



# Urban Renewal Authority Board Agenda

**December 2, 2024 at 5:00 PM**

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Jeni Arndt, Chair  
Kristin Stephens, Vice Chair  
Susan Gutowsky  
Julie Pignataro  
Tricia Canonico  
Melanie Potyondy  
Kelly Ohlson  
Emily Francis  
Kristen Draper  
Dan Sapienza  
Matt Schild

Council Information Center (CIC)  
in City Hall, 300 Laporte Ave, Fort  
Collins, CO and via Zoom at  
<https://zoom.us/j/98687657267>

Cablecast on FCTV  
Channel 14 on Connexion  
Channel 14 and 881 on Comcast

Caitlin Quander  
URA Attorney

Josh Birks  
Acting Executive Director

Amani Chamberlin  
Secretary

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## **URBAN RENEWAL AUTHORITY BOARD MEETING 5:00 PM**

### **A) CALL MEETING TO ORDER**

### **B) ROLL CALL**

### **C) AGENDA REVIEW**

Executive Director's Review of Agenda.

### **D) PUBLIC PARTICIPATION**

### **E) PUBLIC PARTICIPATION FOLLOW-UP**

### **F) ADOPTION OF CONSENT CALENDAR**

### **G) COMMISSIONER REPORTS**

### **H) DISCUSSION ITEMS**

The method of debate for discussion items is as follows:

- Chair introduces the item number and subject; asks if formal presentation will be made by staff
- Staff and/or Applicant presentation (optional)
- Chair requests public comment on the item (three minute limit for each person)
- Board questions of staff on the item
- Board motion on the item
- Board discussion
- Final Board comments
- Board vote on the item

Note: Time limits for individual agenda items may be revised, at the discretion of the Chair, to ensure all have an opportunity to speak. **If attending in person, please sign in at the table in the back of the room.** The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

1. **Consideration of a motion to go into executive session to discuss the potential purchase or acquisition of real property interests, to receive legal advice on specific legal questions, and to determine positions relative to matters that may be subject to negotiations related to property in the North College Urban Renewal Plan Area.**

"I move that the Fort Collins Urban Renewal Authority go into executive session pursuant to: C.R.S. § 24-6-402(4)(a), (b) and (e) for the purpose of discussing with the Authority's attorneys and appropriate management staff the following items, all related to property in the North College Urban Renewal Plan Area:

- Potential Purchase or Acquisition of Real Property Interests,
- Specific Legal Advice on Specific Legal Questions, and
- Determine Positions Relative to Matters that may be Subject to Negotiations, Develop Strategy for Negotiations and Instruct Negotiators."

2. **Items relating to the Consideration of Resolutions to Approve Purchase and Sale Agreement for 1636 North College Avenue.**

Resolution No. 137 to Authorizing The Acquisition of Property at 1636 N. College Ave.

Resolution No. 138 to Adopting a Supplemental 2024 Budget Resolution

Resolution No. 139 to Adopting a Supplemental 2025 Budget Resolution

The owner of the property located at 1636 North College Ave (Property) has signed a Purchase and Sale Agreement (PSA) now before the URA Board of Commissioners for consideration. If the Board agrees with the PSA terms, a resolution authorizing the URA Acting Executive Director to sign the PSA on behalf of the URA as Buyer is presented for Board approval (Exhibit A). If the PSA is signed by the Acting Executive Director, the URA will then have certain rights to inspect and purchase the Property per the terms of the PSA. The resolution does not require the URA to purchase the Property.

**I) OTHER BUSINESS**

**J) ADJOURNMENT**

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours advance notice when possible.

A petición, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.

December 2, 2024

# AGENDA ITEM SUMMARY

Urban Renewal Authority



## STAFF

Andy Smith, Redevelopment Manager  
Josh Birks, Acting Executive Director

## SUBJECT

**Items relating to the Consideration of Resolutions to Approve Purchase and Sale Agreement for 1636 North College Avenue.**

## EXECUTIVE SUMMARY

Resolution No. 137 To Authorizing The Acquisition of Property at 1636 N. College Ave.

Resolution No. 138 To Adopting a Supplemental 2024 Budget Resolution

Resolution No. 139 To Adopting a Supplemental 2025 Budget Resolution

The owner of the property located at 1636 North College Ave (Property) has signed a Purchase and Sale Agreement (PSA) now before the URA Board of Commissioners for consideration. If the Board agrees with the PSA terms, a resolution authorizing the URA Acting Executive Director to sign the PSA on behalf of the URA as Buyer is presented for Board approval (Exhibit A). If the PSA is signed by the Acting Executive Director, the URA will then have certain rights to inspect and purchase the Property per the terms of the PSA. The resolution does not require the URA to purchase the Property.

## STAFF RECOMMENDATION

Staff recommend approval and adoption of the resolution.

## BACKGROUND / DISCUSSION

Beginning in late 2022, the Fort Collins URA began discussions with the owner (Seller) of 1636 North College Avenue regarding a potential sale of the Property to the URA. The Property is located within the North College Plan Area, an urban renewal area created and approved by the City Council in 2004. The intent of the URA in purchasing the Property would be to eliminate and prevent existing conditions of blight in furtherance of the North College Plan goals.

In September 2023, a non-binding Letter of Interest (LOI) was signed by both parties, establishing mutually acceptable terms to be incorporated in a formal PSA that would place the property “under contract”. A draft PSA was circulated between the Fort Collins URA and the Seller, however it was not mutually agreed upon or executed due to prolonged lease termination discussions between the Seller and Albertson’s (Tenant).

On June 11, 2024, URA Staff conducted a visual survey of the Property and confirmed that original conditions remained present. On June 27, 2024, the URA Board authorized the use of eminent domain to acquire the Property if ongoing negotiations were unsuccessful.

Throughout the summer and fall of 2024, URA staff and legal counsel continued negotiations with the Seller while also continuing to take steps to acquire the Property with eminent domain if necessary. According to the Seller, ongoing negotiations with their Tenant to terminate the lease appeared to be coming to a mutually satisfactory agreement. In early November, the Seller notified URA staff that the terms of a lease termination agreement have been mutually agreed upon by them and the Tenant, and that final negotiations of a PSA with the URA could proceed in earnest.

After a few more rounds of negotiation, the Seller and URA staff agreed to terms of a PSA and the Seller signed their portion of the PSA. That PSA is now before the URA Board for consideration.

Several key aspects of the PSA include:

- Purchase price is \$7,636,050.00, which is readily available in cash in the North College Urban Renewal Plan Area fund. The URA may decide to pay cash or finance the purchase and has sufficient time to consider options.
- The URA has 180 days to inspect the property and conduct an assortment of due diligence activities. During this period, the URA may further consider redevelopment and reuse strategies, partnerships, disposition options, financing arrangements, and more.
- The earnest money deposit is \$250,000.00 which is readily available as cash in the North College Urban Renewal Plan Area fund. The earnest money deposit is fully refundable until the expiration of the due diligence period (180 days), yet applicable to the purchase price if the URA elects to close on the transaction.
- The Seller and Tenant have executed a Lease Termination Agreement that becomes effective upon the successful closing of a purchase transaction by the URA.
- The PSA does not require the URA to purchase the Property; it simply provides certain rights to inspect and purchase the Property if so desired by the URA Board.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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None.

**AUTHORITY FINANCIAL IMPACTS**

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The North College Urban Renewal Plan Area unencumbered fund balance is currently estimated to be \$8,296,753. URA finance staff estimates that approximately \$2.4 million of additional unassigned property tax increment revenue will be received in 2025.

To fund due diligence and inspection activities (and other technical projects), the URA Board authorized \$180,000 in 2024, and \$260,000 in 2025 for technical services. URA staff believe this total budget to be sufficient to evaluate the Property and make corresponding plans prior to the expiration of the PSA's due diligence provision.

Two resolutions are attached for consideration by the URA Board. The first resolution (Exhibit C) approves a supplemental budget appropriation in the 2024 calendar year to fund the refundable earnest money deposit of \$250,000. The second resolution (Exhibit D) approves a supplemental budget appropriation in the 2025 calendar year to fund the potential acquisition of the Property for \$7,636,050 (less the earnest money deposit of \$250,000).

## **PUBLIC OUTREACH**

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A series of outreach workshops conducted by the CSU Institute for the Built Environment and The Family Center/La Familia in 2019 and 2020 to form the North Fort Collins Community Engagement Report and the Community Investment Plan for North College.

Since those reports were completed, URA staff have provided updates and presentations to community stakeholders including, but not limited to:

- North Fort Collins Business Association
- The Family Center/La Familia
- The United Way of Larimer County
- Fort Collins Area Chamber of Commerce - Local Legislative Affairs Committee
- Citizens Advisory Group - North College Urban Renewal Plan Area
- Urban Land Institute

## **ATTACHMENTS**

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1. Resolution A for Consideration
2. Exhibit to Resolution A
3. Resolution B for Consideration
4. Resolution C for Consideration
5. Presentation

RESOLUTION NO. 137  
OF THE BOARD OF COMMISSIONERS OF THE FORT COLLINS  
URBAN RENEWAL AUTHORITY AUTHORIZING THE ACQUISITION OF PROPERTY  
AT 1636 N. COLLEGE AVE.

WHEREAS, the Fort Collins Urban Renewal Authority (the “Authority”) was established in 1982 under and in accordance with the Colorado Revised Statutes (“C.R.S.”) § 31-25-101, et seq. (the “Urban Renewal Law”); and

WHEREAS, the City Council of the City of Fort Collins, Colorado (the “City”), by Resolution No. 2004-152 approved and adopted on December 21, 2004, the “North College Urban Renewal Plan” (the “North College Plan”) as an urban renewal plan under the Urban Renewal Law for the area described therein (the “North College Plan Area”); and

WHEREAS, at the time the North College Plan was adopted, the real property located within North College Plan Area was found, determined and declared to be a blighted area as defined in the Urban Renewal Law (the “Blight Determination”); and

WHEREAS, on June 11, 2024 Authority staff performed a “Condition Survey Update – 1636 N College Ave”, which confirmed the findings made by City Council in connection with the Blight Determination with respect to the Property (defined below); and

WHEREAS, the North College Plan provides for the Authority to exercise all powers authorized under the Urban Renewal Law, including the Authority’s acquisition of real property located within the North College Plan Area; and

WHEREAS, based on community feedback and continued and growing issues of blight, the Authority determined it should acquire the property located at 1636 N. College Ave. (the “Property”), which Property is located within the North College Plan Area; and

WHEREAS, the Authority has determined that the acquisition of the Property is in the public interest and will further the goals of the North College Plan and the purpose of the Authority to eliminate and prevent blight; and

WHEREAS, in addition to the direct purposes of eliminating blight and preventing injury to the public health, safety, morals and welfare of the residents of the City, redevelopment of the Property within the boundaries of the North College Plan Area is expected to provide substantial direct and indirect benefits to the City, its citizens and the surrounding region and enhance the economic vitality of the City in numerous ways, including but not limited to the creation and retention of new temporary and permanent jobs; by increasing the City’s employment base; by supporting the redevelopment of the former grocery store space; by generating increased sales tax, property tax, and other general revenue for the City; and by stimulating further economic development in the City and surrounding region; and

WHEREAS the Authority is authorized in C.R.S. § 31-25-105(1)(b) to “make and execute all contracts and other instruments which it may deem necessary or convenient to the

exercise of its powers” and in C.R.S. § 31-25-105(1)(e) to “acquire any property by purchase”; and

WHEREAS, on September 13, 2023, the Authority and DPC entered into a letter of intent based on the parameters previously approved by the Authority Board and then negotiated a purchase and sale agreement (“Purchase Agreement”); and

WHEREAS, the Authority Board has been presented with the negotiated Purchase Agreement which is attached hereto as Exhibit A; and

WHEREAS, in compliance with the North College Plan, the Authority has evaluated and considered other possible alternatives; and

WHEREAS, the Authority has determined there is an immediate need to acquire the Property in order to implement the North College Plan, and that acquisition of the Property will be in furtherance of a public purpose and public use.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL AUTHORITY:

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. The Authority has duly considered and hereby approves the Purchase Agreement, including its exhibits, in substantially the form attached hereto, subject to technical additions, deletions and variations as the legal counsel to the Authority may determine to be necessary and appropriate to protect the interests of the Authority or to effectuate the purposes of this Resolution.

Section 3. Upon successful finalization of the Purchase Agreement and approval as to form by legal counsel to the Authority, the Acting Executive Director is hereby authorized to execute, and the Secretary to attest if necessary, the Purchase Agreement on behalf of the Authority.

Section 4. The Acting Executive Director or his designee is hereby authorized and directed to take all actions necessary for the Authority to comply with and effectuate the Purchase Agreement and acquisition of the Property, including all actions identified in the Purchase Agreement or any exhibit thereto that are not specifically designated as requiring review, approval, or decision by the Authority or required by law to be performed by the Authority.

Section 5. This Resolution shall be effective upon approval by the Authority.

Passed and adopted at a regular meeting of the Board of Commissioners of the City of Fort Collins Urban Renewal Authority this 2<sup>nd</sup> day of December, 2024.

FORT COLLINS URBAN RENEWAL  
AUTHORITY

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Chair

ATTEST:

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Secretary



**EXHIBIT A**  
**AGREEMENT OF PURCHASE AND SALE**

**AGREEMENT OF PURCHASE AND SALE**  
**(RI# 8457, 1636 N. College Ave., Fort Collins, CO)**

**THIS AGREEMENT OF PURCHASE AND SALE** (this “**Agreement**”) is dated as of \_\_\_\_\_, 2024 (the “**Effective Date**”) between VEREIT REAL ESTATE, L.P., a Delaware limited partnership, as seller (“**Seller**”), and the FORT COLLINS URBAN RENEWAL AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the state of Colorado, as buyer (“**Buyer**”).

**RECITALS**

Buyer desires to purchase the Property (as defined below) from Seller and Seller desires to sell the Property to Buyer, all as more particularly set forth in this Agreement. The Property is improved and is currently leased to Albertson’s LLC, a Delaware limited liability company (the “**Tenant**”) under a lease (including any amendments thereto, the “**Lease**”), but that Lease is intended to be terminated by Seller and thus no longer be in effect at the time of the closing of the purchase and sale under this Agreement.

**AGREEMENT**

In consideration of the payments and mutual covenants and undertakings set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer (each a “**Party**” and collectively the “**Parties**”) agree as follows:

**SUMMARY OF TERMS**

Certain key terms of this Agreement are summarized below, but remain subject to the applicable detailed provisions set forth elsewhere in this Agreement.

Property:	Seller’s interest in the property located at 1636 N. College Ave., Fort Collins, CO, as legally described on Exhibit A attached hereto.
Purchase Price:	\$7,636,050.00
First Deposit:	\$250,000.00
Second Deposit:	\$100,000.00
Diligence Period:	One Hundred Eighty (180) days, beginning on and including the Effective Date.
Closing Date:	Thirty-five (35) days after the end of the Diligence Period.
Escrow Agent:	First American Title Insurance Company National Commercial Services 2555 E. Camelback Road, Suite 350 Phoenix, AZ 85016 Attention: Lesa Ferris Phone: (602) 567-8129 Email: leferris@firstam.com

Notices Addresses for the Parties:

If to Buyer: FORT COLLINS URBAN RENEWAL AUTHORITY  
c/o City of Fort Collins  
281 North College Avenue  
Fort Collins CO 80522  
Attn: Andy Smith, Redevelopment Manager  
Phone: (970) 416-2517  
Email: asmith@fcgov.com

with a copy to: Brownstein Hyatt Farber Schreck LLP  
675 15th Street, Suite 2900  
Denver CO 80202  
Attn: Caitlin Quander, Esq.  
Phone: (303) 223-1233  
Email: cquander@bhfs.com

If to Seller: VEREIT REAL ESTATE, L.P.  
c/o Realty Income Corporation  
11995 El Camino Real  
San Diego, CA 92130  
Attn: Daniel Haug, Esq., Kristina Gasperino, and  
Lauren Doyle (RI #8457)  
Phone: (602) 778-6000  
Email: dhaug@realtyincome.com  
Email: kgasperino@realtyincome.com  
Email: ldoyle@realtyincome.com

Notice Provisions: See Section 7.1.

Seller's Broker: None

Buyer's Broker: None

**[Remainder of page intentionally left blank]**

## DEFINITIONS

In addition to any other terms defined elsewhere in this Agreement, the following terms, when used in this Agreement with a capital letter, have the meanings set forth below:

**“Affiliate”** means, with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such Person.

**“Business Day”** means any day other than a Saturday, a Sunday, or a federal holiday recognized by the Federal Reserve Bank of New York.

**“Buyer Party”** means Buyer, its Affiliates, any Permitted Assignee, any Lender, and any of their respective officers, employees, partners, members, agents, attorneys, consultants, contractors, advisors, and other representatives, and their respective heirs, successors, personal representatives, and assigns, each being a **“Buyer Party”** and collectively being the **“Buyer Parties.”**

**“Claim Notice”** means a written notice delivered by one Party to the other Party setting forth a reasonably detailed description of the specific Claims being asserted, including without limitation detailed statements of (a) the amount of loss or damage being asserted, and (b) the rationale for or explanation of why the Claims are alleged to be the responsibility of the Party against whom the Claims are being asserted.

**“Claims”** means any suits, actions, proceedings, investigations, demands, claims, liabilities, fines, penalties, liens, judgments, losses, injuries, damages, expenses, or costs, including without limitation attorneys’ and experts’ fees and costs and investigation, remediation costs, losses due to impairment or diminished value, or any other damages, losses or costs of any type or kind.

**“Closing”** means the consummation of the purchase and sale transaction contemplated by this Agreement.

**“Closing Date”** means the date that is set forth or described as such in the Summary of Terms, as such date may later be changed as expressly provided in this Agreement.

**“Closing Documents”** means the documents, instruments (including, without limitation, any deeds or assignments), and other agreements executed and delivered by a Party at or in connection with the Closing.

**“Code”** means the Internal Revenue Code of 1986, as amended, or any corresponding provision(s) of any succeeding law.

**“Confidential Information”** means all information that is confidential, proprietary, or otherwise not generally available to the public and that is either (a) furnished by or on behalf of Seller to Buyer or any Buyer Parties, or (b) is developed, discovered, determined, or otherwise made known to or by Buyer or any Buyer Parties through, as a result of, or in connection with Buyer’s due diligence investigations of and regarding the Property; and includes the contents and provisions of this Agreement (including without limitation the amount of consideration being paid by Buyer for the Property) but does not include material or information that was or becomes known

or available to Buyer, free of any other confidentiality obligations, outside of this Agreement or the activities of Buyer and the Buyer Parties pursuant to this Agreement.

**“Covenants and Declarations”** means, collectively, the (i) Declaration of Covenants, Conditions and Restrictions recorded September 24, 1991 at Reception No. 91046385, as assigned by that Assignment of Declarant’s Interest recorded August 14, 1995 at Reception No. 95049258 and September 27, 1995 at Reception No. 95060362; (ii) Contract of Sale and Development Agreement, by and between Zephyr Fort Collins, LP, a Colorado limited partnership and Albertson’s, Inc., a Delaware corporation, recorded October 18, 1994 under Reception No. 94084976 and re-recorded April 10, 1995 at Reception No. 95020105; (iii) Declaration of Restrictions and Grant of Easements, by and between Zephyr Fort Collins, LP, a Colorado limited partnership and Albertson’s Inc., a Delaware corporation, recorded June 15, 1995 under Reception No. 95033972 and First Amendment thereto recorded August 14, 1996 at Reception No. 96059014 and Second Amendment recorded January 6, 2004 at Reception No. 20040001212 and Third Amendment recorded February 2, 2017 at Reception No. 20170007721; (iv) Common Area Maintenance Agreement recorded June 15, 1995 at Reception No. 95033973 and First Amendment thereto recorded August 14, 1996 at Reception No. 96059015 and Second Amendment recorded January 6, 2004 at Reception No. 20040001211; and (v) Development Agreement recorded June 15, 1995 under Reception No. 95033974 and First Amendment thereto recorded August 14, 1996 under Reception No. 96059016.

**“Deposit”** means the sum of the First Deposit amount and the Second Deposit amount as specified in the Summary of Terms; provided that any reference to a return or payment of the Deposit to Buyer will be limited only to the extent such amounts have been deposited by Buyer with Escrow Agent.

**“Diligence Materials”** means the documents and other materials and information regarding the Property provided by or on behalf of Seller or any Seller Party to Buyer or any Buyer Party to assist with Buyer’s evaluation and acquisition of the Property, including the Seller Deliveries.

**“Diligence Period”** means the period beginning on the Effective Date and ending at 5:00 p.m. MST on the last day of the period described as such in the Summary of Terms.

**“Escrow Agent”** means the entity specified as such in the Summary of Terms.

**“Escrow Instructions”** means the escrow instructions attached as Exhibit E to, and incorporated as a part of, this Agreement.

**“First Deposit”** means the amount of money specified as such in the Summary of Terms.

**“Governmental Authority”** means any federal, state, county or municipal government or political subdivision; any governmental agency, authority, board, bureau, commission, department, instrumentality, or public body; any court or administrative tribunal; or any Person serving in an official or representative capacity for any of the foregoing.

**“Hazardous Materials”** means materials, wastes, or substances that are (a) regulated, or classified as “hazardous substances,” “hazardous materials,” “toxic substances,” “toxic pollutants,” “hazardous waste,” or like terms under federal, state or local environmental laws or regulations; (b) petroleum products (other than as may be present at the Property in the ordinary

course of its operation or business); (c) asbestos or asbestos-containing materials; (d) toxic mold in quantities harmful to human health; or (e) polychlorinated biphenyls.

**“Improvements”** means all buildings, improvements and fixtures located on the Land.

**“In-house Fees”** means the reasonable fees and costs for and relating to the services of in-house counsel and staff providing legal services to a Party or its Affiliates, which may be charged based upon time spent at rates comparable to those charged by private practice lawyers and staff of comparable experience practicing at offices of firms of regional size in the jurisdiction in which the Property is located.

**“Intangible Property”** means, to the extent transferable, any intangible property owned by Seller and relating solely and specifically to the Real Property, including any transferable licenses, permits, approvals, certificates of occupancy, or entitlements.

**“Land”** means the parcel(s) of land described in Exhibit A attached hereto.

**“Lender”** means an institutional lender utilized by Buyer to provide financing in connection with Buyer’s acquisition of the Property.

**“Obligations Surviving Termination”** means those provisions of this Agreement that either expressly require conduct or performance following, or are expressly stated to survive, a termination of this Agreement prior to Closing.

**“Permitted Assignee”** means any Affiliate of Buyer that has, or will at Closing have, the ability to fully perform the obligations of Buyer under this Agreement.

**“Person”** means any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated association, or other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

**“Personal Property”** means all equipment, machinery, furnishings, and other tangible personal property owned by Seller and located within or upon the Real Property, if any.

**“Property”** means all right, title and interest of Seller in and to the Real Property, the Personal Property and the Intangible Property.

**“Purchase Price”** means the purchase price for the Property specified in the Summary of Terms.

**“Real Estate Taxes”** means all real estate taxes and assessments applicable to the Property, including all installments of special taxes or assessments.

**“Real Property”** means the Land, all rights, privileges and easements appurtenant to the Land, and the Improvements.

**“Restricted Person”** means any Person, group, or nation that is (a) named by any Executive Order, the United States Treasury Department, or other Governmental Authority as a terrorist, “Prohibited Person” or “Specially Designated National and Blocked Person;” (b) named as a Person, group, or nation that is banned, blocked, prohibited, or restricted pursuant to any law that is enforced or administered by the Office of Foreign Assets Control; or (c) acting in

violation of Executive Order No. 13224, the Patriot Act, or any other laws or regulations relating to terrorism or money laundering.

“**Second Deposit**” means the amount of money specified as such in the Summary of Terms.

“**Seller Deliveries**” means the information and documents listed on Schedule 1 attached to this Agreement, to the extent in Seller’s possession and readily available to provide to Buyer.

“**Seller Party**” means Seller, its Affiliates, Seller’s property and asset managers, any lender to Seller, the partners, trustees, shareholders, members, managers, controlling persons, directors, officers, attorneys, employees and agents of each of them, and their respective heirs, successors, personal representatives, and assigns, each being a “**Seller Party**” and collectively being the “**Seller Parties**.”

“**Survey**” means, collectively, any existing survey of the Real Property included in the Seller Deliveries and any new or updated survey of the Real Property obtained by Buyer.

“**Title Company**” means Escrow Agent when acting or referred to in its capacity as the title insurance provider for this transaction.

## ARTICLE 1 PURCHASE AND SALE OF THE PROPERTY

**Section 1.1. Purchase and Sale.** Subject to the provisions, terms, covenants and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller’s right, title and interest in and to the Property, but specifically excluding any (a) rights to use any legal or trade names of Seller or any of Seller’s Affiliates in any manner, and (b) insurance, indemnity, or other claims or rights of Seller under or with respect to the Lease or the Property relating to Seller’s ownership of the Property prior to Closing.

**Section 1.2. Purchase Price; Deposit.** Buyer will pay the Purchase Price as described in this Section. All payments will be made in immediately available funds delivered into escrow with the Escrow Agent.

(a) Buyer will deliver the First Deposit within three (3) Business Days following the Effective Date. Buyer will deliver the Second Deposit within three (3) Business Days after the expiration of the Diligence Period. Escrow Agent will place the Deposit in a federally insured account on behalf of Seller and Buyer. Buyer will instruct Escrow Agent whether Buyer elects to have such account be interest-bearing. Any interest earned on the Deposit while it is held in escrow will belong solely to Buyer and will be paid to Buyer regardless of the ultimate disposition of the Deposit, and accordingly all references to the “Deposit” in this Agreement exclude any interest that may be earned thereon.

(b) The Deposit will be applied as follows: (i) if Buyer terminates this Agreement when Buyer is expressly entitled to do so as provided in this Agreement, the Deposit will be returned to Buyer; (ii) if the Deposit is to be received by Seller as provided in this Agreement, the Deposit will be paid to Seller; and (iii) if Closing occurs, the Deposit will be credited to Buyer and applied against the Purchase Price paid to Seller at Closing.

(c) Buyer will deliver the Purchase Price, as adjusted for the Deposit amount applied thereto and any prorations, credits and adjustments to be made pursuant to the terms of this Agreement, to Escrow Agent not later than the Closing Date, and the Purchase Price will be paid to Seller at Closing.

**Section 1.3. Escrow Instructions.** This Agreement, including the Escrow Instructions, will constitute the instructions for the Escrow Agent's handling of the purchase and sale transaction contemplated herein. The Seller and Buyer shall establish, within three (3) business days after full execution of this Agreement, an escrow with Escrow Agent by depositing a draft of this Agreement, including the Escrow Instructions, with Escrow Agent, and Escrow Agent is hereby engaged to administer the escrow. By accepting this escrow, Escrow Agent agrees to the terms of this Agreement as they relate to the duties of Escrow Agent. Seller and Buyer will execute such supplemental escrow instructions as may reasonably be required by Escrow Agent to enable Escrow Agent to comply with the terms of this Agreement. If any conflict exists between this Agreement and the provisions of any supplemental escrow instructions, the terms of this Agreement will control unless a contrary intent is expressly indicated in the supplemental instructions and such supplemental instructions are signed by both Buyer and Seller.

## ARTICLE 2 BUYER'S INVESTIGATIONS; AS-IS SALE

### Section 2.1. Buyer's Investigations.

(a) Not later than two (2) Business Days following the Escrow Agent's receipt of the First Deposit from Buyer, Seller will deliver to Buyer, or make available to Buyer by diligence website or other electronic means to which Buyer has been given access, the Seller Deliveries. Seller will have no obligation to deliver or disclose to Buyer any of Seller's attorney-client privileged materials, appraisals, internal memoranda, or internal evaluations of the Property. Except as may be otherwise expressly set forth in this Agreement, Seller makes no representations or warranties of any kind regarding the accuracy, thoroughness or completeness of, or any conclusions drawn in, the information contained in the Seller Deliveries or any other Diligence Materials.

(b) During the Diligence Period, Buyer will conduct such commercially reasonable, non-invasive investigations, studies or tests of the Property as Buyer deems necessary to determine whether Buyer desires to complete the acquisition of the Property including but not limited to title review, property inspections, survey, soil testing, utilities, Hazardous Materials, zoning, common area, restrictive covenants, planned community association declarations, and to secure bonding financing, if applicable. Buyer, in its sole and absolute discretion and for any reason or no reason whatsoever, may reject the Property by giving written notice of termination to Seller and Escrow Agent (the "**Termination Notice**") prior to the expiration of the Diligence Period. If Buyer timely gives a Termination Notice, the Deposit will be returned to Buyer and this Agreement and the rights and obligations of the Parties under this Agreement will terminate, except for Obligations Surviving Termination. Alternately, Buyer may accept the Property by giving written notice of acceptance to Seller and Escrow Agent (the "**Acceptance Notice**") prior to the expiration of the Diligence Period. If Buyer fails to deliver either a Termination Notice or an Acceptance Notice prior to the expiration of the Diligence Period, then (i) Buyer will be deemed to have rejected the Property, (ii) the entire Deposit will be refunded to Buyer (other than as expressly set forth in this Agreement), and (iii) this Agreement will terminate, except for Obligations Surviving Termination.



(c) If this Agreement is terminated for any reason, then Buyer will promptly return to Seller any Diligence Materials delivered to Buyer in physical form in connection with the Property.

**Section 2.2. Title and Survey Matters; Objections.**

(a) Promptly following the Effective Date, Title Company will deliver to Buyer and Seller a title insurance commitment or preliminary title report showing the status of title to the Property (the “**Title Commitment**”). During the Diligence Period, Buyer may also, at Buyer’s expense, obtain a new or updated ALTA survey of the Real Property performed by a registered surveyor and certified to Buyer, Seller, the Title Company, and any other party required by Buyer. Buyer will deliver a copy of any such new or updated survey to Seller and Title Company promptly after Buyer’s receipt thereof. Any matters disclosed by the Title Commitment or Survey which are approved, deemed approved, or waived by Buyer pursuant to the terms of this Agreement shall constitute “**Permitted Exceptions.**”

(b) If any exceptions appear on the Title Commitment, or any encroachments or other title conditions are shown on the Survey, that are not acceptable to Buyer, Buyer will provide written notice to Seller and Title Company of such unacceptable matters (“**Title Objection Matters**”) not later than thirty (30) days before the end of the Diligence Period. In addition, Buyer will have the right to notify Seller and Title Company of any additional matters that first appear on any updates to the Title Commitment issued after the expiration of the Diligence Period, and if such matter(s) both (i) materially and adversely impact the Property to the extent that the Property cannot be used substantially as intended by Buyer and (ii) were not caused by the acts or omissions of Buyer, then Buyer may object to such additional matter(s) as Title Objection Matters so long as any such additional objection is made by Buyer within five (5) days after Buyer receives the updated Title Commitment adding such new matter (but, in any event, prior to the Closing Date). Unless timely objected to in writing by Buyer as Title Objection Matters as provided above, all matters disclosed by the Title Commitment or Survey (or any updates thereto) shall be deemed to constitute Permitted Exceptions.

(c) Seller may elect (but is not obligated) to cure or attempt to cure any Title Objection Matters and Seller will notify Buyer in writing within ten (10) Business Days after Seller receives Buyer’s notice of Title Objection Matters if Seller elects to cure any of such objections. If neither Seller nor Title Company elect within such period to cure the Title Objection Matters, then within the later of five (5) Business Days and expiration of the Diligence Period thereafter (but in any event prior to the Closing Date), Buyer may elect to either (i) terminate this Agreement, in which event the Deposit will be returned to Buyer and thereafter the Parties will have no further rights or obligations under this Agreement except for Obligations Surviving Termination, or (ii) waive any uncured Title Objection Matters and proceed to Closing. Failure of Buyer to terminate the Agreement prior to the later of the expiration of the Diligence Period or such five-Business Day period shall be deemed an election by Buyer to waive any uncured Title Objection Matters and proceed to Closing. Any Title Objection Matters so waived (or deemed waived) by Buyer shall be deemed to constitute Permitted Exceptions.

(d) Seller has no obligation to bring any action or proceeding or incur any expense to cure, remove or otherwise address any Title Objection Matter unless Seller expressly agrees to do so in writing as provided in Section 2.2(c) or is required to do so pursuant to the last sentence of this Section 2.2(d). Seller will be entitled to a reasonable extension of the Closing Date (not to exceed thirty (30) days) for the cure or removal of any Title Objection Matters that Seller elects to cure or remove. For purposes of this Section, a Title Objection Matter that is not completely removed as an exception to title but has been cured by affirmatively insuring over or providing

such other coverage as may be reasonably acceptable to Buyer with respect to such Title Objection Matter will, as so cured, be a Permitted Exception. Notwithstanding the foregoing, Seller will cure or remove any of the following that are timely identified by Buyer as Title Objection Matters as provided above: (i) the liens of any mortgages or deeds of trust encumbering fee title to the Real Property securing indebtedness of Seller to the mortgagee or beneficiary thereof, (ii) mechanics' liens pursuant to a written agreement directly between the claimant and Seller for work at the Real Property; and (iii) whether or not included on the Title Commitment, any past due property owners' association fees or amounts owed by Seller or Tenant.

(e) Buyer's obligation to purchase the Property is conditioned upon Title Company being committed at Closing to issue an extended coverage owner's policy of title insurance with respect to the Real Property, dated as of Closing, on a standard ALTA form in an insured amount equal to the Purchase Price, insuring that title to the Property is vested in Buyer subject only to the Permitted Exceptions determined pursuant to this Section 2.2, with all endorsements requested by Buyer and upon payment of the applicable premium therefor and the satisfaction by Buyer of the Buyer's conditions and requirements thereto, including provision of a current ALTA Survey to the extent required therefor (the "**Title Policy**").

(f) In addition to but without limiting the foregoing provisions of this Section, Seller will reasonably cooperate with Buyer, at no material cost to Seller, to obtain agreement from all parties to the Covenants and Declarations to remove the Property therefrom prior to expiration of the Diligence Period; provided, that no such amendments or terminations that effectuate such removal will be effective prior to Closing unless Seller consents to such earlier effectiveness in Seller's sole discretion, it being understood that Seller has no obligation to enter into any such amendment or termination that in Seller's reasonable judgement might compromise Seller's or Tenant's rights with respect to the Property if Closing fails to occur.

### **Section 2.3. Entry, Insurance and Indemnity.**

(a) Buyer must give Seller not less than two (2) Business Days' prior written notice (which may be via email to the Seller email notice addresses set forth on page 2 above) of any desired entry by any Buyer Parties onto the Real Property and must coordinate such entry and any related testing or inspections with Seller. Buyer must otherwise conduct each entry upon the Property in a commercially reasonable manner. Seller has the right to have a representative present during any entry by any Buyer Parties onto the Real Property; provided, however, that the availability or lack thereof of any such representative shall not require Buyer to reschedule any entry scheduled pursuant to this Section 2.3(a). Upon request, Buyer will provide Seller a list of the vendors and contractors and scopes of work for tests and inspections to be performed, which shall be subject to review and approval by Seller. Any invasive testing proposed by Buyer will be set forth in additional detail for Seller's consideration and approval.

(b) Buyer acknowledges that the Property is currently leased to Tenant under the Lease, and that the Tenant retains the right to possession of the Property and may have personal property located in the Property. Buyer acknowledges and agrees that any entry onto the Property may need to be coordinated by Seller with Tenant.

(c) Buyer may not conduct any invasive testing, drilling, or boring at the Property, or any environmental testing of the Property other than a standard ASTM "Phase I" environmental study, and, if recommended by the "Phase I", a "Phase II" environmental study, without in each instance obtaining the prior written approval of Seller, which approval may be withheld in Seller's

sole and absolute discretion and, if granted, will be conditioned upon such precautions as Seller deems advisable to protect itself and the Property.

(d) Buyer will maintain, and will require that any Buyer Party entering upon the Property also maintains, commercial general liability insurance insuring the Buyer Parties against any liability arising out of their activities in, upon, about or with respect to the Property, with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate (which limits may include applicable excess or umbrella coverage). Buyer's policy must insure the contractual liability of Buyer's indemnification and defense obligations under this Agreement and must (i) name Seller, Realty Income Corporation, and Tenant as additional insureds with respect to all Claims arising out of the activities of the Buyer Parties in, upon, about or with respect to the Property, (ii) contain a cross-liability provision or coverage, and (iii) be primary and noncontributing with any other insurance available to the additional insureds. Buyer must provide Seller with evidence that Buyer has such insurance coverages in force prior to any entry by a Buyer Party upon the Property.

(e) Buyer will pay all costs incurred in connection with Buyer's due diligence activities regarding the Property, will promptly repair and restore any damage caused to the Property by such activities, and will not permit any mechanics or other liens to be filed against the Property as a result of such activities. **BUYER WILL INDEMNIFY, DEFEND AND HOLD THE SELLER PARTIES AND TENANT HARMLESS FROM AND AGAINST ANY CLAIMS ARISING OUT OF ANY ACTIVITIES OF THE BUYER PARTIES IN, UPON, ABOUT OR WITH RESPECT TO THE PROPERTY PRIOR TO CLOSING; PROVIDED, HOWEVER, BUYER SHALL NOT BE LIABLE FOR LOSSES AND DAMAGES TO THE EXTENT CAUSED BY PRE-EXISTING CONDITIONS OR LATENT DEFECTS, ANY LEGAL NONCONFORMANCE, THE DISCOVERY, DISPLACEMENT, NON-NEGLIGENT DISTURBANCE, OR EXISTENCE OF ANY HAZARDOUS MATERIALS NOT INITIALLY BROUGHT ONTO THE REAL PROPERTY BY BUYER, ANY DIMINUTION IN THE VALUE OR MARKETABILITY OF THE PROPERTY CAUSED BY THE BUYER'S DILIGENCE OR MATTERS DISCOVERED DURING BUYER'S DILIGENCE OF THE PROPERTY, OR THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF SELLER (COLLECTIVELY, THE "PRE-EXISTING CONDITIONS"), AND BUYER WILL NOT BE RESPONSIBLE FOR INDEMNIFYING SELLER FOR THE MERE DISCOVERY OF ANY PRE-EXISTING CONDITIONS ON THE PROPERTY (ENVIRONMENTAL OR OTHERWISE).** Buyer's indemnity and insurance obligations under this Article 2 are not limited by any other limitation on damages or remedies under this Agreement, including without limitation the liquidated damages provisions contained in Article 6. The provisions of this Section will survive the Closing or any earlier termination of this Agreement.

**Section 2.4. AS-IS SALE.** BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT FOR SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE CLOSING DOCUMENTS, (A) SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY "AS IS, WHERE IS AND WITH ALL FAULTS," AND (B) BUYER IS NOT RELYING ON ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM SELLER OR ANY SELLER PARTY AS TO ANY MATTER CONCERNING OR RELATING TO THE PROPERTY, OR SET FORTH, CONTAINED OR ADDRESSED IN THE DILIGENCE MATERIALS (INCLUDING WITHOUT LIMITATION, THE COMPLETENESS THEREOF), INCLUDING WITHOUT LIMITATION AS TO: (I) THE QUALITY, NATURE, HABITABILITY, MERCHANTABILITY, FITNESS, USE, OPERATION, VALUE, MARKETABILITY, ADEQUACY OR PHYSICAL CONDITION OF THE PROPERTY OR ANY ASPECT OR PORTION THEREOF (INCLUDING WITHOUT LIMITATION STRUCTURAL ELEMENTS, FOUNDATION, ROOF,

APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES, ELECTRICAL, MECHANICAL, HVAC, COMMUNICATION, PLUMBING, SEWAGE, AND UTILITY SYSTEMS, FACILITIES AND APPLIANCES, SOILS, GEOLOGY AND GROUNDWATER); (II) THE DIMENSIONS OR LOT SIZE OF THE REAL PROPERTY OR THE SQUARE FOOTAGE OF THE IMPROVEMENTS THEREON OR OF ANY TENANT'S OR OCCUPANT'S SPACE THEREIN OR COMMON AREAS THEREOF; (III) THE DEVELOPMENT, REDEVELOPMENT, ENTITLEMENT, OR INCOME POTENTIAL, OR RIGHTS OF OR RELATING TO, THE PROPERTY, OR THE SUITABILITY, VALUE, ADEQUACY, OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (IV) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (V) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL AUTHORITY OR OF ANY OTHER PERSON OR ENTITY (INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT); (VI) THE ABILITY OF BUYER TO OBTAIN ANY NECESSARY GOVERNMENTAL APPROVALS, LICENSES OR PERMITS FOR THE CURRENT USE OR BUYER'S INTENDED USE, DEVELOPMENT OR REDEVELOPMENT OF THE PROPERTY; (VII) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS OR OTHER HAZARDOUS CONDITIONS ON, IN, UNDER, ABOVE OR ABOUT THE PROPERTY OR ANY ADJOINING OR NEIGHBORING PROPERTIES; (VIII) THE QUALITY OF ANY LABOR OR MATERIALS USED IN ANY IMPROVEMENTS; (IX) THE CONDITION OF TITLE TO THE PROPERTY; (X) ANY LEASES OR ANY CONTRACTS OR OTHER AGREEMENTS AFFECTING THE PROPERTY OR THE INTENTIONS OF ANY PERSON WITH RESPECT TO THE NEGOTIATION AND/OR EXECUTION OF ANY LEASES, CONTRACTS OR AGREEMENTS WITH RESPECT TO THE PROPERTY; OR (XI) THE ECONOMICS OF, OR THE INCOME AND EXPENSES, REVENUE OR EXPENSE PROJECTIONS OR OTHER FINANCIAL MATTERS RELATING TO, THE OWNERSHIP OR OPERATION OF THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS NOT RELYING ON ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF SELLER, ANY OTHER SELLER PARTY, OR ANY AGENT OR BROKER OF SELLER, WHETHER IMPLIED, PRESUMED OR EXPRESSLY PROVIDED AT LAW OR OTHERWISE, OR ARISING BY VIRTUE OF ANY STATUTE, COMMON LAW OR OTHER RIGHT OR REMEDY IN FAVOR OF BUYER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER IS UNDER NO DUTY TO MAKE ANY INQUIRY REGARDING ANY MATTER THAT MAY OR MAY NOT BE KNOWN TO SELLER, ANY OTHER SELLER PARTY, OR ANY OTHER AGENT OR BROKER OF SELLER.

IF BUYER PURCHASES THE PROPERTY, ANY REPORTS, REPAIRS OR WORK REQUIRED OF OR BY BUYER ARE THE SOLE RESPONSIBILITY OF BUYER, AND BUYER AGREES THAT THERE IS NO OBLIGATION ON THE PART OF SELLER EITHER BEFORE OR AFTER CLOSING TO MAKE ANY CHANGES, ALTERATIONS OR REPAIRS TO THE PROPERTY OR TO CURE ANY VIOLATIONS OF LAW OR TO COMPLY WITH THE REQUIREMENTS OF ANY INSURER OR GOVERNMENTAL AUTHORITY. BUYER IS SOLELY RESPONSIBLE FOR OBTAINING THE ISSUANCE OR RE-ISSUANCE OF ANY CERTIFICATE OF OCCUPANCY OR ANY OTHER APPROVAL OR PERMIT NECESSARY FOR TRANSFER OR OCCUPANCY OF THE PROPERTY AND FOR ANY IMPROVEMENTS, REPAIRS OR ALTERATIONS NECESSARY TO OBTAIN THE SAME, ALL AT BUYER'S SOLE COST AND EXPENSE.

THE PROVISIONS OF THIS SECTION WILL SURVIVE THE CLOSING OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

**Section 2.5. Release.** Without limiting the provisions of Section 2.4, but subject to the express rights and remedies reserved to Buyer in this Agreement, Buyer, for itself and the other Buyer Parties (including without limitation any Permitted Assignee), waives all rights to recover from, and forever releases, discharges and covenants not to sue, Seller and the other Seller Parties with respect to any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that may exist or arise on account of or in any way be connected with the Property (including without limitation the physical, operational, environmental, and structural condition of the Property) or any law or regulation applicable thereto, including without limitation any Claims or other matters relating to the use, presence, discharge or release of Hazardous Materials on, under, in, above or about the Property. Buyer assumes the risk that Buyer's investigations of the Property may not reveal all aspects and conditions of the Property. Buyer acknowledges and agrees that: (a) Buyer is an experienced and knowledgeable purchaser of real property; (b) Buyer expressly accepts and fully understands the limitations of liability contained in this Agreement; and (c) the limitations contained in this Agreement are reasonable. Buyer acknowledges and agrees that Seller has agreed to enter into this Agreement in consideration for and in reliance upon the limitations of liability contained in this Agreement, that the Purchase Price is based in part on such limitations of liability, and that Seller would not have agreed to execute this Agreement or sell the Property to Buyer on terms that did not include such limitations of liability.

EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE WAIVERS AND RELEASES CONTAINED IN SECTIONS 2.4 AND 2.5 EXTEND TO ALL CLAIMS OF ANY NATURE AND KIND WHATSOEVER, KNOWN OR UNKNOWN, SUSPECTED OR NOT SUSPECTED, AND, TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BUYER WAIVES ANY PROVISIONS OF APPLICABLE LAW THAT OTHERWISE MAY LIMIT OR PROHIBIT SUCH WAIVERS AND RELEASES. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE CLOSING OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

### ARTICLE 3 OPERATION OF THE PROPERTY

**Section 3.1. Operation of the Property.** Between the Effective Date and the Closing Date, Seller (a) will use commercially reasonable efforts to maintain the Property in substantially the same physical condition as existed on the Effective Date, excluding reasonable wear and tear and any damage or destruction by Casualty, Condemnation (both as defined below), or other causes or events beyond the reasonable control of Seller; and (b) will not enter into any encumbrances of record which would continue to be binding upon the Property following Closing without Buyer's consent, provided that (i) if Buyer fails to either give or expressly refuse such consent within five (5) Business Days of receiving the written request from Seller, such consent shall conclusively be deemed to have been given; and (ii) Buyer's consent (x) may not be unreasonably withheld, conditioned or delayed with respect to any such agreement that is proposed prior to the expiration of the Diligence Period; and (y) may be granted or withheld in Buyer's sole but commercially reasonable discretion with respect to any such agreement that is proposed between the expiration of the Diligence Period and Closing.

**Section 3.2. Casualty.** If the Property is damaged or destroyed by fire, theft, vandalism, or other casualty event ("**Casualty**") prior to Closing, Seller will provide prompt written notice to Buyer of such Casualty once Seller becomes aware of same. Buyer will likewise provide prompt written notice to Seller of any Casualty if Buyer becomes aware of same. If the Property is "materially damaged or destroyed" (as defined below) by such Casualty, Buyer may terminate this Agreement by written notice given to Seller within ten (10) Business Days after Buyer receives

notice of the occurrence of such Casualty. If Buyer so terminates this Agreement, then the Deposit will be returned to Buyer and neither Party will have any further rights or obligations under this Agreement except for Obligations Surviving Termination. If Buyer does not so terminate this Agreement, or if the Property is not deemed “materially damaged or destroyed,” Buyer will remain bound to purchase the Property for the full Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effects of the Casualty; provided that at Closing Seller will provide Buyer with a credit against the Purchase Price equal to the amount of the property insurance proceeds that would be payable to Seller for the repair of the physical damage to the Property, if any, up to (but not to exceed) the Purchase Price, net of any costs and expenses reasonably incurred by Seller prior to Closing in connection with the Casualty and excluding any deductible amount applicable thereto. For purposes of this Section, the Property shall be deemed “materially damaged or destroyed” if (a) the estimated repair cost to restore the Property to substantially the condition it was in as of the Effective Date (the “**ERC**”) is more than twenty percent (20%) of the Purchase Price, or (b) the insurance proceeds amount that would be credited to Buyer as provided above (if any) is less than the ERC by an amount greater than ten percent (10%) of the Purchase Price. Buyer will receive the Property in its then “as-is, where is” condition as of the Closing Date regardless of any such Casualty.

**Section 3.3. Condemnation.** If any condemnation proceedings are instituted, or notice of any condemnation or intent to condemn is given, with respect to all or any portion of the Real Property (a “**Condemnation**”) prior to Closing, Seller will provide prompt written notice to Buyer of such Condemnation. If the Condemnation will result in a “material and adverse effect” (as defined below) to the Property, Buyer may terminate this Agreement by written notice given to Seller within ten (10) Business Days after the date Buyer receives notice of such Condemnation. If Buyer so terminates this Agreement, then the Deposit will be returned to Buyer and neither Party will have any further rights or obligations under this Agreement except for Obligations Surviving Termination. If Buyer does not so terminate this Agreement, or if the Condemnation will not result in a “material and adverse effect” to the Property, Buyer will remain bound to purchase the Property for the full Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effect of the Condemnation; provided that at Closing Seller will assign to Buyer Seller’s interest in the award payable to Seller on account of the Condemnation (if any), but net of any losses, costs and expenses reasonably incurred by Seller prior to Closing in connection with the Condemnation. For purposes of this Section, “material and adverse effect” means the permanent loss of title to more than fifteen percent (15%) of the square footage of the Land as existing as of the Effective Date.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Representations and Warranties of Seller.** Subject to the information disclosed by the Diligence Materials, Title Commitment and Survey, Seller makes the following representations and warranties to Buyer as of the Effective Date and (except as may be disclosed in writing to Buyer after the Effective Date) again as of the Closing Date:

(a) Seller is duly organized and validly existing and in good standing under the laws of its state of formation; and the execution, delivery and performance of this Agreement and all Closing Documents to be executed and delivered by Seller pursuant to this Agreement are within the organizational power of Seller and have been or will prior to Closing be duly authorized.

(b) Neither the execution and the delivery of this Agreement, nor the consummation of the transactions herein by Seller shall constitute a violation or breach of applicable laws, or of

any provision of any contract, agreement, mortgage or instrument to which Seller is a party or by which Seller is bound, or by an order, writ, injunction, decree or judgment applicable to Seller.

(c) Seller has not filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors or suffered the appointment of a receiver to take possession of the Property.

(d) There are no actions or proceedings pending or, to Seller's knowledge, threatened against Seller that Seller reasonably expects would affect the validity or enforceability of this Agreement or any of the Closing Documents to be executed and delivered by Seller pursuant to this Agreement.

(e) Other than the potential Condemnation being pursued by Buyer or any related Governmental Authority, Seller has not received written notice of any currently pending or threatened Condemnation, rezonings, annexations, special assessments, creation of or inclusion in any statutory district, authorities, or other similar governmental, quasi-governmental, or administrative actions with regard to all or any portion of the Real Property.

(f) Other than the Lease or as may be referred to or contained in any document recorded against the Property, there are no leases, subleases, licenses, or other rights of occupancy in or to the Property to which Seller is a direct party, other than any service contracts to which Seller is a direct party that are timely disclosed to Buyer as part of the Seller Deliveries, or to Seller's knowledge any unrecorded easements, declarations, or other agreements related to the Property.

(g) As of the Effective Date, Seller has not received any written notice from any Governmental Authority that the Real Property is presently in material violation of any applicable environmental or other laws relating to the Real Property.

(h) As of the Effective Date, Seller has not received written notice of any litigation that is currently pending or threatened against Seller with respect to the Real Property, other than (if applicable) the potential Condemnation being pursued by Buyer or any related Governmental Authority.

(i) The Seller Deliveries constitute true and complete copies of all such items as contained in Seller's electronic files.

For purposes of this Agreement and any Closing Documents, whenever the phrases "to the best of Seller's knowledge", or the "knowledge" of Seller or words of similar import are used, they shall be deemed to refer to the current, actual, conscious knowledge only, and not any implied, imputed or constructive knowledge, without any independent investigation having been made or any implied duty to investigate, of the representative(s) of Seller with the responsibility for directly overseeing the management and operations of the Property. Such individual(s) will have no personal liability under this Agreement or otherwise with respect to the Property.

**Section 4.2. Representations and Warranties of Buyer.** Buyer makes the following representations and warranties to Seller as of the Effective Date and (except as may be disclosed in writing to Seller after the Effective Date) again as of the Closing Date:

(a) Buyer is an urban renewal authority duly organized and existing under the laws of the state of Colorado law and is duly qualified to transact business the state of Colorado; and the

execution, delivery and performance of this Agreement and all Closing Documents to be executed and delivered by Buyer pursuant to this Agreement are within the organizational power of Buyer and have been or will prior to Closing be duly authorized by proper action of its Board of Commissioners.

(b) Neither the execution and the delivery of this Agreement, nor the consummation of the transactions herein by Buyer shall constitute a violation or breach of applicable laws, or of any provision of any contract, agreement, mortgage or instrument to which Buyer is a party or by which Buyer is bound, or by an order, writ, injunction, decree or judgment applicable to Buyer.

(c) Buyer has not filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors or suffered the appointment of a receiver to take possession of any of Buyer's property.

(d) There are no actions or proceedings pending or, to Buyer's knowledge, threatened against Buyer that Buyer reasonably expects would affect the validity or enforceability of this Agreement or any of the Closing Documents to be executed and delivered by Buyer pursuant to this Agreement.

(e) Buyer (i) is an experienced and knowledgeable purchaser of real property, (ii) is represented by competent counsel, and (iii) understands and accepts the terms and provisions of this Agreement, including without limitation all releases, waivers, limitations, and assumptions of risk and liability set forth in this Agreement.

For purposes of this Agreement and any Closing Documents, whenever the phrases "to the best of Buyer's knowledge", or the "knowledge" of Buyer or words of similar import are used, they shall be deemed to refer to the current, actual, conscious knowledge only, and not any implied, imputed or constructive knowledge, without any independent investigation having been made or any implied duty to investigate, of Josh Birks. Josh Birks will have no personal liability under this Agreement or otherwise with respect to the Property.

**Section 4.3. OFAC and Source of Funds.** Buyer and Seller each represent and warrant to the other, and to Escrow Agent, that (a) such Party is not a Restricted Person; (b) such Party is not knowingly acting, directly or indirectly, for, on behalf of, or in conjunction with any Restricted Person and is not engaging in, instigating or facilitating this transaction for or on behalf of any Restricted Person; (c) such Party is not engaging in this transaction, directly or indirectly, in violation of any laws relating to drug trafficking, money laundering or predicate crimes to money laundering; and (d) none of the funds of such Party to be utilized in this transaction have been or will be derived from any unlawful activity with the result that such Party, its funds, or the Property is subject to potential seizure, forfeiture or other such remedy or that this Agreement or the transactions hereunder are or will be in violation of any applicable laws or regulations. The provisions of this Section will survive the Closing (in this sole instance, without regard to the limitations contained in Section 4.5) or any earlier termination of this Agreement.

**Section 4.4. Inaccuracy Discovered Prior to Closing.** Neither Party may rely on any representation or warranty made by one Party (the "Maker") to the other Party (the "Recipient") in this Agreement or in any Closing Document to the extent that such representation or warranty was, is or has become inaccurate or incorrect in any material respect (the "Inaccuracy") and the Recipient has, receives or obtains actual knowledge of the Inaccuracy prior to Closing. (If the Recipient first obtains actual knowledge of the Inaccuracy after Closing, Section 4.5 below will apply instead of this Section 4.4.) If the Recipient believes, has received or obtains actual



knowledge prior to or at Closing that an Inaccuracy exists, then the Recipient will immediately give written notice to the Maker of the Inaccuracy. The Maker will have the right, but not the obligation, to elect to cure the Inaccuracy (or the cause or any affects thereof) within ten (10) Business Days after the Maker's receipt of such notice. Regardless of whether such cure is elected, attempted, or achieved by the Maker, the Recipient's sole remedy with respect to an Inaccuracy that is actually known by the Recipient prior to Closing is to terminate this Agreement by giving the Maker written notice of such termination within five (5) Business Days after the end of the Maker's ten (10) Business Day cure period. If necessary, the Closing Date will be automatically extended to allow such periods to expire. If the Recipient so terminates this Agreement, (a) the Deposit will be returned to Buyer, regardless of whether Buyer is the Maker or the Recipient, and (b) neither Party will have any further rights or obligations under this Agreement except for Obligations Surviving Termination. If the Recipient does not so terminate this Agreement, the Recipient shall be conclusively deemed to have waived the Inaccuracy and all effects or consequences thereof, and the Maker will have no liability whatsoever with respect to the Inaccuracy. In furtherance of the foregoing, each Party agrees that the Maker will have no liability with respect to any representation or warranty to the extent that, prior to the Closing, the Recipient has, receives or obtains actual knowledge of an Inaccuracy (from whatever source, including without limitation from disclosure by or on behalf of the Maker) and the Recipient nevertheless proceeds to close the purchase or sale of the Property under this Agreement without availing itself of the termination remedy provided under this Section 4.4. The provisions of this Section will survive the Closing or any earlier termination of this Agreement.

**Section 4.5. Survival of Representations and Warranties.** Subject in all respects to Section 4.4, the representations and warranties made by each Party in this Agreement or any Closing Document will survive the Closing only until the date that is two hundred-seventy (270) days following the date of Closing (the "**Expiration Date**"). Any Claims for, relating to or arising from an Inaccuracy discovered after Closing are limited in all respects to any actual damages the Recipient sustained from the Recipient's reasonable reliance upon the representation or warranty prior to obtaining actual knowledge of the Inaccuracy. In no event will either Party be liable to the other Party for any lost profits or consequential, indirect, special or punitive damages suffered by a Party as a result of any Inaccuracy. If an Inaccuracy is discovered after Closing and the Recipient desires to pursue any remedy against the Maker with respect to such Inaccuracy, then the Recipient must give the Maker a Claim Notice detailing the Inaccuracy upon or prior to the Expiration Date. Any Claims that a Recipient might otherwise have or have had against a Maker with respect to any Inaccuracy, whether such Inaccuracy or such Claims are known or unknown, will not be valid or effective if a Claim Notice detailing the Inaccuracy has not been given to the Maker on or prior to the Expiration Date. For the avoidance of doubt, following the Expiration Date, each Party shall be deemed to be fully discharged and released (without the need for separate releases or other documentation) from any liability or obligation to the other Party (and to its other Buyer Parties or Seller Parties, as applicable) with respect to any Inaccuracy, known or unknown, not detailed in a Claim Notice delivered to the other Party on or prior to the Expiration Date. Further, any Claims that either Party may have at any time against the other Party for any matter with respect to which a Claim Notice has been given to the other Party on or prior to the Expiration Date may be the subject of subsequent litigation brought by the claiming Party, but only if such litigation is commenced against and duly served upon the other Party on or prior to the date that is ninety (90) days following the Expiration Date (the "**Claim Bar Date**"). For the avoidance of doubt, following the Claim Bar Date, each Party shall be deemed to be fully discharged and released (without the need for separate releases or other documentation) from any liability or obligation to the other Party (and to its other Buyer Parties or Seller Parties, as applicable) with respect to any Claim, known or unknown, except for any Claim for which both (a) a Claim Notice was given by the claiming Party to the other Party on or prior to the Expiration

Date, and (b) litigation upon the Claim has been commenced by the claiming Party and duly served upon the other Party prior to or upon the Claim Bar Date. This Section (and Section 4.4 above) collectively provide the sole remedies of each Party with respect to any Inaccuracy and each Party expressly waives any other rights or remedies such Party might otherwise have at law or in equity with respect to any Inaccuracy in any representation or warranty of the other Party. The provisions of this Section will survive the Closing or any earlier termination of this Agreement.

## ARTICLE 5 CLOSING, DELIVERIES AND PRORATIONS

**Section 5.1. Closing.** The Closing and the delivery of all items to be delivered by the Parties at the Closing will be performed through an escrow closing conducted by Escrow Agent on the Closing Date. Except as may otherwise be expressly provided in this Agreement, the Closing Date may not be accelerated or extended without the prior written approval of both Seller and Buyer.

**Section 5.2. Lease Termination.** Prior to execution of this Agreement, Seller negotiated an agreement with Tenant providing for the early termination of the Lease, which lease termination (subject to the conditions thereto as set forth in Seller's lease termination agreement with Tenant) will be effective upon or before the Closing (the "**Lease Termination**"). The Lease Termination is a condition to each of Seller's and Buyer's obligation to close, and Seller's failure to effect the Lease Termination at Closing may be asserted by Buyer as a default by Seller as provided in Section 6.1 of this Agreement.

**Section 5.3. Closing Conditions.** The obligation of Seller, on the one hand, and Buyer, on the other hand, to consummate the transaction contemplated hereunder is contingent upon the following:

(a) The other Party's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date of this Agreement and the Closing Date, such that neither Party has a right to terminate this Agreement for an uncured breach pursuant to Section 4.4 above;

(b) Buyer shall have secured its bonding financing or other Lender financing, if applicable, prior to the expiration of the Diligence Period;

(c) As of the Closing Date, the parties to the Covenants and Declarations shall have delivered the final amendments and terminations that remove the Property from the Covenants and Declarations, all as are determined and agreed prior to the end of the Diligence Period, along with executed signatures to be attached thereto, to Escrow Agent, with instruction that the signatures be released and such executed amendments and terminations be recorded upon Closing;

(d) As of the Closing Date, the other Party shall have performed its obligations hereunder, including that Seller has caused (or is concurrently with Closing causing) the Lease Termination to occur as set forth in Section 5.2, Seller has obtained the ROFR Waiver as set forth in Section 7.21, and all deliveries to be made at Closing shall have been tendered, such that neither Party has a right to terminate this Agreement pursuant to Article 6 below; and

(e) The Escrow Agent shall have issued or committed to issue the Title Policy to Buyer at Closing as contemplated by Section 2.2 above.

So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date, such Party may, in its sole discretion, (i) terminate this Agreement by delivering written notice to the other Party on or before the Closing Date, in which event the Deposit (provided Buyer is not in default hereunder) shall be returned to the Buyer and the Seller Deliveries shall be returned to Seller and this Agreement shall be of no further force or effect except for Obligations Surviving Termination, or (ii) elect to close, notwithstanding the nonsatisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. If such Party elects to close, notwithstanding the nonsatisfaction of such condition, there shall be no liability on the part of the other Party for nonsatisfaction of such condition or for breaches of representations and warranties of which the Party electing to close had knowledge as of the Closing. If no election is made by the applicable Party, such Party shall be deemed to have elected (ii) above.

#### **Section 5.4. Closing Documents.**

(a) On or before the Closing Date, Seller will deliver the following into the escrow, with all documents having been duly executed (and if to be recorded, acknowledged) by Seller:

(i) a Special Warranty Deed (or the state-specific equivalent thereof) in the form attached hereto as Exhibit B (the "**Deed**");

(ii) a Bill of Sale in the form attached hereto as Exhibit C (the "**Bill of Sale**");

(iii) an Assignment of Intangible Property in the form attached hereto as Exhibit D (the "**General Assignment**");

(iv) the closing settlement statement;

(v) such disclosures and reports (including tax reporting and withholding certificates) as are required of Seller by applicable state and local law in connection with the conveyance of the Property;

(vi) a confirmation pursuant to Section 1445(b)(2) of the Code that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code;

(vii) Colorado Form DR 1083, in form required by law;

(viii) Seller's "owner's affidavit" or comparable assurance to Title Company regarding work performed and other customary matters, in a form reasonably acceptable to Seller;

(ix) Resolutions, certificates of good standing and such other organizational documents as Title Company shall reasonably require evidencing Seller's authority to consummate the transaction, as approved by Title Company pursuant to the title review process contemplated by Section 2.2 above; and

(x) such other documents as may be specifically required under this Agreement, and such other customary documents as are necessary and appropriate to effectuate the Closing and are reasonably acceptable to Seller.

(b) On or before the Closing Date, Buyer will deliver the following into the escrow, with all documents having been duly executed (and if to be recorded, acknowledged) by Buyer:

- (i) the Purchase Price, less the amount of the Deposit, as adjusted and reflected in the closing settlement statement agreed upon by Buyer and Seller;
- (ii) counterparts of the Bill of Sale and the General Assignment;
- (iii) the closing settlement statement;
- (iv) such disclosures and reports (including tax reporting and withholding certificates) as are required of Buyer by applicable state and local law in connection with the conveyance of the Property;
- (v) Resolutions, certificates of good standing and such other organizational documents as Title Company shall reasonably require evidencing Buyer's authority to consummate the transaction; and
- (vi) such other documents as may be specifically required under this Agreement, and such other customary documents as are necessary and appropriate to effectuate the Closing and are reasonably acceptable to Buyer.

(c) The Parties agree that the form documents attached as exhibits to this Agreement are acceptable to accomplish the conveyances contemplated by this Agreement. The acceptance by Buyer of the Deed at Closing shall be deemed to be a full performance and discharge of every obligation on the part of Seller to be performed under this Agreement, other than those that are specifically stated in this Agreement to survive the Closing.

**Section 5.5. Prorations.** Items of income and expense relating to the Property will be adjusted between Seller and Buyer as provided below. Closing Date prorations will be made as of 12:01 A.M. local time on the day of Closing as if Buyer was the owner of the Property for the entire Closing Date.

(a) Real Estate Taxes due and payable in the calendar year of Closing will be prorated as of the Closing Date. If the Closing occurs before the relevant tax bill is available, the apportionment of Real Estate Taxes will be made based upon the most recent tax bill available for the Real Property and will be a final settlement. If any Real Estate Taxes are appealed by either Party, any refund of Real Estate Taxes will be prorated based upon the relative payment by the Parties of the Real Estate Taxes to which the refund relates (with any Real Estate Taxes paid by Tenant being counted as paid by Seller for such purpose).

(b) Any and all amounts payable by Tenant to Seller (as landlord) under the Lease shall be retained by Seller, including any payments related to the Lease Termination. Buyer will have no responsibility for any obligations payable as a result of the existence of the Lease, including any leasing commissions related thereto.

(c) All other items of expense for the Property, including but not limited to any utility charges, maintenance charges, and charges under any Permitted Exceptions, will be prorated as of the Closing Date. For any utilities in the name of Seller, Buyer and Seller will cooperate to arrange for final utility readings as close to the Closing Date as possible and the issuance of a final bill to Seller, with Buyer being designated the billing party in lieu of Seller from and after the Closing Date. Seller will be entitled to receive and retain any deposits of Seller held by utility companies with respect to the Property.

(d) Seller will supply the relevant information to Escrow Agent prior to Closing, and the Parties will cooperate in the calculation, review and finalization of the adjustments and prorations contemplated by this Section for Closing. The Purchase Price, prorations, closing costs, and any other credits and adjustments will be reflected on a closing settlement statement prepared by Escrow Agent and executed by Buyer and Seller for the Closing. If a net amount is owed by Seller to Buyer pursuant to this Section, such amount will be credited against the Purchase Price at Closing. If a net amount is owed by Buyer to Seller pursuant to this Section, such amount will be paid to Seller together with the Purchase Price at Closing.

(e) The provisions of this Section that by their terms are to occur after Closing will survive the Closing.

**Section 5.6. Closing Costs.** At Closing, Seller will pay (a) the insurance premium amount for a standard coverage owner's policy of title insurance in the amount of the Purchase Price, including any search or exam costs required therefor; (b) the costs of releasing any liens or other encumbrances that are agreed or required to be released by Seller pursuant to Section 2.2 above, and of recording any such releases; (c) the cost of recording the Deed; and (d) all other costs this Agreement expressly requires Seller to pay. At Closing, Buyer will pay (i) all title insurance costs and charges (other than those for the standard coverage policy to be paid by Seller as provided in subsection (a) above), including any costs for extended coverage, title endorsements, lender policies, or other coverage requested by Buyer; (ii) the cost of any new or updated Survey and other due diligence studies or reports obtained by Buyer; (iii) the cost of recording any Closing Documents (other than the costs of recording paid by Seller as provided in subsection (a) and (b) above); (iv) the fees and costs due Escrow Agent for its sale escrow services under this Agreement; (v) any state, county or local documentary, franchise or transfer taxes; and (vi) all other costs this Agreement expressly requires Buyer to pay. Except as otherwise expressly provided for in this Agreement, Seller and Buyer will each be solely responsible for and bear all of their own respective transaction costs and expenses, including without limitation all expenses of legal counsel, accountants, and other advisors and consultants incurred at any time in connection with pursuing or consummating the transaction contemplated herein. Any other closing costs and charges not specifically designated as the responsibility of either Party in this Agreement will be paid by the Parties according to the usual and customary allocation/apportionment of such costs in the jurisdiction in which the Property is located. Buyer and Seller agree that there is little or no Personal Property included within the Property and no portion of the Purchase Price will be allocated or attributable to Personal Property.

**Section 5.7. Brokers.** Buyer and Seller each state and confirm to the other that no broker, finder or comparable Person was utilized in arranging or bringing about this transaction and that there are no claims or rights for brokerage fees, commissions, finders' fees, or comparable fees or compensation due to any Person in connection with the transactions contemplated by this Agreement. If any Person asserts a claim for a commission, fee or other compensation based upon any contact, dealings or communication with Buyer or Seller, then the Party through whom such Person makes its claim will indemnify, defend and hold harmless the other Party from such claim and any and all costs, damages, liabilities or expenses (including without limitation, reasonable attorneys' fees and disbursements) incurred by the other Party in connection with such claim. The provisions of this Section will survive the Closing or any earlier termination of this Agreement.

## ARTICLE 6 DEFAULT; REMEDIES

**Section 6.1. Default by Seller.** If Seller fails to perform any obligation of Seller under this Agreement prior to or at Closing and does not cure such failure (a) within three (3) Business Days after receipt of written notice from Buyer asserting such failure, if Seller fails to timely deliver Closing Documents or authorize Closing if and when required of Seller for Closing to occur under this Agreement, or (b) within ten (10) days after receipt of written notice from Buyer asserting such failure, if Seller fails to perform any other obligation of Seller (any such failure, if not cured within such period, being a “**Seller Default**”), then Buyer will elect by giving written notice to Seller and Escrow Agent within thirty (30) days after the occurrence of such Seller Default, as Buyer’s sole and exclusive remedy against Seller, either to (i) terminate this Agreement, in which event the Deposit will be returned to Buyer and neither of the Parties will have any further rights, liabilities or obligations under this Agreement, except for Obligations Surviving Termination, or (ii) bring a suit for specific performance against Seller to compel Seller to convey the Property to Buyer as required under this Agreement; provided, however that as a condition precedent to Buyer’s pursuit of any action for specific performance, Buyer (x) must have fully and timely performed all of Buyer’s obligations and made all deliveries (other than the delivery of the balance of the Purchase Price) required to be performed or delivered on or before the Closing Date, (y) must maintain the full Deposit in escrow until and during the pendency of such action, and (z) must demonstrate to the court Buyer’s ability to fund on the Closing Date (and upon any subsequent award of specific performance of such conveyance) the full amount of the Purchase Price. Buyer shall be deemed to have elected to terminate this Agreement (as provided in subsection 6.1(i) above) if Buyer does not deliver to Seller written notice of Buyer’s intent to file a cause of action for specific performance against Seller on or before thirty (30) days after such Seller Default, or having timely given Seller such notice, fails to file and serve Seller with a lawsuit asserting such cause of action within sixty (60) days after such notice.

**Section 6.2. Default by Buyer.** If Buyer fails to perform any obligation of Buyer under this Agreement prior to or at Closing and does not cure such failure (a) within three (3) Business Days after receipt of written notice from Seller asserting such failure, if Buyer (i) fails to timely pay or deposit any amount of money required to be paid or deposited by Buyer under this Agreement, or (ii) fails to timely deliver Closing Documents or authorize Closing if and when required of Buyer for Closing to occur under this Agreement, or (b) within ten (10) days after receipt of written notice from Seller asserting any such failure, if Buyer fails to perform any other obligation of Buyer (any such failure, if not cured within such period, being a “**Buyer Default**”), then Seller will be entitled, as Seller’s sole and exclusive remedy against Buyer, to terminate this Agreement and receive the Deposit as Seller’s agreed and total liquidated damages by giving written notice of termination to Buyer and Escrow Agent within thirty (30) days after the occurrence of such Buyer Default. Upon Seller’s receipt of the Deposit, neither of the Parties will thereafter have any further rights, liabilities or obligations under this Agreement except for Obligations Surviving Termination. **The Parties have agreed that Seller’s actual damages in the event of a Buyer Default would be extremely difficult or impracticable to determine. The Parties have therefore agreed that, considering all the facts and circumstances existing as of the Effective Date, the amount of the Deposit is a reasonable estimate of the damages that Seller would incur in the event of a Buyer Default. Each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained, at the time this Agreement was made, the consequences of this liquidated damages provision.**

### Section 6.3. Limitations on Liability.

(a) Unless otherwise expressly stated in this Agreement, the provisions of Sections 6.1 and 6.2 above provide each Party's sole remedies for any failure by the other Party to perform its respective obligations under this Agreement prior to or at Closing, but will not limit any rights or remedies that either Party may have for a breach or default by the other Party after Closing with respect to those provisions of this Agreement, or those provisions of the Closing Documents, that are expressly stated to survive Closing. However, in no event will either Party be liable to the other Party for any lost profits or consequential, indirect, special or punitive damages suffered by a Party as a result of any failure, breach or default, either before or after Closing, by the other Party under this Agreement or any of the Closing Documents, and each Party expressly waives any right to recover any lost profits or consequential, indirect, special or punitive damages caused to such Party by the other Party. The Parties agree that any attorneys' fees awarded pursuant to Section 7.6 below will not be subject to the limitations of this Section 6.3.

(b) Notwithstanding anything to the contrary set forth in this Agreement or any of the Closing Documents, (i) Seller will have no liability whatsoever with respect to any Claims suffered or incurred by, asserted or assessed against, or imposed upon Buyer or any Buyer Party under or with respect to this Agreement, the Property, or any Closing Document, except to the extent (and only to the extent) that such Claims exceed \$20,000.00 (the "**Threshold Amount**"); and (ii) in no event will the total aggregate liability of Seller and any Seller Parties for any or all Claims with respect to the entirety of the Property and the transactions contemplated by this Agreement and the Closing Documents exceed \$250,000.00 (the "**Maximum Amount**"). Buyer shall not make any Claims or deliver any Claim Notice unless Buyer in good faith believes the Claims would exceed the Threshold Amount, and Buyer shall not seek or receive for such Claims any remedies or awards that individually or in the aggregate would exceed the Maximum Amount.

**Section 6.4. Survival.** The terms, provisions and limitations of this Article will survive the Closing or any earlier termination of this Agreement.

## ARTICLE 7 MISCELLANEOUS

**Section 7.1. Notices.** Any notices required or permitted to be given under this Agreement must be given in writing and delivered to the recipient's notice address as provided in this Agreement either (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next Business Day delivery and provides a delivery confirmation to the sender, or (d) by email; provided, that any emailed notice purporting to either terminate this Agreement or provide notice of an asserted failure, breach or default by the other Party must be followed by a hard copy thereof given within one (1) Business Day thereafter that is delivered in accordance with one of the preceding subsections (a)-(c), unless receipt of such hard copy is expressly waived by a reply email from the recipient Party in response to such notice email. The notice addresses for the Parties are as set forth in the Summary of Terms. Either Party may specify a different or additional domestic (United States) notice address for itself as such Party may from time to time desire by giving notice thereof in writing as provided above to the other Party. If sent by email, a notice shall be deemed given upon the date when such email is transmitted by the sending Party to the receiving Party's notice address, and shall be deemed received on that same date unless such notice is transmitted by the sender after 5:00 p.m. Mountain Time, in which case receipt by the receiving Party shall be deemed to be upon the next Business Day. If personally delivered, a notice shall be deemed given and received upon the date of such delivery. If sent by overnight courier service, a notice

shall be deemed given upon the date of deposit with such courier and deemed received upon the date of delivery or refusal of delivery at the notice address. If sent by certified mail, a notice shall be deemed given and received on the fifth Business Day after deposit into the US Mail. Notices from or signed by the legal counsel for a Party will be equally effective as a notice from such Party itself.

**Section 7.2. Entire Agreement.** This Agreement, together with the Exhibits and Schedules hereto, contains all agreements, representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the Parties with respect to the purchase and sale of the Property. All Exhibits and Schedules to this Agreement are fully incorporated as a part of this Agreement. Any prior correspondence, memoranda, letters of intent, or other agreements between the Parties, including without limitation any oral or written statements made by the Seller Parties or the Buyer Parties, are not binding on or enforceable against either Party, and are entirely superseded and replaced by this Agreement; provided, however, that any prior access, confidentiality, or non-disclosure agreement(s) between Seller and Buyer or any Buyer Party will remain of full force and effect and will not be superseded by this Agreement.

**Section 7.3. Confidentiality.** Seller will be providing Confidential Information in connection with Buyer's evaluation of the transaction and the Property during the term of this Agreement, and Buyer will obtain additional Confidential Information pursuant to Buyer's due diligence investigations of and regarding the Property. Buyer agrees to keep the Confidential Information strictly confidential and shall not disclose, permit the disclosure of, release, disseminate or transfer, whether written or orally or by any other means, such Confidential Information, in whole or in part, in any manner; provided, however, that the Buyer Parties may make such limited disclosures, strictly on a "need-to-know" basis, to and among the Buyer Parties as may reasonably be required in connection with Buyer's evaluation of the Property. Buyer agrees that the other Buyer Parties must be informed by Buyer of the confidential nature of the Confidential Information and must be required by Buyer to treat the Confidential Information in confidence as required under this Agreement. Buyer will be responsible for ensuring the compliance of all Buyer Parties with the terms of this Agreement. Buyer will take all appropriate measures to safeguard the confidentiality and avoid any disclosure of Confidential Information to any unauthorized Person by Buyer or the Buyer Parties and to the extent legally permissible to treat it as proprietary commercial and financial information not subject to disclosure under any applicable law and the Colorado Open Records Act as Buyer is a quasi-governmental entity. No license is granted, directly or indirectly, to any of the Confidential Information. If this Agreement is terminated prior to Closing, then except as provided in Section 2.1 above, Buyer will destroy, and cause each of the Buyer Parties to destroy, all materials containing Confidential Information. Notwithstanding the foregoing, (a) to the extent required by a Buyer Party's customary internal policies or other legal requirements applicable to such Buyer Party, such Buyer Party may retain a copy of Confidential Information solely to satisfy such requirements, provided that such Buyer Party must otherwise strictly maintain the confidentiality thereof; and (b) a Buyer Party may disclose Confidential Information to the extent required to be disclosed pursuant to the Colorado Open Records Act or pursuant to court order or subpoena, but only after such Buyer Party has notified Seller of any request, court order or subpoena seeking or requiring disclosure of Confidential Information and has given Seller the reasonable opportunity to appeal or challenge the same. Buyer agrees that money damages would not be a sufficient remedy for any breach of the confidentiality provisions of this Agreement by Buyer or any Buyer Parties and Seller will be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. The confidentiality covenants and obligations set forth in this Agreement will survive for a period of two (2) years after (i) any termination of this Agreement prior to Closing, as to all



Confidential Information, or (ii) the Closing, but only as to Confidential Information relating to Seller or any Seller Parties and not as to Confidential Information relating solely to the Property.

**Section 7.4. Time.** Time is of the essence in the performance of each of the Parties' respective obligations under this Agreement; provided, however, that if a deadline or date for performance, or for the giving or receipt of a notice, falls on a day that is not a Business Day, such deadline or date shall be deemed extended to the next Business Day.

**Section 7.5. Nonliability of Officials, Agents and Employees.** In no event whatsoever will any Seller Parties or Buyer Parties have any recourse with respect to this Agreement or any of the Closing Documents against, and no liability will be asserted with respect to this Agreement or any Closing Documents against, any of Seller's or Buyer's respective members, partners, shareholders, trustees, employees, agents, directors, officers, or other owners, principals, representatives, or Affiliates, or the respective constituents thereof, or any council member, board member, commissioner, official, employee, consultant, attorney or agent of Buyer (collectively, the "**Exculpated Persons**"), and in no event whatsoever will any of the Exculpated Persons have or be deemed to have undertaken or assumed any personal liability for any obligations entered into by Seller or Buyer, as applicable, under this Agreement or any of the Closing Documents, and regardless of whether any such Persons negotiated or executed this Agreement or any of the Closing Documents on behalf of either Seller or Buyer, as applicable

**Section 7.6. Attorneys' Fees.** In addition to the remedies provided in Article 6 above, if there is any litigation, action or other proceeding between the Parties ("**Action**") to enforce any provisions or rights arising under or in connection with this Agreement or the Closing Documents, the Party that is determined to have prevailed in such Action will also be entitled to an award against the non-prevailing Party for all costs and expenses, including but not limited to reasonable attorneys' fees, reasonably incurred by the prevailing Party in connection with the prosecution or defense of such Action which shall not be included in the Maximum Amount set forth in Section 6.3(b). The Parties additionally agree, with respect to any provision of this Agreement that allows either Party to charge attorneys' fees or costs to, or recover or collect attorneys' fees or costs from, the other Party, that such provision will be construed to also mean and include In-house Fees (as defined above). The provisions of this Section will survive the Closing or any earlier termination of this Agreement.

**Section 7.7. Merger of Obligations.** Obligations that are expressly provided in this Agreement to survive or be performed after the Closing will not merge with the transfer of legal title to the Property but will remain in effect until fulfilled; all other obligations of the Parties will merge with and be extinguished upon the transfer of legal title to the Real Property to Buyer at Closing.

**Section 7.8. Assignment.** Subject to the provisions of this Section, Buyer may, by written notice given to Seller not less than ten (10) Business Days prior to the Closing, assign Buyer's rights and obligations under this Agreement to a Permitted Assignee. Except for any assignment to a Permitted Assignee, Buyer's rights and obligations under this Agreement are not transferable, assignable or delegable, directly or indirectly, without the prior written consent of Seller, which consent may be given or withheld in Seller's sole and absolute discretion. Any transfer, assignment or delegation (to a Permitted Assignee or otherwise) must be made pursuant to a written agreement meeting the requirements of this Section, which agreement will include (without limitation) provisions stating that (a) the transfer, assignment or delegation does not release, diminish or otherwise affect the obligations of the original Buyer under this Agreement, including the original Buyer's obligations to pay the Purchase Price at Closing and to indemnify

Seller and the other Seller Parties in accordance with the terms hereof; and (b) the Permitted Assignee (or other approved transferee, assignee or delegee) expressly agrees for the benefit of Seller and the Seller Parties that (i) such Person is assuming all obligations of the original Buyer under this Agreement, and (ii) the conveyance of the Property to such Person will be subject to all of the terms, provisions, conditions and limitations set forth in this Agreement to the same extent as if such Person was the original Buyer executing this Agreement. Any attempted transfer, assignment or delegation by Buyer in contravention of this Section will be null and void unless accepted in writing by Seller at Seller's sole option (but shall be deemed to have been accepted if the Closing has occurred by Seller conveying to the transferee, assignee or delegee). Subject to the limitations described herein, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

**Section 7.9. 1031 Exchange.** Each Party may structure its acquisition or sale, as applicable, as part of a like-kind exchange under Section 1031 of the Code. Each Party will reasonably cooperate with the other (at no cost or liability to the cooperating Party) in effectuating such a like-kind exchange, including signing such documents as may be reasonably and customarily necessary to acknowledge such exchange; provided, however, that (a) the Closing will not be delayed thereby, (b) the exchanging Party will not be released from any liability or obligation under this Agreement, and (c) the cooperating Party will not incur any additional liability or undertake any additional obligation as a result of any such like-kind exchange. The Party employing the like-kind exchange structure will pay all costs and expenses associated with effectuating such exchange.

**Section 7.10. Governing Law; Jurisdiction and Venue.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE REAL PROPERTY IS LOCATED (the "**Property State**"). For the purposes of any suit, action or proceeding involving this Agreement, each Party expressly submits to the jurisdiction of all federal and state courts sitting in the Property State and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and each Party agrees that such courts will have jurisdiction over any such suit, action or proceeding commenced by any Party. Each Party irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court sitting in the Property State and further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The foregoing provisions are not intended to establish the Property State as the exclusive forum for any suit, action or proceeding involving this Agreement, but merely to establish the consent and agreement of each Party to such non-exclusive jurisdiction and venue in the event of any contest or dispute over such matters.

**Section 7.11. Waiver of Trial by Jury.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT, ANY OF THE CLOSING DOCUMENTS, THE PROPERTY, OR ANY CLAIMS OR ACTIONS PERTAINING TO ANY OF THE FOREGOING.

**Section 7.12. Interpretation of Agreement.** The Article, Section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained in this Agreement. Where the context so requires, (a) the

use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter; (b) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and (c) the words “including” and “include” and other words of similar import will be deemed to be followed by the phrase “without limitation.” All monetary amounts expressed in “dollars” or designated by a “\$”, “USD” or “US\$” symbol or abbreviation refer to a monetary amount payable within the United States in the current lawful, dollar-denominated official currency of the United States of America. The terms and provisions of this Agreement represent the result of negotiations by the Parties, and each Party has been represented by counsel of, and to the extent of, such Party’s own choosing, and neither Party has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each waive the application of any rule of law that might otherwise be applicable that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party that prepared (or whose attorney prepared) the executed Agreement or any earlier draft of this Agreement or the provision in question.

**Section 7.13. Amendments; No Waiver.** No modification, waiver, amendment or discharge of or under this Agreement will be valid unless contained in a writing signed by the Party against whom enforcement is sought. No waiver by Seller or Buyer of a breach of any of the terms, covenants or conditions of this Agreement will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained in this Agreement.

**Section 7.14. No Recording.** Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer or any Buyer Party. Any such recording of this Agreement or a memorandum or short form hereof by Buyer or any Buyer Party will constitute an immediate Buyer Default under this Agreement, and in addition to Seller’s other remedies therefor, Seller may conclusively establish the complete release and removal of such recorded document simply by recording a copy of this provision of this Agreement.

**Section 7.15. No Third Party Beneficiary.** Except as may be expressly stated herein, the provisions of this Agreement do not and are not intended to benefit any third parties.

**Section 7.16. Severability.** If, in any action to enforce this Agreement, any one or more of the covenants, agreements, conditions, provisions, or terms of this Agreement is, in any respect or to any extent (in whole or in part), held to be invalid, illegal or unenforceable for any reason, all remaining portions thereof that are not so held, and all other covenants, agreements, conditions, provisions, and terms of this Agreement, will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

**Section 7.17. Drafts Not an Offer.** The submission of a draft of this Agreement by one Party to another is not intended by either Party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The Parties will not be legally bound in any manner with respect to a purchase and sale of the Property unless and until each of Seller and Buyer have duly executed this Agreement and the Parties have delivered that fully executed Agreement to Escrow Agent. Any submission by Buyer of an executed copy of this Agreement to Seller shall be construed solely as an offer by Buyer to purchase the Property which may be accepted by Seller only by Seller’s execution of such Agreement or a counterpart as provided below.

**Section 7.18. Consent Standards.** Unless expressly provided otherwise in this Agreement, any consent, determination, election or approval required to be obtained, or permitted to be given, by or on behalf of either Party under this Agreement will be given, withheld or made (as the case may be) by such Party in the exercise of such Party's commercially reasonable discretion and within a commercially reasonable period of time.

**Section 7.19. Counterparts; Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same Agreement. Signatures performed, transmitted, or provided by electronic means shall have same legal effect as the delivery of original hand-written signatures. Each Party agrees to promptly deliver a "hard copy" of this Agreement bearing such Party's original manual ink signature to the other Party upon request, but a failure to do so will not affect the enforceability of this Agreement.

**Section 7.20. Publicity.** Neither Party will issue, or cause or permit its Affiliates to issue, any press release or public statement of any sort with respect to the transactions contemplated by this Agreement that expressly names or reasonably identifies the other Party or any Affiliate of the other Party (a "**Press Release**") before Closing, except for a mutually acceptable joint statement (or if reasonably approved by Seller, a unilateral statement by Buyer) issued at the time this Agreement is entered into by the Parties. Upon or after the Closing, neither Party will issue, or cause or permit its Affiliates to issue, any Press Release without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. If either Party desires to issue a Press Release, then prior to any issuance such Party will give a copy of the proposed Press Release to the other Party for its review, comment and approval. If no objection or comments are received from the other Party within five (5) Business Days after the other Party receives such proposed Press Release for review, consent to the Press Release shall be deemed given by the reviewing Party. The foregoing does not limit or preclude disclosures made to comply with a Party's regulatory reporting requirements, including those of the U.S. Securities and Exchange Commission or any stock exchange, or any disclosure requirements applicable to Buyer as a Governmental Authority. The provisions of this Section shall survive the Closing or any earlier termination of this Agreement.

**Section 7.21. ROFR Waiver.** Each Party's obligation to close the sale contemplated by this Agreement is expressly subject to Seller's receipt within thirty (30) days of the Effective Date of either (a) an executed waiver by Tenant of any right of first offer or refusal Tenant may have under the Lease (any such right being a "**ROFR**") with respect to the sale of the Property to Buyer, or (b) the passage of such period of time as may be necessary following Seller's written request for such a waiver to constitute a "deemed" waiver or refusal by Tenant of the ROFR pursuant to the terms of the Lease (whether a written or deemed waiver, the "**ROFR Waiver**"). Seller will provide written notice to Buyer when it provides the notice under the ROFR to Tenant and when the ROFR Waiver is obtained. If Tenant exercises the ROFR, this Agreement will automatically terminate. If this Agreement is terminated pursuant to this Section, the Deposit will be paid to Buyer and thereafter the Parties will have no further rights or obligations under this Agreement except for Obligations Surviving Termination.

**Section 7.22. Governmental Immunity.** Buyer, its officers and employees are relying on and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, as amended, or otherwise available to the Buyer and its officers and employees.

**IN WITNESS WHEREOF**, Buyer and Seller have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date written above.

**BUYER:**

FORT COLLINS URBAN RENEWAL AUTHORITY,  
a body corporate duly organized and existing as an  
urban renewal authority under the laws of the state of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**

VEREIT REAL ESTATE, L.P.,  
a Delaware limited partnership

By: VEREIT Real Estate GP, LLC  
a Delaware limited liability company,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW AGENT’S ACCEPTANCE**

The foregoing fully executed Agreement is accepted by the undersigned as the “Escrow Agent” under this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2024. Escrow Agent accepts the engagement to handle the escrow established by this Agreement in accordance with the terms set forth in this Agreement.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE LAND**

Lot 2, COUNTRY CLUB CORNERS THIRD FILING A PLANNED UNIT DEVELOPMENT,  
County of Larimer, State of Colorado.

**EXHIBIT B**

**DEED**

[to be conformed to state recording requirements]

**WHEN RECORDED MAIL TO:**

[\_\_\_\_\_]

**SPECIAL WARRANTY DEED**

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, \_\_\_\_\_, a \_\_\_\_\_ (“Grantor”), hereby grants and conveys to \_\_\_\_\_, a \_\_\_\_\_ (“Grantee”), the real property located in \_\_\_\_\_, legally described as:

See legal description set forth in Exhibit A attached and incorporated by this reference (the “Property”).

together with all right, title and interest of Grantor in and to (a) all buildings, structures, and improvements located on the Property; (b) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights; (c) all oil, gas, and mineral rights not previously reserved; and (d) any other rights or privileges appurtenant to the Property or used in connection therewith.

SUBJECT TO current real property taxes and all unpaid non-delinquent general and special taxes, bonds and assessments; all liens, covenants, conditions, reservations, rights, easements, interests, rights of way, and restrictions of public record; all leases and any other occupancy agreements in effect; all zoning ordinances and regulations and any other laws, ordinances or governmental regulations restricting or regulating the use, occupancy or enjoyment of the Property; and all matters visible upon or about the Property or that would be disclosed by an accurate survey of the Property.

TO HAVE AND TO HOLD the Property unto said Grantee and its successors and assigns forever;

And Grantor will warrant and defend title to the Property conveyed hereby unto said Grantee against the lawful claims and demands of all claiming by, through or under Grantor, but no other.

Dated this \_\_\_ day of \_\_\_\_\_, 202\_\_.

**GRANTOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[ADD APPROPRIATE NOTARIAL ACKNOWLEDGMENT]**

**Exhibit A to Deed**

**Legal Description of Property**



**EXHIBIT C**  
**BILL OF SALE**

**THIS BILL OF SALE** (this “**Bill of Sale**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “**Sale Date**”) between \_\_\_\_\_, a \_\_\_\_\_ (“**Seller**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”).

In connection with the sale by Seller to Buyer of the real property described on Exhibit A attached hereto (the “**Property**”) pursuant to an Agreement of Purchase and Sale dated as of \_\_\_\_\_, 202[ ] (as may have been amended or assigned, the “**Purchase Agreement**”), and for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby transfers and conveys to Buyer all right, title and interest of Seller in and to any equipment, machinery, furnishings, and other tangible personal property owned by Seller and located within or upon the Property (the “**Personal Property**”). The Personal Property expressly excludes any motorized vehicles, and any property owned by any utilities company, property management company, or other third party.

SELLER HEREBY REPRESENTS AND WARRANTS THAT IT HAS NOT PREVIOUSLY CONVEYED ITS RIGHT, TITLE OR INTEREST IN THE PERSONAL PROPERTY TO ANY THIRD PARTY. BY ACCEPTANCE OF THIS BILL OF SALE, BUYER ACKNOWLEDGES AND AGREES THAT BUYER ACCEPTS THE PERSONAL PROPERTY AS IS, WHERE IS, AND WITH ALL FAULTS, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, FROM SELLER EXCEPT AS OTHERWISE PROVIDED HEREIN. SELLER EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PERSONAL PROPERTY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

This Bill of Sale (i) will be governed by and construed in accordance with the laws of the State in which the Property is located applicable to contracts made and performed entirely therein; (ii) may be executed by the parties in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument; and (iii) is executed and delivered pursuant to, and is subject to the applicable terms and conditions of, the Purchase Agreement.

**[SIGNATURES COMMENCE ON THE NEXT PAGE]**

**IN WITNESS WHEREOF**, Seller and Buyer have caused this Bill of Sale to be duly executed as of the Sale Date written above.

**SELLER:**

[ \_\_\_\_\_ ],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

[ \_\_\_\_\_ ],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A    LEGAL DESCRIPTION**

**EXHIBIT D**

**ASSIGNMENT OF  
INTANGIBLE PROPERTY**

**THIS ASSIGNMENT OF INTANGIBLE PROPERTY** (this "**Assignment**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the "**Assignment Date**"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Assignor**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

WHEREAS, Assignor is transferring Assignor's interest in and to the real property described on Exhibit A attached hereto (the "**Property**") to Assignee as of the Assignment Date pursuant to an Agreement of Purchase and Sale dated as of \_\_\_\_\_, 202\_\_ (as may have been amended or assigned, the "**Purchase Agreement**"); and

WHEREAS, Assignor desires to transfer to Assignee all of Assignor's right, title and interest in and to any intangible property owned by Assignor and relating solely and specifically to the Property, including any transferable licenses, permits, approvals, certificates of occupancy, or entitlements (the "**Intangible Property**"), but subject in all respects to any exclusions or limitations as may be set forth in the Purchase Agreement.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, interest in and to the Intangible Property. This Assignment shall not be construed as a representation or warranty by Assignor as to the transferability of the Intangible Property, and Assignor shall have no liability to Assignee in the event that any or all of the Intangible Property (a) is not transferable to Assignee or (b) is canceled or impaired by reason of this Assignment or any acts of Assignee.

2. This Assignment is made by Assignor without recourse and without any express or implied representation or warranty of any kind, except as may be expressly set forth in the Purchase Agreement.

3. This Assignment will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. This Assignment is executed and delivered pursuant to, and is subject to the applicable terms and conditions of, the Purchase Agreement.

4. This Assignment will be governed by and construed in accordance with the laws of the State in which the Property is located applicable to contracts made and performed entirely therein.

5. The parties agree that this Assignment may be executed by the parties in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, Assignor and Assignee have caused this Assignment to be duly executed as of the Assignment Date written above.

**ASSIGNOR:**

[ \_\_\_\_\_ ],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

[ \_\_\_\_\_ ],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A    LEGAL DESCRIPTION**

**EXHIBIT E**  
**ESCROW INSTRUCTIONS**

1. Escrow Agent is authorized to take all appropriate action necessary to comply with this Agreement.

2. All money payable under this Agreement prior to Closing will be paid to Escrow Agent, unless otherwise specified. All funds received by Escrow Agent will be deposited by Escrow Agent in a federally-insured account in a State or National Bank (FDIC insured) unless otherwise directed in writing by both Seller and Buyer. Escrow Agent may not commingle the Deposit with other funds held in its "trustees account". Escrow Agent will invest the Deposit in an interest-bearing account meeting the above requirements if so directed by Buyer. Any interest earned on the Deposit will belong to Buyer and be treated and reported as the income of Buyer (regardless of the ultimate disposition of the Deposit) and Buyer will be responsible for paying all taxes on any interest earned on the Deposit, which obligation will survive the Closing.

3. Disbursement of funds from Escrow Agent to Seller or Buyer will be made by wire transfer. Unless otherwise specified by a Party, disbursement of any funds to any payee other than Seller or Buyer may be made by check of Escrow Agent. Escrow Agent will be under no obligation to disburse any funds represented by check or draft and no check or draft will be payment to Escrow Agent in compliance with any of the requirements hereof until it has commercially reasonable assurance that such check or draft has been or will be honored.

4. Any Party seeking release or disbursement of the Deposit prior to Closing will make written demand therefor upon both Escrow Agent and the other Party. If Escrow Agent intends to release the Deposit to either Party pursuant to this Agreement (other than at Closing), then Escrow Agent will give the other Party not less than five (5) Business Days prior written notice of such fact, and if Escrow Agent receives written notice during such five (5) Business Day period that such other Party objects to the release, then Escrow Agent will not release the Deposit and any such dispute will be resolved as provided herein. Escrow Agent will promptly notify both Parties of any actual release of the Deposit. All notices will be provided as required under the notice provisions of this Agreement.

5. When this Agreement and all title requirements have been complied with (including without limitation all conditions set forth in any closing instructions agreed to by Escrow Agent), Escrow Agent will deliver, file or record in the appropriate public office all necessary documents, disburse all funds and instruct the Title Company to issue the appropriate title insurance policy(ies).

6. Escrow Agent may for reasonable cause resign upon ten (10) days written notice to the Parties; provided that Escrow Agent will transfer the escrow together with all documents and funds to an escrow agent acceptable to both Seller and Buyer, or if Seller and Buyer cannot agree upon an acceptable escrow agent, then Escrow Agent will have the right to resign and interplead all funds and documents to a court of competent jurisdiction.

7. Escrow Agent may at its election, in the event of any conflicting demands made upon it concerning this Agreement where this Agreement does not clearly specify the course of action Escrow Agent is required to take, hold any money and documents deposited under this Agreement that are the subject of such conflict until it receives mutual instructions by all Parties

or until a civil action will have been concluded in a court of competent jurisdiction, determining the rights of the Parties. In the alternative, in such situation Escrow Agent may, at its discretion, commence a civil action to interplead any conflicting demands to a court of competent jurisdiction.

8. Escrow Agent will be entitled to rely upon any judgment, certification, demand or other writing delivered to it under this Agreement without being required to determine the authenticity or the correctness of any fact stated therein, the propriety or validity thereof, or the jurisdiction of a court issuing any such judgment. Escrow Agent may act in reliance upon (a) any instrument or signature believed to be genuine and duly authorized, and (b) advice of counsel in reference to any matter or matters connected therewith.

9. Escrow Agent will have no liability whatsoever arising out of or in connection with its activity as escrow agent except in the case of its negligence or willful misconduct or a breach by Escrow Agent of these Escrow Instructions, and Seller and Buyer jointly and severally agree to indemnify and hold harmless Escrow Agent from all loss, cost, claim, damage, liability and expenses (including reasonable attorneys' fees) that may be incurred by reason of its acting as escrow agent unless caused by Escrow Agent's negligence or willful misconduct or a breach by Escrow Agent of this Agreement.

10. If escrow fails to close because of Seller's default, Seller will be liable for any accrued costs or cancellation charges of Escrow Agent. If escrow fails to close because of Buyer's default, Buyer will be liable for any accrued costs or cancellation charges of Escrow Agent. If escrow fails to close as a result of any other termination of this Agreement, the Party terminating the Agreement will be liable for any accrued costs or cancellation charges of Escrow Agent.

11. Escrow Agent will be "the person responsible for closing" the transaction pursuant to Internal Revenue Code Section 6045(e), including preparing and filing the applicable IRS Form(s) 1099-S in compliance with Section 6045(e).

12. The provisions of these Escrow Instructions will survive the Closing or any earlier termination of this Agreement.

**SCHEDULE 1**  
**SELLER DELIVERIES**

1. Seller's existing environmental site assessment
2. Seller's existing title policy
3. Seller's existing survey of the Real Property
4. The Lease Termination Agreement between Seller and Tenant (with redactions of economic terms)
5. All service contracts, maintenance agreements, equipment leases, utility agreements and parking agreements to which Seller is a party relating to or affecting the Property. [None]
6. Information about any insurance claims made by Seller or a Seller Party with respect to the Property in the last 10 years [None]
7. Folder of construction plans related to the Property
8. Zoning letter dated September 22, 2010
9. Certificate of Occupancy dated March 6, 2003
10. A copy of the Lease between Seller and Tenant (with redactions of economic terms)

RESOLUTION NO. 138  
OF THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL  
AUTHORITY ADOPTING A SUPPLEMENTAL 2024 BUDGET RESOLUTION

**WHEREAS**, the Fort Collins Urban Renewal Authority (“Authority”) on December 4, 2023 adopted the annual budget for the fiscal year beginning January 1, 2024 and ending December 31, 2024 per Fort Collins Urban Renewal Authority Resolution No. 129, pursuant to and in accordance with Colorado local budgeting requirements and Colorado statute; and

**WHEREAS**, the Authority is entering into an Agreement of Purchase and Sale (“Purchase Agreement”) to acquire the property located at 1636 N. College Ave., Fort Collins, Colorado which requires paying into escrow a deposit of \$250,000.00 within three (3) business days of the effective date of the Purchase Agreement; and

**WHEREAS**, the amended 2024 budget, as revised by this Resolution, remains in balance as required by law; and

**WHEREAS**, this Resolution allocating funds to pay the deposit into escrow is within the existing Authority obligations and revenue funds available and is appropriate and necessary.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL AUTHORITY:**

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. That the 2024 appropriation for the North College Plan Area is hereby modified to provide for this \$250,000.00 budget request, and the remittance and reappropriation of the funds set forth in this Resolution is hereby authorized.

Section 3. The Authority acknowledges that a supplemental budget resolution related to the Authority’s 2025 budget is necessary to account for the remainder of the purchase price under the Purchase Agreement.

Section 4. The Authority finds that the required notice and opportunity for public inspection, were properly made and held in accordance with C.R.S. §§ 29-1-106 and 29-1-109.

Section 5. This Resolution is enacted as a supplemental budget and appropriation pursuant to C.R.S. § 29-1-109.

Section 6. If necessary, the Secretary of the Authority is directed to file a certified copy of this Resolution with the Division of Local Government, Department of Local Affairs, State of Colorado.

Passed and adopted at a regular meeting of the Board of Commissioners of the City of Fort Collins Urban Renewal Authority this 2<sup>nd</sup> day of December, 2024



FORT COLLINS URBAN RENEWAL  
AUTHORITY

By: \_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

RESOLUTION NO. 139  
OF THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL  
AUTHORITY ADOPTING A SUPPLEMENTAL 2025 BUDGET RESOLUTION

**WHEREAS**, the Fort Collins Urban Renewal Authority (“Authority”) on October 24, 2024 adopted the annual budget for the fiscal year beginning January 1, 2025 and ending December 31, 2025 per Fort Collins Urban Renewal Authority Resolution No. 136, pursuant to and in accordance with Colorado local budgeting requirements and Colorado statute; and

**WHEREAS**, the Authority is entering into an Agreement of Purchase and Sale (“Purchase Agreement”) to acquire the property located at 1636 N. College Ave., Fort Collins, Colorado for the purchase price of \$7,636,050.00 (less the initial deposit of \$250,000.00 from the 2024 Authority budget) which, if the Authority proceeds with the transaction after the Diligence Period (as defined in the Purchase Agreement), will be due upon the Closing Date (as defined in the Purchase Agreement); and

**WHEREAS**, the amended 2025 budget, as revised by this Resolution, remains in balance as required by law; and

**WHEREAS**, this Resolution allocating funds to pay the deposit into escrow is within the existing Authority obligations and revenue funds available and is appropriate and necessary.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL AUTHORITY:**

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. That the 2025 appropriation for the North College Plan Area is hereby modified to provide for this \$7,386,050.00 budget request, and the remittance and reappropriation of the funds set forth in this Resolution is hereby authorized.

Section 3. The Authority acknowledges that a supplemental budget resolution related to the Authority’s 2024 budget is necessary to account for the initial \$250,000.00 deposit escrowed and put towards the Purchase Price under the Purchase Agreement.

Section 4. The Authority finds that the required notice and opportunity for public inspection, were properly made and held in accordance with C.R.S. §§ 29-1-106 and 29-1-109.

Section 5. This Resolution is enacted as a supplemental budget and appropriation pursuant to C.R.S. § 29-1-109.

Section 6. If necessary, the Secretary of the Authority is directed to file a certified copy of this Resolution with the Division of Local Government, Department of Local Affairs, State of Colorado.

Passed and adopted at a regular meeting of the Board of Commissioners of the City of Fort Collins Urban Renewal Authority this 2<sup>nd</sup> day of December, 2024.

FORT COLLINS URBAN RENEWAL  
AUTHORITY

By: \_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

**Purchase and Sale Agreement**  
***1636 North College Avenue***



- **2019 - 2020: CSU Institute for the Built Environment and The Family Center/La Familia led series of community workshops**
  
- **Identified three broad categories for investment:**
  - ***Complete & Vibrant Neighborhood***
  - ***Infrastructure Improvements***
  - ***Community Hub***
  
- **Former Albertsons property identified as challenge, opportunity, and logical location for future community hub (“focal point”)**

- 50,907 square feet building on 4.68 acres
- Former grocery store constructed in 1994, closed in 2014 and vacant since
- Owned by a REIT (“Seller”), and leased by Albertsons (“Tenant”)



- In mid-2022, URA Staff began discussions with Seller to explore a potential sale between “willing” seller and buyer
- Signed a non-binding Letter of Intent (not a contract) in September 2023
- Purchase and Sale Agreement (“PSA”) negotiations began, but then stalled

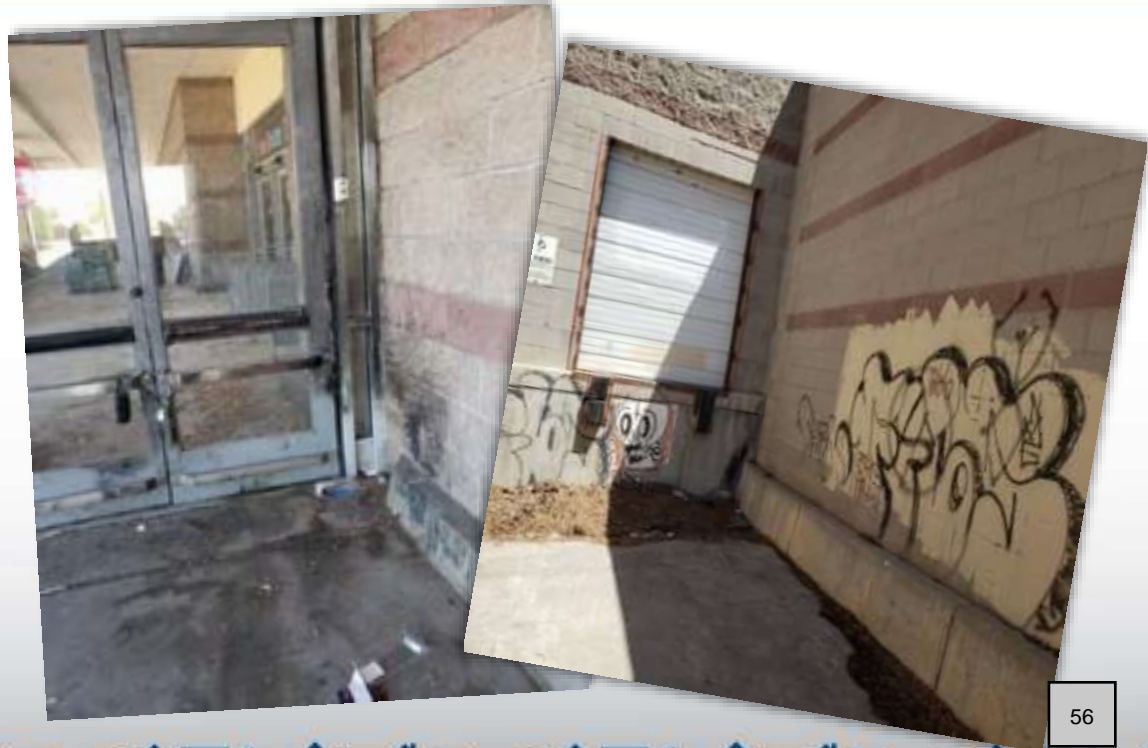




## Background: Purchase Process

### June 2024:

- ✓ Statutory blight conditions confirmed at the property
- ✓ URA Board authorized use of eminent domain, only if necessary





# Purchase and Sale Agreement

- ✓ URA Staff and Seller have continued to negotiate PSA terms
- ✓ Seller and Tenant negotiated a termination of their lease agreement
- ✓ Seller and URA staff agreed on PSA terms to be considered by URA Board; Seller signed their part of the PSA
- ✓ PSA provides URA right to purchase the Property, but does not obligate



## KEY TERMS

- **Price: \$7,636,050**
- **Due Diligence (Inspection) Period: 180 days**
- **Closing: 35 days after end of Due Diligence**
- **Earnest Money Deposit: \$250,000 (*refundable*)**

## KEY TERMS

- **Price: \$7,636,050**
  - ⑩ *\$150 per square foot of building*
  - ⑩ *Within range of internal and external valuation exercises*
- **Due Diligence (Inspection) Period: 180 days**
  - ⑩ *URA Board enjoys sole discretion to proceed or terminate*
  - ⑩ *PSA provides URA **right** to purchase the Property, but does not create an **obligation** to purchase*

- ✓ North College Urban Renewal Plan Area fund balance is currently estimated at \$8.3 million, approximately \$660,000 more than PSA purchase price
  - *\$2.4 million of revenue anticipated in 2025*
- ✓ Refundable earnest money deposit of \$250,000 is due 3 days after contract is signed by URA; remainder of purchase price due at closing
- ✓ URA Board may consider assortment of financial options to fund the purchase, including but not limited to refunding of existing bond debt and/or a loan



- ✓ **URA Board to consider 3 resolutions:**
  1. *Approval of PSA (authorize URA staff to sign)*
  2. *Appropriate PSA contract purchase price*
  3. *Appropriate earnest money deposit*
  
- ✓ **URA staff and service providers to conduct inspections and due diligence (physical, legal, financial, etc.)**
  
- ✓ **Continue strategic visioning process to identify use and/or redevelopment concepts, finances, and potential partners**





Questions?

