

DONATION AGREEMENT

This Donation Agreement (the "Agreement") is entered into by and between Fremont Unified School District, a California public school district ("Donee" or "District"), and Old Republic Title company, a California corporation, formerly known as Founders Title Company, a California corporation, under Holding Agreement Nos. _____ and PatAg, a California limited partnership (collectively "Donors").

RECITALS

- A. Donors are the owners of approximately ten (10) acres of real property (APN _____) located in the City of Fremont, west of Paseo Padre Parkway, in Alameda County, California and described on Exhibit "A" attached hereto and incorporated herein by reference. The real property, including improvements thereon, if any, are collectively referred to herein as the "Donation Property."
- B. Donors desire to donate and Donee desires to accept the approximately ten (10) acre Donation Property described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effective Date.** This Agreement shall be effective on the date it is fully executed by the District and the Donors ("Effective Date").
2. **Donation.** In accordance with and subject to the terms and provisions of this Agreement, Donors are willing to donate the Donation Property to the District in its as-is condition. Other than as expressly set forth in this Agreement, (a) the Donee acknowledges and agrees that Donee is acquiring the Property in its "AS IS" condition, with all faults, if any, and without any warranty, express or implied, and (b) neither Donors nor any agents, representatives, or employees of Donors have made any representations or warranties to the Donee or the Donee's Agents with respect to the condition, value, fitness, use or zoning of the Donation Property upon which the Donee has relied directly or indirectly for any purpose. The Donee acknowledges that it has been afforded the opportunity to make such inspections (or have such inspections made by consultants) as it desires of the Donation Property and to obtain information regarding operative or proposed governmental laws and regulations (including, but not limited to, zoning, environmental and land use laws and regulations) to which the Donation Property is or may be subject to at the Close of Escrow. The Donee acknowledges that it has or will independently and with the assistance of the Donee's professional advisors and consultants undertake whatever non-invasive studies, tests and investigation the Donee desires to conduct relating to the Donation Property (including, without limitation, economic reviews, engineering analyses, environmental analyses and analyses of the records of any governmental or quasi-governmental entity having jurisdiction over the Donation Property). The Donee acknowledges that its staff includes experienced school facilities professionals with experience and knowledge in the areas of school site acquisition, development, and school construction. The Donee is relying

solely on its own investigation as to the Donation Property and its value and is assuming the risk that adverse physical, economic or other conditions may not have been revealed by such investigation. The Donee agrees that, except as expressly set forth in this Agreement, the Donation Property is to be sold to and accepted by the Donee, at Closing, in the condition it is in at the end of the Feasibility Period "AS IS."

Except for those terms and provisions which expressly survive the Close of Escrow, from and after the Closing, the Donee hereby completely releases and forever discharges Donors, Donors' employees, agents, or any other person acting on behalf of Donors, and Donors' partners and owners (collectively, the "Indemnitees") from and against all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (collectively, "Claims") arising from or in any way growing out of or connected with the physical condition of the Donation Property or any law or regulation applicable thereto (collectively, the "Released Matters"). In connection with such waiver and relinquishment, the Donee acknowledges that it is aware that it hereafter may discover Claims or facts in addition to or different from those which it now knows or believes to exist with respect to the Released Matters, but that it is the Donee's intention to fully, finally and forever to settle and release all of the Released Matters in accordance with the provisions of this Section 2, and the release set forth herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different Claims or facts. The foregoing release of Claims shall be binding on the Donee and all subsequent owners, lessees and other transferees of the Donation Property.

In connection with this Section 2, the Donee expressly waives the benefits of Section 1542 of the California Civil Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

Donee's Initials_____

3. **Assignment and Conveyance.** Donors understand and acknowledge that the Donation Property may be subsequently conveyed by the Donee to a third party on or after the Close of Escrow.
4. **Conditions to Donee's Performance.** Donee's obligation to perform under this Agreement is subject to the following conditions:
 - 4.1 Donors' representations and warranties in this Agreement being correct as of the date of this Agreement and as of Close of Escrow;
 - 4.2 Donors' performance of all obligations under this Agreement;
 - 4.3 The vesting of title to the Donation Property in Donee by grant deed in fee simple absolute, free and clear of all liens, encumbrances, assessments, leases (recorded and/or

unrecorded), and taxes except the following “Approved Exception(s)” in the Preliminary Report, dated _____, issued by Old Republic Title Company, attached hereto as Exhibit “B”:

4.4 Old Republic Title Company being prepared to issue a title insurance policy to Donee, or at Donee’s election, to Donee’s assignee, in the full appraised fair market value of the Property, as determined by a qualified appraisal obtained by Donors (“Title Policy”).

If Donee determines that any of these conditions have not been met, Donee shall have the right to terminate this Agreement by delivering written notice to Donors, and, if applicable, to the Escrow agent.

5. **Taxes and Assessments.** Non-delinquent real property taxes and assessments and utility and other charges (to the extent such utility or other accounts cannot be transferred in the name of Donee as of the close of Escrow) shall be prorated between Donors and Donee as of the Close of Escrow. All prorations shall be made on a per-diem basis using a thirty (30) day month and a three hundred sixty-five (365) day year. To the extent any apportionment cannot reasonably be completed by the Close of Escrow, the parties shall make such necessary proration in a commercially reasonable manner and pay such amounts to the party entitled hereto within a period of thirty (30) days after the Close of Escrow. Notwithstanding anything to the contrary herein, the provisions of this section shall survive Close of Escrow to the extent necessary to fully allocate such amounts. Notwithstanding anything to the contrary herein, Donors reserve the right to keep, collect and retain any refunds, rate or price reductions or other sums, including, without limitation, any property tax refund, reductions or rebate, which relate to the periods prior to the Close of Escrow whether or not such sums are collected after the Close of Escrow, and Donee shall promptly return to Donors any such sums received by Donee.

6. **Escrow.** By this Agreement, Donee and Donors establish an escrow (“Escrow”) with Old Republic Title Company, 555-12th Street, Suite 2000, Oakland, CA 94607 (“Title Company”). Donors hereby authorize Donee to prepare and file escrow instructions with said Title Company, on behalf of Donors, in accordance with this Agreement. This includes authorization of the Title Company to withhold pro rata taxes, liens and assessments on the Donor Property conveyed.

6.1 **Fees and Title Insurance.** Donee shall pay the Closing Agent’s Escrow Fee, transfer tax and recording fees, if applicable, and the premium for title insurance if desired by Donee. Donors shall be responsible for any and all reconveyance or transfer fees for any deeds of trust, full release of mortgage, payment of liens, discharge of judgments, or any legal, administrative or other costs or expenses Donor may incur in delivering marketable title to Donee. All costs related to satisfying any “due diligence” requirements or requests that a party deems necessary to perform its obligations under this Agreement shall be the sole obligation of such party. All current property taxes on the Property shall be handled in accordance with Section 4986 of the Revenue and Taxation Code of the State of California and updates thereof. Any other costs or expenses not otherwise provided for in this Agreement shall be paid by the requesting party.

- 6.2 Property Review. Donee shall keep the Property lien free and shall immediately discharge and remove any liens placed thereon based upon the actions of Donee or any party acting under or on behalf of Donee.
- 6.3 Donors' Deposit into Escrow. On or before Close of Escrow, Donors will deliver into Escrow with the Title Company the following documents:
- A. A grant deed, in recordable form and properly executed on behalf of the Donee, in a form approved by Donee ("Grant Deed") conveying to Donee the Property in fee simple absolute, subject only to the Approved Exception(s).
 - B. Copies of any effective leases, rental agreements or any other agreements, if any, which Donee has agreed in writing, are to remain in effect after Donee takes title.
 - C. Donors' affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended ("FIRPTA Affidavit"); and
 - D. Grantor's affidavit as contemplated by the Revenue and Taxation Code Section 18662 ("Withholding Affidavit").
- 6.4 Close of Escrow. Escrow shall close on or before that certain date which is sixty (60) days after the Effective Date, provided in no event shall Close of Escrow occur later than December 31, 2015, upon the conveyance of the Donation Property to Donee ("Close of Escrow"). On the Close of Escrow date, the Title Company shall close Escrow as follows:
- A. Record the Deed, marked for return to Donee in care of Superintendent for Donee (which shall be deemed delivery to Donee), and shall obtain at recording conformed copies of the Deed and deliver a copy thereof to Donors and Donee immediately after the Close of Escrow;
 - B. Issue the Title Policy;
 - C. Prorate taxes, assessments, rents and other charges as provided by this Agreement; and
 - D. Prepare and deliver to Donee and to Donors one signed copy of the Title Company's closing statement showing all receipts and disbursements of the Escrow.

If the Title Company is unable to simultaneously perform all of the instructions set forth above, the Title Company shall notify Donors and Donee and retain all funds and documents pending receipt of further instructions from Donors and Donee. Either party may waive any and all objections to any condition precedent to its performance and proceed with this Agreement by giving written notice thereof to the other party and the Title Company.

7. **Representations and Warranties.** Donee warrants that this Agreement constitutes a binding obligation of Donee. PatAg warrants that this Agreement constitutes a binding obligation of PatAg.

8. **Other Agreements.** Donee agrees to cooperate with Donors' determination of the fair market value by an appraisal to be commissioned by and performed solely for Donors' purposes. Donee is under no obligation to confirm or agree upon any value derived from an appraisal conducted by Donors. Donors will obtain independent tax counsel and are solely responsible for compliance with the gift substantiation requirements of the tax code. Donee's obligation will be to acknowledge receipt of a donation of the Property by executing IRS Form 8283 before Close of Escrow. Donee acknowledges that it has not provided Donors with anything of value in exchange for the Property.
9. **Termination of Agreement.** Donors and Donee mutually agree that this Agreement shall be effective through December 31, 2015, unless further extended in writing by Donors and Donee. The parties to this agreement mutually agree that if Close of Escrow does not occur on or before December 31, 2015, and if this Agreement is not extended by Donors and Donee, this Agreement shall terminate at midnight on December 31, 2015.
10. **Survival.** All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the assignment, expiration or termination of this Agreement and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.
11. **Possession of the Property.** Possession of the Property shall be delivered to Donee at the Close of Escrow.
12. **Attorneys' Fees.** Should either party institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive all costs and expenses, including reasonable attorneys', consultants and expert witness fees incurred by such prevailing party in connection with such action or proceeding, at trial and on any appeal.
13. **Assignment and Successors.** This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.
14. **Notices.** All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing. The place for delivery of all notices given under this Agreement shall be as follows:

Donors: Keenan Land Company
 Chop Keenan
 700 Emerson Street
 Palo Alto, CA 94031
 Telephone (650) 326-2244

Donee: Fremont Unified School District
 4210 Technology Drive
 Fremont, CA 94538
 Telephone: (510) 659-2542
 Attn: Superintendent

or to such other addresses as Donors and Donee may respectively designate by written notice to the other.

15. **Entire Agreement.** The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve Donee of all further obligation or claims. Donors have no other right or claim to compensation arising out of or connected with the acquisition of the Property by Donee.
16. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The Recitals are and shall be enforceable as a part of this Agreement.
17. **Further Assurances.** Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents as may be necessary, expedient, or proper in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.
18. **Property Studies and Records.** Donors shall deliver to Donee, within five (5) calendar days after execution of this Agreement by all Parties, complete, accurate and legible (hard and electronic) copies of all documents concerning the Property that are in Donors' possession or control or are readily available to Donors, including, but not limited to, title reports, specifications, maps, drawings, surveys, engineering, soils, environmental, and geotechnical studies and reports, leases, estoppels, topographic surveys, grading plans, feasibility, marketing or other studies, investigations or reports, permits, approvals, affordable housing agreements, right of way and easement agreements, zoning and master plans, bonds, specific plans, initial studies, mitigated negative declarations and/or environmental impact reports, Phase I and II environmental assessments, entitlement documents; property tax bills; estoppels from tenants; and notices of any violation of any federal, state or local statutes, ordinances, affordable housing or inclusionary housing agreements, rules or regulations.
19. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.
20. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
21. **Counterparts.** This Agreement and any amendments hereto may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and

delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument.

22. **Costs, Expenses and Fees.** Donee and Donors each agree to pay their own costs and expenses, including fees of attorneys, accountants and consultants, incurred in the preparation of and carrying out of this Agreement.
23. **Right To Enter Property.**
- 23.1 Access to Property. Commencing with execution of this Agreement, Donee or Donee's representatives, after written request(s) and approval(s), shall be allowed access to the Property prior to the Close of Escrow, at all reasonable times for the purpose of obtaining data and making surveys, tests, inspections and other studies at Donee's sole expense, necessary to carry out this Agreement or as required by local and California state regulatory agencies.
- 23.2 Donee shall procure and maintain (and require any of its representatives entering the Property to procure and maintain): (i) workers' compensation insurance required by the laws of the State of California; (ii) commercial general liability insurance in the amount of at least Two Million Dollars (\$2,000,000) combined single limit, naming Donors as additional insureds and containing a cross liability endorsement or severability of interests clause; and (iii) with respect to any contractor or consultant conducting environmental, soils or geological tests, commercial general liability insurance, in the amount of at least One Million Dollars (\$1,000,000) combined single limit. Donee shall, prior to any entry by Donee and/or its representatives, furnish certificates of such insurance coverage to Donors. Such certificates shall contain a clause providing for thirty (30) days' advance notice of cancellation or material change in coverage.
- 23.3 Restoration of Property. Donee shall, upon completion of data gathering, and making surveys, tests, inspections and other studies, restore the Property to the extent reasonably possible to its condition prior to such data gathering, surveys, tests, inspections and other studies.
- 23.4 Indemnification Resulting From Access. Donee shall indemnify and hold harmless Donors of and from any and all mechanic's liens, claims, actions, liabilities, costs, expenses, including attorneys' fees, and damages of any type or nature arising out of or in any way related to any such use of or entry onto the Property by Donee or by any other person or entity on behalf of, or at the request of, Donee, excluding any losses or damages, including but not limited to a reduction in the value of the property, resulting from any finding or results of any surveys, tests, inspections or other studies, whether or not negligent.

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

DONEE

Fremont Unified School District

By: _____
Name: _____
Its: _____
Date: _____

DONORS

Old Republic Title Company, a California corporation

By: _____
Name: Deborah Jones
Its: Vice President
Date: _____

PatAg, a California limited partnership

By: PFM, Inc., a California corporation
Its: General Partner

By: _____
Name: Wilcox Patterson
Its: Co-EVP
Date: _____

By: _____
Name: Leon G. Campbell
Its: Co-EVP
Date: _____