

Fund: _____
Certificate of Sale No. _____

THE STATE OF UTAH
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
CERTIFICATE OF SALE

This Certificate of Sale (“**Certificate**”), dated _____, (the “**Certificate Date**”) is between the State of Utah, through the School and Institutional Trust Lands Administration (“**SITLA**”) and [**Purchaser’s Name, if an entity include incorporation information, and address**] (“**Purchaser**”) [OR (collectively, “**Purchasers**”). **NTD: make universal change from Purchaser to Purchasers if appropriate**].

RECITALS

A. SITLA manages lands held in trust by the State of Utah for the benefit of certain named beneficiaries (“**trust lands**”), pursuant to Sections 6, 8, 10, and 12 of the Utah Enabling Act, Article XX, Section 2 of the Utah State Constitution, and Title 53C of the Utah Code.

B. SITLA offered to sell certain trust lands located in **County** County, State of Utah, and **certain water rights** (the “**Property**”), at a public auction held on _____. The Property is described as follows: **or on “Exhibit A”**.

Township _____, Range _____, SLB&M
Section _____: _____

Containing _____ acres, more or less

C. **Purchaser** offered the high bid at the auction and the parties enter into this Certificate to complete the purchase and sale of the Property, on the terms and conditions of this Certificate. [NTD: If no auction, then take out B and C and replace with the following: SITLA has agreed to sell and Purchaser has agreed to purchase through a negotiated sale the trust lands located in **County** County, State of Utah, and **certain water rights** (the “**Property**”), as those trust lands and **water rights** are more fully described on Exhibit A.]

The parties agree as follows:

1. **PURCHASE AND SALE OF PROPERTY**

1.1. **Purchase of the Property.** SITLA shall quitclaim to Purchaser the Property, on the condition precedent that Purchaser pays the Purchase Price, any interest accruing on the Purchase Price, and all other fees and costs as further described in Section 1.3. If Purchaser fails to pay the Purchase Price, interest accruing, and all other fees and costs as described in Section 1.3, Purchaser's rights under this Certificate automatically terminate. [If more than one party, holding as JTs: SITLA shall quitclaim to Purchasers, as joint tenants, the Property, on the condition precedent that Purchasers pay the Purchase Price, any interest accruing on the Purchase Price, and all other fees and costs as further described in Section 1.3. If to more than one party as tenants in common: SITLA shall quitclaim to Purchasers, as tenants-in-common, the Property on the condition precedent that Purchasers pay the Purchase Price, any interest accruing on the Purchase Price, and all other fees and costs as further described in Section 1.3. The Purchasers hold the Property in the following interests:

Party A ___%

Party B ___%.]

1.2. **Reservations and Exceptions.**

1.2(a) SITLA reserves to the State, for the benefit of the trust land beneficiaries:

all coal, oil, gas, and other hydrocarbons and all other mineral deposits located in or on the Property, along with the right to reasonably access and use the Property to explore for, develop, and extract those mineral deposits;

all ordinary sand and gravel located in or on the Property, along with the right to reasonably access and use the Property to explore for, develop, and extract those sand and gravel deposits;

all sub-surface void and pore spaces in the Property whether naturally existing or created upon the removal of coal, oil and gas and other mineral deposits, and the right to reasonably access and use the Property and to use those sub-surface void and pore spaces for any purpose; and

an access and utility easement across the Property as may be necessary and reasonable to access lands administered now or in the future by the School and Institutional Trust Lands Administration.

1.2(b) SITLA reserves to the State all archaeological specimens, values, contexts, features, and deposits within the noted archaeological sites on the Property described in Exhibit B and depicted in Exhibit C.

1.2(c) Purchaser takes the Property subject to all valid, existing rights-of-way, easements, or any other encumbrance in existence as of the date of this Certificate. (OR *subject to any valid, existing rights-of-way, easements, or any other encumbrance in existence as of the date of this Certificate, including but not limited to: list known encumbrances, perpetual term.*)

1.3. **Purchase Price and Terms.**

1.3(a) **Purchase Price.** The Purchase Price is \$ _____ (the “Purchase Price”). SITLA acknowledges that as of the Certificate Date, Purchaser has paid SITLA \$ _____, representing 10% of the Purchase Price, and costs and fees in the amount of \$ _____. Purchaser shall pay SITLA the remainder of the Purchase Price, plus interest accruing from the first day of the month following the auction until the Purchase Price is paid in full. Interest will accrue annually at the prime rate, as reported on the first day of _____ each year, plus 2.5%.

1.3(b) **Payment Schedule.** Purchaser shall pay SITLA the remaining balance of the Purchase Price in 20 installments, the first of which is due on or before _____, and on each subsequent _____ 1st thereafter until paid in full. Purchaser shall pay SITLA all accrued interest with each annual installment payment. The 20th payment must be for all remaining amounts owed, including any interest, fees or penalties. Purchaser may pay all or any portion of the Purchase Price early without penalty.

1.3(c) **Late Payments.** Late payments are subject to fees assessed pursuant to Utah Administrative Code R850-5-200, as amended or replaced.

1.3(d) **Application of Monies Paid.** SITLA shall apply amounts paid by Purchaser first to late fees, penalties and costs, if any, then to pay interest, and then to reduce the principal.

1.4. **Conveyance of the Property.**

1.4(a) **Patent.** On payment in full of the Purchase Price and all other monies owed under Section 1.3, and compliance with all other terms of this Certificate, SITLA shall cause the State of Utah to issue a patent to Purchaser for the Property, containing the reservations and exceptions in Section 1.2.

1.4(b) **Possession.** As of the Certificate Date, Purchaser may access, use, and possess the Property, at which time Purchaser bears all risk of title and loss, destruction and expenses of the Property.

1.5. **Compliance with Laws Prior to Patent.** Prior to delivery of the Patent, Purchaser shall comply with all applicable laws and regulations of any government agency having jurisdiction,

including all valid sanitation and pollution regulations. Purchaser shall report any discovery of a paleontological, cultural or archaeological site or specimen to the Division of State History in compliance with Utah Code Ann. § 9-8-305.

2. **TAXES**

2.1. **Purchaser Responsible for Taxes.** Purchaser acknowledges that the Property has not been subject to taxes during the period it was held by the State of Utah, but that such Property may be subject to general and special real estate and other ad valorem taxes and assessments, including Farmland Assessment (Greenbelt) rollback taxes, and charges for utilities, and other charges. Purchaser is responsible to pay any taxes or other charges assessed against the Property.

2.2. **Failure to Pay Taxes.** If Purchaser fails to pay taxes or charges assessed against the Property prior to issuance of the Patent, SITLA may pay such taxes or charges on Purchaser's behalf. On demand from SITLA, Purchaser shall immediately repay SITLA all taxes or charges paid on Purchaser's behalf, plus interest accruing from the date of payment until paid in full at the rate of 1.5% per month.

3. **INSPECTION; NO WARRANTIES**

3.1. **Inspection.** Purchaser has had the opportunity to inspect the Property to determine its condition and suitability for Purchaser's intended purposes, and for the presence or absence of any Hazardous Substances (defined below) or hazardous conditions. Purchaser has not relied on any disclosures or information from SITLA, its agent, employees, directors, officers or other representatives and acknowledges that such information may be inaccurate. Purchaser acquires the Property in an "As-Is" condition with all faults and defects, including latent and patent defects.

3.2. **Disclaimer of Warranties.** SITLA disclaims all warranties of title and any representations made by SITLA or its agents, employees, directors, officers or other representatives as to zoning, legal or physical access, location or availability of utilities, soil conditions, floodplains and watercourses, the presence or absence of any Hazardous Substances (defined below) or hazardous conditions, or other physical or legal attributes of the Property or Purchaser's ability to obtain approvals for Purchaser's development of the Property, or the physical conditions of the Property. **SITLA HEREBY DISCLAIMS ANY AND ALL WARRANTIES WHATSOEVER WITH RESPECT TO THE PROPERTY IT IS CONVEYING.** Purchaser assumes the risk that adverse past, present, or future physical characteristics and conditions of the Property have not been revealed by inspection or investigation.

4. **PURCHASER'S REPRESENTATIONS WARRANTIES AND COVENANTS**

4.1. **Purchaser's Representations.** Purchaser hereby represents to SITLA that:

- 4.1(a) it is an entity in good standing and licensed to do business in Utah;
- 4.1(b) it has all necessary corporate and governmental authorizations to purchase the Property and execute this Certificate; and
- 4.1(c) there are no judgments, actions, decrees or other legal restraints or causes of action that would prevent Purchaser from acquiring the Property.

5. **DEFAULT AND TERMINATION**

5.1. **Purchaser's Failure to Pay Amounts Owed.** If Purchaser fails to pay any amounts due under Sections 1.3 and 2.2 within 30 days after SITLA provides notice of Purchaser's failure to pay, SITLA may terminate this Certificate, repossess the Property, and retain all monies paid up to the time of termination, pursuant to Utah Code Ann. § 53C-4-102(8). Purchaser will not have any interest in the Property, rights to reclaim any monies paid, or obtain payment for any improvements to the Property.

5.2. **Quit-Claim Deed.** As of the date of this Certificate, Purchaser has executed a properly acknowledged quit-claim deed granting to the State of Utah all of its rights and interest in the Property. If SITLA exercises its right to terminate this Certificate as provided in Section 5.1 or if this Certificate terminates for any other reason, SITLA may record the quit-claim deed in the county in which the Property is located.

5.3. **Remedies Not Exclusive.** The remedies specified in this Section 5 are not exclusive and SITLA may pursue all other remedies it may have at law or in equity at the same time or at any time. Purchaser shall reimburse SITLA for all costs and expenses (including reasonable attorney's fees) that SITLA incurs to enforce this Certificate or seek remedy of any default.

5.4. **Purchaser's Obligations on Termination.** On termination of this Certificate for any reason, Purchaser shall:

- 5.4(a) remove all improvements on the Property within 90 days of termination;
- 5.4(b) reclaim the Property to the same or better condition than it was in at the Date of Down Payment, including removal of any Hazardous Substances, within 90 days of termination; and
- 5.4(c) execute a release of all claims against the State of Utah.

6. **PURCHASER'S POSSESSION**

6.1. **No Waste.** Prior to delivery of the Patent, Purchaser:

- 6.1(a) may not commit or suffer to be committed any waste, spoil, or destruction of, in or upon the Property;

6.1(b) shall maintain the Property in good condition;

6.1(c) may not suffer or permit any lien or encumbrance on or against all or any part of the Property; and

6.1(d) may not materially alter the surface of the Property without SITLA's prior consent, which it may grant, withhold, or condition in SITLA's reasonable discretion. A material alteration of the surface includes without limitation construction of roads, trails or permanent improvements; excavation or removal of materials; cutting or removal of more than a de minimis quantity of trees or vegetation; and any other significant alteration of existing surface conditions.

7. INDEMNIFICATION AND RELEASE

7.1. **Definitions.** The following definitions apply in this Certificate.

7.1(a) "**Hazardous Substance**" means: (a) any substance, material, or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste," or words of similar import in any environmental law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302); and (c) any substance, material, or waste that contains petroleum or is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, except as otherwise provided by law.

7.1(b) "**Indemnified Parties**" means the State of Utah, its affiliates, agencies, directors, officers, employees, agents, consultants, advisors, and other representatives, and their heirs, executors, successors and assignees.

7.1(c) "**Litigation Expense**" means any reasonable out-of-pocket expense incurred in defending a Third-Party Claim or in any related investigation or negotiation, including court-filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements.

7.1(d) "**Losses**" means any amount awarded in, or paid in settlement of, any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding, whether brought by a non-party or by one party against the other.

7.1(e) "**Third-Party Claim**" means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding brought by or on behalf of a non-party.

7.2. **Indemnification**. The Indemnified Parties have no responsibility for and Purchaser shall indemnify the Indemnified Parties from and against all Losses arising out of:

7.2(a) Purchaser's acts or omissions resulting in death, bodily injury, or damage to real property; or

7.2(b) any use, generation, storage, disposal, release or threatened release of Hazardous Substances on the Property at any time before or after issuance of this Certificate, including without limitation (i) all foreseeable and unforeseeable consequential damages, and (ii) the cost of any investigation, repair, cleanup, remediation or detoxification of the Property and other affected property and the preparations of any corrective action, closure or other required plans or reports.

7.2(c) Purchaser is not responsible to indemnify the Indemnified Parties to the extent that the Indemnified Party intentionally caused the Losses.

7.3. **Defense**.

7.3(a) **Purchaser to Defend**. The Purchaser shall defend an Indemnified Parties against any Third-Party Claim. To be entitled to defense from Purchaser, an Indemnified Party must notify Purchaser within a reasonable time of a Third-Party Claim and deliver to Purchaser a copy of all documents and information related to the Third-Party Claim. The Indemnified Parties' failure to notify Purchaser of a Third-Party Claim within a reasonable time does not relieve Purchaser of its defense obligations unless Purchaser is materially prejudiced by the Indemnified Party's failure to give reasonable notice.

7.3(b) **Independent Counsel**. On notice of a Third-Party Claim from an Indemnified Party, Purchaser shall promptly retain independent legal counsel that is reasonably acceptable to the Indemnified Party requesting defense.

7.3(c) **Indemnified Party's Participation in Defense**. An Indemnified Party is entitled to participate in the defense of a Third-Party Claim with counsel of its own choosing and without Purchaser's participation if: (i) Purchaser notifies the Indemnified Party that it does not wish to defend the Third-Party Claim or does not promptly retain independent counsel on notice of a Third-Party Claim; or (ii) representation of the Indemnified Party and Purchaser by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.

7.3(d) **Litigation Expenses**. Purchaser shall pay any Litigation Expenses that an Indemnified Party incurs in connection with defense of a Third-Party Claim before Purchaser assumes the defense of that Third-Party Claim, except with respect to any period during which the Indemnified Party fails to timely notify Purchaser of that Third-Party Claim. Purchaser is not liable for any Litigation Expenses that an Indemnified Party incurs in connection with defense of a Third-Party Claim after Purchaser assumes the

defense of that Third-Party Claim. Purchaser shall promptly pay all Litigation Expenses as they are incurred.

7.3(e) **Settlement.** After Purchaser assumes the defense of a Third-Party Claim, Purchaser may contest, pay, or settle the Third-Party Claim without the consent of the Indemnified Party only if that settlement (i) does not entail any admission on the part of the Indemnified Party that it violated any law or infringed the rights of any person, (ii) has no effect on any other claim against the Indemnified Party, (iii) provides as the claimant's sole relief monetary damages that are paid in full by Purchaser, and (iv) requires that the claimant release the Indemnified Party from all liability alleged in the Third-Party Claim.

8. **NOTICES**

8.1. **Notices.** The parties shall give all notices, consents, or other communications under this Certificate in writing and addressed as follows:

To SITLA:

Utah School and Institutional Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, Utah 84102
Attention: Director

To Purchaser:

[Name
Address]

8.2. **Method of Notification.** Notices must be given by (a) established express delivery service that maintains delivery records, (b) hand delivery, or (c) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of the recipient's failure to provide a reasonable means for accomplishing delivery.

9. **MISCELLANEOUS**

9.1. **Assignment.** Purchaser may not assign this Certificate without prior consent of SITLA and only after Purchaser provides SITLA a writing in which the assignor assumes all obligations and liabilities of Purchaser under this Certificate. An assignment made without SITLA's prior consent is void. An assignment does not relieve Purchaser from its obligations and liability under this Certificate and SITLA may continue to look to Purchaser to fulfill all obligations under this Certificate, including those that survive termination of this Certificate or issuance of the Patent.

- 9.2. **No Merger.** This Certificate does not merge with the Patent.
- 9.3. **Survival.** Sections 2 (Taxes), 3.2 (Disclaimer of Warranties), 5.4 (Purchaser's Obligations on Termination), 7 (Indemnification and Release), 9.2 (No Merger), 9.12 (No Waiver of Governmental Immunity) survive termination of this Certificate and issuance of the Patent.
- 9.4. **Entire Agreement.** This Certificate and attachments constitute the entire agreement between the parties with respect to the subject matter of this Certificate. The parties may only amend this Certificate in a subsequent writing executed by both parties.
- 9.5. **Waivers.** A waiver of any provision of this Certificate does not constitute a waiver of any other provision, whether or not similar, and does not constitute a continuing waiver. Except as expressly provided in this Certificate, a waiver is not binding unless it is documented in a writing signed by both parties.
- 9.6. **Governing Law.** This Certificate is governed by the laws of the State of Utah, without regard to its choice or conflicts of laws principles. The parties may only bring an action arising out of this Certificate or the Patent in the Third Judicial District Court, Salt Lake County, Utah and both parties submit to the exclusive jurisdiction of that court.
- 9.7. **Captions.** The captions in this Certificate are for convenience only and have no legal effect.
- 9.8. **Applicability.** If any term of this Certificate or the application of it to any person, entity or circumstance is deemed invalid and unenforceable by a court with jurisdiction, the remainder of this Certificate or the application of such term to persons or circumstances other than to those that are determined invalid or unenforceable continue and are enforceable to the extent permitted by law.
- 9.9. **Authority.** The individuals executing this Certificate represent that they are authorized to sign on behalf of the respective parties.
- 9.10. **Numbering of Days.** If the last day of any time period stated in this Certificates falls on a Saturday, Sunday or federal or Utah legal holiday, then such time period will be extended to the next succeeding day that is not a Saturday, Sunday or a federal or Utah legal holiday.
- 9.11. **Allocation of Professional Fees.** The parties are responsible for their own legal and professional fees related to preparation of this Certificate and issuance of the Patent.
- 9.12. **No Waiver of Governmental Immunity.** Nothing in this Certificate constitutes a waiver of SITLA's governmental immunity from suit.
- 9.13. **Counterparts and E-Signatures.** The parties may execute this Certificate in counterparts, each of which when taken together will be deemed one and the same document.

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The parties may execute this Certificate by exchange of electronic signatures and such electronic signatures are enforceable against the signing party. The parties agree that an electronic version of this Lease, as amended, has the same legal effect and/or enforceability as a paper version as per Utah Code Ann. § 46-4-201.

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STATE OF UTAH
SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION:

By: _____
DAVID URE
DIRECTOR

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

This Certificate of Sale was acknowledged before me on this _____ day of _____, 20____, by **David Ure**, the Director of the School and Institutional Trust Lands Administration of the State of Utah.

Seal:

Notary Public

Approved as to form:
Sean D. Reyes
Attorney General

By: _____
Special Assistant Attorney General

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[PURCHASER (if more than one purchaser, just do another signature block exactly like this)],

Name: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

This Certificate of Sale was acknowledged before me on this _____ day of
_____, 20____, by _____, the _____
of _____.

Seal:

Notary Public