

May 14, 2018

Baldwin County Commission  
Baldwin County Administration Department  
County Commission Office  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

Re: **Approximately 44.5 acres of land at 22800 Brown Lane, Orange Beach,  
Baldwin County, Alabama (the "Property")**

Ladies and Gentlemen:

This letter sets forth the general terms and conditions on which Forty Seven Canal Place, LLC ("**Seller**") is prepared to commence the negotiation of a definitive purchase and sale agreement (the "**Purchase Contract**") with Baldwin County, Alabama, by and through the Baldwin County Commission, a political subdivision of the State of Alabama ("**Purchaser**"), regarding the sale of the Property described above. This letter does not create a binding legal obligation on the part of Seller or Purchaser and does not constitute an offer, contract, covenant or agreement, but has been prepared to serve as an aid in the preparation and negotiation of a Purchase Contract.

The proposed general terms and conditions are:

1. **Purchase Price and Manner of Payment.** The Purchase Price for the Property will be \$6,000,000. At Closing, Purchaser will pay the Purchase Price, as adjusted by credits and prorations (including, without limitation, the adjustment and credit described below in Paragraph 12), by wire transfer of immediately available funds.
2. **Mortgage Release.** The Property is subject to that Purchase Money Mortgage and Security Agreement dated as of October 4, 2005, recorded as Instrument Number 927765 in the Office of the Judge of Probate of Baldwin County, Alabama (the "**Mortgage**"), which restricts Seller's right to sell the Property. Upon the full execution of the Purchase Contract, Seller will request that the mortgagee under such Mortgage terminate and release such Mortgage to permit the proposed sale of the Property to Purchaser. Seller will have no obligation to incur any cost or expense, commence any legal action or proceeding, nor undertake any payment or performance obligation as consideration for, or to otherwise bring about, such termination and release. The Purchase Contract will automatically terminate on the date that is fifteen (15) days after the date the Purchase Contract is fully executed (the "**Effective Date**") unless, on or before such Effective Date, (a) such mortgagee should either (i) fully and finally terminate and release the Mortgage by instrument recorded in the appropriate real

property records, or (ii) irrevocably and unconditionally commit in writing (in a form reasonably acceptable to Seller) to do so prior to the Closing Date; and (b) Seller notifies Purchaser of its election that the Purchase Contract will not be terminated.

3. **Earnest Money.**

- (a) Within three (3) business days after the Effective Date of the Purchase Contract, Purchaser will deposit with the Atlanta, Georgia office of Fidelity National Title Insurance Company ("**Title Company**") the sum of \$100,000.00 as earnest money (the "**Earnest Money**"). If Purchaser does not elect to terminate the Purchase Contract during the Inspection Period (as defined below), then Purchaser will deposit an additional \$400,000.00 with the Title Company as additional Earnest Money. Such additional Earnest Money deposit will be due no later than the last day of the Inspection Period. The Title Company will invest the Earnest Money pursuant to terms in the Purchase Contract, and the interest and other income earned on the Earnest Money deposit will be deemed a part of the Earnest Money and will be applied towards payment of the Purchase Price if the Closing occurs.
- (b) During the Inspection Period, the Earnest Money will be fully refundable if Purchaser elects to terminate the Purchase Contract. After the Inspection Period, the Earnest Money will be non-refundable unless (i) Seller defaults under the Purchase Contract in any material respect and does not cure the default within the time permitted under the Purchase Contract or (ii) a condition precedent to Purchaser's obligation to close is not satisfied and Purchaser elects not to close within the time permitted under the Purchase Contract. If Purchaser defaults under the Purchase Contract in any material respect, the Earnest Money will be paid to Seller as full liquidated damages and as Seller's sole remedy for such default.
- (c) At Closing, the Earnest Money will be paid over to Seller and applied to the Purchase Price.

4. **Inspection Period; Right to Terminate.** Purchaser will have a period of ninety (90) days after the Effective Date (the "**Inspection Period**") in which to undertake such studies, tests and investigations as will be contemplated in the Purchase Contract. The Purchase Contract will establish the terms and conditions under which Purchaser may conduct such inspections. Purchaser will not be permitted to enter upon or inspect the Property prior to the Effective Date, nor perform any invasive sampling or other environmental testing at the Property at any time. If Purchaser determines in its sole discretion that the Property is not suitable to Purchaser, for any reason or no reason, then Purchaser may terminate

the Purchase Contract by delivery of written notice to Seller prior to the end of the Inspection Period. Upon any such termination, the Earnest Money will be returned to Purchaser.

5. **Title and Survey.** At Closing, Seller will convey to Purchaser the Property by statutory warranty deed, subject to permitted title and survey exceptions, but free of monetary liens then due and payable. No later than thirty (30) days after the full execution of the Purchase Contract, Seller will cause the Title Company to issue to Purchaser a current title insurance commitment covering the Property. At its own cost, Purchaser may obtain a survey of the Property. Purchaser will have until fifteen (15) days prior to the expiration of the Inspection Period in which to notify Seller in writing of title and survey objections. If Seller does not elect to cure all objections specified in Purchaser's notice, then Purchaser may either accept a conveyance of the Property subject to such matters or terminate the Purchase Contract by sending written notice thereof to Seller prior to the end of the Inspection Period.
6. **Closing.** Closing will be held at the Atlanta, Georgia office of Title Company on October 1, 2018 (the "**Closing Date**"); provided, however, that Seller will have the right to extend the Closing Date for a period of up to one (1) calendar year to achieve VCUP Completion (as defined below). Closing may be held at such other place or such earlier time and date as Seller and Purchaser may mutually approve.
7. **As-Is.** Purchaser acknowledges and agrees that upon Closing, Seller will convey the Property to Purchaser, and Purchaser will accept the Property "as is, where is, with all faults", except to the extent expressly provided otherwise in the Purchase Contract.
8. **Transaction Costs.** Seller will pay (a) one-half (½) of any escrow fee which may be charged by the Title Company, and (b) the costs of curing all title objections for which Seller is responsible under the Purchase Contract. Purchaser will pay (i) one-half (½) of any escrow fees charged by the Title Company, (ii) all applicable transfer taxes, documentary stamp taxes and similar charges relating to the transfer of the Property, (iii) the fees for recording the statutory warranty deed, (iv) the premium for any owner's title policy and endorsements obtained by Purchaser at Closing, (v) the cost of Purchaser's inspections of the Property, (vi) the cost of the any survey of the Property that Purchaser may obtain, (ix) all fees, costs and expenses incurred in connection with Seller's achievement of VCUP Completion (as contemplated in Paragraph 12 below). Purchaser and Seller will each be responsible for its own attorneys' fees.
9. **Prorations.** All ad valorem taxes, rents and other items of income and expense will be prorated as of 11:59 p.m. on the date prior to Closing.

10. **Seller's Default.** Upon a default by Seller, Purchaser will be entitled, as its sole remedy, either (a) to receive the return of the Earnest Money, which return will operate to terminate the Purchase Contract and release Seller from any and all liability thereunder, or (b) to enforce specific performance of Seller's obligation to execute and deliver the documents required to convey the Property to Purchaser, subject to VCUP Completion, and to see that the Seller conveys the Property, it being understood and agreed that the remedy of specific performance will not be available to enforce any other obligation of Seller under the Purchase Contract, other than that conveyance. In the Purchase Contract, Purchaser will waive all other rights and remedies against Seller, including any claim for damages.
11. **Brokerage Commission.** Seller will pay a brokerage commission to Ashurst & Niemeyer, L.L.C. ("**Broker**") in an amount set forth in a separate agreement between Seller and Broker, which will be due and payable at the time of Closing and only in the event the Closing occurs. Purchaser and Seller will each indemnify the other against any claims for brokerage commissions arising out of the actions or agreements of the indemnifying party.
12. **VCUP Completion.**
  - (a) **Closing Condition.** The Property is the subject of that Application for Voluntary Cleanup Program dated January 24, 2007, prepared by MACTEC Engineering and Consulting, Inc., under MACTEC Project No. 6325-06-0097, for Colonial Properties Trust, and submitted to the Alabama Department of Environmental Management ("**ADEM**"). As contemplated in such application and the accompanying materials, Seller desires to achieve "**VCUP Completion**", which means satisfaction of all requirements contemplated in Section 335-15-1, *et seq.*, of the Alabama Department of Environmental Management Administrative Code (the "**Administrative Code**"), and other applicable Alabama law, to the extent necessary to obtain the liability protections described in Section 22-30E-9(a) of the Code of Alabama (1975) through the Voluntary Cleanup Program ("**VCUP**") contemplated in the Administrative Code. Seller's obligation to sell the Property to Purchaser will be subject to, and conditioned upon, achieving VCUP Completion.
  - (b) **Environmental Consultant.** On or before the date that is fifteen (15) days after the Effective Date, Seller will engage Terracon Consultants, Inc. ("**Terracon**") as its environmental consultant to advise Seller on the pursuit of VCUP Completion, which may include, without limitation, performing additional environmental investigations at the Property, preparing a plan for any remediation work necessary to achieve VCUP Completion, overseeing any such remediation work, and managing

correspondence with ADEM in the pursuit of VCUP Completion. Seller will keep Purchaser informed of all matters related to the status of VCUP Completion, and at Purchaser's request, Seller will arrange for conference calls or meetings among Seller, Purchaser and Terracon for such purposes.

- (c) **Remediation Plan.** Within ten (10) days after the Effective Date, Seller will provide to Purchaser all environmental reports in Seller's possession for Purchaser's review during the Inspection Period, as well as materials related to the Property prepared by Terracon. Seller will also coordinate with Purchaser and Terracon to determine the scope of any remediation work to be performed at the Property for purposes of achieving VCUP Completion.
  - (d) **Remediation Work.** Unless Purchaser should terminate the Purchase Contract during the Inspection Period, following the expiration of the Inspection Period, Purchaser will use commercially reasonable efforts to complete remediation work at the Property in accordance with the remediation plan created by Seller, Purchaser and Terracon, and to achieve VCUP Completion.
  - (e) **Costs and Expenses.** As an adjustment to the Purchase Price at Closing, Purchaser will reimburse Seller for all costs and expenses incurred by Seller to achieve VCUP Completion. Regardless of the amount of such adjustment, Purchaser will receive a \$100,000 credit against the Purchase Price, as Seller's contribution toward such costs and expenses.
13. **Non-Binding Nature of Letter of Intent.** Seller and Purchaser acknowledge that this letter is not intended to constitute a binding contract and that a contract will not exist unless and until the parties have executed a formal Purchase Contract covering the terms of this letter and all other essential terms of the proposed transaction. The parties acknowledge that they have not attempted to set forth in this letter all of the essential terms of the transaction and that such essential terms have not been agreed upon by the parties and are subject to further negotiations. Neither party may claim any legal rights against the other by reason of any actions taken in reliance upon this letter of intent, including without limitation, any partial performance of the transactions contemplated herein or the expenditure of time and money in anticipation of entering into a contract. The parties acknowledge that at any time either party will have the right to terminate the letter of intent or the negotiation of the Purchase Contract for any reason or no reason and that neither party owes the other party any duty to proceed under this Letter of Intent or to negotiate a final Purchase Contract.

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Very truly yours,

FORTY SEVEN CANAL PLACE, LLC,  
an Alabama limited liability company

By: CPSI, LLC,  
an Alabama limited liability company,  
its manager

By: Elizabeth Long  
Name: Elizabeth Long  
Title: Vice President

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Accepted this 15<sup>th</sup> day of May, 2018:

BALDWIN COUNTY, ALABAMA

By: 

Name: Frank Burt, Jr.

Title: Chairman