

OFFER TO PURCHASE REAL ESTATE

This OFFER TO PURCHASE REAL ESTATE ("Agreement") dated effective as of the date of the last signature hereof is made by **HUGHES ACQUISITION, LLC**, a Michigan limited liability company, 30100 Telegraph Road, Suite 220, Bingham Farms, MI 48025, on behalf of an entity to be formed, (hereinafter referred to as "Purchaser"), and the **CITY OF ANN ARBOR**, a Michigan municipal corporation, 301 East Huron Street, Ann Arbor, MI 48104 (hereinafter referred to as "Seller").

- 1) Offer to Purchase:** Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, land located in the City of Ann Arbor, Washtenaw County, State of Michigan which has a Tax Identification Number of 09-09-29-404-001 (being commonly known as 350 South Fifth Avenue) and legally described as S 6 Ft. Lot 2 and all lots 3, 4, 5 and 6 B3S R5E Original Plat of Ann Arbor, together with all easements, rights-of-way, air, oil, gas, mineral and riparian rights, all tenements, hereditaments and appurtenances, and all improvements hereon, all of which herein after collectively are referred to as the "Property", and subject to building and use restrictions of record at the date of closing, upon the following terms and conditions:

- 2) Purchase Price:** The purchase price for the Property shall be Five Million Two Hundred Thousand (\$5,200,000) Dollars.

- 3) Planned Use:** Purchaser is planning a mixed use development which may include on the upper floors: a) market rate apartments (with a maximum of three bedrooms per unit); b) a hotel, with conference or other ancillary facilities; and/or c) office space. The ground level of the structure would include a mixture of facilities to support the upper floors and commercial space. In addition, Purchaser will work closely with the Ann Arbor Transportation Authority to determine the feasibility of expanding their bus facility onto the Property, in order to minimize bus staging on 4th Avenue and Williams Street. Preliminary discussions with the AATA have already been held.

- 4) Payment/Deposit:** The Purchase Price shall be paid by Purchaser to Seller at closing by certified or cashier's check or wire transfer. Within three (3) days of the acceptance and delivery of this Agreement by Seller to the Purchaser, Purchaser shall deposit the sum of One Hundred Thousand (\$100,000) Dollars as an earnest money deposit (the "Deposit") to be held in escrow in an interest bearing account by Absolute Title Company, Ann Arbor, Michigan (the "Title Company"). The Deposit shall be applied to reduce the purchase funds due at Closing, or shall be refunded to Purchaser or retained by Seller in accordance with the terms of this Agreement.

The Deposit as defined in this Section shall be fully refundable to Purchaser in accordance with the terms of this Agreement until the final approval, by the Ann Arbor City Council, of Purchaser's site plan for the Property which will be, upon submission, substantially in accordance with the current C2A/R zoning, with a D-1 overlay. The Extension Deposits, as deposited in Section 5(b), shall be non-fundable except as set forth in that Section. The

residential component, if any, of Purchaser's site plan will further not include any residential units which contain more than three (3) bedrooms.

5) Title:

Within ten (10) days of the execution of this Agreement, Seller shall furnish, at its sole expense, to Purchaser a commitment for an owner's policy of title (including legible copies of all recorded instruments) insurance in favor of Purchaser issued by the Title Company in the amount of the Purchase Price, without standard exceptions, covering the Property. Any delay by Seller in providing Purchaser with a commitment for Title Insurance beyond the ten (10) days provided for herein shall extend the Due Diligence Period by one (1) day for each day of delay.

Purchaser shall have ten (10) days after having received the title commitment and legible copies of all recorded instruments to notify Seller in writing of any objections to the marketable fee simple title. Seller shall have the right to cure such objection(s) in a manner satisfactory to Purchaser, on or before fifteen (15) days of the date of Purchaser's notification. If the written objection(s) have not been cured by Seller within the time specified, Purchaser shall have the option to (i) accept the Property subject to exceptions, (ii) extend the time to cure in a writing, or (iii) terminate this Agreement.

6) Due Diligence:

The obligations of Purchaser under this Agreement are, in its sole discretion, subject to and contingent upon the following:

- a) Purchaser's sole satisfaction with the Property, including, but not limited to soil conditions, utilities, environmental conditions, easements, zoning and economic requirements, marketability and any other tests of the Property conducted by Purchaser. Purchaser shall have a period of one hundred and eighty (180) days following the date Seller executes this Agreement (the "Due Diligence Period") and delivers same to Purchaser to conduct its Due Diligence investigation and obtain any governmental approvals. Seller shall fully cooperate with Purchaser during the Due Diligence Period, including joining in any governmental applications such as site plan approval applications which Purchaser may file. No later than three (3) days following the date of this Agreement, Seller shall provide Purchaser with copies of (i) all surveys of the Property in its possession, (ii) the most recent A.L.T.A. commitment for an owner's title insurance policy together with a copy of all documents of records and exceptions to title indicated on the commitment, (iii) any and all studies, appraisals, tests, site plans and analysis including but not limited to environmental and geotechnical, (iv) any and all lease agreements and service contracts and (v) any licenses and permits in its possession with respect to the Property. When Seller has delivered all the required documents to Purchaser, Seller shall certify to Purchaser that it has done so. All documents forwarded to Purchaser shall be held in confidence and shall be returned to Seller in the event of termination of this Agreement. If Seller is unable to deliver the documents required under this Paragraph 5(a) in the time required, each day of delay shall extend

the Due Diligence Period by one (1) day. In addition, Seller shall extend all reasonable property access and cooperation to Purchaser, its agents and employees, to facilitate Purchaser's evaluation.

- b) The Due Diligence Period may be extended by two (2) additional periods of sixty (60) days each (each, an "Extended Due Diligence Period"). In Purchaser's discretion, Purchaser shall provide written notice to Seller, prior to the termination of the Due Diligence Period of its election to extend the Due Diligence Period or the Extended Due Diligence Period, as applicable. Each Extended Due Diligence Period notification shall be accompanied by an additional deposit of Fifty Thousand (\$50,000) Dollars ("Extension Deposit"). Each Extension Deposit shall be non-refundable, except as defined in Section 5(c) herein, but applied to reduce the purchase funds due at Closing.
- c) Purchaser shall notify Seller prior to the termination of the Due Diligence Period, as it may be extended by an Extended Due Diligence Period, if Purchaser, in its sole and absolute discretion, is satisfied with the results of its testing, investigations and governmental approvals and whether it intends to proceed to Closing. Purchaser, in its sole and absolute discretion, may, for any reason or no reason, choose to terminate this Agreement during the Due Diligence Period as extended after which this Agreement shall be null and void.
- d) If Purchaser terminates this Agreement prior to the expiration of the initial Due Diligence Period, as set forth in Section 5, or its inability to obtain the required Site Plan Approval, as set forth in Section 3, the Deposit shall be immediately returned to Purchaser along with all other amounts due Purchaser as Purchaser's sole remedy and both parties shall be released from further liability hereunder.

7) Property Access: During the Due Diligence Period and any Extended Due Diligence Period, Purchaser or its representatives shall be entitled to enter upon the Property for the purpose of conducting, at Purchaser's sole expense, surveys, wetland and environmental studies, soil borings or such other testing and investigations as are reasonably necessary to allow Purchaser to determine the physical condition of the Property. Purchaser agrees to restore all areas of the Property disturbed by such testing to substantially the same condition that existed prior to any entry thereon by the Purchaser. Seller shall cooperate with Purchaser both before and after Closing in connection with all Purchaser's testing, investigations and approvals.

Purchaser shall indemnify and hold Seller harmless from and against any and all claims, suits, actions, proceedings, damages, liability, costs and expenses (herein after "Claims"), made or asserted as a result of Purchaser's or its employees', agents' or representatives' exercise of such rights of access during the Due Diligence Period, as it may be extended by an Extended Due Diligence Period. Purchaser, at its sole cost and expense, shall defend and indemnify Seller against all Claims.

8) Environmental: Seller represents and warrants to Purchaser as follows: (i) it has not used nor is aware of a third party who has used, generated, treated, stored or disposed of, on, under or about the Property any Hazardous Materials (as defined below) except in compliance with Environmental Laws (as defined below); (ii) that to the best of Seller's knowledge, no Hazardous Materials, except in compliance with Environmental Laws, are in, on, under or about Property which will require removal or other action or expenditure by Purchaser and (iii) that Seller has not knowingly withheld any relevant facts or information in connection with the environmental condition of the Property. The foregoing representations and warranties shall survive Closing.

The term "Environmental Laws" shall mean any United States, State of Michigan or local statute, code, ordinance, rule or regulation.

Hazardous substance, "release" and "threatened release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the Environmental Laws; provided, however, in the event multiple Environmental Laws define any such term, and any one Environmental Law defines such term more broadly than any other, or that any amendment broadens the meaning of any term defined therein, such broader meaning shall apply.

The term "Hazardous Materials" shall mean any flammable substances, explosives, radioactive materials, hazardous substances, hazardous wastes, toxic substances, pollutants, contaminants or any related materials or substances identified in or regulated by any of the Environmental Laws, as defined herein (including but not limited by any "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA"), 42 USC 9601 et. seq.

Seller hereby agrees to indemnify, defend, save and hold harmless Purchaser from any and all liabilities, claims, actions, demands, penalties, losses, costs, expenses (including without limitation, reasonable attorney fees), lawsuits, costs or any settlement or judgment, and claims of any and every kind whatsoever which may now or in the future be paid, incurred or suffered by or against Purchaser, or any assignee of Purchaser, for the breach of any of the foregoing representations and warranties contained herein. This indemnity shall survive the Closing.

9) Representations: Seller makes the following representations and warranties to Purchaser, which shall be deemed material to the transaction and have been relied upon by Purchaser in connection herewith and all of which shall survive the Closing:

a) Seller has good marketable fee simple title to the Property, and has full power and authority under the terms of its governing documents to enter

into this Agreement and to perform and carry out all obligations, covenants and provisions hereof.

- b) Seller will not cause or permit waste, depletion or any adverse change in the physical condition of any part of the Property to occur prior to Closing, and Seller is not aware of any material defects to the Property.
- c) Seller has received no notice from any governmental agency of any violations of any building or use restrictions, zoning ordinances or other ordinances, rules or regulations affecting the Property, nor to the best of Seller's knowledge is there any condition existing with respect to the Property, or any part thereof, which violates any federal, state or local governmental regulation or law.
- d) Seller has not entered into any other agreements for sale or lease or other restrictions relating to any part of the Property; there are no pending, or to the best of Seller's knowledge, threatened lawsuits, administrative actions or examinations, claims or demands whatsoever relating to the Property; and Seller has not contracted for the furnishing of labor materials to Property which will not be paid in full prior to Closing, or which would give rise to a claim of a construction lien.
- e) Seller hereby agrees to indemnify, defend, save and hold harmless Purchaser from any and all liabilities, claims, actions, demands, penalties, losses, costs, expenses (including, without limitation, reasonable attorney fees), lawsuits, costs of any settlement or judgment, and claims of any and every kind whatsoever which may now or in the future be paid, incurred or suffered by or against Purchaser, or any assignee of Purchaser, for the breach of any of the foregoing representations and warranties contained herein. This indemnity shall survive the Closing.

10) Closing:

The Closing shall occur within sixty (60) days of Purchaser's receipt of final Site Plan Approval for the Property as provided for in Paragraph 3, unless mutually extended by Purchaser and Seller in writing.

- a) At the Closing, Seller shall:
 - (i) Execute a good and sufficient Warranty Deed conveying good and marketable title of the Property to Purchaser, subject to the permitted exceptions, and a Real Estate Transfer Tax Valuation Affidavit.
 - (ii) Cause the premiums due and payable to the Title Company for the owner's title insurance policy to be paid and cause the Title Company to issue the title insurance policy without standard exceptions and containing such special endorsements as Purchaser shall require, and furnish the standard title company affidavit sufficient for the removal of the standard exceptions.

- (iii) Pay all real estate transfer taxes attributable to the sale of the Property and pay all real estate taxes in accordance with this Agreement.
- (iv) Execute and deliver to Purchaser a copy of the Closing Statement showing the computation of the funds payable to Seller pursuant to this Agreement.
- (v) Furnish to Purchaser a non-Foreign Affidavit ("Affidavit") certifying that Seller is not a foreign corporation or person and covering certain other matters.
- (vi) Deliver possession of the Property to Purchaser free of all tenants and occupants.

b) At the Closing, Purchaser shall:

- (i) Pay the Purchase Price to Seller in accordance with the terms and conditions of this Agreement.
- (ii) Reimburse the Seller for the current real estate taxes attributable to Purchaser's period of ownership in accordance with Paragraph 2 herein.
- (iii) Execute and deliver to Seller a copy of the Closing Statement showing the computation of the funds payable to Seller pursuant to this Agreement.
- (iv) Execute and deliver a Property Transfer Affidavit.

Seller and Purchaser each agree to execute and/or deliver such other agreements, documents and instruments and to take such other actions as may be reasonably requested by the other party to carry out the provisions and intent of this Agreement.

11) Condemnation: If, after the execution of this Agreement and prior to Closing, the Property shall be subject to a total taking, by eminent domain, inverse condemnation or otherwise, or in the event that a portion of the Property shall be subjected to such taking, Purchaser may, at its sole option, either: (i) rescind this Agreement, in which event Purchaser shall be entitled to the immediate refund of the entire Deposit, including any portion of the Extension Deposit that is non-refundable under Section 5(b), and the parties hereto shall be relieved of all obligations hereunder; or (ii) elect to proceed to Closing, in which event Purchaser shall be entitled to participate in any such condemnation or eminent domain proceedings and to receive all of the proceeds attributable to any portion of the Property. Seller and Purchaser agree to promptly forward to the other any notice of intent received of a taking of all or a portion of the Property.

12) Seller Default: In the event of any default hereunder by Seller, Purchaser shall have the right to terminate this Agreement by written notice to Seller and receive an immediate refund of its entire Deposit, including any portion of the Extension Deposit that is non-refundable under Section 5(b), and/or obtain such other remedies as may be available under Michigan law or equitable principles.

13) Purchaser Default: In the event of any default hereunder by Purchaser, Seller shall have the right to terminate this Agreement by written notice to Purchaser and shall be entitled to retain the Deposit as liquidated damages as Seller's sole and exclusive remedy against Purchaser.

14) Notices: Any communication given ("Notice") shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, with postage and fees prepaid, or sent by a nationally recognized overnight carrier to the recipients address set forth herein, or by fax with an original notice also sent by way of the one of the above referenced methods. Any party may, by notice given, change its address for any subsequent notice. Any notice delivered by either party under this paragraph shall be effective on the earlier of the date of actual delivery or two (2) business days after mailing.

If to Seller:

City of Ann Arbor
Attn: Stephen K. Postema, Esq.
301 East Huron
Ann Arbor, MI 48107

If to Purchaser:

Hughes Acquisition, LLC
Attn: Mr. Ronald L. Hughes
30100 Telegraph, Suite 218
Bingham Farms, MI 48025

With a Copy to:

With a Copy to:

Shapack Gurrola PLC
Attn: Richard A. Shapack, Esq.
4190 Telegraph Road, Suite 3300
Bloomfield Hills, MI 48302

15) Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to principles of conflicts of law.

16) Entire Agreement: This Agreement embodies the entire understanding by and between the parties and may not be amended, except by an instrument in writing executed by the parties.

17) Severability: Whenever possible, each provision of this Agreement and all related documents shall be interpreted in such a manner as to make the provision effective and valid under applicable law. If applicable law prohibits or invalidates any provision of this Agreement, the provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of

this Agreement, unless the removal or alteration of that provision substantially defeats the basic intent of this Agreement.

- 18) Assignability:** Purchaser shall be permitted to assign this Agreement and all of its rights, title and interest, as purchaser. This Agreement shall be binding upon the parties thereto and their respective administrators, successors and assigns.
- 19) Brokerage:** Both Seller and Purchaser acknowledge that Colliers International is acting as agent for the Seller ("Seller's Agent") and Ronald L. Hughes of Liberty Realty Partners, LLC is acting as agent for the Purchaser ("Purchaser's Agent"). Seller and Purchaser agree that there are no commissions due on the sale of the Property, except for a commission which shall be paid to Colliers International by the Seller at the time of closing which commission shall be shared with Liberty Realty Partners, LLC pursuant to an agreement between Colliers International and Liberty Realty Partners, LLC. Each party agrees to indemnify each other against loss or damage by reason of a breach of the foregoing representation.
- 20) Land Divisions:** The warranty deed by which the Property is conveyed shall include the conveyance of all available land divisions under the Michigan Land Division Act, being Act No. 288 of the Public Acts, as amended.
- 21) Acceptance:** The failure of Seller to execute this Agreement in duplicate and return fully executed copies to Purchaser before 5:00 p.m. Eastern Time, on October 31, 2013 at shall cause this OFFER TO PURCHASE REAL ESTATE to become null, void and of no effect.
- 22) Authority:** This Agreement has been fully authorized, executed and delivered by Seller and is valid, binding upon and enforceable against Seller, which has full power and authority to convey the Property to Purchaser in accordance with and to perform its obligations under this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Seller and Purchaser have executed and delivered this Agreement as of the day and year set forth below:

PURCHASER:

HUGHES ACQUISITION, LLC
a Michigan limited liability company
ON BEHALF OF AN ENTITY TO BE FORMED

By: 
Ronald L. Hughes
Its: Manager
Date: October 18, 2013

SELLER:

CITY OF ANN ARBOR
a Michigan municipal corporation

By: _____
Its: _____
Date: October ____, 2013

The undersigned hereby acknowledges receipt of Purchaser's Deposit of One Hundred Thousand (\$100,000) Dollars and agrees to hold and disburse the Deposit in accordance with the terms and conditions of the foregoing Agreement.

ABSOLUTE TITLE COMPANY

By: _____
Its: _____
Date: October ____, 2013

