

## CUSHMAN & WAKEFIELD AUCTION SERVICES

### AGREEMENT TO PURCHASE REAL ESTATE

To: **Hawthorne Building LLC** ("Owner")

Date: **[Insert Purchase Date]**

The undersigned ("Buyer") hereby agrees to purchase for the sum of \$**[Insert High Bid Amount + Buyer's Premium]**, inclusive of the ten (10) percent buyer's premium, ("Purchase Price") payable in accordance with paragraph 1 below, all of Owner's right, title and interest in and to the real estate and all improvements and fixtures thereon in **Marion** County, commonly known as **7551 Shelby Street, Indianapolis** as more particularly shown or described in Exhibit "A" attached hereto (the "Property").

This Agreement to Purchase Real Estate ("Agreement") is made subject to and Owner and Buyer agree to the following terms and conditions:

1. **PURCHASE PRICE.** The Purchase Price shall be paid by wire transfer, with earnest money described in Section 10 being credited at closing. This purchase is not subject to Buyer obtaining financing for the Property.
2. **TAXES AND ASSESSMENTS.** Buyer shall assume and pay all real estate taxes and assessments (collectively "Taxes") which are a lien after the date of closing and all subsequent taxes, and Owner shall pay or provide Buyer with a credit for all Taxes which are a lien prior to closing using the most recent current taxes for prorations at closing which shall be final between Owner and Buyer.
3. **TITLE.** Owner shall furnish at Owner's expense a commitment for an Owner's Title Insurance Policy issued by **Chicago Title Insurance Company** (the "Title Company") in the amount of the Purchase Price, insuring in Buyer marketable title to the Property as of the search date subject to real estate taxes and assessments not delinquent, easements, restrictions and agreements of record, matters disclosed by a survey and such other exceptions as any national title company may impose.
4. **CLOSING.** Closing shall take on or before **December 31, 2015**. The closing shall take place at the office of the Title Company or via an escrow style closing. Upon payment of the Purchase Price, Owner shall deliver a properly executed Warranty Deed conveying the Property in substantially its present physical condition, ordinary wear and tear excepted. Owner assumes risk of loss and damage until closing. If any damage occurs and the cost to repair based on an estimate provided by Owner is equal to or less than 20% of the Purchase Price, Owner shall assign the insurance proceeds to Buyer at Closing.
6. **POSSESSION.** Possession of the Property shall be delivered at closing, subject to tenant's rights. Insurance for the Property shall be cancelled as of closing date. Owner shall pay all charges for utility services furnished to the Property until the date possession is delivered to Buyer.
7. **IMPROVEMENTS AND FIXTURES.** The Property under this Agreement includes all improvements and permanent fixtures used in connection with the Property owned by Owner, including, but not limited to, the following: all electrical, gas, central heating, central air conditioning, and plumbing fixtures, including water softener (except rental units), built-in appliances, drapery hardware, attached carpeting, radio or television antennae, garage door openers, if any, now in or on the Property, the costs of which shall be fully paid and shall be free of liens. Racking, furniture and other personal property is not included in this sale.

8. **REPRESENTATIONS AND WARRANTIES.** Buyer represents to Owner that Buyer has made an inspection of the Property and personal property, if any, or the Buyer is familiar with the Property to the extent desired, and with respect to this Agreement, is satisfied in all respects with the condition of the Property and personal property, if any, including, without limitation, the structural elements, environmental conditions, availability of all necessary utilities and access. Buyer understands and acknowledges that Owner makes no warranty or representations, either express or implied, as to the condition, quality, performance or serviceability of the Property and personal property, if any, for any particular purpose. Buyer is not relying upon information contained in the sales brochure or other statements made at the auction. No liability for the accuracy of the information provided or any errors or omissions is assumed by Owner or Cassidy Turley Auction Services (the "Auction Company"). Buyer understands that by entering into this Agreement Buyer is agreeing to accept the Property and personal property, if any, in an "AS IS, WHERE IS" condition. Without limiting the above, Buyer on behalf of itself and its successors and assigns waives its right to recover from, and forever releases and discharges, Owner, Owner's affiliates, Owner's investment manager, management company, broker, Auction Company and the partners, trustees, beneficiaries, shareholders, members, directors, officers, employees and agents of each of them, and their respective heirs, successors, personal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising out of, related to or resulting from (i) the physical condition of the Property including, without limitation, all seismic elements, the environmental condition of the Property and hazardous materials on, under or about the Property, or (ii) any law or regulation applicable to the Property. BUYER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED BY OR THE RIGHT TO BE REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE IN CONNECTION WITH THIS AGREEMENT AND THAT SUCH COUNSEL HAS EXPLAINED TO BUYER THE PROVISIONS OF THIS SECTION 8. These obligations shall survive termination of this Agreement or closing.
9. **BINDING AGREEMENT.** All the terms and conditions are as stated herein, there being no verbal agreements. If this Agreement is accepted by the Owner, it shall be an agreement binding upon and inuring to the benefit of the Buyer and Owner, their successors, assigns, heirs, and personal representatives.
10. **EARNEST MONEY.** Buyer shall submit within 24 hours of notification of acceptance of this Agreement an earnest money deposit of **ten (10) percent of the purchase price**, by wire transfer to **Chicago Title Insurance Company**, which is to apply toward the Purchase Price and be held in escrow by the Title Company until closing. If this Agreement is accepted and if (a) Buyer fails to complete the purchase as agreed hereunder, all earnest money shall be paid to Owner as liquidated damages, or Owner shall have the right to sue for specific performance or pursue any other legal remedy available to Owner at law or in equity, and (b) Owner fails to complete the sale as agreed hereunder, Buyer's sole remedy, at law or in equity, shall be the return of all earnest money.
11. **OTHER TERMS OR CONDITIONS:** Any amendment to the Agreement must be in writing and signed by both parties. Time is of the essence of this Agreement. Any party who is the prevailing party against any other party in any legal or equitable proceeding relating to this Agreement shall be entitled to recover court costs and reasonable attorney fees from the non-prevailing party. This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each person executing this Agreement on behalf of a party represents and warrants individually that he or she has been authorized by all necessary action to execute and deliver this Agreement on behalf of such party. This Agreement shall be construed in accordance with the laws of the State of Indiana.
12. **AGENTS.** Auction Company and its agents are exclusively the agent for Owner.

Buyer: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**ACCEPTANCE BY OWNER:** The undersigned Owner of the Property described in above Agreement, hereby accepts said offer.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

**Owner: Hawthorne Building LLC**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

## Exhibit A – Legal Description

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