

**REAL ESTATE SALE AND PURCHASE AGREEMENT**  
**AND ESCROW INSTRUCTIONS**  
**[Purchase of Vacant Land]**

This Real Estate Sale and Purchase Agreement and Escrow Instructions (the "**Agreement**") is made and entered into by and between TUCSON UNIFIED SCHOOL DISTRICT, a political subdivision of the State of Arizona (the "**Seller**"), and 5151 PIMA, LLC, an Arizona limited liability company (the "**Buyer**"), dated effective as of the date of its execution (the "**Effective Date**") by the Escrow Agent (as defined below).

W I T N E S S E T H:

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller hereby agrees to sell and Buyer hereby agrees to purchase and pay for all that certain property hereinafter described in accordance with the following terms and conditions.

**1. PROPERTY**

1.1 Real Property. The conveyance by Seller to Buyer shall consist of all of the real property commonly known as 5151 E. Pima Street, situated in the City of Tucson, Pima County, Arizona, comprised of approximately 8.5 acres and legally described on **Exhibit "A"** attached hereto and hereby incorporated by this reference (the "**Real Property**"), together with: (a) any right, title, and interest, if any, of Seller in and to any and all roads, easements, streets and ways bounding the Real Property and rights of ingress and egress thereto; (b) any mineral, water and irrigation rights running with or pertaining to the Real Property; and (c) any rights or interests that may accrue to the benefit of Seller or the Real Property as a result of abandonment of any road, street or alleyway adjoining the Real Property.

1.2 Personal Property. The conveyance by Seller to Buyer also shall include all personal property of every kind and character owned by Seller, whether tangible or intangible, and now or hereafter installed, located, situated and used in or about or in connection with the operation, use and enjoyment of the Real Property (the "**Personal Property**").

The Real Property and Personal Property are hereinafter sometimes collectively called the "**Property**."

**2. PURCHASE PRICE**

2.1 Escrow. "**Opening of Escrow**" shall be deemed to have occurred when a fully-executed Agreement (or counterparts as executed by each party) is delivered to escrow and accepted by Pamela Tighe ("**Escrow Agent**") at Title Security Agency, LLC, One S. Church Avenue, Suite 2040, Tucson, Arizona 85701, by execution hereof and insertion of the Effective Date hereon.

2.2 Payment. The total purchase price for the Property (the “**Purchase Price**”) is ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000.00) plus the Contract Amount required under the Demolition Contract (both as defined in Paragraph 7.1 below), payable in immediately available funds as follows:

(a) Within two (2) business days after Opening of Escrow, Buyer will deposit the sum of FIFTEEN THOUSAND AND NO/100 (\$15,000.00) as the earnest money deposit (the “**Earnest Money**”). Unless this Agreement is terminated as provided in Paragraph 5.3 below, upon expiration of the Feasibility Period (as defined in Paragraph 5.1 below), the Earnest Money shall be released to Seller.

(b) Unless this Agreement has been sooner terminated pursuant to another of its provisions, then upon expiration of the Development Approval Period (as such term is defined in Paragraphs 3.4 below and as such may be extended pursuant to Paragraph 3.5 below), and Buyer’s waiver of its right to terminate this Agreement as provided in Paragraph 3.4 below, Buyer shall deposit in escrow the Contract Amount to be applied to the Purchase Price.

(c) Subject to the prorations and credits as set forth in Paragraphs 8.3 and 8.4 below, upon Closing (as defined in Paragraph 3.1 below), Buyer shall deliver to Escrow Agent the balance of the Purchase Price in immediately available funds.

(d) Upon Closing, the Earnest Money (which shall include for all purposes the initial Earnest Money released to Seller and any additional Earnest Money deposits paid by Buyer pursuant to Paragraph 3.5 below) and the Contract Amount and all interest earned thereon shall be applied toward the Purchase Price; however, if this transaction fails to close, then the Earnest Money and Contract Amount and the interest earned thereon shall be payable as provided in Paragraphs 3.4(b), 3.5, 4.1(c), 5.3, 9 and 10.14 below, as the case may be, except that the initial Earnest Money, upon release to Seller shall be non-refundable to Buyer except in the case of Seller's default.

### **3. CLOSING; AND PRE-CLOSING OBLIGATIONS AND CONDITIONS**

3.1 Closing. The closing of this transaction (the “**Closing**”, “**Closing Date**” or “**Close of Escrow**”) shall occur on the fifth (5<sup>th</sup>) business day after satisfaction of the conditions precedent set forth in Paragraph 7.1 below, but not later than the sixtieth (60<sup>th</sup>) day after the expiration of the Development Approval Period at the office of the Escrow Agent or at such other time and place as may be agreed upon in writing by Seller and Buyer.

3.2 Deliveries. Within thirty (30) business days after the Effective Date (and within five (5) business days after receipt of any of the following or updates thereof), Seller shall deliver to Buyer, at Seller's sole cost and expense, each of the following enumerated items (the “**Property Information**”); provided, however, if any one of the following enumerated items

does not exist, is not in Seller's possession or Seller does not have access to or control over such item, Seller shall deliver within such time period a written notice reflecting that such is the case:

(a) Reports and studies such as surveys, engineering tests, inspection reports, soils, geotechnical or hydrological tests, environmental assessments and reports and termite reports;

(b) Agreements or correspondence pertaining to third party rights or use of the Property, including covenants, conditions and restrictions, access or parking agreements and written summaries of any oral agreements;

(c) Copies of all licenses, permits, approvals, variances or exceptions issued under any law or regulation relating to environmental protection or fire safety, and any other documents issued by any governmental or non-governmental entity relating in any way to the Property, including, without limitation, utility service, the zoning ordinance, any zoning variances or exceptions, any special use zoning permits and proposed building permits;

(d) Notices and correspondence concerning compliance with, violation of or alleged violation of any law, ordinance, regulation or guideline of any government authority or insurance provider;

(e) Copies of any appraisals of the Property; the 2012 and 2013 property tax statements for the Property, if any; and the 2014 valuations of the Property;

(f) Copies of all unrecorded agreements affecting or pertaining to the Property, including without limitation, leasing, management, employment, service, operations, maintenance, parking agreements and any modifications thereof or supplements thereto (collectively, the "**Contracts**");

(g) Development-related plans, applications, agreements or approvals, such as without limitation, development plans, site plans, or subdivision plats, applications or reports;

(h) Unless such shall be stated on the Survey (as defined in Paragraph 3.3(a) below), a certificate executed by the appropriate official of the City of Tucson stating that the Real Property is not located in a flood plain or flood hazard area;

(i) Copies of all construction and demolition contracts and any warranties, guaranties and permits issued thereunder or pursuant thereto and of lien waivers for all work performed on the Real Property within six (6) months prior to the Effective Date of this Agreement or any time thereafter.

3.3 Survey and Phase One Environmental Site Assessment. Within thirty (30) days after the Effective Date, Seller shall deliver to Buyer, at Seller's sole cost and expense, the following:

(a) a current ALTA/ACSM survey of the Real Property dated subsequent to the date of this Agreement (the “**Survey**”) prepared based on the Title Commitment (as defined in Paragraph 4.1 below), prepared by a professional engineer or surveyor licensed in the State of Arizona, as reasonably approved by Buyer, certified to Buyer and the Title Company (as defined in Paragraph 4.1 below) which shall locate all existing easements and rights-of-way (including applicable recording data) and all above-ground utilities, encroachments, conflicts and protrusions affecting the Real Property, and shall set forth the number of square feet included within the Real Property, but which shall exclude any and all improvements to the Property, whether consisting of structures, paving or other installations (the “**Improvements**”); and

(b) a current Phase I environmental site assessment of the Property (including any asbestos and/or mold survey as may be required) prepared in accordance with the most recent ASTM standards certified to Buyer by a certified environmental specialist or engineer as approved by the State of Arizona Department of Environmental Quality and, if applicable, a Phase II and Phase III environmental inspection and remediation reports.

(c) The period for the delivery of environmental inspection and remediation reports may be extended up to thirty (30) days by mutual written agreement of Seller and Buyer delivered to Escrow Agent prior to the expiration of the initial thirty (30)-day period provided therefor pursuant to Paragraph 3.3(a) above. As provided in Paragraph 5.1 below, the Feasibility Period shall commence upon the completion of Seller's deliveries pursuant to Paragraphs 3.2 and 3.3 above (as the time for the deliveries thereunder may be extended pursuant to this Paragraph 3.3(c) and Paragraph 4.1 below.

3.4 Other Approvals.

(a) Buyer shall have a period of two hundred seventy (270) days (“**Development Approval Period**”) following expiration of the Feasibility Period to obtain necessary approvals for the development of the Real Property (the “**Approvals**”), in form satisfactory to Buyer in its sole discretion. The Approvals shall be more fully detailed in a description of the entitlement process to be pursued by Buyer during the Development Approval Period, which description shall be prepared by Buyer and delivered to Seller during the Feasibility Period (the “**Submittal**”), which Submittal will include, among others, the following activities:

(i) confirmation as to whether the Alamo-Arcadia Area Plan will require amendment;

- (ii) development plan approval;
- (iii) rezoning approval; and
- (iv) issuance of all construction and related permits.

(b) Seller will cooperate with Buyer's efforts, at no cost or expense to Seller, and will execute such letters of authority or consent within five (5) business days after request in order that Buyer may make applications and submittals in connection with the proposed development and entitlement process. Buyer may terminate this Agreement by written notice to Seller and Escrow Agent prior to expiration of the Development Approval Period, if Buyer determines during the Development Approval Period that Approvals acceptable to Buyer will not be obtained during the Development Approval Period, or if as of the expiration of the Development Period (as such may be extended as provided in Paragraph 3.5 below), the re-zoning ordinance (subject only to conditions approved by Buyer) has not been issued with all periods for referendum or appeal expired, and/or Buyer has not obtained all other necessary Approvals for the development of the Property. If Buyer does not deliver written notice advising Seller and Escrow Agent that the Approvals have been obtained before expiration of the Development Approval Period, as such may be extended pursuant to Paragraph 3.5 below, this Agreement shall be deemed cancelled. Upon such termination, neither party will have any further obligation under the Agreement.

3.5 Development Approval Period Extension. If Buyer has undertaken the re-zoning application process with the City of Tucson and pursued the same but such has not been completed prior to expiration of the Development Approval Period (or if it has but the time for referendum or appeal has not expired, or an appeal or referendum has been initiated) or if such has been completed but all other Approvals as identified herein or in the Submittal have not been issued, then Buyer may extend the Development Approval Period for up to two (2) additional sixty (60)-day periods each by delivering written notice thereof to Seller and Escrow Agent prior to the expiration of the initial Development Approval Period and, if applicable, prior to the expiration of the Development Approval Period, as extended, and depositing the sum of \$25,000.00 as additional Earnest Money into escrow for each extension. Upon deposit of the first additional Earnest Money, the additional Earnest Money deposit(s) for the extension(s), which shall be held in escrow, shall be non-refundable to Buyer (except in the case of Seller's default) and credited to the Purchase Price at Close of Escrow or released to Seller if Buyer terminates the Agreement upon expiration of the Development Approval Period, as extended, in accordance with Paragraph 3.4(b) above.

#### **4. TITLE AND TITLE INSURANCE**

4.1 Title and Survey Review. Seller shall cause Escrow Agent or the Title Company to deliver to Buyer within ten (10) days after opening of escrow, a current commitment (the "**Title Commitment**") for the issuance of a 2006 ALTA extended coverage owner's policy of title insurance to Buyer issued by the title insurance underwriter designated by Escrow Agent

(the "**Title Company**"), together with good and legible copies of all documents referenced therein as exceptions to Seller's title. Buyer shall have a period of ten (10) days (the "**Title Review Period**") from the later of the date on which Buyer receives the Title Commitment pursuant to this Paragraph and the date on which Buyer receives the Survey pursuant to Paragraph 3.3(a) above (collectively, the "**Title Documents**") in which to review and to provide written approval or objection to Escrow Agent and Seller ("**Buyer's Notice**") to the condition of title to the Property. If Buyer fails to notify Seller and Escrow Agent in writing of Buyer's approval or disapproval of the exceptions to title within the Title Review Period, the condition of title shown in the Title Commitment and Survey shall be deemed approved by Buyer.

(a) Within five (5) days after Buyer's Notice, Seller shall give Buyer and the Escrow Agent written notice ("**Seller's Notice**") of those disapproved exception(s) which Seller is able and willing to eliminate (or to secure title insurance endorsements against if such are acceptable to Buyer). If Seller fails to timely send Seller's Notice, Seller shall be deemed to have elected not to cure any of the exceptions disapproved by Buyer. Seller shall have until the expiration of the Feasibility Period to eliminate or to secure title insurance endorsements if such are approved by Buyer and in form acceptable to Buyer any disapproved exceptions to title to the Property which Seller agrees in Seller's Notice to attempt to cure.

(b) In the event Seller fails to timely transmit Seller's Notice or advises Buyer in the Seller's Notice that it is unwilling or unable to eliminate (or to secure title insurance endorsements against in such form as may be approved by Buyer in its sole discretion) any disapproved exceptions from the Title Documents, or if after attempting to do so in compliance herewith, Seller is unable to so eliminate (or to secure title insurance endorsements against in such form as may be approved by Buyer in its sole discretion) any disapproved exceptions, Buyer may elect, by giving written notice to Seller and Escrow Agent within five (5) days of the date Seller was to have given Seller's Notice or of the date Seller gives notice to Buyer that it is unwilling or unable to cure the disapproved exception(s), as applicable, to: (i) cancel this Agreement; or (ii) waive Buyer's objection to any such exception(s), in which case Buyer shall accept title to the Property subject to such previously disapproved exceptions.

(c) If Buyer fails to give Seller and Escrow Agent timely notice of its election of alternative 4.1(b)(ii) above, Buyer shall be deemed to have elected alternative 4.1(b)(i) above. In the event this Agreement is canceled in accordance with the provisions hereof due to Seller's failure or inability to eliminate or to secure any approved title insurance endorsements against any disapproved exception(s) after having attempted to do so in compliance with Seller's obligations hereunder, then the Earnest Money and all interest earned thereon shall be promptly refunded to Buyer without further instruction of any party.

(d) If the Title Company amends the Title Commitment to provide for exceptions in addition to those approved by Buyer, Buyer shall give notice to the

Escrow Agent and Seller within ten (10) days thereafter whether it shall accept the additional exceptions or elect to terminate this Agreement unless such are cured to its reasonable satisfaction by Seller in the manner hereinbefore provided with respect to the original exceptions to title, except that Seller shall have until Closing, rather than until the expiration of the Feasibility Period, to effect its performance. The Closing Date shall be extended, if necessary, to accommodate this procedure.

4.2 Title Policy. Provided Buyer approves the status of title of the Property, Seller shall cause Escrow Agent to issue to Buyer at Closing or as soon thereafter as reasonably possible a 2006 ALTA extended coverage owner's policy of title insurance (the "**Title Policy**"). The Title Policy shall be issued by the Title Company in the full amount of the Purchase Price, be effective as of the Closing and shall insure Buyer that fee simple title to the Property is vested in Buyer subject only to the exceptions approved by Buyer (the "**Permitted Exceptions**").

## **5. FEASIBILITY STUDY AND INSPECTIONS**

5.1 Feasibility Period. Buyer shall have a period of sixty (60) days from the completion of Seller's deliveries pursuant to Paragraphs 3.2, 3.3 and 4.1 above in which to conduct a feasibility study of the Property, and all books and records maintained by Seller with respect thereto, and to conduct such tests and studies (including economic feasibility studies and physical tests and inspections) and to review the items to be delivered by Seller pursuant to this Agreement (the "**Feasibility Period**"). Costs and expenses of all such inspections, tests and studies shall be borne solely by Buyer.

5.2 Entry. During the Feasibility Period, Buyer and its duly authorized agents and representatives shall be entitled to enter upon the Real Property at all reasonable times, but without undue interference of the rights of tenants, if any, to inspect the operation of the Property and to conduct whatever other inspections and inquiries Buyer may deem necessary or advisable with respect to the operation of the Property, including the conduct of any environmental assessments; provided, however, any such inspection, or the right to inspect, shall in no way abrogate or diminish Buyer's right to rely on Seller's representations and warranties made herein. Buyer shall indemnify and hold Seller harmless from any loss, liabilities, cost, claims, damages or liens resulting solely from Buyer's entry upon the Property.

5.3 Non-Acceptance. In the event that the inspections conducted by Buyer pursuant to this Section 5 show any condition to exist with respect to the Property which is unacceptable to Buyer in its sole discretion, and Buyer's objections are not cured by Seller to Buyer's satisfaction, or Seller fails to deliver any of the Property Information as required hereunder, then Buyer shall be entitled to cancel this Agreement by providing written notice of cancellation to Seller and Escrow Agent before the expiration of the Feasibility Period. If Buyer timely notifies Seller and Escrow Agent of its election to terminate, then thereafter neither Seller nor Buyer shall have any continuing obligation one unto the other and Escrow Agent shall promptly return the Earnest Money to Buyer. In the event that Buyer does not provide at its sole discretion a written notice to Seller and Escrow Agent waiving its right to terminate this Agreement before the expiration of the Feasibility Period, Buyer shall be deemed to have not accepted its findings

and cancelled the Agreement and the Earnest Money and all interest earned thereon shall be promptly refunded to Buyer without further instruction of any party.

## 6. **REPRESENTATIONS AND WARRANTIES**

6.1 Seller's Representations and Warranties. In order to induce Buyer to enter into this Agreement, Seller covenants, represents and warrants to Buyer as of the Effective Date and as of the date of Closing, as follows:

(a) Seller has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Property, or any portion thereof, which has not been complied with in full or that has not been disclosed to Buyer in writing;

(b) Seller has not received any notice from any insurance company, governmental agency or other person of any defects or inadequacies in the Property, or any part thereof, which would materially and adversely affect the insurability or usability of the Property which has not been complied with in full or that has not been disclosed to Buyer in writing;

(c) There are not presently pending any condemnation actions or special assessments of any nature with respect to the Property, or any part thereof, nor has Seller received any notice of any condemnation actions or special assessments being contemplated, nor does Seller have any knowledge of any being contemplated that has not been disclosed to Buyer in writing;

(d) No third parties have any right, title or interest in and to the Real Property or any portion thereof except those who may have rights pursuant to any of the Permitted Exceptions;

(e) Seller is not a party to, subject to or bound by any agreement (non-competition or otherwise) with any person, or any judgment, order, writ, injunction or decree of any court or governmental body which could prevent or impair (i) the effect of Seller's execution and delivery of this Agreement, or (ii) Seller's performance hereunder, as contemplated herein. There are no agreements, commitments or understandings by or between Seller and any third party pursuant to which Seller or its successors-in-interest are required to dedicate any part of the Real Property, or to grant any easement, water rights, rights of way, road or license in respect to any part of the Real Property;

(f) Seller has not entered into any lease, license or other occupancy agreement for the Real Property or any portion thereof;

(g) At Closing, all Improvements and any debris will have been removed from the Real Property;

(h) That Seller is the owner of the Real Property and Seller shall convey good, marketable and merchantable title to the Real Property to Buyer at Closing by special warranty deed, subject only to the Permitted Exceptions;

(i) At Closing, there will be no unpaid bills or claims, nor any mechanics' or materialmen's liens against the Real Property; all debts, liabilities and obligations of Seller arising from the ownership and operation of the Property have been paid as they become due, and all debts, liabilities or obligations of Seller with respect to the Property (whether known, unknown, accrued, absolute, contingent or otherwise) outstanding as of the date of Closing will then be paid by Seller in full;

(j) Seller is and will be duly and legally authorized and permitted to enter into this Agreement and to carry out and perform all covenants to be performed by it hereunder, and that its right to execute this Agreement is not limited by the existence of any other contracts or agreements whatsoever and the individual executing this Agreement on behalf of Seller had been duly authorized to do so;

(k) That no violations exist concerning any covenants, conditions or restrictions affecting the Property;

(l) There are no claims, actions, suits or other proceedings pending or threatened by any governmental department or agency, or any other corporation, partnership, limited liability company, entity or person, nor any voluntary actions or proceedings contemplated by Seller which in any manner or to any extent would detrimentally affect Buyer's right, title and interest in and to the Property, the future operation of the business conducted thereon, the value of the Property, Seller's ability to perform Seller's obligations contemplated herein, or which question the validity or enforceability of the transaction contemplated herein. Seller has no knowledge of any existing or threatened action, suit or proceeding affecting the Property or any portion thereof or relating to, or arising out of the ownership, management or operation of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality;

(m) Seller is a "**United States person**" within the meaning of Section 1445 of the Internal Revenue Code, as amended;

(n) All sales taxes, rental taxes and real and personal property taxes due and payable with respect to the Real Property, if any, have been paid and those outstanding as of the date of Closing will be paid by Seller in full;

(o) That all of the Contracts shall be cancelled by Seller prior to Closing without liability to Buyer;

(p) The Real Property in all respects is in compliance with all federal, State of Arizona and local laws, ordinances and regulations relating to environmental protection, occupational health and safety, public health and safety or public nuisance or menace; and the Real Property has never been used to manufacture, store or dispose of toxic or hazardous substances, materials or waste covered by the Resource Conservation and Recovery Act or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and reauthorized, the Arizona Environmental Quality Act, and/or any other laws, ordinances, codes and regulations pertaining to public health and safety;

(q) Seller will provide updated information before and after Closing as to all of Seller's warranties and representations. Seller further warrants that its representations and warranties will survive and not be waived by Buyer's receipt of this information or by any investigation by Buyer;

(r) Seller: (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by an Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated National and Blocked Person**," or any other banned or blocked person, group, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Seller hereby agrees to provide Buyer, upon request, identifying information and other information reasonably requested by Buyer in its efforts to comply with such laws, orders, rules or regulations; and

(s) Seller has disclosed to Buyer all material matters known to Seller affecting the Property.

6.2 Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date of this Agreement and as of the Closing:

(a) Buyer is authorized to execute and deliver this Agreement and to perform the covenants and obligations to be performed and carried out by Buyer hereunder; and

(b) Buyer is not a party to, subject to or bound by any agreement (non-competition or otherwise) with any person, or any judgment, order, writ, injunction or decree of any court or governmental body which could prevent or impair (i) the effect of Buyer's execution and delivery of this Agreement, or (ii) Buyer's performance hereunder, as contemplated herein.

6.3 Survival of Covenants, Representations and Warranties after Closing. The parties acknowledge that each and every covenant, representation and warranty contained in Paragraphs 6.1 and 6.2 above shall be true and accurate as of the Effective Date and also as of the Close of

Escrow and shall constitute a material part of the consideration hereunder and shall survive the Closing. All obligations to be performed at the Closing will survive the Closing and will not be deemed to merge upon delivery and acceptance of the conveyance instruments at Closing.

## **7. CONDITION PRECEDENT; ESCROW PERIOD.**

7.1 **Seller's Obligations.** If Buyer waives its right to terminate the Agreement upon or prior to expiration of the Development Approval Period and deposits the Contract Amount in escrow as provided in Paragraph 2.2(b) above, Seller, within forty-five (45) days thereafter, or such longer period as required by the terms of the Demolition Contract (as herein below defined), shall cause: (i) the demolition and removal from the Property in accordance with applicable code and a demolition contract executed by Seller in form and content as negotiated by Buyer and approved by Seller in the reasonable exercise of its discretion during the Development Approval Period (the "**Demolition Contract**") of all Improvements and all debris resulting therefrom, including without limitation, building and attendant improvements on the Property, such as outbuildings, storage buildings, equipment, paving, signage and any other Improvements excepting therefrom only utilities (capped as appropriate), utility lines and conduit (capped at the Real Property boundary), transformers, and the like; and (ii) the delivery to Buyer of an environmental report certified to Buyer prepared by an environmental engineer approved by the Arizona Department of Environmental Quality and prepared in accordance with current ASTM standards reflecting that there are no recognized environmental conditions concerning the Property that may impact its value, development, or require further investigation or remediation. Seller shall be entitled to make progress and final payment(s) of the sum to be paid to the contractor under the mutually-approved Demolition Contract (the "**Contract Amount**") from the amount deposited in escrow pursuant to Paragraph 2.2(b) above.

7.2 **Escrow Period.** From and after the Effective Date of this Agreement until the earlier of the termination of this Agreement or the Closing:

(a) Seller will provide Buyer with all information regarding the Property as is necessary for Buyer's investigation of the Property and Seller will cooperate and diligently assist Buyer in pursuing satisfaction of all contingencies hereunder.

(b) Seller will not enter into any agreements with respect to the Property that will be binding upon the Property following the Close of Escrow and shall not grant any third party any rights or use of any portion of the Property.

(c) Seller will make reasonable efforts during the escrow period to maintain and safeguard the Property in its existing condition, subject to the provisions of Paragraph 7.1 above. Seller will not take any action or execute any document which would create a new interest in the Property or which would affect marketability of title. Seller will permit Buyer access to the Property during the escrow period for the purpose of conducting such tests and inspections as it may reasonably desire.

## 8. CLOSING

8.1 Seller's Deliveries. Within five (5) days after Buyer's delivery to Escrow of the Contract Amount pursuant to Paragraph 2.2(c) above, Seller shall deliver or cause to be delivered to Escrow Agent, at Seller's sole cost and expense, each of the following items:

(a) A special warranty deed (the "**Deed**") in the form of **Exhibit "B"** attached hereto and incorporated herein executed and acknowledged on behalf of Seller, in recordable form, conveying good and indefeasible fee simple title to the Real Property to Buyer, free and clear of any liens, encumbrances, easements or other matters affecting title to the Property except the Permitted Exceptions;

(b) Evidence that each of the Contracts has been duly cancelled as of the Closing without liability to Buyer;

(c) All original warranties and guarantees pertaining to or affecting the Property and an Assignment of Warranties, Guaranties, Permits, Licenses and Other Intangibles duly executed and acknowledged by Seller, assigning to Buyer all of Seller's right, title and interest in such items applicable to the Property, or any part thereof in the form of **Exhibit "C"** attached hereto and incorporated herein. Escrow Agent shall attach the schedule of guaranties and warranties delivered by Seller pursuant to Paragraphs 3.2(c) and 3.2(i) above as Schedule "2" thereto;

(d) Such evidence or other documents that may be reasonably required by Buyer or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the sale of the Property;

(e) An affidavit duly executed and acknowledged by Seller that all bills in connection with management, utilities, services, trash collection and maintenance have been fully paid to date of Closing and such other declarations as may be required by the Title Company to issue the Title Policy and shall cause the Title Company to issue the Title Policy to Buyer at or promptly following Closing; and

(f) All additional documents and instruments this Agreement requires to be provided by Seller at Closing, and all additional documents and instruments as in the opinion of Buyer's counsel are reasonably necessary for the proper consummation of this transaction.

8.2 Buyer's Deliveries. At Closing, Buyer shall deliver or cause to be delivered to Escrow Agent the following items:

(a) The amount of any Closing Purchase Price adjustments, if any;

(b) Acceptance of the Assignment of Warranties, Guaranties, Permits, Licenses and Other Intangibles in the form of **Exhibit "C"**; and

(c) All additional documents and instruments this Agreement requires to be provided by Buyer at Closing and all additional documents and instruments as in the opinion of the Seller's counsel are reasonably necessary for the proper consummation of this transaction.

8.3 Prorations. At Closing, the following items shall be adjusted or prorated between Seller and Buyer:

(a) No ad valorem taxes are assessed for the Property for the current calendar year in which Closing occurs. Buyer shall be responsible for the payment of any such ad valorem taxes imposed upon the Property following Closing; and

(b) Any utility costs and expenses related to the operation of the Property and/or the demolition of the Improvements shall be paid by Seller who shall obtain a final bill therefor.

8.4 Closing Costs. At Closing, the following items shall be paid by Seller and/or Buyer:

(a) Seller shall pay for the cost of a standard owner's policy of title insurance and the Survey, and any endorsements Seller has agreed to provide and Buyer has agreed to accept in satisfaction of any title objection made pursuant to Paragraph 4 above and Buyer shall pay for the cost of extended coverage and for any other endorsements to the Title Policy requested by Buyer.

(b) Seller shall pay the entire balance of any monetary liens encumbering the Property.

(c) Seller and Buyer each shall pay one-half (1/2) of any escrow fees and charges of Escrow Agent.

(d) All other Closing costs (except as otherwise set forth in this Agreement and professional fees which shall be the responsibility of the party employing the professional except in the event of litigation concerning this Agreement) shall be shared by the parties according to local custom.

8.5 Escrow Agent's Obligations. Without limitation, it shall be the obligation of Escrow Agent at Closing:

(a) To record the Deed delivered hereunder;

(b) To deliver to Buyer those items specified in Paragraph 8.1(a) through (f) and deliver copies thereof to Seller;

(c) To cause the issuance and delivery to Buyer of the Title Policy.

8.6 Possession. Exclusive possession of the Property shall be delivered to Buyer by Seller at Closing.

8.7 Seller's Indemnity. Seller agrees to indemnify, defend and hold Buyer harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature arising or accruing prior to the date of Closing or from facts or circumstances existing prior to the date of Closing and which are in any way related to the ownership, maintenance or operation of the Property, and all expenses related thereto, including, but not limited to, court costs and attorneys' fees.

8.8 Buyer's Indemnity. Buyer agrees to indemnify, defend and hold Seller harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature (except those items which by the terms of this Agreement specifically remain the obligation of Seller) first arising or accruing subsequent to the date of Closing and which are in any way related to the ownership, maintenance or operation of the Property, including, but not limited to, court costs and attorneys' fees.

8.9 Notice of Claim. In the event either party hereto receives notice of a claim or demand which results or may result in indemnification pursuant to Paragraphs 8.7 or 8.8 above, such party shall immediately give notice thereof to the other. The party receiving such notice shall immediately take such measures as may be reasonably required to properly and effectively defend such claim, and may defend same with counsel of its own choosing. In the event the party receiving such notice fails to properly and effectively defend such claim, and in the event such party is liable therefor, the party so giving such notice may defend such claim at the expense of the party receiving such notice.

## **9. REMEDIES UPON DEFAULT**

9.1 Seller's Default. In the event that Seller fails to timely comply with all obligations, conditions and covenants of Seller hereunder, such failure shall be an event of default and Buyer shall be entitled to maintain an action against Seller for specific performance and recover attendant damages or to terminate this Agreement, immediately receive without further instruction or consent of Seller the amount of all sums that have been deposited in escrow by Buyer and all interest earned thereon (and if all or any part thereof has been released to Seller, to recover such amounts from Seller on demand), and to maintain an action against Seller for damages.

9.2 Buyer's Default. In the event all conditions of this Agreement are satisfied and all covenants and agreements to be performed prior to Closing are fully performed, but the sale is not consummated through a default on the part of Buyer, then Seller's sole remedy for such default shall be to receive from the Escrow Agent upon demand liquidated damages in the amount of the Earnest Money (including any additional Earnest Money that shall have been deposited in escrow and the Contract Amount or so much thereof as is then in escrow if such has previously been delivered to Escrow Agent) and all interest earned thereon, such amount being

agreed upon by and between Seller and Buyer as liquidated damages due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof; and no other damages, rights, or remedies shall in any case be collectible, enforceable or available to Seller other than in this Paragraph 9.2.

**10. MISCELLANEOUS.**

10.1 Notices. Any notice to be given or served upon any party hereto in connection with this Agreement must be in writing and shall be deemed to have been given (including by courier and electronic transmission) and received and served personally on the party to whom notice was given, or on the second day after mailing if mailed to the party to whom notice is to be given by first-class mail, certified or registered, postage prepaid, return receipt requested and properly addressed to Buyer, Seller and Escrow Agent as follows or on the date of receipt by courier delivery or on the date on which facsimile transmission is sent by verified receipt provided it is no later than 5:00 p.m. local time of the recipient or on the date which email is sent with read acknowledgement provided it is no later than 5:00 p.m. local time of the recipient:

To Seller: Tucson Unified School District  
Attn: Bryant Nodine  
2025 E. Winsett Street  
Tucson, Arizona 85719  
Fax No.: ( ) -  
Email: \_\_\_\_\_

To Buyer: 5151 Pima, LLC  
Attn: Craig Masters  
3945 E. Fort Lowell Road, Suite 111  
Tucson, Arizona 85712  
Email: [cmasters@me.com](mailto:cmasters@me.com)

with a copy to: Deborah Oseran, Esq.  
Mendelsohn Oseran & Spencer, PLC  
3915 E. Broadway Blvd., Suite 225  
Tucson, Arizona 85711  
Fax No.: (520) 323-6614  
[doseran@moslawyers.com](mailto:doseran@moslawyers.com)

To Escrow Agent: Pam Tighe  
Title Security Agency LLC  
1 South Church, Suite 2040  
Tucson, Arizona 85701  
Fax No.: (520) 740-0436  
Email: [pamela.tighe@titlesecurity.com](mailto:pamela.tighe@titlesecurity.com)

10.2 Representations and Warranties. Any representations and warranties contained in this Agreement shall be true and correct on the date of Closing, and Buyer shall have no obligation to close if such representations and warranties are not true and correct as of such date.

It is further understood and agreed that any and all representations, warranties, covenants and agreements contained herein, whether to be performed before or after the time of Closing, shall not be deemed to be merged into or waived by the instruments of Closing, but shall expressly survive Closing and shall be binding upon the party obligated thereby. The obligation of Buyer to close this transaction is expressly conditioned upon said representations and warranties being true and correct on the date of Closing.

10.3 Construction; Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. Venue for the action shall be Pima County. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "**heirs, executors, administrators and assigns**" shall include "**successors, legal representatives and assigns.**"

10.4 Amendment. This Agreement may not be modified or amended, except by an agreement in writing signed by Seller and Buyer. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

10.5 Authority. Each person executing this Agreement warrants and represents that he or she is fully authorized to do so.

10.6 Attorneys' Fees. In the event either party files a suit in connection with this Agreement or any provisions contained herein, then the party which prevails in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs of court incurred in such suit.

10.7 Headings. The descriptive headings of the articles, sections and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

10.8 Entire Agreement. This Agreement (and the items to be furnished in accordance herewith) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representations, warranties, covenants, agreements or conditions not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement; provided, however, that all certifications, representations and warranties of Seller contained in the statements and schedules to be furnished herewith, shall become a part of this Agreement as though set forth herein.

10.9 Counterparts. Numerous copies of this Agreement may be executed by the parties hereto. Each such executed copy shall have the full force and effect of any original executed instrument. Facsimile signatures shall be as effective as original signatures.

10.10 Assignment. Buyer shall be entitled to assign its rights and obligations hereunder with notice to Seller and Escrow Agent to a to-be-formed limited liability company formed for the purpose of owning the Property.

10.11 Time. Time is of the essence in the performance of each of the provisions of this Agreement, however, in the event the provisions of this Agreement require any act to be done or action to be taken hereunder on the date which is a Saturday, Sunday or legal holiday observed by Escrow Agent, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday or legal holiday observed by Escrow Agent.

10.12 Invalidity. In the event any provision or part of this Agreement is deemed invalid, illegal or unenforceable prior to Closing, such invalidity, illegality or unenforceability will not affect the remaining provisions of this Agreement provided that if the change materially affects the terms of this Agreement, then either party may elect to terminate this Agreement, in which event the Earnest Money and all interest earned thereon, will be returned to Buyer with all interest earned thereon and thereupon this Agreement shall be null and void and of no further force and effect.

10.13 Exhibits. All exhibits and/or schedules to this Agreement are fully incorporated herein as though set forth at length.

10.14 Eminent Domain. In the event that eminent domain or condemnation proceedings are commenced or notice is given of any such proceedings, or if any easements or dedications are sought on or against any portion of the Real Property prior to Closing, Buyer shall have the right (a) to cancel this Agreement and receive an immediate return of all sums deposited by Buyer in escrow from Escrow Agent and/or Seller, as applicable, or (b) to close the transaction contemplated hereunder, in which event Buyer shall be entitled to receive any and all condemnation or eminent domain proceeds.

10.15 No Third Parties. Nothing in this Agreement shall confer upon any person, firm or corporation not a party to this Agreement, or the legal representatives of such person, firm or corporation, any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement, except as expressly set forth herein.

10.16 Broker. Each party represents and warrants that it has not dealt with any real estate salesperson or broker. If any person shall assert a claim to a fee, commission or other compensation as a broker or finder in connection with this transaction, the party who has dealt with such broker shall indemnify, defend and hold harmless the other against and from all costs, expenses and liabilities incurred in connection with such claim.

10.17 Confidentiality. The parties agree to hold the terms and provisions of this Agreement confidentially and to disclose the same only to their managers, members, boards, attorneys, accountants, consultants and employees with a "need to know" who have been apprised of the confidential nature thereof and have agreed to be bound thereby. Accordingly, except as necessary to process the Approvals, to pursue financing or users for the Real Property

or as otherwise required by law, or with the prior written consent of the other party, the terms and provisions hereof shall be held confidentially.

10.18 Deed Restriction. Prior to Closing, Seller shall record a deed restriction to prohibit the use of the property for a charter school. Purchaser agrees to abide by this restriction.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties to this Agreement have duly executed as of the dates below indicated.

SELLER: TUCSON UNIFIED SCHOOL DISTRICT, a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Name: Bryant Nodine  
Director of Planning and Student  
Assignment

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

BUYER: 5151 PIMA, LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Craig Masters, Manager

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

RECEIVED AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, (the "**Effective Date**"):

Title Security Agency, LLC

By: \_\_\_\_\_  
Name: Pam Tighe  
Its: Escrow Agent

## **LIST OF EXHIBITS**

Exhibit "A"	Real Property Description
Exhibit "B"	Form of Special Warranty Deed
Exhibit "C"	Form of Assignment of Warranties, Guaranties, Permits, Licenses and Other Intangibles

**EXHIBIT "A"**

[Real Property Description]

**EXHIBIT "B"**

When recorded return to:

Deborah Oseran, Esq.  
Mendelsohn Oseran & Spencer, PLC  
3915 E. Broadway, Suite 225  
Tucson, Arizona 85711

**SPECIAL WARRANTY DEED**

For the consideration of Ten and No/100 Dollars (\$10.00), and other valuable consideration, TUCSON UNIFIED SCHOOL DISTRICT, a political subdivision of the State of Arizona, hereinafter called the Grantor, hereby conveys to 5151 PIMA, LLC, an Arizona limited liability company, the real property situated in Pima County, Arizona described on Schedule "1" attached hereto and incorporated herein, together with all rights and privileges appurtenant thereto.

Subject to the permitted exceptions as set forth on Schedule "2" attached hereto and by this reference incorporated herein, the Grantor warrants the title against all acts of Grantor and none other.

Exempt from Affidavit of Value pursuant to A.R.S. Section 11-1134.A3.

DATED: \_\_\_\_\_, 2015.

TUCSON UNIFIED SCHOOL DISTRICT,  
a political subdivision of the State of  
Arizona

By: \_\_\_\_\_  
Name: Bryant Nodine  
Its: Director of Planning and Student Assignment

STATE OF ARIZONA        )  
  ) ss.  
County of Pima            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the President of the Governing Board of Tucson Unified School District, a political subdivision of the State of Arizona, on behalf of said District.

My Commission Expires: \_\_\_\_\_  
Notary Public

**Schedule "1"**

[Legal Description]

**Schedule "2"**

[Permitted Exceptions]

## EXHIBIT "C"

### ASSIGNMENT OF WARRANTIES, GUARANTIES, PERMITS, LICENSES AND OTHER INTANGIBLES ("Assignment")

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TUCSON UNIFIED SCHOOL DISTRICT, a political subdivision of the State of Arizona ("**Assignor**"), does hereby sell, transfer, convey and assign to 5151 PIMA, LLC, an Arizona limited liability company ("**Assignee**"), all the right, title and interest of the Assignor in and to all of the intangible personal property owned by Assignor and associated with the ownership, use and operation of the real property legally described on Schedule "1" attached hereto and incorporated herein (the "**Property**") together with any other appurtenant intangibles all as more fully set forth in that certain Real Estate Sale and Purchase Agreement and Escrow Instructions between Assignor as Seller and Assignee as Buyer dated August \_\_, 2014 (the "**Agreement**"), including, without limitation: (i) any and all surveys, plans and specifications; (ii) licenses, permits; and (iii) all warranties and guaranties, if any, with respect to any items of personal property existing thereon, all as may be set forth on Schedule "2" attached hereto and incorporated herein. Assignor will cooperate with Assignee in securing the performance of any warrantor for any work which Assignee believes should be performed by any warrantor pursuant to such guarantees or warranties.

To fully give effect to the provisions hereof, Assignor hereby irrevocably appoints Assignee its true and lawful attorney-in-fact to do those things in the name of Assignor or otherwise as may be necessary or desirable to obtain all of the benefits of and to enforce the warranties and guaranties assigned.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, from and after the date hereof, subject to the terms, covenants, conditions and provisions therein contained.

This Assignment is made in connection with the transfer this day of the Property from Assignor to Assignee pursuant to the Agreement.



**ACCEPTANCE OF ASSIGNMENT OF WARRANTIES, GUARANTIES,  
PERMITS, LICENSES AND OTHER INTANGIBLES**

The Assignment of Warranties, Guaranties, Permits, Licenses and Other Intangibles is accepted as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by 5151 PIMA, LLC, an Arizona limited liability company, on the terms and conditions as therein set forth.

5151 PIMA, LLC, an Arizona limited liability  
company

By: \_\_\_\_\_  
Craig Masters, Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Pima            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of 5151 Pima, LLC, an Arizona limited liability company, on behalf of said company.

My Commission Expires: \_\_\_\_\_  
Notary Public

Schedule "1"

[Legal Description]

Schedule "2"

[List of Warranties and Guaranties]