

## REAL ESTATE PURCHASE AND SALE AGREEMENT

### Buyer's Short Form

This Agreement is made by and between \_\_\_\_\_ ("Seller") and \_\_\_\_\_ ("Buyer") for purchase and sale of that certain real property situated in \_\_\_\_\_ County, Washington and described on Exhibit A and all rights appurtenant thereto, together with all buildings, fixtures and other improvements thereon, and all furniture, fixtures equipment and other personal property situated thereon owned by Seller and used in the operation of the real property including without limitation the items of personal property listed on Exhibit B (the "Property").

**1. Purchase Price; Payment.** The total purchase price for the Property is \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_) which amount, including the Deposit, shall be paid in cash upon closing. [The purchase price shall be allocated as between land, buildings and personal property as follows:

|                   |           |
|-------------------|-----------|
| Land              | \$ _____  |
| Buildings         | \$ _____  |
| Personal Property | \$ _____] |

**2. Earnest Money Deposit.** Buyer hereby deposits with Seller, the receipt of which is hereby acknowledged by Seller, its [check] [promissory note due on the termination date of this Agreement] in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as an earnest money deposit ("the Deposit"), payable to Closing Agent. Seller shall immediately deliver the Deposit to Closing Agent to be held in escrow and applied or disposed of by Closing Agent as provided herein.

**3.1 Time for Closing; Termination Date.** This sale shall be closed in the office of \_\_\_\_\_ ("Closing Agent") within \_\_\_\_\_ (\_\_\_\_\_-) days after all of Buyer's conditions precedent have been satisfied or waived by Buyer, but in any event not later than \_\_\_\_\_, 200\_, which shall be the termination date. Buyer and Seller shall deposit in escrow with Closing Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. As used herein, "closing" or "date of closing" means the date on which all appropriate documents are recorded and proceeds of sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller.

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**3.2 Prorations; Closing Costs.** Taxes and assessments for the current year, collected rents, interest, prepaid premiums for insurance to be assigned to Buyer, if any, utilities constituting liens and other items of income and direct expense relating to the Property (including without limitation existing service or supply contracts, owner's association dues, etc.) shall be prorated as of the date of closing. On closing Seller either will assign and transfer to Buyer or give Buyer a credit in the amount of all tenant deposits, if any, held by Seller. Seller shall pay the premium for the title insurance policy, real estate excise taxes, the cost of conveyance tax stamps, assumption fees and charges except to the extent agreed to be paid by Buyer, the cost of recording the deed of trust given to Seller hereunder, if any, and one-half of Closing Agent's escrow fee. Buyer shall pay the cost of recording the statutory warranty deed, the amount of any assumption fees or charges agreed to be paid by Buyer herein, one-half (1/2) of Closing Agent's escrow fee, and sales tax applicable to personal property, if any. If any personal property taxes have been levied or assessed against the personal property, such taxes payable during the calendar year in which this sale closes shall be paid in full by Seller and taxes payable during the following calendar year shall be prorated as if they were payable during the current calendar year. All such personal property taxes shall be determined and paid on a quick-collect basis at closing.

**3.3 Possession.** Buyer shall be entitled to possession upon closing.

**4. Conveyance of Title.** On closing, Seller shall execute and deliver to Buyer a statutory warranty deed conveying good and marketable title to the Property free and clear of any defects or encumbrances except for the lien of real estate taxes for the current calendar year not yet due and payable, those defects or encumbrances identified on Exhibit A or in the following sentence (the "Permitted Exceptions"), and other encumbrances or defects approved by Buyer. Rights reserved in federal patents or state deeds and building or use restrictions general to the district will be permitted encumbrances or defects, not subject to disapproval by Buyer. Items of personal property, if any, will be conveyed by a warranty bill of sale in the form attached hereto as Exhibit C.

**5. Title Insurance.** As soon as reasonably possible after the date of this Agreement, Seller will provide Buyer with a preliminary commitment for title insurance with extended coverage and the following endorsements: \_\_\_\_\_ issued by \_\_\_\_\_ Title Insurance Company, with copies of all exceptions set forth therein. Buyer may notify Seller of its disapproval of any exception shown in the preliminary commitment (other than Permitted Exceptions) or the title company's refusal to provide any requested endorsement. If, within ten (10) days after the receipt of such notice Seller has not removed or given reasonable written assurances to Buyer that such disapproved exception(s) will be removed, or commitment to provide such endorsements received on or before the termination date, Buyer may, at its option, at any time prior to such removal or receipt of such reasonable written assurances, terminate this Agreement by giving notice of such termination to Seller. On such termination Seller or Closing Agent shall refund the Deposit and all rights and obligations of Seller and Buyer under this Agreement shall terminate and be of no further force or effect.

Neither Seller nor Buyer shall be required to close, and the Deposit shall be returned to Buyer, if any exception disapproved by Buyer as herein provided cannot be removed, or endorsement provided, by the termination date; provided, however, that Buyer may elect to waive any disapproved exceptions and close on the remaining terms. Notwithstanding the foregoing, Seller shall remove any defect or encumbrance attaching by, through or under Seller after the date of this Agreement. Exceptions to be discharged by Seller may be paid out of the purchase price at closing.

As soon as available after closing, Seller will provide to Buyer a policy of title insurance pursuant to the preliminary commitment with the endorsements requested by Buyer, dated as of the closing date and insuring Buyer in the amount of the purchase price against loss or damage by reason of defect in Buyer's title to the Property subject only to the printed exclusions and general exceptions appearing in the policy form; any Permitted Exceptions; the exceptions specified in the preliminary title report which Buyer has not disapproved of as provided herein; encumbrances in favor of Seller granted by Buyer to secure any portion of the purchase price; and real property taxes and assessments that are not delinquent.

**2. Risk of Loss; Insurance; Condemnation.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing or until Buyer takes possession of the Property, whichever date is earlier. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date upon which Buyer assumes the risk, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that such termination shall not be effective if Seller agrees in writing within such ten (10) day period to restore the Property substantially to its present condition by the closing date; and provided further that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

Until closing, Seller shall maintain an insurance policy with replacement cost endorsement with premiums prepaid on the Property insuring against loss by fire, lightning and all other risks customarily covered by the standard extended coverage endorsement and special perils endorsement issued in the state in which the Property is located, in an amount not less than the full replacement costs of all improvements on the Property.

If the Property is or becomes the subject of a condemnation proceeding prior to closing, Buyer may, at its option, terminate this Agreement by giving notice of such termination to Seller on or before the termination date, and upon such termination the Deposit shall be returned to Buyer and this Agreement shall be of no further force or effect; provided, however, that Buyer may elect to purchase the Property, in which case the total purchase price shall be reduced by the

total of any condemnation award received by Seller at or prior to closing. On closing, Seller shall assign to Buyer all Seller's rights in and to any future condemnation awards or other proceeds payable or to become payable by reason of any taking. Seller agrees to notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

**3. Seller's Representations and Warranties.** In addition to other representations herein, Seller represents and warrants to Buyer as of the date of closing that:

3.1 Seller, and the person signing on behalf of Seller, has full power and authority to execute this Agreement and perform Seller's obligations hereunder, and if Seller is a corporation, all necessary corporate action to authorize this transaction has been taken;

3.2 The Property is not subject to any leases, tenancies or rights of persons in possession, and any personal property is owned by Seller free and clear of any liens or encumbrances;

3.3 Neither the Property nor the sale of the Property violates any applicable statute, ordinance or regulation, nor any order of any court or any governmental authority or agency, pertaining to the Property or the use occupancy or condition thereof;

3.4 Seller is unaware of any material defect in the Property;

3.5 All persons and corporations supplying labor, materials and equipment to the Property have been paid and there are no claims of liens;

3.6 There are no currently due and payable assessments for public improvements against the Property and Seller is not aware of any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

3.7 The Property has legal access to all streets adjoining the Property;

3.8 Seller has good and marketable title to the property;

3.9 Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code. Prior to closing, Seller shall execute and deliver to Closing Agent an affidavit in the form of the attached Exhibit \_\_\_\_\_ in order to meet the Foreign Investment in Real Property Tax Act ("FIRPTA") requirements of I.R.C. § 1445; and

3.10 Seller has not received notification of any kind from any agency suggesting that the Property is or may be targeted for a governmental cleanup. To the best of Seller's knowledge, neither the Property nor any portion thereof is or has been used as a landfill, waste storage or disposal site, or for the storage or disposal of any chemicals, petroleum or oil products, or hazardous or dangerous wastes or substances.

8.11 The Seller has provided the Buyer with the following reports and studies:

- a. \_\_\_\_\_;
- b. \_\_\_\_\_; and
- c. \_\_\_\_\_.

There are no other reports, studies, assessments, tests or other material documentation discussing or treating the Property, its condition or its use.

8.12 The Property is not within any designated a critical area nor otherwise specially classified or protected by any governmental designation not common to other properties within its zoning classification.

8.13 All information and documentation relevant to the construction of the improvements and any alterations thereof has been provided to Buyer.

**4. Buyer's Authority.** Buyer represents and warrants to Seller that at the date of execution hereof and at the date of closing Buyer, and the person signing on behalf of Buyer, has full power and authority to execute this Agreement and to perform Buyer's obligations hereunder, and if Buyer is a corporation, all necessary corporate action to authorize this transaction has been taken.

**5. Assignment of Warranties and Service and Supply Contracts.** On closing, Seller shall assign to Buyer all rights and benefits, if any, now or hereafter held by Seller under any warranties of any kind, express or implied, made or furnished by the manufacturers, suppliers or vendors of any material used in construction of the improvements on the Property or any furniture, appliances or equipment to be purchased by Buyer hereunder, and shall assign to Buyer all rights and benefits or under any present or future contract for services or supplies used in or about the Property, such assignments to be self-operative without the need for any further written document; provided, however, that at Buyer's request Seller shall execute any instruments and cooperate with Buyer as reasonably required to evidence or enforce such assignments. Seller will sign any documents, join in any action, and otherwise cooperate with Buyer in enforcing any such warranties or contracts, provided that such documents and cooperation does not result in any cost or liability to Seller. Seller hereby designates and appoints Buyer as its true and lawful attorney, with full power of substitution in its name, to demand, collect, sue upon, receipt for, and otherwise dispose of or deal with any claims, payments, settlements or compromises which may be made with respect to any warranties transferred to Buyer hereunder. Buyer shall not be obligated to accept or assume Seller's obligations under any supply or service contract hereby assigned.

**6. Default.** Time is of the essence of this Agreement. If Seller defaults hereunder, Buyer may seek specific performance of this Agreement, damages or rescission and Buyer shall be entitled to return of the Deposit on demand. If Buyer defaults, the Deposit shall be forfeited on demand by Seller as liquidated damages and upon payment thereof to Seller, Buyer shall have no further obligations or liability hereunder. In any suit, action or appeal therefrom, to enforce

this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

**7. Notices.** All notices, waivers, elections, approvals and demands required or permitted to be given hereunder shall be in writing and shall be personally delivered or sent by United States certified mail, return receipt requested, to the addressee's mailing address set forth below. Either party hereto may, by proper notice to the other designate any other address for the giving of notice. Any notice shall be effective when personally delivered or if mailed as provided herein, on the earlier of actual receipt or three (3) days after the date deposited in the mail.

**8. Assignment.** Buyer may assign its rights hereunder to any person or entity.

**9. General.** This is the entire agreement of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. The laws of the state in which the Property is located shall govern this Agreement. This agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties hereto. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

**10. Survival of Warranties.** The terms, covenants, representations and warranties shall not merge in the deed of conveyance, but shall survive closing.

Dated as of the date first above-written

**BUYER:**

\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBITS

