



**NEW MEXICO ASSOCIATION OF REALTORS®
PURCHASE AGREEMENT – COMMERCIAL – 2020
PART I – BROKER DUTIES DISCLOSURE**

Per New Mexico law, Brokers are required to perform a specific set of applicable Broker Duties. Prior to the time the Broker generates or presents any written documents that has the potential to become an express written agreement, he/she must disclose such duties and obtain written acknowledgement that the Broker has made such disclosures.

SECTION A:

All Brokers in this transaction owe the following broker duties to ALL buyers and sellers in this transaction, even if the broker is not representing the buyer or the seller in the transaction:

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of potential conflict of interest that the broker has in the transaction, including, but not limited to;
 - A. Any written brokerage relationship the Broker or any other written agreement has with any other parties to the transaction or;
 - B. Any material interest/relationship of a business, personal or family nature that the broker has in the transaction; or
 - C. Any written agreement the Broker has with a Transaction Coordinator who will be providing services related to the transaction.
5. Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

SECTION B:

In addition to the above duties, Broker(s) owes the following Broker Duties to the buyer(s) and/or seller(s) in this transaction to whom the Broker(s) is/are directly providing real estate services, regardless of the scope and nature of those services.

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction including:
 - A. timely presentation of and response to all written offers or counteroffers; and
 - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advise to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of brokerage relationship option available in New Mexico:
 - A. **Exclusive agency:** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interest of the person in real estate transaction;
 - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as facilitator in real estate transaction rather than as an exclusive agent for either party;
 - C. **Transaction Broker:** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship.
7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller shall not disclose the following to the buyer in a transaction:
 - A. that the seller has previously indicated he/she will accept a sales price less than the asking or listed price;
 - B. that the seller will agree to financing terms other than those offered;
 - C. the seller's motivation for selling/leasing; or
 - D. any other information the seller has requested in writing remain confidential, unless disclosure is required by law;
8. Unless otherwise authorized in writing, a broker who is directly providing real estate service to a buyer shall not disclose the following to the seller in the transaction:
 - A. that the buyer has previously indicated he/she will pay a price greater than the price submitted in a written offer;
 - B. the buyer's motivation for buying; or
 - C. any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

BUYER(S) AND SELLER(S): PLEASE ACKNOWLEDGE RECEIPT BY INITIALING BELOW



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THE FOLLOWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
BROKERS ARE NOT PARTIES TO THIS PURCHASE AGREEMENT.**

BUYER'S BROKER(S)

N/A

➡ Buyer's Broker Name _____ Buyer's Broker's NMREC License No. _____

If different, Buyer's Broker's Qualifying Broker's Name _____ Buyer's Broker's Qualifying Broker's NMREC License No. _____

Buyer's Brokerage Firm _____ Office Phone _____ Fax _____

Buyer's Brokerage Address _____ City _____ State _____ Zip Code _____

Email Address _____ Cell Number _____ Broker is is not a REALTOR®

N/A

➡ Buyer's Broker Name _____ Buyer's Broker's NMREC License No. _____

If different, Buyer's Broker's Qualifying Broker's Name _____ Buyer's Broker's Qualifying Broker's NMREC License No. _____

Buyer's Brokerage Firm _____ Office Phone _____ Fax _____

Buyer's Brokerage Address _____ City _____ State _____ Zip Code _____

Email Address _____ Cell Number _____ Broker is is not a REALTOR®

SELLER'S BROKER

David F Etzold

20552

➡ Seller's Broker Name _____ Seller's Broker's NMREC License No. _____

If different, Seller's Broker's Qualifying Broker's Name _____ Seller's Broker's Qualifying Broker's NMREC License No. _____

Etzold & Co. _____ **915-845-6006** _____

Seller's Brokerage Firm _____ Office Phone _____ Fax _____

310 N. Mesa Ste. 824 _____ **El Paso** _____ **TX** _____ **79901** _____

Seller's Brokerage Address _____ City _____ State _____ Zip Code _____

etzoldco@att.net _____ **(915) 345-7076** _____ Broker is is not a REALTOR®

Email Address _____ Cell Number _____

N/A

➡ Seller's Broker Name _____ Seller's Broker's NMREC License No. _____

If different, Seller's Broker's Qualifying Broker's Name _____ Seller's Broker's Qualifying Broker's NMREC License No. _____

Seller's Brokerage Firm _____ Office Phone _____ Fax _____

Seller's Brokerage Address _____ City _____ State _____ Zip Code _____

Email Address _____ Cell Number _____ Broker is is not a REALTOR®



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1. TERMS SUMMARY.

This Agreement includes:

- Addendum
- Financing Addendum
- Exhibit A Legal Description (to be provided by title company)
- Other (Describe): _____

Offer Date: August 13 2020

Offer Expiration Date: August 17 2020

Buyer: Nothsac Investments LLC, or assigns

C/o Terry Hale, 30765 Pacific Coast Highway #137, Malibu, CA 90265

Seller: Best USI Portfolio LLC

7965 Indiana Ave, Suite 300, Riverside, CA 92506

Property Description: U Store It - Clovis, NM

Address: 1510 West 7th Street Clovis NM 88101

Legal Description: Ptn of Tr 16, ABO Tracts, City of Clovis, Curry County, NM

Purchase Price: \$ 300,000.00

Earnest Money: \$ 5,000.00

Inspection Period: 30 days from Effective Date, plus one 30-day extension with additional \$2500 EM

Closing Date: 30 days after end of Inspection

Conveyance Documents:

- Deed General Warranty Deed Special Warranty Deed Quitclaim Deed Other: _____

Check all that apply:

- Assignment of Leases
 - Other (Describe): _____
 - Survey Type: ALTA Boundary Other (Describe): _____
 - Environmental Site Assessment: Phase I Phase II Other (Describe): _____
- Survey and Environmental Site Assessment at Buyer's expense within first 30 days of Contract**

2. TITLE COMPANY: LANDMARK TITLE, 117, East 4th Street, Clovis, NM 88101

Title Officer Name: Michael Neff (Agent for First American Title)

Phone: (575) 763-3904 Facsimile: _____

Email: MNeff@landmarkclovis.com

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3. FINANCE CONTINGENCY

If checked, this Agreement is contingent upon Buyer obtaining financing on or before _____ N/A and Financing Addendum (NMAR Form 3106) is attached if appropriate.

4. PROPERTY. Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price pursuant to the terms of this Purchase Agreement (“Agreement”). The parties agree that if the legal description of the Property in this Agreement is not accurate, this Agreement shall not be invalid and the legal description shall be revised in a manner acceptable to Buyer, Seller and Title Company. The Property includes all fixtures and permanent improvements located at the Property, including all mechanical systems, electrical systems, plumbing systems, heating, ventilating and air conditioning systems and equipment, sprinkler systems, security systems, fire detection systems, telephone distribution systems (lines, jacks and connections only), floor coverings, window coverings, elevators, signs, paving and landscaping. The Property includes all of Seller’s interest in Existing Leases (as defined below), subleases, licenses, lease guaranties, easements, rights-of-way, streets, alleys, access rights, water rights, air rights, development rights, zoning rights and variances, and all other estates, rights, titles, interests, servitudes, tenements, and appurtenances of any nature whatsoever, in any way now or hereafter belonging to, relating to or pertaining to the Property. Service contracts, employment agreements, warranties and management agreements, to the extent they are assignable, will be included with the Property. THIS AGREEMENT IS NOT TO BE USED FOR TRANSACTIONS INVOLVING AN ASSIGNMENT OF A GROUND LEASE. UNLESS SPECIFICALLY PROVIDED IN AN ADDENDUM TO THIS AGREEMENT, BUYER IS NOT PURCHASING ANY PERSONAL PROPERTY OF SELLER PURSUANT TO THIS AGREEMENT. (IN THE EVENT BUYER IS PURCHASING PERSONAL PROPERTY OF SELLER IN CONJUNCTION WITH PURCHASE OF THE PROPERTY, BUYER SHOULD CONSULT AN ATTORNEY REGARDING NECESSARY ADDITIONAL DOCUMENTATION.)

5. DEFINITIONS. The following terms will have the following meanings:

- A. **BROKER** includes Buyer’s and Seller’s brokers.
- B. If a specific DATE is stated as a deadline in this Agreement, then that date **IS** the **FINAL** day for performance; and if that date falls on a Saturday, Sunday or a legal Holiday, the date **does not** extend to the next business day.
- C. **DATE OF ACCEPTANCE** is the date this Agreement is fully executed and delivered.
- D. **DAY(S)** will be determined on a “calendar day” basis and if the **FINAL** day for performance falls on a Saturday, Sunday or legal Holiday, the time therefore will be extended to the next business day. Legal Holidays are described as New Year’s Day, Martin Luther King Jr.’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, and Christmas.
- E. **DELIVERED** means personally delivered or by any method where there is evidence of receipt. In the event the parties have agreed to electronic transmission of documents, a facsimile or e-mail transmission of a copy of this or any related document shall constitute delivery of that document. When an item is delivered to the real estate Broker who is working with or who represents the Buyer or Seller, it is considered delivered to the Buyer or Seller respectively, except if the same Broker works for or represents both Buyer and Seller, in which case, the item must be delivered to the Buyer or Seller, as applicable.
- F. **DEADLINES.** Any “deadline(s)” can be expressed either as a calendar date (See Paragraph 5(C)) or as a number of days (See Paragraph 5(E)).
- G. **ELECTRONIC** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities and includes, but is not limited to, facsimile and e-mail.
- H. **ELECTRONIC RECORD** means a record created, generated, sent, communicated, received or stored by electronic means.
- I. **ELECTRONIC SIGNATURE** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- J. **FIXTURE** means an article which was once personal property, but which has now become a part of the Property because the article has been fastened or affixed to the Property.



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- K. MASCULINE** includes the feminine.
- L. SINGULAR** includes the plural.

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

7. DISCLOSURE AND DELIVERY OF INFORMATION. Within 5 days of the Date of Acceptance, Seller shall provide to Buyer true, correct and complete copies, to the extent that they are in Seller’s control or possession, of the following: previously prepared environmental audits and inspections, physical inspection reports, maintenance information, warranties, service and other contracts, engineering reports, hydrology reports, drainage information, grading information, soils reports, topography information, utility reports and information, building plans and specifications, certificates of occupancy, plats, prior surveys, site plans, tax assessments and tax bills for the past two (2) years, utility bills, governmental and quasi-governmental notices, a schedule of all lawsuits (except suits initiated by Seller against tenants no longer occupying space at the Property) pending or threatened related to the Property (including a summary of relevant facts, status of the action, parties, court and attorneys involved), and such other information, notices, correspondence, agreements and other materials, if any, in Seller’s possession related to the Property.

8. LEAD-BASED PAINT (LBP). If any part of this Property is a RESIDENCE built before 1978, SELLER MAY NOT ACCEPT AN OFFER FROM BUYER UNTIL SPECIFIC DISCLOSURES REGARDING LBP HAVE BEEN MADE TO THE BUYER. (See LBP Disclosure – NMAR Form 5112). Additionally, both Residential AND certain commercial buildings built prior to 1978 are subject to the Lead Based Paint Renovation Repair and Painting Program (RRPP) (See LBP RRPP Information Sheet – NMAR Form 5112A).

9. INSPECTION PERIOD. Seller is required to disclose to Buyer any adverse material defects known to him about the Property. However, Seller does not have an obligation to inspect the Property for the Buyer’s benefit or to repair, correct or otherwise cure known defects that are disclosed to Buyer or previously unknown defects that are discovered by Buyer or Buyer’s inspectors.

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

- A. PHYSICAL INSPECTION.** Buyer, at Buyer’s election and expense, may obtain a physical inspection, lead-based paint hazard inspection and/or lead-based paint risk assessment concerning the Property.
- B. TITLE.** Within 10 days of the Date of Acceptance, Seller shall obtain a title commitment (“Title Commitment”) from Title Company. Along with the Title Commitment, Title Company shall provide to Buyer copies of all documents listed as exceptions, a property tax search and copies of all plats related to the Property. Buyer shall be entitled to review title to the Property during the Inspection Period.



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- C. **SURVEY.** The survey of the Property of the type specified above shall be obtained by the party designated. The survey shall be obtained as soon as practicable and, in any event, within 20 days of the Date of Acceptance. If an ALTA survey is designated, the survey shall be prepared consistent with the American Land Title Association/American College on Survey & Mapping standards for urban surveys, including the optional items on Table A as selected by the party obtaining the survey. If a boundary or other survey is to be obtained, such survey shall be prepared consistent with the Minimum Standards for Surveying in New Mexico. All surveys shall be certified to Seller, Buyer, Title Company and Buyer’s Lender, if any. The “Flood Zone” status of the Property shall be reflected on the survey.
- D. **LEASES.** During the Inspection Periods, Buyer may review all leases, subleases, lease guaranties, licenses, concession Acceptances and other rental or occupancy arrangements (collectively “Existing Leases”) affecting the Property. ~~Prior to the Closing, Seller shall obtain an estoppel certificate (“Estoppel Certificate”) covering such matters and on a form mutually acceptable to Buyer and Seller from each tenant at the Property. Seller shall use its best efforts to obtain all Estoppel Certificates as soon as possible and in any event on or before the Closing Date. If any Estoppel Certificate cannot be obtained in a timely manner, Seller shall promptly give notice to Buyer of Seller’s failure to obtain such Estoppel Certificate; and, in such event, Buyer, within N/A days after notice is given, may terminate this Acceptance and have the Earnest Money, including accrued interest, delivered to Buyer.~~ *RK*
- E. **ENVIRONMENTAL SITE ASSESSMENT.** The Environmental Site Assessment of the Property shall be obtained by the party set forth in Paragraph 18 at such party’s expense, within 20 days of the Date of Acceptance. The site assessment of the Property shall be of the type specified above and shall be performed in a manner consistent with the standards created by American Society for Testing and Materials Standards.
- F. **SOIL AND DRAINAGE INSPECTION.** Buyer, at Buyer’s election and expenses, may obtain soil and drainage inspections and tests concerning the Property.

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

11. BUYER’S OBJECTION. Prior to the end of the Inspection Period, Buyer may disapprove the Property and/or any item related to the Property **in writing**. In such event, Buyer, at Buyer’s election, may either terminate this Agreement or give notice to Seller requesting that Seller cure the items disapproved by Buyer. Seller shall have the obligation, at Seller’s expense, to satisfy and remove at or before the Closing all monetary encumbrances disapproved by Buyer. Regarding disapproval by Buyer of items other than monetary encumbrances, within 30 days of Buyer’s notice requesting Seller’s cure, Seller shall provide notice to Buyer of Seller’s proposed cure and the time period necessary for Seller to effectuate the cure. Upon receipt of the response from Seller, Buyer shall within 10 days elect to either terminate this Agreement or accept Seller’s proposed cure. If Buyer elects to terminate this Agreement, the Earnest Money, shall be delivered to Buyer. If Buyer agrees to Seller’s proposed cure, the Closing Date shall be extended, if necessary, consistent with the time period specified for Seller’s cure. If Buyer does not disapprove the Property in writing, Buyer shall be deemed to have approved the Property and the Earnest Money shall become non-refundable.

12. SELLER’S REPRESENTATIONS AND WARRANTIES. Except as is expressly disclosed by Seller in accordance with Paragraph 6, Seller makes the following representations and warranties to Buyer as of the Date of Acceptance and as of the Closing Date.

Representations and warranties made in Subparagraphs A through N are made to the best of Seller’s **current and actual knowledge**:



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- A. Seller is the sole owner of the Property and has the full right, power and authority to sell the Property to Buyer as provided in this Agreement.
- B. There are no adverse soil, topography, hydrology, or drainage conditions at the Property.
- C. There are no hazardous materials, hazardous conditions, toxic substances, asbestos, or contaminated substances, including but not limited to asbestos, lead-based paint and/or PCB transformers at the Property.
- D. No governmental or quasi-governmental entity has notified Seller of any action, contemplated action or issue relating to or impacting the Property;
- E. The Property has never been used as a dump, landfill or other similar use and the Property has never had an above ground or an underground storage tank located on it.
- F. All information and documents provided by Seller to Buyer regarding the Property are true, correct and complete. Notwithstanding the foregoing, Seller is not providing any representation or warranty to Buyer regarding the sufficiency, accuracy, completeness, or correctness of any information or report prepared by any party other than Seller. Seller does not provide any representation or warranty to Buyer concerning the skill or competency of any third party producing any such information.
- G. Seller is not aware of any unpaid liens or assessments, or items which could result in a lien, related to the Property.
- H. Water service, electric service, natural gas, telephone service, and public sewer service are presently serving the Property.
- I. The Property is not subject to any historical Property designation and/or development limitation.
- J. Seller will not violate or modify any existing lease or Other Agreement, or create any new lease or Other Agreement affecting the Property, without Buyer's prior written approval.
- K. No person other than tenant(s) pursuant to the Existing Leases shall have any right to possession of the Property.
- L. No work has been performed which has not been paid for or which could give rise to any mechanic's or materialmen's lien being filed against the Property.
- M. No lawsuit or other claim is pending or threatened against Seller and/or the Property.
- N. No tenant or occupant of the Property is subject to any bankruptcy, receivership, probate or insolvency proceeding.
- O. Seller is not subject to any bankruptcy, receivership, probate or insolvency proceeding.
- P. Seller has not collected and will not collect any rent or other monies related to the Property for any period after the Closing Date.

Seller's representations and warranties shall survive the Closing.

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

- A. **TAXES, ASSESSMENTS, UNPAID EXISTING IMPACT FEES.** Applicable real property taxes shall be prorated through the Closing Date, based upon the latest tax information available to Title Company. Seller shall pay all special assessments, standby charges, prorate charges and other similar charges and/or assessments existing as of the Closing.
- B. **INSURANCE.** All insurance obtained by Seller will terminate on the Closing Date. Buyer is advised to obtain appropriate insurance related to the Property effective as of the Closing Date.
- C. **RENT, SECURITY DEPOSITS, AND RELATED EXPENSES.** All rent and other similar monies, including but not limited to utilities, operating expenses and other "pass-through's", shall be prorated as of the Closing Date. The parties agree to promptly adjust between themselves outside of the escrow any rents received after the Closing Date. All security deposits pursuant to Existing Leases shall be delivered to Buyer and paid for by Buyer at the Closing.
- D. **LOAN IMPOUNDS.** At the Closing, Seller shall assign to Buyer, and Buyer shall pay for all impounds or trust funds (including but not limited to insurance escrows, tax escrows, and replacement reserves), held by the lender regarding any loan being assumed by Buyer.
- E. **OTHER CHARGES RELATED TO THE PROPERTY.** All other charges related to the Property, including but not limited to utility bills, service contracts, and management fees shall be paid by Seller through the Closing Date. All service contracts, management agreements and other contracts, unless specifically approved and



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assumed by Buyer in writing at the Closing, shall be terminated by Seller effective as of the Closing Date. Buyer shall pay for all fees incurred in conjunction with the assignment of any service contract, management agreement and/or other contract. Buyer shall be responsible for changing over to Buyer all utilities as of the Closing Date. Utility deposits, if any, shall be assigned to Buyer and be paid for by Buyer at the Closing. Title Company is hereby authorized to retain such monies out of the closing proceeds as are reasonably necessary to pay utility charges which could result in a municipal lien being filed against the Property for any period of time prior to the Closing Date.

- 14. MATERIAL CHANGE.** No Material Change, as hereinafter defined, shall have occurred before the Closing with respect to the Property that has not been approved in writing by Buyer. For purposes of this Agreement, “Material Change” shall mean a change in the status of a use, occupancy, tenants, financial condition or physical condition of the Property. In the event of a Material Change, Buyer, at Buyer’s election, may terminate this Agreement within 5 days of receiving notice from Seller of such Material Change. If Buyer terminates this Agreement, the Earnest Money and all interest accrued thereon shall be returned to Buyer.
- 15. RISK OF LOSS.** In the event of damage or destruction of all or any portion of the Property by wind, water, fire or other casualty, Seller will promptly notify Buyer of the nature and extent of such damage or destruction. In such event, Buyer, in its sole discretion, within 5 days of such notice, may either terminate this Agreement, negotiate a mutually acceptable reduction in the Purchase Price, obtain an assignment of insurance proceeds from Seller or apply insurance proceeds actually received by Seller as of the Closing to the Purchase Price. Prior to the Closing, risk of loss with respect to the Property shall be on Seller. After the Closing, risk of loss with respect to the Property shall be on Buyer.
- 16. CONDEMNATION.** Promptly upon obtaining knowledge of any threatened or filed condemnation proceeding against all or any portion of the Property, Buyer and Seller will notify the other party of such proceeding. In such event, Buyer, in its sole discretion, may either terminate this Agreement, negotiate a mutually acceptable reduction in the Purchase Price, obtain an assignment of condemnation proceeds from Seller or apply condemnation proceeds actually received by Seller as of the Closing to the Purchase Price.
- 17. CLOSING.** The closing (“Closing”) shall occur on the Closing Date. All documents shall be delivered by the respective parties to Title Company to be held in escrow pending the Closing. Each document shall be duly executed and, if the document is to be recorded, duly acknowledged for the Closing.
- A.** Unless stated otherwise in this Contract, Seller shall deliver the following:
- i.** The Deed, of the type specified above, subject only to the title items not objected to by Buyer during the Inspection Period.
 - ii.** An assignment of the Existing Leases.
 - iii.** An affidavit executed by Seller providing that Seller is not a “foreign person” as established by Internal Revenue Code Section 1445 or successor statutes.
 - iv.** Other applicable closing documents required or specified by this Agreement.
 - v.** Closing statement prepared by Title Company for Seller.
- B.** Unless stated otherwise in this contract for the Closing Buyer shall deliver the following:
- i.** The balance of the Purchase Price.
 - ii.** Other applicable closing documents required or specified by this Agreement.
 - iii.** Documents, if any, related to Buyer’s financing for the Property.
 - iv.** Closing Statement prepared by Title Company for Buyer.

As soon after the Closing as is reasonably practicable, Title company shall issue to Buyer a standard New Mexico Owner’s Title Insurance Policy, effective as of the Closing Date, in the amount of the Purchase Price, insuring title to the Property vested in Buyer, in a form consistent with the Title commitment, and subject only to exceptions not objected to by Buyer during the Inspection Period.



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All documents shall be in a form mutually acceptable to Buyer and Seller. Prorations shall be handled at the Closing as set forth in this Agreement.

18. COSTS TO BE PAID. Buyer or Seller will pay the following marked items:

TITLE COMPANY CLOSING COSTS	Buyer	Seller	Not Required
Closing Fee	x	x	
Pro-Rata Data Search		x	
Legal Document Preparation		x	
Special Assessment Search		x	
Buyer Recording Fees	x		
Seller Recording Fees		x	
Other:			
Other:			
POLICY PREMIUMS			
Title Commitment		x	
Standard Owner's Policy		x	
Mortgagee's Policy	x		
Mortgagee's Policy Endorsements	x		
Other:			
Other:			
MISCELLANEOUS			
Survey (Paragraph 9C)	x		
Septic System Inspection (NMAR Form No. 2308)			x
Well Inspection (NMAR Well Information Sheet No. 2307)			x
Impact Fees			x
Property (Condo) Owner Association Fees			x
Environmental Site Assessment (Paragraph 9E)	x		
ESCROW / COLLECTION FEES			
Set up			x
Periodic			
Close out			
Other:			
Other:			

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

20. DEFAULT AND REMEDIES. Before exercising any remedy, the non-defaulting party shall give the defaulting party **five (5) days** written notice specifying the default, and the defaulting party shall be permitted to cure the default in such period. If a default occurs under this Agreement, then this Agreement may be terminated at the option of the non-defaulting party. If the non-defaulting party elects to treat this Agreement as terminated, the Earnest Money and all



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accrued interest thereon, shall be delivered to the non-defaulting party and the non-defaulting party may pursue any additional remedies available at law, in equity or otherwise. In the event, however, the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to specific performance. Buyer and Seller acknowledge and agree that Broker(s) will not in any circumstance be responsible for any breach by either party under this Agreement.

21. ATTORNEY FEES AND COSTS. Should any aspect of this Agreement result in dispute, litigation, or settlement, the prevailing party of such action including all Brokers involved in the transaction, shall be entitled to an award of reasonable attorneys' fees and court costs.

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

23. REAL ESTATE BROKERS. The parties acknowledge that the Broker(s) are the procuring cause of this Agreement. The parties acknowledge that the specific relationship(s) of Buyer and Seller with such Broker(s) has been established pursuant to separate written agreement. This Agreement shall serve as an irrevocable instruction to Title Company to pay such real estate brokerage fee, including applicable Gross Receipts Tax thereon, to Broker(s) from the Closing. Other than Seller's obligations to the Broker(s) as set forth above, Buyer and Seller represent to each other that they have had no dealings with any other broker, or agent, and that no person or entity, other than the Broker(s) has any claim for a fee or commission in conjunction with the sale covered by this Agreement. Each party indemnifies and agrees to defend the other party from any and all costs and liabilities arising from any breach of any representation contained in this paragraph.

24. BROKER'S COMPENSATION.

- A. [] Listing Broker to be paid per Listing Agreement; Selling Broker(s) to be paid per offer of compensation made through Multiple Listing Service.
B. [X] Listing Broker to be paid at closing a compensation of 6% plus applicable New Mexico Gross Receipts Tax to be paid by Seller. Selling Broker to be paid at closing a sales compensation of N/A% plus applicable New Mexico Gross Receipts Tax to be paid by N/A. Other instructions: _____

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

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

27. NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing and may be either personally delivered, sent by recognized overnight courier (for next day delivery) or mailed, postage prepaid, or by any method where there is evidence of receipt addressed to the parties and the Brokers at their respective addresses set forth in this Agreement. If any notice is personally delivered, it shall be deemed given upon delivery. If any notice is sent by recognized overnight courier, it shall be deemed given upon delivery by the courier. If any notice is mailed, it shall be



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deemed given three (3) business days after deposit in the United States mail. A party may change its address for notices by sending a notice to the other party pursuant to the terms of this Paragraph. FACSIMILE AND EMAIL COMMUNICATIONS MAY NOT BE USED FOR NOTICES PURSUANT TO THIS AGREEMENT.

- 28. AUTHORITY.** Each party signing this Agreement represents and warrants to the other party that it has full legal power, authority and right to execute, deliver and perform the obligations under this Agreement. Each party represents and warrants to the other party that the transactions contemplated by this Agreement and each person signing this Agreement and/or any document at the Closing has been duly authorized by all requisite action and that no remaining action or third-party consent is required. If Seller is an entity, Seller represents and warrants to Buyer that it is duly formed, validly existing and in good standing under the laws of the State of its organization (as set forth in Paragraph 1) and qualified to do business in New Mexico. If Buyer is an entity, Buyer represents and warrants to Seller that it is duly formed, validly existing and in good standing under the laws of the State of its organization (as set forth in Paragraph 1) and qualified to do business in New Mexico.
- 29. AMENDMENT.** This Agreement cannot be amended except as agreed to in writing by the parties.
- 30. INVALIDITY.** If any provision of this Agreement is determined to be invalid, ineffective, inoperative, unenforceable, or contrary to law, all of the remaining provisions of this Agreement shall remain in full force and effect.
- 31. CONFIDENTIALITY.** Buyer and Seller agree that at all times after the Date of Acceptance and prior to the Closing, unless consented to in writing by the other party or required by law, no party shall issue a press release or other public disclosure concerning the pending sale of the Property. Buyer and Seller agree to notify their employees, agents, contractors and Broker(s) involved in the sale of this confidentiality provision. No memorandum or other document referencing this Agreement shall be recorded.
- 32. ATTORNEY REVIEW.** Buyer and Seller each acknowledge and agree that this Agreement is a legally binding document and that each party has had a full opportunity to have its respective attorney review, revise and negotiate this Agreement. Consequently, neither party shall be deemed to have had the responsibility of drafting this Agreement if this Agreement at any time is construed or interpreted.
- 33. GOVERNING LAW AND VENUE.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Property or any portion of the Property is located in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.
- 34. WAIVER.** No waiver or failure by any party to enforce any breach of this Agreement shall be considered to be a waiver of any subsequent breach, regardless of the time, nature or form of the subsequent breach. All waivers must be in writing to be effective.
- 35. ENTIRE AGREEMENT.** This Agreement (including all exhibits and addenda) and the Property Disclosure Statement covering the Property constitute a fully integrated document and represent the entire understanding and agreement between Buyer and Seller regarding the Property. All prior discussions, events, or representations, warranties and agreements regarding the Property are hereby superseded and replaced by this Agreement. The parties to this Agreement affirm that the terms and provisions of this Agreement accurately reflect their intent. All exhibits and addenda to this Agreement are incorporated into this Agreement as operative provisions.



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- 36. TIME OF THE ESSENCE.** Time is of the essence under this Agreement.
- 37. CAPTIONS AND DEFINED TERMS.** The headings and captions contained in this Agreement are for convenience and reference purposes only and shall not define, limit or otherwise affect the terms and conditions of this Agreement. Capitalized words shall have the definition specified in this Agreement, including the definitions set forth in the “Terms” Paragraph.
- 38. SEVERABILITY.** If any portion of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
- 39. CONSENT TO THE ELECTRONIC TRANSMISSION OF DOCUMENTS AND TO THE USE OF ELECTRONIC SIGNATURES.** The parties do do not consent to conduct any business related to and/or required under this Agreement by electronic means, including, but not limited to the receipt of electronic records and the use of electronic signatures. Subject to applicable law, electronic signatures shall have the same legal validity and effect as original hand-written signatures. Nothing herein prohibits the parties from conducting business by non- electronic means. If a party has consented to receive records electronically and/or to the use of electronic signatures, that party may withdraw consent at any point in the transaction by delivering written notice to the other party.
- 40. ASSIGNMENT.** Buyer may may not sell, assign or transfer the Buyer’s rights or obligations under this Agreement, or any interest herein.
- 41. MULTIPLE BUYERS.** Each Buyer to this Agreement is jointly and severally liable for all obligations under this Agreement. In the event any buyer should be unable to perform under this Agreement (due to death or incapacity), the remaining Buyer(s) shall continue to be obligated under this Agreement.
- 42. DURATION.** If this Agreement is not fully executed by both Buyer and Seller on or before the Offer Expiration Date, the offer evidenced by this partially executed document shall be automatically withdrawn. In such event, all Earnest Money that already has been deposited with the Title Company, and all accrued interest, shall be delivered to Buyer.
- 43. COUNTERPARTS.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one (1) document.
- 44. FOREIGN SELLERS.** The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires buyers who purchase real property from foreign sellers to withhold fifteen percent (15%) of the amount realized from the sale of the real property for remittance to the Internal Revenue Service (IRS). In the event the seller(s) is **NOT** a foreign person, FIRPTA requires the buyer to obtain proof of the seller’s non-foreign status in order to avoid withholding requirements. Exceptions may apply. For more information, refer to NMAR Form 2304 – Information Sheet – FIRPTA & Taxation of Foreign Persons Receiving Rental Income from U.S. Property.

Prior to or at closing, Seller(s) shall provide to Buyer or to a Qualified Substitute (generally, the Title Company) either a Non-Foreign Seller Affidavit(s) **OR** a letter from the IRS indicating Seller(s) is exempt from withholding. In the event Seller(s) fails to do so, Buyer shall have the right to withhold fifteen percent (15%) of the amount realized from the sale of the Property for remittance to the IRS.



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WIRE FRAUD ALERT: Criminals are hacking email accounts of real estate agents, title companies, settlement attorneys and others, resulting in fraudulent wire instructions being used to divert funds to the account of the criminal. The emails look legitimate, but they are not. Buyer and Seller are advised not to wire any funds without personally speaking with the intended recipient of the wire to confirm the routing number and the account number. Buyer and Seller should not send personal information such as social security numbers, bank account numbers and credit card numbers except through secured email or personal delivery to the intended recipient.

Buyer TH _____

OFFER BY BUYER

Buyer acknowledges that Buyer has read the entire Purchase Agreement and understands the provisions thereof.

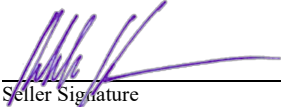
<u>Terry Hale</u>	08/14/2020 06:17 PM GMT	
Buyer Signature	Date	Time
Buyer Signature	Date	Time
Nothsac Investments LLC, or assigns	todd@terryhale.com	
Buyer Name (Print)	Email Address	
Buyer Name (Print)	Email Address	
c/o Terry Hale, 30765 Pacific Coast Highway #137	Malibu, CA	90265
Buyer Address	City	State Zip Code
Todd 508-579-4230	Chris 774-364-3427	
Buyer Home Phone	Buyer Cell Phone	Buyer Business Phone Buyer Fax

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Seller acknowledges that Seller has read the entire Purchase Agreement and understands the provisions thereof.
Seller (select one):

SELLER ACCEPTS this Offer and agrees to sell the Property for the price and on the terms and conditions specified in this Agreement.

SELLER

	8-14-20	
_____ Seller Signature	_____ Offer Date	_____ Time
_____ Seller Signature	_____ Offer Date	_____ Time
Best USI Portfolio LLC	robb@bestssco.com	
_____ Seller Name (Print)	_____ Email Address	
_____ Seller Name (Print)	_____ Email Address	
7065 Indiana Avenue, Suite 300	Riverside	CA 92506
_____ Seller Address	_____ City	_____ State Zip Code
949-500-2357	_____ Seller Home Phone	_____ Seller Cell Phone
	_____ Seller Business Phone	_____ Seller Fax

REJECTS & SUBMITS a Counteroffer (NMAR Form 5102).

REJECTS & SUBMITS an Invitation to Offer (NMAR Form 5103).

IF SELLER IS REJECTING THIS OFFER AND SUBMITTING A COUNTER OFFER, OR IS REJECTING THIS OFFER AND SUBMITTING AN INVITATION TO OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT, BUT SHOULD INITIAL ALL PAGES.

INITIALS: SELLER _____

REJECTS this offer.

IF SELLER IS REJECTING THIS OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY/ALL PAGES

INITIALS: SELLER _____

act should fill in the date).