



April 18, 2019
Folder: 02933-56

VIA UPS Overnight
RETURN RECEIPT REQUESTED

MR. KIRK PELSER
DEPUTY CITY MANAGER
CITY OF POMONA
505 SOUTH GAREY AVENUE
POMONA, CA 91767

Dear Mr. Pelsner:

This letter ("Agreement") confirms our understandings covering the possible sale by Union Pacific Railroad Company ("Seller") to Pomona, City Of ("Buyer") of Seller's interest in certain real property in Pomona, California.

The undersigned will recommend to Seller's Management a sale of the Property on the following terms and conditions:

Article 1. Description of Property:

- A. The Property is approximately 19,870 square feet as shown on the print attached hereto as Exhibit A and made a part hereof. The legal description of the Property will be determined by Seller. Survey will be at the sole cost and expense of Buyer. Survey will depict all facilities affecting the property.
- B. Before finalizing any survey, Buyer shall submit the draft survey to Seller for review and approval. Computer files of the survey and legal descriptions shall be sent via e-mail to DBPARKER@UP.COM, with a subject line referencing the UPRR Folder Number 02933-56 assigned to this document. Buyer shall deliver a certified copy of the completed survey to Seller within sixty (60) days after Buyer's execution of this Agreement ("Survey Period"). Delay in obtaining or furnishing the survey to Seller shall in no event give Buyer the right to extend the Closing Date (as defined in the 'Closing - Default:' Article).

Article 2. Sale Price:

- A. The sale price ("Sale Price") for the Property shall be One Hundred Four Thousand Three Hundred Seventeen and 50/100th Dollars (\$104,317.50).
- B. The Sale Price is computed as follows:

19,870 square feet x \$5.25 per square foot = \$104,317.50
- C. The Sale Price will be adjusted on the basis set forth in Article 2-B if the area of the Property, as determined by Seller or as determined by survey pursuant to Article 1-B, differs from the area set forth in Article 1-A.

Article 3. Feasibility Review/Right of Entry:

- A. For ninety (90) days from the date of execution of this Agreement by Buyer ("Feasibility Review Period"), Buyer and its agents and contractors may enter upon the Property to perform environmental audits, soil tests, engineering and feasibility studies of the Property. If the results of such audits, tests or studies, or Buyer's review of title or any other matters relating to the Property are unsatisfactory, Buyer may terminate this Agreement by giving Seller written notice before the end of the Feasibility Review Period. If no such written notice of termination is given before the end of the Feasibility Review Period, the Property will be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property and such reports will become the sole property of Seller without cost or expense of Seller and this Agreement will terminate without any further force and effect, and without further obligation of either party to the other.
- B. Buyer's right to enter upon the Property pursuant to Article 3-A is subject to the following:
 - 1. Buyer will indemnify, defend and save harmless Seller and/or Seller's affiliates (Seller's affiliates means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with the entry upon the Property by Buyer, its agents or contractors prior to Closing.
 - 2. Buyer and Buyer's agents and contractors (collectively "Contractors") will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller. However, Seller understands Buyer is a public agency is subject to the California Publics Records Act and must release the information if demanded by a party or court of law. Buyer will use its best effort to retain any information as confidential subject to such demand. If Buyer discovers hazardous or toxic substances or materials, Buyer will immediately notify Seller.

(including, but not limited to, any lease or other document, engineering study or environmental assessment) is furnished on the condition that Buyer will make an independent verification of the accuracy of the information. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own independent investigation of the physical and environmental conditions of the Property. Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

- B. **FROM AND AFTER CLOSING, BUYER WILL RELEASE SELLER, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, BUYER EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:**

1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

BUYER HEREBY EVIDENCES ITS SPECIFIC AGREEMENT TO THE TERMS OF THIS RELEASE AND INDEMNITY BY PLACING ITS SIGNATURE OR INITIALS IN THE PLACE PROVIDED HEREINAFTER.

Buyer's Initials

Article 5. Escrow, Title Insurance and Abstract of Title:

- A. Seller will not furnish title insurance or an abstract of title to the Property. Buyer may, at its sole option and expense, obtain a preliminary title report ("PTR") in order to review the status of title to the Property during the Feasibility Review Period. If Buyer obtains a PTR, a copy will be delivered to Seller. Seller has no obligation to cure any title defects or to assist Buyer in obtaining title insurance.
- B. If Buyer desires title insurance, Buyer shall pay the cost of any title insurance and any endorsements or changes to the title policy desired by Buyer. If an escrow is used, Buyer shall pay any and all fees relating to the escrow, including, but not limited to, any City and/or County Transfer Taxes and recording fees.

Article 6. Form of Deed; Reservations:

- A. At Closing, Seller will transfer Seller's interest in the Property to Buyer by Quitclaim Deed, subject to all outstanding rights, whether or not of record.
- B. Seller will reserve from the transfer all minerals and mineral rights without right of surface entry.
- C. Fence.

The Property is quitclaimed by Seller subject to the following covenant, condition and restriction, which Buyer by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

Fence Covenant. Buyer, at its sole cost and expense, shall install, within ninety (90) days after the date of delivery of this Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Seller adjacent to the trackside boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Seller, and in compliance with applicable building codes. Buyer shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Dan Parker - Real Estate (Folder No. 02933-56)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Seller shall complete such review and make appropriate response to Buyer within twenty (20) days after receipt of such plans by Seller. Seller shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

The foregoing covenant, condition and restriction will run with the Property. A breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

D. Restriction On Use.

The Property is quitclaimed by Seller subject to the following covenant, condition and restriction which Buyer by the acceptance of this Deed covenant for itself, its heirs and assigns, faithfully to keep, observe and perform:

Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

The foregoing covenant, condition and restriction shall run with the Property, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Article 7. Existing Agreements:

- A. If any lease or "Use Rights" (license or other rights to use the Property) affects only the Property (whether identified by Seller before or after execution of this Agreement), Seller's rights and obligations under any such identified lease or Use Right will be assigned to and assumed by Buyer at or after Closing.
- B. Buyer acknowledges that the Property may be subject to unidentified Use Rights. It is the responsibility of Buyer to determine if any of these unidentified Use Rights exist.

Article 8. Closing - Default:

- A. Closing will occur on or before August 30, 2019 ("Closing Date"). The Closing will be deemed to occur upon payment of the Sale Price by wire transfer or a cashier's or certified check, and delivery of the deed. All Closing costs, including transfer taxes and excise taxes, will be paid by Buyer.
- B. If Closing fails to occur due to default by Seller, Buyer may terminate this Agreement as Buyer's sole remedy against Seller. In the event of such termination, neither Seller nor Buyer will have any further liability hereunder.
- C. If Closing fails to occur due to default by Buyer, Seller may terminate this Agreement and neither Seller nor Buyer shall have any further obligations or liability hereunder except for any of Buyer's surviving obligations pursuant to Article 3 (B) hereof. In no event shall Seller have any obligation whatsoever to extend the Closing Date for any reason if Buyer fails to perform.

Article 9. Prorations:

Local property taxes, if any, and other assessments due and payable in the year of Closing, as well as rental under any leases or Use Rights that are being assigned, will be prorated as of the date of Closing. Buyer will assume any installments of assessments not yet due and payable.

Article 10. Negotiations – Brokers and Finders:

Negotiations relative to this transaction have been carried on by both parties without the intervention of any person which will give rise to any valid claim against either of the parties hereto, for brokerage commission or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payments arising out of the transaction contemplated by this Agreement and occasioned by the indemnifying party.

Article 11. Subdivision/Platting Compliance:

- A. This Agreement is expressly conditioned upon compliance with the California Subdivision Map Act ("Compliance"). If the Property is not already in Compliance, Buyer shall undertake and use commercially reasonable efforts to comply with local or state subdivision or platting laws or regulations prior to Closing. All necessary applications, maps and other requirements to comply with this requirement will be completed by Buyer at Buyer's sole cost and expense. If Buyer fails to effect Compliance prior to the Closing Date, then this Agreement shall terminate and neither party shall have any further obligation to the other. Seller is not obligated to extend the Closing Date due to Buyer's failure to effect Compliance prior to the Closing Date.
- B. In connection with Buyer pursuing Compliance, Seller shall cooperate by reviewing and executing necessary documents, provided, however, that Seller shall not be required to incur any cost or expense in connection therewith and that any action Buyer desires Seller to take shall be acceptable to Seller as to substance and legal form. If any proposed subdivision plat or parcel map contains conditions affecting Seller, the Property prior to Closing, or other real property owned by Seller which are unacceptable to Seller, then Seller, in its sole and absolute discretion, may terminate this Agreement. If this Agreement is terminated pursuant to this Subsection B, any deposit paid by Buyer will be returned to Buyer, and neither party shall have any further obligations (except for surviving obligations).

Article 12. Mortgage Release:

If the Property is subject to a blanket mortgage granted by Seller or a corporate predecessor of Seller, Seller will obtain a release within approximately six (6) months after Closing.

Article 13. Seller's Management Approval:

BUYER ACKNOWLEDGES THAT NEITHER THIS AGREEMENT NOR THE NEGOTIATIONS LEADING TO THIS AGREEMENT CREATE ANY OBLIGATION ON THE PART OF SELLER TO SELL THE PROPERTY TO BUYER UNLESS THIS AGREEMENT IS APPROVED IN ACCORDANCE WITH SELLER'S MANAGEMENT POLICY STATEMENT. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED TO BUYER BY THE CLOSING DATE, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION.

Article 14. Condemnation:

If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer

and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Article - Condemnation, the Sale Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

If you agree with the foregoing terms and conditions with respect to the possible purchase of the Property, please indicate your acceptance of these terms and conditions by signing in the acceptance space provided below and returning one copy to Daniel B. Parker at the address listed on the bottom of the first page of this letter, in order that it is received by Seller no later than May 30, 2019. Please also indicate below how you wish to take title. If you should have any questions, please call Daniel B. Parker at (402) 544-8624.

Sincerely,



General Director - Real Estate

ACCEPTED AND AGREED THIS ____ DAY OF _____, 2019

City of Pomona

By: _____

Print Name: LINDA LOWRY

Title: CITY MANAGER

Title to the Property will be taken as follows:

THE CITY OF POMONA, a public body, corporate and politic

If Corporation, State of incorporation:

CITY OF POMONA, STATE OF CALIFORNIA

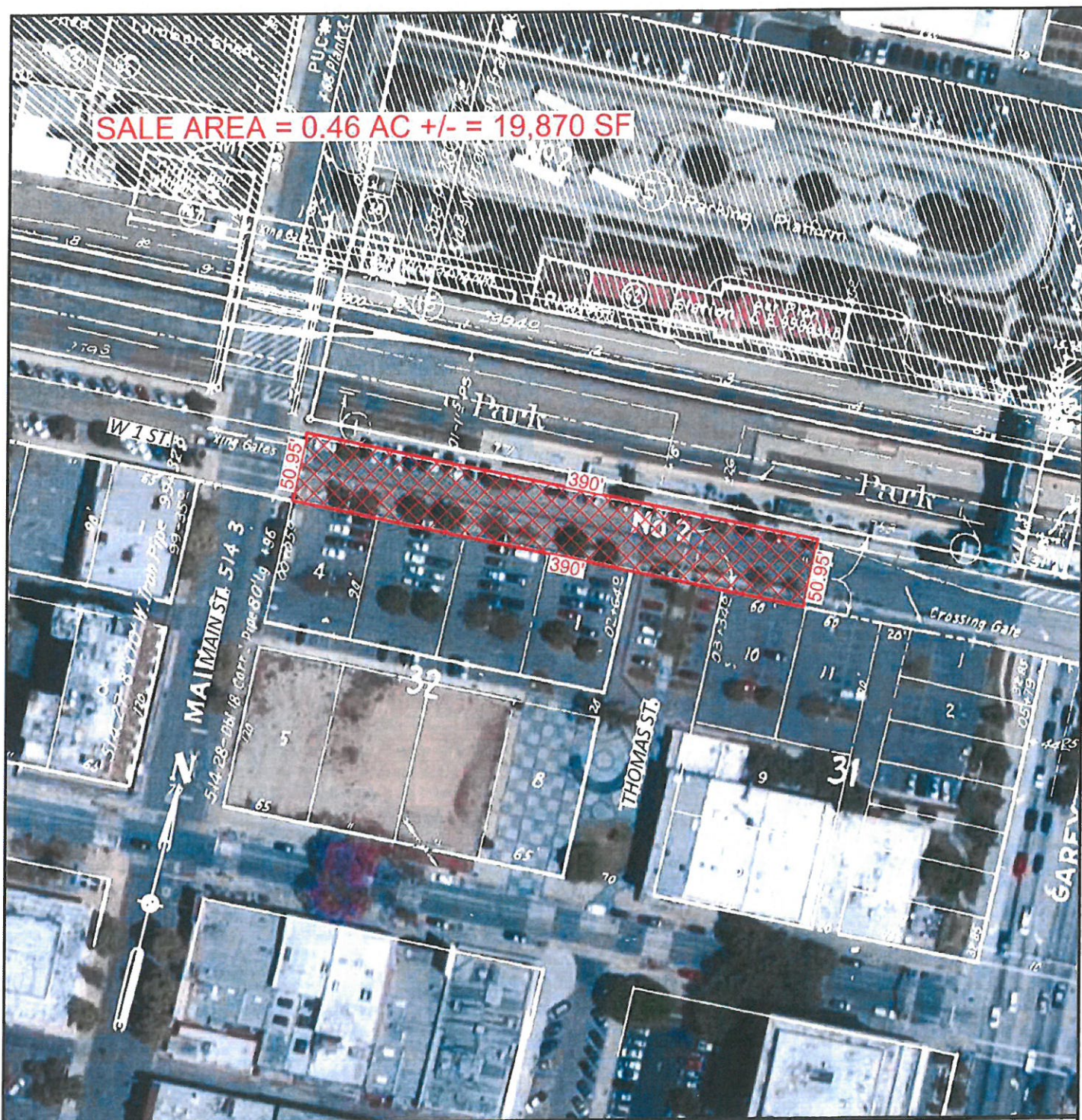
If Husband and Wife, indicate how title will be taken:

N/A Joint Tenants with rights of survivorship

N/A Tenants in Common

N/A Community Property

Mailing Address: CITY OF POMONA
DEPUTY CITY MANAGER
505 SOUTH GAREY AVENUE
POMONA, CALIFORNIA 91767
(909) 620-2363



LEGEND:

SALE AREA 
 UPRRCO. R/W OUTLINED 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE
 AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

POMONA, LOS ANGELES COUNTY, CA

M.P. 514.3 - ALHAMBRA SUB.

TO ACCOMPANY AGREEMENT WITH

CITY OF POMONA

SP CA V-33 / S-8B

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 5/21/2019

RRM FILE: 02933-56

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