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## REAL ESTATE EXCHANGE AGREEMENT

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This REAL ESTATE EXCHANGE AGREEMENT (this “Agreement”) is made effective \_\_\_\_\_, 2019 (the “Effective Date”), by and between WASATCH COUNTY SCHOOL DISTRICT, a subsidiary of the State of Utah (“WCSD”) and HEBER CITY, UTAH, a political subdivision of the State of Utah (“HC”). WCSD and HC are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. WCSD is the owner of that certain real property located at approximately 1478 S Daniel Rd., Heber City, Wasatch County, Utah, commonly known as tax parcel number 00-0009-1020, as described in Section 2.1 below and Exhibit A attached hereto and incorporated herein by this reference (the “WCSD Property”).

B. HC is the owner of certain real property located at approximately 600 West 500 North, Heber City, Wasatch County, Utah, commonly known as tax parcel number 00-0005-7039, as described in Section 2.2 below and Exhibit B attached hereto and incorporated herein by this reference (the “HC Property”).

C. Subject to the terms of this Agreement, WCSD desires to acquire the HC Property from HC in exchange for the WCSD Property, and HC desires to acquire the WCSD Property from WCSD in exchange for the HC Property.

D. To facilitate the exchange of properties between the Parties, WCSD and HC desire to enter into this Agreement.

### AGREEMENTS

NOW, THEREFORE, in consideration of the promises, covenants, representations and warranties hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS. The following terms shall have the following meanings when used in this Agreement:

1.1. Acquiring Party – The Party acquiring property under this Agreement (whether WCSD’s acquisition of the HC Property or HC’s acquisition of the WCSD Property).

1.2. Agreement – Defined in introductory paragraph.

1.3. Affidavit – Defined in Section 8.2.2.

1.4. Business Day – A day other than a Saturday, Sunday or day on which banking institutions in Utah are authorized or required by law or executive order to be closed.

1.5. Cash Payment – Defined in Section 4.3.2.

1.6. Closing – The consummation of the Exchange Transaction, as evidenced by: (i) satisfaction of all conditions to closing set forth herein; (ii) recording of the Deeds; and (iii) the delivery to, and distribution by, Escrow Agent of all required funds and documents.

1.7. Closing Date – On or before the date that is thirty (30) days after expiration of the Inspection Review Period.

1.8. Conditional Satisfaction Notice – Defined in Section 5.1.

1.9. Conveying Party – The Party conveying property under the terms of this Agreement (whether WCSD's conveyance of the WCSD Property, or HC's conveyance of the HC Property).

1.10. Deed(s) – The special warranty deed more particularly described on Exhibit C.

1.11. Default – Any default of either Party's agreements, covenants, representations, warranties or obligations under this Agreement.

1.12. Defaulting Party – Defined in Section 14.

1.13. Escrow – The escrow created with the Escrow Agent pursuant to this Agreement.

1.14. Exchange Transaction – The exchange of the WCSD Property and HC Property as provided for in this Agreement.

1.15. Escrow Agent – Atlas Title Insurance Agency, Inc., Heber City, Utah.

1.16. Hazardous Materials – Any (i) hazardous, harmful, dangerous, or toxic waste, item, substance, material, or product (including, without limitation, any and all petroleum based products) as presently defined by any federal, state, or local environmental and/or health law, act, edict, directive, decree, rule, statute, ordinance, or regulation, including without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, *et. seq.*, (b) the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 5101, *et. seq.*, (v) the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, *et. seq.*, (d) the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, *et. seq.*, (e) the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, *et. seq.*, and (f) all state or local environmental laws, and (g) any and all regulations related to any of the foregoing; or (ii) other item, substance, material, or product prohibited, limited, or regulated by or under any of the laws, acts, edicts, directives, decrees, rules, statutes, ordinances, or regulations described above.

1.17. HC – Defined in introductory paragraph.

1.18. HC Council Approvals – Defined in Section 7.1.

1.19. HC's Broker – Defined in Section 13.

1.20. HC's Closing Conditions – Defined in Section 8.1.

1.21. HC Conveyance – Defined in Section 4.2.

1.22. HC Property – Defined in Recital B.

1.23. HC Property Value – Defined in Section 4.3.1.

1.24. Inspection Materials – Defined in Section 5.2.

1.25. Inspection Review – The right of the Parties to conduct, review, and approve any investigations, inspections, tests, reports, analyses, studies, or other matters deemed necessary, prudent, or desirable by the Acquiring Party (in the Acquiring Party’s sole discretion) to determine (i) the condition and/or fitness of the Property, and (ii) the feasibility and/or desirability of acquiring the Property.

1.26. Inspection Review Period – The period of time from the Effective Date until 5:00 p.m. (MDT) on the date that is thirty (30) days after the Effective Date, or January 13, 2020, whichever is later.

1.27. Non-Defaulting Party – Defined in Section 14.

1.28. Opening of Escrow – The date of delivery to and acceptance by Escrow Agent of a fully executed original of this Agreement (including the execution of the “Escrow Agent Acceptance” form following the signature page(s) of this Agreement).

1.29. Permitted Exceptions – With respect to the Property, all taxes and assessments against the Property which are not yet due and payable as of the Closing Date, and all other matters affecting title to the Property contained in the applicable Title Report or shown on the Survey, to the extent such matters are accepted by the Acquiring Party pursuant to the provisions of Section 6.1 of this Agreement.

1.30. Title Objections – Defined in Section 6.1.

1.31. Title Objection Period – The period of time from the Effective Date until 5:00 p.m. (MDT) on the date that is thirty (30) days after the Effective Date, or January 13, 2020, whichever is later.

1.32. Title Policy – Defined in Section 6.2.

1.33. Title Report – A title commitment with respect to the Property issued by the Escrow Agent and committing to issue the Title Policy, together with legible copies of all instruments or documents referred to in such commitment.

1.34. WCSD – Defined in introductory paragraph.

1.35. WCSD Board Approvals – Defined in Section 7.2.

1.36. WCSD’s Closing Conditions – Defined in Section 8.2.

1.37. WCSD Conveyance – Defined in Section 4.1.

1.38. WCSD Property – Defined in Recital A.

1.39. WCSD Property Value – Defined in Section 4.3.1.

## 2. DESCRIPTION OF PROPERTIES.

2.1. WCSD Property. The WCSD Property consists of approximately 1.78 acres of land and includes the following:

2.1.1. Land located at approximately 1478 S. Daniel Rd., Heber City, Wasatch County, Utah, which is described on Exhibit A attached hereto and incorporated herein by this reference;

2.1.2. All easements, rights-of-way or appurtenances used in connection with the beneficial operation, use and enjoyment of the WCSD Property.

2.1.3. The WCSD Property will include all water, oil, gas, mineral, or subsurface rights of any kind, appurtenant to the WCSD Property.

2.2. HC Property. The HC Property will consist of a 2.02 acres of land and includes the following:

2.2.1. Land located at approximately 600 West 500 North Heber City, Wasatch County, Utah, which is described on Exhibit B attached hereto and incorporated herein by reference.

2.2.2. All easements, rights-of-way or appurtenances used in connection with the beneficial operation, use and enjoyment of the HC Property.

2.2.3. The HC Property will include all water, oil, gas, mineral, or subsurface rights of any kind, appurtenant to the HC Property.

The WCSD Property and the HC Property shall sometimes be referred to herein collectively as the “**Properties**” and individually as a “**Property**.”

2.3. Survey. The Conveying Party shall, within seven (7) calendar days of the Effective Date, and with respect to the Property it is conveying, deliver to the Acquiring Party a current survey of the Conveying Party’s Property (each a “**Survey**”). The Surveys for the WCSD Property and the HC Property shall certify the final legal description and acreage of the Properties.

3. EARNEST MONEY DEPOSIT.

*THIS SECTION INTENTIONALLY OMITTED*

4. CONSIDERATION.

4.1. WCSD’s Conveyance. In consideration of the HC Conveyance (as defined below), at Closing WCSD shall (i) grant and convey, or cause to be granted and conveyed, all right, title and interest, including its interest, in the WCSD Property to HC by special warranty deed substantially in the form of Exhibit C (the “**Deed**”), attached hereto and incorporated herein by this reference, and (ii) pay to HC the Cash Payment as set forth in Section 4.3 below (collectively, the “**WCSD Conveyance**”).

4.2. HC’s Conveyance. In consideration of the WCSD Conveyance (as defined above), at Closing HC shall grant and convey, or cause to be granted and conveyed, all right, title and interest, including its interest, in the HC Property to WCSD by special warranty deed substantially in the form of the Deed (the “**HC Conveyance**”).

4.3. Valuation and Allocation of Cash Payment. The Parties agree as follows:

4.3.1. Property Values. The value of the WCSD Property is TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00) (the “**WCSD Property Value**”). The value of the HC Property is THREE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$330,000.00) (the “**HC Property Value**”).

4.3.2. Cash Payment. At Closing, WCSD will pay to HC SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) (the “Cash Payment”), which Cash Payment constitutes the difference between the WCSD Property Value and the HC Property Value. The Cash Payment shall be deposited by WCSD with Escrow Agent on or before the Closing Date and shall be paid to HC at the Close of Escrow.

4.4. Form of Cash Payment. The Cash Payment shall be made in United States currency by wire transfer.

5. INSPECTION REVIEW PERIOD. During the Inspection Review Period, the Acquiring Party shall have the right to inspect the Property and to conduct the Inspection Review as more fully set forth below.

5.1. Inspection Review. The Conveying Party hereby grants to the Acquiring Party and the Acquiring Party’s employees, contractors and agents, upon reasonable notice, a nonexclusive, revocable license to enter upon the Property, at the Acquiring Party’s sole risk, to conduct the Inspection Review, and other inspections during the Inspection Review Period. The Acquiring Party will immediately repair any damage to the Property resulting from such entry upon, or testing of, the Property. The Acquiring Party shall indemnify, defend, save and hold the Conveying Party harmless from any and all costs, expenses, and damages, injuries, and liabilities of any kind caused by, or in any way related to, the acts or omissions of the Acquiring Party and its employees, contractors and agents during and in connection with the Inspection Review. The obligations of the Acquiring Party set forth above in the preceding sentence shall expressly survive any cancellation, termination, or expiration of this Agreement. The Acquiring Party shall not have the right to perform any invasive or intrusive testing at, in, on or under the Property without the additional prior written consent of the Conveying Party, which consent may be withheld in the Conveying Party’s sole discretion.

On or before expiration of the Inspection Review Period, the Acquiring Party shall deliver to the Conveying Party a notice setting forth the Acquiring Party’s objections to the Property based upon its inspection of the same and the Acquiring Party’s conditions that must be satisfied before it will proceed with the Exchange Transaction (the “Conditional Satisfaction Notice”). Upon receipt of a Conditional Satisfaction Notice, the Conveying Party shall have five (5) Business Days to notify the Acquiring Party whether it will cure the conditions set forth in the Conditional Satisfaction Notice, whereupon the Acquiring Party may, within five (5) Business Days thereafter, either (i) accept such proposed remedies to cure, whereupon the Conveying Party shall have no more than thirty (30) days to cure said conditions, (ii) waive such conditions the Conveying Party is unwilling or unable to cure, or (iii) terminate this Agreement by giving the Conveying Party written notice of termination, whereupon neither the Acquiring Party nor the Conveying Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination.

5.2. Inspection Materials. The Conveying Party shall, within twenty (20) calendar days of the Effective Date and with respect to the Property it is conveying, deliver or cause to be delivered the following items to the Acquiring Party to the extent such items are within the Conveying Party’s possession and control (collectively, the “Inspection Materials”):

5.2.1. The Title Report;

5.2.2. Survey;

5.2.3. All real estate tax bills and assessments in the Conveying Party (or its Agents') possession or control;

5.2.4. All environmental reports, studies, and site assessments in the Conveying Party (or its Agents') possession or control; and

5.2.5. Any underlying leases and purchase contracts.

All of the Inspection Materials delivered by the Conveying Party shall be provided on an "As-Is" basis, without representation or warranty as to the accuracy thereof. If either Party fails to close on the Exchange Transaction, all Inspection Materials provided by the Conveying Party shall be returned to the Conveying Party.

5.3. Termination Right. At any time prior to the expiration of the Inspection Review Period, the Acquiring Party shall have the right for any reason or no reason at all, in its sole and absolute discretion, to terminate and cancel this Agreement by delivering written notice to the Conveying Party. If this Agreement is terminated as provided for in this Section 5.3, the Acquiring Party shall pay the escrow cancellation charges and (ii) each Party shall pay its own title cancellation charges, if any, whereupon neither the Acquiring Party nor the Conveying Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination.

## 6. TITLE AND SURVEY REVIEW.

6.1. Title Objections. The Acquiring Party shall have until expiration of the Title Objection Period to review and to object, in writing, to any easements, liens, encumbrances, or other exceptions or matters disclosed in the Title Report or shown on the Survey (collectively, the "Title Objections"). If the Acquiring Party fails to timely object to anything in the Title Report or Survey prior to expiration of the Title Objection Period, then the condition of title to the Property reflected on the Title Report and Survey will be deemed approved in all respects. If Title Objections are made within the Title Objection Period, the Conveying Party shall determine, in its sole discretion, as to each Title Objection the Conveying Party is willing or able to eliminate or obtain affirmative coverage over each of the Title Objections. Within five (5) days after receipt of any Title Objections, the Conveying Party shall notify the Acquiring Party in writing as to those Title Objections that the Conveying Party will cause to be eliminated or insured over. Any such Title Objections that the Conveying Party has agreed in writing to eliminate or insure over shall be cured on or before the Closing Date. If the Conveying Party's written notice indicates that the Conveying Party is unable or unwilling to eliminate or provide affirmative coverage over any Title Objections, upon terms acceptable to the Acquiring Party, in the Acquiring Party's sole discretion, then the Acquiring Party may, within ten (10) Business Days thereafter, either (i) waive the Title Objections that the Conveying Party was unwilling or unable to cure, or (ii) terminate this Agreement by giving the Conveying Party written notice of termination, whereupon neither the Acquiring Party nor the Conveying Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination; provided, however, if the Conveying Party fails to indicate which Title Objections the Conveying Party will cure or insure over, such silence shall be deemed to be the Conveying Party's election not to cure or insure over the Acquiring Party's Title Objections. In the event that the Acquiring Party does not timely provide such termination notice, then the Acquiring Party shall be deemed to have waived all such Title Objections that the Conveying Party was unwilling or unable to cure, and the Acquiring Party and the Conveying Party shall continue to consummate the Exchange Transaction subject to all other terms and conditions set forth herein.

6.2. Title Policy. At the Closing, Escrow Agent shall issue to the Acquiring Party a standard owner's policy of title insurance ("Title Policy") in an amount reasonably determined by the

Acquiring Party, insuring the Acquiring Party as the fee owner of the Property, subject to all Permitted Exceptions and standard exceptions relating to a standard owner's policy of title insurance. The Acquiring Party may, at its expense, obtain extended coverage and/or such endorsements for the Property as the Acquiring Party may reasonably request or require.

6.3. In the alternative, at the discretion of the Conveying Party, the Conveying Party may elect not to provide a title policy to the Acquiring Party, upon the condition that the Conveying Party assumes any and all responsibility, liability, obligation, and duty to provide clear and clean title to the Acquiring Party, and to proactively resolve all issues of title, including but not limited to clouds or encumbrances upon the title of the property. Additionally, the Conveying Party agrees to indemnify and hold harmless the Acquiring Party from any claims, issues, complaints or challenges regarding the title of the property, and to pay any costs associated with the title work and clearing of the title, including any that the Acquiring Party may incur.

## 7. ADDITIONAL OBLIGATIONS.

7.1. HC Council Approval. WCSD acknowledges that HC's exchange of the Properties shall be subject to all necessary approvals from HC's governing board and authority (the "HC Council Approvals"). HC hereby agrees to pursue in good faith and with all diligence such HC Council Approvals as soon as possible after the Effective Date. In all events, HC shall have until the expiration of the Inspection Review Period to obtain such HC Council Approvals. As soon as such HC Council Approvals are obtained, HC hereby agrees to immediately provide WCSD with written notice of the same. If the HC Council Approvals are not obtained during the Inspection Review Period, this Agreement shall automatically terminate, and neither Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination.

7.2. WCSD Board Approval. HC acknowledges that WCSD's exchange of the Properties shall be subject to all necessary approvals from WCSD's governing board and authority (the "WCSD Board Approvals"). WCSD hereby agrees to pursue in good faith and with all diligence such WCSD Board Approvals as soon as possible after the Effective Date. In all events, WCSD shall have until the expiration of the Inspection Review Period to obtain such WCSD Board Approvals. As soon as such WCSD Board Approvals are obtained, WCSD hereby agrees to immediately provide HC with written notice of the same. If the WCSD Board Approvals are not obtained during the Inspection Review Period, this Agreement shall automatically terminate, and neither Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination.

## 8. CLOSING.

8.1. Time and Place. The Parties shall conduct an escrow-style closing through the Escrow Agent so that it will not be necessary for any Party to attend Closing.

8.2. WCSD's Closing Deliveries. At or before the Closing, WCSD shall deliver, or cause to be delivered, to Escrow Agent and HC, as applicable:

8.2.1. The Deed fully executed and properly acknowledged by WCSD;

8.2.2. An affidavit in the form of Exhibit D (the "Affidavit"), attached hereto and incorporated herein by this reference, fully executed and properly acknowledged by WCSD, as required by Internal Revenue Code Section 1445(b)(2).

8.2.3. The General Assignment fully executed by WCSD.

8.2.4. The Cash Payment;

8.2.5. A settlement statement signed by WCSD, which is reasonably acceptable to HC and accurately reflects the payments, credits and prorations required herein; and

8.2.6. Such other funds, instruments and documents as may be reasonably requested by HC or Escrow Agent or reasonably necessary to effect or carry out the purposes of this Agreement (which funds, instruments and documents shall be subject to HC's prior approval thereof, which approval shall not be unreasonably withheld).

8.3. HC's Closing Deliveries. At the Closing, HC shall deliver to Escrow Agent:

8.3.1. The Deed, fully executed and properly acknowledged by HC.

8.3.2. The Affidavit, fully executed and properly acknowledged by HC.

8.3.3. The General Assignment fully executed by HC.

8.3.4. A settlement statement signed by HC, which is reasonably acceptable to WCSD and accurately reflects the payments, credits and prorations required herein.

8.3.5. Such other funds, instruments and documents as may be reasonably requested by WCSD or Escrow Agent, or reasonably necessary to effect or carry out the purposes of this Agreement (which funds, instruments and documents shall be subject to the WCSD's prior approval thereof, which approval shall not be unreasonably withheld).

8.4. Prorations and Closing Costs.

8.4.1. Except as expressly set forth in this Agreement, each Party must bear its own costs (including attorneys' fees) in connection with its negotiation, due diligence investigation and conduct of this Exchange Transaction.

A. The escrow fee charged by Escrow Agent shall be paid one-half (1/2) by WCSD and one-half (1/2) by HC.

B. The Conveying Party shall pay (i) the premium attributable to a standard ALTA owner's coverage respecting the Title Policy for the Property conveyed by the Conveying Party, and (ii) any repayment penalties and other amounts necessary to release any deeds of trust, mortgages, judgment liens, mechanics' liens, materialmen's liens and other liens to the extent required under Section 6.1.

C. The Acquiring Party shall pay (i) the cost of upgrading the Title Policy for the Property to be acquired by the Acquiring Party to an extended coverage Title Policy and/or the cost of all title endorsements issued in connection with said Title Policy.

8.5. Possession. The Acquiring Party shall be entitled to possession of the Property on the Closing Date.



9. CONDITIONS PRECEDENT AND CONTINGENCIES TO THE CLOSING.

9.1. HC's Conditions. HC's obligation to close and consummate the Exchange Transaction is specifically conditioned and contingent on the fulfillment, satisfaction, and/or completion of each of the following ("HC's Closing Conditions"):

- 9.1.1. The HC Council Approvals;
- 9.1.2. WCSD's delivery of each of the items described in Section 8.2 above;
- 9.1.3. HC's receipt of the Title Policy pursuant to Section 6.2 of this Agreement;
- 9.1.4. Escrow Agent is prepared to record, for the benefit of the Parties, the Deeds;
- 9.1.5. Escrow Agent has completed the proration, crediting or payment of all items identified for proration, crediting or payment on the approved settlement statements; and
- 9.1.6. All other obligations of WCSD described in this Agreement having been satisfied or waived by HC.

Should the contingencies in this Section 9.1 fail for any reason prior to the Closing, then such failure shall be considered a Default and HC shall have all the remedies set forth in Section 15. Notwithstanding the foregoing, all of the foregoing conditions and contingencies are for the benefit of HC and HC may waive any or all of the conditions and contingencies and proceed to the Closing.

9.2. WCSD's Conditions. WCSD's obligation to close and consummate the Exchange Transaction is specifically conditioned and contingent on the fulfillment, satisfaction, and/or completion of each of the following ("WCSD's Closing Conditions"):

- 9.2.1. The WCSD Board Approvals;
- 9.2.2. HC's delivery of each of the items described in Section 8.3 above;
- 9.2.3. WCSD's receipt of the Title Policy pursuant to Section 6.2 of this Agreement;
- 9.2.4. Escrow Agent is prepared to record, for the benefit of the Parties, the Deeds;
- 9.2.5. Escrow Agent has completed the proration, crediting or payment of all items identified for proration, crediting or payment on the approved settlement statements; and
- 9.2.6. All other obligations of HC described in this Agreement having been satisfied or waived by WCSD.

Should the contingencies in this Section 9.2 fail for any reason prior to the Closing, then such failure shall be considered a Default and WCSD shall have all the remedies set forth in Section 15. Notwithstanding the foregoing, all of the foregoing conditions and contingencies are for the benefit of WCSD and WCSD may waive any or all of the conditions and contingencies and proceed to the Closing.

10. PARTIES' REPRESENTATIONS AND WARRANTIES.

10.1. Effective Date and Closing. The Conveying Party, as of the Effective Date, and again at the Closing, represents and warrants to the Acquiring Party that:

10.1.1. Authority and/or Capacity. Each Party has full power and authority to enter into and perform this Agreement and all documents, instruments and agreements entered into by each Party pursuant to this Agreement, and to carry out the transactions contemplated hereby and thereby; and this Agreement has been executed, and such other documents, instruments and agreements have been or will be executed, by a duly authorized representative of each entity constituting each Party.

10.1.2. Binding Agreement. Upon each Party's execution of this Agreement, this Agreement shall be binding and enforceable against each Party in accordance with its terms, and upon each Party's execution of the additional documents contemplated by this Agreement, such additional documents shall be binding and enforceable against each Party in accordance with their terms.

10.1.3. No Leases. At the time of Closing, the Property will not in whole or in part be subject to any leases, or other possessory rights and interests.

The truth of the foregoing representations and warranties on and as of the Effective Date and on and as of the Closing shall be a condition precedent to each Party's obligations to consummate the Exchange Transaction and otherwise perform under this Agreement. All representations and warranties by each Party set forth in this Agreement shall survive the execution and delivery of this Agreement, the recording of the Deed(s) and the Closing.

## 11. "AS IS" EXCHANGE.

11.1. ACCEPTANCE. SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, THE ACQUIRING PARTY ACKNOWLEDGES FOR THE ACQUIRING PARTY AND ACQUIRING PARTY'S SUCCESSORS AND ASSIGNS, THAT THE ACQUIRING PARTY WILL BE ACQUIRING THE PROPERTY BASED SOLELY UPON THE ACQUIRING PARTY'S OWN INVESTIGATION AND INSPECTION THEREOF. CONVEYING PARTY AND ACQUIRING PARTY AGREE THAT THE PROPERTY SHALL BE CONVEYED AND THE ACQUIRING PARTY SHALL ACCEPT TITLE TO AND POSSESSION OF THE PROPERTY ON THE CLOSING DATES "AS IS, WHERE IS, WITH ALL FAULTS", AND THAT SUCH EXCHANGE SHALL BE WITHOUT REPRESENTATION, CERTIFICATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND THE CONVEYING PARTY DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION, CERTIFICATION OR WARRANTY.

11.2. Material Inducement. Acquiring Party hereby agrees and acknowledges that the terms and conditions of this Section 11 are a material inducement to Conveying Party's exchange of the Property, and that Conveying Party would not sell or transfer all or any part of the Property to Acquiring Party without Acquiring Party's express agreement to the terms and conditions of this Section 11.

11.3. Survival. The terms and conditions of all provisions and portions this Section 11 shall survive the Closing and the recording of the Deeds.

## 12. RISK OF LOSS.

12.1. Risk of Loss. The risk of loss with respect to the Property will be upon the Conveying Party until the Closing.

12.2. Casualty. If all or any portion of the Property shall be damaged by any casualty or destruction of any kind prior to Closing, the Conveying Party shall promptly notify the Acquiring Party in writing of such damage, and the Conveying Party shall have no obligation to repair any damage or destruction to the Conveying Party's Property. The Acquiring Party shall have the option to (i) terminate this Agreement with written notice to the Conveying Party, whereupon neither the Acquiring Party nor the Conveying Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination, or (ii) elect not to terminate this Agreement, in which event this Agreement shall remain in full force and effect. If the Acquiring Party does not make any election within ten (10) Business Days after receipt of the Conveying Party's written notification of such damage, then the Acquiring Party shall be deemed to have elected to not terminate this Agreement. If the Acquiring Party does not terminate the Agreement (or is deemed not to have terminated this Agreement), then at Closing (a) the Conveying Party shall pay to the Acquiring Party all insurance awards or proceeds from any such damage which has been received by the Conveying Party on or before the date of Closing, and (b) the Conveying Party shall assign to the Acquiring Party in writing all of the Conveying Party's rights to any additional awards or proceeds and the Acquiring Party shall take the Property subject to any such damage.

12.3. Condemnation. If all or any portion of Property owned by the Conveying Party becomes the subject of a condemnation proceeding(s), the Conveying Party shall promptly notify the Acquiring Party in writing of such proceedings, and the Acquiring Party shall have the option to (i) terminate this Agreement with written notice to the Conveying Party, whereupon neither the Acquiring Party nor the Conveying Party shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination, or (ii) elect not to terminate this Agreement, in which event this Agreement shall remain in full force and effect. If the Acquiring Party does not make any election within ten (10) Business Days after receipt of the Conveying Party's written notification of such condemnation proceedings(s), then the Acquiring Party shall be deemed to have elected to not terminate this Agreement. If the Acquiring Party does not terminate this Agreement (or is deemed not to have terminated this Agreement), then (a) at Closing (1) the Conveying Party shall pay to the Acquiring Party all condemnation awards or proceeds from any such proceedings or actions in lieu thereof received by the Conveying Party from the Effective Date up to the date of Closing, (2) the Conveying Party shall assign to the Acquiring Party all of the Conveying Party's right to any additional awards or proceeds which have not been received as of the date of Closing, and (3) the Conveying Party shall assign to the Acquiring Party all of the Conveying Party's rights to defend such proceedings or actions in lieu thereof, and (b) the Acquiring Party shall take the Property subject to any such condemnation proceeding(s). As used herein, the phrase "becomes the subject of a condemnation proceeding(s)" shall mean any notice or knowledge by the Conveying Party of any formal or informal condemnation or similar actions by any governmental authority against any portion of the Property to be conveyed by the Conveying Party.

13. REMEDIES. In the event of a Default, the Party not in default (the "Non-Defaulting Party") shall give the Party in default (the "Defaulting Party") written notice of such default and thereafter the Defaulting Party shall have ten (10) Business Days to cure such default (or such longer period if such is reasonably necessary in order to cure the default, not to exceed thirty (30) days, and then only if the Defaulting Party commences such cure within the initial ten (10) Business Day period and thereafter diligently pursues the cure to completion). In the event that the Defaulting Party fails to cure the Default within the cure period, the Non-Defaulting Party may, as its remedy for such Default elect to do any one, but only one, of the following: (i) waive the effect of such Default and proceed to consummate the Exchange Transaction; (ii) cancel this Agreement in accordance with Section 16 below; or (iii) bring an action for specific performance of this Agreement. The Parties specifically waive all rights to consequential and punitive damages for any Default.

14. **TERMINATION.** If either Party elects to terminate this Agreement pursuant to a right granted herein, the terminating Party shall give written notice of the termination to the other Party and Escrow Agent. Upon termination by notice as set forth in the preceding sentence, or upon an automatic termination in accordance with the terms of the Agreement, Escrow Agent shall return all documents deposited in the Escrow to the Party who supplied the documents. Upon delivery of documents, this Agreement and the Escrow will be deemed terminated, and except as expressly provided in this Agreement, neither Party will have any further liability or obligation under this Agreement. Upon termination of the Agreement because of a default by a Party, the defaulting Party shall be liable for and shall pay any escrow termination fees or costs; otherwise, upon any termination the Parties shall each pay one half (1/2) of any such fees and costs.

15. **ATTORNEYS' FEES.** If there is any litigation between the Parties to enforce or interpret any provisions or rights under this Agreement, the unsuccessful Party in such litigation, as determined by the court, shall pay to the successful Party, as determined by the court, all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the successful party, such fees to be determined by the court sitting without a jury.

16. **NOTICES.** Except as otherwise required by law, any notice, demand or request given in connection with the Exchange Transaction and this Agreement shall be in writing and shall be given by (i) personal delivery, (ii) overnight courier service, (iii) United States certified mail, return receipt requested, postage or other delivery charge prepaid, or (iv) via electronic mail. In all events, notice shall only be deemed given if properly addressed to HC or WCSD, as applicable. Such notices will be deemed properly addressed if the following addresses (or at such other address as the Parties or the person receiving copies may designate in writing given in accordance with this Section) are used:

WCSD: Wasatch County School District  
Attn: Superintendent Paul Sweat  
101 East 200 North  
Heber City, UT 84032  
Email: paul.sweat@wasatch.edu

With a copy to: Seiler, Anderson, Fife & Marshall, LC  
Attn: Jared Anderson  
2500 North University Ave.  
Provo, UT 84604  
Email: jla@safmlaw.com

HC: Heber City  
Attn: \_\_\_\_\_  
75 North Main Street  
Heber City, UT 84032  
Email:

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email:

Escrow Agent: Atlas Title  
Attn: Michael Brown  
490 West 100 South  
Heber City, UT 84032  
Email:

Notice shall be deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, facsimile, or email; on the date of delivery to the overnight courier service, if such a service is used; and on the date of deposit in the mail, if mailed. Notice shall be deemed to have been received on the date on which the notice is actually received or delivery is refused. Copies of all notices given to the Parties shall be given to Escrow Agent and the broker described above; provided, however, any omission on the part of either party to provide a copy of the applicable notice to Escrow Agent, the broker, or both, shall not affect the effectiveness of the notice if properly provided to the other parties as described above.

17. ADDITIONAL ACTS. The Parties agree to promptly execute and deliver such other documents and perform such other acts as may be reasonably necessary to carry out the purposes and intent of this Agreement.

18. GOVERNING LAW; JURISDICTION. To the fullest extent possible, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without regard to any conflicts of law issues.

19. BUSINESS DAYS. If this Agreement requires any act to be done or action to be taken on a date which is not a Business Day, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding Business Day after such date.

20. WAIVER. The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

21. SURVIVAL. Only where specifically so provided herein shall any of the covenants, agreements, representations, warranties and indemnities set forth in this Agreement survive the Closing. Any such matters that survive Closing pursuant to the terms of this Agreement shall be subject to any time limitations set forth herein, and shall not merge into any deed, assignment or other instrument executed or delivered pursuant hereto.

22. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document and agreement. A copy, facsimile or email transmission of any part of this Agreement, including the signature page, shall have the same force and effect as an original.

23. ENTIRE AGREEMENT/AMENDMENT. This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth herein as of the date hereof, and supersedes all prior oral and written agreements, discussions and understandings of the Parties hereto as to the matters set forth herein, and cannot be altered or amended except pursuant to an instrument in writing signed by both Party.

24. CONSTRUCTION. This Agreement is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and

customary meanings. The Parties hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

25. **INTERPRETATION.** If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument or other agreement executed in connection herewith or in furtherance hereof, including any exhibits hereto, the same shall be consistently interpreted in such manner as to give effect to the general purposes and intentions as expressed in this Agreement, which shall be deemed to prevail and control.

26. **NO THIRD-PARTY BENEFICIARY.** No term or provision of this Agreement or the Exhibits hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, partnership, company, corporation or other entity that is not a party hereto (including, without limitation, any broker), and no such other person, firm, partnership, company, corporation or other entity shall have any right or cause of action hereunder.

27. **SEVERABILITY.** If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof so long as removing the severed portion does not materially alter the overall intent of this Agreement.

28. **TIME OF ESSENCE.** The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable by the non-defaulting party) default under this Agreement by the Party so failing to perform.

*[Signature Page Follows]*

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

WCSD:

WASATCH COUNTY SCHOOL DISTRICT,  
a subsidiary of the State of Utah

  
\_\_\_\_\_

By: Blair Baird

Its: \_\_\_\_\_

HC:

HEBER CITY, a political subdivision of the State  
of Utah

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

ESCROW AGENT ACCEPTANCE

This Exchange Agreement (the "Agreement") is accepted and the Escrow is opened this \_\_\_\_ day of \_\_\_\_\_, 2018. Escrow Agent hereby agrees to act as the Escrow Agent as defined in the Agreement and to perform its duties in accordance with the provisions of the Agreement. Further, Escrow Agent agrees to act as "the person responsible for closing" the Agreement within the meaning of Section 6045(a) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

ESCROW AGENT: ATLAS TITLE INSURANCE AGENCY, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**

**(Legal Description of WCSD Property)**

**EXHIBIT B**

**(Legal Description of HC Property)**

**EXHIBIT C**

**FORM OF DEED**

WHEN RECORDED, MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax Parcel:

\_\_\_\_\_  
*(space above reserved for Recorder's use only)*

**SPECIAL WARRANTY DEED**

\_\_\_\_\_, a \_\_\_\_\_ ("Grantor"), whose address is \_\_\_\_\_ hereby conveys and warrants against all claiming by, through or under Grantor only, to \_\_\_\_\_, a \_\_\_\_\_ ("Grantee"), whose address is \_\_\_\_\_, for the sum of Ten Dollars and other good and valuable consideration, the following described tract of land in \_\_\_\_\_, Salt Lake County, Utah:

See legal description on Exhibit A attached hereto and incorporated by reference herein.

SUBJECT TO the lien for general taxes and assessments not yet due and payable, and subject to all easements, claims of easements, rights-of-way, zoning regulations, matters which would be disclosed by a proper survey, and other matters appearing of record (but excluding any mortgages, trust deeds, or other liens securing monetary obligations).

[INSERT RESERVATION IF APPLICABLE]

*[Signatures and acknowledgments to follow]*



**EXHIBIT D**

**AFFIDAVIT PURSUANT TO  
SECTION 1445 OF THE INTERNAL REVENUE CODE**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_, a(n) \_\_\_\_\_ (the "Conveying Party"), the undersigned hereby certifies the following on behalf of the Conveying Party:

- (a) the Conveying Party is not a foreign person for purpose of U.S. income taxation. If the Conveying Party is a corporation, trust, partnership or estate, the Conveying Party is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).
- (b) if the Conveying Party is a corporation, trust, partnership or estate, transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii).
- (c) the Conveying Party's U.S. employer identification number is \_\_\_\_\_.
- (d) the Conveying Party's office address is: \_\_\_\_\_.

Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge, it is true, correct and complete. I further declare that I have authority to sign and deliver this certificate on behalf of the Conveying Party.

DATED as of \_\_\_\_\_, 20\_\_.

*[Signature to follow]*

IN WITNESS WHEREOF, the undersigned hereby executes this Affidavit as of the date set forth above.

**[DO NOT SIGN – EXHIBIT ONLY]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

:ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who indicated to me that he/she is a \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and that he/she duly acknowledged to me that he/she executed the foregoing instrument as a free and voluntary act for and on behalf of the said political subdivision.

\_\_\_\_\_  
Notary public

**EXHIBIT E**

## GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT (this "Assignment") is entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between \_\_\_\_\_, a \_\_\_\_\_, ("Assignor") and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

### RECITALS

A. Assignor presently owns the real property described in Exhibit A to this Assignment and any and all improvements located thereon (the "Property").

B. Pursuant to that certain Exchange Agreement, dated as of \_\_\_\_\_, 20\_\_, between Assignor and Assignee (as may have been amended from time to time, the "Agreement"), Assignor is, simultaneously with the execution of this Assignment, transferring to Assignee all of its right, title and interest in the Property (the "Property Transfer") under the terms and conditions more fully set forth in the Agreement.

C. In connection with the Property Transfer, Assignor desires to assign, transfer, give and convey to Assignee, and Assignee desires to acquire from Assignor, all of Assignor's interest, in and to the following described rights, interests and property relating to the Property.

### AGREEMENTS

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee each hereby agree as follows:

1. Assignment. Assignor assigns, transfers, sets over, and conveys to Assignee, to the fullest extent the same are assignable, all of Assignor's right, title, and interest, in and to (i) any and all warranties and/or guaranties of any kind, express or implied, written or oral, relating to the Property, including without limitation, any and all warranties and/or guaranties from contractors, builders, manufacturers, and/or suppliers, (ii) any and all licenses, zoning work, benefits from development agreements, consents, approvals or permits relating to the Property (including, without limitation, certificates of occupancy; entitlements; building permits; development, zoning or land use work; or submittals) (collectively, the "Entitlements"), (iii) any applications, reports, surveys, studies, plans, site plans, master plans, plans, assessments, and all other documents, information and materials in any way related to the Property, and/or the Entitlements (including without limitation all Inspection Materials related to the Property as such term in defined in the Agreement); and (iv) any and all benefits, rights and intangible property or assets in any way related to the Property, and/or the Entitlements. The forgoing shall be provided to Assignee in its "as-is," "where-is" condition, without any representations or warranties whatsoever.

2. Binding Effect. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

3. Construction: Definitions. This Assignment shall be construed according to Utah law. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Agreement.

4. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

**ASSIGNOR:**

**[DO NOT SIGN – EXHIBIT ONLY]**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Its: \_\_\_\_\_

**ASSIGNEE:**

**[DO NOT SIGN – EXHIBIT ONLY]**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Its: \_\_\_\_\_