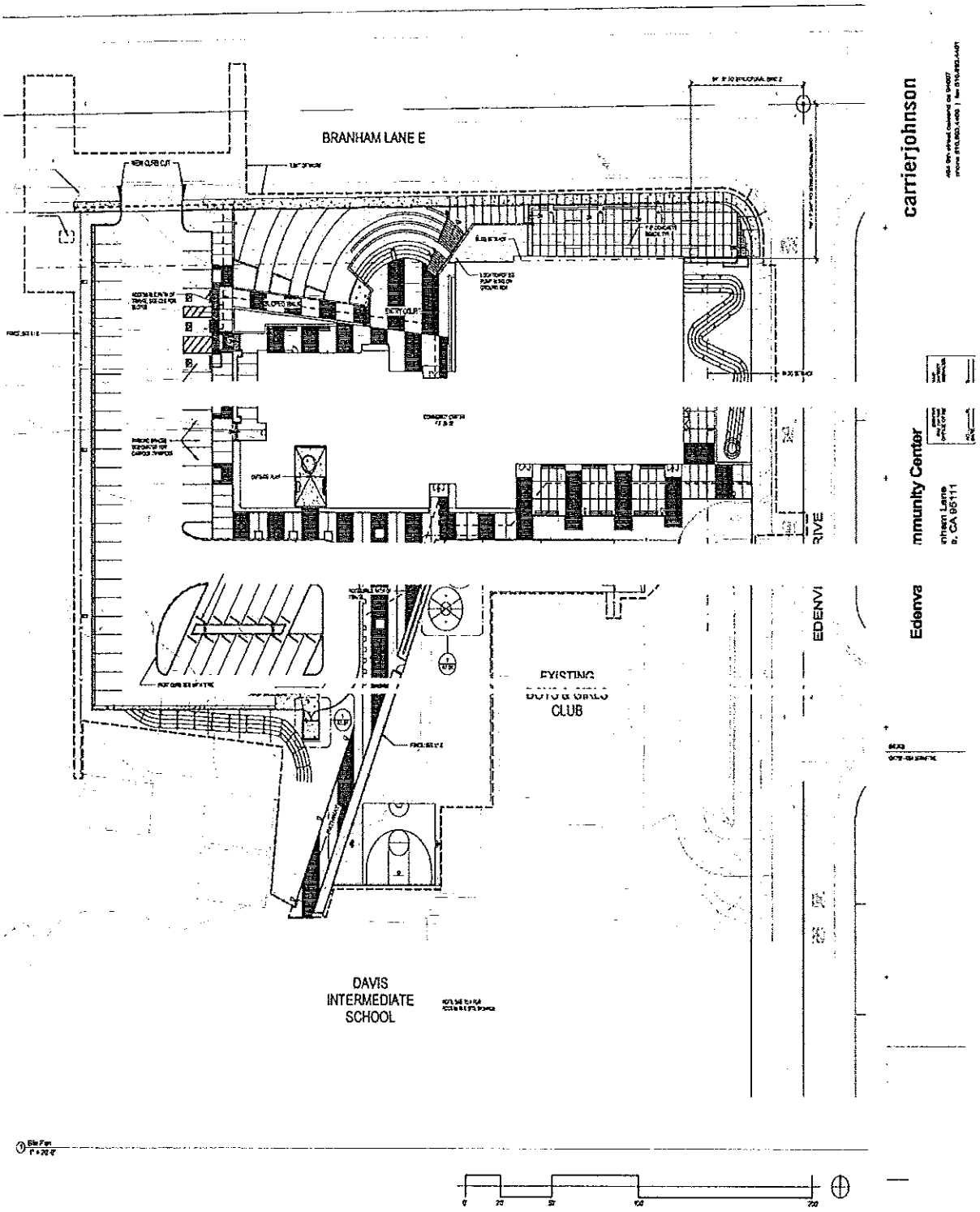


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EXHIBIT A-2

EXHIBIT B

SITE MAP SHOWING LOCATION OF EXISTING AND PROPOSED UTILITY EASEMENTS

(ATTACHED)

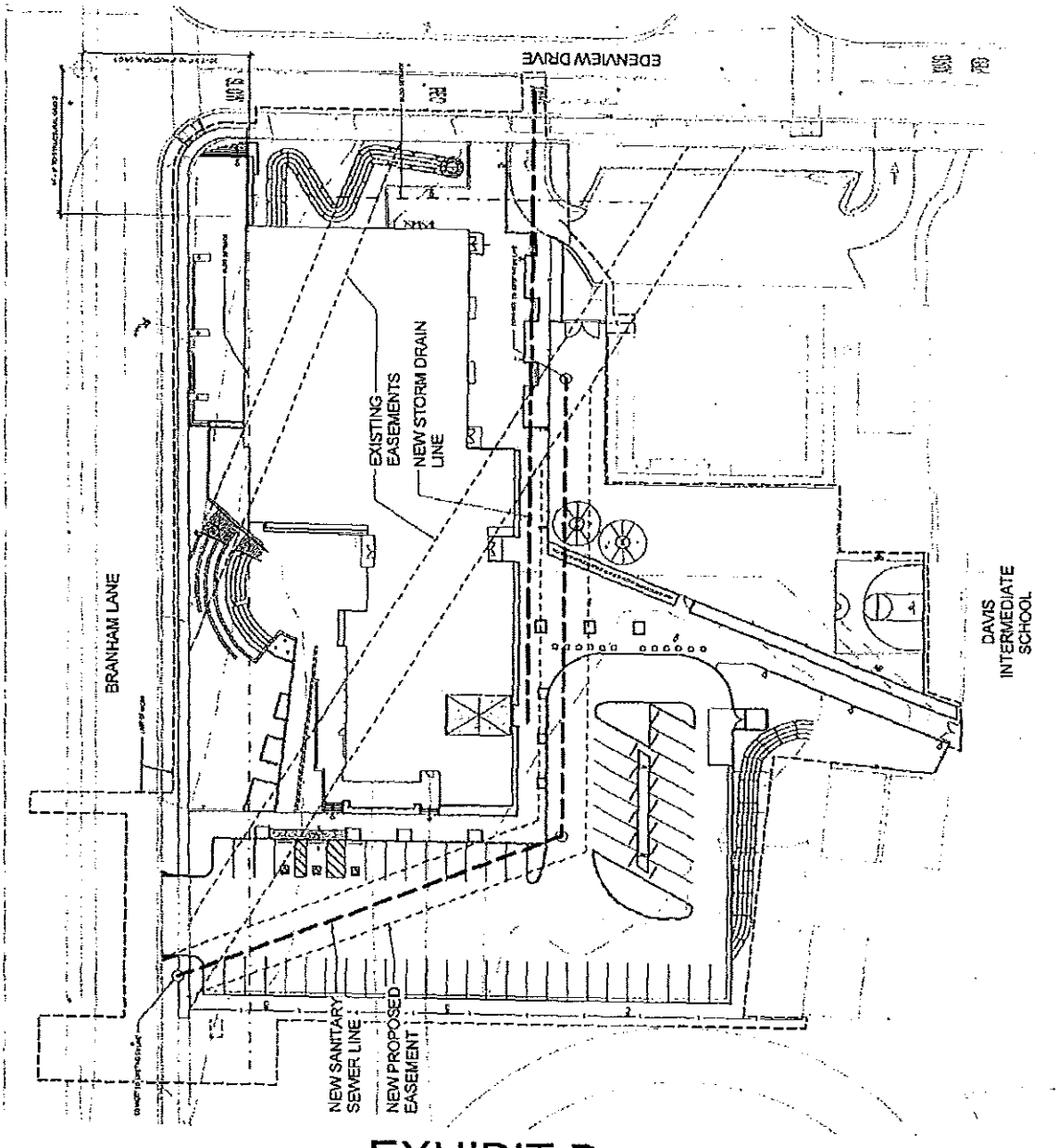

EXHIBIT B

carrierjohnson

architecture for urban environments

NORTH

494 9TH STREET
OAKLAND, CALIFORNIA
94607

TEL 510 893 4400
FAX 510 893 4401

G.R. CARRIER, ARCHITECT

EXHIBIT C

DEFINITION OF HAZARDOUS MATERIALS

For purposes of this Agreement, the term "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state, or environmental clean-up statutes.

EXHIBIT D

AMORTIZATION SCHEDULE

Amount to be Amortized	Period of Amortization	Number of Months in Period of Amortization (Commence on Project Completion Date)	Amount of Amortization per Month
$18,500,000.00	50 years	600 months	$30,833.00

EXHIBIT E

INSURANCE REQUIREMENTS

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Commercial General Liability insurance with coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. Automobile Liability insurance with coverage provided by Insurance Services Office Form Number CA 0001 covering automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance, and any other applicable law, providing full coverage required by law for all employees engaged in work on the Project; and

4 Professional Liability Errors and Omissions insurance for all design professional services; and

5. Builders' Risk insurance providing coverage for "all risks" of loss, issued on a completed value basis on all insurable work included under the Project documents. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood; and

6. Contractor's Pollution Liability insurance, or equivalent, including coverage for all operations, completed operations and professional services relating to the handling of Hazardous Materials (without exclusion for asbestos or lead); and

7. All other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

There shall be no endorsement reducing the scope of coverage required above.

B. Minimum Limits of Insurance

Contractor shall maintain limits be no less than:

1. Commercial General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit each accident; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits and any other applicable law, which shall be at least $1,000,000 per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the District, Agency and City, their respective officers, Board, Board members, Council, Council members, employees, agents, volunteers and contractors; and

4. Professional Liability Errors and Omissions insurance: $2,000,000 per occurrence/aggregate; and

5. Builders' risk: Completed value of project. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Project, with a deductible of not to exceed $50,000.00; and

6. Contractor's Pollution Liability: $2,000,000 each occurrence/aggregate limit; and

7. All other insurance: the amounts required to be maintained under applicable laws, ordinances, rules, and regulations.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by Parties' Risk Managers. At the option of Agency, the City, or the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Parties, or their respective officers, Board, Board members, Council, Council members, employees, agents, volunteers and contractors; or Agency shall require the construction contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Parties' Risk Managers.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

   a. The District, Agency and City, their respective officers, Board, Board members, Council, Council members, employees, agents, volunteers and contractors ("Insureds"), are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of contractor; products and completed operations of contractor; premises owned, leased or used by contractor; and automobiles owned, leased, hired or borrowed by contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insures. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured.

   b. The contractor's insurance coverage shall be primary insurance as respects the Insureds. Any insurance or self-insurance maintained by the Insureds shall be excess of contractor's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies by contractor shall not affect coverage provided to the Insureds.

   d. Coverage shall state that contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

   e. Coverage shall contain a waiver of subrogation in favor of the District, Agency and City, their respective officers, Board, Board members, Council, Council members, employees, agents, volunteers and contractors.

2. Builders' Risk

   a. Agency and City shall be named as loss payees.

   b. The insurer shall waive all rights of subrogation against the District, Agency and City, their respective officers, Board, Board members, Council, Council members, employees, agents, volunteers and contractors.

3. All Coverages

   Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced, or

modified except after thirty (30) days' prior written notice has been given to the District, Agency, City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Duration

1. Commercial General Liability, Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of work under the construction contract for the Project.

2. If any of such coverages are written on a claims-made basis, the following requirements apply:

a. The policy retroactive date must precede the date work commenced under the construction contract for the Project.

b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, the contractor must purchase an extended reporting period equal to or greater than five (5) years after completion of work under the construction contract for the Project.

F. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to Parties' Risk Managers.

G. Verification of Coverage

The contractor shall furnish the Agency and District with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE – Human Resources
Risk Management
200 East Santa Clara Street, 2nd Floor Wing
San Jose, California 95113-1905

OAK GROVE SCHOOL DISTRICT
Attention: Risk Manager
6578 Santa Teresa Blvd
San Jose, CA 95119

H. Contractor's Insurance Requirements.

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

LAST PAGE OF EXHIBIT

RESOLUTION NO. 890-07/08

RESOLUTION OF THE BOARD OF EDUCATION OF THE OAK GROVE SCHOOL DISTRICT EVIDENCING DETERMINATIONS PURSUANT TO THE HEALTH AND SAFETY CODE REGARDING IMPROVEMENTS AT CAROLINE DAVIS INTERMEDIATE SCHOOL

WHEREAS, Section 33445 of the California Health and Safety Code authorizes the Redevelopment Agency of the City of San Jose ("Agency") to pay all or a part of the cost of construction of public improvements when there are no other reasonable means of financing the improvements available to the community; and

WHEREAS, Caroline Davis Intermediate ("School"), located at 5035 Edenview Drive in San Jose, California, is located in a redevelopment project area ("Project Area"); and

WHEREAS, the District, the City of San Jose, and the Redevelopment Agency of the City of San Jose plan to commence construction of improvements to the Edenvale Community Center on the corner of the School property, located along East Branham and Edenview Drive, which the District will use for physical education, recreation, and sports activities (the "Improvements"); and

WHEREAS, no other reasonable means of financing the Improvements are available to the District as the District does not have funds to pay for the Project; and

WHEREAS, the Improvements will provide the public with a location for a year-round community center, including a gymnasium, for community recreation purposes and programs; and

WHEREAS, the Agency and City is funding the cost of these Improvements for the benefit of the community, pursuant to the terms and conditions of the "Agreement Between the City of San Jose, the Redevelopment Agency of the City of San Jose and Oak Grove School District for the Lease, Development, Operation and Joint Use of a Community Center at the Caroline Davis Intermediate School" ("Agreement") between the Agency, City and District.

NOW, THEREFORE, the Board of Education does hereby resolve as follows:

1. The Board finds that the foregoing recitals are true and correct; and

2. The Board finds and determines that no other reasonable means of financing the Improvements are available to the District, and the District does not have sufficient funds to pay for the Project.

Resolution No. 890-07/08

PASSED, ADOPTED, AND APPROVED by the Board of Education of the Oak Grove School District this 3rd day of July, 2008, by the following votes:

AYES: Members Cook, Nishihara, Adams and Hawkins

NOES: None

ABSTENTIONS: None

ABSENT: Member Lemke

President, Board of Trustees

ATTEST:

Board Secretary