

RECORDED AT THE REQUEST OF AND  
RETURN TO:

Napa Sanitation District  
1515 Soscol Ferry Road  
Napa, CA 94558

Exempt from Recording Fees  
Per G.C. 27383

Re: APN 007-120-014

<b>INDEMNIFICATION AGREEMENT</b>
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THIS INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Effective Date") by and between Justin-Siena High School Corporation, a California corporation ("Owner") and the Napa Sanitation District, a California special district ("District") with reference to the following facts.

**RECITALS**

A. Owner owns that certain real property located in the County of Napa, California, commonly known as The Watermark at Napa Valley located at 4055 Solano Avenue, Napa County Assessor's Parcel Number of 007-120-014 and more particularly described in Exhibit A and Exhibit B attached hereto and incorporated herein (the "Property").

B. District has an existing public utility easement on the Property, which was recorded on May 10, 2018, as Instrument No.'s 2018-0009403 and 2018-0009404 in the Official Records of Napa County ("Easement").

C. The District has the right to access and use the Easement for the purposes of constructing, installing, maintaining, repairing, replacing or otherwise taking any actions that the District believes are necessary or prudent for the safe operation of the public utility facilities that are located therein (collectively, "District Operations").

D. The Owner is redeveloping the Property and in connection with such development, Owner planned to install fences, decorative/colored/stamped concrete, decorative/colored/stamped asphalt, parking lot lighting poles, and bollard lighting ("Site Improvements") above the District's Easement and the Owner entered into an Indemnification Agreement over the easement, which was recorded on May 11, 2018, as Instrument No. 2018-0009530 in the Official Records of Napa County ("Easement").

E. The Owner plans to install additional improvements on the Property within the Easement including metal fences, pickle ball courts, bocce courts, natural or synthetic turf planting area, synthetic turf putting green with sand trap, and movable raised box planters ("Site Improvements") above the District's Easement.

F. As a condition to Owner's construction of the Site Improvements, District has requested Owner enter into this Agreement with the District regarding the Site Improvements with the purpose of maintaining District's access to the Easement and the public utility facilities which are now or may hereafter be installed within the District's Easement ("District Facilities").

### **AGREEMENT**

NOW THEREFORE, Owner and District, for good and valuable consideration agree as follows:

1. Owner shall notify the District in writing at least sixty (60) days prior to installation of any new Site Improvements within the Easements.

2. To the fullest extent permitted by law, Owner agrees to indemnify, defend (with counsel approved by District) and hold District, its board members, officers, officials, employees and agents, harmless from any and all claims made against District or any liability, loss or damage suffered by District of any kind or nature, including but not limited to, attorneys' fees, arising from or relating to the Site Improvements except to the extent caused by the sole negligence or willful misconduct of District.

3. In the event that District Operations or access to District Facilities in the Easement require removal of all or a portion of the Site Improvements, Owner shall remove such Site Improvements at its sole cost and expense within five (5) business days of receipt of a request to do so from the District. If Owner does not remove the Site Improvements within the 5-day period after receiving a request from the District to do so, or if there is an emergency requiring the District to immediately remove the Site Improvements to repair or reconstruct the District Facilities, then Owner shall pay the District all costs incurred for the removal of the Site Improvements within thirty (30) days of receipt from the District of a list of itemized costs incurred. Upon completion of District Operations, the District will restore the Property to the condition it was in before the District performed such operations except that the District will not be under any obligation to replace the Site Improvements. Additionally, the District will not be responsible for any repairs to the Site Improvements due to settling and/or cracking. If Site Improvements are removed by the District in order to access the District Facilities or perform District Operations, Owner shall have the right to replace the Site Improvements at its sole cost and expense.

4. Owner agrees that the obligations under this Agreement shall be continuing and irrevocable. No modification or waiver of any provision of this Agreement shall be binding

upon the District unless such modification or waiver shall be in writing and signed by an authorized officer of the District.

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

6. No failure on the part of the District to pursue any remedy under this Agreement shall constitute a waiver on the part of the District of its right to pursue such remedy on the basis of the same or a subsequent breach.

7. If either party is required to utilize the services of an attorney in order to enforce this Agreement, the non-prevailing party will pay any attorney's fees and costs incurred by the prevailing party.

8. Any costs or attorney's fees incurred by the District as prevailing party pursuant to this Agreement shall become a lien and a special assessment against the Property.

9. This Agreement shall run with the Property as both a covenant and an equitable servitude and is binding on Owner's heirs, successors in interest and assigns. It shall be recorded with the Napa County Recorder.

10. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

11. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or deposited in the U.S. mail, first class and postage prepaid, addressed to the parties at their respective addresses as listed below.

If to Indemnitor: Justin-Siena High School Corporation  
4026 Maher Street  
Napa, CA 94558

If to Indemnatee: Napa Sanitation District  
1515 Soscol Ferry Road  
Napa, CA 94558

Notice shall be deemed duly given upon personal delivery or, if mailed, two days after mailing. The foregoing addresses may be changed by notice given as provided in the Agreement.

12. Owner (or any person acting on behalf of Owner) may, at any time, and from time to time, deliver written notice to the District, requesting that the District certify in writing

that (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) the Owner is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. Upon such written request, the District shall execute and return such certificate within thirty (30) days following the receipt thereof. Any authorized officer or agent of the District shall be authorized to execute any certificate requested by the Owner.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OWNER:

Justin-Siena High School Corporation, a California corporation

By:   
David Holquin,  
President

NAPA SANITATION DISTRICT:

Napa Sanitation District, a California Special District

By:

\_\_\_\_\_  
Jill Techel  
Chair, Board of Directors

ATTEST:

By:

\_\_\_\_\_  
Cheryl Schuh  
Secretary, Board of Directors

APPROVED AS TO FORM:

By:



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John Bakker

District Legal Counsel

### Exhibit A

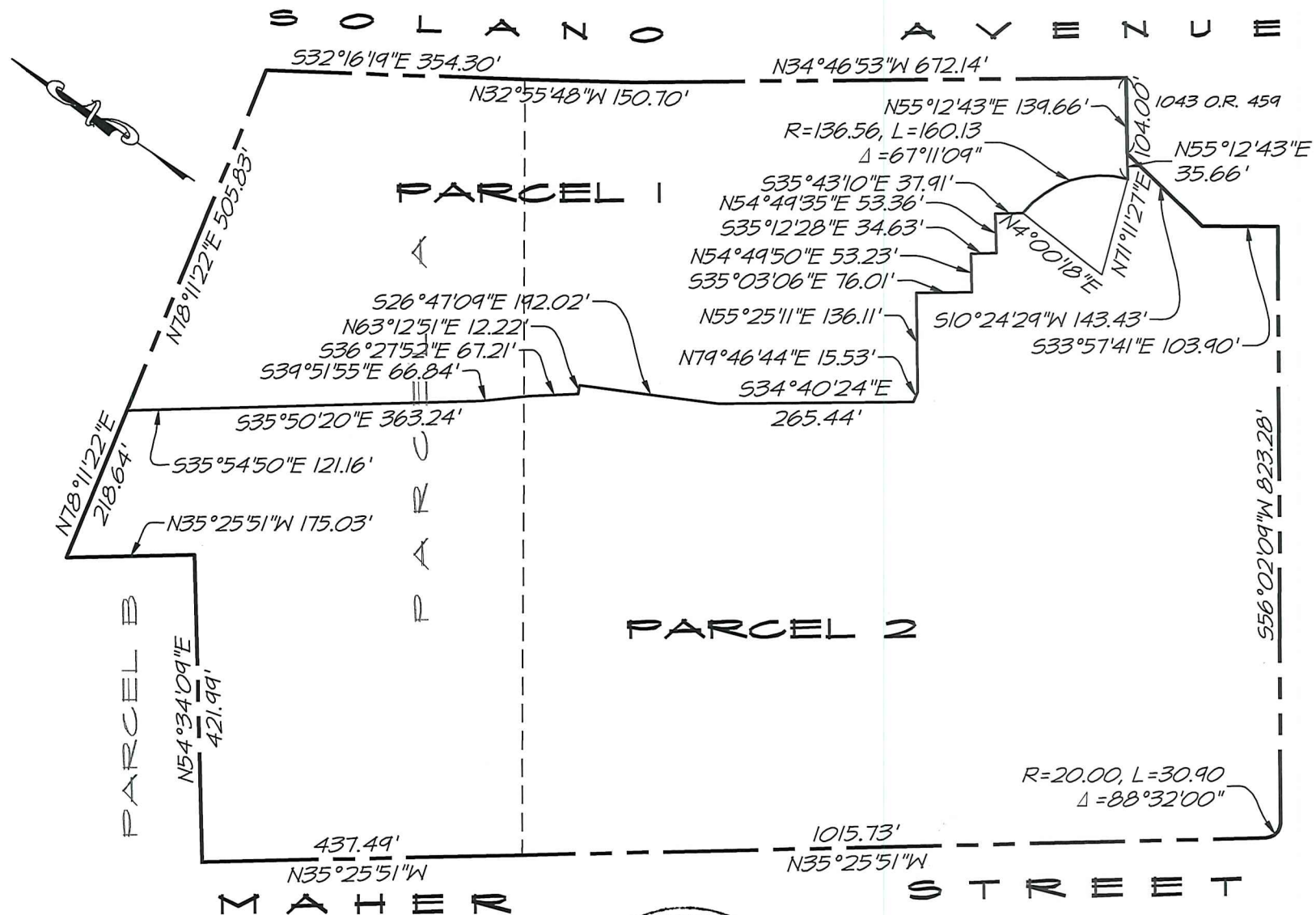
Being a portion of Parcel A, as shown on that certain Parcel Map entitled, "Parcel Map Lands of Siena High School", filed December 6, 1994, in Book 20 of Parcel Maps at pages 55 and 56, in the office of the County Recorder of Napa County and a portion of the Lands of Justin-Siena High School Corporation, a California Nonprofit Religious Corporation described in a Grant Deed recorded June 28, 2013 as Series Number 2013-0018735, Napa County Records, State of California, described as follows:

**Commencing** at the north corner of Parcel A as shown on said Parcel Map Lands of Siena High School; thence along the north line of said Parcel A North  $78^{\circ} 11' 22''$  East 218.64 feet to the **Point of Beginning**; thence continuing along said north line North  $78^{\circ} 11' 22''$  East 505.83 feet to the north corner of said Parcel A on the southwest line of Solano Avenue; thence along the southwest line of Solano Avenue South  $32^{\circ} 16' 19''$  East 354.30 feet; thence South  $32^{\circ} 55' 48''$  East 150.70 feet; thence South  $34^{\circ} 46' 53''$  East 672.14 feet to the north corner of the Lands of the City of Napa as described in the Corporation Grant Deed recorded July 7, 1977 in Book 1043 at Page 459, Official Records of Napa County; thence leaving said southwest line along the northwest line of said Lands of City of Napa South  $55^{\circ} 12' 43''$  West 104.00 feet to the north corner on the west line of said Lands of City of Napa; thence along a prolongation of said northwest line South  $55^{\circ} 12' 43''$  West 35.66 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 136.56 feet and to which a radial line bears North  $71^{\circ} 11' 27''$  East; thence 160.13 feet along said curve through a central angle of  $67^{\circ} 11' 09''$ ; thence along a non-tangent bearing North  $35^{\circ} 43' 10''$  West 37.91 feet; thence South  $54^{\circ} 49' 35''$  West 53.36 feet; thence North  $35^{\circ} 12' 28''$  West 34.63 feet; thence South  $54^{\circ} 49' 50''$  West 53.23 feet; thence North  $35^{\circ} 03' 06''$  West 76.01 feet; thence South  $55^{\circ} 25' 11''$  West 136.11 feet; thence South  $79^{\circ} 46' 44''$  West 15.53 feet; thence North  $34^{\circ} 40' 24''$  West 265.44 feet; thence North  $26^{\circ} 47' 09''$  West 192.02 feet; thence South  $63^{\circ} 12' 51''$  West 12.22 feet; thence North  $36^{\circ} 27' 52''$  West 67.21 feet; thence North  $39^{\circ} 51' 55''$  West 66.84 feet; thence North  $35^{\circ} 50' 20''$  West 363.24 feet; thence North  $35^{\circ} 54' 50''$  West 121.16 feet to the **Point of Beginning**.

Basis of Bearing being the monumented centerline of Maher Street having a bearing of North  $35^{\circ} 25' 51''$  West per the Record of Survey of Napa Control Network Phase 1 and 2, filed in Book 41 of Surveys at pages 44-47, Napa County Records.

**END DESCRIPTION**





<b>RSA<sup>+</sup></b>	1515 FOURTH STREET
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RSA <sup>+</sup>   CONSULTING CIVIL ENGINEERS + SURVEYORS +	CSL 1980
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