



APPENDIX K

PURCHASE AND SALE AGREEMENT – COMMERCIAL

(Property Disclosure Statement – pp. K-21 – K-24)





PURCHASE AND SALE AGREEMENT - COMMERCIAL

1. TERMS SUMMARY.

Date of Agreement, i.e., date of full execution (for reference purposes and for calculation of deadlines) _____, 2 _____

This Agreement includes the Property Disclosure Statement and:

- ___ Addendum
- ___ Financing Addendum
- ___ Other (describe: _____)

Offer Expiration Date: _____, 2 _____

Buyer: _____, a _____

Seller: _____, a _____

Property: _____

Address: _____

Legal Description: _____

Purchase Price: \$ _____

Earnest Money: \$ _____

Title Company: _____

Address: _____

Phone: _____ Facsimile: _____ Email: _____

Inspection Period: _____, 2 _____

Survey Type: ___ ALTA ___ Boundary ___ Other (describe: _____)

To be obtained and paid for by: ___ Buyer ___ Seller

Environmental Site Assessment: ___ Phase I ___ Phase II
___ Other (describe: _____)

To be obtained and paid for by: ___ Buyer ___ Seller

Closing Date: _____, 2 _____

Conveyance Documents:

- Deed: ___ General Warranty Deed
- ___ Special Warranty Deed
- ___ Quitclaim Deed
- ___ Other (describe: _____)
- ___ Assignment of Leases
- ___ Other (describe: _____)

Broker: _____, representing _____,
(___ is ___ is not a licensee in New Mexico), whose address is: _____



Broker: _____, representing _____,
(____ is ____ is not a licensee in New Mexico), whose address is: _____

Financing Contingency: _____ If checked, this Agreement is contingent upon Buyer obtaining financing on or before _____. (Attach Financing Addendum, if appropriate).

2. PROPERTY. Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price pursuant to the terms of this Purchase and Sale Agreement ("Agreement"). The parties agree that if the legal description of the Property in this Agreement is not accurate, this Agreement shall not be invalid and the legal description shall be revised in a manner acceptable to Buyer, Seller and Title Company. The Property includes all fixtures and permanent improvements located at the Property, including all mechanical systems, electrical systems, plumbing systems, heating, ventilating and air conditioning systems and equipment, sprinkler systems, security systems, fire detection systems, telephone distribution systems (lines, jacks and connections only), floor coverings, window coverings, elevators, signs, paving and landscaping. The Property includes all of Seller's interest in Existing Leases (as defined below), subleases, licenses, lease guaranties, easements, rights-of-way, streets, alleys, access rights, water rights, air rights, development rights, zoning rights and variances, and all other estates, rights, titles, interests, servitudes, tenements, and appurtenances of any nature whatsoever, in any way now or hereafter belonging to, relating to or pertaining to the Property. Service contracts, employment agreements, warranties and management agreements, to the extent they are assignable, will be included with the Property. This Agreement is not to be used for transactions involving an assignment of a ground lease. Unless specifically provided in an addendum to this Agreement, Buyer is not purchasing any personal property of Seller pursuant to this Agreement. (In the event Buyer is purchasing personal property of Seller in conjunction with purchase of the Property, Buyer should consult an attorney regarding necessary additional documentation).

3. EARNEST MONEY. Within **five (5) days** of the Date of Agreement, Buyer shall deliver the Earnest Money to the Title Company, to be held in escrow pursuant to the terms of this Agreement. The Earnest Money shall be held in a federally insured, interest bearing account selected by Title Company. Subject to the provisions of this Agreement, the Earnest Money and all accrued interest is to be applied toward the purchase of the Property at the Closing. Upon Title Company's request, Buyer agrees to provide Title Company with its Federal Tax Identification Number. If Buyer fails to deposit the Earnest Money as required by this Agreement, this Agreement shall be automatically terminated.

4. FINANCING. The financing terms, conditions and obligations are set forth in the Financing Addendum.

5. DISCLOSURE AND DELIVERY OF INFORMATION. Within **five (5) days** of the Date of Agreement, Seller shall deliver to Buyer a fully and accurately completed Property Disclosure Statement in the form attached to this Agreement. Within **ten (10) days** of the Date of Agreement, Seller shall provide to





Buyer true, correct and complete copies, to the extent that they are in Seller's control or possession, of the following: previously prepared environmental audits and inspections, physical inspection reports, maintenance information, warranties, service and other contracts, engineering reports, hydrology reports, drainage information, grading information, soils reports, topography information, utility reports and information, building plans and specifications, certificates of occupancy, plats, prior surveys, site plans, tax assessments and tax bills for the past two (2) years, utility bills, governmental and quasi-governmental notices, a schedule of all lawsuits (except suits initiated by Seller against tenants no longer occupying space at the Property) pending or threatened related to the Property (including a summary of relevant facts, status of the action, parties, court and attorneys involved), and such other information, notices, correspondence, agreements and other materials, if any, in Seller's possession related to the Property. If the Property includes a "residence" or "housing" that was constructed prior to 1978, Federal Lead-Based Paint Regulations will apply, and Seller must provide to Buyer, BEFORE accepting an offer from Buyer, disclosures and information required by Federal regulations. Whether the Property is subject to the Federal Lead-Based Paint Regulations is set forth on the Property Disclosure Statement. RANM Form 5112, Lead-Based Paint Disclosures Before Sale, may be used for these disclosures. In addition, Buyer has the right under the regulations, to have a lead paint hazard inspection and/or lead-based paint risk assessment performed within ten days after the Date of Agreement, unless a different period is selected or unless Buyer waives this right in writing. If neither a lead-based paint inspection nor a lead-based paint risk assessment is performed by Buyer, Buyer's signature on this Agreement will constitute a waiver by Buyer of both a lead-based paint hazard inspection and a lead-based paint risk assessment.

6. INSPECTION PERIOD. Buyer shall have the period of time set forth above as the Inspection Period to review the Property. During the Inspection Period, Buyer shall review all of the information regarding the Property provided by Seller. In addition, during the Inspection Period, Buyer may perform such other inspections and review such other information as is desired by Buyer. Such inspections, unless otherwise specified in this Agreement, shall be at Buyer's expense. Such inspections and reviews may include, but are not limited to, physical inspection of the Property, environmental inspection of the Property, soil inspection, review of governmental approvals and permits related to the Property, zoning, title, survey, leases, financial information related to the Property, service agreements, management contracts, and other agreements related to the Property. Seller authorizes Buyer to request zoning and other similar certifications from applicable governmental and quasi-governmental authorities. Buyer agrees to not unreasonably disturb Seller's tenants at the Property and to conduct all inspections and tests at times mutually acceptable to Buyer and Seller. Seller releases Buyer from all claims and liabilities arising out of such requests by Buyer, including but not limited to enforcement actions triggered by such requests. During the Inspection Period, Buyer is specifically entitled to review the following:

A. Physical Inspection. Buyer, at Buyer's election and expense, may obtain a physical inspection, lead-based paint hazard inspection and/or lead-based paint risk assessment concerning the Property.





B. Title. Within **five (5) days** of the Date of Agreement, Seller shall obtain a title commitment ("Title Commitment") from Title Company. All costs associated with the Title Commitment, unless otherwise specified in this Agreement, shall be paid for by Seller. Along with the Title Commitment, Title Company shall provide to Buyer copies of all documents listed as exceptions, a property tax search and copies of all plats related to the Property. Buyer shall be entitled to review title to the Property during the Inspection Period.

C. Survey. The survey of the Property of the type specified above shall be obtained by the party designated. The survey shall be obtained as soon as practicable and, in any event, within **twenty one (21) days** of the Date of Agreement. If an ALTA survey is designated, the survey shall be prepared consistent with the American Land Title Association/American College on Survey & Mapping standards for urban surveys, including the optional items on Table A as selected by the party obtaining the survey. If a boundary or other survey is to be obtained, such survey shall be prepared consistent with the Minimum Standards for Surveying in New Mexico. All surveys shall be certified to Seller, Buyer, Title Company and Buyer's lender, if any. The "Flood Zone" status of the Property shall be reflected on the survey.

D. Leases. During the Inspection Period, Buyer may review all leases, subleases, lease guaranties, licenses, concession agreements and other rental or occupancy arrangements (collectively "Existing Leases") affecting the Property. Prior to the Closing, Seller shall obtain an estoppel certificate ("Estoppel Certificate") covering such matters and on a form mutually acceptable to Buyer and Seller from each tenant at the Property. Seller shall use its best efforts to obtain all Estoppel Certificates as soon as possible and in any event on or before the Closing Date. If any Estoppel Certificate cannot be obtained in a timely manner, Seller shall promptly give notice to Buyer of Seller's failure to obtain such Estoppel Certificate; and, in such event, Buyer, within **three (3) days** after notice is given, may terminate this Agreement and have the Earnest Money, including accrued interest, delivered to Buyer.

E. Environmental Site Assessment. The Environmental Site Assessment of the Property shall be obtained by the party set forth above, at such party's expense, within **twenty one (21) days** of the Date of Agreement. The environmental site assessment of the Property shall be of the type specified above and shall be performed in a manner consistent with the standards created by American Society for Testing and Materials Standards.

F. Soil and Drainage Inspection. Buyer, at Buyer's election and expense, may obtain soil and drainage inspections and tests concerning the Property.

7. BUYER'S ENTRY. Buyer shall be responsible for all costs, expenses, liabilities and damages incurred by Seller as a result of Buyer's entry onto the Property prior to the Closing. Buyer shall return the Property to the condition it was in prior to any entry, test and/or inspection by Buyer. All inspections and tests conducted by Buyer regarding the Property shall be promptly paid for by Buyer. Buyer indemnifies and agrees to defend Seller and the Property from any and all claims, liabilities, liens, losses, expenses (including reasonable attorneys' fees and costs), and/or damages arising out of or





related to any such entry, inspections and/or tests by Buyer, its agents, contractors and employees, in connection with this Agreement.

8. BUYER'S OBJECTION. Prior to the end of the Inspection Period, Buyer may disapprove the Property and/or any item related to the Property. In such event, Buyer, at Buyer's election, may either terminate this Agreement or give notice to Seller requesting that Seller cure the items disapproved by Buyer. Seller shall have the obligation, at Seller's expense, to satisfy and remove at or before the Closing all monetary encumbrances disapproved by Buyer. Regarding disapproval by Buyer of items other than monetary encumbrances, within **five (5) days** of Buyer's notice requesting Seller's cure, Seller shall provide notice to Buyer of Seller's proposed cure and the time period necessary for Seller to effectuate the cure. Upon receipt of the response from Seller, Buyer shall within **three (3) days** elect to either terminate this Agreement or accept Seller's proposed cure. If Buyer elects to terminate this Agreement, the Earnest Money, including accrued interest, shall be delivered to Buyer. If Buyer agrees to Seller's proposed cure, the Closing Date shall be extended, if necessary, consistent with the time period specified for Seller's cure. If Buyer does not disapprove the Property or Seller's proposed cure in writing, Buyer shall be deemed to have approved the Property and the Earnest Money shall become non-refundable.

9. SELLER'S REPRESENTATIONS AND WARRANTIES. Except as is expressly disclosed in the Property Disclosure Statement, Seller, to the best of Seller's current, actual knowledge, makes the following representations and warranties to Buyer as of the Date of Agreement and as of the Closing:

A. Seller is the sole owner of the Property and has the full right, power and authority to sell the Property to Buyer as provided in this Agreement

B. Seller is not aware of any adverse soil, topography, hydrology or drainage condition at the Property.

C. Seller is not aware of any hazardous materials, hazardous conditions, toxic substances, asbestos, or contaminated substances, including but not limited to asbestos, lead based paint and/or PCB transformers at the Property.

D. Seller has not received any notice from any governmental or quasi-governmental entity.

E. The Property has never been used as a dump, landfill or other similar use and the Property has never had an above ground or an underground storage tank located on it.

F. All information and documents provided by Seller to Buyer regarding the Property are true, correct and complete. Notwithstanding the foregoing, Seller is not providing any representation or warranty to Buyer regarding the sufficiency, accuracy, completeness, or correctness of any information or report prepared by any party other than Seller. Seller does not provide any representation or warranty to Buyer concerning the skill or competency of any third party producing any such information.





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G. Seller is not aware of any unpaid liens or assessments, or items which could result in a lien, related to the Property.

H. Water service, electric service, natural gas, telephone service, and public sewer service are presently serving the Property.

I. The Property is not subject to any historical property designation and/or development limitation.

J. Seller will not violate or modify any existing lease or Other Agreement, or create any new lease or Other Agreement affecting the Property, without Buyer's prior written approval.

K. No person other than tenant(s) pursuant to the Existing Leases shall have any right to possession of the Property.

L. No work has been performed which has not been paid for or which could give rise to any mechanic's or materialmen's lien being filed against the Property.

M. No lawsuit or other claim is pending or threatened against Seller and/or the Property.

N. No tenant or occupant of the Property is subject to any bankruptcy, receivership, probate or insolvency proceeding.

O. Seller is not subject to any bankruptcy, receivership, probate or insolvency proceeding.

P. Seller has not collected and will not collect any rent or other monies related to the Property for any period after the Closing Date.

Seller's representations and warranties shall survive the Closing.

10. PRORATIONS, ADJUSTMENTS AND TRUST FUNDS. At the Closing, the following shall occur:

A. Taxes, Assessments, Unpaid Existing Impact Fees. Applicable real property taxes shall be prorated through the Closing Date, based upon the latest tax information available to Title Company. Seller shall pay all special assessments, standby charges, prorata charges and other similar charges and/or assessments existing as of the Closing.

B. Insurance. All insurance obtained by Seller will terminate on the Closing Date. Buyer is advised to obtain appropriate insurance related to the Property effective as of the Closing Date.





C. Rent, Security Deposits and Related Expenses. All rent and other similar monies, including but not limited to common area maintenance fees, utilities, operating expenses and other "pass-throughs," shall be prorated as of the Closing Date. The parties agree to promptly adjust between themselves outside of the escrow any rents received after the Closing Date. All security deposits pursuant to Existing Leases shall be delivered to Buyer and paid for by Buyer at the Closing.

D. Loan Impounds. At the Closing, Seller shall assign to Buyer, and Buyer shall pay for all impounds or trust funds (including but not limited to insurance escrows, tax escrows, and replacement reserves), held by the lender regarding any loan being assumed by Buyer).

E. Other Charges Related to the Property. All other charges related to the Property, including but not limited to utility bills, service contracts, and management fees shall be paid by Seller through the Closing Date. All service contracts, management agreements and other contracts, unless specifically approved and assumed by Buyer in writing at the Closing, shall be terminated by Seller effective as of the Closing Date. Buyer shall pay for all fees incurred in conjunction with the assignment of any service contract, management agreement and/or other contract. Buyer shall be responsible for changing over to Buyer all utilities as of the Closing Date. Utility deposits, if any, shall be assigned to Buyer and be paid for by Buyer at the Closing. Title Company is hereby authorized to retain such monies out of the closing proceeds as are reasonably necessary to pay utility charges which could result in a municipal lien being filed against the Property for any period of time prior to the Closing Date.

11. MATERIAL CHANGE. No Material Change, as hereinafter defined, shall have occurred before the Closing with respect to the Property that has not been approved in writing by Buyer. For purposes of this Agreement, "Material Change" shall mean a change in the status of a use, occupancy, tenants, financial condition or physical condition of the Property. In the event of a Material Change, Buyer, at Buyer's election, may terminate this Agreement within **ten (10) days** of receiving notice from Seller of such Material Change. If Buyer terminates this Agreement, the Earnest Money and all interest accrued thereon shall be returned to Buyer.

12. RISK OF LOSS. In the event of damage or destruction of all or any portion of the Property by wind, water, fire or other casualty, Seller will promptly notify Buyer of the nature and extent of such damage or destruction. In such event, Buyer, in its sole discretion, within **thirty (30) days** of such notice, may either terminate this Agreement, negotiate a mutually acceptable reduction in the Purchase Price, obtain an assignment of insurance proceeds from Seller or apply insurance proceeds actually received by Seller as of the Closing to the Purchase Price. Prior to the Closing, risk of loss with respect to the Property shall be on Seller. After the Closing, risk of loss with respect to the Property shall be on Buyer.

13. CONDEMNATION. Promptly upon obtaining knowledge of any threatened or filed condemnation proceeding against all or any portion of the Property, Seller or Buyer will notify the other party of such proceeding. In such event, Buyer, in its sole discretion, may either terminate this Agreement, negotiate a mutually acceptable reduction in the Purchase Price, obtain an assignment of





condemnation proceeds from Seller or apply condemnation proceeds actually received by Seller as of the Closing to the Purchase Price.

14. CLOSING. The closing ("Closing") shall occur on the Closing Date. All documents shall be delivered by the respective parties to Title Company to be held in escrow pending the Closing. Each document shall be duly executed and, if the document is to be recorded, duly acknowledged. For the Closing, Seller shall deliver the following:

- A.** The Deed, of the type specified above, subject only to the title items not objected to by Buyer during the Inspection Period.
- B.** An assignment of the Existing Leases.
- C.** An affidavit executed by Seller providing that Seller is not a "foreign person" as established by Internal Revenue Code Section 1445 or successor statutes.
- D.** Other applicable closing documents required or specified by this Agreement.
- E.** Closing statement prepared by Title Company for Seller.

For the Closing, Buyer shall deliver the following:

- A.** The balance of the Purchase Price.
- B.** Other applicable closing documents required or specified by this Agreement.
- C.** Documents, if any, related to Buyer's financing for the Property.
- D.** Closing statement prepared by Title Company for Buyer.

As soon after the Closing as is reasonably practicable, Title Company shall issue to Buyer a standard New Mexico form Owner's Title Insurance Policy, effective as of the Closing Date, in the amount of the Purchase Price, insuring title to the Property vested in Buyer, in a form consistent with the Title Commitment, and subject only to exceptions not objected to by Buyer during the Inspection Period. Seller shall pay the premium for the standard New Mexico form Owner's Title Insurance Policy. Buyer shall pay the premium for all endorsements, deletions/modifications of Schedule B, II items and/or extended coverages to the Owner's Title Insurance Policy. Buyer shall pay the premium for any Loan Title Insurance Policy in favor of Buyer's lender, if any.

All documents shall be in a form mutually acceptable to Buyer and Seller. Prorations shall be handled at the Closing as set forth in this Agreement. Buyer and Seller shall each pay for one-half of the escrow charges and/or closing fees of Title Company. Buyer shall pay all costs related to obtaining any financing





related to the Property and the cost of recording all documents transferring the Property to Buyer. All other Closing costs shall be handled as is otherwise agreed to in writing by Buyer and Seller.

15. POSSESSION. Possession of the Property (subject to the rights of tenants under the Existing Leases) and keys to the Property shall be delivered by Seller to Buyer at the Closing.

16. DEFAULT AND REMEDIES. Before exercising any remedy, the non-defaulting party shall give the defaulting party **five (5) days** written notice specifying the default, and the defaulting party shall be permitted to cure the default in such period. If a default occurs under this Agreement, then this Agreement may be terminated at the option of the non-defaulting party. If the non-defaulting party elects to treat this Agreement as terminated, the Earnest Money and all accrued interest thereon, shall be delivered to the non-defaulting party and the non-defaulting party may pursue any additional remedies available at law, in equity or otherwise. In the event, however, the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to specific performance. Buyer and Seller acknowledge and agree that Broker(s) will not in any circumstance be responsible for any breach by either party under this Agreement. If a default occurs under this Agreement then the defaulting party shall be liable to the non-defaulting party for all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the non-defaulting party as a result of the default.

17. DISCLAIMERS. Buyer acknowledges that it is acquiring the Property based on Buyer's own review and inspection. Buyer is acquiring the Property "AS IS " and "WITH ALL FAULTS." Except as expressly provided in this Agreement, Seller makes no representation, warranty, inducement, promise, agreement or assurance regarding the Property, including but not limited to any warranty or representation as to condition, compliance with laws, zoning, water, soil, access, size, marketability, value, future value, utilities, occupancy, or otherwise. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. Buyer acknowledges that it is not relying upon any representation or warranty by any Broker.

18. REAL ESTATE BROKERS. The parties acknowledge that the Broker(s) are the procuring cause of this Agreement. The parties acknowledge that the specific relationship(s) of Buyer and Seller with such Broker(s) has been established pursuant to separate written agreement. In consideration of the real estate brokerage service rendered by Broker(s), Seller agrees to pay Broker(s) a real estate brokerage fee, plus applicable gross receipts tax thereon, as established by the separate written agreement. Such real estate brokerage fee, including applicable gross receipts tax thereon, shall be divided in such shares as the Broker(s) shall direct Title Company in writing. Broker(s) shall be a third party beneficiary of this Agreement. This Agreement shall serve as an irrevocable instruction to Title Company to pay such real estate brokerage fee, including applicable gross receipts tax thereon, to Broker(s) out of the Seller's proceeds from the Closing. Other than Seller's obligations to the Broker(s) as set forth above, Buyer and Seller represent to each other that they have had no dealings with any other broker, or agent, and that no person or entity, other than the Broker(s) has any claim for a fee or commission in conjunction with





the sale covered by this Agreement. Each party indemnifies and agrees to defend the other party from any and all costs and liabilities arising from any breach of any representation contained in this paragraph.

19. FURTHER ACTION. Buyer and Seller agree to take such other and further action, and execute such additional documents, as are reasonably necessary to consummate the sale pursuant to this Agreement or which are reasonably required by the Title Company in conjunction with the Closing.

20. BACK UP OFFERS. Buyer agrees that until such time as Buyer has approved the condition of the Property or waived any contingency of Buyer set forth in this Agreement, Seller may solicit and/or accept back-up offers to purchase the Property.

21. NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing and may be either hand-delivered, sent by recognized overnight courier (for next day delivery) or mailed, postage prepaid, certified mail, return receipt requested, addressed to the parties and the Brokers at their respective addresses set forth above. If any notice is hand-delivered, it shall be deemed given upon delivery. If any notice is sent by recognized overnight courier, it shall be deemed given upon delivery by the courier. If any notice is mailed, it shall be deemed given three (3) business days after deposit in the United States mail. A party may change its address for notices by sending a notice to the other party pursuant to the terms of this paragraph. **FACSIMILIE AND EMAIL COMMUNICATIONS SHALL NOT BE USED FOR NOTICES PURSUANT TO THIS AGREEMENT.**

22. AUTHORITY. Each party signing this Agreement represents and warrants to the other party that it has full legal power, authority and right to execute, deliver and perform the obligations under this Agreement. Each party represents and warrants to the other party that the transactions contemplated by this Agreement and each person signing this Agreement and/or any document at the Closing has been duly authorized by all requisite action and that no remaining action or third-party consent is required. If Seller is an entity, Seller represents and warrants to Buyer that it is duly formed, validly existing and in good standing under the laws of the State of its organization (as set forth above) and qualified to do business in New Mexico. If Buyer is an entity, Buyer represents and warrants to Seller that it is duly formed, validly existing and in good standing under the laws of the state of its organization (as set forth above) and qualified to do business in New Mexico.

23. AMENDMENT. This Agreement cannot be amended except by a written document executed by the party against whom such amendment is to be enforced.

24. INVALIDITY. If any provision of this Agreement is determined to be invalid, ineffective, inoperative, unenforceable, or contrary to law, all of the remaining provisions of this Agreement shall remain in full force and effect.

25. CONFIDENTIALITY. Buyer and Seller agree that at all times after the Date of Agreement and prior to the Closing, unless consented to in writing by the other party or required by law, no party shall





issue a press release or other public disclosure concerning the pending sale of the Property. Buyer and Seller agree to notify their employees, agents, contractors and Broker(s) involved in the sale of this confidentiality provision. No memorandum or other document referencing this Agreement shall be recorded.

26. ASSIGNMENT. No party may assign this Agreement without the prior written consent of the other party.

27. ATTORNEY REVIEW. Buyer and Seller each acknowledge and agree that this Agreement is a legally binding document and that each party has had a full opportunity to have its respective attorney review, revise and negotiate this Agreement. Consequently, neither party shall be deemed to have had the responsibility of drafting this Agreement if this Agreement at any time is construed or interpreted.

28. GOVERNING LAW. This Agreement shall be governed by the law of the State of New Mexico.

29. WAIVER. No waiver or failure by any party to enforce any breach of this Agreement shall be considered to be a waiver of any subsequent breach, regardless of the time, nature or form of the subsequent breach. All waivers must be in writing to be effective.

30. ENTIRE AGREEMENT. This Agreement (including all exhibits and addenda) and the Property Disclosure Statement covering the Property constitute a fully integrated document and represent the entire understanding and agreement between Buyer and Seller regarding the Property. All prior discussions, events, or representations, warranties and agreements regarding the Property are hereby superseded and replaced by this Agreement. The parties to this Agreement affirm that the terms and provisions of this Agreement accurately reflect their intent. All exhibits and addenda to this Agreement are incorporated into this Agreement as operative provisions.

31. TIME OF THE ESSENCE. Time is of the essence under this Agreement.

32. CAPTIONS AND DEFINED TERMS. The headings and captions contained in this Agreement are for convenience and reference purposes only and shall not define, limit or otherwise affect the terms and conditions of this Agreement. Capitalized words shall have the definition specified in this Agreement, including the definitions set forth in the "Terms" paragraph.

33. LIMITATION OF REAL PROPERTY INDEMNIFICATIONS. To the extent applicable, if at all, the indemnifications contained in this Agreement are subject to and limited by the provisions of Section 56-7-1 of the New Mexico Statutes.

34. DURATION. If this Agreement is not fully executed by both Buyer and Seller on or before the Offer Expiration Date, the offer evidenced by this partially executed document shall be automatically withdrawn. In such event, all Earnest Money that already has been deposited with the Title Company, and all accrued interest, shall be delivered to Buyer.





35. COUNTERPARTS. This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one (1) document.

36. BASIC LICENSEE'S DUTIES: By regulation of New Mexico Real Estate Commission, all licensees must disclose Basic Licensee's Duties. Please find attached RANM Form 1401 "Realtor's Association of New Mexico, Basic Licensee's Duties" which describe the basic duties of all Real Estate professional in the State of New Mexico.

SELLER:

BUYER:

_____, a _____

_____, a _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Execution Date: _____

Execution Date: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Email: _____

Email: _____

Attn: No representation or recommendation is made by the Realtors Association of New Mexico ("RANM"), The Commercial Association of Realtors-New Mexico ("CARNM") or by any Broker as to the legal sufficiency, legal effect or tax consequences of this Agreement or the sale to which it relates. The parties are urged to:

1. Seek the advice of appropriate legal and tax counsel and advisors concerning the consequences of this Agreement; and,
2. Obtain the assistance of appropriate experts and consultants to review and investigate the Property during the Inspection Period.

This Agreement is meant to be used in connection with the sale of commercial real property. RANM and CARNM make no warranty as to the legal effectiveness, appropriateness or validity of this form. RANM and CARNM disclaim any liability for damages resulting from use of this form. By use of this form, the parties agree to the limitations set forth in this paragraph. The parties hereby release RANM, CARNM the real estate brokers, their agents and employees, from all liabilities, claims and damages resulting out of the use of this form. Buyer and Seller should consult their own attorneys, accountants and consultants regarding the effectiveness, validity, and/or consequence of use of this form. This form is not intended to identify the user as a REALTOR®. REALTOR® is a



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June 2010



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registered collective membership mark which may be used only by real estate licensees who are members of the National Association of Realtors® and who subscribe to the National Association of Realtor's® code of ethics.



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June 2010



Phone: _____
Facsimile: _____
Email: _____

Phone: _____
Facsimile: _____
Email: _____



Insert RANM 1401





FINANCING ADDENDUM - COMMERCIAL

This Financing Addendum is part of the Agreement dated _____, 2____, covering the Property at _____ . The parties further agree as follows regarding financing:

Type of Financing:

A. Seller Financing (mortgage or deed of trust).

\$_____ to be paid by Buyer to Seller pursuant to a promissory note ("Note"). The Note shall be amortized on a straight line basis over _____ years and interest shall accrue at the rate of _____% per year. Payments pursuant to the Note shall commence on _____ and shall continue on the ____ day of each succeeding _____. All amounts which remain owed pursuant to the Note shall be paid on _____. The Note shall be secured by a: (a) _____ mortgage; or (b) _____ deed of trust covering the Property, on a form acceptable to Seller.

B. Seller Financing (real estate contract).

\$_____ to be paid by Buyer to Seller, which obligation shall be evidenced and secured by a real estate contract. The terms of the real estate contract shall be mutually acceptable to Buyer and Seller. (RANM Form 2402, Addendum to Purchase Agreement - Real Estate Contract, may be used to set forth the terms of the real estate contract.)

C. Assumption of Existing Loan.

\$_____ by Buyer assuming and agreeing to pay an existing loan in this approximate amount, presently payable at \$_____ per _____ including principal, interest presently at _____% per year. Buyer agrees to pay all assumption and related fees.

CAUTION: LENDER'S APPROVAL OF AN ASSUMPTION MAY BE REQUIRED BY EXISTING LOAN DOCUMENTS.

D. New Loan.

\$_____ by Buyer obtaining a new loan. The new loan shall be on terms and conditions, and from a lender, acceptable to Buyer.

Existing Loan Review. If an existing loan is not to be paid and released at Closing, Seller shall furnish copies of all loan documents to Buyer within **ten (10) days** after the Date of Agreement.





Credit Information. If Buyer is to pay all or part of the Purchase Price by executing a promissory note or a real estate contract to Seller, or if an existing loan is not to be released at closing, this Agreement is conditioned upon Seller's approval of Buyer's credit worthiness, which shall be determined by Seller, in Seller's sole discretion. Buyer shall promptly provide such financial statements, personal and business income tax returns, employment records, credit records, references and other documents and information as and when Seller reasonably requires, but in any event, no later than _____. Buyer authorizes Seller to verify Buyer's credit history. If Seller does not provide notice of Seller's disapproval on or before _____, this condition shall be deemed satisfied. If Seller gives notice disapproving Buyer, the Agreement shall terminate, and the Earnest Money, and all accrued interest, shall be delivered to Buyer.

Diligence. Buyer agrees to diligently pursue financing.

Costs. Buyer shall pay all costs and fees related to financing.

Additional Financing Terms. The parties further agree regarding financing as follows:

Caution: If any financing or lien other than a first lien on the Property is involved, the parties are encouraged to contact an attorney. The parties should contact an attorney for preparation of the documents evidencing any seller financing.

SELLER:

BUYER:

_____, a

_____, a

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Execution Date: _____

Execution Date: _____

Address: _____

Address: _____



Kirtland AFB Joint Land Use Study

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Phone: _____
Facsimile: _____
Email: _____

Phone: _____
Facsimile: _____
Email: _____





PROPERTY DISCLOSURE STATEMENT- COMMERCIAL

This Property Disclosure Statement ("Statement") discloses Seller's current, actual knowledge of the condition of the Property (described below) as of the date signed by Seller. This Statement does not relieve Seller of the obligation to disclose a condition of the Property that may not be addressed on this form and/or a change in any condition of the Property occurring after the date of this Statement. This Statement is not a substitute for inspection by Buyer. Conditions may exist which are unknown to Seller. This Statement does not relieve a Buyer of the responsibility to independently review and investigate the Property. The Realtors Association of New Mexico, the Commercial Association of Realtors-New Mexico, and the Brokers do not warrant or guarantee the sufficiency, accuracy, completeness, or correctness of any information in this Statement. Seller understands and intends that the information and representations provided in this Statement will be relied upon. This Statement covers the property having an address of _____

_____, which is generally described as: _____

_____ ("Property"). Seller, to the best of Seller's current, actual knowledge, represents, warrants and certifies to Buyer, and Buyer's agents, contractors, inspectors and lenders, as follows regarding the Property:

1. Material Physical Defects. There are not any material physical defects in the Property, any improvements at the Property, and/or structures on the Property (including, but not limited to the roof), except (if there are no exceptions write "NONE"): _____
_____.

2. Physical Damage. The Property has not suffered any material casualty, fire damage or other damage, except (if there are no exceptions write "NONE"): _____
_____.

3. Equipment. The mechanical systems, electrical systems, plumbing systems, heating, ventilating and air conditioning systems and equipment, sprinkler systems, security systems, fire detection systems, telephone distribution systems (lines, jacks and connections only), elevators, and other similar equipment and fixtures existing on the Property are in good operating order and condition, except (if there are no exceptions write "NONE"): _____

_____.





4. **Soil Conditions.** The Property does not have any slipping, sliding, settling, flooding, ponding or any other grading, drainage or soil problems, except (if there are no exceptions write "NONE"):

_____.

5. **Utilities and Assessments.** The Property is served by the following utilities (check the appropriate boxes) _____ water service, _____ electric service, _____ natural gas, _____ telephone service, _____ public sewer service and other: _____

_____. Owner represents and warrants that all costs and assessments related to such utilities have been fully paid. The following telecommunications services are available at the Property: _____
_____.

6. **Compliance with Laws.** No aspect or condition of the Property violates applicable laws, rules, regulations, codes, or covenants, conditions or restrictions, except (if there are no exceptions write "NONE"):

_____.

7. **Improvements.** No improvements or alterations have been made to the Property without any permit where a permit was required, except (if there are no exceptions write "NONE"):

_____. The following certificates of occupancy have been issued regarding the Property: _____

_____.

8. **Actions, Suits or Proceedings.** No action, suit or proceeding is pending or threatened before any court, arbitration tribunal, governmental agency, quasi-governmental agency, commission, board, bureau, or instrumentality that would affect the Property or the right or ability of an owner or tenant to convey, occupy or utilize the Property, except (if there are no exceptions write "NONE"):

_____.

9. **Governmental Proceedings.** No existing or threatened condemnation, environmental, zoning, redevelopment agency plan or other land use regulation proceeding exists, except (if there are no exceptions write "NONE"):

_____.





10. **Contracts.** No service contract or other contract exists affecting the Property, except (if there are no exceptions write "NONE"): _____

11. **Unrecorded Title Matters.** No unrecorded claim, encumbrance, covenant, condition, restriction, easement, lien, charge or other matter exists regarding the Property, except (if there are no exceptions write "NONE"): _____

12. **Leases.** No lease, sublease or other tenancy agreement exists affecting the Property, except (if there are no exceptions write "NONE"): _____

13. **Options.** No option to purchase, option to lease, right of first refusal, right of first offer or other similar agreement exists regarding the Property, except (if there are no exceptions write "NONE"): _____

14. **Lead-Based Paint.** If the Property includes a "residence" or "housing" that was constructed prior to 1978, Federal Lead-Based Paint Regulations will apply. The Property ____ is ____ is not subject to the Federal Lead-Based Paint Regulations.

SELLER:

a _____

By: _____

Print Name: _____

Its: _____

Execution Date: _____

By signing below, Buyer acknowledges receipt of



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←-----→

this Statement. By signing below, however, Buyer has not indicated approval or disapproval of the Property and/or the information contained in this Statement.

BUYER:

a _____

By: _____

Print Name: _____

Its: _____

Execution Date: _____

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