

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") is made and entered into effective as of July 1, 2021 ("**Effective Date**"), by and between POMONA UNIFIED SCHOOL DISTRICT, a public agency of the State of California ("**District**"), and CITY OF POMONA, a municipal corporation ("**City**"). District and City are sometimes individually referred to herein as "Party" and collectively as "Parties."

### RECITALS

WHEREAS, reference is made to that certain Agreement for Purchase and Sale and Joint Escrow Instructions dated February 5, 2019, as amended (the "**Purchase Agreement**"), by and between District and Melia Homes, Inc., a California corporation ("**Buyer**"), regarding the sale of approximately 8.96 acres of land located at 2255 S. Garey Avenue, Pomona, California (the "**Rio Rancho Property**") by District to Buyer;

WHEREAS, upon the closing of the transactions contemplated in the Purchase Agreement, Buyer intends to develop the Rio Rancho Property into a residential community comprised of detached and attached homes (the "**Melia Project**");

WHEREAS, reference is made to the Pomona Corridors Specific Plan published in June 2013 (the "**Plan**") and Section 2.6 therein (the "**Open Space Regulations**"), which contain certain regulations and guidelines for the provision of public open space applicable to developments within Zone 5 described in Section 2.6.2 of the Plan (the "**Public Open Space Requirement**");

WHEREAS, as evidenced by the mutual execution of this MOU, the Parties acknowledge and agree that, due to the availability of the fields and other open space in the real property adjacent to the Rio Rancho Property, which adjacent property is operated by Goals Soccer Centers, Inc., a Delaware corporation ("**Goals Soccer**"), and owned by District pursuant to a ground lease expiring in 2045 (the "**Goals Leased Premises**"), the Rio Rancho Property is deemed to be in compliance with the Public Open Space Requirement if access to the Goals Leased Premises is granted as set forth in this MOU; and

WHEREAS, District and the City desire to enter into this MOU to set forth certain understanding between the Parties regarding the compliance with the Public Open Space Requirement in respect of the Rio Rancho Property and the Melia Project.

### OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above recitals and of the covenants and agreements contained herein, the Parties hereto agree as follows:

1. Term. The term of this MOU ("**Term**") shall commence on the Effective Date and shall automatically terminate on the date that a Termination Event (as defined in **Section 5** hereof) occurs.

2. Public Open Space Requirement. Upon the issuance of a certificate of occupancy for the Melia Project by City, access to the Goals Leased Premises shall be provided as set forth in Exhibit A attached hereto, which is an excerpt from that certain Memorandum of Understanding between the District and Goals Soccer dated July 1, 2021. If at any time during the operation of the relevant regulations, the Goals Leased Premises cease to include the referenced open space per Section 2.6.2 of the Plan and the Melia Project is then determined by the City in good faith to no longer be in compliance with the Public Open Space Requirement, then District agrees to one of the following alternative arrangements:

2.1 Arrange for the provision of the availability of other open space for residents in Area 5 of Figure 2.6.2 Special Public Open Space Areas Map in Section 2.6.2 of the City of Pomona's Pomona Corridors Specific Plan (the "**Corridor Residents**") in satisfaction of the Public Open Space Requirement. Any such arrangement by the District may include, without limitation, the operation of the adjacent property (currently referred to as the Goals Leased Premises) by District or a tenant of District or a new owner of such adjacent property such that it provides the availability of open space in compliance with the Public Open Space Requirement; or

2.2 The payment by District of an "in lieu of fee" described in **Section 3** hereof.

3. In Lieu of Fee. The in lieu of fee described in **Section 2** above shall be in the amount of Two Hundred Twenty-Six Thousand One Hundred Forty-Eight Dollars and Sixteen Cents (\$226,148.16).
4. Delivery of Notices. All notices permitted or required under this MOU shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:

City of Pomona  
Attn: City Manager  
505 South Garey Avenue  
Pomona, CA 91766

DISTRICT:

Pomona Unified School District  
Assistant Superintendent/  
Chief Business Officer  
800 South Garey Avenue  
Pomona, CA 91766

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5. Termination Events. Any of the following events shall constitute a "**Termination Event**": (a) the mutual execution of a notice by the City and District terminating this MOU; (b) any changes in law or regulation such that the Public Open Space Requirement no longer applies to the Melia Project or the underlying property; (c) the implementation

of an alternative arrangement (described in **Section 2** above) reasonably acceptable by the City in satisfaction of the Public Open Space Requirement; or (d) the payment of the in lieu of fee (described in **Section 3** above) to the City. Notwithstanding anything contained herein to the contrary, District may assign this MOU, or its obligations under this MOU, to a third party (e.g., a purchaser of the adjacent property currently referred to as the Goals Leased Premises) who agrees in writing to be bound by all of District's obligations under this MOU.

6. Sale of the adjacent property currently referred to as the Goals Leased Premises ("Adjacent Property"). Prior to any sale of the Adjacent Property, the District shall record on the Adjacent Property a copy of this MOU as well as the writing between the third party purchaser of the Adjacent Property and the District memorializing the third party purchaser has agreed to be bound to the MOU ("**Assumption Agreement**"). Should District fail to record on the Adjacent Property the MOU and the Assumption Agreement prior to any sale of the Adjacent Property, the In Lieu of Fee (Section 2) shall immediately become due and payable to the City.
7. Process in event of Breach.
  - 7.1. If the Corridor Residents do not have access to the Goals Leased Premises in compliance with the terms of this MOU, the City shall provide written notice of breach of the term(s) of the MOU to District. ("**Notice of Breach**"). District shall have thirty (30) days in which to cure any breach and provide the Corridor Resident access to the Goals Leased Premises in compliance with this MOU.
  - 7.2. The Parties agree that if the District does not cure the breach and provide the Corridor Resident access to the Goals Leased Premises in compliance with this MOU within thirty (30) days from the Notice of Breach, the District shall pay the City In Lieu of Fee (Section 2) within sixty (60) days from the Notice of Breach.
8. Governing Law; Venue. This MOU shall be governed by the laws of the State of California without regard to principles of conflict of laws. Venue for any lawsuit or claim arising out of or related to this MOU shall be the County of Los Angeles.
9. Integration. This MOU contains the entire MOU of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. Neither of the Parties has relied upon any oral or written representation or oral or written information given to the Party by any representative of the other Party.
10. Modification. No change or modification of the terms or provisions of this MOU shall be deemed valid unless set forth in a writing signed by both Parties.
11. Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties hereto.

12. Authority. Each Party has all requisite power and authority to execute, deliver and perform this MOU. Each Party warrants that the person who has signed this MOU on behalf of such Party has the legal power, right and authority to make this MOU and bind each such Party.
13. APPROVED SIGNATURE. THIS MOU IS NOT VALID OR AN ENFORCEABLE OBLIGATION AGAINST THE DISTRICT UNTIL SIGNED BY THE SUPERINTENDENT OR THE SUPERINTENDENT'S APPROVED DESIGNEE.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the Effective Date.

CITY OF POMONA  
a municipal corporation

POMONA UNIFIED SCHOOL DISTRICT  
a public agency of the State of California

By: \_\_\_\_\_  
James Makshanoff, City Manager

\_\_\_\_\_  
Sandra Garcia, Assistant Superintendent/  
Chief Business Officer

Attest: \_\_\_\_\_  
Rosalia A. Butler, City Clerk

Approved by Board: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Sonia Carvalho, City Attorney

MUNDELL, ODLUM & HAWS, LLP  
General Counsel

Approved by City Council: \_\_\_\_\_

\_\_\_\_\_

## **Exhibit A**

2.1 In addition to public access and use of the Goals Soccer fields and facilities on the Premises currently available to local public schools pursuant to the Ground Lease, Goals Soccer agrees to expand the Approved Users (as defined in Section 6.2 of the Ground Lease) to include residents in Area 5 of Figure 2.6.2 Special Public Open Space Areas Map in Section 2.6.2 of the City of Pomona's Pomona Corridors Specific Plan (the "**Corridor Residents**"), if and when the Melia Project is fully developed and residents begin to reside at the Melia Project.

2.2 Goals Soccer agrees to make available for the Corridor Residents, free of charge, non-exclusive use of the Soccer Courts, not less than ten (10) hours per week, Monday through Friday, and not less than three (3) hours per weekend, Saturday through Sunday, on such days and times as reasonably determined by the mutual agreement of Goals Soccer and the District.

2.3 Additionally, Goals Soccer agrees to make available for the Corridor Residents, at a reduced rate, non-exclusive use of the Soccer Courts and other open space and amenities, including batting cages, parking, and a pavilion with a snack bar and lockers, for not less than an additional ten (10) hours per week, Monday through Friday, on such days and times as reasonably determined by the mutual agreement of Goals Soccer and the District.

2.4 For purposes of this Section 2, Goals Soccer may require that the Corridor Residents provide evidence of their residence in the relevant areas of the Pomona Corridors to the reasonable satisfaction of Goals Soccer before providing any such Corridor Residents access to the Premises in accordance with this Section 2 (e.g., driver's licenses or specially designated ID cards provided by Goals Soccer to the Corridor Residents upon confirmation of each such Corridor Resident's address in the relevant areas of the Pomona Corridors).

2.5 Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that any provision of access to the Premises as contemplated in this MOU is subject to the ability by Goals Soccer to provide such access in compliance with any state or local mandates and regulations with respect to social distancing and the reopening of public space in light of the COVID-19 coronavirus pandemic.