

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made by and between Santa Fe Estates, a New Mexico corporation, ("Seller") and H. Garrett Thornburg, Trustee of the H. Garrett Thornburg, Jr. Revocable Living Trust utd July 27, 1990, and/or its permitted assigns, ("Buyer") effective as of the date a party hereto last executes this Agreement in accordance with its terms, as indicated beside the parties' signatures below, which date shall serve as the date of this Agreement.

RECITALS

A. Seller owns certain real estate in Santa Fe County, New Mexico, more particularly described as Parcel 9A and 9B as shown on that certain Santa Fe Estates Master Plan dated December 13, 1996, approved by the Santa Fe City Council at its meeting on September 25, 1996.

B. Buyer desires to purchase and acquire, and Seller desires to sell and convey, a legally subdivided parcel of the Village Center Property within Parcel 9A consisting of approximately 7.32 acres, the approximate location and configuration of which is shown on Exhibit A attached hereto (the "Property"), upon the terms and provisions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises, the agreements and undertakings of the parties set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

PURCHASE PRICE

- 1.1. Agreement to Purchase and Sell. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and acquire from Seller, the Property, upon the terms and provisions contained herein.
- 1.2. Purchase Price. The purchase price to be paid by Buyer to Seller for the Property shall be the product of multiplying Eight and 50/100's Dollars (\$8.50) by the number of square feet in the area of the Property, as determined in the Final Recorded Lot Split Plat (hereinafter defined) to be provided as hereinafter set forth (the "Purchase Price").
- 1.3. Payment of Purchase Price. The Purchase Price shall be payable by Buyer to Seller as follows:
 - (a) Twenty-Five Thousand Dollars (\$25,000.00) as earnest money and part



payment of the Purchase Price, has been paid to and deposited with Capitol City Title Services, Inc. ("Title Company") upon the date of this Agreement, which sum shall be held and disbursed pursuant to the terms and provisions of this Agreement. Title Company shall hold the earnest money deposit in such interest bearing account as Buyer and Title Company shall agree, with interest to accrue under the taxpayer identification number of Buyer. If the Closing, as hereinafter defined, shall occur, the earnest money deposit and interest earned thereon (collectively the "Deposit") shall be applied toward the Purchase Price; and

PROPERTY

2.1. Property Size. The parties acknowledge that the 7.32 acres size of the Property is an estimate. The parties agree that the size of the Property shall be determined by the terms and provisions of the Santa Fe Estates Master Plan (including its limitations on impervious surface area), the Santa Fe City Code (as interpreted by City staff and the City Attorney), and the following criteria:

2.1.1. The Property must have a sufficient size that will permit the construction of a minimum of 80,000 square feet of Office Space within a two-story building structure or structures. "Office Space" as used herein means net leasable area of the type customarily used by a service-oriented business.

2.1.2. The Property shall be allocated Fifty-Seven and four-tenths percent (57.4%) of the maximum 5.5 acres of "impervious surface area" currently permitted under the Santa Fe Estates Master Plan for the Village Center Property. Such impervious surface area allocable to the Property is 137,519 square feet.

2.1.3. The size of the Property shall accommodate surface parking of a minimum of one vehicle per 200 square feet of Office Space.

The parties shall cooperate in good faith during the Feasibility Period (hereinafter defined) to determine the size of the Property as set forth above. The finally determined size, configuration and legal description of the Property shall be set forth in the Final Recorded Lot Split Plat (hereinafter defined).

2.2. Appurtenances. The Property includes any and all rights, easements, privileges and appurtenances pertaining or belonging thereto.

2.3. Improvements. The Property includes any and all improvements and infrastructure

thereon (the "Improvements").

2.4. Utilities. Seller at Seller's expense shall install, or cause to be installed, prior to the Closing, the following utility service lines to the boundary line of Parcel 9A reasonably sufficient for Buyer's development of up to 80,000 square feet of Office Space on the Property: electricity, natural gas, water, sewer, telephone, cable TV and "T-1" or other similar high speed internet connection line. Also, on the Final Recorded Lot Split Plat Seller shall establish perpetual non-exclusive easement(s) for installation and maintenance of such utilities servicing the Property, if and to the extent that such installed utilities will need to be extended to the Property over the remaining portion of Parcel 9A not conveyed hereunder in a specific location, which location shall be subject to Buyer's approval within the term of the Feasibility Period (the "Utility Easement(s)"). Seller shall establish such location of the Utility Easement(s) in a manner that will accommodate reasonable and expedient installation of such utilities at a reasonable expense, without substantial interference with the use of the remaining portion of Parcel 9A not conveyed hereunder.

ARTICLE 3

CONDITIONS TO BUYER'S PERFORMANCE

3.1. Title Insurance. As soon as possible after the date of this Agreement, Seller, at Seller's cost and expense, shall cause Commonwealth Land Title Insurance Company, through Title Company, to issue and deliver to Buyer: (i) a current preliminary commitment for the issuance of an owner's policy of title insurance for the Property in the amount of the estimated Purchase Price, written on the latest promulgated ALTA form utilized in the State of New Mexico ("Preliminary Title Commitment"); and (ii) a legible, complete and true photocopy of all documents described or mentioned in the Preliminary Title Commitment, including those documents listed as exceptions to title. Within ten (10) days after the Final Recorded Lot Split Plat Delivery Date, as hereinafter defined, Seller, at Seller's cost and expense, also shall cause Title Company to issue and deliver to Buyer: (i) a current commitment for the issuance of an owner's policy of title insurance (the "Policy"), for the Property and the Utility Easement(s), which shall be described according to the Final Recorded Lot Split Plat, in the amount of the Purchase Price, written on the latest promulgated ALTA form utilized in the State of New Mexico ("Title Commitment"); and (ii) a legible, complete and true photocopy of all documents described or mentioned in the Title Commitment, including those documents listed as exceptions to title. Seller shall cause the delivery to Buyer of the Policy for the Property and the Utility Easement(s) promptly following the Closing Date and shall pay the premium of the Policy.

The Preliminary Title Commitment, the Title Commitment and the Policy shall commit to insure or insure access to the Property and (except for the Preliminary Title Commitment) the Utility Easement(s) and shall commit to have, or have, standard preprinted exceptions 1, 2, 3, 4, 6 and 7 (except the language in exception 7, "water rights, claims or title to water") deleted therefrom at Seller's expense.

Buyer shall have ten (10) days after each such receipt of the Preliminary Title Commitment and the Title Commitment and documents within which to review the same, and, if Buyer objects for any reason in Buyer's discretion to any matter(s) appearing therein in any manner affecting title

first phase thereof, or (ii) the Final Recorded Lot Split Plat Delivery Date as hereinafter defined; or (b) eighteen (18) months after the date of this Agreement, subject to extension as hereinafter provided. If Buyer terminates this Agreement as provided in this Section, and if requested by Seller within ten (10) calendar days after such termination, Buyer shall deliver to Seller any and all written studies and reports prepared by Buyer with respect to Buyer's intended development of the Property; provided, however, that in no event shall Seller be entitled to rely upon such studies and reports for any purpose whatsoever. Buyer's document delivery obligations shall survive the termination of this Agreement. The latter studies and reports involve only the physical development of the land constituting the Property (such as environmental assessments and terrain management engineering analyses and reports), and do not include any financial matters relating to such development (such as appraisals, lending materials and financial analyses and projections).

"Building Permit" as used herein means the issuance by the applicable Land Use Authorities of all building and related permits with conditions acceptable to Buyer to enable Buyer to commence and complete construction of the building improvements and site infrastructure desired by Buyer on the Property as generally described previously herein. "Water Connection" as used herein means issuance by Sangre de Cristo Water Company or other then applicable water utility company serving the Property of all permits and the satisfaction of all requirements with conditions satisfactory to Buyer to enable Buyer to connect to water utility service and receive that necessary quantity of water to serve the water needs of the building improvements and site infrastructure to be constructed by Buyer under the Building Permit.

Commencing upon the expiration of the Feasibility Period described above, Buyer may elect to extend the Feasibility Period for six (6) successive one (1) month periods by giving written notice of each such election to Seller and Title Company and, simultaneously with the giving of such notice to Title Company, delivering to the Title Company the sum of Ten Thousand Dollars (\$10,000.00) at the beginning of each monthly period. Each \$10,000.00 sum so delivered shall be promptly paid and delivered by Title Company to Seller, but shall be applied to and reduce the Purchase Price at the Closing in the event Buyer does not elect to terminate this Agreement as provided herein. In the event Buyer elects to terminate this Agreement as provided herein, any and all such \$10,000.00 amounts shall be nonrefundable to Buyer and shall be retained by Seller.

During the Feasibility Period the following shall occur:

3.3.1. Seller Cooperation. Seller shall reasonably cooperate with Buyer during the Feasibility Period, including extensions thereof, in connection with Buyer's efforts to obtain land use approvals from the applicable land use governing authorities (the "Land Use Authorities") for Buyer's intended development and use of the Property, including: (a) prompt review and execution of all necessary submittals, which are acceptable to and approved by Seller, to the Land Use Authorities, and (b) if required by the Land Use Authorities in connection with Buyer's application for development plan approval, the Building Permit and the Water Connection, prompt preparation and submission to the Land

Use Authorities of any submittals relating to the remainder of Santa Fe Estates Parcel 9A (the "Parcel 9A Remainder"), subject to the following limitations: (a) it is contemplated by the parties that the only submittals that may be required by the Land Use Authorities regarding the Parcel 9A Remainder in connection with Buyer's application for development plan approval are master plan-type pictorial sketches that illustrate development on the Parcel 9A Remainder for the purpose of supporting approval by the Land Use Authorities of Buyer's development plan on the Property, and Seller shall not be required hereunder to make any other type of submittal; (b) Seller, at Seller's sole option, may utilize the same architects/planners engaged by Buyer in connection with preparing Buyer's development plan on the Property to prepare the submittals for the Parcel 9A Remainder; (c) in no event shall Seller be required to expend more than the sum of Ten Thousand Dollars (\$10,000.00) for the Parcel 9A Remainder submittals, and (d) in the event Buyer terminates this Agreement under Buyer's Options after Seller has incurred any expense for the Parcel 9A Remainder submittals, Buyer shall reimburse Seller concurrently with the return to Buyer of the Deposit an amount equal to such expense multiplied by a fraction, the numerator of which is the number of square feet in the area of the Property, and the denominator of which is the number of square feet in the area of Parcel 9A, which reimbursement obligation shall survive the termination of this Agreement. Buyer acknowledges and agrees that all of the proposed submittals by Buyer to Land Use Authorities with respect, in whole or in part, to the Property, including the development plan and the Lot Split defined in Section 3.3.2 but excluding the Building Permit and the Water Connection, shall be subject to the review and reasonable approval of Seller prior to the submission of the same by Buyer to Land Use Authorities. Seller shall respond to Buyer's request for approval as required in the preceding sentence within ten (10) business days after delivery of the submitted item to Seller. If Seller disapproves of the submittal item, Seller shall specify the objectionable matters, in writing delivered to Buyer within such ten (10) business day period. Seller's failure to respond or failure to deliver specified written objections within such ten (10) business day period shall be deemed and constitute Seller's approval of the submitted item.

Prior to making such submittal request, Buyer may deliver to Seller and request Seller's approval of a preliminary submittal of the conceptual, schematic plan contemplated by Buyer to be made in Buyer's subsequent submittal to the applicable Land Use Authority. Seller shall respond to Buyer's request within ten (10) business days after delivery of the preliminary submittal item to Seller. If Seller disapproves of the preliminary submittal item, Seller shall specify the objectionable matters in writing delivered to Buyer within such ten (10) business day period. Seller's failure to respond or failure to deliver specified written objections within such ten (10) business day period shall be deemed and constitute Seller's approval of the preliminary submittal item. Seller's approval of the preliminary submittal item shall bar any objection by Seller to any matter in a subsequent submittal that is consistent with the approved preliminary submittal. It is the parties' intention that Seller will provide prompt approval or reasonable, specified objections to preliminary submittal plans, so that Buyer can proceed with the expense of preparing submittals to the Land Use Authorities after obtaining Seller's approval of Buyer's conceptual, schematic plan for the submittal.

Seller acknowledges that Seller's timely and diligent cooperation in Buyer's

preparation, submission and promotion of Buyer's development plan, the Building Permit and the Water Connection for the Property in order to obtain their approval by the Land Use Authority. In the event Seller and Buyer are unable to agree upon the amount of time of any such unreasonable delay, the issue of such amount of time shall be submitted to mediation, before a single mediator chosen by the parties. If the parties are unable to resolve the issue by mediation within thirty (30) days after submission to mediation, then the matter shall be resolved by binding arbitration in accordance with the rules of the New Mexico Arbitration Act. In no event shall Seller be deemed to have caused any delay if Seller shall timely raise a reasonable objection to Buyer's development plan or other submittals. If Seller shall timely raise a reasonable objection to Buyer's development plan or other submittals, and Buyer and Seller are unable to reach agreement on the resolution of such objection prior to the expiration of the Feasibility Period, then Buyer's sole remedy shall be to exercise Buyer's Options.

3.3.2 Lot Split. Concurrent with Buyer's application with the Land Use Authorities for development plan approval during the Feasibility Period, Seller at the expense shared equally with Buyer shall submit an application, in Seller's name, with the Land Use Authorities for a lot split creating the Property from a portion of Parcel 9A as a separate legal lot of record (the "Lot Split"). Seller shall use prompt diligence and submit all required studies, reports and other information to obtain approval by the Land Use Authorities of the Lot Split and provide Buyer with periodic (at least once per month) update reports of the progress of obtaining such approval and any and all conditions proposed by the Land Use Authorities. Notwithstanding the foregoing, other than any submittals relating to the Parcel 9A Remainder which may be required in connection with the Lot Split and shall be made at Seller's expense pursuant to and subject to the limitations of Section 3.3.1, in no event shall Seller be obligated to submit any studies, reports, or other information also required by Land Use Authorities in connection with Buyer's development plan for the Property, which shall be submitted by Buyer at Buyer's expense. Buyer and Seller acknowledge and agree (i) that all of the proposed submittals by Seller to Land Use Authorities with respect, in whole or in part, to the Lot Split shall be subject to the review and reasonable approval of Buyer prior to the submission of the same by Seller to the Land Use Authorities, and (ii) any and all conditions imposed by the Land Use Authorities in connection with approving the Lot Split shall be subject to Buyer's and Seller's approval. The parties contemplate that final determination of the Property will not occur until development plan approval has been accomplished at which time the Lot Split can be finalized. Upon obtaining approval and recordation with the Santa Fe County Clerk of the approved Lot Split plat creating the Property as a separate legal lot of record (the "Final Recorded Lot Split Plat"), Seller shall promptly deliver to Buyer a copy thereof, together with a copy of all accompanying conditions of the Land Use Authorities' approval to the Lot Split creating the Property as a separate legal lot of record (the "Final Recorded Lot Split Plat Delivery Date").

Buyer shall promptly reimburse Seller for one-half (½) of Seller's costs incurred in connection with applying for and obtaining the Land Use Authorities' approval of the Lot Split (the "Lot Split Costs"), including fees of surveyors, architects and engineers and charges for required studies, reports and other information. Seller shall submit to Buyer periodic (not less than monthly) statements itemizing the Lot Split Costs and attaching copies of invoices or other written evidence of the Lot Split Costs shown thereon. Buyer shall reimburse Seller one-half (½) of the Lot Split Costs reflected on each such statement within fifteen (15) days after its delivery to Buyer. Buyer's reimbursement obligations shall survive the termination of this Agreement. Notwithstanding any of the terms and provisions of this Section 3.3.2 to the contrary, in the event of the termination of this Agreement, Buyer shall not be responsible for reimbursement of Lot Split Costs initiated or that could otherwise reasonably be avoided on and after the date of receipt by Seller of Buyer's notice of such termination.

3.3.3 Covenants. Buyer acknowledges that Seller intends to subject the Property to (i) certain recorded declarations of covenants, conditions and restrictions affecting all of Santa Fe Estates, and (ii) certain recorded declarations of covenants, conditions and restrictions applicable to the Property and the remainder of Parcels 9A and 9B, known as the Santa Fe Estates Village Center, and such other Parcels as may be added to the Santa Fe Estates Village Center as a result of amendments to the Santa Fe Estates Master Plan. Within thirty (30) days after the date of this Agreement, Seller shall deliver to Buyer a true and correct copy of the proposed draft of the Master Declaration of Covenants (the "Master Declaration") and the Village Center Declaration of Covenants (the "Village Center Declaration" and collectively the "Declarations"). Buyer shall have thirty (30) days after delivery of each of the respective Declarations within which to review the same, and, if Buyer objects for any reason in Buyer's discretion to any matter(s) appearing therein, Buyer shall notify Seller in writing of such objection(s), and Seller, if Seller so chooses, in Seller's sole and absolute discretion, without any obligation to do so, shall have ten (10) days from receipt of such notice of objection(s) within which to remove or correct the matter(s) objected to. If Seller is unable or unwilling to so remove or correct such matter(s) within such time period, Buyer may exercise any one of Buyer's Options as hereinafter defined. All matters contained in each respective Declarations draft that are not so objected to by Buyer, by delivery of written notice to Seller within such thirty (30) day periods, conclusively shall be deemed to be acceptable to Buyer. If the form and content of the Declarations shall be agreed upon by Buyer and Seller, then, unless otherwise consented to in writing by Buyer, the Declarations shall not thereafter be amended in any material respect prior to Closing, unless required by Land Use Authorities. If Land Use Authorities shall require revisions to either of the Declarations, then Seller shall provide the applicable revisions to Buyer. Buyer shall have ten (10) days after delivery of the respective revisions within which to review the same, and, if Buyer objects for any reason in Buyer's discretion to any matter(s) appearing therein, Buyer shall notify Seller in writing of such objection(s), and Seller, if Seller so chooses, in Seller's sole and absolute discretion, without any obligation to do so, shall have ten (10) days from receipt of such notice of objection(s) within which to remove or correct the matter(s) objected to, if possible. If Seller is unable or unwilling to so remove or correct such matter(s) within such time period, Buyer may exercise any one of Buyer's Options as hereinafter defined.