

Darren B. Neilson, USB #15005
The Neilson Law Group
2150 South 1300 East, Suite 360
Salt Lake City, UT 84106
Telephone: 801.207.9500
Facsimile: 801.212.2058
Email: darren@neilsonlaw.co

Attorneys for Debtor Fairgrounds Properties, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re
FAIRGROUNDS PROPERTIES, INC.
Debtor.

Bankruptcy No. 17-29271
Chapter 11
Judge William T. Thurman

MOTION SEEKING AUTHORITY TO SELL REAL PROPERTY (LOT 37) LOCATED IN HURRICANE, UTAH FREE AND CLEAR OF ALL INTERESTS PURSUANT TO 11 U.S.C. § 363, AND TO PAY TAXES AND COSTS OF SALE FROM SALE PROCEEDS

Fairgrounds Properties, Inc., debtor and debtor-in-possession (the “**Debtor**” or “**Fairgrounds**”) in the above captioned Chapter 11 case, by and through its undersigned proposed counsel, moves this Court for an Order authorizing the private sale of real property (lot 35) located in Hurricane, Utah, which is described in further detail below, free and clear of all interests pursuant to 11 U.S.C. § 363(b), (f), and (m), as well as Rule 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure. As part of this request, the Debtor requests that the Court authorize the Debtor to make certain payments associated with the sale as detailed below.

This Motion is supported by the *Declaration of Robert Stevens* (the “**Stevens Declaration**”) attached hereto as **Exhibit 1**. For the reasons set forth below, the Debtor maintains that this Motion should be granted.

JURISDICTION AND VENUE

1. On or about October 25, 2017, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. ECF Docket No. 1.
2. The Court has subject matter jurisdiction of this proceeding pursuant to 28 U.S.C. §§ 157 and 1334.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

BACKGROUND

4. In 2007, Debtor purchased eighty-six (86) acres of real property located in Hurricane, Utah (the “**Property**”). Stevens Declaration ¶ 4. The Debtor developed the Property into industrial lots and then sold them for further construction and development by purchasers (the “**Fairgrounds Lots**”). *Id.* Though various sales over the years, as of the petition date, the Debtor is left with approximately thirty-one (31) acres, which had been divided up into nineteen (19) lots. *Id.* The Debtor has completed the entire infrastructure of remaining land including; completion of gutters, paved entries and water and sewer. *Id.*

5. Relevant to this Motion is Lot 37 (“**Lot 37**”) which is described as: “Lot Thirty-Seven (37) FAIRGROUNDS INDUSTRIAL PARK, according to the Official Pat thereof, on file in the Office of the Recorder of Washington County, State of Utah,” as is more fully described in a Title Report attached as Exhibit “A” to the Stevens Declaration.

6. Pre-petition liens existing against the Lot 37, include but are not limited to (collectively, the “**Recorded Liens**”):

- a. Unpaid property taxes;
- b. Deed of Trust in favor of Town & Country Bank¹, recorded December 17, 2008, as entry number 20080048001;

¹ People’s Intermountain Bank (“**PIB**”), a Utah corporation is the successor in interest by merger to Town & Country Bank, Inc.

- c. Deed of Trust in favor of Dakota Aggregate LLC, recorded February 24, 2014, as entry number 20140005359.

Exhibit A to Stevens Declaration.

Marketing and Sale of the Property

7. Linx Commercial Real Estate (“**Linx**”) has marketed the Property for private sale pursuant to a listing agreement dated May 11, 2018. Stevens Declaration ¶ 5.

8. Linx has actively marketed the Property, including Lot 37 for private sale pursuant to industry standards, including by: (a) creating marketing flyers and postcards; (b) HTML email broadcasts; (c) posting on national real estate websites; (d) launching campaigns to real estate brokers; (e) engaging the regional economic development community; (f) soliciting targeted category buyers; and (g) otherwise promoting the Property’s availability to the national marketplace. Stevens Declaration at ¶ 6.

9. Subject to Bankruptcy Court approval, on November 01, 2018, Aurelio Gutierrez and/or Assigns (“**Buyer**”) presented a Real Estate Purchase Contract for Land (“**Agreement**”) for the purchase of Lot 37 for a purchase price of \$95,000. A true and correct copy of the Sale Agreement is attached as Exhibit “B” to the Stevens Declaration. On or about November 02, 2018, Debtor accepted the offer. *See* Exhibit B to Stevens Declaration.

The Sale Agreement

10. While the Sale Agreement must be reviewed to obtain full disclosure of all its material terms, the following summary of the terms most relevant to this Motion:

- a. The purchase price if \$95,000.
- b. The Buyer has made an earnest money deposit in the amount of \$2,500.

Id.

Additional Terms

11. Additional terms requested in this Motion are:
 - a. The sale of Lot 37 is conditioned on the Court’s entry of an Order approving the Sale.

- b. The Settlement and close of the transaction will occur once the Order is entered.
- c. The Debtor requests that the Court waive the fourteen (14) day appeal period.
- d. The sale of the Property is “AS IS” with no representation or warranties by the Debtor, except that the Debtor has authority to enter into the Sale Agreement and sell the Property with Court approval and will seek approval of the sale free and clear of liens and interests under 11 U.S.C. § 363(b) and (f).
- e. Authorize a break-up fee (the “**Break-Up Fee**”) in favor of Buyer of \$5,000.

Break-up Fee

12. In order to induce Buyer to expend additional time, resources, and uncertainty in submitting a “stalking horse” bid, the Debtor agreed to provide, and to seek this Court's approval of the Break-Up Fee. The Motion requests entry of an order approving the Break-Up Fee, which is comprised of a break-up fee of \$5,000² if Lot 37 is sold to a party other than Buyer, provided that Buyer has not defaulted in any of its material obligations under the Sales Agreement.

Proposed Sale Procedures

13. The proposed sale of Lot 37 is a private sale, and it is anticipated that it will close in accordance with the terms of the Sale Agreement.

14. However, the sale of Lot 37 is subject to higher and/or better offers.

15. The Debtor will consider all written offers for the purchase of Lot 37 made prior to the expiration of the deadline set forth in the Notice of Hearing filed concurrently herewith (the “**Higher and/or Better Deadline**”).

² As set forth in the Higher and/or Better Deadline, the first acceptable bid shall be in increments of \$6,000 to ensure that the Debtor’s Estate receives a benefit from back-up buyer.

16. Whether an offer is a higher and/or better offer will be determined by the Debtor is its sole discretion.

17. Upon closing of the sale, whether to the Buyer or to a person who has submitted a higher and/or better offer, the Debtor will file a Notice of Sale with the Court that provides information typically required under Federal Rule of Bankruptcy Procedure 6004(f).

18. In the event that a higher and/or better offer is received and accepted for the sale of Lot 37, approval of the sale to the Buyer herein will be deemed to be approval of the sale to the person submitting the higher and/or better offer, with the Notice of Sale providing an itemization of amounts obtained by the Debtor, as well as the Break-Up Fee to the Buyer.

Proposed Disbursements and Treatment of Recorded Liens

16. Following close of the sale of Lot 37, the Debtor anticipates paying from the gross proceeds of the sale the costs of sale, which will include a 6% commission as set forth in the Listing Agreement. Stevens Declaration ¶ 8.

17. Unpaid Property Taxes: The Debtor seeks permission to pay all unpaid property taxes from the sale proceeds as they are secured by Lot 37 pursuant to Utah law.

18. Deed of Trust of PIB: The Debtor seeks permission to pay PIB the remainder of the funds after paying costs and taxes.

19. Deed with Assignment of Rents of Fairgrounds Industrial Park, LLC: Fairgrounds Industrial Park, LLC has agreed to voluntarily release this deed against Lot 37, and it will remain of record against the rest of the Property with the same rights and priority, if any, as it had on the Petition Date.

20. Deed of Trust of Dakota Aggregate LLC: The Debtor seeks to sell Lot 37 free and clear of this lien as it is an avoidable transfer under 11 U.S.C. § 544 and the Uniform Fraudulent Transfer Act as adopted in Title 25 Chapter 6 of the Utah Code. Specifically, under Utah Code Ann. §§ 2-6-202(b) and 305(2) a transfer is avoidable if the debtor incurred the obligation without

receiving reasonable equivalent value at a time when the Debtor was insolvent. Stevens Declaration ¶ 15. Furthermore, the transfer was made within four (4) years of the Petition Date. *Id.* Debtor was in a bankruptcy at the time of the transfer and did not receive reasonable equivalent value for the transfer as the obligation satisfied by allowing the transfer was an obligation of Brett John³ personally and not that of the Debtor. *Id.*

21. Furthermore, even in the event that the transfer to Dakota Aggregate LLC is not fraudulent, Dakota Aggregate LLC is behind both PIB and Fairgrounds Industrial Park LLC and would not be entitled to payment until those creditors are paid in full.

Notice

22. Notice of this Motion will also be served on all parties in interest in this case.

RELIEF REQUESTED

23. By this Motion, the Debtor seeks the entry of an Order: (a) approving the Sale Agreement; (b) authorizing the sale of Lot 37 pursuant to the Sale Agreement and this Motion out of the ordinary course of business, free and clear of interests, and subject to higher and/or better offers, with valid liens, claims, encumbrances and interests in Lot 37 attaching to the net sale proceeds; (c) authorizing the payment of actual and necessary costs of sale, including a commission to Linx, and outstanding real property taxes; and (d) waiving of the fourteen (14) day appeal period.

24. The Debtor believes that the sale of Lot 37 as set forth in the Sale Agreement is fair, reasonable, and in the best interests of the Debtor and the estate.

25. The Debtor thus maintains that this Motion should be granted.

ARGUMENT

³ Mr. John was once a principal of the Debtor prior to transferring his interest to Mr. Stevens.

The Proposed Sale Should Be Authorized Under 11 U.S.C. § 363(b)

25. The Bankruptcy Code provides that the "trustee, after notice and a hearing, may use, sell, lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under 11 U.S.C. § 1107(a), a debtor-in-possession "shall have all the rights, ...and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter."

26. In this case, the Debtor is a real estate developer, and so the Sale is not technically outside the Debtor's ordinary course of business. However, the Debtor believes it is prudent to file this Motion to give all parties notice, and to invoke the powers of 11 U.S.C. § 363(f).

27. In order to approve a sale of assets outside the ordinary course of business, the Debtor must show that:

- a. a sound business reason exists for the sale;
- b. there has been adequate and reasonable notice to interested parties, including full disclosure of the sale terms and the Debtor's relationship with the buyer;
- c. the sale price is fair and reasonable; and
- d. the proposed buyer is proceeding in good faith.

28. The Debtor has met all four parts of this test, and accordingly, respectfully requests that the Court grant this Motion.

Sound Business Purpose

29. Once a debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.' " *In re Johns-Manville Corp.*, 60 B.R. 612, 615-616 (Bankr. S.D.N.Y.) ("a presumption of reasonableness attaches to a Debtor's management decisions").

30. The Debtor is a real estate developer and Mr. Steven's has over thirty (30) years of experience and expertise in real estate sales. Stevens Declaration ¶ 11.

31. In the Debtor's business judgment, the Debtor believes that the proposed sale under the Sale Agreement is fair, reasonable, and will maximize the value of the Property, and produce a good-faith purchaser. *Id* at ¶ 12. The Debtor's opinion is based on several factors, including but not limited to the following:

- a. the length of time the Property has been marketed for sale;
- b. the advice of Linx and those acting under its direction, who have experience in selling land similar to the Property;
- c. the arm's-length nature of the negotiations related to the terms of the Sale Agreement;;
- d. the relatively quick closing of the sale; and
- e. the ability of the Debtor to accept higher and/or better offers for Lot 35.

Id.

Notice of the Proposed Sale and Higher and/or Better Offers

32. Adequate and reasonable notice of this Motion and the proposed public sale of Lot 14 will be made to interested parties.

33. Concurrent with the filing of this Motion, the Debtor will serve a Notice of Hearing upon all creditors and parties-in-interest in the above-captioned bankruptcy case and all parties whose interests might be affected by the sale contemplated herein. The Notice of Hearing provides: (a) a general description of Lot 37; (b) the price that is offered by the Buyer; (c) a statement that the Debtor will accept higher and/or better offers for Lot 37, as well as the procedures for submitting a higher and/or better offer prior to the expiration of the Higher and/or Better Deadline;

(d) procedures and the deadline for objecting to the sale of Lot 37; and (e) the date and time of any hearing on this Motion.

34. Linx will provide notice of the proposed sale to any parties who have expressed an interest in Lot 37.

35. Linx will continue to market Lot 37 for sale through the Higher and/or Better Deadline, and the Debtor will consider competing offers for Lot 37 prior to the expiration of the Higher and/or Better Deadline. Stevens Declaration ¶ 13.

36. Whether an offer is higher and/or better will be determined by the Debtor in its sole and absolute discretion, and to the extent the Debtor receives a competing offer for Lot 37 prior to the Higher and/or Better Deadline that it considers higher and/or better, the Debtor will provide notice to the Buyer of the higher and/or better offer.

37. Such procedures are fair, reasonable, and are intended to obtain the highest and best price for Lot 37 as well as afford notice as required under 11 U.S.C. § 363 and Federal Rules of Bankruptcy Procedure 2002 and 6004.

Fair and Reasonable Price

38. For the reasons set forth above, as well as the fact that the Debtor can accept higher and/or better offers for Lot 37 prior to the expiration of the Higher and/or Better Deadline, the Debtor respectfully submits the proposed sale price for Lot 37 is fair and reasonable.

Good Faith Purchaser

39. The parties' negotiation of the Sale Agreement has been at arms' length and in good faith, and the parties agree that all acts culminating in the closing of the Sale Agreement will likewise be negotiated and conducted through arms' length transactions and in good faith. Stevens Declaration ¶ 14.

40. Although the Bankruptcy Code does not define "good faith," the Tenth Circuit has determined in the context of 11 U.S.C. § 363(m) that a "good faith" purchaser is "one that buys in good faith, and for value." Actions that destroy a purchaser's good faith include "fraud, collusion between the purchaser and other bidders or trustee, or an attempt to take grossly unfair advantage of other bidders."

41. Here, the good faith standard has been met because the Buyer is purchasing the Property in good faith and for fair value as part of a transparent process that affords all parties in interest and potential purchasers the opportunity to make a higher and/or better offer for the purchase of the Property. Additionally, the Buyer is an independent third party that has no connections to the Debtor, and there has been no fraud or collusion between the Buyer and Debtor. Stevens Declaration ¶ 14.

42. Specifically, Lot 37 has been actively marketed for more than eight years. Stevens Declaration ¶ 5. The parties entered into good-faith negotiations relating to the terms of the Sale Agreement. Stevens Declaration ¶ 14. As a result of such negotiations, as well as other factors discussed above, the purchase price represents a fair and reasonable value for Lot 37. Finally, the material terms of the sale are being fully disclosed to the Court and parties in interest, and to the extent any party submits a higher and/or better offer for Lot 37 prior to the expiration of the Higher and/or Better Deadline, the Debtor is able to accept such offer. Accordingly, the Debtor submits that the proposed sale is an arm's length transaction made to a good faith purchaser and requests that any order authorizing this sale so provide.

43. Accordingly, the Debtor requests that the Court enter an Order granting this Motion and (a) approving the sale under 11 U.S.C. § 363(b) and (m).

The Sale of Lot 14 Free and Clear Pursuant to 11 U.S.C. §363 (f) is Warrented

44. 11 U.S.C. § 363(f) states that a Debtor may sell estate property free and clear of interests, if:

- f. applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- g. such entity consents;
- h. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- i. such interest is in bona fide dispute; or
- j. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

45. Because Section 363(f) is in the disjunctive, the satisfaction of any one of the alternative requirements enumerated therein will warrant the Debtor's proposed sale of the Property free and clear of interests.

46. The Recorded Liens equal an amount greater than the sales price of the Property. However, as set forth above, each of the Recorded Liens is either invalid or in bona fide dispute, or the holder has agreed to this Motion subject to the treatment stated herein, including the payment to PIB from the proceeds of Lot 37 closing. Accordingly, it is appropriate for the Court to approve the Sale, free and clear of all liens, claims and encumbrances, including but not limited to the Recorded Liens, without the liens attaching to the Sale proceeds. In this manner, the Debtor would pay PIB and the costs of sale, including property taxes.

47. Cause exists to waive the 14-day period set forth in Rule 6004(h) because the Debtor needs to comply with the Sales Agreement and time is of the essence.

The Debtor Should be Authorized to Make Payments

48. The Debtor is requesting authority to pay the costs of sale, including the sales commission and taxes. Based on all of the statements above, the Debtor submits that he should be authorized to do so.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an Order granting the Motion, and:

- A. Approving the Sale Agreement;
- B. Authorizing the sale of Lot 37 to the Buyer or to the person whose higher and/or better offer is accepted by the Debtor free and clear of all interests pursuant to 11 U.S.C. 363(b) and (f);
- C. Finding that the sale of Lot 37 is a good faith sale under 11 U.S.C. § 363(m);
- D. Authorizing the Debtor to pay from the gross sale proceeds the costs of sale, including a 6% commission, outstanding real property taxes, and payment to PIB;
- E. Authorize the Break-Up Fee to the Buyer;
- F. Authorize the waiver of the 14-day appeal period; and
- G. Such other relief as the Court deems just and appropriate.

Dated November 6, 2018.

/s/ Darren Neilson

Darren Neilson
Proposed counsel for Fairgrounds Properties, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certified that on this 7th day of February, 2018, a true and correct copy of the foregoing **MOTION SEEKING AUTHORITY TO SELL REAL PROPERTY (LOT 37) LOCATED IN HURRICANE, UTAH FREE AND CLEAR OF ALL INTERESTS PURSUANT TO 11 U.S.C. § 363, AND TO PAY TAXES AND COSTS OF SALE FROM SALE PROCEEDS** was electronically filed with the United States Bankruptcy Court for the District of Utah CM/ECF filing system and further certifies that the below listed are parties of record in this case, are registered users of CM/ECF, and will be served through the CM/ECF system:

- Justin D. Heideman jheideman@heidlaw.com, wpoulsen@heidlaw.com; sstelmasek@heidlaw.com
- Peter J. Kuhn Peter.J.Kuhn@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- Brian M. Rothschild brothschild@parsonsbehle.com, ecf@parsonsbehle.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Adelaide Maudsley: amaudsley@kmclaw.com;
- Chris Schmutz: chrisschmutz.pc@gmail.com.

Mail Service – By regular first class United States mail, postage fully prepaid, addressed to the following parties:

Washington County Treasurer
197 East Tabernacle
St George, UT 84770-3443

Internal Revenue Service
ATTEN: Kenny Walker
M/S 5021
178 S. Rio Grande
Salt Lake City, UT 84101-1501

/s/ Darren Neilson

EXHIBIT 1

Darren B. Neilson, USB #15005
The Neilson Law Group
2150 South 1300 East, Suite 360
Salt Lake City, UT 84106
Telephone: 801.207.9500
Facsimile: 801.212.2058
Email: darren@neilsonlaw.co

Attorneys for Debtor Fairgrounds Properties, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re

FAIRGROUNDS PROPERTIES, INC.

Debtor.

Bankruptcy No. 17-29271

Chapter 11

Judge William T. Thurman

**DECLARATION OF ROBERT STEVENS IN SUPPORT OF MOTION SEEKING
AUTHORITY TO SELL REAL PROPERTY (LOT 37) LOCATED IN HURRICANE,
UTAH FREE AND CLEAR OF ALL INTERESTS PURSUANT TO 11 U.S.C. § 363, AND
TO PAY TAXES AND COSTS OF SALE FROM SALE PROCEEDS**

I, Robert Stevens, being of lawful age, declare, certify, verify, and state as follows:

1. I am the president and sole owner of Fairgrounds Properties, Inc. (“**Fairgrounds**” or “**Debtor**”).
2. I submit this Declaration in support of the Motion Seeking Authority to Sell Real Property Located in Hurricane, Utah Free and Clear of All Interests Pursuant to 11 U.S.C. § 363, and to Pay Taxes and Costs of Sale From Sale Proceeds (the “**Motion**”).
3. I make all of the following statements based on my personal knowledge.

4. In 2007, I, acting as the principal for the Debtor purchased eighty-six (86) acres of real property located in Hurricane, Utah (the “**Property**”). Thereafter the Property was developed into industrial lots and then marketed and sold them for further construction and development by purchasers (the “**Fairgrounds Lots**”). Though various sales over the years, as of the petition date, the Debtor is left with approximately thirty-one (31) acres, which have been divided up into nineteen (19) lots. The Debtor has completed the entire infrastructure of remaining land including; completion of gutters, paved entries and water/sewer.

5. The Property, including Lot 37, has been marketed for private sale since 2008. Debtor entered into a new listing agreement with Linx Commercial Real Estate (“**LINX**”) on May 11, 2018. I have been working with LINX and am familiar with the work they have done to market the Property. LINX has marketed the Property for private sale pursuant to a listing agreement from May 11, 2018. A title report for Lot 37 is attached hereto as Exhibit “A.”

6. The Property has been actively marketed for private sale including by: (a) creating marketing flyers and postcards; (b) HTML email broadcasts; (c) posting on national real estate website; (d) launching campaigns to real estate brokers and national home builders; (e) engaging the regional economic development community; (t) soliciting targeted category buyers; and (g) otherwise promoting the Property's availability to the national marketplace.

7. On or about November 01, 2018, Aurelio Gutierrez and/or Assigns (“**Buyer**”) presented a Real Estate Purchase Contract for Land (“**Agreement**”) for the purchase of Lot 37 for a purchase price of \$95,000. A true and correct copy of the Sale Agreement is attached hereto as Exhibit “B”. On or about November 02, 2018, I accepted the offer. See Exhibit “B.”

8. Following close of the sale of Lot 37, the Debtor anticipates paying from the gross proceeds of the sale the costs of sale, which will include a 6% commission to LINX as set forth in the Listing Agreement.

9. There are outstanding property taxes on Lot 37, and I anticipate paying the property taxes out of the gross sale proceeds.

10. Notice of this Motion will be served on all parties in interest in this case.

11. The Debtor is a real estate developer and I have over thirty (30) years of experience and expertise in real estate sales.

12. I believe that the proposed sale under the Sale Agreement is fair, reasonable, and will maximize the value of the Lot 37, and produce a good-faith purchaser. My opinion is based on several factors, including but not limited to the following:

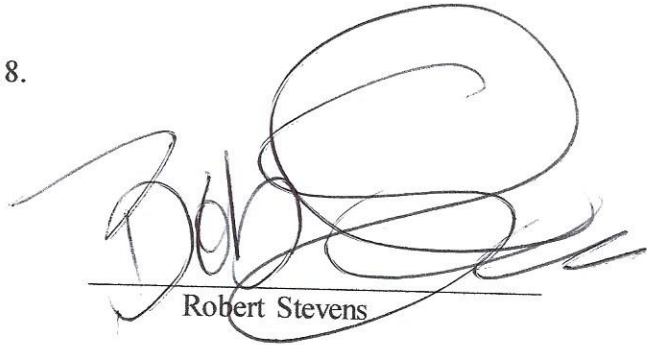
- a. the length of time the Property has been marketed for sale;
- b. the advice of LINX and those acting under its direction, who have experience in selling land similar to the Property;
- c. the arm's-length nature of the negotiations related to the terms of the Sale Agreement;
- d. the relatively quick closing of the sale; and
- e. the ability of the Debtor to accept higher and/or better offers for Lot 37.

13. LINX will continue to market Lot 37 for sale through the Higher and/or Better Deadline, and the Debtor will consider competing offers for Lot 37 prior to the expiration of the Higher and/or Better Deadline.

14. Buyer is an independent third party that has no connections to the Debtor, and there has been no fraud or collusion between the Buyer and Debtor

15. The Debtor incurred the obligation to Dakota Aggregate, LLC in February of 2014. At the time the two principals of the Debtor were myself and my son-in-law, Brett John. Dakota Aggregate, LLC had obtained a judgment against Mr. John personally based on a previous business venture between Dakota Aggregate, LLC and Mr. John. In satisfaction of the judgment against Mr. John, Dakota Aggregate, LLC was allowed to record a lien against the Property. The Debtor did not receive any value in consideration for the transfer. At the time of the transfer, the Debtor was operating as a debtor-in-possession under a confirmed plan of reorganization and was insolvent.

DATED this 11 of November 2018.



Robert Stevens

EXHIBIT A

American Land Title Association

Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018

Transaction Identification Data for reference only:

Commitment Number: 202129
Escrow Agent: Brad Seegmiller
Escrow Agent Utah License Number: 73873
Escrow Agent Contact: (435) 652-4829 | brad@sutc.com
Property Land Type: Vacant Commercial Property
Property Address: (Not Yet Addressed / Unimproved Land), Hurricane, Utah 84737
Standard Owners Policy (Commercial)



SCHEDULE A

1. Commitment Date: November 3, 2018 at 7:00AM
2. Policy to be issued:
 - (a) Owners Policy (Commercial)
Proposed Insured: **Aurelio Gutierrez**
Proposed Policy Amount: **\$95,000.00** Premium: **\$374.00**
3. The estate or interest in the Land described or referred to in this Commitment is **fee simple**.
4. The Title is, at the Commitment Date, vested in:
Fairgrounds Properties, Inc., a Utah Corporation
5. The Land, situated in Washington County, Utah, is described as follows:

Lot Thirty-Seven (37), FAIRGROUNDS INDUSTRIAL PARK, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Southern Utah Title Company

Authorized Agent for Insurer

By: 

Authorized Signatory



This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.
The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited.
Reprinted under license from the American Land Title Association.



American Land Title Association

Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018

**SCHEDULE B, PART I
Requirements**

All of the following Requirements must be met:

1. Pay the agreed amounts for interest in the land and/or the mortgage or deed of trust to be insured.
2. Pay us the premiums, fees and charges for the policy. In the event the transaction for which this commitment is furnished cancels, the minimum cancellation fee will be \$120.00.
3. Provide us with releases, reconveyances or other instruments, acceptable to us, including payment of any amounts due, removing the encumbrances shown in Schedule B - Section 2 that are objectionable to the proposed insured.
4. Provide us with copies of appropriate agreements, resolutions, certificates, or other evidence needed to identify the parties authorized to execute the documents creating the interest to be insured.
5. The documents creating the interest to be insured must be signed, delivered and recorded.
6. You must tell us in writing the name of anyone not referred to in this Commitment who will receive an interest in, or who will make a loan secured by a deed of trust or mortgage secured by, the land described in this Commitment.
7. Upon receipt and review of the necessary information listed in these requirements and related to this transaction, we reserve the right to add requirements to this Schedule or add special exceptions in Schedule B - Section 2.
8. Provide us with any information regarding personal property taxes which may have been assessed or are due and payable which could become a lien on the real property.
9. This Company will require the following, if necessary, to insure a loan by or conveyance from, the entity named herein: A. A copy of the Partnership Agreement, Articles of Organization, Operating Agreement and Corporation Resolution, together with all supplements or amendments thereto. B. Evidence that the entity is in good standing in the State where it was formed. C. A copy of the Trust Agreement and any amendments thereto.
10. Require assessment check with the existing Municipality and proof of full satisfaction that all Special Improvement Districts and/or Special Service Districts affecting said property be paid in full or paid current.
11. Payment of taxes which are liens, now due and payable as shown on Schedule B - Section 2.
12. Payment of Delinquent Taxes, including penalties and interest as shown on Schedule B - Section 2. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
13. Require satisfactory evidence that the Special Service Districts (SSDS) shown on Schedule B - Section 2, be paid current and/or paid in full.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 6 | Commitment Number: 202129



American Land Title Association

**Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018**

14. Release, Reconveyance, Satisfaction of the Trust Deed With Assignment of Rents, recorded as Doc. No. [20070017680](#) , as shown on Schedule B - Section 2. (Affects this and other property)
15. Release, Reconveyance, Satisfaction of the Deed of Trust, recorded as Doc. No. [20080048001](#) , as shown on Schedule B - Section 2. (Affects this and other property)
16. Release, Reconveyance, Satisfaction of the Deed of Trust, recorded as Doc. No. [20140005359](#) , as shown on Schedule B - Section 2. (Affects this and other property)
17. Require an Order Approving Sale or an Order Granting Relief From The Automatic Stay or an Order Discharging Debtor under Bankruptcy Case No. 17-29271, as shown on Schedule B - Section 2.
18. Provide Insurer with a copy of the Articles of Incorporation for Fairgrounds Properties, Inc., A Utah Corporation, together with verification of their current corporate status.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 7 | Commitment Number: 202129



American Land Title Association

Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018

SCHEDULE B, PART II
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be by an inspection of the land or which may be asserted by persons in possession, or claiming be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey of the land would disclose, and which are not shown by the public records.
4. Any lien, or right to a lien, imposed by law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights, including, but not limited to, easements or equitable servitudes; or, (d) water rights, claims or title to water, whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.
6. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
7. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity, or garbage collection or disposal or other utilities unless shown as an existing lien by the public records.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the records or attaching subsequent to the effective date hereof but prior to the date the proposed acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
9. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.
10. Rights of way for any roads, ditches, canals, or transmission lines now existing over, under, or across said property.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 8 | Commitment Number: 202129



American Land Title Association

**Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018**

11. Taxes for the year 2018, in the amount of \$1,232.15, which are liens, now due and payable, but will not become delinquent until December 1, 2018. Tax Serial No. H-FAIR-37.
12. Taxes for the year 2017, in the amount of \$1159.82, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
13. Taxes for the year 2016, in the amount of \$945.98, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
14. Taxes for the year 2015, in the amount of \$1,221.23, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
15. Taxes for the year 2014, in the amount of \$1,291.41, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
16. Taxes for the year 2013, in the amount of \$1,374.38, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
17. Taxes for the year 2012, in the amount of \$1,462.69, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
18. Taxes for the year 2011, in the amount of \$1,474.08, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
19. Taxes for the year 2010, in the amount of \$1,991.19, plus penalties, interest and costs, which are liens, now delinquent, due and payable. Tax Serial No. H-FAIR-37. (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)
20. Liability to Assessments levied by the Ash Creek Special Service District, as disclosed by Instrument recorded October 16, 1985, as Entry No. [283078](#) , in Book 390, at Pages 907-916, Official Washington County Records. (Affects this and other property)
21. Subject to Right-Of-Way Grant/Temporary Use Permit, dated SEPTEMBER 8, 1988, in favor of MOUNTAIN FUEL SUPPLY COMPANY, for right to construct, operate, maintain, and terminate a Natural Gas Pipeline, and rights incidental thereto, as set forth in Instrument, recorded MAY 27, 1997, as Entry No. [566876](#) , in Book 1103, at Pages 186-209, Official Washington County Records, said right-of-way or permit granted herein is 50.0 feet wide, 73,318.0 feet long and crosses through Lot 5, Section 3, Township 42 South, Range 14 West, Salt Lake Base and Meridian. (General Easement - Exact location un-defined) (Affects this and other property)

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 9 | Commitment Number: 202129



American Land Title Association

**Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018**

22. Exceptions and Reservations, and rights incidental thereto, as reserved by the United States of America by Patent No. 43-98-0011, recorded February 4, 1998, as Entry No. [590572](#), in Book 1174, at Pages 838-839, Official Washington County Records, and wherein it recites in part as follows: (Affects this and other property)

"EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

SUBJECT TO:

1. Those rights for a sewage pipeline and access road, granted to Hurricane City, its successors and assigns, by right-of-way number UTU-44040, pursuant to the Act of October 21, 1976, (90 Stat. 2776, 43 U.S.C. 1761), as to lot 20, section 30, T. 41 S., R. 13 W.; and

2. Those rights for a natural gas pipeline, granted to Questar Gas, its successors and assigns, by right-of-way number UTU-62308, pursuant to the Act of October 21, 1976, (90 Stat. 2776, 43 U.S.C. 1761), as to lot 5, section 3, T. 42 S., R. 14 W."

23. Subject to easements, notes, restrictions, reservations, any and all other matters as set forth and disclosed on the Official Plat of "FAIRGROUNDS INDUSTRIAL PARK", Official Washington County Records.

24. The Effect of the Covenants, Conditions and Restrictions in the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, recorded April 26, 2007, as Doc. No. [20070021390](#), Official Washington County Records.

25. Trust Deed With Assignment of Rents (Corporate Form), executed by FAIRGROUNDS PROPERTIES, INC., A Utah Corporation, as TRUSTOR, to SOUTHERN UTAH TITLE COMPANY, as TRUSTEE, in favor of LAND EXCHANGE CORPORATION, A Utah Corporation, as BENEFICIARY, to secure the payment of \$2,690,996.31 and interest, recorded April 6, 2007, as Doc. No. [20070017680](#), Official Washington County Records. (Affects this and other property)

Assigned to and now held of record by ROBERT C. STEVENS, by an Assignment of Deed of Trust recorded October 25, 2007, as Doc. No. [20070051962](#), Official Washington County Records.

Subordination Agreement, executed by ROBERT C. STEVENS, to TOWN AND COUNTRY BANK, recorded December 19, 2008, as Doc. No. [20080048003](#), Official Washington County Records, State of Utah, subordinating the lien of said Deed of Trust to the lien of the Deed of Trust recorded at Doc. No. [20080048001](#), of the Official Records.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 10 | Commitment Number: 202129



American Land Title Association

**Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018**

26. Deed of Trust, dated December 17, 2008, executed by FAIRGROUNDS PROPERTIES, INC., as TRUSTOR, in favor of TOWN & COUNTRY BANK, as TRUSTEE and BENEFICIARY, to secure the payment of \$1,380,000.00 and interest, recorded December 19, 2008, as Doc. No. [20080048001](#) , Official Washington County Records. (Affects this and other property)

Notice of Default and Election to Sell, under the terms of said Deed of Trust recorded on December 23, 2010, as Doc No. [20100043324](#) , Official Washington County Records.

Substitution of Trustee, recorded January 4, 2011, as Doc No. [20110000228](#) , Official Washington County Records, State of Utah, wherein H. STUART RIPPLINGER, a member of the Utah State Bar is designated as Successor Trustee under said Deed of Trust.

Substitution of Trustee, recorded January 4, 2011, as Doc No. [20110000232](#) , Official Washington County Records, State of Utah, wherein JUSTIN D HEIDEMAN, a member of the Utah State Bar is designated as Successor Trustee under said Deed of Trust.

Notice of Trustee's Sale, wherein H. STUART RIPPLINGER, a member of the Utah State Bar, Trustee, gives notice that the land will be sold at public auction, for the purpose of foreclosing a Deed of Trust, on May 10, 2011, recorded April 7, 2011, as Doc. No. [20110010773](#) , Official Washington County Records.

Substitution of Trustee, recorded November 12, 2014, as Doc No. [20140034566](#) , Official Washington County Records, State of Utah, wherein KIMBALL A. FORBES, of the law firm of Clarkson, Draper & Beckstrom, LLC is designated as Successor Trustee under said Deed of Trust.

Substitution of Trustee, recorded June 16, 2017, as Doc No. [20170024817](#) , Official Washington County Records, State of Utah, wherein P. ROWLAND GRAFF, of the law firm of Clarkson & Associates, LLC is designated as Successor Trustee under said Deed of Trust.

Notice of Default and Election to Sell, under the terms of said Deed of Trust recorded on June 16, 2017, as Doc No. [20170024819](#) , Official Washington County Records.

27. Trust Deed, dated February 21, 2014, executed by FAIRGROUNDS PROPERTIES INC., as TRUSTOR, to SOUTHERN UTAH TITLE COMPANY, as TRUSTEE, in favor of DAKOTA AGGREGATE LLC, a Utah Limited Liability Company, as BENEFICIARY, to secure the payment of \$300,000.00 and interest, recorded February 24, 2014, as Doc No. [20140005359](#) , Official Washington County Records. (Affects this and other property)

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 11 | Commitment Number: 202129



American Land Title Association

**Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018**

28. Liability to Assessments levied by the Board of County Commissioners of Washington County, Utah, creating and establishing a Special Service District ("Hurricane Valley Fire Special Service District") to provide for fire protection, paramedic services, and ambulance services, as disclosed by Resolution No. R-2007-1203, recorded December 22, 2009, as Doc. No. [20090048182](#) , Official Washington County Records. (Affects this and other property)

A Resolution Amending the Boundary of the Hurricane Valley Fire Special Service District, recorded March 1, 2010, as Doc. No. [20100006648](#) , Official Washington County Records.

2nd Amended Hurricane Valley Fire Special Service District, recorded December 30, 2010, as Doc. No. [20100044122](#) , Official Washington County Records.

Resolution No. R-2015-1946, A Resolution Amending the Boundary of the Hurricane Valley Fire Special Service District to include the Corporate Limits of the City of Hurricane, recorded November 9, 2015, as Doc. No. [20150039260](#) , Official Washington County Records and Hurricane Valley Fire District 3rd Amended, recorded November 9, 2015, as Doc. No. [20150039261](#) , Official Washington County Records.

Hurricane Valley Fire District 4th Amended, Extended & Clarified, recorded December 14, 2015, as Doc. No. [20150043173](#) , Official Washington County Records.

29. Proceedings pending in the Bankruptcy Court of the U.S. District Court, Utah, entitled in re: FAIRGROUNDS PROPERTIES, INC., as Debtor, who's Attorney being DARREN B. NEILSON AND PETER J. KUHN as Trustee in Case No. 17-29271, wherein a petition for relief was filed on October 25, 2017.

Adversary proceeding pending in the Bankruptcy Court of the U.S. District Court, Utah, entitled in re: FAIRGROUNDS PROPERTIES, INC., who's Attorney is DARREN B. NEILSON, as Plaintiff, vs. DAKOTA AGGREGATE LLC, as Defendant, who's Attorney is CHRIS L. SCHMUTZ, filed April 1, 2018, as Case No. 18-02038. Relating to Bankruptcy Case No. 17-29271.

Exceptions 1-8 will not appear in any Extended Policy and Exceptions 1-10 will not appear in any Extended Loan Policy to be issued hereunder.

Note: The names on Schedule A have been checked for judgments and, if any were found, are disclosed on Schedule B of this Commitment.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 12 | Commitment Number: 202129



EXHIBIT B



PURCHASE AND SALE AGREEMENT FOR COMMERCIAL REAL ESTATE

This is a legally binding contract. This form has been prepared by counsel for the Utah CCIM Chapter. Parties to this Purchase and Sale Agreement for Commercial Real Estate (the "PSA") may agree, in writing, to alter or delete provisions of this PSA. All such changes should be reflected in an Addendum. The body of this PSA should not be modified. Seek advice from your attorney and tax advisor before entering into a binding contract.

FUNDAMENTAL TERMS OF OFFER TO PURCHASE UNIMPROVED LAND

"REFERENCE DATE": November 1, 2018

"SELLER": Fairgrounds Properties Inc

With Notices to be given at: Street Address 2 W St. George Blvd, Suite 10

City, State, Zip Code St. George, UT 84770

Fax, Email tom@linxcre.com

"BUYER": Aurelio Gutierrez and/or assigns

With Notices to be given at: Street Address 2 W St. George Blvd, Suite 10

City, State, Zip Code St. George, UT 84770

Fax, Email travis@linxcre.com

"PROPERTY": Name/General Description:

Address: Fairgrounds Industrial Park, Lot 37

City: Hurricane County: Washington Utah, Zip: 84737

County Tax Parcel #: H-FAIR-37

Source of legal description (check applicable box):

- TITLE COMMITMENT (See Section 8(a))
- SURVEY (See Survey Addendum, if applicable)

The Property also includes certain rights and interests described in Section 2.

"DEED": General Warranty Deed Special Warranty Deed Other _____

"TITLE POLICY": Standard Coverage Extended Coverage

"PURCHASE PRICE": \$ 95,000

"EARNEST MONEY DEPOSIT": \$ 2,500 in the form of: Wire Transfer

Buyer's Check to be deposited with Buyer's Brokerage Title Company/Escrow Agent Other _____ Buyer agrees to deliver the Earnest Money Deposit no later than four (4) calendar days after Acceptance (as defined in Section 23). The Brokerage or Other depository shall deposit the Earnest Money into the Real Estate Trust Account no later than four (4) calendar days from receipt.

"SELLER DISCLOSURE DEADLINE": (Date) 7 days after acceptance

"DUE DILIGENCE DEADLINE": (Date) 14 days after acceptance

"SETTLEMENT DEADLINE": (Date) 7 days after Due Diligence Deadline

"SELLER'S AGENT": Tom Callister

"SELLER'S BROKERAGE": LINX Commercial Real Estate

"BUYER'S AGENT": Travis Parry

"BUYER'S BROKERAGE": LINX Commercial Real Estate

"MEDIATION": Seller and Buyer DO DO NOT elect to mediate in accordance with the provisions of Section 15. [check box] ADDITIONAL TERMS: There ARE ARE NOT addenda to this PSA containing additional terms. If there are, the terms of the following (each, an "Addendum" or collectively, the "Addenda") are incorporated into this PSA by this reference: [check box]

- Seller Financing
- Financing Contingency
- ALTA Survey
- Assumption of Financing
- Other Addendum

Seller's Initials RS Date 11/2/2018

Buyer's Initials AG Date 11/1/2018

Document Page 30 of 41
OFFER TO PURCHASE

1. **OFFER TO PURCHASE.** Buyer offers to purchase the Property from Seller for the Purchase Price and otherwise upon the terms and subject to the conditions set forth in this PSA. Certain capitalized terms used in this PSA are defined in Section 27.

2. **PROPERTY.** Unless excluded by another provision of this PSA or an Addendum or Counteroffer, the Property includes: (a) all fixtures presently attached to the Property; (b) all personal property owned by Seller and used primarily in connection with the Property; (c) Seller’s right, if any, in any names or trademarks under which the Property is operated, but not including the generic name or trademarks of Seller; (d) all rights and easements appurtenant to the Property; and (e) all water rights and/or water shares, if any, that are the source for culinary or secondary water used in connection with the Property.

3. **PAYMENT OF PURCHASE PRICE.** Unless the Loan Assumption Addendum or the Seller Financing Addendum is part of this PSA, the Purchase Price and all other sums shall be paid by federal wire transfer or other collected funds at the Closing.

4. **SETTLEMENT AND CLOSING.** Settlement shall take place on the Settlement Deadline or on another date upon which the Parties agree in writing. “Settlement” shall be deemed to have occurred only when all of the following have been fully completed: (a) Buyer and Seller have signed and delivered to the Escrow Agent all documents required by this PSA, by any lender, or by Applicable Law; (b) any monies required to be paid by Buyer under this PSA (except for the proceeds of any new loan) have been delivered by Buyer to the Escrow Agent; and (c) any monies required to be paid by Seller under this PSA have been delivered by Seller to the Escrow Agent. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the Escrow Agent for its services in the Settlement and Closing. Taxes and assessments for the current year, rents, association dues, utilities and charges accrued under contracts relating to the Property and assumed by Buyer, operating expenses relating to the Property and interest on any assumed obligations shall be prorated as of 11:59 p.m. on the day prior to Settlement unless otherwise agreed to in a settlement statement or other writing executed by the Parties. Tenant deposits (including, but not limited to, security deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. “Closing” means consummation of the transaction contemplated by this PSA and shall be deemed to have occurred only when: (a) Settlement has been completed; (b) the proceeds of any new loan have been delivered by the lender to the Escrow Agent; and (c) the applicable Closing documents have been recorded in the Official Records of the County Recorder of the County in which the Property is located. If a lender is funding a portion of the Purchase Price, loan proceeds must be delivered to Escrow Agent not later than the end of the third (3rd) Business Day following completion of Settlement or Buyer shall be in default.

5. **POSSESSION.** Seller shall deliver physical possession of the Property to Buyer within twenty-four (24) hours following Closing or at such other date and time as is specified in an Addendum.

6. **CONFIRMATION OF BROKERAGE FEES AND AGENCY DISCLOSURE.** Buyer and Seller each acknowledge prior receipt of written agency disclosure provided by their respective Agents that has disclosed the agency relationships that are confirmed in the Fundamental Terms. Buyer and Seller further acknowledge that brokerage fees due as a result of this transaction are being paid based upon the terms of a separate written agreement. If an Agent or Brokerage represents both Seller and Buyer, then he, she or it shall constitute a “Limited Agent,” as defined in applicable regulations of the Utah Division of Real Estate.

7. **DEED AND TITLE INSURANCE.**

7.1 **Deed.** Seller will convey title to Buyer at Closing by statutory form of Deed specified in the Fundamental Terms. Buyer agrees to accept title to the Property subject to: (a) the Permitted Exceptions (defined below); (b) any lease or property management agreement timely disclosed to Buyer pursuant to Section 8 below and not objected to by Buyer prior to the Due Diligence Deadline; and (c) any title exception arising by, through or under Buyer.

7.2 **Title Policy.** At Settlement, Seller agrees to pay for the Title Policy specified in the Fundamental Terms, in the amount of the Purchase Price insuring title to the Property to Buyer subject only to the Permitted Exceptions (the “Title Policy”). Buyer, at its sole option, cost and expense, may elect to obtain additional coverage or additional specific endorsements. Notwithstanding anything the PSA to the contrary, in no event shall Seller be required to pay more than twice the cost of a standard title insurance policy (exclusive of endorsements) for an extended title insurance policy.

8. **SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline, Seller shall provide to Buyer the following at Seller’s sole cost and expense (the “Seller Disclosures”):

Seller’s Initials RS Date 11/2/2018

Buyer’s Initials DS RG Date 11/1/2018

- (a) a preliminary title commitment (the "**Title Commitment**") from a title company selected by Seller (the "**Title Company**"), together with a copy of each instrument, agreement or document listed as an exception to title in such Title Commitment;
- (b) a true and correct copy of all leases, management agreements and contracts affecting the Property;
- (c) a Seller property condition disclosure for the Property signed and dated by Seller;
- (d) all copies in Seller's possession of studies and/or reports which have previously been performed in connection with or for the Property, including without limitation, environmental reports, soils studies, seismic studies, physical inspection reports, site plans and surveys, and identification of such studies of which Seller is aware but that are not in Seller's possession;
- (e) all copies of written notices relating to a violation of Applicable Law including, without limitation, Environmental Law and laws relating to land use, zoning or compliance with building codes;
- (f) evidence of any water rights and/or water shares used in connection with the Property; and
- (g) all other documents described as Seller's Disclosures in any Addenda or Counteroffers to this PSA.

9. BUYER'S DUE DILIGENCE AND RIGHT TO CANCEL. No later than the Due Diligence Deadline, Buyer, at its sole cost and expense, shall: (a) conduct such Due Diligence as it deems necessary and appropriate; and (b) determine if the results of its Due Diligence are acceptable. The Due Diligence Deadline is subject to extension as set forth in any Addendum attached hereto. If, prior to Closing, the Title Company issues a supplemental or amended title report showing additional title exceptions (the "**Amended Title Commitment**"), Due Diligence Deadline shall be extended five (5) business days from the date of Buyer's receipt of such Amended Title Commitment.

9.1 Title and Survey Matters. In conducting its due diligence prior to the Due Diligence Deadline, Buyer may review the Title Commitment, Survey and all other Seller Disclosures as referenced in Section 8. Seller agrees to cooperate with Buyer in connection with Buyer's Due Diligence investigation by providing additional information or documentation reasonably requested by Buyer.

(a) **Removal of Monetary Liens.** Notwithstanding anything in this PSA to the contrary, unless specifically set forth in an Addendum or Counteroffer, Seller covenants and agrees that all Monetary Liens shall be removed by Seller at Closing or insured against by the Title Insurer at Seller's sole cost and expense, regardless of whether Buyer has objected to such Monetary Lien(s). This provision will survive Closing.

9.2 Inspection. In conducting its Due Diligence prior to the Due Diligence Deadline, and at any time thereafter until Settlement, Buyer may, upon reasonable notice and at reasonable times, conduct inspections, appraisals and for tests on the Property. Buyer shall enter to conduct such inspections and tests on the Property only during reasonable hours and with reasonable prior notice to Seller. Seller shall have the right to accompany Buyer and any of its agents on the Property at all times. All inspections and tests shall be conducted in a manner that does not unreasonably disrupt the activities and business of Seller and its tenants, and Buyer shall indemnify, hold harmless and defend Seller, its tenants and their employees, invitees and guests from and against any and all liabilities, claims, actions or damages (including reasonable attorneys' fees and court costs) which arise from, are caused by, or are in any manner connected with Buyer's Due Diligence and caused by or arising from the actions of Buyer, including, without limitation, claims for payment for inspection services, claims for mechanic's liens, claims for physical damage to the Property and claims from personal injury.

9.3 Buyer's Right to Cancel or Resolve Objections.

(a) **Right to Cancel or Object.** If Buyer, in Buyer's sole discretion, determines that the results of the Buyer's Due Diligence are not acceptable, then, not later than the Due Diligence Deadline, Buyer shall either: (a) cancel this PSA by providing written notice to Seller, in which event the Earnest Money Deposit shall be released to Buyer; or (b) provide to Seller one or more written notices setting forth Buyer's objections in reasonable detail (the "**Objections**").

(b) **Failure to Respond.** If Buyer does not timely take either of the actions described in Section 9.2, then the results of the Buyer's Due Diligence shall be deemed approved by Buyer, all Objections which Buyer could have asserted shall be deemed waived by Buyer and, unless another condition or contingency set forth in an Addendum or Counteroffer remains unsatisfied, the Earnest Money Deposit shall become nonrefundable except in the event of Seller's default.

(c) **Response by Seller.** If Buyer timely provides Objections to Seller, Buyer and Seller shall have five (5) business days after Seller's receipt of the Objections (the "**Response Period**") in which to agree in writing upon the manner of resolving the Objections. Seller may, but shall not be required to, resolve the Objections. If Buyer and Seller have not agreed in writing upon the manner of resolving the Objections prior to the expiration of the Response Period, Buyer may cancel this PSA by delivering written notice to Seller not later than five (5) days after the end of the Response Period (the "**Termination Date**"); whereupon the Earnest Money Deposit shall be released to Buyer and neither Party shall have any further rights, obligations or liabilities under this PSA except as expressly set forth herein. If this PSA

Seller's Initials RS Date 11/2/2018

Buyer's Initials AG Date 11/1/2018

is not canceled by Buyer under this Section, the Objections shall be deemed waived by Buyer and the Earnest Money Deposit shall become nonrefundable except upon Seller's default. If the Response Period extends past the Settlement Deadline, the Settlement Deadline shall be extended to the date that is five (5) business days following the extended Termination Date. If the Termination Date extends past the Settlement Deadline, the Settlement Deadline shall be extended to the date that is five (5) business days following such Termination Date.

10. SELLER REPRESENTATIONS AND WARRANTIES. Seller represents and warrants that the following statements are true and complete as of the Effective Date and shall be true and complete as of the Settlement and Closing. The following representations and warranties shall survive the date of Closing for one (1) year, and shall terminate and be null and void if or to the extent a legal action has not been filed in a court of competent jurisdiction prior to the expiration of such one (1) year period:

(a) there is no action, suit, administrative proceeding or other proceeding pending in any court or before any arbitrator of any kind or before or by any governmental body or, to Seller's knowledge, threatened against Seller and/or the Property which may adversely affect the transaction contemplated by this PSA;

(b) all work which has been or will be performed in, on or about the Property, or materials furnished to the Property which might in any circumstances give rise to a mechanic's or materialman's lien (other than relating to work performed by Buyer), will be paid and all necessary waivers of rights to a mechanic's or materialman's lien for such work will be obtained;

(c) Seller has not received any written notice or citation indicating that the Property is in material violation of Applicable Law;

(d) Neither Seller nor, to Seller's knowledge, any other Person, has ever caused or permitted any Hazardous Material to be placed, held, located, released or disposed of on, under, or at the Property or any part thereof in violation of Applicable Law and, to Seller's knowledge, no Hazardous Material is located on, under or at the Property in violation of Applicable Law;

(e) To Seller's knowledge, the consummation of the transactions contemplated by this PSA and the compliance by Seller with the terms of this PSA do not and will not conflict with or result in a material breach of any of the terms or provisions of any agreement, arrangement, undertaking, accord, document, or instrument to which Seller is a party or by which Seller or the Property is bound; and

(f) Seller is not a "foreign person" as that term is defined in Code Section 1445 and shall deposit with Escrow Agent at or prior to Settlement, an affidavit in such form as may be required by the U.S. Internal Revenue Service, setting forth Seller's full name, address and taxpayer identification number and stating under penalty of perjury that Seller is not a "foreign person" as so defined.

(g) Except as set forth in writing upon delivery and to Seller's knowledge, all copies Seller provides to Buyer under Section 8 above are true and correct copies of the originals or copies within Seller's possession.

(h) Except as set forth in this Section, there are no leases, use agreements or similar agreements in effect with respect to the Property giving any third party the right to possession of the Property: _____

(i) To the Knowledge of Seller, the Property is in compliance with all Applicable Law.

(j) To the Knowledge of Seller and except as disclosed by environmental reports provided to Buyer, no Hazardous Material is present in, on or under the Property or any nearby real property which could migrate to the Property. Seller has not used the Property or any part thereof, and to its Knowledge no other Person has used the Property or any part thereof, for the production, processing, manufacture, generation, treatment, handling, storage, transportation or disposal of Hazardous Material while the Property has been owned by Seller.

11. NO OTHER REPRESENTATIONS AND WARRANTIES. Except as expressly set forth in this PSA or in an Addendum or Counteroffer: (a) Buyer is purchasing the Property, and the Property shall be conveyed and transferred to Buyer, "AS IS, WHERE IS, AND WITH ALL FAULTS" and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from or on behalf of Seller; and (b) Seller has not, does not and will not, with respect to the Property, make any warranties or representations, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition or merchantability, or with respect to the value, profitability, developability or marketability of the Property.

12. CHANGES PENDING CLOSING. Between the Effective Date and the date of Closing, and except as and to the extent otherwise permitted by an Addendum hereto, Seller: (a) shall (i) comply with all Applicable Law, and (ii) continue and maintain all current casualty and liability insurance policies on the Property; and (b) shall not (i) execute any lease affecting the Property except as set forth in any Addendum attached hereto; (ii) create or suffer to be created any further Monetary Lien against the Property; (iii) make any substantial alterations or improvements to the Property; and (iv) except for the usage and storage of normal and customary amounts of Hazardous Material found in cleaning and

Seller's Initials RS Date 11/2/2018

Buyer's Initials RG Date 11/1/2018

maintenance supplies stored and used in compliance with Environmental Law, shall not use, produce, process, manufacture, generate, treat, handle, store, release or dispose of any Hazardous Material in, on or under the Property.

13. **AUTHORITY OF SIGNERS.** If Buyer or Seller is a legal entity rather than an individual, each Person executing and delivering this PSA or any Addendum or Counteroffer for it unconditionally and irrevocably warrants his or her authority to do so and to bind Buyer or Seller. Each of Seller and Buyer further warrant that the execution and delivery of this PSA by it has been duly and validly authorized, and all requisite actions have been taken to make this PSA valid, binding and enforceable upon it.

14. **COMPLETE CONTRACT.** This PSA together with any attached Addendum and Counteroffer, exhibit, and Seller Disclosures, constitutes the entire agreement between the Parties regarding the purchase and sale of the Property and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the Parties. This PSA cannot be changed except by written agreement of the Parties. Subject to the limitations on assignment expressly set forth in any Addendum or Counteroffer, this PSA shall inure to the benefit of and be binding on the Parties hereto and their respective heirs, legal representatives, successors and assigns.

15. **MEDIATION.** If the Parties have elected to mediate by checking the appropriate box in the Fundamental Terms, any dispute relating to this PSA that arises prior to or after Closing shall first be submitted to mediation. Mediation is a process in which the Parties meet with an impartial Person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The Parties to the dispute must agree in writing before any settlement is binding. The Parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved thirty (30) days from the date written notice requesting mediation is sent by one Party to all other Parties. If mediation fails, the other procedures, rights and remedies available to the Parties under this PSA shall apply. Nothing in this Section shall prohibit any Party from seeking emergency equitable relief pending mediation including, without limitation, an injunction.

16. **DEFAULT.** In the event of a default by Buyer, Seller shall be entitled, as Seller's sole and exclusive remedy, to terminate this PSA by written notice to Buyer, in which event the Earnest Money Deposit shall be paid to Seller as liquidated damages. In the event of a default by Seller, Buyer shall be entitled, at its option: (a) to terminate this PSA by written notice to Seller, in which event the Earnest Money Deposit shall be returned to Buyer and Buyer shall be entitled to and agrees to accept from Seller, a sum equal to the Earnest Money Deposit as liquidated damages; or (b) to enforce Seller's obligations under this PSA by a suit for specific performance. Upon termination of this PSA by either Party, no Party shall have any further rights, obligations, or liabilities hereunder except as expressly set forth in this PSA. The Parties acknowledge and agree that the actual damages upon default are uncertain in amount and difficult to ascertain, and that the amount of liquidated damages specified in this Section was reasonably determined.

17. **ATTORNEYS' FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this PSA, the prevailing Party shall be entitled to costs and reasonable attorneys' fees. Attorneys' fees shall not be awarded for participation in mediation under Section 15.

18. **NOTICES.** All notices required under this PSA must be: (a) in writing; (b) signed by the Party giving notice; and (c) received by the other Party, the other Party's Agent or the other Party's Brokerage no later than the applicable date referenced in this PSA. Notices may be hand delivered, faxed, emailed, delivered by certified mail, return receipt requested or by a national overnight courier service such as, but not limited to, Federal Express. If a notice is sent by electronic transmission, the burden of proving actual receipt will be on the sender.

19. **ABROGATION.** Except for the provisions of Sections 7, 9.2, 14, 15 and 16 and any other provisions of this PSA which expressly survive the termination of this PSA, the provisions of this PSA shall not be enforceable after Closing.

20. **RISK OF LOSS; EMINENT DOMAIN.** All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until Closing. In the event of any destruction exceeding five percent (5%) of the Purchase Price or any taking or commencement of a taking by any governmental agency of a material portion of the Property, Buyer may, at Buyer's sole discretion, terminate this PSA by written notice to Seller within ten (10) days of notice of the commencement of taking or event of destruction, in which event all the Earnest Money Deposit, together with any interest accrued thereon, shall be promptly refunded to Buyer. If Buyer does not terminate this PSA, the insurance or condemnation proceeds, or right to collect the same, shall be paid or assigned to Buyer at Closing.

21. **TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this PSA, and any extension of the time for performance of any obligation or satisfaction of any condition must be agreed to in writing by all

Seller's Initials RS Date 11/2/2018

Buyer's Initials RG Date 11/1/2018

Parties. Unless otherwise explicitly stated in this PSA: (a) performance under this PSA which references a date shall absolutely be required by 5:00 P.M. Mountain Time on the stated date; and (b) the term “days” shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., delivery of a specified notice, etc.). If the date for performance falls, or the deadline expires on a day which is not a Business Day, performance shall be required or the deadline shall expire on the next Business Day thereafter. Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and other Persons which are not Parties, except as otherwise agreed to in writing by such Persons.

22. **ELECTRONIC TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) or Email transmissions of a signed copy of this PSA, any Addenda and Counteroffers thereto, and the retransmission of any signed fax or Email shall be the same as delivery of an original, subject to confirmation of receipt by the other party hereto. This PSA and any Addenda and Counteroffers thereto may be executed in counterparts.

23. **ACCEPTANCE.** “Acceptance” occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) delivers to the other Party or to the other Party’s Agent or Brokerage written acceptance of the offer or counteroffer by hand delivery, fax, email, delivery by certified mail, return receipt requested or by a national overnight courier service such as, but not limited to, Federal Express. The burden of proving delivery will be on the sender.

24. **DEADLINES.** Buyer and Seller agree that Seller Disclosure Deadline, the Due Diligence Deadline and Settlement Deadline are as set forth in the Fundamental Terms, as modified by any Addendum hereto.

25. **1031 EXCHANGE.** Each Party shall cooperate with the other Party in effecting an exchange under Code Section 1031; provided however, that the other Party’s cooperation shall be conditioned on the following: (a) the exchange will be at no additional liability and cost to the other Party; (b) the exchange will not delay Settlement or Closing; and (c) the other Party shall not be required to acquire title to any proposed exchange properties to accommodate an exchange. The exchanging Party shall indemnify, defend and hold the other Party harmless from and against any and all claims, demands, costs and expenses which the other Party may sustain or incur resulting from the attempt by the exchanging Party to consummate the sale or acquisition of the Property as a Section 1031 exchange.

26. **JOINT PREPARATION.** The provisions of this PSA have been negotiated by all Parties hereto and should therefore not be interpreted or construed in favor of or with prejudice against any particular Party, but in accordance with the general tenor of the language used.

27. **DEFINITIONS.** Certain capitalized terms previously used in this PSA are defined above. In addition to those capitalized terms, the following capitalized terms shall have the following meanings:

“Agent” means Buyer’s Agent or Seller’s Agent, as applicable.

“Applicable Law” shall mean and include: any and all laws, rules, regulations or ordinances of any governmental authority having jurisdiction over a specified matter, as the same may be in effect from time to time, including, without limitation, any Environmental Law.

“Brokerage” means Buyer’s Brokerage or Seller’s Brokerage, as applicable.

“Business Day” shall mean any day other than a Saturday, Sunday, or legal holiday on which national banks in Utah are authorized by federal law to close.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

“Counteroffer” means a Counteroffer signed by the Party making the Counteroffer to PSA, and to be attached to this PSA.

“Deed” means the form of Deed checked in the appropriate box on page 1 of this PSA in the Fundamental Terms.

“Due Diligence” means such investigations of and tests on or regarding the Property as Buyer deems necessary and appropriate.

Seller’s Initials RS Date 11/2/2018

Buyer’s Initials RG Date 11/1/2018

“Effective Date” means the date both Seller and Buyer have executed this PSA and accepted Counteroffers and Addenda.

“Environmental Law” shall mean any federal, state, or local law, statute, ordinance, rule, or regulation pertaining to health, industrial hygiene, or the environmental conditions on or under the Property, or relating to releases, discharges, emissions, or disposals from the Property to air, water, soil, or groundwater, or relating to the withdrawal or use of groundwater, or relating to the use, handling, or disposal of polychlorinated biphenyls, asbestos, or urea formaldehyde, or relating to the treatment, disposal, storage, or management of Hazardous Materials or relating to the transportation, storage, disposal, or management, including, without limitation, the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, and the Resource Conservation and Recovery Act of 1976, as amended, and all rules, and regulations, published pursuant thereto or promulgated thereunder.

“Fundamental Terms” means the Fundamental Terms of Offer to Purchase set forth on page 1 of this PSA as modified by an accepted Counteroffer or Addendum.

“Hazardous Material” shall mean and include, without limitation: (a) those substances included within the definitions of “hazardous substances” and “hazardous waste” in any Environmental Law; and (b) any material, waste, or substance which is or contains asbestos, polychlorinated biphenyls, petroleum and its derivative by-products, and other explosive or radioactive materials.

“Knowledge” means the actual knowledge of a specified Person with the duty to investigate his or her files and records but without a duty of further inquiry.

“Monetary Liens” means each of the following to the extent arising by, through or under Seller: judgment liens, mortgages, deeds of trust, mechanic’s liens, pre-construction liens, liens that secure the payment of money or credit, and liens or charges for delinquent taxes.

“Parties” means Seller and Buyer.

“Party” means Seller or Buyer.

“Person” means any natural individual human, any legal entity, a trust or the trustees of a trust acting in such capacity.

“Reference Date” means the date set forth in the Fundamental Terms on which the offer was prepared.

“Title Commitment” means a commitment issued by the Title Insurer for the Title Policy insuring the Owner’s title in the Property in the full amount of the Purchase Price.

“Title Policy” means a standard 2006 ALTA Owner’s Policy of Title Insurance issued by the Title Insurer.

OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept and deliver an acceptance of this Offer by 5:00 P.M. Mountain Time on November 6, 2018, this Offer shall lapse, and the Buyer’s Brokerage or Escrow Agent, as applicable, shall return the Earnest Money Deposit to Buyer.

If Buyer is an individual or individuals:

DocuSigned by: <u>Aurelio Gutierrez</u> (Signature of Buyer)	<u>Aurelio Gutierrez</u> (Print Name of Buyer)	<u>11/1/2018</u> (Date)
_____	_____	_____
(Signature of Buyer)	(Print Name of Buyer)	(Date)

If Buyer is an entity:

(Print Name of Entity)

(Date)

(State of Formation and Type of Entity)

By: _____
(Signature of Authorized Signer)

Name: _____
(Print Name of Authorized Signer)

Its: _____
(Print Position of Signer)

Form Approved 2/20/13 Seller's Initials ^{DS} RS Date 11/2/2018

Buyer's Initials ^{DS} RG Date 11/1/2018

Document Page 37 of 41
EARNEST MONEY RECEIPT

(to be used if requested by Buyer or Seller)

The Buyer's Brokerage or Escrow Agent, as applicable, acknowledges receipt of the Earnest Money Deposit in the amount of \$_____.

(Date)

(Print Name of Brokerage or Escrow Agent)

By: _____
(Signature above acknowledges receipt of Earnest Money Deposit)

Name: _____
(Print Name of Signer)

Its: _____
(Print Position of Signer)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[X] ACCEPTANCE OF OFFER TO PURCHASE: Seller accepts the foregoing offer on the terms and conditions specified above.

[] COUNTEROFFER: Seller presents for Buyer's acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Addendum No. _____.

[] REJECTION

If Seller is an individual or individuals:

(Signature of Seller) (Print Name of Seller) (Date)

(Signature of Seller) (Print Name of Seller) (Date)

If Seller is an entity:

Fairgrounds Properties Inc
(Print Name of Entity) 11/2/2018
(Date)

Utah
(State of Formation and Type of Entity)

DocuSigned by:
By: Robert Stevens
(Signature of Authorized Signer)

Name: Robert Stevens
(Print Name of Authorized Signer)

Its: Manager
(Print Position of Signer)

DOCUMENT RECEIPT

State law requires Brokerage or Agent to furnish Buyer and Seller with copies of this PSA bearing all signatures. This document should be made part of the closing documents and signed prior to Settlement. (Fill in applicable Section below.)

A. I acknowledge receipt of a final copy of the foregoing PSA bearing all signatures:

(Signature of Buyer's Authorized Signer) (Print Name of Authorized Signer) (Date)

(Signature of Seller's Authorized Signer) (Print Name of Authorized Signer) (Date)

B. I personally caused a final copy of the foregoing PSA bearing all signatures to be faxed **Emailed** mailed **hand delivered** on _____ (Date), postage prepaid, to the Seller Buyer.

Sent/Delivered by (specify): _____

(Signature) (Print Name of Signer) (Date)



ADDENDUM/COUNTEROFFER NO. 1 TO PURCHASE AGREEMENT

ADDENDUM **COUNTEROFFER** to that PURCHASE AND SALE AGREEMENT FOR COMMERCIAL REAL ESTATE (the "PSA") with a Reference Date of November 1, 2018, including all other Addenda and Counteroffers thereto, between Buyer and Seller (as described in the Fundamental Terms) pertaining to the following Property:

The following terms constitute an addendum (the "Addendum") to the specified terms in the PSA or identified Addendum.

- 1- Seller to have up to 45 days from Acceptance to receive Bankruptcy Court approval of the sale. Stalking horse break-up fee during the approval process, should the sale fall through to Buyer, to be \$5,000 to Buyer
- 2- Title Company to be Southern Utah Title Company, Brad Seegmiller escrow officer.

To the extent the provisions of this Addendum/Counteroffer modify or conflict with any provisions of the PSA or any other prior Addenda or Counteroffer, the provisions of this Addendum/Counteroffer shall control. All other provisions of the PSA and all other Addenda and Counteroffers not modified by this Addendum/Counteroffer shall remain in full force and effect; provided, however, that to the extent the provisions of any Addendum conflict with the provisions of any other Addendum, the Addendum most recently executed by all of the parties will control.

Buyer or Seller, as applicable, shall have until 5:00 P.M. Mountain Time on November 6, 2018 to accept or reject, and deliver, this Addendum.

(Signature of Authorized Signer) <u>Aurelio Gutierrez</u>	(Print Name of Authorized Signer) <u>Aurelio Gutierrez</u>	(Date) <u>11/1/2018</u>
2420513DF31B448... (Signature of Authorized Signer)	(Print Name of Authorized Signer)	(Date)

ACCEPT / REJECTION / COUNTER OFFER

CHECK ONE

- ACCEPTANCE:** Seller Buyer ACCEPTS the foregoing ADDENDUM.
- COUNTER OFFER:** Seller Buyer presents as a COUNTER OFFER the terms of attached Addendum No. ____.
- REJECTION:** Seller Buyer REJECTS the foregoing ADDENDUM.

(Signature of Authorized Signer) <u>Robert Stevens</u>	(Print Name of Authorized Signer) <u>Robert Stevens</u>	(Date) <u>11/2/2018</u>
DE611F3D4E5A4E6... (Signature of Authorized Signer)	(Print Name of Authorized Signer)	(Date)

Seller's Initials RS Date 11/2/2018

Buyer's Initials AG Date 11/1/2018

Document Page 41 of 41
LINX COMMERCIAL REAL ESTATE
AGENCY DISCLOSURE

This form is a disclosure. It is not a contract to provide brokerage services. If it is not understood, consult with legal counsel.

Name of Buyer/Tenant: Aurelio Gutierrez and/or assigns Name of Owner/Landlord: Fairgrounds Properties Inc

EXPLANATION OF AGENCY RELATIONSHIPS

UTAH LAW REQUIRES DISCLOSURE OF AGENCY RELATIONSHIPS, AND AS AN OWNER OR PROSPECTIVE BUYER/TENANT OF REAL ESTATE, IT IS IMPORTANT THAT YOU UNDERSTAND THE AGENCY RELATIONSHIPS BETWEEN YOU AND ANY REAL ESTATE AGENTS WITH WHOM YOU ARE WORKING.

- 1. PRINCIPAL BROKER. All real estate agents are required by law to affiliate with a real estate broker ("Principal Broker").
2. AGENT REPRESENTATION OF OWNER AND/OR BUYER/TENANT. A real estate agent may, through the brokerage, represent an owner who wants to sell or lease property...
3. OWNER'S AGENT. An Owner's Agent works to assist the owner in locating a buyer or tenant...
4. BUYER/TENANT'S AGENT. A Buyer/Tenant's Agent works to assist the buyer/tenant in locating and negotiating a purchase...
5. LIMITED AGENT & IN-HOUSE TRANSACTIONS.

ACKNOWLEDGEMENT OF AGENCY RELATIONSHIPS IN THIS TRANSACTION

6. ACKNOWLEDGEMENT OF AGENCY DISCLOSURE. In reference to the property located at: Fairgrounds Lot 37, City of Hurricane, County of Washington, Utah, BY SIGNING THIS AGENCY DISCLOSURE FORM, THE UNDERSIGNED OWNER AND/OR BUYER/TENANT ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE EXPLANATIONS CONTAINED IN THIS FORM, AND CONSENT TO THE AGENCY RELATIONSHIPS DESCRIBED BELOW. (CHECK APPLICABLE BOXES):

LINX COMMERCIAL REAL ESTATE REPRESENTS ONLY ONE PARTY

- A. [] ONE PARTY ONLY: LINX COMMERCIAL REAL ESTATE represents [] Owner [] Buyer/Tenant: (Name of Agent)
B. [] NO AGENT REPRESENTATION: Buyer/tenant acknowledges that LINX COMMERCIAL REAL ESTATE has advised them of the right to have their own Buyer/Tenant's Agent to represent them...

LINX COMMERCIAL REAL ESTATE REPRESENTS BOTH OWNER AND BUYER/TENANT (IN-HOUSE TRANSACTION)

- C. [] ONE AGENT: Owner and Buyer/Tenant consent to (Name of Limited Agent); and the Principal or Branch Broker representing both Owner and Buyer/Tenant as Limited Agents as described above.
D. [X] TWO AGENTS: Owner and Buyer/Tenant consent to Tom Callister (Name of Owner's Agent) continuing to represent Owner; and Travis Parry (Name of Buyer/Tenant's Agent) continuing to represent Buyer/Tenant; and the Principal or Branch Broker acting as a Limited Agent as described above.

Buyer/Tenant Signed by: Aurelio Gutierrez Date: 10-1-2018 Owner: By: Date

LINX COMMERCIAL REAL ESTATE by: (Authorized Agent) Date (Authorized Agent) (Date)