



PURCHASE AND SALE AGREEMENT FOR COMMERCIAL REAL ESTATE

This is a legally binding contract. This form has been prepared by counsel for the Utah CCIM Chapter. Parties to this Purchase and Sale Agreement for Commercial Real Estate (the "PSA") may agree, in writing, to alter or delete provisions of this PSA. All such changes should be reflected in an Addendum. The body of this PSA should not be modified. Seek advice from your attorney and tax advisor before entering into a binding contract.

OFFER TO PURCHASE COMMERCIAL OR MULTI-FAMILY PROPERTY

"REFERENCE DATE": _____

"SELLER": _____

With Notices to be given at: Street Address _____

City, State, Zip Code _____

Fax, Email _____

"BUYER": _____

With Notices to be given at: Street Address _____

City, State, Zip Code _____

Fax, Email _____

"PROPERTY": Name/General Description:

Address: _____

City: _____ County: _____ Utah, Zip: _____

County Tax Parcel #: _____

Source of legal description (check applicable box):

TITLE COMMITMENT (See Section 8(a))

SURVEY (See Survey Addendum, if applicable)

The Property also includes certain rights and interests described in Section 2.

"DEED": General Warranty Deed Special Warranty Deed Other _____

"TITLE POLICY": Standard Coverage Extended Coverage

"PURCHASE PRICE": \$ _____

"EARNEST MONEY DEPOSIT": \$ _____ in the form of: Wire Transfer

Buyer's Check to be deposited with Buyer's Brokerage Title Company/Escrow Agent Other _____

Buyer agrees to deliver the Earnest Money Deposit no later than five (5) Business Days after Acceptance (as defined in Section 23). The Brokerage or Other depository shall deposit the Earnest Money into the Real Estate Trust Account no later than five (5) Business Days from receipt.

"SELLER DISCLOSURE DEADLINE": (Date) _____

"DUE DILIGENCE DEADLINE": (Date) _____

"SETTLEMENT DEADLINE": (Date) _____

"SELLER'S AGENT / BROKERAGE": _____

"BUYER'S AGENT / BROKERAGE": _____

"TITLE COMPANY/ESCROW AGENT": _____

"MEDIATION": Seller and Buyer DO DO NOT elect to mediate in accordance with the provisions of Section 15.

ADDITIONAL TERMS: There ARE ARE NOT addenda to this PSA containing additional terms. If there are, the terms of the following (each, an "Addendum" or collectively, the "Addenda") are incorporated into this PSA by this reference:

Seller Financing Financing Contingency ALTA Survey Assumption of Financing Other Addendum

OFFER TO PURCHASE

1. **OFFER TO PURCHASE.** Buyer offers to purchase the Property from Seller for the Purchase Price and otherwise upon the terms and subject to the conditions set forth in this PSA. Certain capitalized terms used in this PSA are defined in Section 27.

2. **PROPERTY.** Unless excluded by another provision of this PSA or an Addendum or Counteroffer, the Property includes: (a) all non-trade fixtures presently attached to the Property; (b) all personal property owned by Seller and used primarily in connection with the Property; (c) Seller's right, if any, in any names or trademarks under which the Property is operated, but not including the generic name or trademarks of Seller; (d) all rights and easements appurtenant to the Property; and (e) all water rights and/or water shares, if any, that are the source for culinary or secondary water used in connection with the Property.

3. **PAYMENT OF PURCHASE PRICE.** Unless the Loan Assumption Addendum or the Seller Financing Addendum is part of this PSA, the Purchase Price and all other sums shall be paid by federal funds wire transfer or other collected funds at the Closing.

4. **SETTLEMENT AND CLOSING.** Settlement shall take place on the Settlement Deadline or on another date upon which the Parties agree in writing.

4.1 **Settlement.** "Settlement" shall be deemed to have occurred only when all of the following have been fully completed: (a) Buyer and Seller have signed and delivered to the Escrow Agent all documents required by this PSA, by any lender, or by Applicable Law; (b) any monies required to be paid by Buyer under this PSA (except for the proceeds of any new loan) have been delivered by Buyer to the Escrow Agent; and (c) any monies required to be paid by Seller under this PSA have been delivered by Seller to the Escrow Agent. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the Escrow Agent for its services in the Settlement and Closing. Taxes and assessments for the current year, collected rents, association dues, utilities and charges accrued under contracts relating to the Property and assumed by Buyer, operating expenses relating to the Property and interest on any assumed obligations shall be prorated as of 11:59 p.m. on the day prior to Settlement unless otherwise agreed to in a settlement statement or other writing executed by the Parties. Tenant deposits (including, but not limited to, security deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement.

4.2 **Closing.** "Closing" means consummation of the transaction contemplated by this PSA and shall be deemed to have occurred only when: (a) Settlement has occurred; (b) the proceeds of any new loan have been delivered by the lender to the Escrow Agent; and (c) the applicable Closing documents have been recorded in the Official Records of the County Recorder of the County in which the Property is located. If a lender is funding a portion of the Purchase Price, loan proceeds must be delivered to Escrow Agent not later than the end of the fifth (5th) Business Day following completion of Settlement or Buyer shall be in default.

5. **POSSESSION.** Seller shall deliver physical possession of the Property to Buyer within twenty-four (24) hours following Closing or at such other date and time as is specified in an Addendum.

6. **CONFIRMATION OF BROKERAGE FEES AND AGENCY DISCLOSURE.** Buyer and Seller each acknowledge prior receipt of written agency disclosure provided by their respective Agents that has disclosed the agency relationships that are confirmed in the Fundamental Terms. Buyer and Seller further acknowledge that brokerage fees due as a result of this transaction are being paid based upon the terms of a separate written agreement. If an Agent or Brokerage represents both Seller and Buyer, then he, she or it shall constitute a Limited Agent as defined in applicable regulations of the Utah Division of Real Estate.

7. **DEED AND TITLE INSURANCE.**

7.1 **Deed.** Seller will convey title to Buyer at Closing by statutory form of Deed specified in the Fundamental Terms. Buyer agrees to accept title to the Property subject to: (a) the Permitted Exceptions (defined below); (b) any lease or property management agreement timely disclosed to Buyer pursuant to Section 8 below and not objected to by Buyer prior to the Due Diligence Deadline; and (c) any title exception arising by, through or under Buyer.

7.2 **Title Policy.** At Settlement, Seller agrees to pay for the Title Policy specified in the Fundamental Terms, in the amount of the Purchase Price insuring title to the Property to Buyer subject only to the Permitted Exceptions (the "Title Policy"). Buyer, at its sole option, cost and expense, may elect to obtain additional coverage or additional specific endorsements.

8. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline, Seller shall provide to Buyer the following, to the extent they are within the possession or control of Seller, and at Seller's sole cost and expense (the "Seller Disclosures"):

(a) a title commitment (the "**Title Commitment**") from a title company selected by Seller (the "**Title Company**"), together with a copy of each instrument, agreement or document listed as an exception to title in such Title Commitment;

(b) a Seller property condition disclosure for the Property signed and dated by Seller;

(c) a true and correct copy of all management agreements and contracts affecting the Property;

(d) all copies in Seller's possession of studies and/or reports which have previously been performed in connection with or for the Property, including without limitation, environmental reports, soils studies, seismic studies, physical inspection reports, site plans and surveys, and identification of such studies of which Seller is aware but that are not in Seller's possession;

(e) all copies of written notices relating to a violation of Applicable Law including, without limitation, Environmental Law and laws relating to land use, zoning or compliance with building codes;

(f) evidence of any water rights and/or water shares used in connection with the Property;

(g) all other documents described as Seller's Disclosures in any Addenda or Counteroffers to this PSA;

(h) a true and correct copy of all leases and rental agreements now in effect with regard to the Property (the "**Leases**"), together with a current rent roll (the "**Rent Roll**"), each certified as correct and complete by Seller; and

(i) operating statements of the Property for its last three full fiscal years of operation plus the current fiscal year through the last day of the month prior to the Effective Date, certified as correct and complete by the Seller or by an independent certified public accountant (the "**Operating Statements**").

(j) To the Knowledge of Seller, there are no material defects or deficiencies in the design, construction, fabrication, manufacture or installation of the improvements to the Property or any part thereof or any system, element or component thereof, and all systems elements and components of the Property (including all machinery, fixtures and equipment, the roof, foundation and structural elements, and the elevator, mechanical, electrical and life safety systems) are in good working order and repair and sound operating condition in all material respects except for normal wear and tear.

9. BUYER'S DUE DILIGENCE AND RIGHT TO CANCEL. No later than the Due Diligence Deadline, Buyer, at its sole cost and expense, shall: (a) conduct such Due Diligence as it deems necessary and appropriate; and (b) determine if the results of its Due Diligence are acceptable. The Due Diligence Deadline is subject to extension as set forth in any Addendum attached hereto. If, prior to Closing, the Title Company issues a supplemental or amended title report showing additional title exceptions (the "**Amended Title Commitment**"), Due Diligence Deadline shall be extended five (5) Business Days from the date of Buyer's receipt of such Amended Title Commitment.

9.1 Title and Survey Matters. In conducting its due diligence prior to the Due Diligence Deadline, Buyer may review the Title Commitment, Survey and all other Seller Disclosures as referenced in Section 8. Seller agrees to cooperate with Buyer in connection with Buyer's Due Diligence investigation by providing additional information or documentation reasonably requested by Buyer.

(a) **Removal of Monetary Liens.** Notwithstanding anything in this PSA to the contrary, unless specifically set forth in an Addendum or Counteroffer, Seller covenants and agrees that all Monetary Liens shall be removed by Seller at Closing or insured against by the Title Insurer at Seller's sole cost and expense, regardless of whether Buyer has objected to such Monetary Lien(s). This provision will survive Closing.

(b) **Permitted Exceptions.** Those matters reflected in the Title Commitment to which Buyer does not object or agrees to waive following objection; provided however that Permitted Exceptions does not include (i) delinquent taxes or assessments, or (ii) deeds of trust, mortgages, judgment liens, mechanics' liens, materialmen's liens, and other liens or monetary encumbrances placed on or against the Property.

9.2 Inspection. In conducting its Due Diligence prior to the Due Diligence Deadline, and at any time thereafter until Settlement, Buyer may, upon reasonable notice and at reasonable times, conduct inspections, appraisals and for tests on the Property. Buyer shall enter to conduct such inspections and tests on the Property only during reasonable hours and with reasonable prior notice to Seller. Seller shall have the right to accompany Buyer and any of its agents on the Property at all times. All inspections and tests shall be conducted in a manner that does not unreasonably disrupt the activities and business of Seller and its tenants, and Buyer shall indemnify, hold harmless and defend Seller, its tenants and their employees, invitees and guests from and against any and all liabilities, claims, actions or damages (including reasonable attorneys' fees and court costs) which arise from, are caused by, or are in any manner connected with Buyer's Due Diligence and caused by or arising from the actions of Buyer, including,

without limitation, claims for payment for inspection services, claims for mechanic's liens, claims for physical damage to the Property and claims arising from personal injury.

9.3 Buyer's Right to Cancel or Resolve Objections.

(a) **Right to Cancel or Object.** If Buyer, in Buyer's sole discretion, determines that the results of the Buyer's Due Diligence are not acceptable, then, not later than the Due Diligence Deadline, Buyer shall either: (a) cancel this PSA by providing written notice to Seller, in which event the Earnest Money Deposit shall be released to Buyer; or (b) provide to Seller one or more written notices setting forth Buyer's objections in reasonable detail (the "Objections").

(b) **Failure to Respond.** If Buyer does not timely take either of the actions described in Section 9.3, then the results of the Buyer's Due Diligence shall be deemed approved by Buyer, all Objections which Buyer could have asserted shall be deemed waived by Buyer and, unless another condition or contingency set forth in an Addendum or Counteroffer remains unsatisfied, the Earnest Money Deposit shall become nonrefundable except in the event of Seller's default.

(c) **Response by Seller.** If Buyer timely provides Objections to Seller, Buyer and Seller shall have five (5) Business Days after Seller's receipt of the Objections (the "Response Period") in which to agree in writing upon the manner of resolving the Objections. Seller may, but shall not be required to, resolve the Objections. If Buyer and Seller have not agreed in writing upon the manner of resolving the Objections prior to the expiration of the Response Period, Buyer may cancel this PSA by delivering written notice to Seller not later than five (5) Business Days after the end of the Response Period (the "Termination Date"); whereupon the Earnest Money Deposit shall be released to Buyer and neither Party shall have any further rights, obligations or liabilities under this PSA except as expressly set forth herein. If this PSA is not canceled by Buyer under this Section, the Objections shall be deemed waived by Buyer and the Earnest Money Deposit shall become nonrefundable except upon Seller's default. If the Response Period extends past the Settlement Deadline, the Settlement Deadline shall be extended to the date that is five (5) Business Days following the extended Termination Date. If the Termination Date extends past the Settlement Deadline, the Settlement Deadline shall be extended to the date that is five (5) Business Days following such Termination Date.

9.4 Estoppel Certificates. For a Commercial Property involving commercial leases, Seller shall deliver to Buyer, not less than five (5) Business Days prior to the Closing Date, in form reasonably required by Buyer or its secured lender, or in the form required by the applicable Leases, executed estoppel agreements from all tenants of the Property except as set forth in an Addendum attached hereto. If Seller cannot cause the required tenants to execute estoppel agreements in a form reasonably acceptable to Buyer and to Buyer's lender at least five (5) Business Days prior to the Settlement Date, Buyer may, at its sole discretion, extend the Settlement Deadline for up to thirty (30) Business Days to allow Seller additional time to obtain the required estoppel certificates. If Seller does not obtain the required estoppel agreements, Buyer may terminate the PSA by written notice to Seller, in which event the Earnest Money Deposit shall be returned to Buyer, and no Party shall have any further rights, obligations, or liabilities under the PSA except as expressly set forth in the PSA. If Buyer does not timely terminate the PSA, then Buyer shall be deemed to have waived the provisions of this Section.

10. SELLER REPRESENTATIONS AND WARRANTIES. Seller represents and warrants that the following statements are true and complete as of the Effective Date and shall be true and complete as of the Settlement and Closing. The following representations and warranties shall survive the date of Closing for one (1) year, and shall terminate and be null and void if or to the extent a legal action has not been filed in a court of competent jurisdiction prior to the expiration of such one (1) year period:

(a) there is no action, suit, administrative proceeding or other proceeding pending in any court or before any arbitrator of any kind or before or by any governmental body or, to Seller's knowledge, threatened against Seller and/or the Property which may adversely affect the transaction contemplated by this PSA;

(b) all work which has been or will be performed in, on or about the Property, or materials furnished to the Property which might in any circumstances give rise to a mechanic's or materialman's lien (other than relating to work performed by Buyer), will be paid and all necessary waivers of rights to a mechanic's or materialman's lien for such work will be obtained;

(c) Seller has not received any written notice or citation indicating that the Property is in material violation of Applicable Law;

(d) to Seller's knowledge, the consummation of the transactions contemplated by this PSA and the compliance by Seller with the terms of this PSA do not and will not conflict with or result in a material breach of any of the terms or provisions of any agreement, arrangement, undertaking, accord, document, or instrument to which Seller is a party or by which Seller or the Property is bound; and

(e) seller is not a "foreign person" as that term is defined in Code Section 1445 and shall deposit with Escrow Agent at or prior to Settlement, an affidavit in such form as may be required by the U.S. Internal Revenue

Service, setting forth Seller's full name, address and taxpayer identification number and stating under penalty of perjury that Seller is not a "foreign person" as so defined.

(f) except as set forth in writing, upon delivery and to Seller's knowledge, all copies Seller provides to Buyer under Section 8 above are true and correct copies of the originals or copies within Seller's possession.

(g) to the Knowledge of Seller, the Property is in compliance with all Applicable Law.

(h) to the Knowledge of Seller and except as disclosed by environmental reports provided to Buyer, no Hazardous Material is present in, on or under the Property or any nearby real property which could migrate to the Property. Seller has not used the Property or any part thereof, and to its Knowledge no other Person has used the Property or any part thereof, for the production, processing, manufacture, generation, treatment, handling, storage, transportation or disposal of Hazardous Material while the Property has been owned by Seller;

(i) except as disclosed by Seller in writing: (i) the Leases and all information shown in the Rent Roll will be and is accurate and complete; (ii) the Leases are in full force and effect and all rent is accruing without offset or deduction; (iii) there are no Persons leasing or, to the Knowledge of Seller, occupying the Property except the tenants described in the Rent Roll; (iv) the Leases have not been amended or modified except as stated in the Rent Roll; (v) no monthly rent has been paid more than one (1) month in advance and no security deposit or prepaid rent has been paid except as stated in the Rent Roll; (vi) no tenant is entitled to interest on any security deposit; (vii) the tenants have accepted possession of their respective premises and all improvements and construction required to be performed by the landlord under the Leases have been completed; (viii) no event has occurred and no condition now exists which, with or without notice or the passage of time, or both, would constitute a material breach or a default by the landlord or, to the Knowledge of Seller, by any tenant; (ix) no money is owed or will become owing to any tenant for improvements or otherwise under the Leases; and (x) there are no leasing commissions or other commissions, fees or compensation presently owed or which will become due and payable under any of the Leases or which could become due and payable in the future upon the exercise of any right or option contained in any of the Leases; and

(j) the Operating Statements delivered to Buyer are correct and complete in all material respects and accurately show and fairly present all income and expenses of the Property for the periods indicated in all material respects, subject to customary and consistent year-end adjustments.

11. NO OTHER REPRESENTATIONS AND WARRANTIES. Except as expressly set forth in this PSA or in an Addendum or Counteroffer: (a) Buyer is purchasing the Property, and the Property shall be conveyed and transferred to Buyer, "AS IS, WHERE IS, AND WITH ALL FAULTS" and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from or on behalf of Seller; and (b) Seller has not, does not and will not, with respect to the Property, make any warranties or representations, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition or merchantability, or with respect to the value, profitability, developability or marketability of the Property.

12. CHANGES PENDING CLOSING. Between the Effective Date and the date of Closing, and except as and to the extent otherwise permitted by an Addendum hereto, Seller shall:

(i) comply with all Applicable Law;

(ii) continue and maintain all current casualty and liability insurance policies on the Property;

(iii) manage, operate, maintain and repair the Property in the ordinary course of business in accordance with sound property management practice and in good repair and working order and condition; and,

(iv) keep in force property insurance covering all buildings, structures, improvements, machinery, fixtures and equipment included in the Property insuring against all risks of physical loss or damage, subject to standard exclusions, in an amount equal to the actual replacement cost (without deduction for depreciation) of such buildings, structures, improvements, machinery, fixtures and equipment.

During such period Seller shall not:

(i) create or suffer to be created any further Monetary Lien against the Property;

(ii) make any substantial alterations or improvements to the Property; or,

(iii) except for the usage and storage of normal and customary amounts of Hazardous Material found in cleaning and maintenance supplies stored and used in compliance with Environmental Law, shall not use, produce, process, manufacture, generate, treat, handle, store, release or dispose of any Hazardous Material in, on or under the Property.

12.1 Leasing Matters. Between the effective Date and the date of Closing, and except as and to the extent otherwise permitted by an addendum hereto. Seller shall provide Buyer with copies of any and all proposed Leases, Lease renewals, Lease modifications and Lease amendments which Seller proposes to execute. Buyer shall have no approval rights with respect to proposed Leases, Lease renewals, Lease modifications and Lease amendments until after the Due Diligence Deadline. From and after the Due Diligence Deadline, Seller will not enter into any new Lease relating to the Property, or any renewal, modification or amendment of any currently existing Leases, without first obtaining Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned or

delayed. Unless the Parties otherwise agree in writing; any brokerage commission payable with respect to a new Lease, a Lease modification and/or Lease amendment executed after the Due Diligence Deadline shall be paid by Buyer; and all tenant improvements required under any Lease (and/or Lease modification and/or amendments) executed after the Due Diligence Deadline shall be completed at Buyer's sole cost and expense.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a legal entity rather than an individual, each Person executing and delivering this PSA or any Addendum or Counteroffer for it unconditionally and irrevocably warrants his or her authority to do so and to bind Buyer or Seller. Each of Seller and Buyer further warrant that the execution and delivery of this PSA by it has been duly and validly authorized, and all requisite actions have been taken to make this PSA valid, binding and enforceable upon it.

14. COMPLETE CONTRACT. This PSA together with any attached Addendum and Counteroffer, exhibit, and Seller Disclosures, constitutes the entire agreement between the Parties regarding the purchase and sale of the Property and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the Parties. This PSA cannot be changed except by written agreement of the Parties. Subject to the limitations on assignment expressly set forth in any Addendum or Counteroffer, this PSA shall inure to the benefit of and be binding on the Parties hereto and their respective heirs, legal representatives, successors and assigns.

15. MEDIATION. If the Parties have elected to mediate by checking the appropriate box in the Fundamental Terms, any dispute relating to this PSA that arises prior to or after Closing shall first be submitted to mediation. Mediation is a process in which the Parties meet with an impartial Person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The Parties to the dispute must agree in writing before any settlement is binding. The Parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved thirty (30) days from the date written notice requesting mediation is sent by one Party to all other Parties. If mediation fails, the other procedures, rights and remedies available to the Parties under this PSA shall apply. Nothing in this Section shall prohibit any Party from seeking emergency equitable relief pending mediation including, without limitation, an injunction.

16. DEFAULT. In the event of a default by Buyer, Seller shall be entitled, as Seller's sole and exclusive remedy, to terminate this PSA by written notice to Buyer, in which event the Earnest Money Deposit shall be paid to Seller as liquidated damages. In the event of a default by Seller, Buyer shall be entitled, at its option: (a) to terminate this PSA by written notice to Seller, in which event the Earnest Money Deposit shall be returned to Buyer and Buyer shall be entitled to and agrees to accept from Seller, a sum equal to the Earnest Money Deposit as liquidated damages; (b) to enforce Seller's obligations under this PSA by a suit for specific performance; or (c) accept a return of the Earnest Money Deposit, or Deposits, if applicable, and pursue any other remedies available at law. Upon termination of this PSA by either Party, no Party shall have any further rights, obligations, or liabilities hereunder except as expressly set forth in this PSA. The Parties acknowledge and agree that the actual damages upon default are uncertain in amount and difficult to ascertain, and that the amount of liquidated damages specified in this Section was reasonably determined.

17. ATTORNEYS' FEES AND COSTS. In the event of litigation or binding arbitration arising out of this PSA, the prevailing Party shall be entitled to costs and reasonable attorneys' fees. Attorneys' fees shall not be awarded for participation in mediation under Section 15.

18. NOTICES. All notices required under this PSA must be: (a) in writing; (b) signed by the Party giving notice; and (c) received by the other Party, the other Party's Agent or the other Party's Brokerage no later than the applicable date referenced in this PSA. Notices may be hand delivered, faxed, emailed, delivered by certified mail, return receipt requested or by a national overnight courier service such as, but not limited to, Federal Express. If a notice is sent by electronic transmission, the burden of proving receipt will be on the sender.

19. ABROGATION. Except for the provisions of Sections 5, 7, 9.2, 14 and 15 and any other provisions of this PSA which expressly survive the termination of this PSA, the provisions of this PSA shall not be enforceable after Closing.

20. RISK OF LOSS; EMINENT DOMAIN. All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until Closing. In the event of any destruction exceeding five percent (5%) of the Purchase Price or any taking or commencement of a taking by any governmental agency of a material portion of the Property, Buyer may, at Buyer's sole discretion, terminate this PSA by written notice to Seller within ten (10) days of notice of the commencement of taking or event of destruction, in which event all the Earnest Money

Deposit, together with any interest accrued thereon, shall be promptly refunded to Buyer. If Buyer does not terminate this PSA, the insurance or condemnation proceeds, or right to collect the same, shall be paid or assigned to Buyer at Closing.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this PSA, and any extension of the time for performance of any obligation or satisfaction of any condition must be agreed to in writing by all Parties. Unless otherwise explicitly stated in this PSA: performance under this PSA which references a date shall absolutely be required by 5:00 P.M. Mountain Time on the stated date. Business Days shall be counted (beginning on the day following the event which triggers the timing requirement (i.e., delivery of a specified notice, etc.). If the date for performance falls, or the deadline expires on a day which is not a Business Day, performance shall be required or the deadline shall expire on the next Business Day thereafter. Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and other Persons which are not Parties, except as otherwise agreed to in writing by such Persons.

22. ELECTRONIC TRANSMISSION AND COUNTERPARTS. Facsimile (fax) or Email transmissions of a signed copy of this PSA, any Addenda and Counteroffers thereto, and the retransmission of any signed fax or Email shall be the same as delivery of an original, subject to confirmation of receipt by the other party hereto. This PSA and any Addenda and Counteroffers thereto may be executed in counterparts.

23. ACCEPTANCE. “Acceptance” occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) delivers to the other Party or to the other Party’s Agent or Brokerage written acceptance of the offer or counteroffer by hand delivery, fax, email, delivery by certified mail, return receipt requested or by a national overnight courier service such as, but not limited to, Federal Express. The burden of proving delivery will be on the sender.

24. DEADLINES. Buyer and Seller agree that Seller Disclosure Deadline, the Due Diligence Deadline and Settlement Deadline are as set forth in the Fundamental Terms, as modified by any Addendum hereto.

25. TAX DEFERRED EXCHANGE. Each Party shall cooperate with the other Party in effecting a tax deferred exchange under the I.R.S. Code; provided however, that the other Party’s cooperation shall be conditioned on the following: (a) the exchange will be at no additional liability and cost to the other Party; (b) the exchange will not delay Settlement or Closing; and (c) the other Party shall not be required to acquire title to any proposed exchange properties to accommodate an exchange. Except in cases of Default by a non-exchanging party, the exchanging Party hereby indemnifies and agrees to defend and hold the other Party harmless from and against any and all claims, demands, costs and expenses which the other Party may sustain or incur resulting from the attempt by the exchanging Party to consummate the sale or acquisition of the Property as a tax deferred exchange.

26. JOINT PREPARATION. The provisions of this PSA have been negotiated by all Parties hereto and should therefore not be interpreted or construed in favor of or with prejudice against any particular Party, but in accordance with the general tenor of the language used.

27. DEFINITIONS. Certain capitalized terms previously used in this PSA are defined above. In addition to those capitalized terms, the following capitalized terms shall have the following meanings:

“Agent” means Buyer’s Agent or Seller’s Agent, as applicable.

“Applicable Law” shall mean and include any and all laws, rules, regulations or ordinances of any governmental authority having jurisdiction over a specified matter, as the same may be in effect from time to time, including, without limitation, any Environmental Law.

“Brokerage” means Buyer’s Brokerage or Seller’s Brokerage, as applicable.

“Business Day” shall mean any day other than a Saturday, Sunday, or legal holiday on which national banks in Utah are authorized by federal law to close.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

“Counteroffer” means a Counteroffer signed by the Party making the Counteroffer to this PSA, and which Counteroffer will be attached to this PSA as an addendum.

“Deed” means the form of Deed checked in the appropriate box on page 1 of this PSA in the Fundamental Terms.

“Due Diligence” means such investigations of and tests on or regarding the Property as Buyer deems necessary and appropriate.

“Effective Date” means the date both Seller and Buyer have executed this PSA and accepted Counteroffers and Addenda, as applicable.

“Environmental Law” shall mean any federal, state, or local law, statute, ordinance, rule, or regulation pertaining to health, industrial hygiene, or the environmental conditions on or under the Property, or relating to releases, discharges, emissions, or disposals from the Property to air, water, soil, or groundwater, or relating to the withdrawal or use of groundwater, or relating to the use, handling, or disposal of polychlorinated biphenyls, asbestos, or urea formaldehyde, or relating to the treatment, disposal, storage, or management of Hazardous Materials or relating to the transportation, storage, disposal, or management, including, without limitation, the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, and the Resource Conservation and Recovery Act of 1976, as amended, and all rules, and regulations, published pursuant thereto or promulgated thereunder.

“Fundamental Terms” means the Fundamental Terms of Offer to Purchase set forth on page 1 of this PSA as modified by an accepted Counteroffer or Addendum.

“Hazardous Material” shall mean and include, without limitation: (a) those substances included within the definitions of **“hazardous substances”** and **“hazardous waste”** in any Environmental Law; and (b) any material, waste, or substance which is or contains asbestos, polychlorinated biphenyls, petroleum and its derivative by-products, and other explosive or radioactive materials.

“Knowledge” means the actual knowledge of a Party and imposes a duty to investigate the applicable files and records but without a duty of further inquiry. The knowledge of a specific person may be set forth in an Addendum, if desired.

“Lease” shall have the meaning set forth in Section 8(h).

“Monetary Liens” means each of the following to the extent arising by, through or under Seller: judgment liens, mortgages, deeds of trust, mechanic’s liens, pre-construction liens, liens that secure the payment of money or credit, and liens or charges for delinquent taxes.

“Operating Statements” shall have the meaning set forth in Section 8(i).

“Parties” means Seller and Buyer.

“Party” means Seller or Buyer.

“Permitted Exception” has the meaning set forth in Section 9.1(b).

“Person” means any natural individual human, any legal entity, a trust or the trustees of a trust acting in such capacity.

“Reference Date” means the date set forth in the Fundamental Terms on which the offer was prepared.

“Title Commitment” means a commitment issued by the Title Insurer for the Title Policy insuring the Owner’s title in the Property in the full amount of the Purchase Price.

“Title Policy” means a standard 2006 ALTA Owner’s Policy of Title Insurance issued by the Title Insurer.

OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept and deliver an acceptance of this Offer by 5:00 P.M. Mountain Time on _____, this Offer shall lapse, and the Buyer’s Brokerage or Escrow Agent, as applicable, shall return the Earnest Money Deposit to Buyer.

If Buyer is an individual or individuals:

(Signature of Buyer)

(Print Name of Buyer)

(Date)

(Signature of Buyer)

(Print Name of Buyer)

(Date)

If Buyer is an entity:

(Print Name of Entity)

(Date)

(State of Formation and Type of Entity)

By: _____
(Signature of Authorized Signer)

Name: _____
(Print Name of Authorized Signer)

Its: _____
(Print Position of Signer)

EARNEST MONEY RECEIPT
(to be used if requested by Buyer or Seller)

The Buyer's Brokerage or Escrow Agent, as applicable, acknowledges receipt of the Earnest Money Deposit in the amount of \$_____.

(Date)

(Print Name of Brokerage or Title Company)

By: _____
(Signature above acknowledges receipt of Earnest Money Deposit)

Name: _____
(Print Name of Signer)

Its: _____
(Print Position of Signer)

Seller's Initials _____ Date _____

Buyer's Initials _____ Date _____

