

AGREEMENT OF PURCHASE AND SALE

(Approximately 17.1 acres in Erda, Tooele County, Utah)

THIS AGREEMENT OF PURCHASE AND SALE AND RIGHT OF FIRST REFUSAL (this "Agreement"), the Effective Date of which is the date this Agreement is signed by the Escrow Agent below, is entered into by and between **Sagers Family Limited Partnership**, a Utah Partnership ("Seller"), and **Excelsior Academy**, a Utah nonprofit company ("Buyer").

In consideration of the mutual agreements, covenants and promises contained in this Agreement and other good and valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, Buyer and Seller (sometimes collectively referred to as "Parties" or separately as a "Party") agree as follows:

1. **Definitions and Table 1:** Capitalized terms that are not defined when first used in this Agreement have the meanings set forth below.
 - a. **Authorities:** All federal, state and local governmental and quasi- governmental agencies, bodies, entities, boards and authorities that have jurisdiction over the Property, the furnishing of utilities or other services to the Property, or the subdivision, improvement, development, occupancy, sale or use of the Property, including the City, the County, and the State of Utah.
 - b. **City:** City of Erda, Utah.
 - c. **Closing:** The closing and consummation of each Phased Take-Down, as evidenced by the delivery of all required funds to Seller with respect to such Phased Take-Down and the recordation of the Deed for the applicable Take-Down Parcel.
 - d. **Closing Date:** Subject to the specific provisions of this Agreement, closing on the various Phased Take-Downs shall occur according to the dates set forth on Table 1.
 - e. **County:** Tooele County, Utah.
 - f. **Deposit:** \$20,000 to be deposited in accordance with Section 3 herein. The Deposit will be applied to the Purchase Price of the Second Phased Take Down as set forth on Table 1.
 - g. **Documents:** All surveys, prior title commitments or title policies, preliminary and final plats, environmental assessments, engineering plans, soils tests, drainage studies, grading information, topographical studies, reports on water and utility availability and quality, archaeological and/or endangered species studies, tax assessment records, zoning applications and stipulations and permits and approvals for the Property.
 - h. **Effective Date:** The date on which counterpart originals of this Agreement, executed by Buyer and Seller, are delivered to and accepted by Escrow Agent and Escrow Agent has delivered notice thereof to Buyer and Seller. The Effective Date shall be filled in above upon establishment of the Effective Date by Escrow Agent. An email version of a signed counterpart of this Agreement delivered in accordance with Section 12 below shall constitute delivery.
 - i. **Escrow Agent:** Tooele Title Company, Attn: Heidi Allred, Tooele Office.

j. **Feasibility Period:** The period beginning on the Effective Date and ending on the Closing Date of the First Phased Takedown.

k. **Legal Requirements:** The rules, regulations, laws, ordinances, standards, approved plans and other requirements of the Authorities.

l. **Property:** The approximately 17.1 Acres of vacant land south of the existing Excelsior Schools. A portion of Tooele County Tax Parcel 19-097-0-0004. Identified herein as exhibit A.

m. **Purchase Price:** The Purchase Price for each Phased Takedown shall be as set forth on Table 1.

n. **Water:** There are no water rights being sold or transferred with this agreement.

Table 1

Phased Take Down	Real property Included	Acreage	Closing Date (on or before)	Amount of Deposit applicable to the Purchase Price	Purchase Price for each take down	Water Right	Acre Feet / CFS
First Phased Take Down	North Half of Exhibit A	8.85	On or before Oct 01, 2022	-\$0-	\$1,650,000		
Second Phased Take Down	South Half of Exhibit A	8.85	On or before Oct 01, 2023	-\$20,000	\$1,650,000		

2. **Deposit.** Within three (3) business days following the Effective Date, Buyer shall deliver to Escrow Agent the Deposit in the amount of \$20,000 (the "Deposit") by wire transfer of immediately available funds. From and after Buyer's timely delivery of the Deposit, the Deposit shall be non-refundable to Buyer, except as otherwise expressly provided in this Agreement or in the event of a material breach of this Agreement by Seller (in which event the Deposit shall be refunded in full to Buyer). The Deposit shall be applied to and credited against the Purchase Price of the Property due and payable at Closing of the Second Phased Taken Down, as defined below.

3. **New Road.** Seller shall within two (2) years build and construct a new road at its own expense, on its own property immediately East of the described property herein as Exhibit E. This new road shall be constructed to the standards of Erda City and can be used to serve the Buyers property. This newly constructed road shall have all typical improvements including curb and gutter, sewer and water facilities.

4. **New Road Representations:** Seller does not/will not provide electrical or gas facilities within the new road. The Seller also does not guarantee or provide connection capacity within the newly built road.

5. **Feasibility of Property.**

a. **Information.** Within forty-eight (48) hours of the Effective Date, Seller shall deliver to Buyer any and all documents in Seller's possession or control related to the Property. Seller hereby represents and warrants that (A) the documents delivered by Seller to Buyer hereunder are complete copies of all documents in Seller's possession or control, and (B) to Seller's knowledge (as defined below), there are no material defects, deficiencies or inaccuracies contained in the documents. Concurrent with Closing, Seller shall assign to Buyer exclusive rights to use any existing reports, without charge, and shall also assign, to the extent assignable, all of Seller's rights, title and interest in and to the other documents relating to the Property at Closing, as set forth in the Assignment. Seller authorizes Buyer to contact the authors of any existing reports and to seek such authors consent to have the existing reports certified to Buyer. Notwithstanding anything to the contrary in this Agreement. Buyer will rely on its own investigation of the Property.

b. **Feasibility Period.** During the period commencing on the Effective Date and terminating at 5:00 p.m. Mountain time on September 16, 2022 (the "**Feasibility Period**"), Buyer shall have the opportunity to conduct all due diligence with regard to the Property by analyzing the feasibility of its ownership, operation, and use of the Property. Buyer is solely responsible for any and all costs incurred by Buyer in connection with its review and/or investigations of the matters set forth in this Section 5(b), Buyer shall conduct such independent investigations, studies and tests as Buyer deems necessary and appropriate, in its sole and absolute discretion, concerning Buyer's proposed ownership, operation, use and development of the Property and the suitability of the Property for Buyer's intended purposes. Buyer and its agents, employees, consultants and representatives, including, without limitation, Buyer's engineers and contractors (collectively, "**Buyer's Representatives**"), shall have the right to enter upon the Property at all times during the pendency of this Agreement in order to make, at Buyer's sole expense, such investigations and studies as Buyer deems necessary or advisable, in Buyer's sole and absolute discretion, including a standard ATSM Phase I environmental report and an ALTA survey. Buyer shall restore the Property to substantially its condition prior to commencement of the work. Buyer shall promptly pay all expenses arising out of such inspections on or about the Property and will not allow any mechanic's or materialmen's liens to be recorded on the Property. Buyer shall promptly repair any damage to the Property caused by such inspections and other work performed by Buyer or on Buyer's behalf. If Buyer determines, in Buyer's sole and absolute discretion, to purchase the Property, then Buyer shall deliver to Seller and Escrow Agent written notice of approval (the "**Notice of Approval**") on or before the expiration of the Feasibility Period. If Buyer determines, in Buyer's sole and absolute discretion, that it elects not to purchase the Property, then Buyer shall deliver to Seller and Escrow Agent a written notice of disapproval (the "**Notice of Disapproval**") at any time on or before the expiration of the Feasibility Period. Buyer's failure to deliver a Notice of Approval or a Notice of Disapproval on or before the expiration of the Feasibility Period shall be deemed to constitute Buyer's timely delivery of a Notice of Disapproval. If Buyer delivers (or is deemed to deliver) the Notice of Disapproval on or before the expiration of the Feasibility Period, then this Agreement shall terminate and neither party shall have any liability under this Agreement except as expressly survives termination of this Agreement. Buyer shall indemnify and hold harmless Seller, Seller's employees and agents, and all of their respective successors and assigns (collectively, "**Seller Parties**") from and against any and all claims, liabilities, losses, costs, damages or expenses of any kind, including, without limitation, reasonable attorneys' fees, incurred or suffered by the Seller Parties to the extent the same directly result from the negligence of Buyer in any of the Buyer's activities with respect to the Property under this Section. Notwithstanding anything herein to the contrary, Buyer's restoration and/or indemnification obligations set forth herein shall not be deemed to apply to changes, claims, liabilities, losses, costs, damages or expenses to the extent arising from or relating to (1) the negligent acts, the omissions, or the willful misconduct of

any of the Seller Parties or their invitees, or (2) the presence of any latent defects or Hazardous Substances (as defined below) discovered on, under or through the Property not created or negligently exacerbated by Buyer, and/or the disclosure of any such latent defects or Hazardous Substances. The Parties respective obligations under this Section shall survive the Closing and termination of this Agreement. The indemnification obligation of Buyer contained in this Section 4 shall survive the termination of this Agreement.

6. **Closing.**

a. Subject to satisfaction of the Conditions Precedent to Closing set forth in Section 8, Closing shall occur on the Closing Date at the offices of Escrow Agent during normal business hours or at such other location upon which the Parties agree. The Closing shall be deemed to have occurred when (i) all closing documents contemplated by this Agreement have been delivered to, received by and executed by the appropriate Parties, (ii) all conditions to the Closing contemplated by this Agreement have been satisfied or waived by Buyer, (iii) the deed required pursuant to **Exhibit D**, and other documents to be recorded at Closing, have been recorded, and (iv) all funds required to be paid under this Agreement at the Closing have been delivered to Escrow Agent and are available for distribution by Escrow Agent.

b. Each Party shall execute, acknowledge and deliver, after the Effective Date, including at or after Closing, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

c. At the Closing, ad valorem real property taxes and assessments based upon the latest available tax bill from the County Assessor of the Property for the current tax fiscal year, shall be prorated between the Parties. Unless the Property has been separately assessed as of the Closing, Escrow Agent shall use as a basis for the tax proration a pro rata portion of the amount shown for real property taxes in the most recent tax bill issued for the assessor's parcel of which the Property is a part. The allocation of taxes between the Property and the balance of the property covered by such tax bill shall be determined by multiplying the amount shown in such tax bill by a fraction, the numerator of which shall be the square footage contained in the Property and the denominator of which shall be the square footage contained in such assessor's parcel; provided, however, in no event shall Buyer be assessed for any portion of such tax which relates to improvements upon the balance of the property covered by the tax bill. At the Closing, Seller shall be charged for the portion of the taxes for the year in which such Closing occurs, if unpaid, as allocable pursuant to this Agreement, and prior years' taxes and any interest and penalties, if applicable, if then unpaid, and Buyer shall be responsible for paying taxes for the year in which the Closing occurs as allocable pursuant to this Agreement. At the Closing, Seller shall be charged for the portion of the special taxing district liens and improvement district liens for the year in which such Closing occurs, if unpaid, as allocable pursuant to this Agreement, and prior years' special taxing district liens and improvement district liens and any interest and penalties, if applicable, if then unpaid, and Buyer shall be responsible for paying special taxing district liens and improvement district liens for the year in which the Closing occurs as allocable pursuant to this Agreement. If any of the foregoing information is changed or newer information is provided after Closing, as a result of tax protest, tax refunds, changes in tax rates or valuation, or otherwise, then the Parties shall make such payments, one to the other, outside of Escrow, as are necessary to adjust the proration of the foregoing taxes and assessments to the actual amounts.

d. Seller and Buyer shall each pay one-half of the escrow and recording fees and each Party shall pay its respective ordinary and customary closing costs. Notwithstanding the foregoing, Seller shall pay at Closing, without any contribution from Buyer, (i) any documentary transfer, excise and/or stamp tax; (ii) the cost of preparing release documents, if any, and the recording thereof for any lien releases required to be obtained by Seller in order to convey title to the Property in accordance with Section 6; (iii) the title premium

for a standard ALTA owners title policy and related search fees; and (iv) the real property transfer taxes. Notwithstanding the foregoing, Buyer shall pay at Closing, without contribution from the Seller, the additional premium for the ALTA extended coverage.

e. Assessments and charges payable to any utility company, any homeowner's association, any condominium owner's association or any like organization or entity, shall be prorated by Escrow Agent through Close of Escrow. In addition, to the extent, if any, due at Closing based on the conveyance of the Property by Seller to Buyer, (i) Seller shall pay all homeowner, condominium owner, or management association inspection, working capital, transfer, set-up, reporting and/or copying fees, charges, assessments, and/or costs, and, if applicable, any working capital fees or assessments as relates to the Property.

f. To the extent that the Property has a special tax treatment as agricultural, timber, forest or open space classification and the sale under this Agreement will cause a reclassification and a reassessment of prior taxes, both parties shall cooperate in taking such action or executing such documents, including a notice of removal from classification or similar documents, to provide for and evidence such removal, reclassification and reassessment; and all past and additional taxes, including compensating taxes, applicable interest and penalties assessed by the County or any other Authorities on account of such removal, reclassification and reassessment shall be paid at Closing by Buyer.

g. Seller shall not be responsible for any increase in any tax liability resulting from an increase in value of the Property due to the actions undertaken by Buyer other than as permitted under this Agreement.

7. **Condemnation.** If after the Effective Date and prior to Closing, all or a material part of the Property ("material" to mean something more than de minimis and which would adversely affect either access, utility connections, cost to deliver, or expected revenue in a significant way, in Buyer's commercially reasonable determination) is taken or threatened to be taken by eminent domain or condemnation, or in the event of any material loss or damage to the Property ("material" to mean something more than de minimis and which would adversely affect either access, utility connections, cost to deliver, or expected revenue in a significant way, in Buyer's commercially reasonable determination), Seller shall give prompt notice to Buyer. Within fifteen (15) days of receipt of such notice, Buyer may elect to either (a) to terminate this Agreement, or (b) to consummate Closing as herein provided, in which event Seller shall pay or assign to Buyer at closing an amount equal to all amounts paid to or for the benefit of Seller as a result of such condemnation or casualty and to have Seller assign to Buyer at Closing all proceeds to be paid in the future. If this Agreement is terminated in full pursuant to this Section, the Deposit will be returned to Buyer, and neither Party shall have any further rights, duties, obligations or liabilities, at law or in equity, arising out of or relating to this Agreement except for those that specifically survive termination of this Agreement pursuant to other Sections hereof.

8. **Conditions Precedent to Closing.**

a. **Buyer's Conditions Precedent to Closing.** Buyer's obligation to complete Closing shall be conditioned upon the satisfaction (or Buyer's written waiver thereof) of each of the conditions precedent set forth in this Section 8(a) (the "Buyer's Conditions Precedent"). Buyer shall be entitled to waive, in writing, each or any of the Buyer's Conditions Precedent insofar as the same affect the Property or any particular portion thereof. However, notwithstanding the fact that Buyer may exercise its right to waive each or any of Buyer's Conditions Precedent for any portion of the Property, any such waiver shall not be a waiver of any other Buyer's Conditions Precedent. The Buyer's Conditions Precedent are as follows:

i. **Representations.** Each of Seller's representations and warranties as set forth in Section 14 shall be true in all material respects as of the Closing Date.

ii. General Obligations. Seller shall have satisfied the conditions and performed its obligations set forth in this Agreement in all material respects.

iii. Environmental Conditions. Buyer shall, in Buyer's good faith and commercially reasonable determination, be satisfied that subsequent to the Feasibility Period, as may be extended, the environmental conditions relating to the Property have not materially and adversely changed other than through the acts or omissions of Buyer such that Buyer is subject or otherwise potentially exposed to any (i) significant fee, expense, cost, obligation or liability in regard to the Property in Buyer's commercially reasonable determination, or (ii) significant impairment to Buyer's construction operations or marketing efforts with respect to the Property in Buyer's commercial reasonable determination.

iv. Condition of the Property. There shall be no material, adverse change after the expiration of the Feasibility Period, as may be extended, and prior to Closing in: (i) the areas determined to be flood prone areas as such affect the Property; (ii) access to the Property; or (iii) any other material condition of the Property that is not the result of the acts or omissions of Buyer.

b. Seller's Conditions Precedent to Closing. Seller's obligation to complete Closing shall be conditioned upon the satisfaction (or Buyer's written waiver thereof) of each of the conditions precedent set forth in this Section 8(b) and as specifically set forth elsewhere in this Agreement (the "Seller's Conditions Precedent"). Seller shall be entitled to waive, in writing, each or any of Seller's Conditions Precedent insofar as the same affect the Property or any particular portion thereof. However, notwithstanding the fact that Seller may exercise its right to waive each or any of Seller's Conditions Precedent for any portion of the Property, any such waiver shall not be a waiver of any other Seller's Conditions Precedent. The Seller's Conditions Precedent are as follows:

i. Representations. Each of Buyer's representations and warranties as set forth in this Agreement shall be true in all material respects as of the date of Closing.

ii. General Obligations. Buyer shall have satisfied the conditions and performed its obligations set forth in this Agreement in all material respects.

9. Risk of Loss. The Property shall be held at the risk of Seller until Closing thereon, subject to Buyer's obligations pursuant to Sections 4(b) and 4(c).

10. Possession. Seller shall deliver possession and occupancy of the Property to Buyer at Closing. At its sole cost and prior to Closing, Seller shall, as evidenced and confirmed by Seller in a manner acceptable to Buyer, remove all tenants from the Property and terminate all rights of occupancy of the Property as of the Closing (the "No-Tenancy Certification"); provided that, notwithstanding anything to the contrary herein, the Parties shall accommodate the current tenant to allow him reasonable opportunity to remove his current crop and farm equipment from the Property. Seller shall cause the termination of any and all tenancies prior to Closing.

11. **Default.**

a. Buyer Default. If Buyer fails to timely deposit the Deposit or to timely close any of the phased takedowns, then Seller may terminate this Agreement and retain the Deposit.

b. Seller Default. If Seller fails to pay or perform when due any act or obligation required by this Agreement prior to Closing, or Seller fails to comply with a covenant, or a representation

or warranty given by Seller is not true or correct, then Seller shall be in default under this Agreement, in which event Buyer shall have all of its rights and remedies under law and equity including, without limitation, the right to (i) commence any and all proceedings necessary to specifically enforce the terms of this Agreement and cause title to the Property to be conveyed to Buyer, or (ii) cancel this Agreement and the Escrow. In any event, Buyer may recover an award of all of its damages, provided only that any award of damages shall not include exemplary or punitive damages, lost profits, consequential or other forms of incidental damages, or any expenses (other than attorneys' fees and court costs).

12. **Notices.** Any notice or other communication to be given pursuant to this Agreement shall be given in accordance with **Exhibit C**.

13. **Brokers.**

a. Buyer and Seller warrant and represent to each other that no real estate broker is involved in this transaction. Each shall be solely responsible to resolve any issues from those claiming entitlement to a commission by, through or under them.

b. Buyer and Seller each represent to the other that it has not dealt with any real estate broker or any other person or entity entitled to a commission, broker's fee or other compensation in connection with the sale of the Property by Seller to Buyer, other than the Broker. Commissions due and owing the Broker shall be paid by Seller at Closing pursuant to separate agreement between Seller and Broker. Buyer and Seller each agree to indemnify, protect, defend and hold the other harmless for, from and against any expense, including, without limitation, attorneys' and accountants' fees, claims, actions, suits or demands for payment of any commission, finder's fee or other sum initiated by any broker, commission agent or other person which such Party or its representatives has engaged or retained or with which it has had discussions concerning the transaction contemplated by this Agreement. Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth in this Section shall survive the Closing or any earlier termination of this Agreement.

14. **Representations and Warranties.**

a. **Mutual Representations: Restrictions.**

(i) To induce each other to enter into this Agreement, each Party hereby represents and warrants to the other that (i) it has been duly authorized and empowered to enter into this Agreement and to perform fully its obligations hereunder, (ii) such obligations constitute the valid and binding obligations of such Party, enforceable in accordance with their terms, and (iii) that no further consents of any other person, entity, public body or court are required in connection with this Agreement and the performance of all obligations hereunder.

(ii) **Seller's Warranties and Representations.** To induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer, and upon Closing shall be deemed to represent and warrant to Buyer, that:

(iii) **Condemnation, Rezoning or Reclassification.** To Seller's knowledge, there is not pending (A) condemnation proceeding or other litigation, claim, or investigation relating to or otherwise affecting Seller and/or any portion or all of the Property or (B) reclassification of any or all of the Property for local zoning purposes. Buyer assumes all responsibility to investigate these matters and

get comfortable with the same), or (C) reassessment or reclassification of any or all of the Property for state or local real property taxation purposes.

(iv) Litigation. There is no litigation, suit, arbitration or proceeding pending before any court or administrative agency or any other condition that relates to or affects the Property, Seller's interest therein, or Seller's performance hereunder, or which will result in a lien, charge, encumbrance or judgment against any part of or any interest in the Property.

(v) Organization/Authority. Seller is being created as a Utah limited liability company. Seller possesses any and all authority necessary under the laws of the State of Utah to execute this Agreement, conduct the activities, improvements and requirements of this Agreement and execute all documents contemplated to be executed on behalf of Seller hereunder and have full power and authority to so execute and sell the Property and shall provide satisfactory evidence of such to the Escrow Agent prior to Closing. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Seller have full power and authority to do so.

(vi) No Breach. The execution and delivery of this Agreement by Seller, the execution and delivery of every other document and instrument delivered pursuant hereto by or on behalf of Seller, and the consummation of the transactions contemplated hereby does not and will not (A) constitute or result in the breach of or default under any oral or written agreement to which Seller is a party or which affects the Property; (B) constitute or result in a violation of any order, decree, or injunction with respect to which Seller and/or the Property is bound; (C) cause or entitle any party to have a right to accelerate or declare a default under any oral or written agreement to which Seller is a party or which affects the Property; and/or (D), to Seller's knowledge, violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller or the Property is or may be subject.

(vii) No Contracts. Except as set forth in the Master Development Agreement as amended, Seller has not entered into any other contracts, agreements or understandings, verbal or written, for the sale or transfer of any portion of the Property. Between the date of this Agreement and Closing hereunder, no part of the Property will be voluntarily alienated, encumbered or transferred except as contemplated by this Agreement or order by operation of law.

(viii) No Commitments. To Seller's knowledge and except as may be disclosed by, or arising under, (1) the Preliminary Commitment, (2) the Documents including the Master Development Agreement as amended, (3) the documents to be delivered at Closing, (4) existing laws and ordinances (including land use and development ordinances and codes), and (5) this Agreement or the performance of any of the terms hereof (but subject to the terms hereof), Seller has not made, and has no knowledge of: any existing commitments to any Authority, school board, church or other religious body, or to any other organization, group or individual relating to the Property which would impose any material obligations upon Buyer to make any contributions of money or land or to install or maintain any improvements.

(ix) Title. To Seller's knowledge, Seller is under contract to acquire fee simple title to the Property and except as disclosed in this Agreement or in the Preliminary Commitment, there are no outstanding and enforceable leases, tenancies, options, rights of first refusal, licenses, or operating or other agreements applicable to or affecting the Property (and which would continue to affect the Property following Closing).

(x) Environmental Conditions. Seller has no notice from any Authorities, and to Seller's knowledge is not otherwise aware of any violation of any statute, ordinance, law or code regarding zoning, building, fire, air pollution, health law as concerns the Property, including without limitation as concerns the use, generation, manufacture, storage or disposal in, at, on, under or about the Property of any "hazardous waste," any "hazardous substance," or any "oil, petroleum products, and their by-products," as such terms are defined by any federal, state, county or local law, ordinance, regulation or requirement applicable to any portion of the Property, except the Property was the site of a landfill which Seller has disclosed to Buyer.

(xi) No Assessments. To Seller's knowledge there are no public improvements which have been ordered to be made or assessed, and except as disclosed in the Preliminary Commitment, there are no special, general, or other assessments pending, threatened against or affecting the Property. All installments of any pending assessments will be paid by Seller.

(xii) Specially Designated Nationals and Blocked Persons List. Seller represents and warrants to Buyer that neither Seller nor any affiliate of Seller (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the "Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively in this subsection called the "Orders"); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded no lo contendere, indicted, arraigned or custodially detained on charges involving money laundering.

(xiii) Restrictions: To Seller's knowledge, there are no recorded or unrecorded restrictions existing or alleged relating to the development of the Property known to Seller that are not disclosed in the Preliminary Commitment.

(xiv) Bankruptcy: To Seller's knowledge, there are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's knowledge, pending in any current judicial or administrative proceeding against Seller.

(xv) Survival. The representations and warranties of each Party set forth herein shall be true as of the Effective Date and the date of Closing and shall survive the Closing for a period of one (1) year. If written notice of a claim is given within such time, then the representation, warranty or covenant shall survive until the claim is resolved.

(xvi) As-Is. Except for those representations and warranties specifically included in this Agreement: (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations and warranties of any kind, express or implied, concerning the Property or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness for a particular purpose, tenantability, habitability and use; (iii) Buyer otherwise take the Property "AS-IS;"

and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

15. **Litigation.**

a. In the event of any action or proceeding, including an arbitration, brought by either Party against the other under this Agreement, in addition to all other remedies available and regardless of any limitations stated in this Section 11, the non-prevailing Party shall pay the prevailing Party's costs and expenses, including the reasonable fees of its attorneys, incurred for prosecution, defense, consultation, or advice in such action or proceeding, inclusive of appeals.

i. **VENUE:** BUYER AND SELLER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE JURISDICTION OF THE STATE COURT IN SALT LAKE COUNTY, UTAH (OR IF THE REQUISITES OF JURISDICTION OBTAIN, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH) IN CONNECTION WITH ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BUYER AND SELLER ARISING OUT OF OR IN ANY WAY RELATED TO THE PROPERTY, THIS DOCUMENT OR ANY OTHER AGREEMENTS, DOCUMENTS OR INSTRUMENTS EXECUTED AND DELIVERED IN CONNECTION WITH OR OTHERWISE RELATING TO THE PROPERTY. IN THIS REGARD, THE EXCLUSIVE VENUE OF ANY SUCH DISPUTE SHALL BE IN SALT LAKE CITY, SALT LAKE COUNTY, UTAH. BUYER AND SELLER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY DEFENSE OF FORUM NON CONVENIENS OR ANY OTHER OBJECTION TO VENUE.

ii. **JURY WAIVER:** BUYER AND SELLER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BUYER AND SELLER ARISING OUT OF OR IN ANY WAY RELATED TO THE PROPERTY, THIS DOCUMENT OR ANY OTHER AGREEMENTS, DOCUMENTS OR INSTRUMENTS EXECUTED OR DELIVERED IN CONNECTION WITH, OR OTHERWISE RELATING TO, THE PROPERTY (TOGETHER WITH THIS AGREEMENT, THE "RELATED DOCUMENTS"). THIS PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES EXECUTING THIS AGREEMENT AND ANY OTHER RELATED DOCUMENTS. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN AND IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BUYER AND SELLER, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL. THIS WAIVER IS INTENDED TO AND DOES ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. BUYER AND SELLER FURTHER CERTIFY AND REPRESENT TO EACH OTHER THAT NO PARTY, REPRESENTATIVE OR AGENT OF BUYER OR SELLER (INCLUDING, BUT NOT LIMITED TO, THEIR RESPECTIVE COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE TO BUYER OR SELLER OR TO ANY AGENT OR REPRESENTATIVE OF BUYER OR SELLER (INCLUDING, BUT NOT LIMITED TO, THEIR RESPECTIVE COUNSEL) THAT THEY WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL.

iii. **This section shall survive the Closing or the earlier termination of this Agreement.**

16. **“AS IS” PURCHASE.**

a. **Disclaimer.** Except as set forth in Section 9 above, Seller has not made, and Buyer acknowledges that Seller has not made, any warranty or representation, express or implied, written or oral, statutory or otherwise, concerning the Property or the Inspection Materials, including, but not limited to, the following: (i) the condition of title to the Property; (ii) the nature, physical condition or any other aspect of the Property; (iii) the existence of Hazardous Materials in, on, about, under or affecting the Property; (iv) the compliance of the Property with any laws or any other federal, state or local laws, ordinances, statutes, rules, codes or regulations (including, without limitation, any environmental laws or any zoning codes), (v) the size, dimensions or square footage of the Property, (vi) the fitness of the Property for any particular purpose, (vii) the completeness, adequacy, truthfulness, or accuracy of the Inspection Materials, or (viii) the existence, availability, design, construction, or future installation of infrastructure, improvements, utilities, and the like surrounding or servicing the Property.

b. **Acceptance.** SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, BUYER ACKNOWLEDGES FOR BUYER AND BUYER’S SUCCESSORS AND ASSIGNS, THAT BUYER WILL BE ACQUIRING THE PROPERTY BASED UPON BUYER’S OWN INVESTIGATION AND INSPECTION THEREOF. SELLER AND BUYER AGREE THAT, EXCEPT AS SET FORTH IN SECTION 9, THE PROPERTY SHALL BE SOLD AND BUYER SHALL ACCEPT TITLE AND POSSESSION OF THE PROPERTY ON THE CLOSING DATE “AS IS, WHERE IS, WITH ALL FAULTS” WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT EXCEPT AS SET FORTH IN SECTION 9, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY.

c. **Release and Indemnity.** EXCEPT WITH RESPECT TO SELLER’S BREACH OF ANY WARRANTY SET FORTH IN SECTION 9, BUYER HEREBY EXPRESSLY RELEASES AND INDEMNIFIES SELLER FROM ANY FAULT, INJURY, DAMAGE, COST, EXPENSE, SUIT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OF ANY KIND WHATSOEVER IN CONNECTION WITH THE PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, EACH OF THE SPECIFIC ITEMS DISCLAIMED BY SELLER IN SECTION 10.1 ABOVE. THE RELEASE AND INDEMNITY DESCRIBED HEREIN WILL SURVIVE THE CLOSING AND DELIVERY OF THE DEED.

d. **ENVIRONMENTAL RELEASE/INDEMNITY.** BUYER EXPRESSLY ASSUMES THE RISK THAT ANY HAZARDOUS MATERIALS ARE OR HEREAFTER MAY BE LOCATED ON THE PROPERTY. FROM AND AFTER THE CLOSING, BUYER HEREBY INDEMNIFIES, AND AGREES TO FOREVER ACQUIT, RELEASE AND DISCHARGE, AND WAIVE, ALL RIGHTS AND CLAIMS TO CONTRIBUTION FROM, SELLER AND THE INDEMNITEES, AND SELLER’S AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, FROM AND AGAINST ANY AND ALL JUDGMENTS, CLAIMS, EXPENSES (INCLUDING ATTORNEYS’ AND OTHER CONSULTANTS’ REASONABLE FEES AND COSTS), CAUSES OF ACTION, DAMAGES, LIABILITIES, INCLUDING WITHOUT LIMITATION, ALL FORESEEABLE AND ALL UNFORESEEABLE CONSEQUENTIAL DAMAGES, DIRECTLY OR INDIRECTLY ARISING OUT OF: (I) THE USE, GENERATION, STORAGE, DISPOSAL, RELEASE OR THREATENED RELEASE OF HAZARDOUS

MATERIALS ON THE PROPERTY; AND (II) THE COST OF ANY REASONABLY NECESSARY INVESTIGATION, REPAIR, CLEANUP, REMEDIATION OR DETOXIFICATION OF THE PROPERTY AND OTHER AFFECTED PROPERTY AND THE PREPARATION OF ANY CORRECTIVE ACTION, CLOSURE OR OTHER REQUIRED PLANS OR REPORTS TO THE FULL EXTENT THAT SUCH ACTIONS ARE ALLEGED TO BE ATTRIBUTABLE, DIRECTLY OR INDIRECTLY, TO THE PRESENCE OR USE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, OR DISPOSAL OF HAZARDOUS MATERIALS BY ANY PERSON AND RELATED TO OR INVOLVING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION 10.4 SHALL NOT MERGE WITH THE DEED AND SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE DEED.

e. Material Inducement. Buyer hereby agrees and acknowledges that the terms and conditions of this Section 10 are a material inducement to Seller's sale of the Property, and that Seller would not sell or transfer all or any part of the Property to Buyer without Buyer's express agreement to the terms and conditions of this Section Reserved.

17. **General: Additional Provisions.**

a. Entire Agreement. This Agreement constitutes the final and entire Agreement between the Parties with respect to the purchase of the Property and they shall not be bound by any terms, covenants, conditions, representations or warranties not expressly contained herein. This Agreement may not be amended except by written instrument executed by both Parties.

b. Partial Invalidity. If any one or more of the provisions contained in this Agreement shall for any reason be held 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 invalid, illegal or unenforceable provision had never been contained herein.

c. Time of the Essence. Time is of the essence of this Agreement and the performance of the terms and conditions hereof.

d. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors and assigns. Buyer may assign this Agreement to any person or entity, whether related to Buyer or a third party, without Seller's consent, and upon the assumption of Buyer's interests by such person or entity, the Buyer shall not be relieved of any liability under this Agreement. Seller may assign this Agreement to any person or entity, without Buyer's consent, only in connection with the Seller's transfer of the Property and only with such transferee's assumption of the Seller's interests under this Agreement.

e. Counterparts. This Agreement may be executed in counterparts, the true and accurate email copy or PDF copy shall be deemed an original and all of which together shall constitute one and the same instrument. PDF copies of this Agreement and any amendments hereto and any signatures thereon sent by email shall be construed for all purposes as originals.

f. Headings. The headings of the Sections and subsections hereof are provided for convenience of reference only, and shall not be considered in construing their contents.

g. Exhibits. Each writing or plat or plan referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit is incorporated herein by reference and made a part hereof. The following exhibits are attached hereto (if any exhibits are not attached hereto at the time of the

signing of this Agreement, then the parties will work in good faith to agree upon final documents before the lapse of the Feasibility Period):

Exhibit A:	Legal Description of the Property
Exhibit B:	Closing Documents
Exhibit C:	Notice Addresses
Exhibit D:	Special Warranty Deed

h. Time Periods: Any and all references in this Agreement to time periods which are specified by reference to a certain number of days refer to calendar days, unless "business days" is otherwise expressly provided. Therefore, if (a) the last date by which the Closing is to occur, or (b) any date by which a Party is required to provide the other Party with notice occurs on a Saturday or a Sunday or a banking holiday in the jurisdiction where the Property is located, then and in any of such events, such applicable dates shall be deemed to occur, for all purposes of this Agreement, on that calendar day which is the next succeeding day, which is not a Saturday, Sunday or banking holiday. Unless otherwise specified, the time for performing any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 P.M. (Pacific time) on the last day of the applicable time period as provided in this Agreement.

i. No Partnerships; Third Person: Nothing in this Agreement shall be deemed in any way to create between the Parties any relationship of partnership, joint venture, association or other arrangement and the Parties disclaim the existence of any such relationship. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a Party to this Agreement (including, without limitation, any broker) and no such other person, partnership, corporation or entity shall have any right or cause of action under this Agreement.

j. Waivers. No Party shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by any Party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right

k. Choice of Law. This Agreement shall be given effect and construed by application of the law of the jurisdiction in which the Property is located.

l. Waivers. Either of the Parties shall have the right to excuse or waive performance by the other Party of any obligation under this Agreement by a writing signed by the Party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver of such right or remedy; and no waiver by Seller or Buyer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

m. Construction. The Parties agree that this Agreement has been thoroughly negotiated in good faith and that, if any ambiguity shall arise hereunder, there shall be no presumption that either party drafted this Agreement or shall have such ambiguity resolved against either party by virtue of its role in drafting or preparing this Agreement.

n. Section 1031 Exchange. Buyer and Seller hereby acknowledge that both parties may sell or purchase the subject Property under the provisions of an Internal Revenue Service Section 1031 Tax Deferred Exchange. Buyer and Seller hereby agree to cooperate in executing any documents required by such an exchange provided that each party incurs no additional cost or liability due to such an exchange and such an exchange does not delay or hinder the Closing as scheduled hereunder. The party conducting the 1031 Tax

Deferred Exchange shall indemnify, defend and hold the other party harmless from and against any claims, damages or liabilities of any type.

o. Non-Assumption of Seller's Liabilities; Compliance with Notices. Buyer is acquiring the Property from Seller and is not the successor of Seller. Buyer does not assume or agree to pay or indemnify Seller or any other person or entity against any liability, obligation or expense of Seller relating to the Property in any way except as expressly set forth in this Agreement. Seller shall comply, at Seller's expense, with the requirements of all notices relating to the Property which may be issued by any Authorities or other entity after the Effective Date, but prior to Closing, except to the extent caused by Buyer.

p. Transfer and Excise Taxes. Any transfer or excise taxes payable by reason of the purchase and sale provide for in this Agreement shall be paid by Seller. Rollback or greenbelt assessment taxes shall be paid by Buyer.

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

SELLER:

Sagers Family Partnership,
a Utah limited liability company,

By _____
Name _____
Title _____

BUYER:

Excelsior Academy,
a Utah Non Profit company

By _____
Name _____
Title _____

The undersigned joins in the execution of the foregoing Agreement for the sole purpose of agreeing to hold and apply the Deposit, and to agree to its other obligations under this Agreement, subject to and in accordance with the terms of the foregoing Agreement.

ESCROW AGENT:

Tooele Title Insurance Company

By _____
Name _____
Title _____

EXHIBIT A

Legal Description of the Property

First Phase Take Down

Second Phase Take Down

EXHIBIT B

Closing Documents to be Delivered at Closing

- (a) Seller shall deliver a Special Warranty Deed in the form attached hereto as Exhibit D.
- (b) Seller shall deliver a Foreign Investment in Real Property Tax Act ("FIRPTA") certification, in conformance with the requirements of FIRPTA stating that Seller is not a foreign person and that no withholding is required pursuant to FIRPTA. Seller will indemnify, defend and hold Buyer harmless for, from and against any loss or liability if such certification is not correct. In the event such certification is not forthcoming or in the event either Escrow Agent or Buyer knows of or has reason to know that such certification is false, Escrow Agent is hereby irrevocably authorized and directed to withhold 10% of Seller's proceeds of the Purchase Price pursuant to FIRPTA for disposition in accordance therewith and in accordance with applicable regulations.
- (c) Seller shall deliver all consents which may be required from any third person or entity in connection with the sale of any Property.
- (d) Seller shall deliver a title affidavit as to those items or facts within Seller's control in form typically required by the Escrow Agent and sufficient to allow such Escrow Agent to delete the "standard exceptions" in a title policy; including, but not limited to (A) rights of parties in possession other than record owners, (B) any lien, or right to lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown among the public records, (C) defects, liens, encumbrances adverse claims or other matters, if any, created, first appearing in the public record or attaching subsequent to the effective date of the Commitment but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by the Commitment.
- (e) Seller shall deliver lien releases, affidavits and other documents satisfactory to counsel for Buyer, indemnifying Buyer from all liability and expense, including attorneys' fees, that Buyer may incur in connection with unfiled mechanics' liens for any work completed or materials furnished at or about the Property prior to Closing by Seller or otherwise.
- (f) Buyer and Seller shall deliver such other documents or instruments as may be reasonably required by other provisions of this Agreement or reasonably required by the other Party to effectuate the closing of the Property hereunder, including any documents evidencing the authority or powers of a Party to execute or perform its obligations under the Agreement or any closing documents.
- (g) Such other documents and instrument provided for in this Agreement, including any Bill of Sale or other assignment required by Buyer.

All of the documents and instruments to be delivered by Buyer or Seller pursuant to this Exhibit shall be in form and substance reasonably satisfactory to counsel for the other party.

EXHIBIT C

Notice Addresses

Any notice to be given to any Party hereto in connection with this Agreement shall be in writing and shall be deemed received (a) on the date delivered if hand delivered by receipted hand delivery or email and (b) two (2) days after postmark if sent postage prepaid by certified or registered mail, return receipt requested. Notwithstanding anything to the contrary, any default notice shall be sent by e-mail, as well as one other method of delivery, provided that such default notice shall not be deemed to have been received by a Party until receipt by such Party under the other delivery method. Notices to the Parties shall be sent to their addresses set forth below. Either Party, by written notice to the other, may change its address to which notices are to be sent. The Parties shall copy Escrow Agent on all notices sent hereunder, but failure to notify Escrow Agent shall not be deemed a failure of notice to a Party to whom notice has been given.

Buyer's Address:

Escrow Agent:

Tooele Title Company
123 West Vine Street
Tooele, Utah 84074
Attn: Heidi Allred
Telephone: (435)882-1120
Email: Heidi@tooeletitle.com

Seller's Address:

Sagers Family Partnership
448 South 300 West
Tooele, UT 84074
Attn.: Kathryn Faudre
Telephone: (435) 830-3642
Email: faud4@hotmail.com

EXHIBIT D

Form of Special Warranty Deed

Tax Parcel Numbers:

(space above for Recorder's use only)

SPECIAL WARRANTY DEED

In consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, _____, a _____ ("Grantor"), hereby conveys and warrants against only those claiming by, through or under it (and no others) , _____, a _____ ("Grantee"), all right, title and interest in and to the real property located in _____ County, _____, and described as follows:

See Exhibit A attached hereto and incorporated herein by this reference;

TOGETHER with all easements, rights and hereditaments appurtenant thereto and all improvements located thereon;

SUBJECT TO current taxes and assessments and to the reservations, easements, covenants, conditions, restrictions, and other rights or interests of record or enforceable at law or equity; and

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed this _____ day of _____, 202_.

_____,
a _____

[EXHIBIT NOT FOR EXECUTION]

By: _____

_____, _____

STATE OF _____)

ss:

COUNTY OF _____)

Acknowledged before me this _____ day of _____, 202_, by _____,
the _____ of _____, a _____.

Notary Public

[Exhibit A to be Attached hereafter]

