AGREEMENT BETWEEN DUBLIN UNIFIED SCHOOL DISTRICT AND SCS DEVELOPMENT COMPANY, INC.

This Agreement (“Agreement”), dated for reference purposes as of _________________________, 2018, is entered into by and between Dublin Unified School District, a California school district located in the County of Alameda (“District”), and SCS Development Company, Inc., a California corporation (“Developer”). District and Developer may hereafter be referred to individually as “Party” or collectively as “Parties.”

RECITALS

A. Developer is the owner of a 76.1-acre site generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive (“Property”), which is more particularly described and depicted on Exhibit “A” attached hereto and incorporated by this reference.

B. Developer is seeking entitlement from the City of Dublin (“City”) for the development of a mixed-use project referred to as “At Dublin” (“Project”). The Project is proposed with the Planned Development and Site Development (“PD/SDR”) to include the following (the “Program”):

<table>
<thead>
<tr>
<th>General Commercial:</th>
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<tbody>
<tr>
<td>Commercial</td>
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<tr>
<td>Hotel</td>
</tr>
<tr>
<td>203,343 square feet</td>
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<td>75,000 square feet/150 Keys</td>
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<tr>
<th>Mixed Use:</th>
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<tbody>
<tr>
<td>Commercial</td>
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<tr>
<td>Multi-family apartments</td>
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<tr>
<td>79,895 square feet</td>
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<tr>
<td>280 units/356,632 net rentable square feet (exclusive of the parking structure)</td>
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<tr>
<th>Residential:</th>
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<tr>
<td>Townhomes</td>
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<tr>
<td>Single Family Detached</td>
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<tr>
<td>205 units/413,015 net square feet</td>
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<tr>
<td>180 units/459,476 net square feet</td>
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The portion of the Project consisting of the General Commercial (Commercial and Hotel) and Mixed Use, Commercial components identified in this Recital B shall be referred to herein as the “Commercial Project.” The portion of the Project consisting of the Mixed Use, Multi-family apartments and Residential (Townhomes and Single Family Detached) components identified in this Recital B shall be referred to herein as the “Residential Project.”

While the foregoing are the mixed use, density and square footage totals proposed for the Project, for purposes of this Agreement, “Project,” “Commercial Project,” and “Residential Project” shall include any development Approved (as defined in Section 3.1) on the Property, provided that such Approval is in Substantial Conformance with the Program. “Substantial Conformance” means that the Approval has not resulted in a reduction of ten percent (10%) or more of: (i) the square footage of the Commercial Project set forth in the Program; and/or (ii) the number of units of the Residential Project set forth in the Program.

C. The Project is located within the jurisdictional boundaries of the District.
D. As of the Effective Date of the Agreement (as defined in Section 2.1), the District is authorized to impose school impact fees pursuant to Education Code sections 17620, et seq., and Government Code sections 65995, et seq., at a rate of Eleven Dollars ($11.00) per square foot of residential development (“Level II Fees”) and Sixty One Cents ($0.61) per square foot of commercial/industrial development. Based on the Program, at the current Level II rate, the Project would generate approximately Thirteen Million Five Hundred Twenty Nine Thousand One Hundred Ninety Dollars and Seventy One Cents ($13,529,190.71) (the “Statutory Fee Amount”).

E. Developer supports District’s ongoing efforts to provide adequate school facilities for students generated by new development in the District. Developer desires voluntarily to establish terms for the timely provision of financing to provide school facilities to serve new development, including the Project. Developer is committed to funding such facilities under the terms and conditions set forth in this Agreement, and in amounts substantially in excess of the Statutory Fee Amount.

NOW THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which the Parties hereby acknowledge, the District and Developer agree as follows:

TERMS AND CONDITIONS

1. RECITALS AND EXHIBITS INCORPORATED

1.1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated into the “Terms and Conditions” of this Agreement as though set forth fully herein.

1.2. Incorporation of Exhibits. Exhibits “A,” “B,” and “C” attached to this Agreement are hereby incorporated in this Agreement by reference.

2. EFFECTIVE DATE AND TERMINATION

2.1. Effective Date. This “Effective Date” of this Agreement shall be upon the later of the following dates: (i) the date upon which the governing board of the District approves this Agreement, or (ii) the date upon which this Agreement is executed by Developer.

2.2. Termination and Tolling.

a. Termination Upon Payment. This Agreement shall terminate (i) with respect to the Commercial Project, upon payment of the Contribution (as defined in Section 3.1 below), provided that the District’s obligations pursuant to Section 3.7 shall survive until termination of the Agreement with respect to the Residential Project; and (ii) with respect to the Residential Project, upon the date when certificates of occupancy have been issued for all of the dwellings constructed upon the Property in connection with the Project and all Parties’ obligations under this Agreement have been fully performed.
b. **Tolling.** In the event that Developer, in its sole and absolute discretion, decides not to proceed with the construction of the Project, Developer shall have the right to toll this Agreement upon written notice to the District no later than sixty (60) days prior to the date that the Contribution (as defined in Section 3.1 below) is due (the “Tolling Date”). In the event that, after the Tolling Date, Developer or its successors-in-interest subsequently (i) provides written notice to the District of the intent to resume the Project, or (ii) obtains building permits for any part of the Project from City (collectively, “Project Resumption”), then the tolling shall terminate and the Contribution and the Additional Contribution (as defined in Section 3.3 below) shall be increased by the greater of (A) a three percent (3%) interest increase per annum or (B) the current State Allocation Board’s approved construction cost index increase annualized (“Interest Rate”) calculated from the Tolling Date to the date of Project Resumption. Notwithstanding the foregoing, if the Project Resumption has not occurred by the later of the date of expiration of the development agreement between the City and Developer regarding the Project (the “Development Agreement”) or the date of expiration of any amendment to the Development Agreement, then this Agreement shall terminate upon notice by Developer to District of said expiration. If, however, Approval remains in place for the Project such that its development can proceed without a development agreement, termination shall not be allowed under this Section 2.2(b).

c. **Notice of Termination.** Upon termination pursuant to this Section 2.2 with respect to the Commercial Project, and upon Developer’s request, the District agrees to deliver to Developer a written notice of such termination and the Developer’s obligations in relation thereto in a recordable form (including a quitclaim deed as to the Commercial Project) reasonably acceptable to Developer. Upon termination pursuant to this Section 2.2 with respect to the Residential Project, District agrees to deliver to Developer a written notice of such termination and the Developer’s obligations in relation thereto in a recordable form (including a quitclaim deed as to the Residential Project) reasonably acceptable to Developer.

3. **DEVELOPER CONTRIBUTION**

The purpose of this Agreement is to set forth Developer’s obligation both to pay the Statutory Fee Amount and to provide additional voluntary funding to District as another method of financing a portion of the cost of school facilities within the District that will serve students from the Project and elsewhere in the District. Developer acknowledges that this Agreement, and each of its terms and conditions hereunder, are fully enforceable as a binding contract on Developer and its successors-in-interest or assignees and Developer will not assert in any manner that District is acting in excess of its powers in entering into this Agreement.

3.1 **Contribution.**

a. Provided that the Project is Approved and there is no uncured District Event of Default (as defined in Section 5.1 below), Developer agrees to pay to District a
lump sum in the amount of the Statutory Fee Amount plus an additional contribution of Five Hundred Twenty Thousand Eight Hundred and Nine Dollars and Twenty Cents ($520,809.20), for a total of Fourteen Million Fifty Thousand Dollars ($14,050,000) in cash or its equivalent (the “Contribution”) no later than the earlier of: (a) 12 months after Approval of the Project, or (b) issuance by the City of the first residential building permit (excluding permits solely for grading or site improvements) for development of the Project on the Property. For purposes of this Agreement, “Approval” shall be defined to mean that all necessary entitlements, permits, certifications, and approvals from the City and any other governmental or quasi-governmental agency with jurisdiction over the Project required for Developer’s intended development of the Project have been obtained, and (i) all applicable administrative and judicial appeal, rehearing, and challenge periods and all referendum periods for such approvals, including without limitation, challenges under the California Environmental Quality Act (Pub. Res. Code §§ 21000, et seq.) (“CEQA”), shall have expired without such an appeal, request for rehearing, challenge, or referendum having been filed, or (ii) in the event of a timely filing of such an appeal, request for rehearing, challenge, or referendum, such matters shall have been fully and finally resolved in a manner that allows the Project to proceed. If Approval has occurred, the Project thus approved shall be referred to for purposes of this Agreement as an “Approved” Project. Developer shall provide the District with immediate written notice upon occurrence of the Approval of the Project. Promptly upon Developer’s payment of the Contribution, District shall certify such payment in writing to the City.

b. Developer’s commitment to pay the Contribution shall be in lieu of any and all other fees, assessments, taxes, charges, impositions, dedications, exactions, liens, or payment, of any type, amount, or value whatsoever, established, levied, or imposed at any time by District on Developer, other than the Additional Contribution (as defined in Section 3.3 below), subject to any increase pursuant to Section 3.4 below, and the Gift (as defined in Section 3.5 below).

i. District and Developer acknowledge and agree that (A) the Commercial Project shall have no obligations under this Agreement other than payment of the Statutory Fee Amount applicable to the Commercial Project; and (B) Developer’s payment of the Contribution shall satisfy in full the Statutory Fee Amount for the Commercial Project.

ii. This Agreement shall not prevent the levy and collection of property taxes applicable to the Property, for any reason, including the levy of taxes in connection with the District’s existing or future bonded indebtedness. This Agreement shall further not prevent the District from seeking to gain and/or actually receiving voter approval of any District-wide general obligation bonds, or any other voter approved State authorized financing programs, including but not limited to, parcel taxes, School Facilities Improvement District bonds, applicable property taxes, and any other State authorized financing programs that may then be in effect (collectively the “Financing
Measures”). Notwithstanding the foregoing, District shall not seek to gain and/or actually gain voter approval for any Financing Measure that is applicable solely to the Property or to the Property and less than the entirety of the District until and unless such approval is received from the future occupants of the Project, and District shall not seek any such Financing Measure applicable solely to the Property or to the Property and less than the entirety of the District from Developer or the current or future owner(s) of the Property prior to occupancy of the Project.

iii. This Agreement shall not prevent the District from charging future property owners within the Project for expansion or replacement of then-existing square footage pursuant to then-applicable law.

iv. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes, bonds, or assessments on the Property.

3.2 Restrictive Covenant. Developer represents and covenants that Developer shall not obtain any building permits for residential development on the Property or commence residential construction on the Property, other than permits and construction work related to grading and site improvements, until the Contribution has been made.

3.3 Additional Contribution. Provided that the Project is Approved and there is no uncured District Event of Default (as defined in Section 5.1 below), Developer agrees to make a second lump sum payment to the District equal to the Contribution amount of Fourteen Million Fifty Thousand Dollars ($14,050,000) in cash or its equivalent (the “Additional Contribution”), which shall be paid to the District no later than 12 months after payment of the Contribution becomes due. Promptly upon Developer’s payment of the Additional Contribution, District shall certify such payment in writing to the City. The Contribution and Additional Contribution cumulatively shall total Twenty Eight Million One Hundred Thousand Dollars ($28,100,000). The Parties acknowledge and agree that the Additional Contribution is premised upon Developer’s payment of the Contribution in an amount that exceeds current school facility impact mitigation fees allowed pursuant to Education Code section 17620, et seq., Government Code section 65995, or pursuant to Government Code section 65995.5 (“Level II Fees”), and that in consideration of Developer’s payment of the Additional Contribution, the District shall not levy any fees against the Project pursuant to Government Code section 65995.7 (“Level III Fees”).

3.4 Changes in the Program. The Contribution and Additional Contribution are calculated based on the total number of residential units and the total of commercial square footage set forth in the Program in Recital B.

a. Additional Units/Square Footage.
i. If the Approved Project authorizes additional multi-family apartment units ("Additional Multi-Family Apartment Units"), or additional attached townhome units ("Additional Townhome Units"), or additional single family detached homes ("Additional Single-Family Detached Units"), or any combination thereof, beyond those set forth for the Residential Project in the Program as described in Recital B ("Additional Residential Units"), then the Developer shall be required to increase the Contribution and Additional Contribution as follows:

(A) For Additional Multi-Family Apartment Units, the Contribution and Additional Contribution shall be increased each by an additional amount equal to Eleven Dollars and Forty-Three Cents ($11.43) per square foot for any such Additional Multi-Family Apartment Units, for a total payment per additional square foot of Twenty-Two Dollars and Eighty-Six Cents ($22.86).

(B) For Additional Townhome Units, the Contribution and Additional Contribution shall be increased each by an additional amount equal to Eleven Dollars and Forty-Three Cents ($11.43) per square foot for any such Additional Townhome Units, for a total of Twenty-Two Dollars and Eighty-Six Cents ($22.86), plus an additional amount calculated as follows. The student yield for single-family attached dwelling units as identified in the District’s then-most recent demographic study ("Demographic Study") shall be compared against the student yield for multi-family apartment units in the same Demographic Study. The percentage by which the student yield for single-family attached dwelling units is greater than then student yield for multi-family apartment units shall be used as a multiplier for the amounts set forth in this Section 3.4(a)(i)(B). To illustrate, if the Demographic Study shows a student yield for multi-family apartment units of .20 students per dwelling unit, and the Demographic Study shows a student yield for single family attached dwelling units of .22, the percentage increase is ten percent (10%), so the $22.86 total per square foot payment would be increased by a corresponding ten percent (10%), or Two Dollars and Twenty Nine Cents ($2.29), for a total payment per additional square foot of Additional Townhome Units of Twenty Five Dollars and Fifteen Cents ($25.15).

(C) For Additional Single-Family Detached Units, the Contribution and Additional Contribution shall be increased each by an additional amount equal to Eleven Dollars and Forty-Three Cents ($11.43) per square foot for any such Additional Single-Family Detached Units, for a total of Twenty-Two Dollars and Eighty-Six Cents ($22.86), plus an additional amount calculated as follows. The student yield for single-family detached dwelling units as identified in the District’s then-most recent Demographic Study shall be compared against the student yield for multi-family apartment units in the same Demographic Study. The percentage
by which the student yield for single-family detached dwelling units is
greater than then student yield for multi-family apartment units shall be
used as a multiplier for the amounts set forth in this Section 3.4(a)(i)(C).
To illustrate, if the Demographic Study shows a student yield for multi-
family apartment units of .20 students per dwelling unit, and the
Demographic Study shows a student yield for single-family attached
dwelling units of .30, the percentage increase is fifty percent (50%), so the
$22.86 total per square foot payment would be increased by a
corresponding fifty percent (50%), or Eleven Dollars and Forty Three
Cents ($11.43), for a total payment per additional square foot of
Additional Single-Family Detached Units of Thirty Four Dollars and
Twenty Nine Cents ($34.29).

(D) Each of the per-square foot amounts as set forth in this Section 3.4(a)(i)
shall increase annually by the Interest Rate set forth in Section 2.2(b)
above, with the first increase occurring on January 1, 2020, reflecting the
increase for the prior twelve (12) month period, and with each annual
increase thereafter occurring on January 1.

ii If the Approved Project authorizes commercial square footage that is more
than one hundred and twenty-five percent (125%) of the square footage of the
Commercial Project set forth in the Program as described in Recital B
(“Additional Commercial SF”), the Developer shall be required to pay the
then-applicable statutory fee for any such Additional Commercial SF that is
more than one hundred and twenty-five percent (125%) of the commercial
square footage for the Commercial Project set forth in the Program as
described in Recital B.

b. Reduced Units/Square Footage.

i. If the Approved Project authorizes a reduction in the number of residential
units so that the total Residential Project is reduced by ten percent (10%) or
more of the residential units set forth in the Residential Project in the Program
as described in Recital B (“Reduced Residential Units”), then the Developer
shall be permitted to decrease the Contribution and Additional Contribution
each by amount equal to Eleven Dollars and Forty-Three Cents ($11.43) per
square foot for any such Additional Residential Units, for a total reduced
payment per square foot of Twenty-Two Dollars and Eighty-Six Cents ($22.86). To illustrate, for the total of 665 residential units included in the
Program as described in Recital B, a ten percent (10%) reduction in the
number of residential units would result in the Residential Project consisting
of 598 units (665 units multiplied by .10, rounded). If 597 units are
Approved, the Contribution and Additional Contribution shall be reduced by
amount of Twenty-Two Dollars and Eighty-Six Cents ($22.86) times the
square footage of one residential unit.
ii. If the Approved Project authorizes a reduction in the total commercial square footage so that the Commercial Project is reduced by twenty-five percent (25%) or more of the commercial square footage set forth in the Commercial Project as described in Recital B (“Reduced Commercial SF”), then the Developer shall be allowed to reduce the combined total of the Contribution and Additional Contribution by the amount of the then-applicable commercial statutory fee multiplied by the total square footage of the Project that is less than seventy-five percent (75%) of the total square footage of the Commercial Project set forth in the Program as described in Recital B. To illustrate, if the total of 283,238 commercial square feet included in the Project as described in Recital B is reduced by twenty-five percent (25%), the resulting total commercial square footage would be 212,428 square feet. For every square foot of the Commercial Project that is reduced beyond 212,428 square feet, the combined total of the Contribution and Additional Contribution would be reduced by the then-current per square foot statutory fee applicable to commercial construction.

c. For purposes of this Section 3.4, the square footage used to calculate any increase or decrease in the Contribution and Additional Contribution for Residential Development shall be as follows. For any increase or decrease to the multi-family apartment count of units, the square footage shall be based on a per-unit average square footage for all Approved multi-family apartment units. For any increase or decrease to the townhome count of units, the square footage shall be based on a per-unit average square footage for all Approved townhome units. For any increase or decrease to the single-family detached count of units, the square footage shall be based on a per-unit average square footage for all Approved single family detached count of units.

d. The Contribution and the Additional Contribution shall not change except as provided in Section 2.2(b) above and this Section 3.4.

3.5 Donation. Provided that the Project is Approved and there is no uncured District Event of Default (as defined in Section 5.1 below), then in addition to the Contribution and the Additional Contribution, Developer wishes to make a donation (“Gift”) to the District of the actual costs incurred by the District, up to a maximum amount of One Hundred Thousand Dollars ($100,000), in developing a preliminary schematic design (“Design”) of a future high school at the “Promenade Site,” which consists of seven connected land parcels between Dublin Boulevard and Central Parkway in Dublin, California, identified as Assessor’s Parcel Numbers 987-78-2, 3, 4, 5, 6, and 7, inclusive of the areas designated on parcel map 9717 as South Grafton Street and East Finnian Way, as the site for a future high school. The Gift shall be made in the following manner:

a. Within ten (10) days of the Effective Date of this Agreement, Developer shall donate to the District the amount of Fifty Thousand Dollars ($50,000) (“Initial Funds”) of the Gift.
b. The District shall use the Initial Funds towards developing the Design. Upon depletion of the Initial Funds, the District shall provide Developer with satisfactory evidence that the Initial Funds have been fully spent on the Design.

c. If the Initial Funds do not fully cover the expense of the Design, Developer shall donate to the District up to an additional Fifty Thousand Dollars ($50,000) as reimbursement towards the cost of the Design, following receipt of satisfactory evidence that the costs to be reimbursed were for work on the Design. Developer shall reimburse the District the amount shown on the invoices within thirty (30) days of receipt of such invoices. In no event shall the total amount of the Gift exceed One Hundred Thousand Dollars ($100,000).

d. It is the mutual intent of Developer and the District that the Gift be utilized solely for the Design.

e. The District shall be solely responsible to contract for all services, supplies, and labor related to the Design. Developer shall provide no suggestions, oversight or input into the selection of design professionals, and the District and its Governing Board shall retain all authority to request modifications to and approve or disapprove of either or both the Design and any future designs of the high school.

3.6 Certificate of Compliance/Deferral of Payment of Fees. Except as otherwise stated below, prior to the City’s issuance of a building permit (excluding permits for grading or site improvements) for any residential or commercial structure to be constructed in the Project, Developer shall first obtain from the District a Certificate of Compliance evidencing that the Developer has complied with the provisions of this Agreement. District shall not be obligated to provide a Certificate of Compliance in the event that there is an uncured Developer Event of Default (as defined in Section 5.1 below), and such Certificate of Compliance shall not be issued until such Event of Default has been cured in accordance with Section 5.1 below.

3.7 Joint Statement; Non-Opposition. In acknowledgment of Developer’s contributions as set forth in this Agreement, and the effect of those contributions in financing school facilities to serve the Project, District: (a) shall, with Developer, issue the Joint Statement attached hereto as Exhibit C no later than five (5) days after Developer’s request; (b) shall, within five (5) days after any Developer request, transmit correspondence substantially conforming to Exhibit C to the City; (c) shall not retract the Joint Statement or issue communications disclaiming or conflicting with the Joint Statement; and (d) shall not oppose Developer’s efforts to obtain Approval of the Project. District’s obligations under this Section 3.7 shall be conditioned on there then being no uncured Developer Event of Default (as defined in Section 5.1 below). District’s obligations under this Section 3.7 shall further be conditional upon this Agreement becoming effective, and may cease upon termination of this Agreement. District hereby covenants that, except as authorized by this Agreement, it will not under any circumstances or at any time assert or take any of the actions described below against Developer, or any successor-in-interest or assignee:
a. Oppose, object, or otherwise impede the processing of applications for any Approvals with respect to the Project, including without limitation site plan amendments, general plan amendments, zoning or rezoning, conditional use permit applications, environmental evaluations, tentative tract map applications, final map processing and approvals, building permits, certificates of occupancy or utility releases for completed structures, annexations, or other local government processing related to the Property.

b. Oppose the Project on the basis of compliance with CEQA or any regulations implemented with respect thereto on the basis of inadequate school facilities to serve the Project or otherwise.

c. Advise or request any other public or private entity to advise anyone that school facilities are inadequate to serve the students generated by the Project.

d. Refuse to issue a Certificate of Compliance when requested by Developer, or other builder or contractor constructing the Project.

e. Except as expressly provided in this Agreement, pursue additional funding for school facilities from Developer, including without limitation any fees, assessments, taxes, charges, impositions, dedications, exactions, liens, or payment, of any type, amount, or value whatsoever, and notwithstanding any subsequent change in applicable law to the extent such change may authorize the District to do so.

Nothing herein shall prohibit or limit the District from opposing or commenting on project applications for developments other than the Project as described herein. Notwithstanding the foregoing, the requirement of this Section 3.7 shall not apply in the event of an uncured Developer Event of Default (as defined in Section 5.1 below).

4. JOINT USE GYMNASIUM

The Parties acknowledge that effective May 1, 2018, District and City entered into an Agreement for Ground Lease and Property Option – Dublin Crossing, whereby City has committed to lease twelve (12) acres of land to District, with an option for the District to purchase, for a future school site commonly referred to as the “Dublin Crossing” school site, subject to the conditions set forth in that agreement. That agreement also commits the District to include in its future plans for the Dublin Crossing school site the design for a K-8 joint use gymnasium, with the funding for such gymnasium subject to negotiations between the City and District. Developer agrees to make commercially reasonable, good faith efforts to request that the City direct at least Five Million Dollars ($5,000,000) of public facility or community benefit fees generated by the Project toward the construction of a joint use gymnasium to be constructed on the future Dublin Crossing school site, or such other site that is mutually agreed to by District and City. Developer shall make commercially reasonable, good faith efforts to include this obligation in a legally binding development agreement with the City related to the Project so as to bind the City to such a direction of funds. If, despite Developer’s commercially reasonable, good faith efforts, this
obligation is not secured in a legally binding development agreement, Developer shall promptly so notify District and shall provide reasonable evidence of Developer’s commercially reasonable, good faith efforts made to secure such an obligation.

5. **DEFAULT, REMEDIES, AND TERMINATION**

5.1. **Events of Default.** Subject to any extensions of time by mutual consent of the Parties in writing, any failure by either Party to perform any material term or provision of this Agreement shall constitute an “Event of Default” upon occurrence of the circumstances set forth in subsections 5.1(a) and 5.1(b) below.

   a. **Developer Event of Default.** A Developer Event of Default shall occur if Developer does not cure such failure to perform: (i) in the event of Developer’s failure to pay the Contribution and/or the Additional Contribution or any portion thereof, within thirty (30) days following written notice of default from District; and (ii) in the event of any other default, (A) within sixty (60) days following written notice of default from the District, where such failure is of a nature that can be cured within such sixty (60) day period, or (B) if such failure is not of a nature which can be cured within such sixty (60) day period, Developer does not commence substantial efforts to cure such failure within sixty (60) days, or thereafter does not within a reasonable time prosecute to completion with diligence and continually the curing of such failure. Late payments of the Contribution and/or the Additional Contribution or any portion thereof beyond such thirty (30) day cure period shall bear a late payment penalty at the Interest Rate, calculated on a monthly basis.

   b. **District Event of Default.** A District Event of Default shall occur if District does not cure such failure to perform (i) in the event of a default in District’s obligations pursuant to Section 3.7 herein, within five (5) business days following written notice of default from Developer; and (ii) in the event of any other default, (A) within sixty (60) days following written notice of default from the Developer, where such failure is of a nature that can be cured within such sixty (60) day period, or (B) if such failure is not of a nature which can be cured within such sixty (60) day period, District does not commence substantial efforts to cure such failure within sixty (60) days, or thereafter does not within a reasonable time prosecute to completion with diligence and continually the curing of such failure.

   c. **Notice of Default.** Any notice of default given hereunder by either Party shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, sufficient facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (i) termination of this Agreement, (ii) institution of legal proceedings with respect thereto, or (iii) issuance of any approval with respect to
the Project. The waiver by either Party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

5.2. **Meet and Confer.** During the time periods specified in Section 5.1 for cure of an alleged Event of Default, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, that nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the applicable cure period referred to in Section 5.1 (even if the applicable cure period itself is extended pursuant to Section 5.1.a(ii)(B) or 5.1.b(ii)(B)) unless the Parties agree otherwise in writing. The Parties may agree in writing to toll any applicable statutes of limitation for such period as may reasonably be necessary to complete the meet and confer process outlined in this section.

5.3. **Remedies and Termination.** If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, as applicable, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Agreement and/or terminate this Agreement. In the event that this Agreement is terminated and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

5.4. **Remedies.** Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Agreement, subject to compliance with Sections 5.1 and 5.2. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

6. **MISCELLANEOUS**

6.1. **Agreement Runs With Land.** This Agreement is created for the benefit of District, Developer and the Property. Subject to the limitations set forth herein, the covenants of this Agreement shall run with the land constituting the Property. Developer agrees for the benefit of District that the Property, as described in Exhibit “A” hereto, shall be held, transferred, and encumbered subject to the provisions of this Agreement which are for the use and benefit of the District, the Developer, the Property, and of each and every person who now or in the future owns any portion or portions of the Property. Within thirty (30) days following execution of this Agreement, the Parties shall execute a Memorandum of Agreement in a form substantially conforming to Exhibit “B” hereto. Following notice of Approval as set forth in Section 3.1 hereof, either Party to this Agreement may cause the applicable Memorandum of Agreement to be recorded with the Recorder’s Office of Alameda County. Both Parties shall reasonably cooperate to prepare or provide any further documents and signatures necessary for the recording of the terms of this Agreement.
6.2. **Successors and Assignees.** All terms and conditions of this Agreement shall be binding upon all successors-in-interest, including without limitation purchasers of all or any part of the Property. Developer shall have the right to assign in whole or in part its rights, duties and obligations under this Agreement in connection with a transfer of all or any portion of the Property without the consent of the District. In the event that Developer transfers title to all or a portion of the Property, then such successor or assign shall be required to fulfill Developer’s obligations under this Agreement for that certain portion of the transferred Property. Developer shall be released from the obligations under this Agreement which apply to the transferred portion of the Property. For that portion of the Property that is not transferred, Developer’s obligations under this Agreement shall remain in full force and effect. Prior to any such transfer or assignment, Developer shall also notify the District in writing of the name of the successor or assign and all appropriate contact information for the District’s records. In the event of transfer of any portion of the Property, (a) any Event of Default by any assignee with respect to the transferred Property shall not be considered an Event of Default by Developer or any other assignee with respect to the portion of the Property retained by Developer or such other assignee, and (b) any Event of Default by Developer with respect to the Property retained by Developer shall not be considered an Event of Default by any assignee with respect to the portion of the Property transferred to such assignee.

6.3. **Headings.** The headings of this Agreement are for convenience purposes only and shall not limit or define the meaning of the provisions of this Agreement.

6.4. **Governing Law and Venue.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California applicable to contracts to be performed wholly within this State. Any dispute arising from the terms and conditions of this Agreement shall be heard by a court of competent jurisdiction located within Alameda County.

6.5. **Attorneys’ Fees and Costs.** In the event of any legal proceeding, including any lawsuit, action, or proceeding in law or equity, arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and costs arising from the proceeding, including expert witness fees. The prevailing Party on any appeal shall also be entitled to recover its reasonable attorneys’ fees and costs arising out of any such appeal. In addition to the foregoing attorneys’ fees and costs, the prevailing Party shall be entitled to its attorneys’ fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

6.6. **Construction.** The singular includes the plural, “shall” is mandatory, and “may” is permissive. The Parties acknowledge and agree that each of the Parties and each of the Parties’ attorneys have participated fully in the negotiation and drafting of this Agreement. In cases of uncertainty as to the meaning, intent or interpretation of any provision of this Agreement, the Agreement shall be construed without regard to which of the Parties caused, or may have caused, the uncertainty to exist. No presumption shall arise from the fact that particular provisions were or may have been drafted by a specific Party, and prior versions or drafts of this Agreement may be used to interpret the meaning or intent of this Agreement or any provision thereof.
6.7. **Notices.** Any notice to be given hereunder to either Party shall be in writing and shall be given either by personal delivery (including express or courier service), by receipt-confirmed facsimile, or by registered or certified mail, with return receipt requested and postage prepaid (excluding electronic messaging) and addressed as follows:

6.7.1. **To District:**

Dublin Unified School District  
ATTN: SUPERINTENDENT  
7471 Larkdale Avenue  
Dublin, CA  94568  
Facsimile:  925-829-6532

With a copy to Legal Counsel: LOZANO SMITH  
ATTN: Harold M. Freiman, Esq.  
2001 North Main Street, Suite 500  
Walnut Creek, CA  94596  
Facsimile:  925-953-1625

6.7.2. **To Developer:**

SCS Development Company, Inc.  
ATTN: Stephen E. Schott  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA  95050  
Facsimile:  408-985-6057

6.8. **No Joint Venture.** The relationship of the Parties to this Agreement is determined solely by the provisions of this Agreement. This Agreement does not create and shall not be construed to create any agency, partnership, joint venture, trust or other relationship with duties or incidents different from those of parties to an arm’s-length contract.

6.9. **No Further Assurances.** Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons or entities other than the express Parties to this Agreement; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

6.10. **Time is of the Essence.** Time is of the essence in the performance of each Party’s respective obligations under this Agreement.

6.11. **Amendments and Waivers.** No amendment of, supplement to, or waiver of any obligations under this Agreement shall be enforceable or admissible unless set forth in writing signed by the Party against which enforcement or admission is sought. No delay or failure to
require performance of any provision of this Agreement shall constitute a waiver of that
provision as to that or any other instance. Any waiver granted shall apply solely to the specific
instance expressly stated in a writing signed by the Parties.

6.12. **Entire Agreement.** This Agreement sets forth the entire understanding of the
Parties relating to the transactions it contemplates, and supersedes all prior understandings
relating to them, whether written or oral. There are no obligations, commitments,
representations, or warranties relating to them except those expressly set forth in this Agreement.

6.13. **Severability.** If any provision of this Agreement is held invalid, void or
unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be
enforced without failure of material consideration to any Party, then this Agreement shall not be
affected and it shall remain in full force and effect, unless amended or modified by mutual
consent of the Parties; provided, however, that if the invalidity or unenforceability of any
provision of this Agreement results in a material failure of consideration, then the Party
adversely affected thereby shall have the right in its sole discretion to terminate this Agreement
upon providing written notice of such termination to the other Party.

6.14. **Execution in Counterparts.** This Agreement may be executed in multiple
counterparts, each of which shall be deemed an original, and counterpart signature pages may be
assembled to form a single document which shall be deemed an original document.
Consolidated signature pages shall be compiled by District and forwarded to Developer to
constitute the Developer’s executed copy of the Agreement.

6.15. **Signatures.** By signing below, each of the signatories represents and warrants that
he or she has been duly authorized to execute this Agreement on behalf of the Party on whose
behalf he or she is signing. The Superintendent for the District further represents and warrants,
by his/her signature, that this Agreement has been duly ratified and approved by the Board of
Trustees of the District.

[Continued on next page]
6.16. Represented by Counsel. Each Party hereto acknowledges that it has been represented by legal counsel, or had the opportunity to obtain legal counsel and consciously chose not to obtain it, in the negotiation, drafting, and execution of this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into by and between the District and Developer as of the last date set forth below.

DUBLIN UNIFIED SCHOOL DISTRICT  
By: _____________________________  
Name: ___________________________  
Its: Board President  
Date: _______________, 201__

By: _____________________________  
Name: ___________________________  
Its: Superintendent  
Date: _______________, 201__

SCS DEVELOPMENT COMPANY, INC.  
a California corporation  
By: _____________________________  
Name: ___________________________  
Its: ______________________________

Date: _______________, 201__
EXHIBIT A
LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

STAGE 1: LANDSCAPE MASTER PLAN
EXHIBIT A
LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

Legal Description
Real property in the City of Dublin, County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCEL A OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM, ALL THOSE CERTAIN PIECES OR PARCELS OF LAND DESCRIBED UNDER EXHIBIT "C" OF THE AMENDED FINAL ORDER OF CONDEMNATION, BEING DUBLIN BOULEVARD, CENTRAL PARKWAY, GLEASON DRIVE AND WIDENING OF TASSAJARA ROAD. SAID ORDER RECORDED FEBRUARY 04, 2004, SERIES NO. 2004050348, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

PARCEL 3 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

PARCEL THREE:

PARCEL 4 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

PARCEL FOUR:

PARCEL 1 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

PARCEL FIVE:

PARCEL 2 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

A.P.N.: 985-0051-004 and 985-0051-005 and 985-0051-006 and 985-0051-024 and 985-0051-025
MEMORANDUM OF AGREEMENT BETWEEN DUBLIN UNIFIED SCHOOL DISTRICT AND SCS DEVELOPMENT COMPANY, INC.

This Memorandum is entered into as of _____________, 20___, by and between DUBLIN UNIFIED SCHOOL DISTRICT, a California public school district (“DISTRICT”), and SCS DEVELOPMENT COMPANY, INC. (“DEVELOPER”). The DISTRICT and DEVELOPER are sometimes referred to herein collectively as the “Parties,” or each individually as a “Party.”

WHEREAS, Developer is the owner/developer of certain real property located within the District’s boundaries, consisting of a 76.1 acre site generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive, in the City of Dublin, County of Alameda, State of California, as more particularly described in Exhibit 1, attached hereto (hereinafter “Property”) on which Developer is seeking or has received entitlements to construct residential units, commercial space, and other public improvements (“Project”).

WHEREAS, DISTRICT and DEVELOPER are Parties to that certain Agreement Between Dublin Unified School District dated ______________, 2018 (“Agreement”), by which DEVELOPER has agreed to provide various benefits to DISTRICT to satisfy DEVELOPER’s statutory obligations to pay State mandated fees to DISTRICT as required by Government Code sections 65995, et seq., and Education Code section 17620, et seq., and to provide additional contributions to the DISTRICT.

WHEREAS, the Parties intend to bind the successors in interest in the Property, as that Property is more particularly described in Exhibit 1 hereto, to the obligations of DEVELOPER as set forth in the Agreement, and subject to the exceptions therein, until such obligations to DISTRICT are fully satisfied; and
WHEREAS, the purpose of this Memorandum is to give notice of the existence of the Agreement, together with this Memorandum, which constitute the agreement between the DISTRICT and DEVELOPER, to each successor in interest to any portion of the Property.

NOW, THEREFORE, DISTRICT and DEVELOPER hereby agree that the Agreement creates a covenant running with the land and that either Party may record this Memorandum following notice of Approval (as defined in the Agreement) of the Project. Any interested person may obtain a copy of the Agreement at the Dublin Unified School District office located at 7471 Larkdale Avenue, Dublin, California 94568. The terms and conditions of the Agreement are hereby incorporated by reference with the same force and effect as though set forth herein.

In the event of any conflict between the terms of the Agreement and the terms of this Memorandum, the terms of the Agreement shall control.

This Memorandum may be executed in counterparts, each of which shall be deemed an original for all purposes and which together shall be considered one document.

IN WITNESS WHEREOF, this Memorandum has been executed by the Parties on the date and year first written above.

DISTRICT:

By: __________________________
Name: _______________________
Its: _________________________
Dated: _______________________

DEVELOPER:

By: __________________________
Name: _______________________
Its: _________________________
Dated: _______________________

{SR313020}
Exhibit “1” to Memorandum

Property Description/Map
Exhibit “1” to Memorandum

Property Description/Map

Legal Description

Real property in the City of Dublin, County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCEL A OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM, ALL THOSE CERTAIN PIECES OR PARCELS OF LAND DESCRIBED UNDER EXHIBIT "C" OF THE AMENDED FINAL ORDER OF CONDEMNATION, BEING DUBLIN BOULEVARD, CENTRAL PARKWAY, GLEASON DRIVE AND WIDENING OF TASSAJARA ROAD. SAID ORDER RECORDED FEBRUARY 04, 2004, SERIES NO. 2004050348, ALAMEDA COUNTY RECORDS.

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PARCEL 2 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

A.P.N.: 985-0051-004 and 985-0051-005 and 985-0051-006 and 985-0051-024 and 985-0051-025
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On _______________, 2018, before me, _________________________, Notary Public, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: ________________________________ (Seal)
The Dublin Unified School District (DUSD) has reached an agreement with SCS Development—the owner of the AT Dublin project—for the accelerated payment of $28.1M in development fees plus an additional contribution of up to $100,000 towards the development costs of a preliminary schematic design for the future high school at the Promenade site. This agreement is conditional on the City of Dublin’s exercise of its discretion whether to approve the development.

The District takes no position as to whether the development should or should not be approved, as that is a matter entirely within the City’s sole jurisdiction. However, the District must take all steps necessary to ensure the availability of adequate school facilities in the event that the City does approve development. The agreement reached with AT Dublin gives assurance that adequate school facilities will be available for students who would reside in the project if approved. The agreement does so by providing for funding equal to the full mitigation of the school facilities impact of the project, at a level previously unprecedented in the District. The effect on the District is therefore neutral with or without project approval.

The up-front mitigation payment provided for by the agreement is more than twice the statutory amount SCS is legally required to pay. The payment is being offered by SCS to help DUSD with its facilities needs, including the purchase of land and development of a new high school. The District recently selected and is moving forward with the Promenade site as the best
option for the location of a Dublin high school. The high school will be designed for an ultimate capacity for 2,500 students, with the first phase to be built including capacity for 1,000 students.

AT Dublin is a 76-acre, mixed-use, infill project planned on Tassajara Road between Gleason and I-580. It is located near the Promenade site—a centrally located property that is situated in a high-density, residential and commercial neighborhood. If approved by the City, the AT Dublin development and the new high school would complete a significant portion of the remaining undeveloped lands of the Eastern Dublin Specific Plan, and together would encourage increased pedestrian walking and biking as originally envisioned. The new East Dublin school site provides the opportunity to integrate a high quality, state of the art, high school into a walkable master plan community.

SCS Development understands the importance of building a new high school for the community and has been working with DUSD to help make this a reality. Enrollment at Dublin High is over 3,000 students, and is estimated to grow by another 1,300 students within the next five years. While the AT Dublin project is projected to generate approximately 5% of those 1,300 high school students, SCS’s $28.1 million payment represents almost 30 percent of DUSD’s allocated funds for the initial phase of the new high school. The full amount would be paid on a schedule that will bring in the funds well in advance of when statutory fees would have been due. This will give the District greater funding choices as it moves forward with its school planning and construction.

“We appreciate the initiative of SCS to sit down with the District early on and work with us in reaching this agreement,” says Amy Miller, Board President of DUSD. “Clearly, SCS understands the needs of our District, particularly our limited ability to access new funding sources, especially at the state level. This level of mitigation from SCS, unprecedented in our
District, provides critical additional funds which will be instrumental to our facilities program, including our new high school should the AT Dublin project be approved. The agreement is critical to achieve the District’s goal that the impact of development will be at least neutral on the District, with the developer fully funding the cost for any new facilities needed to house students from that development.”

“Given the projected student growth, one of the District’s priorities is to take immediate action to acquire and plan for a high school,” says Dr. Boozer, Superintendent. “The accelerated payment agreement for SCS’s development fees and its $100,000 donation will help the District jump start the design and planning for the new high school.” Students who would live in the AT Dublin community are not expected to begin enrolling in Dublin schools until 2022. AT Dublin is planned to be fully built-out by 2025 and is projected to contribute 188 kindergarten through 5th-grade students, 71 6th through 8th-grade students, and 64 9-12-grade students.

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