

James W. Anderson (9829)
Victoria B. Finlinson (15103)
CLYDE SNOW & SESSIONS
201 South Main Street, Suite 1300
Salt Lake City, Utah 84111
Email: jwa@clydesnow.com
vbf@clydesnow.com
Telephone: (801) 322-2516
Fax No.: (801) 521-6280

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

In re:

HATU WINDS LAND CO., LC,
Debtor.

Bankruptcy Case No. 17-20136
Chapter 11

Judge Joel T. Marker

MOTION TO SELL REAL PROPERTY

The Debtor, Hatu Winds Land Co., LC (“**Debtor**” or “**HWL**”), pursuant to 11 U.S.C. § 363(b), (f) and (m) and Bankruptcy Rules 2002, 6004 and 9014, respectfully submits this Motion to Sell Real Property (the “**Motion**”). The Motion seeks to sell all real property owned by the Debtor (the “**Sale**”), located at 1820 West Printers Row (2300 South), West Valley City, Salt Lake County, Utah, tax parcel nos. 15-22-127-006 and 15-22-127-009 (the “**Property**”), to Salt Lake County (“**Buyer**”), pursuant to that certain Real Estate Purchase Contract attached hereto as Exhibit “A” (the “**Agreement**”), subject to higher and better offers, free and clear of all interests, liens, claims and encumbrances with any and all such interests, liens, claims and

encumbrances to attach to the proceeds of the Sale. In support of the Motion, the Debtor represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On January 9, 2017, HWL filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

3. HWL is a Utah limited liability company that owns and leases the Property to third parties.

4. Prior to the bankruptcy and during the bankruptcy, HWL has continued to market and sell the Property. As a result of these efforts, HWL has received the offer embodied in the Agreement.

5. HWL believes the best way to pay claims of this estate is to realize the value of the sale of the Property. Continuing to lease space in the Property would not generate sufficient cash to pay claims nearly as quickly as selling the Property.

6. The Debtor's primary creditors are Chase Bank USA and the SBA, both of whom have secured claims against the Property. The Debtor is in the process of drafting its plan of reorganization, and intends to treat the claims and pay the proceeds of the Sale pursuant to its plan of reorganization, rather than attempt to do so in this Motion.

7. The following liens exist against the Property¹:
 - a. Property Taxes are owed to Salt Lake County in the approximate amount of \$98,202.12, plus interest accruing at 7% (as set forth in the creditor's proof of claim #1).
 - b. Chase Bank USA asserts a claim and has a recorded deed of trust against the Property. The Debtor's records show the last amount of this claim to be \$1,551,902.01.
 - c. Chase Bank USA asserts a claim and has a second recorded deed of trust against the Property. The Debtor's records show the last amount of this claim to be \$139,235.17.
 - d. Small Business Administration asserts a claim and has a recorded deed of trust against the Property. The Debtor's records show the last amount of this claim to be \$1,083,249.39.
 - e. Elliot Moses asserts a claim and has a recorded deed of trust against the Property. The Debtor's records show the last amount of this claim to be \$199,000.00.
 - f. Jeranimo, LC asserts a claim and has a recorded deed of trust against the Property. The Debtor's records show the last amount of this claim to be \$30,000.00.
8. The total face amount of these claims is \$3,101,588.69.

¹ The Debtor is not admitting the validity or amount of any such liens or claims, but merely listing what exists in the public records to the best of its knowledge. The Debtor reserves the right to contest all liens and claims through the provisions set forth in its plan of reorganization, or other proper bankruptcy procedure.

OVERVIEW OF THE SALE

9. Reference is made to the Agreement, attached hereto as Exhibit "A", for its specific terms. In the event there is any discrepancy between the statements in this Motion and the Agreement, the terms of the Agreement shall control. The Buyer will close on the Property at a purchase price of \$3,500,000.00, on or before May 31, 2017. The purchase price shall be paid in full at closing. The Buyer's due diligence period extends for 90 days. The Debtor and Buyer will share all escrow and closing costs, and if required by Buyer, the Debtor will purchase a title insurance policy for Buyer. The Buyer shall deposit \$10,000 of earnest money with Metro National Title Company, which remains refundable to Buyer until the Buyer has completed its Buyer Undertakings and removed all contingencies stated in sections 8 and 9 of the Agreement. The Debtor is entitled to continue to market the property and obtain higher and better offers. Any higher and better offer shall include first a repayment of Buyer's actual out of pocket costs for title work, inspection fees, and other expenses incurred in carrying out its Due Diligence. Buyer shall also have the opportunity to match any higher and better offer, or withdraw. In the event of withdrawal, Buyer receives back the earnest money. In the event of an auction, Buyer is deemed an authorized bidder upon paying the earnest money.

APPLICABLE AUTHORITY

10. A debtor in possession may sell property of the estate outside the ordinary course of business. 11 U.S.C. §§ 363(b)(1) and 1107(a). A Chapter 11 debtor may sell all or substantially all of its assets outside of a plan of reorganization. *See, In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009). In order to approve a sale of a debtor's assets outside the ordinary course of business, there must exist: (1) a sound business reason for the sale;

(2) adequate and reasonable notice to interested parties, including the sale terms and the Debtor's relationship with the buyer; (3) a fair and reasonable sale price; and (4) good faith on the part of the buyer. *See In re Medical Software Solutions*, 286 B.R. 431, 439-40 (Bankr. D. Utah 2002). 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"). The court, however, is not to substitute its business judgment for that of the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 676 (Bankr. S.D.N.Y. 1989).

11. A sound business reason exists for the Sale. Selling the Property generates the cash necessary to pay all allowed claims in full, and in a much shorter time than continuing to lease the Property and attempt to generate more leases. In addition, the Debtor needs funds to administer the estate and determine claims. The Sale will provide these necessary funds and also relieve the Debtor of the expenses and risks involved generally in operating as a landlord.

12. The Agreement is the product of good faith. The Debtor has spent a significant amount of time marketing the real property and has received an LOI and this Agreement. The LOI was prior to filing the bankruptcy petition, but was for a very similar purchase price. The LOI did not materialize into a full offer. The Debtor believes the Buyer is not related to the Debtor, its owners or creditors. Rather, the Buyer is a government that has no known relationship to the parties or this case other than the county to a taxpayer. The Agreement is the result of arms-length negotiations with both parties represented by real estate agents. There is no

collusion or attempt to take advantage of others. *See, e.g., In re Ewell*, 958 F. 2d 276 (9th Cir. 1992). In addition, there is no special treatment to insiders, but the estate benefits as a whole.

13. It has long been recognized that bankruptcy courts have the power to authorize the sale of property free of liens with the liens attaching to the proceeds, with or without the consent of the lienholder. As set forth in §363(f), a debtor may sell estate property free and clear of any liens, claims and encumbrances if:

- (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) 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;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

14. The import of section 363(f) is that liens and interests in property to be sold should be adequately protected. *In re Johns-Manville Corp.*, 837 F.2d at 94. In sales, the most common form of adequate protection is by attaching the liens to the proceeds of the sale. *In re WPRV-TV, Inc.*, 143 B.R. 315 (D.P.R. 1991).

15. In this case, the total of all liens against the Property is calculated by the Debtor to be \$3,101,588.69. Even assuming the creditors submit proofs of claim for higher amounts and accrue additional interest, there is still sufficient funds from the Sale to pay these amounts of claims. The Sale will generate sales proceeds of \$3,500,000.00. The Debtor's agent has agreed to a flat commission of 4% (\$140,000), rather than the customary 6%, and will share this 4%

with the Buyer's agent. Even assuming for simple math there are an additional \$60,000 of closing costs for the title insurance policy, prorations, and anything else that comes up, that still leaves net sales proceeds of \$3,300,000, exceeding the expected amount of lien claims by almost \$200,000.

16. Furthermore, the lien for Elliot Moses is to an insider and was recorded within one year of the petition date. Thus, it is potentially avoidable under 11 U.S.C. § 547, if necessary, garnering an additional \$199,000 of sales proceeds to pay allowed secured claims.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court approve the Agreement and enter an order authorizing the Debtor to complete any and all tasks necessary to effectuate and close the Sale, pursuant to the Agreement, including continuing marketing and soliciting higher and better offers.

DATED this 2nd day of March 2017.

/s/ James W. Anderson
James W. Anderson
Victoria B. Finlinson

EXHIBIT "A"

REAL ESTATE PURCHASE CONTRACT

OFFER TO PURCHASE

The Buyer, SALT LAKE COUNTY, a body corporate and politic of the State of Utah, offers to purchase the Property described below from the Seller, HATU WINDS LAND CO., L.C., a Utah limited liability company, on the terms and conditions contained herein.

1. PROPERTY: Parcel Nos. 15-22-127-006 and 15-22-127-009. Common Address 1820 W 2300 S, West Valley City, Utah. For legal description, see Exhibit A (hereinafter, the "Property").

1.1 INCLUDED ITEMS: Unless excluded herein, this sale shall include all buildings and fixtures presently attached to the property. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: _____.

1.2 EXCLUDED ITEMS: These items are excluded from this sale: None.

2. PURCHASE PRICE: the purchase price shall be THREE MILLION DOLLARS (\$3,000,000.00), which shall be payable as follows: Entire purchase price at closing.

3. CLOSING: This transaction shall be closed on or before May 31, 2017. Closing shall occur when Buyer and Seller have (a) signed and delivered to each other (or to the escrow/title company), all documents required by this contract, by written escrow instructions, and by applicable law, (b) Buyer has approved all items referenced under Sections 7 and 8, and has removed all contingencies referenced in Section 9, and (c) the monies required to be paid under these documents have been delivered to the escrow/title company in the form of cashier's check or county warrant. The Parties shall share the costs associated with the escrow closing fee unless otherwise agreed by the parties in writing. All pro-rations, particularly of real estate property taxes, shall be made as of the date of closing.

4. POSSESSION: Seller shall deliver possession of the Property to Buyer at the time of the closing.

5. AGENCY DISCLOSURE: Neither Buyer nor any of Buyer's officers, agents, or employees has employed any brokers, finders or other intermediaries, or incurred any liability for any brokerage fees, finder's fees, commissions or other amounts, with respect to the transaction contemplated by this Agreement, which liabilities can be asserted against Seller or the Subject Property, or require payment by Seller, except as set forth below:

None.

6. TITLE TO PROPERTY AND TITLE INSURANCE: (a) Seller has, or shall have at closing, fee simple title to the Property, and agrees to convey such title to Buyer by warranty deed, free of financial encumbrances; (b) Seller agrees to pay for a current title report within 15 days of execution of this contract, and, if required by Buyer, to furnish Buyer at closing with a current standard form owner's policy of title insurance in the amount of the purchase price.

7. SELLER DISCLOSURES: No later than 15 calendar days after acceptance, Seller will deliver to Buyer the following Seller disclosures: (a) a Seller's Property Condition Disclosure for the Property, signed and dated by the Seller; (b) copies of all loan documents, leases, rental agreements, liens, and other financial encumbrances against the Property; (c) copies of any environmental assessments, reports, site plans, or other documents which may materially affect the Buyer's interest in the Property.

8. BUYER UNDERTAKINGS: The Buyer may undertake the following elements at its own expense and for its own benefit for the purpose of complying with the contingencies under Section 9: ordering and obtaining (a) an appraisal of the Property, (b) a survey of the Property, (c) an environmental study of the Property, (d) a physical inspection of the Property, (e) a report on compliance with all applicable federal, state, and local law, ordinances, and regulations with regard to zoning and permissible uses of the Property. Seller agrees to fully cooperate with Buyer's completion of these matters, and to make the Property available as reasonable and necessary for the same.

9. CONTINGENCIES: This offer is subject to the Buyer's approving in its sole discretion the contents of the title report referenced in Section 6, the Seller Disclosures in Section 7, and the results of the appraisal, survey, environmental study, physical inspection, and report referenced in Buyer Undertakings in Section 8. Buyer shall have 90 calendar days to approve Seller Disclosures, to complete Buyer Undertakings, and to remove the

contingencies referenced in this Section 9. If Buyer, in Buyer's sole discretion, is not satisfied with the results of any one of the Contingencies referenced herein, Buyer may cancel this agreement at any time, or the parties may elect to sign a mutually agreeable addendum to remedy the Contingency deficiencies.

10. ADDENDUM: The terms of attached Addendum # 1 are incorporated into this contract by this reference.

11. SELLER'S WARRANTIES: Regarding the condition of the Property, Seller warrants to Buyer the following:

11.1 When Seller delivers possession of the Property to Buyer, it will be free of Seller's personal belongings.

11.2 Within 14 days of executing this agreement, Seller will disclose all claims and/or notices of any environmental, building, or zoning code violations regarding the Property which have not been resolved.

11.3 Any private well or septic tank on the Property, whether working or not, is in compliance with all governmental regulations.

11.4 Seller has complied with all applicable laws, ordinances, regulations, statutes and rules relating to the Property or any part thereof.

11.5 There has been no storage, production, transportation, disposal, treatment or release of any solid waste, hazardous waste, hazardous substance, toxic substance, or any other pollutants or contaminants on or in the Property. If inspection results in a determination that pollutants or contaminants exist on the property, Seller may elect to remediate the property or reduce the Purchase Price to compensate Buyer for any required remediation. If Seller chooses to do neither of the foregoing, Buyer may terminate this Agreement without penalty.

11.6 Seller agrees that after executing this agreement it will not enter into any written contracts, agreements, amendments, encumbrances, or listings, or be a party to any oral understandings or agreements affecting the Property, which may become binding upon Buyer.

12. CHANGES DURING TRANSACTION: Seller agrees that no changes to any existing leases shall be made, no new leases entered into, and no alterations or improvements to the Property shall be made or undertaken without the written consent of the Buyer.

13. ASSIGNMENT: Buyer may assign all of its rights and interests in and to this agreement to a third party at any time prior to closing.

14. COMPETING CONTRACTS: Seller acknowledges that Buyer is looking at other potential sites for the same purpose, and Buyer may terminate this agreement at any time prior to closing at no cost to Buyer if Buyer, in Buyer's sole discretion, chooses a different site for its project.

15. AUTHORITY OF SIGNERS: If Seller is a corporation, partnership, trust, estate, or other entity, the person executing this contract on its behalf warrants his or her authority to do so and to bind the Seller. The Buyer, Salt Lake County, is a body corporate and politic of the State of Utah. The signature of the County Mayor, pursuant to a resolution of the County Council authorizing execution of this agreement, is required in order to bind the Buyer. In the event an authorized representative of the Salt Lake County Real Estate Division first executes this agreement, this agreement is subject to ratification by the County Council, and to execution by the County Mayor. If, for any reason, the Salt Lake County Council decides, in its sole discretion, not to fund performance of Buyer under this agreement, Buyer shall promptly notify Seller of said non-funding and Buyer's termination of this Agreement. If the Buyer terminates this Agreement due to non-funding, Buyer shall not incur any penalty.

16. COMPLETE CONTRACT: This instrument, together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire contract between the parties, and supersedes and replaces any and all prior negotiations, representations, warranties, understandings, or contracts between the parties. This contract cannot be changed except by written agreement of the parties.

17. GRAMA. Seller acknowledges that this Agreement and other documents are subject to public disclosure by Buyer upon approval and ratification of this Agreement by the County Council pursuant to the Utah Government Records Access Management Act ("GRAMA"), Utah Code Ann. §§ 63-2-101, *et seq.* If Seller deems any documents or portions of documents to be proprietary and protected, Seller must make those designations in accordance with GRAMA. Disclosure of any documents or portions of documents designated as proprietary by Seller will be pursuant to GRAMA and at the sole discretion of Buyer.

18. ETHICAL STANDARDS Seller represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained

as proprietary by Seller will be pursuant to GRAMA and at the sole discretion of Buyer.

18. **ETHICAL STANDARDS** Seller represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

19. **CAMPAIGN CONTRIBUTIONS** Seller acknowledges the prohibition of campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances, 2001. Seller also acknowledges and understands this prohibition means that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with Buyer maybe prohibited from making certain campaign contributions to County candidates. Seller further acknowledges that violation of this prohibition may result in criminal sanctions as well as termination of this Agreement. Seller represents, by executing this Agreement, that Seller has not made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

20. **ABROGATION:** The warranties and provisions made in this contract shall survive closing and conveyance of title to Buyer, notwithstanding the merger doctrine or any other rule or law to the contrary.

21. **RISK OF LOSS:** All risk of loss or damage to the Property shall be borne by Seller until closing.

22. **TIME IS OF THE ESSENCE:** Time is of the essence regarding the dates set forth in this transaction. Any extension of the times or dates in this agreement must be agreed to in writing and executed by all parties.

23. **FACSIMILE (FAX) DOCUMENTS:** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. If the transaction involves multiple Buyers or Sellers, facsimile transmissions may be executed in counterparts.

24. **ACCEPTANCE:** Acceptance occurs when Seller or Buyer, responding to an offer or counter offer of the other: (a) signs the offer or counter offer where noted to indicate acceptance, and (b) communicates to the other party or the other party's agent that the offer or counter offer has been signed as required.

25. **OFFER AND TIME FOR ACCEPTANCE:** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by Thursday, February 23, 2017, 5:00 () AM (X) PM Mountain Time, this offer shall lapse.



(Buyer's Signature)
Real Estate Division

2/17/17
(Offer Date)

Notice Address: Salt Lake County Real Estate
2001 South State Street, #S120
Salt Lake City, Utah 84114
Phone: 385-468-0373



Salt Lake County Mayor or Designee

2/23/17
Date

ACCEPTANCE

Seller accepts the foregoing offer on the terms and conditions specified above. Notice Address:

(Seller's Signature) (Date) (Time)

(Seller's Signature) (Date) (Time)

[SEAL]

NOTARY PUBLIC
Residing at _____

REJECTION / COUNTER OFFER

CHECK ONE:

Seller () **REJECTS** the foregoing offer.

Seller () Presents for Buyer's acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached **COUNTER OFFER #** 1 .

(Seller's Signature) (Date) (Time)

(Seller's Signature) (Date) (Time)

Exhibit A
(Legal Description)

See Attached.

2/17/2017



SALT LAKE COUNTY RECORDER

Parcel Details for: 15221270060000

ATTENTION: Please verify these data against mainframe records if recent changes do not appear.

Parcel Number: 15221270060000

Owners: HATU WINDS LAND CO LC

Part Owners (0):

Owner Address: PO BOX 150296
OGDEN UT 84415

Parcel Address: 1820 W 2300 S

Book: 9505

Page: 2600

Total Acres: 3.01

Land Value: \$661300

Building Value: \$1848900

Total Value: \$2510200

Untaxed:

Legal Description

COM N 0°02 35" E 1083 FT & 625 FT W FR CEN SEC 22 T 1S R 1W
SL MER S 42.17 FT TO N LINE OF 2300 SO STREET W LY ALG CURVE
TO LEFT 144.79 FT N 112.73 FT W 0.67 FT N 33.33 FT W 119.67
FT N 417.67 FT E 260 FT S 558.33 FT TO BEG 3.01 AC 6980-0234
9505-2355,2358,2361

2/17/2017

Salt Lake County Recorder - Printer Friendly Version



SALT LAKE COUNTY RECORDER

Parcel Details for: 15221270090000

ATTENTION: Please verify these data against mainframe records if recent changes do not appear.

Parcel Number: 15221270090000

Owners: HATU WINDS LAND CO LC

Part Owners (0):

Owner Address: PO BOX 150296
OGDEN UT 84415

Parcel Address: 1820 W 2300 S

Book: 9505

Page: 2600

Total Acres: 1.36

Land Value: \$307100

Building Value: \$0

Total Value: \$307100

Untaxed:

Legal Description

BEG N 0°02 35" E 1083 FT & W 625 FT & N 533.329 FT FR CEN
SEC 22, T 1S, R 1W, SLM; N 24.86 FT; W 260 FT; S 417.33 FT;
W 30 FT; N 24.33 FT; W 75 FT; N 453 FT; E 425 FT; S 84.86
FT; W 60 FT TO BEG. 1.36 AC M OR L. 5719-1934 7806-0948
9505-2355,2358 9505-2358,2361

TO
REAL ESTATE PURCHASE CONTRACT

THIS IS AN ADDENDUM COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of February 17, 2017, including all prior addenda and counteroffers, between Salt Lake County as Buyer, and Hatu Winds Land Co., L.C. as Seller, regarding the Property located at 1820 West 2300 South, West Valley City, Utah. The following terms are hereby incorporated as part of the REPC.

1. The Purchase Price will be \$3,500,000.00
2. Within ten (10) business days after the Buyer's County Council approves this REPC, Buyer shall deliver to Metro National Title Company, 345 East 300 South, Salt Lake City, Utah 84111, Earnest Money, the amount of \$10,000.00. The Earnest Money deposit will become non-refundable upon completion of "Buyer Undertakings", and removal of all "contingencies", under sections 8 and 9 of the Real Estate Purchase Contract.
3. The property is an asset of the bankruptcy estate in the case of Hatu Winds Land Co., LC, in the Bankruptcy Court for the District of Utah, case number 17-20136. The REPC shall be subject to bankruptcy court approval, and may need to be approved as part of a Plan of Reorganization. Within five (5) business days after Acceptance, Seller agrees to file a motion seeking Bankruptcy Court approval of the Agreement, and Buyer agrees to cooperate in taking such actions as may be reasonably requested by the Seller in seeking approval of the REPC. The REPC is subject to higher and better offers presented to the Seller prior to closing, and any other restrictions placed by order of the Bankruptcy Court. Any higher and better offer shall include first a repayment of Buyer's actual out of pocket costs for title work, inspection fees, and other expenses incurred in carrying out its Due Diligence. Buyer shall have the opportunity to match any higher and better offer, or to withdraw. In the event Buyer withdraws, the Earnest Money shall be returned to Buyer. The Trustee shall have discretion to select the highest and best offer, subject to Bankruptcy Court approval. In the event the Bankruptcy Court orders an auction process of the property, including by entering an order approving the Seller's Plan of Reorganization that includes an auction process, Buyer shall be deemed an authorized bidder upon paying the \$10,000.00 Earnest Money, and the offer contained in this REPC shall be the opening bid at such auction. So long as Seller's Plan or Reorganization contains the terms of this REPC for selling the property to Buyer, Buyer shall timely execute a ballot in favor of Seller's Plan of Reorganization in Seller's bankruptcy case. Notwithstanding any other dispute resolution section or jurisdiction section set forth in this REPC, Buyer hereby agrees that this REPC shall be subject to adjudication only before the Federal District Court and Bankruptcy Court for the District of Utah, and Buyer consents to the personal and subject matter jurisdiction thereof, waiving all right to a jury.

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): REMAIN UNCHANGED ARE CHANGED AS FOLLOWS: _____

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. Seller Buyer shall have until 5:00 AM PM Mountain Time on February 23, 2017 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

 2/23/17 16:48
[] Buyer [X] Seller Signature (Date) (Time)

 2/23/17
[X] Buyer [] Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE: Seller Buyer hereby accepts the terms of this ADDENDUM NO. 1. 2/23/17

COUNTEROFFER: Seller Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ___.

	<u>2/23/17</u>		
(Signature)	(Date) (Time)	(Signature)	(Date) (Time)

REJECTION: Seller Buyer rejects the foregoing ADDENDUM.

(Signature)	(Date) (Time)	(Signature)	(Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.