

## Real Property Purchase and Sale Agreement

This Real Property Purchase and Sale Agreement (this “**Agreement**”) is made and entered into as of the hereinafter defined Effective Date by and between Othello School District No. 147-163-55, Adams, Grant and Franklin Counties, Washington, a municipal corporation organized under the laws of the State of Washington (or its assigns as permitted herein) (“**Seller**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”).

Seller is the owner of certain real property located South of Lee Road between 7<sup>th</sup> and 14<sup>th</sup> Avenue in Othello, WA, consisting of tax parcel number 1529030682655, the complete legal description of which is set forth on Exhibit A attached hereto and by this reference incorporated herein. Buyer desires to purchase from Seller and Seller desires to sell to Buyer the hereinafter defined Property on the terms and conditions set forth below.

Seller is a school district of the State of Washington, and has determined that the Property is no longer needed for school district purposes. Seller is conveying the Property pursuant to the power granted it under chapter 28A.335 RCW.

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

### ARTICLE I. PROPERTY

Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, the obligations of each of them subject to the terms and conditions set forth herein, the following:

1.1 Property and Improvements. That certain parcel of real property more particularly described on Exhibit A hereto, together with any and all improvements currently located on the Property, if any (collectively, the “**Improvements**”).

1.2 Appurtenances. To the extent assignable, all rights, privileges and easements, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the Property, all development rights, air rights, water rights and all easements, rights-of-way, permits, licenses and other rights appurtenant to or used in connection with the Property and the Improvements, if any (collectively, the “**Appurtenances**”).

1.3 Intangibles. To the extent assignable by Assignor, but without warranty, those records in Assignor’s possession (if any) respecting plans, specifications, permits, utilities, development rights, air rights, water rights, approvals, studies, surveys, guaranties, warranties, and any other similar items, relating to the Property (collectively, the “**Intangibles**”).

All of the items described in Sections 1.1 through 1.3 above are herein collectively referred to as the “**Property**.”

### ARTICLE II. PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Property (the “**Purchase Price**”) shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to adjustments, if any, as provided for under this Agreement. The Purchase Price shall be paid by Buyer in cash on the Closing Date (as defined below).

2.2 Escrow Holder. Chicago Title Company, c/o Christopher Hull, 6416 W. Okanogan Ave., Kennewick, WA 99336 (“**Escrow Holder**” in its capacity as escrow holder and “**Title Company**” in its capacity as title insurer), has been designated as Escrow Holder hereunder by mutual agreement of Seller and Buyer. Upon execution of this Agreement by the last of Seller and Buyer (such date, the “**Effective Date**”), Escrow Holder shall open a closing escrow in accordance with the terms of this Agreement.

2.3 Earnest Money. Not later than ten business days after the Effective Date, Buyer shall deposit with Escrow Holder the sum of [REDACTED] Dollars (\$ [REDACTED]) in cash (by wire payment or cashier’s check) as the earnest money deposit (the “**Earnest Money**”). Upon closing of this transaction, the Earnest Money shall be credited against the Purchase Price. Escrow Holder shall deposit the Earnest Money in an interest-bearing account at a financial institution approved by Seller (with interest to be added to and become a part of the Earnest Money).

2.4 Cash to Close. On the Closing Date, Buyer shall deposit with the Escrow Holder the entire amount of the Purchase Price, less Earnest Money and less any other amounts to be credited against the Purchase Price, in cash (by wire payment or cashier’s check).

### **ARTICLE III. TITLE**

3.1 Review of Title. Promptly after the Effective Date, Seller shall cause Title Company to deliver to Buyer a preliminary commitment for title insurance for the Property issued by Title Company (the “**Preliminary Commitment**”), together with complete copies of all exceptions and encumbrances noted thereon (collectively with the Preliminary Commitment, the “**Title Materials**”) and shall deliver to Buyer copies of any surveys of the Property in Seller’s possession (the “**Existing Survey**”). Buyer shall have until ten (10) days after the receipt of the last to be delivered of the Title Materials and the Existing Survey (the “**Title Review Period**”) to advise Seller in writing of any encumbrances, restrictions, easements, or other matters in the Preliminary Commitment or the Existing Survey (collectively, “**Exceptions**”) to which Buyer objects. All Exceptions to which Buyer does not object in writing during the Title Review Period shall be deemed accepted by Buyer, except as noted below.

If Buyer objects to any Exceptions during the Title Review Period, Seller shall advise Buyer in writing within five (5) business days after receipt of Buyer’s written objections: (a) which Exceptions Seller will remove at on or before Closing, (b) which Exceptions Seller will request Title Company to insure around via an endorsement (and will provide a form of the endorsement on or prior to Closing), and (b) which Exceptions will not be removed by Seller. Seller’s failure to respond within five business days shall be deemed Seller’s notice not to remove the Exceptions in question.

If Seller does not agree to remove or obtain an endorsement as to all Exceptions to which Buyer objects on or before the earlier to occur of (i) the last day of the Inspection Period; or (ii) five (5) business days after receipt of Seller’s response to Buyer’s written objections (or the expiration of the period for delivery of such response), Buyer shall notify Seller in writing of Buyer’s election to either: (a) terminate this Agreement, in which event the Earnest Money shall be returned to Seller, or (b) waive its objections to the Exceptions Seller will not remove, in which event such Exceptions shall be deemed accepted by Buyer. For the avoidance of doubt, Buyer’s delivery of an Inspection Approval Notice (as defined in Section 4.3 below) shall be automatically deemed to be acceptance of any such Exceptions to which Buyer objected but which Seller did not agree to remove or cause the Title Company to insure around prior to Closing.

Notwithstanding the foregoing, Seller shall cause the removal, at its sole expense, of the following (collectively the “**Mandatory Removal Exceptions**”): (i) mortgage or deed of trust liens or security interests against the Property, in each case granted or consent to by Seller or its affiliates or agents (and not tenants of the Property or other third parties), (ii) real estate tax liens, other than liens for

taxes and assessments not yet delinquent, (iii) any mechanics or materialmen's liens resulting from contracts for work entered into directly by Seller or its affiliates or agents, and (iv) other monetary liens that have been placed against the Property by Seller or its affiliates or agents or due to any act or failure to act of Seller or Seller's affiliates or agents (and not tenants of the Property, Buyer, or other third parties). Seller shall be entitled to apply the Purchase Price towards the payment or satisfaction of such liens, and may cure any Objection by causing the Title Company to insure against collection of the same out of the Property.

Notwithstanding anything set forth in this Agreement, if any new Exceptions appear on title after the expiration of the Inspection Period but before Closing, and such new Exceptions were not placed on title at Buyer's direction or with Buyer's prior written consent, then Buyer shall have the right to object to such Exceptions by written notice to Seller and, if Seller refuses or is unable to remove such Exceptions before Closing, to terminate this Agreement by written notice to Seller, in which case this Agreement shall terminate, the Earnest Money shall be returned to Seller, and the parties shall have no further obligations to one another except for those obligations that expressly survive termination of this Agreement.

Notwithstanding anything to the contrary contained above, the Property shall be conveyed subject to the following matters (collectively, the "**Permitted Exceptions**"): (a) the Exceptions accepted or deemed accepted by Buyer as provided above and (b) the lien of all ad valorem real estate taxes and governmental special assessments and municipal liens not yet due and payable as of the date of Closing, subject to proration as herein provided; (c) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property; and (d) any exceptions that arise in connection with Buyer's survey of the Property.

3.2 Title Insurance. During the Inspection Period, Buyer shall confirm that Title Company is committed to deliver to Buyer at Closing an ALTA Owner's Policy of standard coverage title insurance, and any applicable sales tax, issued by Title Company in the amount of the Purchase Price, dated the date of Closing, insuring Buyer's title subject to no exceptions other than the Permitted Exceptions and the printed exclusions contained in the standard coverage owner's policy of title insurance (2006 ALTA form) (the "**Title Policy**"). Seller shall only be responsible for the cost of the standard coverage title insurance premium plus any endorsements required to insure around Exceptions Seller has agreed to remove. The Title Policy shall contain any other such endorsements as Buyer may specify, but Buyer shall pay the cost of all such endorsements as well as the cost of the premium for extended coverage (if requested by Buyer).

3.3 Survey. Buyer shall be entitled to obtain, at its own expense, an ALTA/ACSM Class A survey of the Property in form and prepared by a surveyor acceptable to Buyer and Title Company (the "**Survey**").

3.4 Conveyance of Property. At Closing, Seller shall convey to Buyer fee simple title to the Property by execution and delivery of a Bargain and Sale Deed to the Property in the form of Exhibit B hereto, subject only to the Permitted Exceptions (the "**Deed**").

#### **ARTICLE IV. INSPECTION OF DOCUMENTS AND EVALUATION OF THE PROPERTY**

4.1 Due Diligence Materials. Seller shall deliver to the Buyer within five business days after the Effective Date, or such other time as provided in this Agreement, the originals or copies of the following, to the extent they exist and are in Seller's possession, relating to the Property (hereinafter collectively referred to as the "**Due Diligence Materials**"):

(a) Tax Statements and Utility Bills. All real and personal property tax statements for the preceding three full calendar years for the Property and utility bills for the property for the preceding calendar year, together with a schedule of special assessment districts and assessment amounts, if any, for the Property, to the extent not already set forth in the Preliminary Commitment.

(b) Approvals. To the extent in Seller's possession, all governmental approvals, permits or licenses, including any zoning variances or special use permits, if any, with respect to the Property and notices alleging any violations.

(c) Environmental Reports. All studies and reports commissioned by the Seller and in Seller's possession relating to hazardous or toxic materials (including asbestos) on the Property and all correspondence or written claims from any person or entity related thereto in Seller's possession (collectively, the "**Environmental Reports**").

(d) Litigation Notices. Written notices of any pending or threatened litigation, insurance claims, and uncured legal violations relating to the Property received by the Seller, together with the pertinent demands and pleadings.

(e) Structural or Engineering Reports. All structural, soils or engineering reports or surveys in Seller's possession for the Property and the Improvements.

(f) Maintenance or Incident Logs. All maintenance and incident logs, if any, including copies of all claims or notices in Seller's possession related to defects in or violations of law related to the Property including all correspondence with any governmental entity.

(g) Other Matters. To the extent in Seller's possession, any other non-proprietary documents relating to the Property reasonably requested by Buyer.

Notwithstanding anything in this Agreement to the contrary, the foregoing shall not include any of the Seller's internal memoranda or reports, confidential or privileged documents or information nor shall it include any appraisals.

The term "**Seller's possession**" as used above means in Seller's physical possession and known to Seller. Buyer agrees to keep all Due Diligence Materials that are not currently publicly available strictly confidential.

4.2 Inspection Period. Buyer shall have thirty (30) days from the Effective Date (the "**Inspection Period**") to inspect the Property, to conduct a feasibility study, and to review and approve the items set forth above except that the procedure and time period set forth in Section 3.1 shall apply to approval of the Preliminary Commitment and the Exceptions thereto if it shall require a period longer than the Inspection Period. During the Inspection Period, the Buyer may, at its sole expense, inspect the Property's physical condition, verify to its satisfaction the information provided to or obtained by it and conduct any environmental or other inspections and due diligence as it deems appropriate. Notwithstanding anything in this Agreement to the contrary, the Buyer shall have the right to enter upon the Property only subject to and in accordance with the following terms and conditions:

(a) This Agreement has not been terminated and Buyer is not in default;

(b) Any entry upon the Property shall be only for the purpose of inspections, studies and surveys;

(c) Buyer shall provide at least 24 hours' prior written notice to Seller in advance of any entry by Buyer or any Buyer Consultant (as defined below) and Seller or Seller's representative(s) may accompany Buyer during any of Buyer's inspections upon the Property or meetings with governmental agencies;

(d) Before conducting a Phase II environmental site assessment or other invasive physical inspections, studies, or surveys of the Property, Buyer shall obtain Seller's written consent. Buyer agrees that neither Buyer nor any Buyer Consultant shall provide any governmental entity or agency with information concerning the environmental condition of the Property without obtaining Seller's prior written consent thereto;

(e) Prior to any entry upon the Property by Buyer, or its contractor, agent, employee, consultant or other third party at Buyer's direction (each a "Buyer Consultant"), Buyer and any Buyer Consultant entering the Property will deliver to Seller evidence that Seller is named as an additional insured on a primary and noncontributory basis on Buyer's and such Buyer Consultant's liability insurance coverage issued by an insurer reasonably acceptable to Seller and with combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence and a minimum aggregate limit of \$2,000,000. Any Buyer Consultant that seeks to perform invasive testing or collect samples from the Property shall maintain pollution liability insurance with limits of not less than One Million Dollars (\$1,000,000), and shall provide evidence that Seller is named as an additional insured on such policy prior to entering the Property; and

(f) Buyer shall promptly and at its sole cost and expense repair any damage to the Property caused by Buyer's entry upon or inspection of the Property and shall otherwise restore the Property to the condition existing prior to its entry. Buyer shall indemnify, defend, and hold Seller harmless from any claims, liens, causes of action, or obligations by persons or entities not a party to this Agreement that are caused by Buyer's or its agents' or contractors' activities on the Property prior to Closing, including without limitation Seller's costs, expenses and reasonable attorneys' fees, except to the extent such claims arise out of Buyer's mere discovery of Hazardous Materials (defined in Section 13.1) or latent defects. Notwithstanding anything in this Agreement to the contrary, Buyer's restoration, repair and remediation obligations and the indemnity set forth in this paragraph shall survive termination of this Agreement.

4.3 Inspection Approval Notice. If Buyer is satisfied in its sole discretion with the results of its inspection and due diligence regarding the Property, Buyer may waive its Inspection Period contingency by delivering written notice of such waiver (the "**Inspection Approval Notice**") to the Seller at any time prior to expiration of the Inspection Period. If Buyer fails to deliver an Inspection Approval Notice prior to expiration of the Inspection Period, then this Agreement will terminate, the Earnest Money (less Buyer's share of standard escrow cancellation fees) will be returned to Buyer, and the parties will have no further obligations hereunder except for obligations, if any, that expressly survive termination of this Agreement.

4.4 Release of Claims. Without limiting the above, at Closing, and with the exception of claims arising from fraud or any breach of any of Seller's representations or warranties set forth in this Agreement, or the obligations herein which expressly survive Closing by their terms, Buyer on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges Seller, Seller's affiliates, investment advisor(s), partner(s), trustees, beneficiaries, shareholders, members, managers, officers and directors, employees, agents, and representatives of each of them, and their respective heirs, successors, personal representatives and assigns, from any and all claims, demands, causes of action (whether under statutory or common law), actions, rights, liabilities, damages, costs, torts, suits, covenants, controversies, agreements and promises, known or unknown, with respect to the Property, this Agreement, and/or the transactions contemplated hereunder.

## ARTICLE V. CONDITIONS PRECEDENT TO CLOSING

5.1 Buyer's Conditions Precedent. Buyer's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

(a) Board Approval. Approval of this Agreement and Closing thereunder by resolution of the Seller's school board (the "**Board**"). Seller shall obtain the Board's approval of this Agreement and the transaction completed hereunder prior to the expiration of the Inspection Period.

(b) Performance by Seller. Seller shall have timely performed all material obligations required by this Agreement to be performed by it.

(c) Title Policy. Title Company shall be ready, willing, and able to issue the Title Policy subject to the Permitted Exceptions to Buyer at Closing or as soon thereafter as practicable.

(d) Representations and Warranties True. Seller's representations and warranties contained herein shall be true and correct in all material respects.

The conditions set forth in Sections 5.1 (a) through (d) above are intended solely for Buyer's benefit. If any of the conditions set forth in Sections 5.1 (a) through (d) are not satisfied as of the Closing Date (as it may be extended from time to time in accordance with the terms of this Agreement), Buyer shall have the right at its sole election either to waive the condition in question and proceed with the sale or, in the alternative, to terminate this Agreement, whereupon this Agreement shall terminate, the Earnest Money shall be returned to Buyer, and the parties shall have no further obligations hereunder except for obligations, if any, that expressly survive termination of this Agreement.

5.2 Seller's Conditions Precedent. Seller's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

(a) Performance by Buyer. Buyer shall have timely performed all material obligations required by this Agreement to be performed by it.

(b) Purchase Price. Buyer shall have delivered or cause to be delivered to Escrow Holder the Purchase Price and all other funds and documents required to be delivered pursuant to the terms of this Agreement.

(c) Inspection Approval Notice. Buyer shall have delivered the Inspection Approval Notice on or prior to the expiration of the Inspection Period.

(d) Representations and Warranties True. The representations and warranties of Buyer contained herein shall be true and correct as of the Closing Date.

The conditions set forth in Sections 5.2 (a) through (d) above are intended solely for Seller's benefit. If any of the foregoing conditions are not satisfied as of the Closing Date, Seller shall have the right at its sole election either to waive the condition in question and proceed with the sale or, in the alternative, to terminate this Agreement and retain the Earnest Money as liquidated damages.

## **ARTICLE VI. OPERATIONS PENDING CLOSING/CONDITION OF TITLE**

6.1 Operations Pending Closing. After the Effective Date and prior to the Closing or the sooner termination of this Agreement, the Seller agrees to use commercially reasonable efforts to maintain the Property in its current condition and state of repair (normal wear and tear, casualty loss and condemnation excepted). Upon receipt of Buyer's Inspection Approval Notice and prior to Closing, Seller shall not enter in any agreement(s) to lease or rent any portion of the Property, or enter into any written or oral contracts or agreements that would be binding on the Property or Buyer after Closing without the Buyer's prior written consent, which may be given or withheld in Buyer's sole and absolute discretion.

6.2 Condition of Title. After the Effective Date and prior to the Closing or sooner termination of this Agreement, Seller agrees with respect to all or any portion of the Property: not to further mortgage, encumber, or otherwise change or consent to any change in the Permitted Exceptions, without Buyer's prior written approval, such approval which may be withheld in Buyer's sole discretion.

## **ARTICLE VII. CLOSING AND ESCROW**

7.1 Closing. The Closing under this Agreement (the "Closing" or the "Closing Date") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at Title Company's offices on or before the date that is thirty (30) days after Buyer's delivery of the Inspection Approval Notice. As used herein, "Closing", "Closing Date" or "date of Closing" means the date on which all appropriate documents are recorded and the proceeds of sale are available for disbursement to Seller.

7.2 Delivery by Seller. On or before the Closing Date, Seller shall deposit with Escrow Holder, the following:

- (a) The duly executed and acknowledged Deed ready for recordation on the Closing Date, together with a duly signed and executed counterpart of the real estate excise tax affidavit ("REETA");
- (b) Affidavit executed by Seller in the form of Exhibit C hereto (the "FIRPTA Affidavit");
- (c) Duly signed and acknowledged counterpart of Assignment of Intangibles (copy);  
and
- (d) Such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller.

7.3 Delivery by Buyer. On or prior to the Closing Date, Buyer shall deposit with Escrow Holder the following:

- (a) The Purchase Price;
- (b) Duly signed and acknowledged counterpart of Assignment of Intangibles (copy);  
and
- (c) Duly signed and executed counterpart of the REETA.

7.4 Title Policy; Other Instruments. Title Company shall issue the extended Title Policy subject to the Permitted Exceptions at Closing or as soon thereafter as practicable. Seller and Buyer shall

each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

7.5 Prorations. All revenues and expenses of the Property, including (but not limited to) real property taxes and assessments, LID assessments, special assessments, drainage district service charges, water, sewer and utility charges and other expenses normal to the operation and maintenance of the Property, but excluding insurance premiums, shall be prorated as of 11:59 a.m. the day prior to the Closing Date. Real property tax prorations will be on the basis of taxes paid or payable in the year of Closing.

7.6 Closing Costs and Expenses. Buyer and Seller shall each pay their own attorneys' fees and expenses to perform their obligations under this Agreement.

(a) Buyer shall pay:

- (i) extended coverage premiums for the Title Policy plus the cost of all endorsements requested by Buyer and any survey of the Property ordered by Buyer;
- (ii) one-half of the fees for the Escrow Holder;
- (iii) all costs and expenses of Buyer's consultants and investigations;
- (iv) the sales commission payable to Buyer's Broker (as defined in Section 13.1 below) if any; and
- (v) all customary recording costs for the Deed.

(b) Seller shall pay:

- (i) standard coverage premiums for the Title Policy and any related sales tax;
- (ii) all costs of removing encumbrances on the Property other than the Permitted Exceptions, including (but not limited to) the cost of any endorsements, if any, required to remove any disapproved title exceptions that Seller agrees to remove or is obligated to remove under this Agreement;
- (iii) one-half of the fees for the Escrow Holder.

7.7 Closing Statements. Escrow Holder shall prepare a closing statement for each of Buyer and Seller prior to the Closing Date, which shall include prorations, and shall be approved by Buyer and Seller, which approval shall not unreasonably be withheld. In the event any prorations or apportionments made hereunder shall prove to be incorrect for any reason, then any party shall be entitled to an adjustment to correct the same. Any item that cannot be prorated because of the unavailability of information shall be tentatively prorated on the basis of the best data then available and re-prorated between the Buyer and Seller within thirty (30) days after the information is available. Notwithstanding the foregoing, any adjustments or re-prorations shall be made, if at all, within ninety (90) days after the Closing Date.

7.8 Delivery Outside of Escrow. Seller shall deliver to Buyer at Closing outside of the Closing escrow the originals (to the extent in Seller's possession) of the Due Diligence Materials, and copies of such other records and items as reasonably requested by Buyer that pertain to the maintenance and operation of the Property and are not privileged or confidential.

## **ARTICLE VIII. REPRESENTATIONS AND WARRANTIES**

Seller and Buyer make the following representations and warranties:

8.1 Seller's Representations. Seller represents and warrants to Buyer, subject to the disclosures in the Due Diligence Materials:

(a) Authority. This Agreement and all documents to be executed by Seller at Closing have been duly authorized, executed, and delivered by Seller and are binding on and enforceable against Seller in accordance with their terms. Seller has obtained all authorizations or approvals necessary in order for Buyer to enter into and perform its obligations under this Agreement, or will obtain such approvals prior to Closing.

(b) No Violation of Law. To Seller's knowledge, the execution, delivery and performance by Seller of its obligations under this Agreement will not violate or result in a breach of any law, governmental rule, regulation, judgment, decree or order by which the Property is bound, or by any of the provisions of any contract by which the Property is bound or, if Seller is not an individual, of Seller's certificate of formation, operating agreement, articles of incorporation, bylaws or partnership agreement, as the case may be.

(c) Tenant Leases. There are no leases, licenses, or other agreements granting any person or party the right to use or occupy the Property or any portion thereof.

(d) Litigation. There is no claim, litigation, or proceeding pending against Seller, or to Seller's current actual knowledge threatened in writing against Seller, that relate to the Property or the transactions contemplated by this Agreement.

(e) Existing Agreements. Seller has entered into no contracts, agreements, or understandings (whether written or oral) relating to the Property that will be binding on Buyer after Closing, except for the Permitted Exceptions.

(f) Compliance. Seller has not received written notice: (i) that any permits, licenses and other governmental authorizations required to own and operate the Property have not been obtained, are not in full force and effect, or have been violated (and not cured); or (ii) that the Property and the operation and use thereof is in violation of applicable laws or any agreements affecting the Property (which violation has not been cured).

(g) No Prior Options, Sales, or Assignments. Seller has not granted any options still in effect nor obligated itself in any manner whatsoever to sell the Property or any portion thereof to any party other than Buyer.

(h) Special Assessments. Seller has not received written notice during its ownership of the Property of contemplated improvements to the Property or the area surrounding the Property that would result in the assessment of a special improvement or similar lien against the Property, except as disclosed in the Preliminary Commitment.

For purposes of this Agreement, including this Section 8.1, "Seller's knowledge" or "Seller's actual knowledge" means the actual, and not constructive or implied, knowledge, without any duty of investigation of Seller.

8.2 Buyer's Representations. Buyer represents and warrants to Seller as follows:

(a) Status. Buyer is a [REDACTED] duly formed and validly existing under the laws of the State of [REDACTED].

(b) Authority. This Agreement and all documents to be executed by Buyer at Closing have been duly authorized, executed, and delivered by Buyer and are binding on and enforceable against Buyer in accordance with their terms. Buyer has obtained all authorizations or approvals necessary in order for Buyer to enter into and perform its obligations under this Agreement.

(c) Conflicts and Pending Actions. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not: (i) violate any judgment, order, injunction, or decree to which Buyer is subject, or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Buyer or any lease, mortgage, loan agreement, covenant, or other agreement or instrument to which Buyer is a party or by which Buyer is bound. There is no action, proceeding, unsatisfied order or judgment, or government investigation pending or, to Buyer's knowledge, threatened against Buyer which challenges or impairs Buyer's ability to execute or perform its obligations under this Agreement.

8.3 Survival of Representations. All of the representations, warranties, and covenants of the parties contained in this Agreement: (i) shall be true and correct in all material respects as of the Effective Date and as of the Closing Date, except that if Seller or Buyer becomes aware of any fact or circumstance between the Effective Date and the Closing Date, which would materially and adversely change one of its foregoing representations or warranties, then Seller or Buyer as applicable will promptly give notice of such changed fact or circumstance to the other party and (ii) the other party's rights to enforce such representations and warranties and covenants shall survive the Closing for a period of one (1) year and such rights to enforce shall not be merged into any documents delivered by the other party at Closing and any claim for breach of a representation, warranty or covenant must be commenced, if at all, within such 1-year period. No claim for a breach of any representation or warranty of Seller or Buyer, as applicable, shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was actually known prior to Closing to the party seeking to enforce the representation or warranty. The representing party shall indemnify, defend and hold the other party harmless from and against any cause, claim, loss, damage or expense, including reasonable attorneys' fees, which the other party suffers as a result of a breach of the representations, warranties and covenants contained in this Agreement. Upon Buyer becoming aware (whether by notice from Seller or otherwise) of any fact which would materially and adversely change any of the representations or warranties contained herein or would otherwise constitute a material breach thereof by Seller, Buyer shall have the option of: (i) waiving the breach of warranty or change, and proceeding with Closing, or (ii) terminating this Agreement, in which event the Earnest Money will be returned to Buyer. Seller shall have no liability to Buyer for a breach of any such representation, warranty or covenant unless the aggregate amount of valid claims for all such breaches exceeds Twenty Thousand Dollars (\$20,000), in which event the full amount of such valid claims shall be actionable, but only up to the maximum aggregate amount of six percent (6%) of the Purchase Price.

## **ARTICLE IX. DISCLAIMERS AND WAIVERS**

9.1 No Reliance on Documents. Except as expressly stated herein and in the Deed or any other document the form of which is attached hereto and which is required to be delivered by Seller to Buyer at Closing, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered or given by Seller or its agents to Buyer in connection with the transaction contemplated hereby. Buyer acknowledges and agrees that all materials, data and

information delivered or given by Seller to Buyer in connection with the transaction contemplated hereby are provided to Buyer as a convenience only and that, except as otherwise expressly stated herein or in the Deed or any other document the form of which is attached hereto and which is required to be delivered by Seller to Buyer at Closing, any reliance on or use of such materials, data or information by Buyer shall be at the sole risk of Buyer. By delivering an Inspection Approval Notice under Section 4.3, Buyer will be deemed to have acknowledged and agreed that it has been given a full opportunity to inspect and investigate each and every aspect of the Property set forth in the Due Diligence Materials, either independently or through agents of Buyer's choosing, including but not limited to: (i) matters relating to title and survey, together with all governmental and other legal requirements, including but not limited to taxes, assessments, zoning, seismic, use, occupancy, construction and building codes, operation permit requirements, and (ii) the physical condition and aspects of the Property, including but not limited to all physical and functional aspects of the property. Such examination of the Property shall include an examination for the presence or absence of Hazardous Materials, which shall be performed or arranged by Buyer at Buyer's sole expense, pursuant to Section 4.2 hereof. For purposes of this agreement, "Hazardous Materials" means inflammable explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), state and local counterparts to those federal laws, and any other applicable federal, state or local laws (collectively, "**Environmental Laws**"). Neither Seller, nor any affiliate of Seller, nor the person or entity which prepared any report or reports delivered by Seller to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any such reports.

## 9.2 AS-IS SALE; DISCLAIMERS.

BUYER ACKNOWLEDGES THAT BUYER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES THAT IT HAS NOT RECEIVED FROM ANY SELLER ANY ACCOUNTING, TAX, LEGAL, DEVELOPMENT PLANNING, ENVIRONMENTAL, ARCHITECTURAL, ENGINEERING, MANAGEMENT OR OTHER ADVICE WITH RESPECT TO THE PROPERTY OR THIS TRANSACTION AND IS RELYING SOLELY UPON THE ADVICE OF ITS OWN ADVISORS.

BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DEED OR ANY OTHER DOCUMENT THE FORM OF WHICH IS ATTACHED HERETO AND WHICH IS REQUIRED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING, NEITHER SELLER NOR ANYONE ACTING ON SELLER'S BEHALF IS MAKING OR HAS AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO: (A) ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) THE PHYSICAL, STRUCTURAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS COMPLIANCE WITH LAWS, (C) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR OTHER PUBLIC OR PRIVATE USE RESTRICTIONS ON USE OR REDEVELOPMENT OF THE PROPERTY, (D) THE CONDITION OF TITLE TO THE PROPERTY, (E) THE VALUE, ECONOMICS OF THE OPERATION OR INCOME POTENTIAL OF THE PROPERTY, (F) THE CONDITION OF SOILS OR GROUNDWATER ON OR UNDER THE PROPERTY, (G) THE

EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (H) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATIONS WITH ANY APPLICABLE CODES, LAWS, ORDINANCES, REGULATIONS, OR RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY, (I) THE PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR AROUND THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, OR (J) THE AVAILABILITY OF WATER OR WATER RIGHTS.

BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN THE DEED OR ANY OTHER DOCUMENT THE FORM OF WHICH IS ATTACHED HERETO AND WHICH IS REQUIRED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY OFFERING MEMORANDUM OR OFFERING PACKAGE DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGERS OF THE PROPERTY, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, WHETHER DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN THE DEED OR ANY OTHER DOCUMENT THE FORM OF WHICH IS ATTACHED HERETO AND WHICH IS REQUIRED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS."

EXCEPT FOR THE WARRANTIES CONTAINED IN THIS AGREEMENT, BUYER HEREBY WAIVES, RELINQUISHES, AND RELEASES ANY AND ALL RIGHTS, CLAIMS AND CAUSES OF ACTION AND RIGHTS OF CONTRIBUTION OR INDEMNITY THAT BUYER MAY HAVE OR MAY BE ENTITLED TO ASSERT AGAINST SELLER UNDER OR WITH RESPECT TO THE PROPERTY OR THE CONDITION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL RIGHTS, CLAIMS AND CAUSES OF ACTION UNDER OR WITH RESPECT TO TITLE 42 OF THE UNITED STATES CODE, SECTION 9601 *ET SEQ.*, THE WASHINGTON MODEL TOXICS CONTROL ACT, OR ANY OTHER LAW; PROVIDED THAT THIS WAIVER AND RELEASE SHALL NOT COVER CLAIMS BY THIRD PARTIES RELATING TO OCCURRENCES AT THE PROPERTY PRIOR TO CLOSING.

FOR THE FOREGOING PURPOSES (WITHOUT WAIVING THE BENEFIT OF ANY EXPRESS COVENANTS, REPRESENTATIONS OR WARRANTIES SET FORTH IN THIS AGREEMENT), BUYER HEREBY SPECIFICALLY WAIVES THE PROVISIONS OF ANY LAW OF ANY APPLICABLE JURISDICTION, THE IMPORT OF WHICH IS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN THE CREDITOR'S FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY THE CREDITOR MUST HAVE MATERIALLY AFFECTED A SETTLEMENT WITH THE DEBTOR.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_

9.3 Seller Disclosure Statement. Buyer and Seller agree and acknowledge that the Real Property constitutes "Commercial Real Estate" as defined in RCW 64.06.005. Buyer hereby waives the receipt of the Seller Disclosure Statement pursuant to RCW Chapter 64.06 and the right to rescind this

Agreement based on Buyer's lack of receipt of any Seller Disclosure Statement for the Real Property. The provision of this Section shall survive closing. Buyer further acknowledges that it has the full right to investigate and conduct tests relating to the Property pursuant to the right of inspection under Article IV.

Buyer and Seller have each separately initialed this provision to indicate its agreement to such waivers.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_

9.4 Survival of Disclaimers. The provisions of this Article 9 shall survive Closing or any termination of this Agreement.

#### **ARTICLE X. LOSS BY FIRE OR OTHER CASUALTY: CONDEMNATION**

10.1 Minor Loss. In the event of a "Minor" loss of, damage to, or condemnation of the Property after the Effective Date or prior to the Closing Date, Buyer shall be bound to purchase the Property as required by the terms hereof, without regard to the occurrence or effect of such loss, damage to, or condemnation of any portion of the Property, provided that: (a) the cost to repair such damage, loss, or destruction does not exceed six percent (6%) of the Purchase Price, and (b) at Closing, Seller shall assign to Buyer all of Seller's right, title and interest in and to any insurance proceeds or condemnation awards, and there shall be a credit against the Purchase Price due hereunder equal to any insurance deductible, less any reasonable, out-of-pocket sums expended by Seller toward the restoration or repair of the Property (the nature of which restoration or repairs, but not the right of Seller to effect such restoration or repairs, shall be subject to Buyer's approval, such approval not to be unreasonably withheld, conditioned, or delayed). Seller shall retain any rights to proceeds or awards to the extent applicable to the period of ownership prior to Closing (for example, rental loss insurance for the period of time prior to the Closing Date).

10.2 Major Loss. In the event of a "Major" loss or damage to, or condemnation of, the Property after the Effective Date but prior to the Closing Date, Buyer may terminate this Agreement upon written notice to Seller and the Earnest Money shall be returned to Buyer. If Buyer does not elect to terminate this Agreement, then Seller shall have no obligation to repair or replace any damage or destruction caused by the foregoing, but the following shall apply at the Closing: (a) in the event of a casualty, Buyer shall receive a credit against the Purchase Price at Closing for the reasonably estimated remaining cost to restore the Property to its condition immediately prior to such casualty (it being understood that the proceeds of any casualty insurance shall be and remain payable to Seller); and (b) in the event of a taking, Seller shall assign to Buyer its rights to any condemnation proceeds resulting from such taking and shall not make any settlements without Buyer's prior written approval. For the purposes of this Article 9, "Major" loss, damage or condemnation refers to the following: (a) loss or damage to the Property such that the cost of repairing or restoring the premises in question to substantially the same condition which existed prior to the event of damage would be, in the opinion of an architect selected by Seller and reasonably approved by Buyer, greater than six percent (6%) of the Purchase Price, and/or (b) any loss due to a condemnation which reduces the value of the Property by more than six percent (6%), or permanently and "materially" impairs access to the Property or the current use of the Property, "materially" to mean something more than *de minimis*, and which would adversely affect access or expected revenue in a significant way.

#### **ARTICLE XI. POSSESSION**

Possession of the Property shall be delivered to Buyer on the Closing Date, free of any rights of any person or entity to possession or use except for the Permitted Exceptions.

## **ARTICLE XII. DEFAULT; REMEDIES**

12.1 Default by Buyer. If Buyer fails, without legal excuse, to complete the purchase of the Property in accordance with the terms of this Agreement or otherwise defaults hereunder (all conditions to Buyer's obligations having been satisfied or expressly waived in writing), Seller's sole and exclusive remedy for such failure or default shall be to retain the Earnest Money as liquidated damages; provided, however, the foregoing shall not preclude Seller from enforcing Buyer's indemnity, restoration and repair obligations hereunder. Buyer expressly agrees that the delivery to and the retention of the Earnest Money by Seller represents a reasonable estimation of the damages in the event of Buyer's default, that actual damages may be difficult to ascertain, and that this provision does not constitute a penalty.

12.2 Default by Seller. If Seller fails, without legal excuse, to complete the sale of the Property in accordance with the terms of this Agreement or otherwise defaults hereunder, Buyer may elect to pursue only one of the following remedies as its sole and exclusive remedy: (a) terminate this Agreement, receive a refund of the Earnest Money, and recover from Seller its actual third-party out-of-pocket expenses incurred by Buyer as a result of such default, including (but not limited to) expenses incurred in connection with Buyer's due diligence efforts, up to a maximum of \$10,000 or (b) specifically enforce this Agreement.

12.3 Attorneys' Fees. In the event either party brings an action or any other proceeding against the other party to enforce or interpret any of the terms, covenants or conditions hereof, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other party in such amounts as shall be set by the court, at trial and on appeal.

## **ARTICLE XIII. MISCELLANEOUS**

13.1 Brokers and Finders. Each party represents to the other no broker or finder has been involved in this transaction, except [REDACTED] ("**Buyer's Broker**"). In the event of a claim for broker's fee, finder's fee, commission, or other similar compensation in connection with this Agreement, (a) Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify Seller against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) that Seller may sustain or incur by reason of such claim, and (b) Seller, to the extent permitted by law and if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify Buyer against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) that Buyer may sustain or incur by reason of such claim. Notwithstanding anything to the contrary herein, the provisions of this Section 13.1 shall survive the termination of this Agreement or the Closing.

13.2 Notices. All notices, demands, requests, consents and approvals that may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, electronically transmitted (provided an original or copy of the notice is contemporaneously mailed by overnight or certified mail, return receipt requested) or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Seller at:

Othello School District No. 147-163-55, Adams, Grant and  
Franklin Counties  
Attn: Dr. Chris Hurst  
1025 S. 1<sup>st</sup> Avenue  
Othello, WA 99344  
E-Mail: [churst@othelloschools.org](mailto:churst@othelloschools.org)

With copy to: Foster Garvey PC  
Attn: Tacy Hass  
1111 3<sup>rd</sup> Avenue  
Suite 3000  
Seattle, WA 98101  
Email: tacy.hass@foster.com

Buyer at: [REDACTED]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to: [REDACTED]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

13.3 Amendment, Waiver. No modification, termination, or amendment of this Agreement may be made except by written agreement signed by Seller and Buyer. No failure by Buyer or Seller to insist upon the strict performance of any covenant, agreement, or condition of this Agreement or to exercise any right or remedy shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Buyer's or Seller's permitted successors and assigns.

13.4 Survival. All provisions of this Agreement that expressly provide for obligations, duties, or rights to be performed after the Closing Date or the recording of the Deed shall survive the Closing Date and/or the recording of the Deed to the extent expressly provided in this Agreement.

13.5 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

13.6 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the final and complete agreement between the parties with respect to the purchase and sale of the Property and supersede all prior and contemporaneous agreements, letters of intent, and understandings between the parties hereto relating to the subject matter of this Agreement.

13.7 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Seller and Buyer. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

13.8 Governing Law; Time. This Agreement and the parties' rights hereto shall be governed by and construed in accordance with the internal laws of the State of Washington. "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open

for business in the State of Washington. Any period of time that would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Agreement.

13.9 Exhibits. The following exhibits are attached to or referenced in this Agreement and are incorporated in this Agreement:

- EXHIBIT A - Description of the Property
- EXHIBIT B - Form of Deed
- EXHIBIT C - Form of FIRPTA
- EXHIBIT D - Assignment of Intangibles

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

13.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. In addition, the parties hereto agree that this Agreement may be delivered either by a party or its counsel by email to the other party or its counsel and that signatures so transmitted constitute original signatures and are binding on the party so signing. Upon request, the parties shall further deliver between themselves actual originally signed copies or counterparts, but such further delivery, or failure thereof, shall not affect the validity or timing of this Agreement.

13.12 Assignment. From the Effective Date up through Closing, Buyer's rights under this Agreement are not assignable without Seller's prior written consent.

13.13 Tax Deferred Exchange. Either party may convey or receive a conveyance of the real property described herein as part of an IRC Section 1031 Tax Deferred Exchange. Either party may assign all contract rights and obligations hereunder to a qualified intermediary, as part of, and in furtherance of, such tax deferred exchange. In such event, the other party agrees to assist and cooperate in such exchange for the benefit of the exchanging party at no cost, expense, delay or liability to the other party, and further agrees to execute any and all documents (subject to the reasonable approval of the other party's legal counsel) as are reasonably necessary in connection with such exchange at the exchanging party's sole expense. Nothing contained in this Section 12.13 shall release the exchanging party of any of its obligations or liabilities under this Agreement, whether arising before, at or after Closing, nor shall any such exchange delay the Closing Date.

*[Remainder of page intentionally left blank; signatures follow]*

*Signature Page for Real Property Purchase and Sale Agreement*

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

BUYER:

\_\_\_\_\_

\_\_\_\_\_

Date of Execution: \_\_\_\_\_

SELLER:

Othello School District No. 147-163-55, Adams, Grant  
and Franklin Counties, a Washington municipal  
corporation

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

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

Date of Execution: \_\_\_\_\_

DRAFT

EXHIBIT A

Description of the Property

A portion of Farm Units 87 and 88, Irrigation Block 45, Columbia Basin Project, according to the plat thereof lying in the Northeast quarter of Section 34, Township 16 North, Range 29 East, W.M., Adams County, Washington, more particularly described as follows:

Beginning at the Northeast corner of said Section 34, being the Northeast corner of said Farm Unit 87, marked by a 3 ¼ inch brass cap in case marked "Adams County", from which the East quarter corner of said Section 34, marked by a USBR Brass Cap, bears South 00°46'44" East, 2641.66 feet; Thence South 00°46'44" East along the East boundary of said Farm Unit 87, a distance of 1322.87 feet; thence South 88°33'42" West, 2643.60 feet to the West boundary of said Farm Unit 88; thence North 00°51'55" West along said West boundary, 1350.36 feet to the Northwest corner of said Farm Unit 88; thence North 89°09'27" East along the North boundaries of said Farm Units, 2645.46 feet to point of beginning.

DRAFT

EXHIBIT B

Form of Deed

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

Attn: \_\_\_\_\_

**BARGAIN AND SALE DEED**

**Grantor:**

Othello School District No. 147-163-55, a Washington municipal corporation

**Grantee:**

\_\_\_\_\_

**Abbreviated  
Description:**

**Legal**

Lots 87, 88, Block 45, N ½ FU 87 & 88, IB 45, County of Adams, State of Washington.

Complete legal description on Exhibit A.

**Assessor's Tax Parcel ID#:**

15290306882655

For the consideration of Ten and no/100 Dollars, and other valuable consideration, in hand paid, Othello School District No. 147-163-55, a Washington municipal corporation ("**Grantor**"), does hereby grant, bargain, sell and convey to \_\_\_\_\_ ("**Grantee**") that certain real property situated in \_\_\_\_\_ County, Washington, legally described on Exhibit A attached hereto and incorporated herein.

**SUBJECT TO:** The Permitted Exceptions listed on Exhibit B attached hereto and incorporated herein.

The Grantor for itself and its successors-in-interest does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that Grantor will forever warrant and defend the said described real estate against all persons whomsoever claiming or to claim by, through, or under said Grantor and not otherwise.

[Signature Follows.]



**EXHIBIT A**

**Legal Description**

A portion of Farm Units 87 and 88, Irrigation Block 45, Columbia Basin Project, according to the plat thereof lying in the Northeast quarter of Section 34, Township 16 North, Range 29 East, W.M., Adams County, Washington, more particularly described as follows:

Beginning at the Northeast corner of said Section 34, being the Northeast corner of said Farm Unit 87, marked by a 3 ¼ inch brass cap in case marked "Adams County", from which the East quarter corner of said Section 34, marked by a USBR Brass Cap, bears South 00°46'44" East, 2641.66 feet; Thence South 00°46'44" East along the East boundary of said Farm Unit 87, a distance of 1322.87 feet; thence South 88°33'42" West, 2643.60 feet to the West boundary of said Farm Unit 88; thence North 00°51'55" West along said West boundary, 1350.36 feet to the Northwest corner of said Farm Unit 88; thence North 89°09'27" East along the North boundaries of said Farm Units, 2645.46 feet to point of beginning.

DRAFT

EXHIBIT C

Form of FIRPTA

**FIRPTA CERTIFICATE  
(FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT)**

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 \_\_\_\_\_, (the “**Transferor**”), I, \_\_\_\_\_, hereby certify the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those items are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor’s U.S. Employer Identification Number is \_\_\_\_\_;

3. Transferor is not a disregarded entity as defined in Section 1.1455-2(b)(2)(iii) of the Income Tax Regulations promulgated under the Code; and

3. Transferor’s principal office address is:

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

Transferor understands that this certificate may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

UNDER PENALTIES OF PERJURY, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have the authority to sign this document on behalf of Transferor.

\_\_\_\_\_

By \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**DO NOT SIGN; EXHIBIT ONLY**

EXHIBIT D

Form of  
Assignment of Intangibles

THIS ASSIGNMENT OF INTANGIBLES (this “**Assignment**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Othello School District No. 147-163-55, Adams, Grant and Franklin Counties, a Washington municipal corporation (“**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”), who agree as follows:

1. Property. The “**Property**” means the real property located in \_\_\_\_\_ County, Washington, commonly known as \_\_\_\_\_ in \_\_\_\_\_, Washington and legally described in Exhibit A attached to this Assignment, together with the building, structures and other improvements located thereon (if any).

2. Intangibles. “**Intangibles**” means, to the extent assignable by Assignor, but without warranty, those records in Assignor’s possession (if any) respecting plans, specifications, permits, utilities, development rights, air rights, water rights, approvals, studies, surveys, guaranties, warranties, and any other similar items, relating to the Property.

3. Assignment. For good and valuable consideration received by Assignor, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby grants, transfers and assigns to Assignee the entire right, title and interest of Assignor in and to the Intangibles.

4. Indemnity. Assignor shall indemnify, defend, and hold harmless Assignee from and against any and all obligations, claims, liabilities, costs and fees (including without limitations reasonable attorneys’ fees) with respect to the Intangibles arising or accruing prior to the Effective Date. Assignee shall indemnify, defend and hold harmless Assignor from and against any and all obligations, claims, liabilities, costs and fees (including without limitations reasonable attorneys’ fees) with respect to the Intangibles arising or accruing on or after the Closing Date.

5. Legal Expenses. If either party to this Assignment brings suit or otherwise becomes involved in any legal proceedings seeking to enforce the terms of this Assignment, or to recover damages for their breach, the prevailing party shall be entitled to recover its costs and expenses (including fees of attorneys, expert witnesses, accountants, court reporters and others) incurred in connection therewith including: (i) in trial and appellate court proceedings, (ii) in connection with any and all counterclaims asserted by one party to this Assignment against another whether or not such counterclaims arise out of or are otherwise related to this Assignment, (iii) in bankruptcy or other insolvency proceedings, and (iv) in post-judgment collection proceedings.

5. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

6. Power and Authority. Each party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment, and the individual signing this Assignment on behalf of such party represents and warrants to the other party that he or she is fully empowered and authorized to do so.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

**ASSIGNOR:**

Othello School District No. 147-163-55, Adams, Grant and Franklin Counties, a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DO NOT SIGN; EXHIBIT ONLY**