Complete the Critical Task
Negotiating LOIs and PSAs
Complete the Critical Task: Negotiating LOIs and PSAs
Complete the Critical Task: Negotiating LOIs and PSAs
Letter of Intent

- General description of the property (need not be surveyed)
- Seller identity
- Buyer identity
- Purchase price
- Deposit
- Due diligence and closing period
- Non-binding language
- Confidentiality
- Order title commitment
- Drafter
Complete the Critical Task: Negotiating LOIs and PSAs
Purchase Agreement

More specific property description
Operating covenants
Confidentiality
Timeline
Memo of PSA

Confidentiality

Purchaser agrees that prior to the Closing and thereafter if Closing does not occur, all information relating to the Property, any reports, studies, data, and summaries developed by Purchaser, and any information relating to the business of Seller (the "Confidential Information") shall be kept confidential and provided in this work without the prior written consent of Seller. Prior to the Closing, the Confidential Information shall not be disclosed by Purchaser or Purchaser’s Representatives in any manner whatsoever, (whether in writing or otherwise) to Purchaser’s Representatives who need to know the Confidential Information for the purpose of facilitating the Closing, the Purchase and the Transfer and all other transactions that are necessary for Purchaser or Purchaser’s Representatives to comply with applicable laws, including, without limitation, governmental regulatory, accounting, tax and property requirements, to comply with other requirements and requests of regulatory and supervisory authorities and governmental and regulatory organizations having jurisdiction, or to Purchaser or Purchaser’s Representatives or to comply with regulatory or judicial processes, or to satisfy knowing, reasonable and necessary requests or inquiries generated in accordance with customary practice of Purchaser or its Affiliates and to be received or prospective investors in this transaction. “Purchaser’s Representatives” shall mean the Purchaser’s directors, officers, employees, Affiliates, contractors, consultant, advisers on the transaction, including without limitation, attorneys, accountants, consultants, underwriters, and financial advisors. Seller as aforesaid may issue an investor prospectus following the public disclosure of the occurrence of this event to the extent of the information without the consent of Purchaser. “Confidential Information” shall not be deemed to include any information or documents which (i) is or becomes generally available to the public through no fault of Purchaser, (ii) was actually known to Purchaser before disclosure of such Confidential Information to Purchaser or its Affiliates, (iii) is or becomes available to Purchaser or its Affiliates from a source other than Seller or any of Seller’s Affiliates or Representatives, or (iv) is developed by Purchaser or Purchaser’s Representatives with respect to new products or services not independently developed by Purchaser. In addition, no other remedies available to Seller, Seller shall have the right to seek equitable relief, including, without limitation, injunction, specific performance, or other specific performance, against the Purchaser or its Representatives, in order to enforce the provisions of this Section. The provisions of this Section shall survive the termination of this Agreement.
The exact size and dimensions of the Property and necessary access and parking easements shall be established during the Review Period (as defined in Section 10(a) hereof), but shall be sufficient to accommodate the footprint of the intended Project and the use of no less than ____ parking spaces. Notwithstanding the foregoing, Purchaser and Seller shall make their best commercially reasonable efforts during Purchaser’s site planning process to ensure the Property remains approximately ____ acres, but not in any event greater than ____ acres.
Purchase Agreement

More specific property description
Operating covenants
Confidentiality
Timeline
Memo of PSA

Uncertain Property Description

The exact size and dimensions of the property and various appurtenances and working arrangements shall be established during the Due Diligence Period as defined in this agreement. No further development, additions, or improvements shall be made to the property prior to the completion of due diligence. The property shall be purchased subject to all existing leases, easements, and restrictions.

Purchaser and Seller shall take such steps, commensurate with the nature of the property, to ensure the satisfactory completion of the transaction.

Confidentiality

Purchaser agrees that prior to and during the due diligence process, all information relating to the property and reports, studies, data, and experience it may receive during the due diligence process shall be kept confidential and shall be treated as trade secrets and commercial information. Purchaser hereby agrees to hold such information in strict confidence and not to disclose any information to any third party without the written consent of Seller. All confidential information shall be protected by Seller or its representatives or any other party who may be under an obligation of confidentiality with respect to such confidential information. The information shall be used solely for the purpose of evaluating the property, and shall not be used for any other purpose. Seller shall use reasonable efforts to minimize the risk of disclosure of confidential information.

Confidential information shall be defined to include any information in any document which is not generally available to the public, other than information obtained by Purchaser or Seller's representatives in violation of this agreement. Confidential information shall be disclosed only to those individuals who are necessary to perform the due diligence or to proceed with the transaction.

The provisions of this agreement shall continue in full force and effect.
Purchaser agrees that, prior to the Closing and thereafter if Closing does not occur, all information relating to the Property, any reports, studies, data and summaries developed by Purchaser, and any information relating to the business of either party (together, the “Confidential Information”) shall be kept confidential as provided in this section. Without the prior written consent of Seller, prior to the Closing, the Confidential Information shall not be disclosed by Purchaser or Purchaser’s Representatives in any manner whatsoever, in whole or in part, except (1) to Purchaser’s Representatives who need to know the Confidential Information for the purpose of evaluating the Property and who are informed by the Purchaser of the confidential nature thereof; (2) as may be necessary for Purchaser or Purchaser’s Representatives to comply with applicable laws, including, without limitation, governmental regulatory, disclosure, tax and reporting requirements; to comply with other requirements and requests of regulatory and supervisory authorities and self-regulatory organizations having jurisdiction over Purchaser or Purchaser’s Representatives; to comply with regulatory or judicial processes; or to satisfy reporting procedures and inquiries of credit rating agencies in accordance with customary practices of Purchaser or its affiliates; and (3) to existing or prospective tenants of the Property and lenders for the transaction. As used herein, “Purchaser’s Representatives” shall mean: Purchaser’s directors, officers, employees, affiliates, investors, brokers, agents or other representatives, including, without limitation, attorneys, accountants, contractors, consultants, engineers and financial advisors. Seller, at its election, may issue an oral or written press release or public disclosure of the existence or the terms of this Contract without the consent of Purchaser. “Confidential Information” shall not be deemed to include any information or document which (I) is or becomes generally available to the public other than as a result of a disclosure by Purchaser or Purchaser’s Representatives in violation of this Contract, (II) becomes available to Purchaser from a source other than Seller or any affiliates of Seller or their agents or representatives, or (III) is developed by Purchaser or Purchaser’s Representatives without reliance upon and independently of otherwise confidential Property Information. In addition to any other remedies available to Seller, Seller shall have the right to seek equitable relief, including, without limitation, injunctive relief or specific performance, against the Purchaser or its representatives, in order to enforce the provisions of this section. The provisions of this section shall survive the termination of this Contract for one year.
Purchase Agreement

More specific property description
Operating covenants
Confidentiality
Timeline
Memo of PSA
Complete the Critical Task: Negotiating LOIs and PSAs

Purchase Agreement
- More specific property description
- Operating covenants
- Confidentiality
- Timeline
- Memo of PSA
Due Diligence

Access Period
Terms of Access
Liability
Title and Survey
Documents
Objections

Due Diligence Documents
Not later than Five (5) Business Days after Effective Date, Seller shall deliver to Buyer copies of all documents in Seller's possession or readily obtainable by Seller which pertain in any way to the Property, including, but not limited to, plans, plats, surveys, title materials, consultant and other third party reports, soils and environmental reports, correspondence and memoranda, and copies of all existing easement agreements, site development agreements, certificates, licenses, permits, authorizations, approvals, adjudications, special taxing district (including metropolitan district) documents, subdivision agreements, development agreements, and any other agreements and documents affecting the status, operation, approval, permitting, entitlement and development of the Property (collectively, the "Due Diligence Materials")
Due Diligence Documents

Not later than Five (5) Business Days after Effective Date, Seller shall deliver to Buyer copies of all documents in Seller’s possession or readily obtainable by Seller which pertain in any way to the Property, including, but not limited to, plans, plats, surveys, title materials, consultant and other third party reports, soils and environmental reports, correspondence and memoranda, and copies of all existing easement agreements, site development agreements, certificates, licenses, permits, authorizations, approvals, adjudications, special taxing district (including metropolitan district) documents, subdivision agreements, development agreements, and any other agreements and documents affecting the status, operation, approval, permitting, entitlement and development of the Property (collectively, the “Due Diligence Materials”)

Due Diligence

Access Period
Terms of Access
Liability
Title and Survey
Documents
Objections

Due Diligence Documents
Not later than Five (5) Business Days after Effective Date, Seller shall deliver to Buyer copies of all documents in Seller’s possession or readily obtainable by Seller which pertain in any way to the Property, including, but not limited to, plans, plats, surveys, title materials, consultant and other third-party reports, soils and environmental reports, correspondence and memoranda, and copies of all existing easement agreements, site development agreements, certificates, licenses, permits, authorizations, approvals, adjudications, special taxing district (including metropolitan district) documents, subdivision agreements, development agreements, and any other agreements and documents affecting the status, operation, approval, permitting, entitlement and development of the Property (collectively, the “Due Diligence Materials”.)
Task: Presenting and PSAs
No Go

Notice of Termination
Earnest Money
Due Diligence Documents
Memo of PSA
Clear Termination Right

During the Feasibility Period, Buyer shall have the absolute right to cancel the Escrow and terminate this Agreement for any reason or no reason, by giving written notice thereof to Seller and Escrow Agent at any time prior to 5:00 p.m. Colorado time on the last day of the Feasibility Period.
No Go

Notice of Termination
Earnest Money
Due Diligence Documents
Memo of PSA
Go

Notice of Intent to Purchase
Earnest Money
Seller’s Cures
Closing Date
Entitlements Period

Limited Scope
Diligent Efforts
Seller Cooperation
Time Period
Earnest Money
No Go

Notice of Termination
Earnest Money
Due Diligence Documents
Memo of PSA
Closing

Closing Conditions
Prorations
Closing Costs
Deliveries
Survival
What Survives Closing?

Any provisions of this Agreement related to the subject of the agreements to be delivered at the Close of Escrow pursuant to Sections 9.1 and 9.2 shall merge into those agreements at the Close of Escrow and shall not survive the Close of Escrow. Only those provisions of this Agreement that are either not capable of being completed prior to the Close of Escrow or that expressly state that they survive the Close of Escrow or earlier termination of this Agreement shall survive the Close of Escrow or earlier termination of this Agreement.
Closing

Closing Conditions
Prorations
Closing Costs
Deliveries
Survival

What Survives Closing?

Any provisions of this Agreement related to the subject of the agreements to be delivered at the Close of Escrow pursuant to Sections 7.1 and 8.2 shall merge into these agreements at the Close of Escrow and shall not survive the Close of Escrow. Only those provisions of this Agreement that are either not capable of being completed prior to the Close of Escrow or that expressly state that they survive the Close of Escrow or earlier termination of this Agreement shall survive the Close of Escrow or earlier termination of this Agreement.
Default

Seller

- Cure period
- Return earnest money
- Specific performance
- Reimburse costs

Buyer

- Cure period
- Forfeit earnest money
- Additional damages
Seller

Cure period
Return earnest money
Specific performance
Reimburse costs
Buyer

Cure period
Forfeit earnest money
Additional damages
Buyer Default

If Buyer is in default under this Contract, in addition to any other remedies it may have, Seller may terminate this Contract, in which event the Deposit shall be forfeited and retained on behalf of Seller, Buyer shall deliver to Seller, without warranty of any kind as to accuracy, completeness or validity, all of its plans, specifications, studies, tests and investigations relating to the Property and its planned development thereon, including all of the foregoing that are stamped and approved by the City, and both parties shall, except as hereafter provided, thereafter be released from all obligations hereunder.
Complete the Critical Task: Negotiating LOIs and PSAs