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Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR MARICOPA COUNTY

STATE OF ARIZONA ex rel. LAUREN)
KINGRY, Superintendent of the Arizona)
Department of Financial Institutions,)
Plaintiff,)
v.)
LANDMARC CAPITAL &)
INVESTMENT COMPANY,)
Defendant.)

Cause No. CV2009-020595

PETITION NO. 58

PETITION TO CONFIRM SALE OF
REAL PROPERTY LOCATED AT 9224
E. HIGHWAY 92, HEREFORD,
ARIZONA 85615

(Assigned to the Honorable Eileen Willett)

Lauren W. Kingry, as the court appointed Receiver, respectfully petitions the Court as follows:

1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On

1 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*
2 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,
3 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*
4 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as
5 Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
6 Receivers to carry on the day to day business of Landmarc.

7 2. In accordance with the Receivership Order, the Receiver located and took
8 possession of certain real property, located at 9224 East Highway 92, Hereford, Arizona
9 (“Property”). This Property is legally described in Exhibit “A” attached hereto and was
10 acquired in October 2008 by Landmarc Capital & Investment Company (“Landmarc”)
11 through foreclosure of Loan No. LC050509. The Property is currently titled in the name of
12 Arizona Valuations, LLC.

13 3. On August 2, 2011, this Court entered *Order Re: Petition No. 46*, which
14 approved a Settlement Agreement between the Receiver and Melvin Harter Ministries, Inc.
15 (“MHMI”) and Melvin E. Harter (“Harter”). Under the Settlement Agreement, MHMI was
16 given the opportunity to acquire the Property by paying \$450,000 on or before October 31,
17 2011. MHMI did not exercise its right to acquire the Property.

18 4. The Property is not occupied and is not encumbered by any indebtedness, other
19 than obligations for real estate taxes and assessments.

20 5. Because the Property contains structures that necessitate the expenditure of time
21 and funds to provide security and insurance, the continued holding of the Property is not

1 necessary or appropriate to protect the interests of any of the persons interested in this
2 receivership. Accordingly, the Receiver requests approval of the sale as provided herein.

3 6. On January 4, 2011, Jeffrey C. Patch of Tucson Real Estate Appraisal
4 submitted to the Receiver a Restricted Use Appraisal Report on the Property (“Report”).
5 Jeffrey C. Patch has been issued Certificate Number 30263 by the State of Arizona as a
6 Certified General Real Estate Appraiser. The Receiver has agreed to pay this appraiser a fee
7 of \$5,000 for this appraisal and the appraiser has no known interest in any of the parties or in
8 the sale of the Property.

9 7. The Report indicates that the Property consists of 62.31 acres with ten buildings
10 totaling 90,334 square feet. The Report indicates that the market value of the land assuming
11 no improvements is \$250,000 and that the improvements have a total depreciated replacement
12 cost of \$1,000,000. The Report goes on to note that “the reliability of the Cost Approach is
13 greatly reduced due to the excessive amount of physical curable, physical incurable,
14 functional obsolescence, and external obsolescence.” The Report indicates that the highest
15 and best use of the Property would be for a religious or social service use employing the
16 existing improvement. Combining the value of the land as if vacant, to the depreciated
17 replacement cost of the improvements totals \$1,250,000 as the opinion of value in use. The
18 Report also notes that \$1,250,000 sets the upper limit of value and that any serious offers in
19 excess of \$250,000 should be seriously considered.¹
20

21 ¹ Separately in the Report the appraiser states, without explanation or justification, that the “value in use” is \$2,250,000. This statement is directly contradicted by the narrative discussion in the Report.

1 8. Prior to entering into the Settlement Agreement, the Receiver engaged the
2 services of Henry K. Zipf and Henry Zipf Realty Co., to market the Property, under which the
3 Receiver agreed to pay a 6% sales commission, subject to the approval of this Court.

4 9. On September 26, 2011, the Receiver received an offer from Snow Music Corp.
5 to purchase the Property for \$600,000 under terms that were not acceptable to the Receiver.
6 The Receiver thereafter submitted to Buyer a counter offer which has been accepted. These
7 documents constitute the Purchase Agreement and are attached hereto as Exhibit "2". The
8 Purchase Agreement provides for the sale of the Property for \$600,000 in cash and is
9 conditioned upon approval by this Court and the failure of MHMI to acquire the Property as
10 provided in *Order Re: Petition No. 46*.

11 10. The sale contemplated under Exhibit "2" is conditioned upon, and will not take
12 place in the absence of, an order of this Court approving such sale after notice and a hearing.

13 11. In accordance with this Court's *Order Re: Petition Number 2*, the Receiver:

14 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
15 Hearing, to all persons on the Master Service List and other interested persons as
16 indicated in the Proof of Mailing filed herewith;

17 b. Intends to publish notice of this sale in a newspaper of general
18 circulation within the county in which this action is pending; and

19 c. Intends to publish notice of this sale in a newspaper of general
20 circulation within the county in which the Property is located.

21

EXHIBIT "ONE"

PARCEL I: (Tax Parcel No. 104-68-013B)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
thence North 89° 52' 26" East, a distance of 509.87 feet to the POINT OF BEGINNING;
Thence North 89° 52' 26" East, a distance of 530.00 feet;
Thence South 00° 07' 26" East, a distance of 230.00 feet;
Thence South 89° 52' 26" West, a distance of 530.00 feet;
thence North 00° 07' 26" West, a distance of 230.00 feet to the POINT OF BEGINNING.

PARCEL II: (Tax parcel 104-68-013D)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East and a portion of the Northeast Quarter of Section 1, Township 24 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section 1;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet to the POINT OF BEGINNING;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
Thence North 89° 52' 26" East, a distance of 509.87 feet;
Thence South 00° 07' 26" East, a distance of 230.00 feet;
Thence North 89° 52' 26" East, a distance of 50.00 feet;
Thence South 00° 07' 34" East, a distance of 71.64 feet;
Thence South 44° 55' 58" West, a distance of 215.20 feet;
Thence North 90° 00' 00" West, a distance of 261.28 feet;
Thence North 00° 07' 13" West, a distance of 70.81 feet;
Thence South 89° 51' 56" West, a distance of 699.29 feet;
Thence North 00° 37' 13" West, a distance of 568.99 feet to the POINT OF BEGINNING.

PARCEL III: (Tax Parcel No. 104-68-013F)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

Exhibit "1"

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 947.87 feet;
Thence North 89° 51' 56" East, a distance of 699.29 feet;
Thence South 00° 07' 13" East, a distance of 70.81 feet to the POINT OF BEGINNING;
Thence South 90° 00' 00" East, a distance of 261.28 feet;
Thence North 44° 55' 58" East, a distance of 215.20 feet;
Thence North 00° 07' 34" West, a distance of 71.64 feet;
Thence North 89° 52' 26" East, a distance of 270.00 feet;
Thence South 00° 07' 34" East, a distance of 170.00 feet;
Thence South 69° 05' 46" West, a distance of 302.25 feet;
Thence South 44° 37' 08" West, a distance of 384.62 feet;
Thence South 89° 52' 45" West, a distance of 130.29 feet;
Thence North 00° 07' 13" West, a distance of 327.31 feet to the POINT OF BEGINNING.

PARCEL IV: (Tax Parcel No. 104-68-013H)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
Thence North 89° 52' 26" East, a distance of 1,039.87 feet;
Thence South 00° 07' 26" East, a distance of 230.00 feet to the POINT OF BEGINNING;
Thence South 00° 07' 26" East, a distance of 1,188.83 feet;
Thence South 89° 53' 41" West, a distance of 405.27 feet;
Thence North 01° 55' 51" East, 958.25 feet;
Thence North 69° 05' 46" East, a distance of 172.11 feet;
Thence North 00° 07' 34" West, a distance of 170.00 feet;
Thence North 89° 52' 26" East, a distance of 210.00 feet to the POINT OF BEGINNING.

PARCEL V: (Tax Parcel No. 104-68-013G)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 1,345.84 feet;
Thence North 89° 52' 45" East, a distance of 695.82 feet to the POINT OF BEGINNING;
Thence North 89° 52' 45" East, a distance of 130.29 feet;
Thence North 44° 37' 08" East, a distance of 384.62 feet;
Thence North 69° 05' 46" East, a distance of 130.14 feet;
Thence South 01° 55' 51" West, a distance of 958.25 feet;
Thence South 89° 53' 42" West, a distance of 488.39 feet;

Thence North 00° 07' 13" West, a distance of 638.12 feet to the POINT OF BEGINNING.

PARCEL VI: (Tax Parcel No. 104-68-012)

A portion of the Northeast Quarter of Section 1, Township 24 South, Range 21 East, and a portion of Lot 1, of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the North quarter corner common to said Section 1 and Section 6;
Thence North 89° 52' 11" West, coincident with the North line of said Section 1, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
Thence North 89° 52' 26" East, a distance of 1,039.87 feet;
Thence North 00° 07' 26" East, a distance of 560.34 feet to a point on the North line of said Section 6;
Thence North 90° 00' 00" West, coincident with said North line of Section 6, a distance of 892.02 feet to the POINT OF BEGINNING.

PARCEL VII: (Tax Parcel No. 104-68-016)

A portion of the Northeast Quarter of Section 1, Township 24 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section 1;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 947.87 feet to the POINT OF BEGINNING;
Thence North 89° 51' 56" East, a distance of 699.29 feet;
Thence South 00° 07' 13" East, a distance of 398.12 feet;
Thence South 89° 52' 45" West, a distance of 695.82 feet;
Thence North 00° 37' 13" West, a distance of 397.97 feet to the POINT OF BEGINNING.

COMMERCIAL REAL ESTATE PURCHASE CONTRACT

Document updated:
May 2003



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



RECEIPT

- 1. Offer Received From: ("Buyer") Snow Music Corp. and or assigns
- 2. Agency Confirmation: Broker named on Line 18 is the agent of (check one):
- 3. the Buyer exclusively; or the Seller exclusively; or both the Buyer and Seller
- 4. Amount of Earnest Money: Ten Thousand \$ 10,000.00
- 5. All earnest money shall be deposited into a federally insured account acceptable to Buyer and Seller and any interest earned
- 6. thereon shall also be included as earnest money ("Earnest Money"). Buyer agrees that, if Buyer breaches this Contract, Earnest
- 7. Money is subject to forfeiture. If any check for Earnest Money is dishonored for any reason, Seller may, at Seller's option,
- 8. immediately cancel this Contract pursuant to lines 309-313. Unless otherwise provided herein, all Earnest Money is considered to be
- 9. part of the Purchase Price for the Property described below.
- 10. Earnest Money shall be: (check one)
- 11. Delivered by Buyer to Escrow Company upon mutual execution of this Contract.
- 12. Held by Broker until mutual execution. Upon mutual execution, Broker shall promptly deposit the Earnest Money with the Escrow
- 13. Company to which the check is payable. If the check is payable to Broker, Broker shall deposit the check in Broker's trust
- 14. account or endorse the check without recourse and deposit it with a duly licensed Escrow Company.
- 15. Form of Earnest Money: Personal Check Other:
- 16. Deposited with: Broker's Trust Account Escrow Company
- 17. Offer Received By: Henry K. Zipf 6313 09/26/2011
(PRINT SALESPERSON'S NAME AND AGENT CODE) (SALEPERSON'S SIGNATURE) (MO/DA/YR)
- 18. Henry Zipf Realty Co. 3196 (collectively "Broker")
(PRINT NAME OF FIRM) (OFFICE CODE)

PROPERTY AND PURCHASE PRICE

- 19. Property Description and Offer: Buyer agrees to purchase and Seller agrees to sell the following real property:
- 20. Property Address: 9224 E. Highway 92
- 21. City: Herford County: Cochise AZ, Zip Code: 85615
- 22. Assessors Parcel # See Exhibit "A"
- 23. Legal description: See Exhibit "A"
- 24.
- 25.
- 26. which includes, at no additional cost to Buyer, all fixtures and improvements thereon, as well as the following items, if any, owned by
- 27. Seller and presently located on or in the real property: electrical distribution systems (power panels, ducting, conduits, disconnects),
- 28. lighting fixtures, computer wiring, telephone distribution systems (lines, jacks and connections), heating, ventilation and air conditioning
- 29. equipment, evaporative coolers, air lines, carpets, window coverings, wall coverings, security and fire detection systems/alarms, and
- 30. Any personal property present at the time of closing.
- 31.
- 32. (collectively the "Property"). All fixtures and improvements shall be free of liens and encumbrances unless otherwise specified.
- 33. Leased Equipment NOT Included: None
- 34. Personal Property Included: Any personal property present at the time of closing.
- 35. Personal property shall be transferred in AS-IS CONDITION, FREE AND CLEAR OF ANY LIENS AND ENCUMBRANCES, and SELLER
- 36. MAKES NO WARRANTY of any kind, expressed or implied (including, without limitation, ANY WARRANTY OF MERCHANTABILITY).
- 37. Addenda Incorporated: Schedule of personal property Lead-Based Paint Disclosure Other None
- 38. \$ 600,000 Full Purchase Price, paid as outlined below. Buyer acknowledges that failure to have funds deposited as
- 39. required to close escrow on the date specified herein shall constitute a material breach of Contract.
- 40. \$ 10,000 Earnest Money
- 41. \$ 10,000.00 Additional Earnest Money None
- 42. \$ 590,000 All cash at close of escrow.
- 43.
- 44.

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Commercial Real Estate Purchase Contract • Updated: May 2003
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BUYER	BUYER
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- 45. **Escrow:** This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the terms of
- 46. this Contract shall be: to be determined by Seller
(ESCROW COMPANY) (CONTACT PERSON)
- 47. _____
(ADDRESS) (TELEPHONE)
- 48. _____
(FAX) (E-MAIL)
- 49. **Opening of Escrow:** The term "Opening of Escrow" shall mean the date when a fully executed Contract and the Earnest Money
- 50. have been delivered to Escrow Company. Escrow Company shall immediately notify Buyer, Seller and Broker(s) in writing of the
- 51. date of the Opening of Escrow.
- 52. **Close of Escrow:** Seller and Buyer shall comply with all terms and conditions of this Contract and Close Escrow
- 53. shall occur 30 days after court approval
- 54. but in no event later than 12/01/2011 . Any other closing date requires the written mutual agreement of Seller and Buyer.
MO/DAY/YR
- 55. Seller and Buyer hereby agree that the Close of Escrow shall be defined as recordation of the deed and any other documents
- 56. required to complete the transaction. The parties expressly agree that the failure of any party to comply with the terms and
- 57. conditions of this Contract by the scheduled Close of Escrow shall constitute a material breach of this Contract.
- 58. **Possession and Keys:** Possession and occupancy of the Property shall be delivered to Buyer at **Close of Escrow,**
- 59. or _____, subject to the rights of tenants under existing leases. Seller shall provide keys and/or means to operate
- 60. all locks, mailboxes, security system/alarms, access to all common area facilities and _____
- 61. _____

DUE DILIGENCE AND INSPECTIONS


- 62. **Due Diligence:** Buyer's due diligence and inspection period shall be thirty (30) days or _____ days after Opening of Escrow
- 63. ("Due Diligence Period"). During the Due Diligence Period, Buyer shall satisfy itself with respect to the physical condition of the
- 64. Property, the condition of title to the Property and as to the feasibility and suitability of the Property for Buyer's intended purpose.
- 65. REFER TO LINES 66-85 FOR IMPORTANT TERMS.
- 66. **Buyer Disapproval:** If prior to the expiration of the Due Diligence Period or as otherwise provided herein, Buyer, in Buyer's sole
- 67. discretion, disapproves of the Property, Buyer shall:
- 68. (a) immediately cancel this Contract pursuant to Lines 309-313 without further written consent of the parties, in which event all
- 69. Earnest Money shall be returned to Buyer; or
- 70. (b) deliver to the Seller written notice of the items disapproved and provide Seller an opportunity to correct the items.
- 71. If Buyer elects option (b), Seller shall respond in writing within five (5) days or _____ days after delivery to Seller
- 72. of Buyer's notice of items disapproved. If Seller is unwilling or unable to agree to correct any of the terms disapproved by
- 73. Buyer, including making any repairs in a workmanlike manner, Buyer may either:
- 74. (a) cancel this Contract within five (5) days after receipt of Seller's response or after expiration of the time period for
- 75. Seller's response, whichever occurs first, in which case all Earnest Money shall be returned to Buyer; or
- 76. (b) proceed with the transaction, in which case Seller is not obligated to correct those items Seller has not agreed to
- 77. correct in writing.
- 78. If Buyer cancels this Contract, Buyer shall return all documents provided by the Seller and provide Seller with copies of all reports or
- 79. studies generated by Buyer, provided, however, that Buyer shall not be required to deliver any such report or study if the written
- 80. contract that Buyer entered into with the consultant who prepared such report or study specifically forbids the dissemination of the
- 81. report or study to others.
- 82. **BUYER'S FAILURE TO GIVE WRITTEN NOTICE OF CANCELLATION OF THIS CONTRACT OR DISAPPROVAL OF ITEMS**
- 83. **WITHIN THE SPECIFIED TIME PERIODS SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH**
- 84. **THE TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS THAT SELLER HAS NOT AGREED IN**
- 85. **WRITING TO CORRECT.**
- 86. **Inspections:** During the Due Diligence Period, Buyer shall have the right, at Buyer's expense, to select an inspector(s), and to
- 87. make economic, environmental and physical "inspections" (including tests, surveys, and other studies) of the Property, including but
- 88. not limited to square footage, wood infestation, roof, designated flood hazard areas, structural, plumbing (such as galvanized or
- 89. polybutylene pipes), sewer/septic, well, heating, air conditioning, electrical and mechanical systems, built-in appliances, soil,
- 90. foundation, pool/spa and related equipment, cost of compliance with swimming pool regulations, possible environmental hazards
- 91. (such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, methamphetamine, LSD, ecstasy,
- 92. hazardous waste, other substances, materials or products, and/or location in a federal or state Superfund area), water damage,
- 93. mold, conditions conducive to mold, geologic conditions, location of property lines, water/utility use restrictions and fees for services
- 94. such as garbage, water/utility or fire protection, sign usage, zoning regulations, variances, use permits, and compliance with
- 95. Americans with Disabilities Act. If the presence of sex offenders in the vicinity of the Property or the occurrence of a disease, natural
- 96. death, suicide, homicide or other crime on or in the vicinity of the Property is a material matter to the Buyer, it must be investigated
- 97. by the Buyer during the Due Diligence Period.
- 98. **Square Footage:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE (OR NET ACREAGE) OF THE
- 99. REAL PROPERTY (LAND) OR IMPROVEMENTS THEREON IS APPROXIMATE. IF SQUARE FOOTAGE (OR NET ACREAGE) IS
- 100. A MATERIAL MATTER TO THE BUYER, IT MUST BE VERIFIED BY BUYER DURING THE DUE DILIGENCE PERIOD.

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BUYER	BUYER





- 101. **Wood Infestation Inspection:** IF CURRENT OR PAST WOOD INFESTATION (SUCH AS TERMITES) IS A MATERIAL MATTER
- 102. TO THE BUYER, IT MUST BE INVESTIGATED DURING THE DUE DILIGENCE PERIOD. If the lender requires an updated Wood
- 103. Infestation Report, it shall be performed at Buyer's expense. If wood infestation is disclosed in any Wood Infestation Report,
- 104. REFER TO LINES 66-85 FOR IMPORTANT TERMS.
- 105. **Flood Hazard:** If the Property is situated in an area identified as having any special flood hazards by any governmental entity
- 106. including, but not limited to, being designated as a special flood hazard area by the Federal Emergency Management Agency
- 107. (FEMA), the Buyer's lender may require the purchase of flood hazard insurance at the Close of Escrow or some future date. Special
- 108. flood hazards may affect the ability to encumber or improve the Property now or at some future date. Flood hazard designation of
- 109. the Property or cost of flood hazard insurance shall be determined by Buyer during the Due Diligence Period.
- 110. **Survey:** A survey shall be performed is waived by the Buyer.
- 111. If a survey is to be performed, Buyer shall have the survey completed by a licensed surveyor in accordance with the Arizona State
- 112. Board of Technical Registration's "Arizona Land Boundary Survey Minimum Standards" and review the receipt of results of survey or
- 113. map during the Due Diligence Period.
- 114. Cost of the survey shall be paid by: Seller Buyer Other: _____
- 115. Surveyor's instructions are: A boundary survey and survey plat showing the corners either verified or monumentation.
- 116. A survey certified by a licensed surveyor, acceptable to Buyer and the Title Company, in sufficient
- 117. detail for issuance of an American Land Title Association ("ALTA") Owner's Policy of Title Insurance
- 118. showing all boundary, encroachment or survey exceptions and all improvements, utility lines and
- 119. easements on the Property or within five (5) feet thereof.
- 120. Other survey terms: _____
- 121. _____
- 122. **Buyer's Responsibility Regarding Inspections:** Buyer shall keep the Property free and clear of liens, shall indemnify and hold
- 123. Seller harmless from all liability, claims, demands, damages, and costs and shall repair all damages arising from the inspections.
- 124. **Final Walkthrough:** The Seller grants Buyer and any representative of Buyer reasonable access to conduct a final walkthrough of the
- 125. Property for the purpose of satisfying Buyer that any repairs agreed to by the Seller have been completed and, further, that the Property
- 126. is in substantially the same condition as on the date of the mutual execution of the Contract. Seller shall make the Property available for
- 127. the final walkthrough. If Buyer does not conduct such walkthrough, Buyer specifically releases Seller and Broker(s) of any liability.
- 128. **Seller's Responsibility Regarding Inspections and Final Walkthrough:** Seller shall make the Property available for all inspec-
- 129. tions during the Due Diligence Period and final walkthrough. Seller understands that the inspections and final walkthrough require
- 130. that all utilities be on and the Seller is responsible for providing same at Seller's expense.
- 131. **Sanitation and Waste Disposal Systems:** Buyer is aware and Seller warrants that the Property is on a:
- 132. sewer system septic system alternative system
- 133. **Seller's Obligations Regarding On-Site Wastewater Treatment Facility (conventional septic or alternative system)**
- 134. **("Facility"):** If such a Facility has been installed on the Property, Seller shall deliver to Buyer copies of Facility permits and any
- 135. other Facility documents of record within five (5) days after Opening of Escrow. During Due Diligence Period, any Facility on the
- 136. Property shall be inspected as required by law at: Buyer's expense Seller's expense by an inspector recognized by the
- 137. applicable governmental authority. Seller shall deliver to Escrow Company, at Seller's expense, any certification and/or
- 138. documentation required. Escrow Company is instructed to file any transfer form(s) with applicable county authority. Buyer shall pay
- 139. any Facility transfer fees.
- 140. **Seller's Obligations Regarding Wells:** If any well is located on the Property, Seller shall deliver to Escrow Company, before Close
- 141. of Escrow, a copy of the Arizona Department of Water Resources ("ADWR") "Registration of Existing Wells." Escrow Company is
- 142. hereby instructed to send to the ADWR a "Change of Well Information." Seller does not warrant the gallons per minute as reflected on
- 143. the ADWR certification of registration. Buyer may verify gallons per minute during Due Diligence Period through a certified flow test.
- 144. **Changes During Escrow:** Seller shall immediately notify Buyer in writing: (i) of any changes in the disclosures made herein, in the Seller
- 145. Property Disclosure Statement, or otherwise; (ii) if Seller modifies any existing lease or other agreement affecting the Property; or (iii) if Seller
- 146. enters into any new leases, rental agreements, service contracts or other agreements affecting the Property. Buyer shall be allowed five (5) days
- 147. after receipt of such notice to provide written notice to Seller of any items disapproved. REFER TO LINES 66-85 FOR IMPORTANT TERMS.

DISCLOSURES

- 148. **Seller Property Disclosure Statement ("SPDS"):**
- 149. (a) Buyer has received, read, and approved the SPDS.
- 150. (b) Buyer waives review and approval of the SPDS. (BUYER'S INITIALS REQUIRED TO WAIVE SPDS _____)
- 151. (c) Seller shall deliver the SPDS to Buyer within five (5) days after Opening of Escrow.

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		<Initials		Initials>	
SELLER	SELLER		 BUYER BUYER		

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- 152. **Additional Seller Disclosures and Information:** Seller shall provide to Buyer the following disclosures and information pertinent to the Property
- 153. in writing within five (5) days or _____ days after Opening of Escrow: (1) any information known to Seller that may adversely affect the
- 154. Buyer's use of the Property, (2) any known pending special assessments, association fees, claims, or litigation, (3) copies of covenants, conditions,
- 155. and restrictions, articles of incorporation; by-laws; other governing documents; and any other documents required by law, (4) financial statements,
- 156. copies of current rent rolls, lists of current deposits, personal property lists, copies of leases, rental agreements, service contracts, (5) a copy of the
- 157. most recent survey, if available, and (6) any and all other agreements, documents, studies, or reports relating to the Property in Seller's possession
- 158. or control provided, however, that Seller shall not be required to deliver any report or study if the written contract that Seller entered into with the
- 159. consultant who prepared such report or study specifically forbids the dissemination of the report to others. The Buyer shall provide written
- 160. notice to Seller prior to the expiration of the Due Diligence Period of any items disapproved. REFER TO LINES 66-85 FOR IMPORTANT TERMS.
- 161. Seller shall deliver all original documents and estoppel certificates executed by all tenants to Buyer at Close of Escrow.
- 162. **No Seller or Tenant Bankruptcy, Probate or Insolvency Proceedings.** Seller has no notice or knowledge that any tenant on the
- 163. Property is the subject of a bankruptcy, probate or insolvency proceeding. Further, Seller is not the subject of a bankruptcy,
- 164. insolvency or probate proceeding.
- 165. **Seller's Notice of Violations:** Seller represents that Seller has no knowledge of any notice of violations of City, County, State, or
- 166. Federal building, zoning, fire, or health laws, codes, statutes, ordinances, regulations, or rules filed or issued regarding the Property.
- 167. If Seller receives notice of violations of any of the aforementioned prior to Close of Escrow, Seller shall immediately notify Buyer
- 168. in writing. Buyer shall have five (5) days after receipt of such notice to provide written notice to Seller of any items disapproved.
- 169. REFER TO LINES 66-85 FOR IMPORTANT TERMS.

DISCLOSURES FOR PROPERTY USED FOR RESIDENTIAL PURPOSES

- 170. (If Property is not used for residential purposes, GO TO LINE 194.)
- 171. **Notice to Buyer of Swimming Pool Barrier Regulations (Initials Required):** The State of Arizona has swimming pool barrier regulations
- 172. that are outlined in the Arizona Department of Health Services Private Pool Safety Notice. The county or municipality in which the Property is
- 173. located may have different swimming pool barrier regulations than the state. During the Due Diligence Period, Buyer agrees to investigate all
- 174. applicable state, county, and municipal swimming pool barrier regulations and, unless disapproved prior to the expiration of the Due Diligence
- 175. Period, agrees to comply with and pay all costs of compliance with said regulations. BUYER'S INITIALS ACKNOWLEDGE 1) EXISTENCE OF
- 176. SWIMMING POOL BARRIER REGULATIONS and 2) If this Property contains a swimming pool, RECEIPT OF THE ARIZONA DEPARTMENT
- 177. OF HEALTH SERVICES APPROVED PRIVATE POOL SAFETY NOTICE AS REQUIRED BY A.R.S. §36-1681 (E).
- 178.

(BUYER'S INITIALS REQUIRED) _____ BUYER _____ BUYER
- 179. **Lead-Based Paint Disclosure (Initials Required):** If the Property was built prior to 1978, Seller shall: (1) notify the Buyer of any
- 180. known lead-based paint or lead-based paint hazards in or on the Property; (2) provide the Buyer with any lead-based paint risk
- 181. assessments or inspections of the Property in the Seller's possession; (3) provide the Buyer with the Disclosure of Information on
- 182. Lead-based Paint and Lead-Based Paint Hazards, and any reports, records, pamphlets, and/or other materials referenced therein,
- 183. including the pamphlet "Protect Your Family from Lead in Your Home" (collectively "Lead-Based Paint Information").
- 184. Lead-Based Paint Information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct
- 185. lead based paint risk assessments or inspections during Due Diligence Period.
- 186. Seller shall provide the Lead-Based Paint Information to Buyer within five (5) days after Opening of Escrow. Buyer may within ten
- 187. (10) days or _____ days after receipt of the Lead-Based Paint Information conduct or obtain a risk assessment or inspection
- 188. of the Property for the presence of lead-based paint or lead based-paint hazards ("Assessment Period"). Buyer may within five (5)
- 189. days after receipt of the Lead-Based Paint Information or five (5) days after expiration of the Assessment Period cancel this Contract
- 190. in Buyer's sole discretion by delivering written notice of cancellation to Seller Pursuant to Lines 309-313.
- 191. **Prior to 1978: If Property was constructed prior to 1978, BUYER'S INITIALS REQUIRED** _____ BUYER _____ BUYER
- 192. **1978 or Later: If Property was constructed in 1978 or later, BUYER'S INITIALS REQUIRED** _____ BUYER _____ BUYER
- 193. IF THIS IS AN ALL CASH SALE, GO TO LINE 209.

FINANCING

- 194. (If financing is to be other than new financing, see attached addendum.)
- 195. This sale is is not contingent upon Buyer obtaining a satisfactory financing commitment within Financing
- 196. Commitment Contingency Period. (If sale is not contingent on a financing commitment, go to line 209.)
- 197. **Financing Commitment Contingency Period:** If the sale is contingent upon Buyer obtaining a satisfactory financing commitment, Buyer
- 198. shall have thirty (30) days or _____ days after the Opening of Escrow ("Financing Commitment Contingency Period") to
- 199. obtain a financing commitment satisfactory to Buyer in Buyer's sole discretion, for a loan to purchase the Property or Buyer may cancel
- 200. this Contract pursuant to Lines 309-313 and receive a refund of the Earnest Money. **PRIOR TO THE EXPIRATION OF THE FINANCING**
- 201. **COMMITMENT CONTINGENCY PERIOD, BUYER SHALL DELIVER TO SELLER AND ESCROW COMPANY WRITTEN NOTICE**
- 202. **THAT BUYER HAS NOT RECEIVED SUCH SATISFACTORY FINANCING COMMITMENT OR BUYER SHALL BE DEEMED TO**
- 203. **HAVE WAIVED THE FINANCING COMMITMENT CONTINGENCY AND ANY RIGHT TO CANCEL DUE TO FINANCING.**
- 204. **Financing Application:** Within ten (10) days after the Opening of Escrow, Buyer shall submit a formal loan application to a lender
- 205. of Buyer's choice. Buyer and Seller shall promptly provide to such lender all materials and documents lender deems appropriate to
- 206. facilitate such lender's processing of such loan application. Buyer agrees to pay such fees as required by the lender and all other
- 207. financing costs. Buyer authorizes the lender to provide financing status updates to Broker(s).

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<Initials	
SELLER	SELLER

Initials>	
BUYER	BUYER



TITLE AND ESCROW

- 208. **Title and Vesting:** Taking title may have significant legal, estate planning and tax consequences. Buyer should obtain legal
- 209. and tax advice.
- 210. Buyer will take title as **determined before Close of Escrow** or Other: _____
- 211. **Title Commitment and Title Insurance:** Buyer shall be provided at Seller's expense a Standard Owner's Title Insurance Policy show-
- 212. ing the title vested in Buyer as provided in Line 211. Buyer may acquire extended coverage(s) at Buyer's own additional expense.
- 213. Escrow Company is hereby instructed to obtain and distribute to Buyer and Broker(s) a Commitment for Title Insurance in sufficient
- 214. detail for the issuance of an Extended Owner's Title Insurance Policy together with complete and legible copies of all documents that
- 215. will remain as exceptions to Buyer's policy of title insurance ("Title Commitment"), within fifteen (15) days after Opening of Escrow.
- 216. Buyer shall have until the expiration of the Due Diligence Period to provide written notice to Seller of any items disapproved. Buyer shall
- 217. have five (5) days after receipt of any amendments to Title Commitment or notice of any subsequent exceptions to provide Seller
- 218. written notice of any amendment or exceptions disapproved. REFER TO LINES 66-85 FOR IMPORTANT TERMS.
- 219. Seller shall convey title by special warranty deed or _____ deed.
- 220. **Additional Instructions:** (a) If the Escrow Company is also acting as the title agency but is not the title insurer issuing the title
- 221. insurance policy, the Buyer and Seller hereby instruct the Escrow Company to deliver to the Buyer and Seller upon Opening of
- 222. Escrow a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to fraudulent acts or
- 223. breach of escrow instructions by the Escrow Company. (b) All documents necessary to close this transaction shall be executed
- 224. promptly by Seller and Buyer in the standard form used by Escrow Company. Escrow Company is hereby instructed to modify such
- 225. documents to the extent necessary to be consistent with this Contract. (c) All closing and escrow costs, unless otherwise stated
- 226. herein, shall be allocated equally between Seller and Buyer in accordance with local custom and applicable laws and regulations. (d)
- 227. Escrow Company is hereby instructed to send to Broker(s) copies of all notices and communications directed to or from Seller or
- 228. Buyer. Escrow Company shall provide Broker(s) with access to escrowed materials and information regarding the escrow.
- 229. **Prorations, Expenses and Adjustments:**
- 230. **Taxes:** Real property taxes payable by the Seller shall be prorated through Close of Escrow, based upon the latest tax bill available.
- 231. The parties agree that any discrepancy between the latest tax bill available and the actual tax bill when received shall be handled as
- 232. a Post Closing Matter and Buyer or Seller may be responsible for additional tax payments to each other.
- 233. **Insurance:** If Buyer takes an assignment of the existing casualty and/or liability insurance that is maintained by Seller, the current
- 234. premium shall be prorated through Close of Escrow.
- 235. **Rents, Interest and Expenses:** Rents; interest on existing notes, if transferred; utilities; and operating expenses shall be prorated
- 236. through Close of Escrow. The Parties agree to adjust any rents received after Close of Escrow as a Post Closing Matter.
- 237. **Deposits:** All deposits held by Seller pursuant to rent/lease agreement(s) shall be credited against the cash required of Buyer at
- 238. Close of Escrow or paid to Buyer by Seller at Close of Escrow.
- 239. **Post Closing Matters:** The parties shall promptly adjust any item to be prorated that is not determined or determinable at Close of
- 240. Escrow as a Post Closing Matter by appropriate cash payment to the other party outside of the escrow when the amount due is
- 241. determined. Seller and Buyer agree that Escrow Company and Broker(s) are relieved of any responsibilities for said adjustments.
- 242. **Insurance:** Buyer shall insure that any fire, casualty, or other insurance desired by Buyer, or required by any Lender, is in place at
- 243. Close of Escrow. Buyer specifically releases Broker(s) from any obligations relating to such insurance.
- 244. **Assessments:** The amount of any assessment that is a lien as of the Close of Escrow, shall be:
- 245. paid in full by Seller prorated and assumed by Buyer paid in full by Buyer.
- 246. Any assessment that becomes a lien after Close of Escrow is the Buyer's responsibility.
- 247. **IRS and FIRPTA Reporting:** Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign,
- 248. and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the
- 249. Foreign Investment in Real Property Tax Act (FIRPTA). Buyer acknowledges that if the Seller is a foreign person, the Buyer (or
- 250. Escrow Company, as directed by Buyer) must withhold a tax equal to 10% of the purchase price, unless an exemption applies.
- 251. **RESPA:** The Real Estate Settlement Procedures Act (RESPA) requires that no Seller of property that will be purchased with the
- 252. assistance of a federally-related mortgage financing shall require, directly or indirectly, as a condition of selling the property, that title
- 253. insurance covering the property be purchased by the Buyer from any particular title company.
- 254. **TAX DEFERRED EXCHANGE:** Seller and Buyer are advised to consult a professional tax advisor regarding the advisability of a
- 255. tax-deferred exchange pursuant to I.R.C. §1031 or otherwise. Seller and Buyer agree to cooperate in a tax deferred exchange pro-
- 256. vided that Close of Escrow is not delayed. All additional costs in connection with any such tax deferred exchange shall be borne by
- 257. the party requesting the exchange. The non-requesting party and Broker(s) shall be indemnified and held harmless from any liability
- 258. that may arise from participation in the tax deferred exchange.

WARRANTIES

- 259. **Seller Warranties:** Seller warrants and shall maintain and/or repair the Property so that, at the earlier of possession of the Property
- 260. or Close of Escrow, all heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors,
- 261. filter systems, cleaning systems, and heater, if any), and built-in appliances will be in working condition or as otherwise agreed in
- 262. this Contract. Seller also warrants that, at the earlier of possession of the Property or Close of Escrow, the Property shall be in
- 263. substantially the same condition as on the date of the mutual execution of the Contract.
- 264. **Buyer Warranties:** Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect the Buyer's
- 265. ability to close escrow or complete the obligations of this Contract. At the earlier of the removal of all contingencies, possession of the
- 266. Property or Close of Escrow. (a) Buyer warrants to Seller that Buyer has conducted all desired independent investigations and accepts the
- 267. Property and (b) Buyer acknowledges that there will be no Seller warranty of any kind, except as stated in Lines 260-264. >>

<Initials	
SELLER	SELLER

Initials>	
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BUYER	BUYER



268. **Warranties that Survive Closing:** Prior to the Close of Escrow, Seller warrants that payment in full will have been made for all 269. rental and/or privilege taxes, labor, professional services, materials, machinery, fixtures, or tools furnished within the 150 days 270. immediately preceding the Close of Escrow in connection with the construction, alteration, or repair of any structure on or 271. improvement made to the Property. Seller warrants that the information on Lines 131-139 regarding connection to a public sewer 272. system, septic tank or other sanitation system is correct to Seller's knowledge. Seller warrants that Seller has disclosed to Buyer 273. and Broker(s) all material latent defects and any information concerning the Property known to Seller, which materially and 274. adversely affect the consideration to be paid by Buyer.

REMEDIES

275. **Remedies:** The parties agree to the remedies for breach of Contract indicated below.

276. *If Buyer is in breach: (check one)*

277. All Rights and Remedies: Seller may cancel this Contract pursuant to Lines 309-313 and/or proceed upon any claim or 278. remedy that the Seller may have in law or equity.

279. Liquidated Damages: The parties agree that it would be impracticable or extremely difficult to fix the actual damages that 280. Seller would suffer if Buyer fails to perform Buyer's obligations pursuant to this Contract. Therefore, if Buyer breaches this 281. Contract, Seller shall be entitled to the Earnest Money as Seller's sole remedy and Buyer shall be released from any further 282. liability to Seller. In such event, this Contract shall be cancelled and Seller shall pay any Escrow Company cancellation fees.

283. (INITIALS REQUIRED)

SELLER SELLER BUYER BUYER

284. *If Seller is in breach:*

285. All Rights and Remedies: Buyer may cancel this Contract pursuant to Lines 309-313, shall be entitled to the return of the 286. Earnest Money and/or proceed upon any claim or remedy that the Buyer may have in law or equity.

287. **Mediation:** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this Contract, any alleged breach of 288. this Contract, or services provided in relation to this Contract, claims for Earnest Money or representations made by the Buyer or 289. Seller in connection with the sale, purchase, financing, condition, or other aspect of the Property to which this Contract pertains, 290. including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud before resorting to court action. 291. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and 292. confidentially. Mediators cannot impose binding decisions. The parties must agree and sign an agreement before any settlement 293. reached at the mediation is binding. Mediation shall take place in the State of Arizona. All mediation costs shall be paid equally by 294. the parties to the Contract.

295. **Exclusions from Mediation:** The following matters are excluded from mediation hereunder: (a) any action brought in the Small 296. Claims Division of an Arizona Justice Court (up to \$2,500), so long as the matter is not thereafter transferred or removed from the 297. Small Claims Division; (b) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or 298. agreement for sale; (c) an unlawful entry or detainer action; (d) the filing or enforcement of a mechanic's lien; or (e) any matter that 299. is within the jurisdiction of a probate or bankruptcy court. The filing of a judicial action to enable the recording of a notice of pending 300. action, or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the obligation to 301. mediate under this provision, nor shall it constitute a breach of the duty to mediate.

302. **Attorneys Fees and Costs:** If Buyer or Seller files suit against the other to enforce any provision of this Contract or for damages 303. sustained by reason of its breach, all parties prevailing in such action, on trial and appeal, shall receive their reasonable attorney's 304. fees and costs as awarded by the court. In addition, both Seller and Buyer agree to indemnify and hold harmless all Brokers against 305. all costs and expenses that any Broker may incur or sustain in connection with any lawsuit arising from this Contract and will pay the 306. same on demand unless the court grants judgment in such action against the party to be indemnified. Costs shall include, without 307. limitation, reasonable attorney's fees, expert witness fees, fees paid to investigators, and court costs.

308. **Cancellation:** Any party who wishes to cancel this Contract as provided herein or because of any material breach by another party, 309. and who is not in material breach except as occasioned by a material breach by the other party, may cancel this Contract by 310. delivering written notice of cancellation to either the breaching party or to the Escrow Company stating the basis for cancellation or 311. nature of the breach. Cancellation shall become effective immediately upon delivery of the written notice of cancellation to either the 312. breaching party or Escrow Company.

313. **Release of Earnest Money:** In the event of a dispute between Buyer and Seller regarding Earnest Money deposited with Escrow 314. Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of this 315. Contract. Buyer and Seller specifically authorize Escrow Company to act in its sole and absolute discretion in the release of Earnest 316. Money. Buyer and Seller agree to hold harmless and indemnify Escrow Company against any claim, action or lawsuit of any kind, 317. and from any loss, judgment, or expense, including costs and reasonable attorneys' fees, arising from or relating in any way to the 318. release of Earnest Money.

319. **Recommendations:** If any Broker recommends a builder, contractor, inspector, vendor or any other person or entity to Seller or Buyer 320. for any purpose, such recommendation shall be independently investigated and evaluated by Seller or Buyer, who hereby acknowledge 321. that any decision to enter into any contractual arrangements with any such person or entity recommended by any Broker will be based 322. solely upon such independent investigation and evaluation. Seller and Buyer understand that said contractual arrangement may result 323. in a commission or fee to Broker, which shall be disclosed in writing to the Seller and Buyer as required by law.

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SELLER SELLER <Initials> Initials> BUYER BUYER
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ADDITIONAL TERMS

324. ~~None~~ AS such time that Harter's drop dead date
 325. comes and goes there will be no additional time
 326. allowed for Harter to meet the terms of his
 327. agreement and our agreement becomes of full force
 328. and affect as the primary document for the
 329. purchase of the property.
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349. **Risk of Loss:** If there is any loss or damage to the Property between the date of mutual execution of this Contract and the Close of
 350. Escrow or possession of the Property, whichever is earlier, by reason of fire, vandalism, flood, earthquake or act of God, the risk of
 351. loss shall be borne by the Seller, provided, however, that if the cost of repairing such loss or damage would exceed ten percent
 352. (10%) of the purchase price, either Seller or Buyer may elect to cancel the Contract by written notice pursuant to lines 309-313.

353. **Permission:** Buyer and Seller grant Broker(s) permission to advise the public of the existence of this Contract.

354. **Arizona Law:** This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.

355. **Time is of the essence:** The parties acknowledge that time is of the essence in performance of the obligations described herein.

356. **Broker's Fee:** Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm,
 357. broker or finder in connection with the negotiation of this Contract and/or the consummation of the purchase and sale contemplated
 358. herein, other than the Broker(s) named herein, and no Broker or other person, firm or entity, other than said Broker(s) is/are entitled
 359. to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of either Buyer or Seller.
 360. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs,
 361. expenses or liability for compensation, commission or charges that may be claimed by any broker, finder or other similar party, other
 362. than said named Broker(s) by reason of any dealings or act of the indemnifying party.

363. **Compensation:** Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by
 364. separate written agreement(s). Any separate written agreement(s) shall be delivered to Escrow Company for payment at Close of
 365. Escrow, if not previously paid, and shall constitute an irrevocable assignment of Seller's proceeds at Close of Escrow and/or
 366. payment shall be collected from Buyer as a condition to Close, as applicable. If any Broker hires an attorney to enforce the collection
 367. of the brokerage fee payable pursuant to this Contract and is successful in collecting some or all of such brokerage fee, the
 368. party(ies) responsible for paying such brokerage fee agree(s) to pay such Broker's costs including, but not limited to: reasonable
 369. attorneys' fees, expert witness fees, fees paid to investigators, and court costs. **COMMISSIONS PAYABLE FOR THE SALE,
 370. LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS® OR
 371. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT. THE SELLER
 372. AND THE BUYER ACKNOWLEDGE THAT THE BROKER(S) REFERENCED HEREIN ARE THIRD-PARTY BENEFICIARIES OF
 373. THIS CONTRACT.**

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SELLER	SELLER

<Initials

Initials>

BUYER	BUYER



374. **Additional Compensation:** The Real Estate Settlement Procedures Act ("RESPA") prohibits the paying or receiving of any fee, kickback, or thing of value for the referral of any business related to settlement or closing of a federally regulated mortgage financing, including, but not limited to, any services related to the origination, processing, or funding of a federally regulated mortgage financing, and includes settlement related business. RESPA does not prohibit fees, salaries, compensation, or other payments for services actually performed. If any Broker performs any such services for a fee, Seller and Buyer consent to the payment of this additional compensation as follows: None

380. _____
381. _____

382. **Subsequent Offers:** Buyer acknowledges that Seller has the right to accept subsequent offers until Close of Escrow. Seller understands that any subsequent offer accepted by the Seller must be a backup offer, namely, contingent on the cancellation of this Contract.

385. **Entire Agreement:** This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and Buyer, and shall supersede any other written or oral agreements between Seller and Buyer. This Contract, including any extensions of any time periods referenced herein, can be modified only by a writing signed by Seller and Buyer. A fully executed facsimile copy of the entire Contract shall be treated as an original Contract. This Contract and any other documents required by this Contract may be executed and delivered by facsimile and in any number of counterparts, which shall become effective upon delivery as provided for herein. All counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract. All references to days in this Contract shall be construed as calendar days.

393. **Assignment:** Except in the event of a tax-deferred exchange, Buyer shall not assign this Contract without the prior written consent of Seller. Any such assignment shall not release Buyer from Buyer's obligations under this Contract.

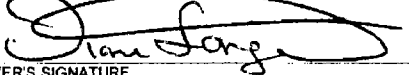
395. **Release of Brokers:** SELLER AND BUYER HEREBY ACKNOWLEDGE THAT THEY HAVE BEEN AND ARE NOW ADVISED BY THE BROKER(S) TO CONSULT AND RETAIN THEIR OWN EXPERTS TO ADVISE AND REPRESENT THEM CONCERNING THE LEGAL AND INCOME TAX EFFECTS OF THIS CONTRACT, AND THE CONDITION OF THE PROPERTY. SELLER AND BUYER HEREBY EXPRESSLY RELEASE, HOLD HARMLESS AND INDEMNIFY ALL BROKER(S) IN THIS TRANSACTION FROM ANY AND ALL LIABILITY AND RESPONSIBILITY REGARDING THE CONDITION, SQUARE FOOTAGE/ACREAGE, LOT LINES OR BOUNDARIES, VALUE, FINANCING, RENT ROLLS, INCOME AND EXPENSE PROJECTIONS OR PROFORMAS, ENVIRONMENTAL CONDITIONS, SANITATION SYSTEMS, ROOF CONDITION, WOOD INFESTATION AND WOOD INFESTATION REPORT, COMPLIANCE WITH BUILDING CODES, ZONING OR OTHER GOVERNMENTAL REGULATIONS, OR ANY OTHER MATERIAL MATTERS RELATING TO THE PROPERTY.

404. (INITIALS REQUIRED) _____ BUYER BUYER SELLER SELLER

405. **Time for Acceptance:** This is an offer to purchase the Property. Unless acceptance is signed by Seller and a signed copy delivered in person, by private or United States mail, or facsimile, and received by Buyer or by Broker named on Lines 17-18 by: _____ at _____ AM PM, Mountain Standard Time, or unless this offer to purchase has been previously withdrawn in writing by Buyer, this offer to purchase shall be deemed withdrawn and the Buyer's Earnest Money shall be returned.

410. THIS CONTRACT CONTAINS NINE (9) PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT YOU HAVE RECEIVED AND READ ALL NINE (9) PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.

412. The undersigned agree to purchase the Property on the terms and conditions herein stated and acknowledge receipt of a copy hereof.

414.  09/26/2011
^ BUYER'S SIGNATURE MO/DA/YR ^ BUYER'S SIGNATURE MO/DA/YR

415. **Snow Music Corp. and or assigns**
BUYER NAME PRINTED BUYER'S NAME PRINTED

416. By: Diane Langevin

417. Its: CAO

418. 2160 E. Fry Blvd Suite 190
ADDRESS ADDRESS

419. Sierra Vista, AZ 85635
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

420. Broker: Henry Zipf Realty Co. Henry K. Zipf
(COMPANY NAME) (LICENSEE)

421. 3871 N. Via De Cordoba (520) 444-5672 (520) 344-9939 henryzipf@cox.net
Tucson, AZ 85749 (ADDRESS) (TELEPHONE) (FAX) (E-MAIL)

>>



ACCEPTANCE

422. Agency Confirmation: The following agency relationship(s) is hereby confirmed for this transaction:

423. Listing Broker: Henry K. Zipf Henry Zipf Realty Co. (520) 444-5672
(PRINT SALESPERSON'S NAME AND AGENCY CODE) 6313 (PRINT FIRM NAME AND OFFICE CODE) 3196 (TELEPHONE)

424. Is the agent of (check one): the Seller exclusively; or both the Buyer and Seller

425. Seller Receipt of Copy: The undersigned acknowledge receipt of a copy hereof and grant permission to Broker named on
426. Lines 17-18 to deliver a copy to Buyer.

427. Counter Offer is attached, and is incorporated herein by reference. Seller must sign both the Contract and the
428. Counter Offer. If there is a conflict between this Contract and the Counter Offer, the provisions of the Counter Offer
429. shall be controlling.

430. The undersigned agree to sell the Property on the terms and conditions herein stated.

431. ^ SELLER'S SIGNATURE _____ MO/DA/YR ^ SELLER'S SIGNATURE _____ MO/DA/YR

432. SELLER'S NAME PRINTED _____ SELLER'S NAME PRINTED _____

433. By: _____

434. Its: _____

435. ADDRESS _____ ADDRESS _____

436. CITY, STATE, ZIP CODE _____ CITY, STATE, ZIP CODE _____

437. Broker: Henry Zipf Realty Co. Henry K. Zipf
(COMPANY NAME) (LICENSEE)

3871 N. Via De Cordoba
438. Tucson, AZ 85749 (520) 444-5672 (520) 344-9939 henryzipf@cox.net
(ADDRESS) (TELEPHONE) (FAX) (E-MAIL)

ACCEPTANCE BY ESCROW COMPANY

439. Date of Opening of Escrow: _____

440. The provisions of this Contract are hereby acknowledged and agreed to.

441. Escrow Company: to be determined by Seller

442. By: _____

443. Its: _____

For Broker Use Only:
Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DA/YR



EXHIBIT "ONE"

PARCEL I: (Tax Parcel No. 104-68-013B)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
thence North 89° 52' 26" East, a distance of 509.87 feet to the POINT OF BEGINNING;
Thence North 89° 52' 26" East, a distance of 530.00 feet;
Thence South 00° 07' 26" East, a distance of 230.00 feet;
Thence South 89° 52' 26" West, a distance of 530.00 feet;
thence North 00° 07' 26" West, a distance of 230.00 feet to the POINT OF BEGINNING.

PARCEL II: (Tax parcel 104-68-013D)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East and a portion of the Northeast Quarter of Section 1, Township 24 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section 1;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet to the POINT OF BEGINNING;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
Thence North 89° 52' 26" East, a distance of 509.87 feet;
Thence South 00° 07' 26" East, a distance of 230.00 feet;
Thence North 89° 52' 26" East, a distance of 50.00 feet;
Thence South 00° 07' 34" East, a distance of 71.64 feet;
Thence South 44° 55' 58" West, a distance of 215.20 feet;
Thence North 90° 00' 00" West, a distance of 261.28 feet;
Thence North 00° 07' 13" West, a distance of 70.81 feet;
Thence South 89° 51' 56" West, a distance of 699.29 feet;
Thence North 00° 37' 13" West, a distance of 568.99 feet to the POINT OF BEGINNING.

PARCEL III: (Tax Parcel No. 104-68-013F)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 947.87 feet;
Thence North 89° 51' 56" East, a distance of 699.29 feet;
Thence South 00° 07' 13" East, a distance of 70.81 feet to the POINT OF BEGINNING;
Thence South 90° 00' 00" East, a distance of 261.28 feet;
Thence North 44° 55' 58" East, a distance of 215.20 feet;
Thence North 00° 07' 34" West, a distance of 71.64 feet;
Thence North 89° 52' 26" East, a distance of 270.00 feet;
Thence South 00° 07' 34" East, a distance of 170.00 feet;
Thence South 69° 05' 46" West, a distance of 302.25 feet;
Thence South 44° 37' 08" West, a distance of 384.62 feet;
Thence South 89° 52' 45" West, a distance of 130.29 feet;
Thence North 00° 07' 13" West, a distance of 327.31 feet to the POINT OF BEGINNING.

PARCEL IV: (Tax Parcel No. 104-68-013H)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
Thence North 89° 52' 26" East, a distance of 1,039.87 feet;
Thence South 00° 07' 26" East, a distance of 230.00 feet to the POINT OF BEGINNING;
Thence South 00° 07' 26" East, a distance of 1,188.83 feet;
Thence South 89° 53' 41" West, a distance of 405.27 feet;
Thence North 01° 55' 51" East, 958.25 feet;
Thence North 69° 05' 46" East, a distance of 172.11 feet;
Thence North 00° 07' 34" West, a distance of 170.00 feet;
Thence North 89° 52' 26" East, a distance of 210.00 feet to the POINT OF BEGINNING.

PARCEL V: (Tax Parcel No. 104-68-013G)

A portion of the Northwest Quarter of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 6;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 1,345.84 feet;
Thence North 89° 52' 45" East, a distance of 695.82 feet to the POINT OF BEGINNING;
Thence North 89° 52' 45" East, a distance of 130.29 feet;
Thence North 44° 37' 08" East, a distance of 384.62 feet;
Thence North 69° 05' 46" East, a distance of 130.14 feet;
Thence South 01° 55' 51" West, a distance of 958.25 feet;
Thence South 89° 53' 42" West, a distance of 488.39 feet;

Thence North 00° 07' 13" West, a distance of 638.12 feet to the POINT OF BEGINNING.

PARCEL VI: (Tax Parcel No. 104-68-012)

A portion of the Northeast Quarter of Section 1, Township 24 South, Range 21 East, and a portion of Lot 1, of Section 6, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the North quarter corner common to said Section 1 and Section 6;
Thence North 89° 52' 11" West, coincident with the North line of said Section 1, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 378.88 feet;
Thence North 89° 22' 47" East, a distance of 558.22 feet;
Thence South 00° 02' 54" East, a distance of 191.42 feet;
Thence North 89° 52' 26" East, a distance of 1,039.87 feet;
Thence North 00° 07' 26" East, a distance of 560.34 feet to a point on the North line of said Section 6;
Thence North 90° 00' 00" West, coincident with said North line of Section 6, a distance of 892.02 feet to the POINT OF BEGINNING.

PARCEL VII: (Tax Parcel No. 104-68-016)

A portion of the Northeast Quarter of Section 1, Township 24 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section 1;
Thence North 89° 52' 11" West, a distance of 709.09 feet;
Thence South 00° 37' 13" East, a distance of 947.87 feet to the POINT OF BEGINNING;
Thence North 89° 51' 56" East, a distance of 699.29 feet;
Thence South 00° 07' 13" East, a distance of 398.12 feet;
Thence South 89° 52' 45" West, a distance of 695.82 feet;
Thence North 00° 37' 13" West, a distance of 397.97 feet to the POINT OF BEGINNING.

Counter Offer No. 1

This is a Counter Offer by the Seller, Lauren Kingry, Receiver by **Thomas J. Giallanza**, in his capacity as **Deputy Receiver**, to the Proposal to purchase a commercial property by Snow Music Corp., the Buyer, ("Buyer's Offer"). In consideration of the mutual promises and covenants set forth in this Counter Offer, Seller agrees to sell and Buyer agrees to buy the Property described below on the terms and conditions set forth in this Counter Offer No.1 ("Counter Offer"), and to the extent not inconsistent herewith, the terms and conditions set forth in the Purchase Contract hereinabove:

1. Property. The real property, which is the subject of this Counter Offer, is located at 9224 E. Highway 92, Hereford, AZ, ("Property").

2. Seller. The Seller is Lauren Kingry, Receiver by either Lawrence J. Warfield, in his capacity as the Special Deputy Receiver or **Thomas J. Giallanza** in his capacity as **Deputy Receiver**, appointed by the Superior Court of Arizona in the action entitled State of Arizona v. Landmare Capital, et al CV2009-020595 ("Receivership Court"). The Taxpayer Identification Number for the Seller is 86-0959744.

3. Buyer. The Buyer is **Snow Music Corporation**, an Arizona Corporation.

4. Purchase Price. The Purchase Price, which Buyer agrees to pay for the Property is \$600,000. The Purchase Price shall not be adjusted by any overage or shortage in area of the Property. The Purchase Price shall be paid as follows:

(a) Buyer shall deposit with Escrow Agent within two (2) days of the Buyer's acceptance of the Commercial Real Estate Contract and this Counter Offer No. 1 a total of \$10,000.00 cash earnest money deposit (the "Earnest Money") which shall become non-refundable, except as otherwise provided in Paragraph 10 below. If Buyer does not so cancel this Agreement, and if Seller does not so cancel this Agreement, and, provided further, if Seller does not otherwise default hereunder, the Earnest Money shall be credited towards the Sales Price, if Buyer purchases the Property.

5. Deed. At the Close of Escrow, Seller shall convey title to the Property to Buyer by **Special Warranty Deed** (the "Deed"), subject to taxes and assessments, not delinquent, reservations in patents, all easements, rights-of-way, covenants, conditions, restrictions, declarations, all matters that an accurate survey or a physical inspection of the Property would disclose and all matters to which Buyer has agreed.

6. Disbursements. Upon the Close of Escrow, the full amount of the Purchase Price, less any closing costs that the Seller has expressly agreed to pay, shall be disbursed to Seller.

7. Property Sold "As Is". The Property is being sold "AS IS" and the Seller is not providing any warranties. Buyer expressly acknowledges that there may be present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect the Buyer's decision to purchase the Property. Buyer further acknowledges that Buyer has not relied on any warranties, promises, projections, calculations, understandings or representations, express or implied, of Seller or of any agent or representative of Seller, relating to the Property.

Buyer's Initials



Seller's Initials



and Buyer is acquiring the Property in its present condition and state of repair, "AS IS", with all defects, latent or apparent. Buyer further acknowledges that any information of any type which Buyer has received or may receive from Seller or Seller's agents is furnished on the express condition that Buyer shall make an independent verification of the accuracy (including without limitation calculations) of such information, all such information being furnished without any warranty or liability whatsoever. The Seller has acquired possession of the Property pursuant to Court order and has not occupied the Property and therefore Seller cannot and will not provide any Seller Disclosure Statements.

8. Additional Terms.

- (a) The cost of all inspections are to be paid for by Buyer.
- (b) Title shall be conveyed to Buyer by a Special Warranty Deed
- (c) The parties agree that the following lines appearing on the Commercial Resale Real Estate Purchase Contract are deleted:
 - (i) Lines 133 through 139.
 - (ii) Lines 148 through 161.
 - (iii) Lines 170 through 194.
 - (iv) Lines 196 through 207.
 - (v) Lines 235 through 236.
 - (vi) Lines 254 through 263.
 - (vii) Lines 287 through 301; and
 - (viii) Lines 324 through 329.
- (d) The Buyer acknowledges that it may become necessary for the Seller to initiate a legal action to forcibly remove parties associated with Melvin Harter from possession of the Property. If such action is necessary, Buyer and Buyer's agents will not engage in any direct or indirect contact with any of such persons or entities. The Court, in which the Forcible Detainer action is filed, will determine when possession is to be returned to the Seller.
- (e) Subject to approval of the Court for this Commercial Resale Real Estate Purchase Contract, Counter Offer No. 1 and paragraph 8(d), all utilities necessary for Buyer to inspect the property are to be turned on by the Buyer and at the buyer's sole cost. Buyer's sales agent will coordinate access for Buyer to conduct inspections once utilities necessary for Buyer's inspection have been turned on at Buyer's cost. Lines 128 through 130 of the Commercial Resale Real Estate Purchase Contract shall be modified to become consistent with this paragraph.

Buyer's Initials

AS

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Seller's Initials

TPS

(f) The Seller and Buyer agree that the following words shall be deleted from line 131 of the Commercial Real Estate Purchase Contract: is on a:

(g) The Seller and Buyer agree that the following words shall be added to the end of line 131 of the Commercial Real Estate Purchase Contract: has no sanitation and waste Disposal System. Buyer warrants that it is aware of the fact that the property has no sanitation and waste disposal system and Buyer desires to acquire the property with the intent to obtain, at Buyer's expense, all necessary permits to build and operate a sanitation and waste disposal system on the property after the closing of escrow.

(h) The parties agree that Lines 46 through 48 of the Commercial Real Estate Purchase Contract shall read to include the following:

93 North American Title c/o Alix Graham, Branch Manager

94 3200 E. Camelback Road, # 150, Phoenix, AZ, 85018

95 agraham@NAT.com Phone: 602-294-2200 Fax: 866-488-1907

(i) The parties agree that Line 1 of the Commercial Real Estate Purchase Contract shall be modified as follows:

The words "and or assigns" shall be deleted.

(h) Lines 330 through 332 shall be added and shall read as follows:

Seller shall only permit assignment of this Commercial Real Estate Purchase Contract to an Assignee other than Snow Music Corporation, so long as the Assignee is an entity with the financial capacity to undertake and execute all the obligations of Buyer under this Commercial Real Estate Purchase Contract and is fully controlled by Dianne Langevin or Michael J. Snow Langevin or others that may be satisfactory to the Receiver, in the sole discretion of the Receiver.

(i) In the event that the Settlement and full payment to Seller contemplated by the Order of the Receivership Court with respect to Claim No. 7738 and the litigation entitled Melvin Harter Ministries, Inc. v. Landmark Capital & Investment Company, et al. in Cause No. CV2010-001247 as well as each and every matter Ordered by the Receivership Court in connection with Petition No. 42 do not fully take place, then the parties to this agreement understand that this Commercial Real Estate Purchase Contract

Buyer's Initials: AS

Seller's Initials: TGS

shall, subject to the Receivership Court's approval, become the primary agreement for consummation.

- (j) The Seller and Buyer agree that line 245 of Commercial Real Estate Purchase Contract shall read as follows: prorated and assumed by Buyer
- (k) The Seller and Buyer agree that the following words shall be added at the end of line 164: but is the subject of a Receivership action.
- (l) The Seller and Buyer agree that the following date shall be modified in line 54 of the Commercial Real Estate Purchase Contract from 12 01 2011 to December 29, 2011.

9. Court Receivership. The Buyer understands and acknowledges that the Seller was duly appointed the Receiver in the Receivership State of Arizona v. Landmark Capital, et al CV2009-020595 (the "Receivership Court") and that the Property and this transaction are under the jurisdiction of the Receivership Court. The parties further understand and acknowledge that this Agreement may be contingent on the approval of the Receivership Court and that the Receivership Court could decline to approve the Agreement for various reasons, including without limitation that the sale price is not fair or that a sale of the Property is not in the best interests of the estate.

10. Cancellation. In the event Seller is unable, within 45 days of the Buyer's acceptance of the Commercial Real Estate Contract and this Counter Offer, to obtain the approval of the Receivership Court, if necessary, then the Buyer or the Seller may elect in writing to cancel this Agreement and any Escrow and Buyer will receive a full refund of the Earnest Money. Upon a cancellation in accordance with the provisions of the Commercial Real Estate Contract and this Counter Offer, all documents deposited in Escrow by Seller and Buyer shall be returned to the party depositing the document, and this Agreement shall terminate.

11. Inspection or Conduction of Feasibility Study by Buyer. Buyer shall have ten (10) days following the Court's approval of this Commercial Real Estate Purchase Contract to complete the Buyer's inspection or feasibility study of the Property, and Seller grants Buyer reasonable access to the Property for that purpose, subject to Paragraph 8(d), above. If Buyer does not disapprove of the condition of the property within this period, Buyer shall be deemed to have accepted the condition of the Property. If Buyer timely disapproves of the condition of the Property in writing, then, upon notice to Seller of Buyer's objections, Seller shall have until Close of Escrow to eliminate the objectionable items; or, Seller may, within five (5) days from Buyer's notice, notify Buyer that Seller does not intend to eliminate the objectionable items, and Buyer's sole and exclusive remedy shall be to either waive his objection (in which case Close of Escrow shall occur subject to such matters) or to cancel this Agreement and receive a full refund of the Earnest Money.

12. Possession. Possession of the Property shall be delivered to Buyer at Close of Escrow.

Buyer's Initials *AS*

Seller's Initials *TJS*

13. Release and Indemnity. Seller is hereby released from all responsibility and liability regarding the condition (including, without limitation, the presence of environmental hazards or substances) or valuation or utility of the Property. Buyer agrees that Buyer will not attempt to assert any claims of liability against Seller for furnishing such information, nor shall Buyer assert any claims of liability against Seller for the existence of or damages arising out of the existence of asbestos, mold or other environmental hazards, and Buyer agrees to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. Buyer agrees to indemnify Seller and hold Seller harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to Buyer's inspection of the Property or to the breach by Buyer of any obligation hereunder or the inaccuracy of any representation or warranty made by Buyer or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the Closing.

14. Assignment and Nomination. Buyer may not assign or otherwise transfer Buyer's rights under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any such assignee shall accept in writing the terms and conditions of this Agreement and of any supplements or Escrow Instructions that may have been entered into as of the time of the assignment. In no event shall any assignment extend the Close of Escrow.

15. No Liability. Buyer agrees that no receivers, directors, officers, employees or agents of Seller have any personal obligation hereunder, and that such party shall not seek to assert any claim or enforce any rights against such bankruptcy trustees, directors, officers, employees or agents.

16. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

17. Exclusive Jurisdiction of the Receivership Court. The Receivership Court shall have exclusive jurisdiction to resolve any dispute arising under this Agreement.

18. Close of Escrow. The sale shall close 30 days after Court approval or completion of the last of the requirements set forth in Paragraphs 8 & 9 above, whichever comes first.

19. Time of the Essence. Time is of the essence and unless the Buyer's acceptance of the Commercial Real Estate Contract and this Counter Offer is signed by the Buyer or an authorized representative and a signed copy of the Commercial Real Estate Contract and this Counter Offer is delivered in person, by mail, or by facsimile and received by the Special Deputy Receiver or Thomas J. Giallanza, Deputy Receiver, on or before **October 17, 2011 at 5 PM, Mountain Standard Time**, or unless the Commercial Real Estate Contract and this Counter Offer has been previously withdrawn by the Deputy Receiver or Special Deputy Receiver, this Commercial Real Estate Contract and this Counter Offer shall be considered withdrawn on the date and time set forth above in this Paragraph. Until this Commercial Real Estate Contract and this Counter Offer has been accepted as provided above, the Parties understand that the Property can be sold or leased to someone else or either Party may withdraw the offer to buy or sell the Property. The undersigned acknowledge receipt of a copy hereof.

Buyer's Initials



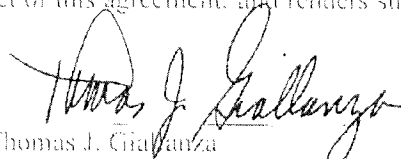
Seller's Initials



20. Signed Original. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute at least one original of this Counter Offer and all other contract documents and to provide such originals to the Seller.

21. Entire Agreement. This agreement supersedes any other agreement, whether oral or in writing, between the parties regarding the subject of this agreement, and renders such other agreements between the parties null and void.

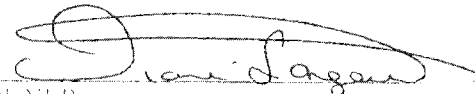
Dated: October 12, 2011


Thomas J. Gallanza
Deputy Receiver, SELLER

Acceptance

The Buyer accepts the above Commercial Real Estate Contract and this Counter Offer and agrees to the modified or additional terms and conditions in the above Commercial Real Estate Contract and this Counter Offer and acknowledges receipt of a copy hereof.

Date: 10 | 14 | 11


BUYER

Buyer's Initials 

Seller's Initials _____