
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made this 8TH day of March, 2019 (the "Effective Date"), by and between Robert Probst and Probst Tile & Marble Co. a Utah limited liability company (collectively referred to as "Seller"), and the BOARD OF EDUCATION OF WASATCH COUNTY SCHOOL DISTRICT, a political subdivision of the State of Utah ("Buyer").

RECITALS

A. Seller is the owner of approximately twenty and forty-three/one hundredth (20.43) acres of real property located in Wasatch County, Utah, commonly referred to as Parcel Nos. 00-0020-1934, 00-0008-0221, and 00-0008-0239 (the "Real Property").

B. Buyer desires to purchase from Seller, and Seller is willing to sell to Buyer, the Property (defined herein) based upon the covenants, terms, conditions, and provisions set forth in this Agreement.

AGREEMENT

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, Seller and Buyer agree as follows:

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

1.1. Affidavit – Defined in Section 11.2.2.

1.2. Agreement – This Purchase and Sale Agreement, including all exhibits and schedules attached hereto.

1.3. 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.

1.4. Buyer – Defined in the first paragraph of this Agreement.

1.5. Buyer's Consultants – The attorneys and consultants of Buyer that are specifically working with Buyer on the Purchase and Sale Transaction.

1.6. Buyer's Default – Defined in Section 15.2.

1.7. Buyer's Representative – Paul Sweat, Superintendent (see contact information in Section 18).

1.8. Cash – United States currency represented by certified or cashier's check, wire transfer or other readily available funds.

- 1.9. Casualty Loss Value – Defined in Section 13 .3.1.
- 1.10. Closing or Close of Escrow – The closing and consummation of the Purchase and Sale Transaction, as evidenced by the delivery of Fifty percent (50%) of the Purchase Price to Seller and the recording of the Deed.
- 1.11. Closing Date – On or before the date that is thirty (30) days after expiration of the Inspection Review Period. The exact time and date for Closing will be designated by Buyer upon not less than five (5) days prior notice (which notice may be provided in writing or by telephone), subject to the reasonable approval of Seller.
- 1.12. Extension of Closing. Buyer shall be entitled to extend the Closing Date one time, by delivering notice to Seller (which notice may be provided in writing or by telephone) to a date up to sixty (60) days following the initial scheduled Closing Date (including, without limitation, to obtain consents, approvals, permits, and to allow time for the satisfaction of the conditions to or requirements of this Agreement).
- 1.13. Current Knowledge – With respect to Seller, shall mean the current, actual knowledge of Seller’s Representative, and with respect to Buyer, shall mean the current, actual knowledge of Buyer’s Representative.
- 1.14. Deed – Defined in Section 11.2.1.
- 1.15. Deposit – Defined in Section 4.2.
- 1.16. Effective Date – Defined in the first paragraph of this Agreement.
- 1.17. Escrow – The escrow created with the Escrow Agent pursuant to this Agreement.
- 1.18. Escrow Agent – Atlas Title Insurance Agency, Inc., Heber City, Utah.
- 1.19. General Assignment– Defined in Section 11.2.3.
- 1.20. 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., (c) 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.
- 1.21. Inspection Materials – Defined in Section 7.2.
- 1.22. Inspection Review – Right of Buyer to inspect the Property and to conduct, review and approve any title reports, investigations, and tests, including, without limitation, soils inspections, physical inspections, environmental tests, analyses, studies or other matters deemed necessary by Buyer to

determine the condition and fitness of the Property, and the feasibility and desirability of acquiring the Property, as more fully set forth in Section 7.

1.23. Inspection Review Period – The period of time from the Effective Date until 5:00 p.m., Mountain Standard Time on the date that is one hundred twenty (120) days after the Effective Date. Buyer shall be entitled to extend the Inspection Review Period by delivering notice to Seller (which notice may be provided in writing or by telephone) to a date up to sixty (60) days following the initial scheduled Inspection Review Period.

1.24. MAI Appraiser – Member Appraisal Institute.

1.25. Opening of Escrow – The date of delivery to and acceptance by Escrow Agent of a fully executed original of this Agreement.

1.26. Permitted Exceptions – All taxes and assessments against the Property which are not yet due and payable as of the Closing Date, all current zoning laws and restrictions relating to the Property, any patent claims, and all other matters affecting title to the Property contained in the Title Report or shown on the Survey as are accepted by Buyer pursuant to the provisions of Section 8.2 of this Agreement.

1.27. Personal Property – Not applicable.

1.28. Property – Defined in Section 3.

1.29. Purchase and Sale Transaction – The purchase of all of the Property by Buyer, and the sale of all of the Property by Seller, all as contemplated by this Agreement.

1.30. Purchase Price – Defined in Section 4.1.

1.31. Real Property – Defined in Recital A.

1.32. Seller – Defined in the first paragraph of this Agreement.

1.33. Seller's Default – Defined in Section 15.1.

1.34. Seller's Representative – Robert Probst (see contact information in Section 18).

1.35. Survey – Defined in Section 8.1.

1.36. Title Objections – Written objections by Buyer to Seller of any easements, liens, encumbrances, or other exceptions or matters disclosed in the Title Report or shown on the Survey.

1.37. Title Policy – A standard owner's policy of title insurance.

1.38. Title Report – A title commitment with respect to the Property issued by the Escrow Agent and committing to issue a standard owner's policy of title insurance with respect to the Property, together with copies of all instruments referred to on Schedule "B" of such report.

2. PURCHASE AGREEMENT. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Property. The Property shall be purchased in accordance with, and subject to, the terms, conditions, and provisions fully set forth below.

3. PROPERTY DEFINED. Buyer, as more fully set forth herein, shall purchase the Real Property, together with (i) all buildings, structures, and improvements currently included thereon, (ii) any and all easements, rights of way, and appurtenances running with or pertaining thereto, (iii) any water, water rights, or stock in water companies of any kind whatsoever; (iv) any oil, gas, mineral, or subsurface rights of any kind, and (v) any other property or rights described on the General Assignment (collectively, the "Property").

4. PURCHASE PRICE.

4.1. Amount of Purchase Price. The purchase price and consideration (the "Purchase Price") to be paid for the purchase of the Property shall be ONE HUNDRED TWENTY-ONE THOUSAND DOLLARS AND NO/100 DOLLARS (\$121,000.00) per acre, the total acreage to be verified by the Survey.

4.2. Deposit. Buyer shall deposit FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) in Cash with Escrow Agent within three (3) Business Days after the delivery to Escrow Agent of a fully executed original of this Agreement (the "Deposit").

4.3. Balance of the Purchase Price. Fifty percent (50%) of the Purchase Price, less the Deposit, shall be paid by Buyer to Seller at Closing. Fifty percent (50%) of the Purchase Price shall be paid by Buyer to Seller on or before February 28, 2020.

5. DISPOSITION OF THE DEPOSIT. Seller and Buyer hereby instruct Escrow Agent to hold the Deposit in a federally insured, interest-bearing account with no penalty for early withdrawal, and to disburse the Deposit as follows:

5.1. Distribution of the Deposit to Buyer. If the Purchase and Sale Transaction for the Property is not consummated due to (a) the timely termination of this Agreement by Buyer pursuant to an existing termination right under this Agreement in which the express terms of such termination right provide that Buyer is granted the right to receive the Deposit, or (b) the termination of this Agreement by Buyer due to a material Seller's Default under this Agreement, then all portions of the Deposit (including any interest) shall be paid and disbursed immediately to Buyer.

5.2. Distribution of Deposit to Seller. If the Purchase and Sale Transaction for the Property is not consummated due to Buyer's Default under this Agreement, then all portions of the Deposit (including any interest) shall be paid and disbursed immediately to Seller.

5.3. Application of the Deposit to the Purchase and Sale Transaction. If the Purchase and Sale Transaction is consummated, then the Deposit (including any interest) shall be applied at Closing to the Purchase Price and shall be paid to Seller.

6. ESCROW AGENT AND ESCROW.

6.1. Escrow. Within three (3) business days after the execution of this Agreement by the parties, Seller shall open an escrow account with Escrow Agent by depositing an executed copy of this Agreement with Escrow Agent. Escrow Agent shall review this Agreement, and if this Agreement is acceptable, sign this Agreement where indicated and return one (1) fully-executed copy of this Agreement to each of the parties. If this Agreement is unacceptable to Escrow Agent, Escrow Agent shall immediately notify each of the parties with an explanation detailing the deficiencies of this Agreement. Escrow Agent shall act as the "person responsible for closing the transaction" and also as the "reporting person" for

purposes of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and the filing of any required information with the Internal Revenue Service.

6.2. Acknowledgment by Escrow Agent. By signing this Agreement, Escrow Agent hereby agrees to act as Escrow Agent under this Agreement.

7. INSPECTION REVIEW PERIOD. During the Inspection Review Period, Buyer shall have the right to conduct the Inspection Review, all in accordance with the terms and provisions of this Section 7.

7.1. Inspection Review. Seller hereby grants to Buyer and Buyer's employees, contractors, and agents, a nonexclusive right and license to enter upon the Property, at Buyer's sole risk, to conduct the Inspection Review, and other inspections during the Inspection Review Period. Seller will accommodate Buyer's Inspection Review activities. Buyer will immediately repair any damage to the Property resulting from such entry upon, or testing of, the Property.

7.2. Inspection Materials. If not already provided, within five (5) business days from the mutual execution and delivery of this Agreement, Seller agrees to deliver to Buyer (to the extent in Seller's possession or control), the following materials with respect to the Property, (collectively, the "Inspection Materials"):

7.2.1. The Title Report;

7.2.2. The most recent survey of the Property, if any;

7.2.3. Seller's most recent Phase I environmental assessments for the Property, if any;

7.2.4. Copies of documents related to subdivision plans, site servicing, annexation, zoning status, proposed concept plans, or any other material documentation which relates to the Property, if any, and in the possession of Seller; and

7.2.5. All reports, tests, inspection results, and other similar documents related to the Property, which shall be made available to Buyer for inspection and copying, if any and in the possession of Seller.

7.3. Buyer's Termination Right. In the event that the results of Buyer's Inspection Reviews are unsatisfactory to Buyer for any reason, then Buyer may terminate this Agreement prior to the expiration of the Inspection Review Period by delivering to Seller written notice of termination, whereupon all portions of the Deposit, if any, shall be returned to Buyer in accordance with Section 5.1 of this Agreement, and neither Buyer nor Seller shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination. In the event Buyer does not timely terminate this Agreement prior to the expiration of the Inspection Review Period as set forth in this Section 7.3, then Buyer (i) shall be deemed (a) to have waived its right to terminate under this Section 7.3, and (b) to have approved the condition of the Property in all respects; and (ii) Buyer and Seller shall continue to consummate the Purchase and Sale Transaction subject to all other terms and conditions set forth herein.

8. TITLE AND SURVEY REVIEW.

8.1. Survey. As soon after the Effective Date as reasonably possible, Buyer and Seller will jointly commission a current survey of the Real Property (the "Survey") prepared by a registered professional land surveyor jointly agreed to by Buyer and Seller, in conformance with the ALTA Standards and Buyer's then current survey requirements. Buyer and Seller agree to each pay one-half of the cost of the Survey.

8.2. Title and Survey Objections. Buyer shall have until expiration of the Inspection Review Period to make Title and Survey Objections. If Buyer, within the Inspection Review Period, fails to timely object to anything in the Title Report or Survey, then the condition of title to the Property reflected on the Title Report and Survey will be deemed approved in all respects. If Title and/or Survey Objections are made within the Inspection Review Period, Seller shall determine, in its sole discretion as to each Title and/or Survey Objection, whether or not Seller is willing or able to eliminate or obtain affirmative coverage over each of the Title and/or Survey Objections. All title and survey items and issues not specifically objected to shall be Permitted Exceptions. Seller shall notify Buyer ten (10) days prior to expiration of the Inspection Review Period in writing as to those Title and/or Survey Objections that Seller will cause to be eliminated or insured over. If Seller's written notice indicates that Seller is unable or unwilling to eliminate or provide affirmative coverage over any Title and/or Survey Objections, upon terms acceptable to Buyer in its sole discretion, then Buyer may either (i) waive the Title and/or Survey Objections that Seller was unwilling or unable to cure in which event all title and survey issues and items related to Title and Survey Objections shall be Permitted Exceptions, or (ii) terminate this Agreement prior to the expiration of the Inspection Review Period by giving Seller written notice of termination, whereupon all portions of the Deposit, if any, shall be returned to Buyer in accordance with Section 5 of this Agreement, and neither Buyer nor Seller shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination. In the event Seller's written notice indicates that Seller is unable or unwilling to eliminate or provide affirmative coverage over any Title and/or Survey Objections, but Buyer does not timely terminate this Agreement prior to the time period set forth above for such termination, then Buyer shall be deemed to have waived all such Title and Survey Objections that Seller was unwilling or unable to cure and all title and survey issues and items related to such Title and Survey Objections shall be Permitted Exceptions, and Buyer and Seller shall continue to consummate the Purchase and Sale Transaction subject to all other terms and conditions set forth herein.

8.3. Title Policy. At Closing, Escrow Agent shall issue to Buyer a Title Policy in the amount of the Purchase Price insuring Buyer 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—Seller shall pay the premium for the standard owner's policy. Buyer may purchase, at Buyer's sole cost and expense, such extended coverage or endorsements for the Property as Buyer may reasonably request or require.

9. WATER. Seller hereby agrees to transfer to Buyer at Closing all water rights, secondary water, water appurtenant to the Property, and other certificated/stock water rights, including 106 shares of Spring Creek Ditch Irrigation Co.

10. CONDITIONS TO CLOSING. Buyer has, or will through the presentation of multiple additional Purchase and Sale Agreements, offered to purchase parcels of real property located in close proximity to the Property (the "Additional Parcels"). Buyer requires each of the Additional Parcels to complete its intended project. The obligations of Buyer to close, fund, and consummate this Purchase and Sale Transaction is specifically conditioned and contingent upon Buyer closing, funding, and consummating the purchase and sale transaction for each of the Additional Parcels. Buyer may terminate this Agreement prior to the Closing Date by delivering to Seller written notice of termination, whereupon all portions of the Deposit, if any, shall be returned to Buyer in accordance with Section 5.1 of this Agreement, and neither Buyer nor Seller shall have any further right, liability, duty or obligation under this

Agreement, except for agreements or covenants that specifically survive termination. The foregoing condition/contingency is solely for the benefit of Buyer, and Buyer may waive such condition/contingency.

11. CLOSING.

11.1. Time and Place. Subject to Buyer's rights under Section 1.12 of this Agreement, Closing for the Purchase and Sale Transaction shall take place in the offices of Escrow Agent on the Closing Date.

11.2. Seller's Closing Deliveries. At Closing, Seller shall deliver, or cause to be delivered, to Escrow Agent:

11.2.1. A special warranty deed (the "Deed"), fully executed and properly acknowledged by Seller;

11.2.2. An affidavit fully executed and properly acknowledged by Seller, as required by Internal Revenue Code Section 1445(b)(2) (the "Affidavit");

11.2.3. A general assignment and bill of sale related to the Property fully executed by Seller (the "General Assignment");

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

11.2.5. Such other funds, instruments and documents as may be reasonably requested by Buyer 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 Seller's prior approval thereof, which approval shall not be unreasonably withheld).

11.3. Buyer's Closing Deliveries. At Closing, Buyer shall deliver to Escrow Agent:

11.3.1. The funds required by Section 4 of this Agreement together with any prorations and other fees related to Closing;

11.3.2. The General Assignment, fully executed by Buyer;

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

11.3.4. Such other funds, instruments and documents as may be reasonably requested by Seller 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 Buyer's prior approval thereof, which approval shall not be unreasonably withheld).

11.4. Prorations and Closing Costs

11.4.1. 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 the Purchase and Sale Transaction. Seller shall pay the premium for standard coverage in connection with the Title Policy. Buyer shall pay the cost of any extended coverage and/or endorsements that Buyer desires in connection with the Title Policy. Any and all documentary stamp taxes, surtaxes,

rollback, or transfer fees or taxes (“Additional Taxes”) shall be the responsibility of Seller, irrespective of the triggering event, timing of assessment, or whether notice thereof is received prior to or after Closing, it being expressly agreed that, in no event, shall Buyer have any responsibility or liability for Additional Taxes. Seller shall timely pay the Additional Taxes and Seller shall indemnify, defend and hold Buyer harmless from any claims, damages or expenses (including but not limited to attorney’s fees) related thereto. If it is determined prior to Closing that the Property is or will be subject to Additional Taxes, the parties shall enter into an escrow agreement on or before Closing, which shall provide for the escrow of sufficient funds by Seller to pay any Additional Taxes. If there are inadequate funds in escrow to satisfy any Additional Taxes, Seller shall pay therein such additional funds as are necessary, within 5 days from the date Seller receives notification of an inadequacy. Recording fees, escrow fees, and other customary closing costs shall be allocated between Seller and Buyer in the manner customary for commercial real estate transactions in the county in which the Property is located.

11.5. Possession. Buyer shall be entitled to possession of the Property after the Closing Date.

12. REPRESENTATIONS AND WARRANTIES.

12.1. Seller’s Representations. Seller, to Seller’s Current Knowledge, as of the Effective Date and again at Closing, represents and warrants to Buyer that:

12.1.1. Organization and Standing. Probst Tile & Marble, Co. is duly formed, validly existing and in good standing under the laws of the State of its formation. Seller has full power and authority to enter into and perform this Agreement and all documents, instruments and agreements entered into by Seller pursuant to this Agreement, and to carry out the transactions contemplated hereby and thereby, subject to the condition precedent set forth in Section 35. This Agreement has been executed, and such other documents, instruments and agreements have been or will be executed, by a duly authorized representative of Seller.

12.1.2. Binding Agreement. Upon Seller’s execution hereof, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller’s execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Seller in accordance with their terms.

12.1.3. No Condemnation. Seller has not received any written notice, or any information regarding any potential written notice, of condemnation or eminent domain proceedings with respect to the Property, and no condemnation or eminent domain proceedings or negotiations have been commenced in connection with the Property.

12.1.4. No Litigation. There are no current actions, suits, or proceedings at law or in equity before any judicial body or governmental agency affecting or involving the Property.

12.1.5. No Tenants. There are no tenants in possession of the Property.

12.1.6. No Material Alterations to the Property. From and after the Effective Date, Seller shall not intentionally make any material alterations to the improvements on the Property, except customary and normal repairs and maintenance to the Property or with the prior written consent of Buyer, which consent shall not be unreasonable withheld, conditioned, or delayed.

12.1.7. Hazardous Materials. To Seller’s Current Knowledge and except as disclosed in any environmental report provided by Seller to Buyer, all operations or activities of Seller

upon, or Seller's use or occupancy of the Property, or any portion thereof, is in all material respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of any Hazardous Materials. Seller has not engaged in or permitted any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Materials at, on, in or about, the Property, or any portion thereof in violation of applicable laws. To Seller's Current Knowledge, no proceeding or inquiry by any governmental authority with respect to any of the matters set forth in this Section 12.1.7.

The truth of the foregoing representations and warranties on and as of the Effective Date and on and as of Closing shall be a condition precedent to Buyer's obligations to purchase the Property and otherwise perform under this Agreement. All representations and warranties by Seller set forth in this Agreement shall survive the execution and delivery of this Agreement, the recording of the Deed, and Closing.

12.2. Buyer's Representations. Buyer, to Buyer's Current Knowledge, as of the date of this Agreement and again at Closing, represents and warrants to Seller that:

12.2.1. Organization and Standing. Buyer is duly formed, validly existing and in good standing under the laws of the State of its formation. Buyer has full power and authority to enter into and perform this Agreement and all documents, instruments and agreements entered into by Buyer pursuant to this Agreement, and to carry out the transactions contemplated hereby and thereby. This Agreement has been executed, and such other documents, instruments and agreements have been or will be executed, by a duly authorized representative of Buyer.

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

The truth of the foregoing representations and warranties on and as of the Effective Date and on and as of Closing shall be a condition precedent to Seller obligations to sell the Property and otherwise perform under this Agreement. All representations and warranties by Seller set forth in this Agreement shall survive the execution and delivery of this Agreement, the recording of the Deed, and Closing.

13. RISK OF LOSS.

13.1. Risk of Loss. Subject to the provisions of this Section 13 set forth below, the risk of loss with respect to the Property will be upon Seller with respect to any executory period related to this Agreement.

13.2. Condemnation. If a portion of the Property becomes the subject of condemnation proceedings at any time prior to Closing, Seller shall promptly notify Buyer of such proceedings, and Buyer may, at its option, terminate this Contract by giving written notice of same to Seller within the earlier to occur of (i) one (1) Business Day prior to the then-scheduled Closing Date, or (ii) twenty (20) days after Seller's said written notice to Buyer, whereupon Buyer shall be entitled to prompt return of the Deposit. If Buyer fails to timely elect to terminate, this Agreement shall remain in force and, in such event, at Closing (a) Seller shall pay to Buyer all condemnation awards or proceeds from any such proceedings or actions in lieu thereof received by Seller prior to the Closing Date (less any actual costs of Seller in obtaining or securing same), and (b) Seller shall assign to Buyer all rights to condemnation awards made or paid after

Closing and shall also assign to Buyer all of Seller's rights to participate in such proceedings (in the stead of Seller), and Buyer shall take the Property subject to any such proceedings. As used herein, the phrase "becomes the subject of condemnation proceedings" shall mean the service upon Seller of a formal notice of condemnation by a governmental authority with power of eminent domain, specifying that all or a portion of the Property is subject to such proceeding or action.

13.3. Casualty.

13.3.1. Minor Casualty. If the Property shall be damaged by any casualty prior to Closing, and the loss in value to the Property because of such casualty (the "Casualty Loss Value"), as estimated by Buyer in Buyer's sole but reasonable discretion, is less than or equal to five percent (5%) of the Purchase Price, then this Agreement shall continue in full force and effect and the Closing shall occur as otherwise provided herein, without any adjustment to the Purchase Price.

13.3.2. Major Casualty. If the Property shall be damaged by any casualty prior to Closing, and the Casualty Loss Value, as estimated by Buyer in Buyer's sole but reasonable discretion, is more than five percent (5%) of the Purchase Price, then either Buyer or Seller may elect to terminate this Agreement, by written notice to the other party given not more than ten (10) days after receipt of written notice from Seller to Buyer of Seller's estimate of the evaluation of the loss, which estimate notice Seller shall give within thirty (30) days after the casualty. If neither party elects to so terminate this Agreement, then this Agreement shall continue in full force and effect and Closing shall occur as otherwise provided herein, without any adjustment to the Purchase Price.

14. BROKER'S COMMISSION. Seller shall be responsible for commissions due and owing to Buyer's broker or Seller's broker as a result of this Purchase and Sale Transaction as agreed upon by Seller and such brokers pursuant to separate agreements between such parties. Seller and Buyer shall and do hereby each indemnify the other against, and agree to hold the other harmless from, any claim, demand or suit for any brokerage or real estate commission, finder's fee or similar fee or charge with respect to this Agreement or the Purchase and Sale Transaction based on any act by or agreement or contract with the indemnifying party asserted by anyone, and for all losses, obligations, costs, expenses and fees (including reasonable attorneys' fees) incurred by the other party on account of or arising from any such claim, demand or suit.

15. REMEDIES.

15.1. Buyer's Remedies. In the event Seller materially defaults in any of its agreements, covenants, representations, warranties or other obligations under this Agreement ("Seller's Default"), Buyer shall give Seller written notice of such default and thereafter Seller 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, provided that Seller commences such cure within the initial ten (10) Business Day period and thereafter diligently pursues the cure to completion). In the event that Seller fails to cure Seller's Default within the cure period, Buyer may, as Buyer's sole remedies for such Seller's Default: (i) waive the effect of such default and proceed to consummate the Purchase and Sale Transaction; (ii) cancel this Agreement in accordance with Section 18 below; or (iii) bring an appropriate action for specific performance of this Agreement. All rights and remedies contained in this Section 15.1 shall be non-cumulative and exclusive.

15.2. Seller's Remedies. In the event Buyer defaults in any of its agreements, covenants, representations, warranties or other obligations under this Agreement ("Buyer's Default"), Seller shall give Buyer written notice of such default and thereafter Buyer 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 Buyer commences such cure within the initial ten (10) Business Day period, and thereafter, diligently pursues the cure to completion). In the event that Buyer fails to timely cure Buyer's Default, Seller may: (i) waive the effect of such default and proceed to consummate the Purchase and Sale Transaction; and/or (ii) cancel this Agreement and retain the Deposit in accordance with Section 5 of this Agreement. In no event shall Seller be entitled to any punitive, special, or consequential damages of any kind.

16. TERMINATION. If Buyer or Seller 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 disburse the Deposit in accordance with Section 5 above and return all documents deposited in the Escrow to the party who supplied the documents. Upon delivery of money and 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 Seller and Buyer shall each pay half of any such fees and costs.

17. ATTORNEYS' FEES. If there is any litigation between Seller and Buyer to enforce or interpret any provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by a court of competent jurisdiction, 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.

18. NOTICES. Except as otherwise required by law, any notice, demand or request given in connection with the Purchase and Sale Transaction and this Agreement shall be in writing and shall be given by personal delivery or overnight courier service, addressed to Seller or Buyer at the following addresses (or at such other address as Seller or Buyer or the person receiving copies may designate in writing given in accordance with this Section):

SELLER: Robert Probst
Probst Tile & Marble, Co.
131 West 700 South
Heber City, Utah 84032
Tel: 435-671-0386
Email Address: *Tileman2007@yahoo.com*

WITH A COPY TO:

BUYER: Wasatch County School District
101 East 200 North
Heber City, Utah 84032
Attn: Paul Sweat, Superintendent
Tel: 435-654-0280
Email Address: paul.sweat@wasatch.edu

WITH A COPY TO: Seiler, Anderson, Fife & Marshall, LC
2500 North University Ave.

Provo, Utah 84604
Attn: Jared L. Anderson
Tel: 801-375-1920
Email Address: jla@safmlaw.com

Notice shall be deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, and on the date of delivery to the overnight courier service, if such a service is used. Notice shall be deemed to have been received on the date on which the notice is actually received or delivery is refused.

19. 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.

20. GOVERNING LAW. This Agreement and all matters relating hereto shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah, without regard to conflicts of law principles.

21. VENUE. This Agreement and all matter relating hereto shall be enforced in courts of competent jurisdiction in Wasatch County, Utah.

22. 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.

23. 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.

24. SURVIVAL. Only where specifically so provided herein shall any of the covenants, agreements, representations, warranties and indemnities set forth in this Agreement survive 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. All claims for breach of the covenants, agreements or warranties or for material misrepresentation and indemnity made in writing during the applicable time period limitation shall survive such period.

25. COUNTERPARTS. This Agreement may be signed in multiple counterparts, all of which taken together shall constitute one and the same agreement. Further, copied or electronically or facsimile transmitted signatures of an original signature shall be treated for all purposes as an original signature. After execution and delivery of this Agreement, a copy of the signed Agreement shall be considered for all purposes as an original of this Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of this Agreement that contains original signatures in order to enforce this Agreement, or for any other purpose, except as otherwise required by law.

26. SUCCESSORS AND ASSIGNS. Buyer shall have the right to assign its rights and obligations under this Agreement to any entity to which it transfers the Property prior to Closing, provided such entity assumes Buyer's obligations under this Agreement and thereafter notice of such assignment is given to Seller. Seller shall not have the right to assign, transfer or convey any of its rights, interests or obligations under this Agreement to any other person or entity. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

27. 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 Buyer and Seller.

28. 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. Seller and Buyer 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.

29. 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.

30. HEADINGS. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

31. 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, corporation or other entity not a party hereto (including, without limitation, any broker), and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

32. 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.

33. TIME IS OF THE ESSENCE. With respect to all dates and time periods set forth in this Agreement, time is of the essence and such dates and time periods shall be strictly adhered to and enforced.


34. CONFIDENTIALITY. Seller hereby agrees to cause its members, managers, officers, employees, contractors, and other personnel, agents and representatives of Seller to hold, in strict confidence, and not disclose to any other person without the prior written consent of Buyer, any of the financial terms of the Purchase and Sale Transaction; provided, however, after the Closing Date Seller shall be permitted to disclose the existence of this Purchase and Sale Transaction, except for the financial terms contained herein. Notwithstanding anything to the contrary hereinabove set forth, Seller may disclose such information (i) on a need-to-know basis to their employees, members of professional firms serving it in connection with the Purchase and Sale Transaction, and (ii) as any court or governmental agency may require in order to comply with applicable laws. Further, Seller acknowledges and agrees, for itself and its employees, contractors and agents (including specifically real estate brokers and agents), that no publication of the financial terms of this transaction shall be made or given to any media. The provisions of this Section 34 shall survive any termination of this Agreement.

35. CONDITION PRECEDENT. The effectiveness of this Agreement is subject to and contingent upon approval of this Agreement by the Wasatch County School District Board of Education pursuant to state laws and the processes and procedures of the Buyer. In the event that such approval is not obtained, this Agreement shall become null and void and neither party shall have any further obligation or liability to the other respective party hereto.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.


SELLER:

PROBST TILE & MARBLE CO., a Utah limited liability company

By: 
Name: Bob Probst
Its: President

BUYER:

WASATCH COUNTY SCHOOL DISTRICT, a political subdivision of the State of Utah

By: 
Name: Mark Davis
Its: Board ~~President~~ Vice President

ROBERT PROBST, Individually



ESCROW AGENT ACCEPTANCE

This Purchase and Sale Agreement (the "Agreement") and the Deposit are accepted and the Escrow is opened this ____ day of February, 2019. 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 Purchase and Sale Transaction 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: Kim Smith

Title: Escrow Officer

ESCROW AGENT ACCEPTANCE

This Purchase and Sale Agreement (the "Agreement") and the Deposit are accepted and the Escrow is opened this ____ day of February, 2019. 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 Purchase and Sale Transaction 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: Kim Smith

Title: Escrow Officer

**ADDENDUM TO
PURCHASE AND SALE AGREEMENT**

THIS IS AN ADDENDUM to the Purchase and Sale Agreement dated March 8, 2019 (the "Agreement") between Robert Probst and Probst Tile & Marble Co. as Seller and the Board of Education of Wasatch County School District as Buyer as Buyer, regarding the real property commonly referred to as Parcel Nos. 00-0020-1934, 00-0008-0221, and 00-0008-0239.

The following Section of the Agreement is hereby amended in accordance with Section 27 of the Agreement as follows:

Section 1.11 Closing Date – the entire section shall be deleted and replaced with, "On or before October 18, 2019."

Buyer and Seller agree that all other deadlines referenced in the Agreement remain unchanged. To the extent the terms of this Addendum modify or conflict with any provisions of the Agreement, the terms of this Addendum shall control. All other terms of the Agreement not modified by this Addendum shall remain the same.

DATE: October 2, 2019

DATE: October 2, 2019


SELLER:

BUYER:

PROBST TILE & MARBLE CO., a Utah limited liability company

WASATCH COUNTY SCHOOL DISTRICT, a political subdivision of the State of Utah

By: 

By: 

Name: Robert Probst

Name: PAUL A SWEET

Its: Owner

Its: Superintendent

ROBERT PROBST, Individually



**SECOND ADDENDUM TO
PURCHASE AND SALE AGREEMENT**

THIS IS AN ADDENDUM to the Purchase and Sale Agreement dated March 8, 2019 (the "Agreement"), including the prior Addendum dated October 2, 2019, between Robert Probst and Probst Tile & Marble Co. as Seller and the Board of Education of Wasatch County School District as Buyer as Buyer, regarding the real property commonly referred to as Parcel Nos. 00-0020-1934, 00-0008-0221, and 00-0008-0239.

The following terms are hereby incorporated as part of the Agreement in accordance with Section 27 of the Agreement:

Section 1.11 Closing Date – The Closing Date shall be on or before November 18, 2019.

Buyer and Seller agree that all other deadlines referenced in the Agreement remain unchanged. To the extent the terms of this Addendum modify or conflict with any provisions of the Agreement, the terms of this Addendum shall control. All other terms of the Agreement not modified by this Addendum shall remain the same.

DATE: October 16, 2019

DATE: October 16, 2019

SELLER:

BUYER:

PROBST TILE & MARBLE CO., a Utah limited liability company

WASATCH COUNTY SCHOOL DISTRICT, a political subdivision of the State of Utah

By: 

By: 

Name: Bob Probst

Name: PAUL A SWEAT

Its: owner

Its: SUPERINTENDENT

ROBERT PROBST, Individually

