

[NAME OF SENDER]

[CONTACT INFO]

[DATE]

[NAME]

[TITLE]

[ADDRESS]

[CITY, STATE, ZIP]

**VIA: [OVERNIGHT MAIL OR E-MAIL]**

**RE: Letter of Intent For a Proposed Agreement of Purchase and Sale By and Between [RT ENTITY] (“Seller”] and [\_\_\_\_\_\_\_\_\_\_\_\_] (“Buyer”)] (the “Agreement”)**

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Property”)]**

**[CITY, STATE - RT #\_\_\_\_\_]**

Dear ***[NAME]:***

Seller hereby submits the following non-binding Letter of Intent to Buyer for acquisition by Buyer of the above-referenced Property on the terms and conditions set forth herein:

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| --- | --- |
| **PURCHASE PRICE:** | $\_\_\_\_\_\_\_\_\_\_\_\_\_ all cash at Closing (defined below) by wire transfer. |
| DEPOSIT/EARNEST MONEY: | **[Initial] Deposit - [$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.\_\_]**, payable within three (3) business days after the full execution and delivery of the Agreement (the “**Effective Date**”) by wire transfer of immediately available funds to the Title Company (defined below).  **[Additional Deposit - ] [$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.\_\_]**, payable within two (2) business days after the expiration of the Inspection Period (defined below), provided the Agreement is not terminated during the Inspection Period, by wire transfer of immediately available funds to the Title Company.The Initial Deposit and the Additional Deposit are referred to, collectively, as the “**Deposit**”.**]**  The term “**Earnest Money**” shall mean and include the **[Initial]** Deposit **[and the Additional Deposit]** if and to the extent deposited by Buyer with the Title Company, together with any interest earned thereon. The Earnest Money shall be held in escrow by the Title Company and shall be credited toward the Purchase Price at Closing. |
| **TITLE COMPANY/:** | **FIDELITY NATIONAL TITLE INSURANCE COMPANY**  580 Village Blvd., Suite 280  West Palm Beach, FL, 33409  Attn: Jana Hutchins  Phone: Main: (561) 687-1300 - Direct (561) 656-6446 –  Cell: (561) 232-9018  E-Mail Address: [jana.hutchins@fnf.com](mailto:jana.hutchins@fnf.com) |
| **SELLER’S INFORMATION:** | Within ten (10) days after the Effective Date, Seller shall provide to Buyer copies of any as-built plans, existing title insurance documents, surveys, site plans and other documentation in Seller’s possession, if any, and reasonably relevant to Buyer’s evaluation of the Property, without any representation or warranty with respect thereto. |
| **INSPECTION PERIOD:** | The period commencing on the Effective Date and expiring thirty (30) days thereafter.  During such period, Buyer shall be entitled to conduct, at its own expense, inspections and reviews relating to the Property typically performed by a buyer to determine the suitability of property, including, without limitation, a so-called Phase I audit and any other reasonable investigations, tests, searches, reviews, studies, or examinations into the environmental status of the Property. Seller shall provide Buyer or its agents physical access to the Property, during reasonable business hours and upon reasonable prior notice to Seller, for the purposes of undertaking and completing the due diligence. However, Buyer shall not perform any so-called Phase II environmental inspections and/or other intrusive or invasive tests or inspections which could alter the physical condition of any portion of the Property without first obtaining Seller’s written approval (which approval may be given or withheld in Seller’s sole and absolute discretion).  Buyer shall have the right to terminate the Agreement at any time during the Inspection Period for any reason or for no reason in which event Buyer shall be entitled to a refund of the Earnest Money, provided Buyer is not in default of the Agreement. Failure to timely deliver a termination notice is deemed a Buyer’s waiver of Buyer’s rights to terminate and agreement to consummate the purchase of the Property subject only to the satisfaction of Seller’s closing obligations as set forth in the Agreement. |
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| **TITLE COMMITMENT:** | Buyer shall obtain, at Buyer’s expense, an owner’s title insurance commitment from the Title Company (the “**Title Commitment**”). Within ten (10) business days after the Effective Date, Buyer shall provide to Seller a copy of the Title Commitment, copies of all exception matters listed therein and written notice of Buyer’s objections to the Title Commitment.  Seller will have no obligation to take any steps, bring any action, and/or incur any costs, efforts and/or expenses whatsoever regarding any objections to the Title Commitment and/or Survey (defined below); provided, however, that, prior to Closing, Seller shall discharge and release the Property from any mortgages and security interests |
| **SURVEY:** | Buyer may obtain, at Buyer’s expense, a current ALTA/ACSM survey of the Land (the “**Survey**”). Within ten (10) business days after the Effective Date, Buyer shall provide to Seller a copy of the Survey and written notice of Buyer’s objections thereto. |
| **MARKETABLE TITLE:** | Seller shall convey the Property to Buyer at Closing free and clear of all encumbrances, liens or other adverse claims of any nature whatsoever other than Permitted Exceptions. “Permitted Exceptions” shall mean ((i) all exceptions to title in the Title Commitment approved or deemed approved by Buyer; (ii) the Title Company’s standard exception for surveys, unless Buyer obtains and delivers to the Title Company a survey acceptable to the Title Company to permit the Title Company to remove such exception; (iii) zoning ordinances and regulations and other laws or regulations governing use or enjoyment of the Property; (iv) matters affecting title created by, on behalf of, or with the consent of Buyer; (v) any state of facts that would be disclosed by an accurate survey of the Property and/or which are shown on the Survey and are approved or deemed approved by Buyer; and (vi) liens to secure taxes and assessments not yet due and payable. |
| **PERSONAL PROPERTY:** | The sale shall include all personal property, if any, on the Property on the Effective Date other than, any point of sale equipment (and any software associated therewith) and any personal property containing trade names, proprietary marks, trademarks or brand marks and derivatives thereof. Since Seller has closed this building, Seller shall not be responsible for the loss of or damage to any personal property due to theft, vandalism, fire, flood, acts of God or acts of terrorism. |
| **CLOSING:** | The “Closing” shall occur within fifteen (15) days following the expiration of the Inspection Period(the “**Closing Date**”). |
| **BROKERS:** | **Hilco Real Estate** (**“Seller’s Broker”**). All fees and commissions of Seller’s Broker are to be paid by Seller pursuant to a separate agreement.  **[\_\_\_\_Name\_\_\_\_\_]** (**“Buyer’s Broker”**). All fees and commissions of Buyer’s Broker shall total one percent (1%) of the Purchase Price and are to be paid by Seller.  **[Seller’s Broker]** **[and Buyer’s Broker]** shall be referred to [collectively] as the “**Broker**”).  Each party represents to the other that the representing party has incurred no liability for any finder’s fee or a brokerage commission arising from or relating to the transactions contemplated by this Letter of Intent other than as indicated above. Each party agrees to indemnify, defend and hold harmless the other party for all costs and expenses incurred, including, without limitation, reasonable attorneys’ fees, as a result of: (i) any claim of any broker or finder, other than the Broker if any indicated above, arising out of or resulting from any agreement, arrangement and/or understanding alleged to have been made by such party (or on its behalf) with any broker or finder in connection with this Letter of Intent and/or the transaction contemplated hereby; and/or (ii) the failure of the party to pay the Broker all commissions and fees due and owing to the Broker as indicated above. |
| **PURCHASE AGREEMENT:** | Seller’s obligations to proceed are subject to the full execution of the Agreement. Upon Buyer’s confirmation that it wishes to proceed by Buyer’s signing and returning a copy of this Letter of Intent to Seller, Buyer and Seller agree to negotiate in good faith to, within fifteen (15) business days, complete and execute a mutually acceptable Agreement of Purchase and Sale and related documents. The Agreement will incorporate the terms and conditions set forth herein (or as modified by the parties) and other typical terms and conditions of a transaction of this kind. |
| **ASSIGNMENT:** | Buyer may not assign the Agreement and/or its rights and/or obligations under the Agreement without first obtaining Seller’s written approval, which approval may be given or withheld in Seller’s sole and absolute discretion. Notwithstanding the foregoing, at Closing, Buyer may assign its rights under the Agreement without obtaining Seller’s written approval if such assignment is to an entity controlling, controlled by, or under common control with Buyer, in which instance Buyer shall provide Seller with notice (and an executed copy of the agreement effectuating such assignment) of such proposed assignment five (5) business days prior to the scheduled Closing Date. Notwithstanding any such assignment, Buyer shall not be released of Buyer’s obligations hereunder. |
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| **ADJUSTMENTS AND**  **PRORATIONS:** | Seller shall pay (i) the fees of any counsel representing it in connection with this transaction, and (ii) one-half (1/2) of any escrow fee charged by the Title Company to hold the Earnest Money.  Buyer shall pay all other closing costs, including, without limitation (i) any and all state and county transfer taxes, deed recording fees, documentary stamp taxes, property owners’ association transfer/resale assessments and other taxes and fees imposed on account of the recordation of the Deed and/or the transfer of the Property, (ii) the fees of any counsel representing Buyer in connection with this transaction, (iii) one-half (1/2) of any escrow fees charged by the Title Company, (iv) recording fees, (v) the premium for the Title Policy and Title Commitment costs, (vi) the cost of Buyer’s inspections of the Property and (vii) any costs associated with the Survey. Except as otherwise provided in the Agreement, all other costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring such costs.  Except for assessments charged by a property owners’ association in connection with the transfer/sale of the Property, if any, which are to be paid by Buyer, general, special, ad valorem, personal property and other property taxes and assessments imposed by any governmental authority and any association assessments, fees and dues (collectively, the “**Taxes**”) for the then-current calendar year should be prorated. If the Closing Date occurs prior to the receipt by Seller of all tax bills for the calendar year, Buyer and Seller shall prorate Taxes for such calendar year based on the previous year and a post-closing “true-up” shall take place once all tax bills for the calendar year are received. Buyer shall pay all increases in Taxes due to the change in ownership or use of the Property and the same shall not be prorated.  All utility bills for the Property shall be prorated. In the event Seller has not received utility bills through the Closing Date, utilities shall be prorated based on the most recent bills and a post-closing “true-up” shall take place within ninety (90) days after the Closing. Buyer shall pay to Seller all utility deposits paid by Seller with respect to the Property |
| **REPRESENTATIONS AND WARRANTIES:** | Seller shall only make representations regarding Seller’s authority to enter into the Agreement and Seller’s knowledge of environmental issues and pending claims and violations. Except for such representations and warranties by Seller and the limited warranty contained in the deed to be provided by Seller at Closing, Buyer will take the Property at Closing on an “**As-Is**” and “**Where Is**” basis without representation, covenant, or warranty of any kind (whether express, implied, or, to the maximum extent permitted by applicable law, statutory) by Seller. |
| **CONFIDENTIALITY:** | This Letter of Intent is being transmitted to you with the express understanding and agreement that you shall keep confidential its contents, the fact that it has been transmitted and the fact that Seller is contemplating selling the Property. |
| **NON-BINDING AGREEMENT:** | This Letter of Intent is solely intended as an expression of intent and shall not be a legally binding (except that the parties shall be bound by the terms of the Paragraphs entitled Brokers and Confidentiality). Neither Buyer nor Seller shall have an obligation to close the transaction described herein until such time, if any, as they, in their sole discretion, enter into the Agreement. |
| **COUNTERPARTS:** | This Letter of Intent may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Moreover, delivery of said counterparts of this Letter of Intent may be effectuated electronically for the purposes of this Letter of Intent. |

**[SIGNATURES ON FOLLOWING PAGE]**

If the foregoing is acceptable, please have an authorized officer of Buyer sign and return a copy to Seller no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_.

Sincerely,

[RT ENTITY]

By:

Name:

Title:

**AGREED TO AND ACCEPTED THIS**

**\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_**

**[Buyer]**

By:

Name:

Title: