

REAL ESTATE SALE AND PURCHASE AGREEMENT

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into effective the last date executed by a party hereto (the "Effective Date"), by and between Maize Unified School District No. 266, Sedgwick County, State of Kansas, ("Seller"), and Fox Ridge Development Company, Inc. ("Buyer").

WHEREAS, Seller is the owner of the South 75 feet of the North Half of Section 32, Township 26S, Range 1W, Sedgwick County, Kansas (herein the "Property"); and

WHEREAS, Buyer desires to purchase the Property and Seller is agreeable to selling the Property, pursuant and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Sale.** Seller agrees to sell, and Buyer agrees to purchase, the Property pursuant to the terms and conditions of this Agreement.

2. **Purchase Price.** The purchase price for the Property shall be \$20,000 (the "Purchase Price"). Buyer will pay to Seller the Purchase Price, subject to the adjustments and prorations hereafter set out, on the Closing Date. The Seller is not requiring the Buyer to deposit Earnest Money.

3. **Contingency Period.** Buyer shall have until the Closing Date to review a title insurance commitment (the "Commitment") covering the Property from First American Title Kansas Agency, Inc. (the "Title Company") in the amount of the Purchase Price, conduct soil tests, environmental tests and studies and engineering studies and any other due diligence that Buyer in its sole discretion deems necessary with respect to the Property (the "Contingency Period"). For such purposes, Buyer and Buyer's agents, employees and contractors shall have the right, pending expiration of the Contingency Period, to go upon the Property at all reasonable times. The costs of such tests and studies shall be paid by Buyer. Buyer agrees to indemnify and hold harmless Seller from all liens, liabilities, damages, costs and expenses arising from personal injuries, physical damage to the Property or otherwise which are caused by Buyer's inspection and testing of the Property pursuant to this paragraph or any other paragraph of this Agreement. Buyer may elect at any time during the Contingency Period to terminate this Contract or to shorten the Contingency Period.

4. **Closing.** It is understood and agreed between the parties hereto that time is of the essence of this Agreement and that unless this Agreement is terminated pursuant to a right herein, this transaction shall be consummated and closed (herein the "Closing") at the Title Company on August 31, 2007, or such earlier date that is mutually agreed upon by Buyer and Seller (herein the "Closing Date"). The Closing shall take place at such time as mutually approved by the parties.

Upon payment of the Purchase Price, Seller shall execute and deliver to Buyer a general warranty deed for the Property, transferring marketable fee simple title to the Property to Buyer. The delivery of such deed shall convey exclusive possession of the Property to Buyer. Seller shall also deliver an affidavit to the Title Company sufficient for Buyer to obtain an extended coverage

owner's title policy, together with such other documents that may be reasonably required by the Title Company or Buyer to close the transaction contemplated hereunder.

The cost of the Commitment, the title policy issued pursuant to the Commitment, the Title Company's closing fees, and up to \$500 of legal fees actually incurred by Seller directly related to this Agreement will be paid by Buyer upon Closing. Each party shall pay its own recording fees, if any.

5. **Deed Covenants.** The deed of the Property from Seller shall include the following covenants, easements and agreements, which shall run with the land as obligations of the owner of the Property, and which benefits shall not be assignable or transferable by Seller except as assigned or transferred with the land.

A. **Reservation of Easements.** Subject to existing easements and restrictions of record, Seller hereby retains, grants, conveys, declares, creates, imposes and establishes for the benefit of Seller, a perpetual easement in, to, over, under and across the Property for the following purposes and uses:

1. **School-Sponsored Educational Activity.** Use by Seller, its board members, employees and students for a school sponsored educational activity (for example, a nature hike) upon and along the North shoreline of the retention ponds and lakes as may exist upon the Property from time to time, provided that Seller in each instance first obtain the consent of the Property owner. Seller shall provide the owner of the Property with reasonable advance notice and request sufficiently describing the planned activity, including the proposed location on the Property for the activity, and the number of students and employees or other supervisors who will attend the activity. The owner of the Property may create a request form document to be used to submit such requests. The owner of the Property shall not unreasonably withhold, delay or condition its consent to a requested activity, provided that it shall not be unreasonable to withhold consent for the following reasons as determined by the owner of the Property: (a) insufficient employee/adult supervision, (b) the condition of the proposed location on the Property is unsafe or undergoing construction, repair or seeding, or (c) Seller fails to sign any requested waiver of liability of the Property owner for injury or harm that may occur during a requested school sponsored educational activity (except that Seller shall not be required to sign a waiver of liability for injury or harm caused by a grossly negligent or intentional act or omission of the owner of the Property).

2. **Drainage and Utility Easement.** Utility easement and surface and storm water runoff drainage and retention of the balance of the of the North Half of 32-26S-1W, Sedgwick County, Kansas (hereinafter the "USD Tract"), up to a maximum of 15 acre feet of detention volume from the USD Tract and Seller's adjacent and contiguous property, provided such drainage and retention occurs at no additional cost or expense to the owner of the Property, and further provided that upon any exercise by Seller of the utility easement granted herein, Seller shall promptly restore the Property, including any landscaping and irrigation infrastructure.

B. **Maintenance.** The owner of the Property shall maintain in good, sightly and working condition and repair, reasonable wear and tear excepted, the landscaping and irrigation of and along the North shoreline of the retention ponds and lakes as may exist upon the Property from time to time, including payment of all costs and expenses related thereto.

C. **Running With the Land.** The Parties hereby declare that the Deed Covenants, and all of the provisions contained herein and all of the rights, easements and obligations hereunder, shall be and constitute covenants running with the fee simple estate of the Property and shall be binding upon

all present and future owners thereof. The grants of easements, rights and privileges in this Agreement are independent of any contractual agreements undertaken by the Parties in this Agreement and a breach by either Party of any such contractual agreements shall not cause or result in a forfeiture or reversion of the easements, rights and privileges granted in this Agreement.

6. **Real Estate Taxes and Prorations.** All rentals, taxes, insurance and interest, if any, shall be adjusted and prorated through the date of Closing with Buyer responsible for such taxes, special assessments, rentals, insurance and interest subsequent to Closing, and Seller is responsible for such items prior to Closing. Taxes shall be prorated for the calendar year on the basis of taxes levied. If the taxes have not been levied, then they will be prorated based upon taxes for the previous year, adjusted for the most recent mil levy, if known.

7. **Representations.** EXCEPT AS EXPRESSLY STATED ELSEWHERE IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY WILL BE MADE IN AN "AS IS" CONDITION, WITH ALL FAULTS.

A. **No Reliance.** Buyer has not been induced by and has not relied upon any warranties, representations, promises or statements, whether express or implied, written or oral, made by Seller or any agent, employee, attorney, broker or other representative of Seller, which are not expressly set forth in this Agreement.

B. **Buyer Assumption.** Buyer assumes the responsibility and risks of all defects, latent and patent, and all conditions relating to the Property, including without limitation, all defects and conditions that cannot be observed by casual inspection. Buyer further agrees it will have an opportunity to inspect the Property and will be relying entirely upon its own inspection of the Property in making its decision to purchase the Property. Buyer expressly acknowledges that by entering into this Agreement, Buyer shall be conclusively and irrebuttably presumed not to have relied upon any representations or warranties except as are expressly set forth herein. Buyer agrees that the Purchase Price was negotiated after consideration of all possible defects in the Property.

C. **Environmental Claims.** Seller makes no representations as to the environmental condition of the Property. Buyer may retain an environmental inspection firm to inspect the Property.

8. **Certain Covenants by Seller.** Seller makes the following covenants and representations to Buyer, which shall be true on the Effective Date and remain true up to and including the Closing Date or earlier termination of this Agreement as otherwise provided herein. The provisions of this paragraph shall not merge with the deed and shall survive the Closing or termination of this Agreement for a period of one (1) year, and, Subject to any limitations on Seller for such liability pursuant to the Kansas Cash Basis Law, K.S.A. 10-1101 et seq., and the Kansas statutes regarding Budgets of Taxing Subdivisions, K.S.A. 79-2925 et seq., Seller agrees to indemnify and hold harmless Buyer from all liens, liabilities, damages, costs and expenses arising from or caused due to the failure of any covenant or representation in this paragraph of such Seller to remain true up to and including the Closing Date, provided that the same are not caused by the negligence or willful misconduct of Buyer or any agent, employee or contractor of Buyer.

(a) During the term hereof, Seller shall not grant with respect to the Property, file against the Property, or cause to be filed against the Property any conveyance of an interest in or to the Property, easements, rights-of-way, restrictions of use, rights of occupancy, liens (except for any mortgage lien to be removed at Closing), or any petition of any governmental authority for public improvements that would result in any special assessment;

(b) Seller shall not authorize or permit any material adverse change to the Property prior to Closing, and Seller shall promptly notify the Buyer of any material change in the condition of the Property, or of any change that causes a covenant or representation made hereunder to not be true, provided that Seller has actual knowledge of such change;

(c) Seller shall notify Buyer of any notice received by Seller from a governmental body seeking to subject the Property to special assessments for public improvements or to condemn all or any portion of the Property for public purposes;

(d) Seller has the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out Seller's obligations hereunder; and

(e) There are no lawsuits or legal proceedings pending, or, to the best of Seller's actual knowledge, threatened, regarding the ownership, use or possession of the Property.

(f) Buyer accepts and acknowledges that this Agreement is subject to and contingent upon existing easements of record including, but not limited to, those granted to Kansas Gas and Electric Company.

9. **Risk of Loss by Condemnation.** The risk of loss to the Property by condemnation prior to the Closing shall be on Seller. In the event of any taking after the Effective Date but prior to Closing, Buyer shall have the option to either (i) terminate this Agreement by notice thereof to the Seller, in which case the parties shall have no further rights or obligations under this Agreement, or (ii) Close this transaction. If Buyer elects to Close this transaction, upon Closing, Buyer shall be entitled to receive the full amount of any condemnation proceeds attributable to such taking of the Property. Seller shall execute and deliver all documents reasonably requested of Seller in order to effectuate same.

10. **Default; Remedies.**

10.1. If Buyer fails to cure any failure to perform or observe any of its covenants or obligations hereunder within ten (10) days of receipt of written notice from Seller expressly identifying any and all failure(s), such failure(s) shall be deemed a Buyer Breach. In the event of a Buyer Breach, Seller may elect to terminate this Agreement as Seller's sole remedy.

10.2. If Seller fails to cure any failure to perform or observe any of the covenants or obligations to be performed or observed by Seller under this Agreement within ten (10) days of receipt of written notice from Buyer expressly identifying any and all failure(s), or if any covenant or representation made by Seller ceases to be true and continues to not be true within ten (10) days of receipt of written notice from Buyer expressly identifying the covenant or representation, such failure(s) shall be deemed a Seller Breach. In the event of a Seller Breach, Buyer shall have the right to elect to either (a) terminate the Agreement, or (b) elect to pursue an action for specific performance.

11. **Notices.** All notices which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed served effective: (i) upon delivery, if personally delivered, (ii) upon delivery by Federal Express or other similar courier service, marked for next day delivery, addressed as set forth below, (iii) upon receipt if sent by registered or certified mail, return receipt requested, addressed as set forth below, or (iv) upon being sent by facsimile transmission, provided an original is mailed the same day by registered or certified mail, return receipt requested, addressed as set forth below. The notice addresses of the parties are:

To Seller: Maize Unified School District No. 266
201 S. Park Avenue
Maize, Kansas 67101
Attention: Superintendent of Schools

To Buyer: Fox Ridge Development Company, Inc.
7926 W. 21st Street
Wichita, Kansas 67205
Attention: Marvin L. Schellenberg
Facsimile: (316) 721-2153

Any party may change the address to which notices intended for it shall be sent by sending a notice to the other party given in the manner specified in this paragraph.

12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

13. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Kansas.

14. **Brokers.** Seller and Buyer each represent and warrant to each other that they have not had any dealings with any real estate broker, finders or agents in connection with this Agreement. Subject to any limitations on Seller for such liability pursuant to the Kansas Cash Basis Law, K.S.A. 10-1101 et seq., and the Kansas statutes regarding Budgets of Taxing Subdivisions, K.S.A. 79-2925 et seq., Seller agrees to indemnify, defend and hold Buyer, and its nominees, successors and assigns, harmless from any and all claims, costs, commissions, fees or damages by any person or firm claiming to have negotiated, instituted or brought about this Agreement by reason of dealing with Seller or its members, employees or agents. Buyer agrees to indemnify, defend and hold Seller, and its members, employees or agents, harmless from any and all claims, costs, commissions, fees or damages by any person or firm claiming to have negotiated, instituted or brought about this Agreement by reason of dealing with Buyer or its members, employees or agents. Notwithstanding any other provision of this Agreement to the contrary, the indemnity and hold harmless provisions contained in this paragraph shall survive the Closing and, if this Agreement is terminated, the termination of this Agreement. The parties acknowledge that Marvin L. Schellenberg of the Buyer is a licensed real estate broker in the State of Kansas.

15. **Modification and Non-Waiver.** 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.

16. **Miscellaneous.** As used in this Agreement, the masculine, feminine or neuter gender and singular or plural numbers shall each be deemed to include the other whenever the context so indicates. If any date under this Agreement on which an event is to occur or notice is to be given falls on a Saturday, Sunday or federal holiday, then such date shall be the first business day following such Saturday, Sunday or federal holiday.

17. **Entire Agreement.** This Agreement (including any exhibits hereto) embodies the entire agreement between the parties concerning the subject matter hereof and replaces and supersedes any prior and contemporaneous negotiations, agreements or understandings among the parties hereto.

18. **Headings.** The headings of paragraphs herein are for convenience of reference only, do not constitute a part of this Agreement, and shall not be deemed to limit or alter any of the provisions hereof.

19. **Counterparts.** This Agreement may be executed in one or more counterparts and by facsimile, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

20. **Further Acts.** Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this Agreement.

21. **Time of the Essence.** Time is of the essence to this Agreement.

22. **Contractual Provisions Attachment.** The provisions found in the Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof to the extent they are applicable, except the terms of Section 5 of said attachment are not incorporated as a part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

Maize Unified School District No. 266

By: Craig L. Elliott
Printed Name: Craig L. Elliott
Title: Superintendent
Date: 6/28/07

Fox Ridge Development Company, Inc.

By: Marvin Schellenberg
Printed Name: MARVIN SCHELLENBERG
Title: Gen. President.
Date: 7-2-07

Attested by: Ralph Brown
Clerk of the Board

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."