

## OFFER AND AGREEMENT TO PURCHASE REAL ESTATE

This **Offer and Agreement to Purchase Real Estate** (this “Agreement”) is made as of the date of later execution hereof by the following “Seller” and “Purchaser” (the “Effective Date”).

**The Property:** 130 W New Circle Road Suite 170 and 134 W New Circle Road, Lexington, KY 40505

**Seller:** William Ziering Trust  
Attn: Bill Ziering  
28657 N Twin Oaks Valley  
Vista, CA  
Phone No.: (858) 775-7197  
E-Mail: [William.zeiring@gmail.com](mailto:William.zeiring@gmail.com)

**Seller’s Broker:** Nathan Dilly and Neal Metcalfe  
SVN Stone Commercial Real Estate  
270 S. Limestone  
Lexington, KY 40508  
Phone No.: (859) 420-5492 | (859) 312-8069  
E-Mail: [Nathan.dilly@svn.com](mailto:Nathan.dilly@svn.com); [neal.metcalfe@svn.com](mailto:neal.metcalfe@svn.com)

**Purchaser:** Lexington-Fayette Urban County Government  
Attn: Commissioner of General Services  
Address: 200 East Main Street  
Lexington, KY 40507  
Phone No.: (859) 258-3900  
E-Mail: [cford2@lexingtonky.gov](mailto:cford2@lexingtonky.gov)

**Purchaser’s Broker:** N/A

- Offer to Purchase the Property** Purchaser hereby offers to purchase the “Property” identified above (and more specifically identified in Exhibit A, attached hereto and incorporated herein by this reference), which shall include: the land and all buildings and other improvements thereon; all appurtenant rights, privileges, easements, and fixtures; and all personally attached to or built-in that, if removed, would leave the land or buildings in a damaged, incomplete or unfinished condition. This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.
- Purchase Price** Six Million Dollars and no cents (\$6,000,000.00)
- Expiration of Offer** Unless accepted by Seller’s signature on this Agreement and then delivered to Purchaser by Five O’clock P.M. EST on March 14, 2024, this offer shall expire and shall be automatically null and void.
- Earnest Money Deposit** No funds be deposited, upon Purchaser’s receipt of Seller’s written acceptance of this Agreement, as an Earnest Money Deposit to be held by SVN Stone Commercial Escrow

and credited to Purchase Price at closing. The Earnest Money Deposit shall only be removed from escrow (a) in accordance with the several provisions of this Agreement, or (b) upon written agreement of both parties, or (c) upon a court order.

**5. Conditions to Purchaser's Obligations** Purchaser shall enjoy a period of 30 calendar days following Seller's execution of this Agreement (the "Contingency Period") within which Purchaser shall, acting in good faith and with appropriate due diligence, determine whether the conditions to its obligations under this Agreement can be satisfied or waived. Neither Seller nor Purchaser shall have any rights, duties or obligations hereunder, and this Agreement shall be and become void ab initio, unless the following conditions precedent are satisfied or are specifically waived in writing by Purchaser within the Contingency Period:

(a) Purchaser obtains and approves a current title commitment, containing only such exceptions as are reasonably acceptable to Purchaser.

(b) Seller provides to Purchaser evidence to the satisfaction of Purchaser that Seller has terminated the Lease.

If the Purchaser declares this Agreement null and void due to not meeting one or more of the above conditions, then the Earnest Money Deposit shall be immediately returned to Purchaser, whereupon both Seller and Purchaser will sign and deliver a mutual release.

**6. Access by Purchaser** Purchaser and Purchaser's agents and contractors are hereby granted access to the Property for purposes of performing inspections and testing that Purchaser reasonably deems necessary; provided, however, that all such work shall be performed in a good and workmanlike manner at Purchaser's sole expense, and the property shall be returned to a safe condition, substantially similar to its condition prior to Purchaser's entry. Purchaser shall ensure that no liens attach to the Property as a result of such inspection and testing work. Purchaser shall provide Seller and Tenant with twenty-four (24) hours advance written notice prior to inspections so as to properly notify the Tenant.

**7. Closing** If Seller accepts Purchaser's offer, the consummation of the sale and purchase of the Property shall be held at such time and place as the parties may in good faith agree, but not later than forty-five (45) calendar days following Effective Date. Seller shall deliver to Purchaser at closing a fully executed Special Warranty Deed in statutory recordable form reasonably acceptable to Purchaser's counsel conveying to Purchaser good, marketable and unencumbered fee simple absolute title to the Property, and such other documents reasonably required by Purchaser's counsel including, but not limited to, an assignment of the Lease and the Guaranty of the Lease, which shall include the Seller's agreement to indemnify, defend, and hold harmless Purchaser from and against all claims, actions, proceedings, losses and liabilities, and expenses arising from Seller's failure to perform its obligations under the Lease as landlord and accruing prior to the Closing Date; a Certificate of Non-Foreign Status; a Form 1099; the executed Tenant Estoppel Certificate; executed tenant notice letters to each of the tenants advising them of the sale of the Property to Purchaser, the transfer of the tenants' security deposits to Purchaser and directing the tenants to thereafter deliver all notices to Purchaser and pay all rents or other payments directly to Purchaser; and an Owner's Affidavit. Seller shall deliver full possession of the Property at closing with delivery of Deed subject only to the Lease.

**8. Closing Costs and Proration at Closing** Real estate taxes will not be prorated as the Tenant pays the real estate taxes pursuant to the terms of the Lease. Rents shall be prorated as of the date of closing. Any tenant security deposits held by the Seller shall transfer to the Purchaser at closing. Seller shall pay

for preparation of the Deed and for all transfer and documentary stamp taxes for the Deed. Purchaser shall pay the cost of recording the Deed.

9. **Risk of Loss** Seller shall ensure that the condition of the Property does not deteriorate but is maintained in at least its present condition at all times prior to closing. All risk of loss or damage to the Property by fire or other casualty, condemnation (or threat thereof), or any other cause shall remain with Seller until the Closing. If, prior to closing, the Property is so damaged, then Seller shall, at Seller's cost, promptly repair said damage in a good and workmanlike manner, or, if not, then Purchaser shall have the option to declare this Agreement null and void and receive a refund of the Earnest Money Deposit, or Purchaser may complete settlement, accepting the Property as damaged together with the proceeds of any insurance or award payable as a result of such damage, at the sole and absolute discretion of the Purchaser.

10. **Default** If Seller defaults, then Purchaser shall be entitled to an immediate refund of the Earnest Money Deposit and to pursue all legal and equitable remedies, including the right of specific performance. If Purchaser defaults, then Seller shall be entitled to retain the Earnest Money Deposit and to pursue all legal and equitable remedies, including the right of specific performance.

11. **Availability of Documents** Seller shall, within seven (7) calendar days following Seller's acceptance of this Agreement, deliver to Purchaser, at no cost to Purchaser, true and accurate copies of all documents related to the Property that are in Seller's possession or control including, but not limited to, all leases, lease guarantees, title insurance policies, title reports and commitments, surveys, geotechnical information, and Phase I and other environmental assessments and reports.

12. **Representations of Seller** Seller hereby represents that Seller has no knowledge of any condemnations or assessments affecting or contemplated with respect to the Property; and/or actions, suits or proceedings pending or threatened against the Property or Seller's interest in the Property. Other than the existing lease with Mattress Overstock, Seller has not contracted with any other party for the sale or lease of the Property, and no other party holds an interest in the Property. Seller will not enter into any new lease or amend or modify any lease without Purchaser's prior written consent; nor shall Seller enter into any new agreements with any brokers in connection with any prospective tenants for new leases without Purchaser's prior written consent. The parties signing this Agreement as the "Seller" are the only parties whose signatures are necessary to convey fee title to and possession of the Property. Seller is not a "Foreign Person" within the meaning of Section 1445 of the Internal Revenue Code, as amended, and Seller will deliver an affidavit to such effect to Purchaser on or before the Closing. Seller is a trust duly formed, validly existing, and in good standing under the laws of the State of California, is qualified to conduct business in the State of Kentucky, and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Seller and all agreements, instruments, and documents herein provided to be executed by Seller on the Closing Date: (i) do not violate the formation documents of Seller, or any contract, agreement, commitment, lease, order, judgment, or decree to which Seller is a party; and (ii) have been duly authorized by the consent of the trustee and beneficiaries of Seller, if applicable, and the appropriate and necessary action has been taken by such trustees and beneficiaries on the part of Seller, if applicable. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof. This Agreement is valid and binding upon Seller, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally. Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval, or registration under any law, statute, rule,

regulation, judgment, order, writ, injunction, or decree which is binding upon Seller which has not been previously obtained. Seller has not entered into any service, maintenance, supply, leasing, brokerage, and listing and/or other contracts relating to the Property (along with all amendments and modifications thereof, the "Service Contracts") which shall be binding upon the Purchaser after the Closing, other than the Lease. Each of the service contracts can and, at Purchaser's option, shall be terminated by Seller on or before the Closing Date. Seller has performed all its obligations under each of the Service Contracts and no fact or circumstance has occurred which, by itself or with the passage of time or the giving of notice or both, would constitute a default by any party under any of the Service Contracts. Seller has delivered to Purchaser true, correct, and complete copies of all Service Contracts. Seller is not, and shall not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or be otherwise associated with such persons or entities. These representations and warranties of Seller set forth in this section shall survive the Closing and shall not be affected by any investigation, verification, or approval by any party or anyone on behalf of any party to this Agreement.

**13. Real Estate Commission** Nathan Dilly and Neal Metcalfe of SVN Stone Commercial Real Estate represent Seller. Seller agrees to pay to SVN Stone Commercial Real Estate at the time of closing a real estate commission equal to six percent (6%) of the total purchase price of the Property. The parties hereby warrant and represent that neither of them has contracted with other agents or brokers, or otherwise taken any action that would give rise to a claim by another broker or agent for a commission, and that there are no other brokers or agents involved in this transaction, and that no additional commissions are due any other such brokers or agents not specifically mentioned herein. To the extent permitted by law, and without waiving the defense of sovereign immunity to claims against third parties, Seller and Purchaser shall indemnify, defend and hold harmless the other from and against any claim or demand by any real estate agent for bringing about this Agreement who claims to have dealt with the indemnifying party, including all expenses incurred in defending any such claim or demand (including reasonable attorney's fees).

**14. Entire Agreement** This Agreement includes the entire agreement between the parties hereto. Seller hereby acknowledges and agrees that neither Purchaser nor anyone acting on Purchaser's behalf has made any statement, promise or agreement or has taken upon itself any engagement whatsoever, whether verbally or in writing, in conflict with the terms of this Agreement, or that in any way modifies, varies, alters, enlarges or invalidates any of the provisions hereof.

**15. Notices** Any notice, demand or request that may be required to be given under this Agreement shall be in writing and shall be either (a) delivered in person (with a signed acceptance), or (b) sent by United States Certified Mail, postage pre-paid, return receipt required, or (c) delivered by a nationally recognized courier service that obtains an acknowledgement of receipt, and, in each such instance, such notice, demand or request shall be addressed as set forth in the heading of this Agreement, or at such other address as either party may designate by notice given in accordance with this section.

**16. Rules of Construction** (a) Time of the Essence – TIME IS OF THE ESSENCE FOR PURPOSES OF THIS AGREEMENT. (b) Drafter – The fact that this Agreement was initially drafted by one party or the other shall have no bearing in its interpretation or construction. (c) Headings – Section headings of this Agreement are for convenience only and are not to be construed as defining or limiting in any way

the scope or intent of the provisions hereof. (d) Deposit – Any reference in this Agreement to Earnest Money Deposit shall include all interest accruing thereon. € Binding Effect – This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto, their administrators, executors, representatives, heirs, successors and assigns. (f) Counterparts – This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument. (g) Severability – In the event any provision of this Agreement is held by any court having jurisdiction over any dispute arising hereunder to be invalid or unenforceable, then such court shall reinterpret such provision so as to carry out the intent of the parties hereto in a valid and enforceable manner, and the invalidity or unenforceability of such provision, and the remainder of this Agreement, including any reinterpretation of such provision, shall remain in full force and effect. (h) Governing Law – This Agreement shall be deemed to have been delivered to and made at Lexington, Kentucky, and the terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Kentucky without regard to the principles of conflicts of law.

17. **Miscellaneous Provisions** Purchaser and or Seller may elect to treat this transaction as an exchange under IRC Section 1031 at no cost or liability to the other party. Purchaser may elect to transfer this transaction to a Corporation or Limited Liability Company.

18. **Amendments and Notices to Terminate** This Agreement cannot be changed orally, but only by an agreement in writing signed by Seller and by an authorized representative of Purchaser. Notwithstanding anything to the contrary contained in this Agreement, amendments to this Agreement to extend the Contingency Period and/or Closing date may be agreed upon in writing or email by each party or each party's respective attorney and notices to terminate this Agreement prior to the expiration of the Contingency Period may be given, by Purchaser as provided in this Agreement or by Purchaser or Purchaser's attorney by email to Seller and/or Seller's attorney.

19. **Review of Agreement** Seller represents to Purchaser that Seller has read and understands the terms of this Agreement. Purchaser represents to Seller that Purchaser has read and understands the terms of this Agreement.

IN WITNESS WHEREOF, Purchaser respectfully submits this offer to purchase the Property on the terms, and subject to the conditions set forth in this Offer and Agreement to Purchase Real Estate.

**PURCHASER: Lexington-Fayette Urban County Government**

By:   
Title:   
   
Date Time (A.M./P.M.)

**ACCEPTANCE**

IN WITNESS WHEREOF, Seller hereby accepts Purchaser's offer to purchase the Property on the terms, and subject to the conditions, set forth in this Offer and Agreement to Purchase Real Estate.

**SELLER(S): William Ziering Trust**

By:   
Title:   
   
Date Time (A.M./P.M.)

**EARNEST MONEY RECEIPT**

Broker, as Seller's Listing Agency, acknowledges receipt of the Earnest Money Deposit as per Section 4 of this Offer and Agreement to Purchase Real Estate.

By:   
Title:   
   
Date Time (A.M./P.M.)

**EXHIBIT A**  
TO  
**OFFER AND AGREEMENT TO PURCHASE REAL ESTATE**  
Between William Ziering Trust as Seller,  
And Lexington-Fayette Urban County Government as Purchaser

**LEGAL DESCRIPTION OF THE PROPERTY**  
**To be provided by Seller.**

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