

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of _____, 2017 (the "Effective Date"), by and between DIANE A. THOMPSON acting as Court-appointed Receiver of American Pension Services, Inc. ("Seller"), and _____, ("Purchaser").¹

NOW, THEREFORE, for and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

I. PURCHASE OF PROPERTY

Section 1.01. Agreement To Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement, as well as the terms and conditions set forth in the American Pension Services Terms and Conditions ("APS Terms and Conditions"), and pursuant to Court Order, all of Seller's right, title and interest in and to (a) the real property as more particularly described on Exhibit A attached hereto, and any and all improvements thereon and appurtenances thereto (collectively, the "Real Property"); (b) the fixtures affixed thereto; (c) all leases and rental agreements relating to the Real Property or any portion thereof (all of the foregoing items in clauses (a) through (c) above, now or hereafter existing, collectively, the "Property").

Section 1.02. Sale Pursuant to Court Order. The Property described in Exhibit A is being sold pursuant to Court Order in the matter encaptioned *SEC v. American Pension Services, Inc.*, No. 2:14-cv-00309-RJS-DBP (D. Utah Apr. 24, 2014).

II. PURCHASE PRICE

Section 2.01. Purchase Price. The purchase price of the Property shall be the sum of \$ _____ ("Purchase Price"), payable as follows:

(a) ***Earnest Money Deposit.*** Prior to placing a bid, Purchaser shall pay the Live Auctioneers, CWS Marketing Group ("Auctioneer") a cash deposit equal to \$5,000.00 as an earnest money deposit ("Deposit"). The Deposit shall be sent to: 10611 Balls Ford Road, Suite 140, Manassas, VA 20109, Attn: Stephanie Vale. To protect Purchaser's interest, Seller and Purchaser have or will enter into an escrow agreement with [**name of Escrow Company**] ("Escrow Agent"). Auctioneer shall to deliver the Deposit to Escrow Agent. Escrow Agent shall hold the Deposit for up to thirty (30) days, until the Closing Date. The Deposit shall be held by Escrow Agent in a federally-insured, non-interest bearing account, and shall be applied to the payment of the Purchase Price at Closing. If Purchaser does not close,

(b) ***Additional Deposit.*** For all winning bids over \$50,000.00, Purchaser shall pay Seller an additional cash deposit equal to 10% of the purchase price, less the initial Deposit

¹ Purchaser guarantees the property as described in Section I, 1.01 below, is not an asset of Purchaser's account at American Pension Services, Inc.

(the "Additional Deposit"). Purchaser shall pay the Additional Deposit within three (3) business days of making such successful bid. The Additional Deposit shall be sent to the Auctioneer at: CWS Marketing Group 10611 Balls Ford Road, Suite 140, Manassas, VA 20109, Attn: Stephanie Vale. Auctioneer shall cause such deposit to be deposited and held by Escrow Agent in a non-interest bearing account. Escrow Agent shall hold the Additional Deposit for a period of up to thirty (30) days, or until the Closing Date.

(c) **Buyer's Premium.** A fee equal to 5% of the Purchase Price shall be added to the Purchase Price as a Buyer's Premium. Purchaser shall include the 5% Buyer's Premium with Purchaser's final payment to [name of Escrow Company] by the Closing Date. The Buyer's Premium is the total amount of \$ _____.

(d) **Final Cash Payment.** \$ _____ (Purchase Price), which includes the Deposit, and where applicable, the Additional Deposit, and Buyer's Premium shall be paid by Purchaser to Seller in cash or other immediately available funds at Closing.

III. BUYER DUE DILIGENCE

Section 3.01. Title Insurance and Title Commitment. Purchaser may, at its sole cost and expense, obtain Title Insurance Policy or Title Commitment; however, receipt of such Title Insurance Policy or Title Commitment shall not extend the Closing Date, or be a condition to Closing. Additionally, Seller shall have no obligation or duty to remove, cause Title Company to endorse over, or otherwise resolve any title objections.

Section 3.02. Survey. Purchaser may, at its sole cost and expense, order a survey but the receipt of such survey shall not extend the Closing Date, or be a condition to Closing.

Section 3.03. Environmental. Purchaser may, at its sole cost and expense, order an update to the Environmental Report or a new Phase I environmental assessment report, if deemed necessary by Purchaser in its sole discretion. Purchaser may not undertake an invasive test of any part of the Property or any Phase II environmental investigation without the prior written approval of Seller, which approval may be withheld for any reason or no reason. The receipt of such update or new report shall not extend the Closing Date, or be a condition to Closing.

IV. CLOSING

Section 4.01. Closing Date. The completion of the purchase of the Property by Purchaser (the "Closing") shall occur on within 30 business days of the close of the Live Online Bidding, or no later than August 14, 2017)(the "Closing Date"), as described in the APS Terms and Conditions.

Section 4.02. Taxes, Transaction Fees and Costs. Any outstanding taxes and assessments and personal property taxes relating to the Property shall be the sole obligation of the Purchaser at the time of Closing. Purchaser shall pay for all costs associated with the Closing including, without limitation, all recording fees, all transfer, stamp, documentary, transaction privilege, franchise, sales or similar taxes, if any (but expressly excluding any income tax

imposed on Seller), all title, search and escrow fees and any special assessment searches and any and all other closing costs and expenses incurred in connection with this transaction. Each party shall pay its own legal fees incurred in connection with this transaction.

Section 4.03. Closing Deliveries.

(a) ***Seller Closing Deliveries.*** Seller agrees to deliver the following documents to Purchaser on the Closing Date (fully executed and notarized by Seller as appropriate):

(i) originals of a Quit Claim Deed to the Property, dated as of the Closing Date, in the form attached as Exhibit “B” to this Agreement (the “Quitclaim Deed”), duly executed and acknowledged by Seller, conveying to Purchaser the Property AS-IS, including all current taxes against the Property not yet due and payable, assessments and any other liens arising therefrom.

(b) ***Purchaser Closing Deliveries.*** Purchaser agrees to deliver to Seller on the Closing Date (fully executed and notarized by Purchaser as appropriate) all other funds, documents, instruments and certificates required to be delivered to the appropriate person by this Agreement and the APS Terms and Conditions, attached as Exhibit C.

V. “AS IS” SALE

(a) **Condition of Property.** The purchase of the Property and other rights to be conveyed, sold, transferred and/or assigned pursuant to this Agreement shall be on an “**AS IS**” “**WHERE IS**” basis, “**WITH ALL FAULTS,**” without representation or warranty, express or implied, with regard to physical condition or state of occupancy, including without limitation, any latent or patent defects, conditions of soils or groundwater, existence or nonexistence of any hazardous, toxic or otherwise regulated substance, waste, contaminant or material, quality of construction, workmanship, merchantability or fitness for any particular purpose as to the physical measurements or useable space thereof. There will be no physical inspection of the Property and Purchaser shall not disturb any occupants or trespass on the Property. Seller does not plan to conduct its own inspection and shall not be liable for any latent or patent defects in the Property.

VI. DEFAULTS; REMEDIES

Section 6.01. Default. Each of the following shall be deemed an event of default of a party to this Agreement (each, an “Event of Default”):

(a) Failure to make required payments for the Property by the Closing Date shall be deemed forfeiture of any right, title and interest Purchaser may have acquired in the Property. Property shall revert and repossess to the Seller without further notice to Purchaser and will result in any monies and deposits paid being forfeited including the Deposit, Additional Deposit, if applicable, and Buyer's Premium, and the transaction null and void as to Purchaser.

Section 6.02. No Purchaser Remedies.

(a) After the Closing, Purchaser agrees to release and hold harmless Seller from any and all demands, rights and causes of action for any reason.

Section 6.03. Seller Remedies. In the event of any Event of Default by Purchaser in regard to complete and final payment to the Seller, as its sole and exclusive remedy, shall be entitled to terminate this Agreement whereupon neither party shall have any further obligation or liability.

Section 6.04. Waiver. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT OR INSTRUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

VII. MISCELLANEOUS

Section 7.01. Risk of Loss. Seller does not assume risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause up to or thereafter Closing.

Section 7.02. Notices. All notices, demands, consents, approvals, appointments and other instruments given pursuant to this Agreement (each, a “Notice”) shall be in writing and given by (a) hand delivery or (b) express overnight delivery service and shall be deemed to have been delivered upon (i) receipt, if hand delivered; (ii) the next Business Day, if delivered by a reputable express overnight delivery service. Notices shall be provided to the parties and addresses specified below:

If to Purchaser:

Attention: _____
Address: _____

If to Seller:

DIANE A. THOMPSON acting as Court-appointed
Receiver of American Pension Services, Inc.
Attention: Melanie Vartabedian
Address: Ballard Spahr LLP
201 S. Main, Suite 800
Salt Lake City, UT 84111

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the person(s) entitled to receive such Notice.

Section 7.03. Assignment. Purchaser may not assign its rights under this Agreement in whole or in part without the prior written consent of Seller; *provided, however,* Purchaser may assign this Agreement to an entity under common ownership of or control with Purchaser upon

written notice of such assignment delivered to Seller prior to the Closing Date. No assignment of Purchaser's right and interest hereunder shall relieve Purchaser of any liability for the performance of any obligation of Purchaser contained herein.

Section 7.04. Business Days. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday in the state in which the Property is located. If any date provided for in this agreement falls on a Saturday, Sunday or legal holiday in the state in which the Property is located, such date shall be extended to the next Business Day.

Section 7.05. Waiver and Amendment. No provision of this Agreement shall be deemed waived except by a written instrument unambiguously setting forth the matter waived and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. This Agreement may only be amended by a written agreement executed by Seller and Purchaser.

Section 7.06. Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

Section 7.07. Entire Agreement. This Agreement (including all attached exhibits, which are hereby incorporated by reference into this Agreement) constitutes the whole agreement between the parties. This Agreement supersedes any prior agreements. There are no representations, warranties, terms, obligations, covenants, or conditions other than contained herein. This Agreement may not be amended or modified by any act or conduct of the parties or by oral agreement, unless reduced to writing, signed by both Purchaser and Seller.

Section 7.08. Severability; Binding Effect. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such void, voidable, unenforceable, or invalid provision had never been a part of this Agreement, provided that the Agreement as so modified preserves the basic intent of the parties. All provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto.

Section 7.09. Governing Law. This Agreement shall be governed by, and construed with, the laws of the applicable state or states in which the Property is located, without giving effect to any state's conflict of laws principles.

Section 7.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same document. Either party may deliver its signature to the other via facsimile or electronic transmission (such as in the form of a PDF), and any signature so delivered will be binding on the delivering party.

[Remainder of page intentionally left blank; signature page(s) to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the Effective Date.

SELLER:
DIANE A. THOMPSON acting as Court-appointed
Receiver of American Pension Services, Inc.

By: _____

Printed Name: _____

Title: _____

PURCHASER:

By: _____

Printed Name: _____

Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY

EXHIBIT B
FORM OF QUIT CLAIM DEED

WHEN RECORDED, MAIL TO:

Tax Parcel No. _____

QUIT CLAIM DEED

IN WITNESS WHEREOF, Grantor has executed this Quit Claim Deed this _____ day of _____, 2017.

GRANTOR:

DIANE A. THOMPSON
Court-appointed Receiver
Ballard Spahr LLP
201 South Main Street, Suite 800
Salt Lake City, Utah 84111

STATE OF UTAH)
):ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by DIANE A. THOMPSON.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT C
APS TERMS AND CONDITIONS