

TO BE RECORDED AND WHEN RECORDED
RETURN TO:
Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Charles F. Adams, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE LEASE

This SITE LEASE (this "Site Lease"), dated as of July 1, 2018, is between the MT. DIABLO UNIFIED SCHOOL DISTRICT, a unified school district duly organized and existing under the laws of the State of California (the "District"), and the MT. DIABLO UNIFIED SCHOOL DISTRICT EDUCATION FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as lessee (the "Corporation").

BACKGROUND:

1. At a special election held on November 7, 1989, more than two-thirds of the voters of the District approved Measure A, authorizing the levy and collection of a special tax at the rate of \$67 per taxable unit (the "Special Taxes"), for the purpose of providing financing for the rehabilitation and improvement of existing elementary, middle and high school facilities and other facilities, and the construction and installation of new elementary, middle and high school facilities at existing school sites, together with necessary appurtenances thereto and furniture and equipment therefor (collectively, the "Authorized Projects").

2. The District wishes at this time to provide financing for projects and facilities which constitute Authorized Projects under Measure A (the "Projects").

3. In order to provide financing for the Projects, the District has agreed to lease the land and buildings at the _____ School, as described more fully in Appendix A attached hereto and made a part hereof (the "Leased Property"), to the Corporation under this Site Lease in consideration of the payment of an upfront rental payment in an amount sufficient for such purposes, and the Corporation has agreed to lease the Leased Property back to the District under a Lease Agreement dated the date hereof

and recorded concurrently herewith (the "Lease Agreement") in consideration of the agreement by the District to pay semiannual lease payments (the "Lease Payments").

4. The Lease Payments will be payable from any source of legally available funds of the District, including the General Fund of the District, and will additionally be payable from and secured by a pledge of and lien on the Special Taxes which is subordinate to the pledge and lien which secures outstanding Special Tax Bonds of the District.

5. The Corporation has agreed to assign its right to receive the Lease Payments to U.S. Bank National Association, as trustee (the "Trustee"), and in consideration of such assignment the Trustee has agreed to execute and deliver \$_____ aggregate principal amount of 2018 Certificates of Participation (the "Certificates"), each evidencing a direct, undivided fractional interest in the lease payments to be paid by the District under the Lease Agreement, the proceeds of which will be applied by the Corporation to finance the acquisition and construction of the Project under a Trust Agreement dated as of July 1, 2018 (the "Trust Agreement"), among the Corporation, the District and the Trustee.

6. The District is authorized to enter into this Site Lease and the Lease Agreement under Section 17456 of the Education Code of the State of California.

7. Payment of principal and interest represented by the Certificates is insured by a Municipal Bond Insurance Policy (the "Certificate Insurance Policy") issued by _____ (the "Certificate Insurer").

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the District and the Corporation formally covenant, agree and bind themselves as follows:

SECTION 1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Site Lease have the respective meanings given them in the Trust Agreement.

SECTION 2. *Lease of Leased Property.* The District hereby leases the Leased Property to the Corporation, and the Corporation hereby leases the Leased Property from the District, on the terms and conditions hereinafter set forth.

SECTION 3. *Term; Possession.* The term of this Site Lease commences, and the Corporation becomes entitled to possession of the Leased Property, as of the Closing Date. This Site Lease ends, and the right of the Corporation hereunder to possession of the Leased Property thereupon ceases, on the date on which all of the outstanding Certificates are paid in full, or provision is made for such payment in accordance with the Trust Agreement, and the Trust Agreement has been discharged under Section 13.01 thereof, but under any circumstances not later than September 1, 2036.

SECTION 4. *Rental.* The Corporation shall pay to or at the direction of the District as and for rental of the Leased Property hereunder, from the proceeds of sale of the

Certificates, the amount of \$_____ (the "Site Lease Payment") to be paid on or before the date of execution and delivery hereof. From the proceeds of the Site Lease Payment, there will be deposited in the Project Fund an amount required to finance the Projects as set forth in the Lease Agreement and in the Trust Agreement. The District shall ensure that the proceeds of the Site Lease Payment deposited in the Project Fund are applied solely for capital outlay purposes.

The Corporation and the District hereby find and determine that the total amount of the Site Lease Payment does not exceed the estimated value of the leasehold interest in the Leased Property which is conveyed hereunder by the District to the Corporation. No other amounts of rental is due and payable by the Corporation for the use and occupancy of the Leased Property under this Site Lease.

SECTION 5. *Assignments and Subleases.* Unless the District is in default under the Lease, the Corporation may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, except as provided in the Lease, without the prior written consent of the District and the Certificate Insurer.

SECTION 6. *Right of Entry.* The District and the Certificate Insurer both reserve the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 7. *Termination.* The Corporation agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property will remain thereon and title thereto will vest thereupon in the District for no additional consideration.

SECTION 8. *Default.* If the Corporation defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Corporation, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Agreement shall be deemed to occur as a result thereof and this Site Lease may not be terminated by the District as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the District shall continue to pay the Lease Payments to the Trustee.

SECTION 9. *Amendments.* The Corporation and the District may at any time amend or modify any of the provisions of this Site Lease with the written consent of the Certificate Insurer, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Certificates; or (b) without the consent of the Trustee or any of the Certificate Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the District or the Corporation contained in this Site Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the District or the Corporation,

- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, for the purpose of conforming to the original intention of the District and the Corporation,
- (iii) to amend any provision thereof relating to the Tax Code, but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest represented by any of the Certificates under the Tax Code, in the opinion of Bond Counsel,
- (iv) to amend the description of any component of the Leased Property to reflect accurately the property originally intended to be included therein, or to effectuate any substitution of property as permitted by Section 4.6 of the Lease Agreement or any release or property as permitted by Section 4.7 of the Lease Agreement,
- (v) in any other respect whatsoever as the Corporation and the District deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Certificates.

The District must obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment as set forth in this Section have been satisfied. Promptly following the effective date of any amendment or modification under this Section, the District must mail written notice thereof to each rating agency which then maintains a rating on the Certificates.

SECTION 10. *Quiet Enjoyment.* The Corporation at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease Agreement and subject only to Permitted Encumbrances.

The District represents, warrants and covenants that it has good and indefeasible marketable fee simple title to the real property and all building, property and improvements comprising the Leased Property. The District covenants and agrees to hold and maintain clean and marketable title to all of the Leased Property during the term of this Site Lease.

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Corporation are solely corporate liabilities of the Corporation as a nonprofit corporation, and the District hereby release each and every member and officer of the Corporation of and from any personal or individual liability under this Site Lease. No member or officer of the Corporation or its governing board is at any time or under any circumstances individually or personally liable under this Site Lease for anything done or omitted to be done by the Corporation hereunder.

SECTION 12. *Taxes.* The District will pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property, or any improvements thereon, are taken by eminent domain proceedings, the interest of the Corporation will be the aggregate amount of the then unpaid principal and interest components of the Lease Payments payable under the Lease Agreement and the balance of the award, if any, will be paid to the District. The District hereby waives any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Leased Property through the eminent domain powers of the District.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease will be affected thereby, and each provision of this Site Lease will be valid and enforceable to the fullest extent permitted by law. The Corporation and the District each hereby declares that it would have entered into this Site Lease and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Site Lease may be held illegal, invalid or unenforceable.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission, at its number set forth below. Notice will be effective either (a) upon transmission by facsimile, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The District, the Corporation and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder. Notices may be delivered in via e-mail to the officer identified below but will only be effective upon receipt by the sender of an acknowledgment of such recipient.

*If to the District
or the Corporation:*

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, California 94519
Attention: Superintendent

If to the Trustee:

U.S. Bank National Association
1 California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust Services

If to the Certificate Insurer:

SECTION 16. *Governing Law.* This Site Lease shall be governed by the laws of the State of California.

SECTION 17. *Third Party Beneficiary.* The Trustee and the Certificate Insurer are hereby made third party beneficiaries hereunder with all rights of third party beneficiaries.

SECTION 18. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Corporation, the District and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 19. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

SECTION 20. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which is an original but all together constitute one and the same instrument. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Corporation and the District, all with the same force and effect as though the same counterpart had been executed by both the Corporation and the District.

IN WITNESS WHEREOF, the District and the Corporation have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT, as lessor

By: _____
Name
Title

Attest

Name
Title

MT. DIABLO UNIFIED SCHOOL DISTRICT EDUCATION FACILITIES FINANCING CORPORATION, as lessee

By: _____
Name
Title

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of the following described land located in the City of Concord, County of Contra Costa, State of California, together with all buildings, facilities and other improvements which constitute real property and which are located thereon: