



## Planning and Community Development Department

2880 International Circle, Colorado Springs, CO 80910

Phone 719.520.6300 | Fax 719.520.6695 | [www.elpasoco.com](http://www.elpasoco.com)

### Type D Application Form (1-2C)

Please check the applicable application type  
(Note: each request requires completion of a  
separate application form):

- ☐ Appeal
- ☐ Approval of Location
- ☐ Board of Adjustment
- ☐ Certification of Designation
- ☐ Const. Drawings, Minor or Major
- ☐ Development Agreement
- ☐ Final Plat, Minor or Major
- ☐ Final Plat, Amendment
- ☐ Minor Subdivision
- ☐ Planned Unit Dev. Amendment, Major
- ☐ Preliminary Plan, Major or Minor
- ☐ Rezoning
- ☐ Road Disclaimer
- ☐ SIA, Modification
- ☐ Sketch Plan, Major or Minor
- ☐ Sketch Plan, Revision
- ☐ Solid Waste Disposal Site/Facility
- ☐ Special District
- ☐ Special Use
  - ☐ Major
  - ☐ Minor, Admin or Renewal
- ☐ Subdivision Exception
- ☐ Vacation
  - ☐ Plat Vacation with ROW
  - ☐ Vacation of ROW
- ☐ Variances
  - ☐ Major
  - ☐ Minor (2<sup>nd</sup> Dwelling or Renewal)
  - ☐ Tower, Renewal
- ☐ Vested Rights
- ☐ Waiver or Deviation
- ☐ Waiver of Subdivision Regulations
- ☐ WSEO
- ☐ Other: \_\_\_\_\_

This application form shall be accompanied by  
all required support materials.

**PROPERTY INFORMATION:** Provide information to identify properties and  
the proposed development. Attached additional sheets if necessary.

Property Address(es):	
Tax ID/Parcel Numbers(s)	Parcel size(s) in Acres:
Existing Land Use/Development:	Zoning District:

- ☐ Check this box if **Administrative Relief** is being requested in  
association with this application and attach a completed  
Administrative Relief request form.
- ☐ Check this box if any **Waivers** are being requested in association  
with this application for development and attach a completed  
Waiver request form.

**PROPERTY OWNER INFORMATION:** Indicate the person(s) or  
organization(s) who own the property proposed for development.  
Attach additional sheets if there are multiple property owners.

Name (Individual or Organization):	
Mailing Address:	
Daytime Telephone:	Fax:
Email or Alternative Contact Information:	

#### For PCD Office Use:

Date:	File :
Rec'd By:	Receipt #:
DSD File #:	

**Description of the request:** *(submit additional sheets if necessary):*

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**APPLICANT(S):** Indicate person(s) submitting the application if different than the property owner(s) (attach additional sheets if necessary)

Name (Individual or Organization):	
Mailing Address:	
Daytime Telephone:	Fax:
Email or Alternative Contact Information:	

**AUTHORIZED REPRESENTATIVE(S):** Indicate the person(s) authorized to represent the property owner and/or applicants (attach additional sheets if necessary).

Name (Individual or Organization):	
Mailing Address:	
Daytime Telephone:	Fax:
Email or Alternative Contact Information:	

**AUTHORIZATION FOR OWNER'S APPLICANT(S)/REPRESENTATIVE(S):**

An owner signature is not required to process a Type A or B Development Application. An owner's signature may only be executed by the owner or an authorized representative where the application is accompanied by a completed Authority to Represent/Owner's Affidavit naming the person as the owner's agent

**OWNER/APPLICANT AUTHORIZATION:**

To the best of my knowledge, the information on this application and all additional or supplemental documentation is true, factual and complete. I am fully aware that any misrepresentation of any information on this application may be grounds for denial or revocation. I have familiarized myself with the rules, regulations and procedures with respect to preparing and filing this application. I also understand that an incorrect submittal may delay review, and that any approval of this application is based on the representations made in the application and may be revoked on any breach of representation or condition(s) of approval. I verify that I am submitting all of the required materials as part of this application and as appropriate to this project, and I acknowledge that failure to submit all of the necessary materials to allow a complete review and reasonable determination of conformance with the County's rules, regulations and ordinances may result in my application not being accepted or may extend the length of time needed to review the project. I hereby agree to abide by all conditions of any approvals granted by El Paso County. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale. I acknowledge that I understand the implications of use or development restrictions that are a result of subdivision plat notes, deed restrictions, or restrictive covenants. I agree that if a conflict should result from the request I am submitting to El Paso County due to subdivision plat notes, deed restrictions, or restrictive covenants, it will be my responsibility to resolve any conflict. I hereby give permission to El Paso County, and applicable review agencies, to enter on the above described property with or without notice for the purposes of reviewing this development application and enforcing the provisions of the LDC. I agree to at all times maintain proper facilities and safe access for inspection of the property by El Paso County while this application is pending.

Owner (s) Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Owner (s) Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Applicant (s) Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**Circle K Stores Inc.**  
**Rocky Mountain Business Unit**  
5500 S. Quebec St, Ste 100  
Greenwood Village, CO 80111

October 19, 2022

EPC Planning & Community Development  
2880 International Circle  
Colorado Springs, CO 80901

**RE: Property Owner Authorization**

Ms. Parsons:

This letter hereby authorizes Land Development Consultants, LLC (LDC) to act on behalf of Circle Stores Inc., to process all required Land Use and Permit applications as required by El Paso County.

If you have any questions or concerns, please feel free to contact me (720) 341-7015.

Sincerely,

Zoe Pericak  
Real Estate Development Manager

**PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS  
(SOUTH-WEST CORNER OF E US HIGHWAY 24 & MERIDIAN RD., EL PASO COUNTY CO)**

**Seller:** William G Malone Trust  
3612 Pennington Circle  
Modesto, California 95356  
Telephone: 209-541-7831  
E-Mail: William.malone@att.net

**Buyer:** Circle K Stores Inc., a Texas corporation  
Circle K Stores Inc.  
5500 South Quebec, Suite 100  
Greenwood Village, Colorado 80111  
Attn: Real Estate Department  
Email: zpericak@Circlek.com

with a copy to: Circle K Stores Inc.  
19500 Bulverde Road, Suite 100  
San Antonio, Texas 78259  
Attn: Murray H. Van Eman, Senior Counsel  
Email: Murray.VanEman@circlek.com

**Escrow Agent:** Chicago Title Insurance Company  
3100 Monticello, Suite 800  
Dallas, TX 75205  
Attention: Nancy Shirar  
Telephone: (972) 764-4874  
Facsimile: (214) 520-5982  
E-mail: Nancy.Shirar@ctt.com

**Escrow:** 8000362100186

**Purchase Price:** [REDACTED]

**Land:** Approximately 7,000 square feet (.16 acres) of unimproved real property generally located near the South-West corner of E. US Highway 24 & Meridian Road in El Paso County, designated as County Assessor Parcel No. 5312403003, and legally described and/or generally depicted on Exhibit "A".

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Investigation Period:** One Hundred Eighty (180) days from the Effective Date (as defined below).

**Extension Periods:** Five (5) 30-day extensions of the Investigation Period.

**Closing Date:** Thirty (30) days after the expiration of the Investigation Period.

**Buyer's Broker:** Legend Partners LLC  
5150 East Yale Circle, Suite 400  
Denver, Colorado 80222  
Attention: Nate Hansen

**THE TERMS LISTED ABOVE ARE DEFINED TERMS THAT ARE REFERRED TO THROUGHOUT THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS.**

**ARTICLE I**  
**AGREEMENT, PROPERTY, AND PURCHASE PRICE**

**Section 1.01. Agreement.** This Purchase Agreement and Escrow Instructions (inclusive of all exhibits, this “**Contract**”) will constitute a binding and effective agreement of Seller to sell the Property to Buyer and will constitute a binding and effective agreement of Buyer to purchase the Property from Seller effective as of the “**Effective Date**” (as defined in Section 1.05).

**Section 1.02. Inclusions in Property.** The “**Property**” includes the Land and all easements, licenses, interests, rights, privileges, and appurtenances held by Seller as of the Closing Date that in any way benefit the Property or relate to the ownership of the Property, including, without limitation: (i) any and all mineral, water, and irrigation rights running with or pertaining to the Property; (ii) all of Seller’s interest in any road, street, or alleyway adjoining the Property; (iii) any rights or interests that may accrue to the benefit of Seller or the land as a result of the abandonment of any road, street, or alleyway adjoining the Property; (iv) any and all buildings, trade fixtures, equipment, and improvements that may be located on the Property; (v) any and all replacements, renewals, substitutions, and additions of or to the Property that may be made or acquired after the Effective Date; and (vi) all transferable permits, licenses, warranties, and entitlements applicable to the Property.

**Section 1.03. Purchase Price.** To consummate its purchase of the Property, Buyer agrees to pay the Purchase Price to Seller in all cash. The Purchase Price will be paid by Buyer to Seller as follows:

- (a) Buyer will deposit the Initial Earnest Money into the Escrow within five (5) business days of the Effective Date.
- (b) After application of the Earnest Money, Buyer will pay the remaining balance (“**Closing Cash**”) due on the Purchase Price to Seller through Escrow on the Closing Date.

**Section 1.04. Earnest Money.** The term “**Earnest Money**” means the Initial Earnest Money and Extension Deposits (if any). If the Escrow closes, the Earnest Money will be credited and applied for the benefit of Buyer by Escrow Agent to the Purchase Price. Unless Buyer has previously canceled the Contract and Escrow, the Earnest Money will be nonrefundable on the later of its deposit or the expiration of the Investigation Period, except as otherwise provided in this Contract.

**Section 1.05. Effective Date.** The term “**Effective Date**” means the date upon which Escrow Agent has in its possession at least one fully executed original or electronic counterpart of this Contract and, by its execution below, accepts this Contract as its escrow instructions. Escrow Agent will indicate the date of the Effective Date on Escrow Agent’s Acceptance attached at the end of this Contract.

**Section 1.06. Close of Escrow.** The completion of the purchase and closing of the Escrow (referred to interchangeably as the “**Closing**” or the “**Close of Escrow**”) will occur on or before the Closing Date or any earlier date for which Buyer has provided at least five (5) business days' prior written notice to Seller and Escrow Agent.

**Section 1.07. Escrow Instructions.** This Contract, including the “**Additional Escrow Instructions**” attached as **Exhibit “B”**, will constitute the sole escrow instructions to Escrow Agent, and no standard form escrow instructions of Escrow Agent will be used for this Escrow.

**Section 1.08. Site Plan.** As used in this Contract, the term “**Buyer’s Site Plan**” means the preliminary site or land plan attached as **Exhibit “D”**, as may be modified from time to time, by Buyer

with the approval of any federal, state, or other political, governmental, or quasi-governmental authority or association or any other entity or third-party, including all applicable councils, boards, commissions, committees, departments, and agencies and all utility providers or regulators, having jurisdiction and/or approval rights over the ownership, operation, or use of the Property and/or the construction of improvements thereon (called, collectively, the “**Governmental Authorities**”).

## ARTICLE II DUE DILIGENCE DOCUMENTS

**Section 2.01. Title.** Within twenty (20) days after the Effective Date, Escrow Agent will provide Buyer with a preliminary title report or title commitment for an ALTA extended owner’s policy of title insurance for the Property in the amount of the Purchase Price and complete and legible copies of all instruments and documents referred to as exceptions to title, including a copy of the so-called vesting deed (collectively, the “**Report**”). The Report must be issued by Escrow Agent or an acceptable title insurance underwriter, must include all title requirements for closing, and must be dated with an effective date and time after the Effective Date.

**Section 2.02. Survey.** During the Investigation Period, Buyer, at Buyer’s cost, shall cause to be prepared an ALTA/NSPS Land Title Survey (“**Survey**”) of the Property. The Survey will be certified to Buyer, Seller, and Escrow Agent, and Buyer will cause a copy of the Survey to be delivered to Seller and Escrow Agent. The Survey will be the basis for determining the final legal description for the Property.

**Section 2.03. Environmental.** During the Investigation Period, Buyer, at Buyer’s cost, may cause to be prepared a Phase I Environmental Site Assessment and, if necessary or desirable, a Phase II report (collectively, the “**ESA**”) of the Property in accordance with any current ASTM Standards. If prepared, the ESA will be certified to Buyer and Seller, and Buyer will cause a copy of the ESA to be delivered to Seller.

**Section 2.04. Due Diligence Documents.** Within twenty (20) days after the Effective Date, Seller will deliver to Buyer copies of all existing surveys, leases, environmental reports, water reports, soil tests, topography studies, archaeological tests, engineering reports, traffic studies, maintenance records, marketing studies, maintenance reports, appraisals, zoning reports, zoning stipulations, development agreements, cost estimates, infrastructure plans, licenses, tax abatement agreements, revenue sharing arrangements, and similar records relating to the Property that were delivered to or performed by or for Seller or its affiliates and/or that are in the possession of, or are readily available to, Seller, its agents, or its affiliates (collectively, the “**Due Diligence Documents**”). The Due Diligence Documents will be itemized in writing by Seller at the time of their delivery to Buyer. The Investigation Period shall be automatically extended one (1) day for each day that delivery of the Due Diligence Documents is delayed beyond the five (5) day period set forth above. Copies of any such items not in Seller’s possession upon the Effective Date (the “**Additional Due Diligence Documents**”) but which come into Seller’s possession prior to Closing, shall be delivered to Buyer within three (3) days after coming into Seller’s possession, but in no event later than the Closing Date (in either such case the Investigation Period and Closing Date, if necessary, shall be extended for a period of five (5) days solely to allow Buyer to review and approve or disapprove, in its sole and absolute discretion, such Additional Due Diligence Documents). If Seller does not possess an item of Additional Due Diligence Documents but has actual knowledge of the existence of the same, Seller will completely disclose (to the extent of Seller’s actual knowledge) the whereabouts of such information to Buyer and will cooperate, but without cost to Seller, with Buyer to allow Buyer to attempt to obtain such information. If underground storage tanks and/or related piping (“**UST’s**”) have ever been located under the Property, Seller will provide Buyer, concurrent with the delivery of the other Due Diligence Documents, copies of all tank registrations, tank and line tests, compliance tests and results,

and inventory records for the three most recent years, together with all information in Seller's possession concerning any leakage from the UST's or contamination of the Property.

### **ARTICLE III INTERIM SELLER OBLIGATIONS AND REPRESENTATIONS**

**Section 3.01. Interim Acts of Seller.** Seller agrees that, from the Effective Date until the Closing or earlier termination of this Contract, without the prior written consent of Buyer, Seller will not (a) enter into any lease or other oral or written agreement affecting the Property, which might become binding upon Buyer or the Property, or that relates to the sale, lease, occupancy or transfer of the Property or any portion thereof, or that otherwise encumbers or restricts the Property in any manner whatsoever, (b) permit any modifications or additions to the Property (including, but not limited to, changing the native grade of the Property), (c) grant any easements with respect to the Property, (d) allow any liens to attach to the Property before the Closing that will not be satisfied out of Seller's Closing proceeds, except for any such liens which are caused by Buyer's actions on the Property which shall be satisfied by Buyer prior to Closing. Seller agrees that there will be no outstanding obligations of Seller with respect to the Property as of the Closing, except for obligations described in this Contract to be prorated at Closing, obligations that will be satisfied out of Seller's proceeds at Closing, or any indebtedness taken subject to or assumed by Buyer in writing.

**Section 3.02. Work on Property.** To the extent that there is any work performed on the Property by Seller, Seller's agents, or independent contractors engaged by Seller prior to the Closing, all invoices, liens, and/or payment requests will be paid in full by Seller by no later than the Closing. If requested by Buyer or Escrow Agent, Seller will deliver unconditional lien releases to Buyer and Escrow Agent for all work performed by Seller, Seller's agents, or any independent contractor engaged by Seller.

**Section 3.03. Representations and Warranties of Seller.** Seller represents and warrants to Buyer as follows:

(a) Seller is the owner of marketable fee simple title to the Property. The Property has access to one or more public roadways.

(b) To Seller's knowledge, the Property is not now being used and, to Seller's knowledge, has not previously been used for the generation, transportation, treatment, storage, or disposal of any hazardous or toxic wastes or substances that are subject to regulation under any federal, state, or local laws or regulations ("**Hazardous Waste Laws**"). To Seller's knowledge, there have been no past or current releases or substantial threats of a release of a hazardous or toxic waste or substance from or unto the Property that are or may be subject to regulation under the Hazardous Waste Laws.

(c) Seller has not received any notice by any person, authority, or agency having jurisdiction over the Property or Seller with regard to the violation of any applicable regulation, ordinance, requirement, covenant, condition, or restriction relating to the use or occupancy of the Property.

(d) To Seller's knowledge, there are no intended public improvements that will or could result in any charges being assessed against the Property and that will or could result in a lien or encumbrance upon the Property or its owners.



(e) To Seller's knowledge, there is no pending or contemplated condemnation or taking by inverse condemnation of all or any portion of the Property by any Governmental Authorities.

(f) To Seller's knowledge, there are no suits or claims pending or threatened with respect to or in any manner affecting the Property. Seller does not know of any circumstances that should or could reasonably form the basis for any suits or claims and that have not been disclosed in writing to Buyer by Seller.

(g) Other than this Contract, Seller has not entered into any written or oral agreement or option under which Seller is or could become obligated to sell or dedicate all or any portion of the Property and Seller will not enter into this type of agreement or option with respect to the Property during the term of the Escrow.

(h) The act of entering into this Contract and the completion of this transaction will not in any way violate any agreements to which Seller is a party or any laws to which Seller is subject.

(i) This Contract has been duly authorized and executed on Seller's behalf and constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms. Seller is not prohibited from consummating this transaction by the terms of its governing document or any judicial or governmental order or stay.

(j) To Seller's knowledge, there are no wells, drilling holes, wellheads, or underground storage tanks located on or under the surface of the Property.

(k) Seller has not entered into any public or private shared expense agreements, repayment agreements, reimbursement agreements, impact fee credit agreements, or development payback agreements that affect all or any portion of the Property.

(l) Seller has not entered into any oral or written agreement with any third party that would subject the Property to any land use regulation, restriction, condition, or stipulation that would prevent or impair Buyer's contemplated development operation of the Property.

(m) To Seller's knowledge, there are no parties in adverse possession of the Property, and no party uses or is in possession of the Property other than Seller.

(n) To Seller's knowledge, the Property is not located in or classified as a special district, such as but not limited to any historic, landmark, restricted parking, overlay, planned urban development district.

(o) To Seller's knowledge, there are no items of archeological significance located on, about, or under the Property.

(p) The Property is not subject to any land use regulation, restriction, condition, or stipulation that may be imposed by any oral or written agreement between Seller and any third party that would prevent or impair Buyer's contemplated development and operation of the Property.

(q) Seller is not a Prohibited Person<sup>1</sup> as defined in the USA PATRIOT Act, Public Law 107-56.

(r) The Property has an assured water supply and access to sewer and other utilities of a size and capacity that may be tapped into by Buyer.

(s) The Property is not subject to any lease or occupancy license that would give anyone other than Buyer the right to use or occupy the Property after the Closing Date.

All representations and warranties contained in this Contract are true on and as of the Effective Date, will be true on and as of the Close of Escrow, and will survive the Close of Escrow and the execution, delivery, and recordation of the conveyancing deed. Should Seller, at any time after the Effective Date and prior to Closing, learn that any of the foregoing representations and warranties are no longer true and correct, Seller shall promptly notify Buyer of such fact, stating with specificity the nature and extent to which Seller's representations and warranties have changed. Any breach of the warranties or representations made to Buyer by Seller under this Contract shall be deemed an Event of Default under Section 8.05 herein, and shall be subject to Buyer's remedies as set forth therein.

**Section 3.04. Buyer Representations and Warranties.** Buyer represents and warrants to Seller as follows:

(a) Buyer has the full power to execute, deliver, and carry out the terms and provisions of this Contract and has taken all necessary action to authorize the execution, delivery, and performance of this Contract;

(b) The execution and delivery of this Contract is not prohibited by, will not conflict with, constitute grounds for termination of, or result in the breach of any agreements or instruments to which Buyer is now a party or by which it is bound, or any order, rule, or regulation of any court or any other governmental agency or official; and

(c) This Contract constitutes the valid and binding agreement of Buyer, enforceable in accordance with its terms, subject to the provisions of Section 5.06 below.

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<sup>1</sup> A "**Prohibited Person**" shall mean any person, organization, or entity: (i) listed in the Annex to, or is otherwise subject to, the provisions of Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Executive Order**"); (ii) owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) with whom a party is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the PATRIOT Act and the Executive Order; (iv) that commits, threatens, or conspires to commit or supports "**terrorism**" as defined in the Executive Order; (v) that is named as a "specifically designated national" or "blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn>, or at any replacement website or other replacement official publication of the list or is named on any other U.S. or foreign government or regulatory list maintained for the purpose of preventing terrorism, money laundering, or similar activities; (vi) that is covered by IEEPA, OFAC, or any other law, regulation, or executive order relating to the imposition of economic sanctions against any country, region, or individual pursuant to United States law or United Nations resolution; or (vii) that is an affiliate (including any principal, officer, immediate family member, or close associate) of a person or entity described in one or more of the above clauses of this definition of Prohibited Person.

## ARTICLE IV TITLE AND SURVEY CONTINGENCY

**Section 4.01. Buyer's Objections.** No later than thirty (30) days following the last to be delivered of the Report and Survey, Buyer shall advise Seller in writing that Buyer objects, in Buyer's sole discretion, to any matters contained in the Report or Survey ("**Buyer's Objections**"). If the Report or Survey is amended, Buyer will have until the later of the end of the Investigation Period or 10 business days following its receipt of the amended Report (including legible and complete copies of all new exceptions or requirements to title) or amended Survey to deliver Buyer's Objections to any new matter. If Buyer fails to timely deliver Buyer's Objections, Buyer will be deemed to have waived its right to deliver the Buyer's Objections to the Report or Survey, as applicable.

### **Section 4.02. Seller's Cure.**

(a) Within 10 days of Seller's receipt of timely delivered Buyer's Objections, Seller will send written notice ("**Title Response**") to Buyer specifying in detail which of Buyer's Objections that Seller will or will not cure. Seller will have no obligation to cure any of Buyer's Objections, except as established below. If Seller commits to removing any of Buyer's Objections (or obtaining endorsements acceptable to Buyer) and fails to do so by the expiration of the Investigation Period, Seller will be in default under this Contract and Buyer, at Buyer's election, may pursue its remedies as established in this Contract. Within 10 days after Buyer's receipt of the Title Response from Seller, Buyer may elect, by delivering written notice to Seller and Escrow Agent, to either: (i) proceed with the purchase and sale of the Property (on the condition that Seller accomplishes any objectives described by Seller in the Title Response); or (ii) cancel this Contract and the Escrow. If Buyer exercises its cancellation remedy above, this Contract and the Escrow will be deemed cancelled as of the date of Buyer's notice and the cancellation will be governed by the provisions of Section 5.09.

(b) Notwithstanding anything to the contrary in this Contract and without the need to make any formal written objections, Buyer objects to: (i) all deeds of trust and/or mortgages and any ancillary encumbrances, including but not limited to, assignments of leases and rents and UCC-1 financing statements; (ii) any restrictions prohibiting use of the Property as or for a convenience store, for the sale of motor vehicle fuels, and/or any restrictions on hours of operation; (iii) all judgment liens, mechanic's liens, notices of lis pendens, tax liens, attachments, and any other matters evidencing monetary encumbrances (other than liens for non-delinquent property taxes); (iv) any options or rights of purchase; (v) notices of lease, possession, or occupancy rights to all or part of the Property; (vi) all restrictive easement agreements, conditions, covenants, restrictions and easements, site development agreements, and all other similar agreements and declarations.

(c) Seller, at Seller's sole cost and expense, will fully pay and discharge and release the Property from any and all recorded or unrecorded mortgages, deeds of trust, installment land contracts, judgments, tax liens, mechanics liens, lawsuits, or other monetary liens affecting or purporting to affect title to the Property (including any prepayment penalties), and Seller authorizes and directs Escrow Agent to use Seller's proceeds from the Closing to remove and discharge these matters.

**Section 4.03. Extension to Closing for Cure.** The Closing Date will be extended to the date that is five (5) business days following the later of: (a) the time period described in Section 4.01 for Buyer's review of any amended Report or Survey; or (b) the time period described in Section 4.02 for Seller's

curing of Buyer's Objections, if Buyer has objected to any new exception or requirement contained in any amended Report or Survey.

## ARTICLE V OTHER BUYER CONTINGENCIES

**Section 5.01. Buyer Investigations.** Buyer will have until the end of the Investigation Period within which to conduct and approve any feasibility studies, physical inspections, environmental testing, due diligence investigations, economic studies, marketing reports, utility studies, soil tests, or other tests or investigations (collectively, the "**Buyer Investigations**") deemed necessary by Buyer, in its sole discretion, to determine the economic, physical, developmental, and operational feasibility of Buyer's purchase of the Property. Buyer's obligation to purchase the Property is conditioned on Buyer's approval of the results of the Buyer Investigations and the Due Diligence Documents, in Buyer's sole discretion. Buyer has the absolute right to terminate this Contract for any reason during the Investigation Period, and shall not be obligated to close the transaction for the purchase of the Property unless Buyer delivers to Seller, prior to the end of the Investigation Period, written notice that Buyer has waived its right to terminate this Contract (the "**Exercise Notice**"). The date on which Buyer delivers the Exercise Notice to Seller (so long as it is delivered on or prior to the end of the Investigation Period) is referred to herein as the "**Going Forward Date**" and the Investigation Period shall end on the Going Forward Date. Notwithstanding anything to the contrary contained herein, the Earnest Money shall be fully refundable to Buyer prior to Buyer delivering the Exercise Notice as provided above, and if Buyer fails to timely deliver the Exercise Notice to Seller, then this Contract shall immediately terminate at 11:59 p.m. Eastern Time (ET) on the last day of the Investigation Period and both parties shall be fully released herefrom, except as otherwise expressly provided in this Contract, as of 11:59 p.m. ET on the last day of the Investigation Period; provided, however that the Title Company shall immediately refund to Buyer all of the Earnest Money.

**Section 5.02. Right of Entry.** Seller grants to Buyer and Buyer's agents, employees, and contractors the right to enter upon the Property, at all reasonable times during the term of this Escrow, to conduct any Buyer Investigations. Seller agrees (at no cost to Seller) to cooperate in a reasonable manner with Buyer and its agents, employees, and contractors in the performance of the Buyer Investigations. To the extent Buyer damages or disturbs the Property, Buyer will return the Property to substantially the same condition that existed immediately prior to the Buyer Investigations. Buyer agrees to indemnify, defend, and hold Seller harmless for, from, and against any claim, damage, liability, cost (including reasonable court costs and attorney fees), loss, or injury arising as a direct consequence of Buyer Investigations, excluding any conditions which previously existed upon the Property. This inspection indemnity of Buyer will survive the cancellation of this Contract and Escrow and the Closing.

**Section 5.03. Declaration of Restrictions.** Prior to the end of the Investigation Period, Buyer and Seller agree to negotiate in good faith a declaration of restrictions (the "**Declaration**") burdening any real property owned directly or indirectly by Seller and located within two (2) miles of any part of the Property (the "**Burdened Property**") to be recorded at Closing and containing the following use restrictions and protections for Buyer and the Property:

(a) No part of the Burdened Property will be used as a Convenience Store. The term "**Convenience Store**" means a retail store selling, renting or providing merchandise and/or services customarily sold, rented or provided from time to time at stores operated or franchised by Tenant within the State of Colorado, and including by way of example, but not limited to, merchandise and/or services customarily sold, rented or provided from time to time at stores such as a Cumberland Farms, 7-Eleven, Stop N Shop, On the Run, High's, Store 24, WaWa, and Kwik Stop, and other regional or "mom and pop" convenience stores or businesses.

(b) No part of the Property will be used as a Motor Fuels Facility. The term “**Motor Fuels Facility**” means a full-service and/or self-service facility which provides for the retail sale and dispensing of gasoline, other petroleum products, or other common methods of propelling vehicles.

(c) No part of the Property will be used as a Liquor Store. The term “**Liquor Store**” means a retail store selling primarily beer, wine or other alcoholic beverages for off-premise consumption.

(d) Notwithstanding anything to the contrary in this Contract, Buyer will have the right to enforce any violation of the above declaration by any remedy available at law or in equity, including the right to injunctive relief without the necessity of posting a bond.

#### **Section 5.04. Entitlement Approvals.**

(a) Buyer’s obligation to close this Escrow and consummate the purchase of the Property is conditioned upon Buyer’s ability to obtain from the applicable Governmental Authorities on or before the expiration of the Investigation Period, all necessary final and written permits and approvals necessary for Buyer to develop and operate the Property as a convenience store (including, at Buyer’s election, a quick serve restaurant and/or a car wash) selling alcoholic beverages, motor vehicle fuels, and lottery tickets (or other allowable gaming), including, without limitation, any zoning changes, zoning variances, Buyer’s Site Plan approvals, use permits, liquor licenses, special use permits, gaming license, beer and wine license, subdivision approvals, lot divisions, lot consolidations, other land use entitlements and building permits and approvals necessary for Buyer’s intended development of the Property, subject to only those conditions, stipulations, costs and other matters as are acceptable to Buyer in its sole and absolute discretion (collectively, the “**Entitlement Approvals**”). If Buyer delivers notice to Seller on or before the expiration of Investigation Period, as may be extended, that Buyer has been unable to obtain the Entitlement Approvals, then this Contract and the Escrow will be immediately deemed cancelled, and the cancellation will be governed by the provisions of Section 5.09.

(b) Notwithstanding the foregoing, if any referendum petition challenging any aspect of the Entitlement Approvals is filed with the Governmental Authorities within any applicable referendum petition filing period, Buyer will be permitted to cancel this Contract and the Escrow, even though the Investigation Period may have passed, by giving Seller and Escrow Agent written notice of cancellation within 15 days after the date Buyer receives notice of the filing of the referendum. Any cancellation above will be governed by the provisions of Section 5.09.

(c) Seller will cooperate in all reasonable respects with Buyer in applying for and obtaining the Entitlement Approvals, but all costs for any applications will be solely those of Buyer.

#### **Section 5.05. Environmental Matters.**

(a) **Hazardous Materials.** If, during Buyer’s Investigations, hazardous material contamination or other environmental conditions are discovered at the Property resulting from any source including contamination from any existing UST’s, Seller will elect, within 10 business days after Seller’s discovery of, or written notice from Buyer of, any environmental contamination, to terminate this Contract or to promptly provide Buyer with assurance reasonably acceptable to Buyer that: (i) the conditions will not prevent or unreasonably interfere with

Buyer's use of the Property after the Closing Date; (ii) Seller will promptly address the environmental conditions in accordance with law, at no cost to Buyer and with a minimum of disruption to Buyer's use of the Property; (iii) Seller has the financial ability to fund any necessary monitoring and remediation of the Property; and (iv) Seller will indemnify Buyer in accordance with Section 8.08 below for, from, and against any loss, claim, cost, liability, or damage arising out of the environmental conditions at the Property as of the Closing Date. These reasonable assurances may include the deposit of a portion of the Purchase Price into an escrow account, to be disbursed from time to time as any remedial work is completed.

(b) ***Assurances not Provided/Termination.*** If Seller is unable or unwilling to provide these assurances or if Seller has elected to terminate this Contract, Seller will so notify Buyer, and Buyer will, within 10 days after receipt of the notice (and the Closing Date will be extended, if needed), notify Seller of its election to: (i) waive the objections and close the transaction subject to the environmental conditions; or (ii) terminate this Contract in accordance with Section 5.09. If Seller has elected to remediate the environmental matter, the provisions of Section 5.05(c) and (d) below will apply.

(c) ***Cleanup.*** Seller will promptly commence the assessment and remediation of hazardous material contamination at the Property (or, if already in progress, continue the assessment and remediation), in conformance with applicable laws, regulations, and orders (collectively, "**Cleanup**"). Seller will continuously and diligently pursue the completion of Cleanup so as to minimize the disruption of the use of the Property after Closing. Cleanup will be complete upon the issuance of a "no further action" letter (or similar letter) by the environmental agency with oversight authority over the Property (the "**Agency**") and delivery of a copy of the letter to Buyer. Notwithstanding any provision of this Contract or the law to the contrary, the consent of Buyer is not required to permit the recordation of any restriction against the Property that the Agency may require as a condition of site closure. These provisions will survive the Closing.

(d) ***Control of Cleanup.*** Buyer, at its option, may elect to take over Cleanup after the Closing Date. The parties will negotiate in good faith for a mutually acceptable reduction to the Purchase Price or agree upon an environmental escrow account to be withheld from Seller's proceeds at Closing. The escrow account will be used to fund the cost of Cleanup by Buyer. This election will not make Buyer the responsible party for the hazardous material contamination. The parties will cooperate in good faith after the Closing Date to ensure and maximize any available reimbursement for the costs of Cleanup, including, if applicable, the naming of Buyer as a volunteer or as the designated representative of Seller for Cleanup. These provisions will survive the Closing.

(e) ***Right of Entry.*** At Closing, if it is determined that any Cleanup shall take place after the Closing Date, Buyer and Seller will each execute and deliver to the other the Access Agreement attached as **Exhibit "E"** and incorporated into this Contract, pursuant to which Seller will be entitled to enter the Property from time to time for the purpose of conducting Cleanup and related activities.

**Section 5.06. Management Approval.** This transaction is subject to the approval of Buyer's (or its corporate parent's) senior management and/or Board of Directors ("**Management Approval**"). Buyer shall use reasonable efforts to obtain Management Approval and shall promptly notify Seller of the approval or disapproval of the transaction.

**Section 5.07. Extension.** Buyer may extend the Investigation Period for the Extension Periods by notifying Seller and Escrow Agent in writing prior to the expiration of the then-applicable Investigation Period and depositing with Escrow Agent the Extension Deposit within five (5) days after the commencement of such Extension Period.

**Section 5.08. Purchase of Adjacent Property.** Seller acknowledges that Buyer is or will become party to a binding contract (the “**Adjacent Property Purchase Contract**”) pursuant to which Buyer will acquire fee simple title to the real property adjacent to the Property and currently owned by the Randy and Vicky Gibbs (the “**Adjacent Property**”). Buyer’s obligation to purchase the Property is conditioned on the transaction contemplated in the Adjacent Property Purchase Contract on or prior to the Closing Date. Buyer has the absolute right to terminate this Contract at any time if the Adjacent Property Purchase Contract has not closed on or prior to the Closing Date or if the Adjacent Property Purchase Contract is terminated for any reason. In Buyer elects to terminate in accordance with this Section, this Contract shall immediately terminate upon Seller’s receipt of notice of Buyer’s election and both parties shall be fully released herefrom, except as otherwise expressly provided herein; provided, however that the Title Company shall immediately refund to Buyer all of the Earnest Money

**Section 5.09. Failure of Condition.** If Buyer properly provides written notice of its election to cancel this Contract and the Escrow, the cancellation will be immediate, neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under this Contract, and Escrow Agent will return promptly to Buyer all Earnest Money without the need for further documentation from either party. Buyer’s failure to timely deliver a written notice of cancellation for a failure of any of the contingencies described above will be deemed a waiver of Buyer’s right to cancel this Contract for a failure of that condition.

## ARTICLE VI CLOSING

**Section 6.01. Non-Foreign Affidavit.** At the Closing, Seller agrees to furnish to Buyer either a sworn affidavit stating, under penalty of perjury, that Seller is not a “foreign person” as defined in the Internal Revenue Code of 1986, as amended (“**Code**”) or other appropriate evidence that Buyer is not required to withhold taxes under Section 1445(a) of the Code. If Seller does not furnish the sworn affidavit or other appropriate evidence deemed satisfactory by Buyer and Escrow Agent, Buyer may withhold or direct Escrow Agent to withhold from Seller’s sale proceeds an amount equal to the amount required to be withheld pursuant to Section 1445 of the Code. Any withheld funds will be deposited by Escrow Agent with the Internal Revenue Service as required by Section 1445(a) and any applicable regulations. The amount withheld, if any, will nevertheless be deemed to be part of the Purchase Price paid to Seller.

**Section 6.02. Closing Deliveries.** Seller, on the Closing Date, will deposit with Escrow Agent (for recordation, if applicable, and delivery to Buyer): a warranty deed, in the form attached as **Exhibit “F”**, subject to those title and/or survey matters approved by Buyer (the “**Deed**”), a bill of sale for any personal property, an assignment of any transferable permits, licenses, warranties, and entitlements (if Buyer elects to do so in a separate document), the Declaration, such other documents and instruments as may be required by applicable law, and all resolutions and authorizations required by Escrow Agent to insure Seller’s authority and ability to sell the Property. Buyer, on the Closing Date, will deliver to Escrow Agent (for disbursement to Seller) the Closing Cash, plus all additional sums necessary to pay Buyer’s portion of the closing costs and prorations, the Declaration, and all resolutions and authorizations required by Escrow Agent to insure Buyer’s authority and ability to acquire the Property.

**Section 6.03. Possession.** Seller must deliver exclusive physical possession of the Property to Buyer at Close of Escrow, subject only to those rights under any approved title matter.

**Section 6.04. Accuracy of Warranties.** Buyer's obligation to purchase the Property is conditioned upon the truth and accuracy, in all respects, of Seller's warranties and representations made under this Contract. Seller will indemnify, defend, and as of the Closing Date hold harmless Buyer for, from, and against any claims, expenses, liabilities, losses, liens, damages, and costs, including attorney fees in a reasonable amount, arising out of any inaccurate or untrue warranties and representations made by Seller. Buyer will indemnify, defend, and hold harmless Seller for, from, and against any claims, expenses, liabilities, losses, liens, damages, and costs, including attorney fees in a reasonable amount, arising out of any inaccurate or untrue warranties and representations made by Buyer. The indemnification obligations above will survive the Closing and the execution, delivery and recordation of the Deed.

**Section 6.05. Title Policy.** Buyer's obligation to purchase the Property is conditioned upon Escrow Agent's issuance of (or the unconditional written commitment of Escrow Agent to issue) an ALTA Extended Owner's Policy of Title Insurance ("**Title Policy**") in an insured amount at least equal to the Purchase Price effective no earlier than the actual Closing Date and insuring Buyer's fee simple title to the Property, subject only to those matters approved by Buyer under this Contract.

## **ARTICLE VII CLOSING PRORATIONS AND COSTS**

### **Section 7.01. Real Estate Taxes and Assessments.**

(a) All non-delinquent real estate or ad valorem taxes on the Property will be prorated as of the Closing Date, based upon the most current information available. All delinquent real estate or ad valorem taxes will be paid in full by Seller on the Closing Date together with all penalties and redemption charges. No further adjustment in any tax figures will occur following the Closing. Seller will be entitled to receive any refunds or over-payments for taxes for tax years prior to the year in which the Closing occurs. All improvement liens, special taxing districts, or other special municipal or county assessments that affect the Property and that exist as of the Closing Date will be paid in full by Seller as of the Close of Escrow.

(b) If the Property is not assessed as a separate tax parcel on the assessment rolls of the applicable County Assessor for the tax year in which the Closing Date occurs, Escrow Agent will handle the proration and payment of the real estate taxes for the Property as follows: (i) Seller will pay all real estate taxes on the entire tax parcel (including the Property) through and including the Closing Date, based upon the most current information available; and (ii) Buyer will pay all real estate taxes on the Property after the Closing Date. Escrow Agent will calculate the portion of the real estate taxes attributable to the Property based on a comparison of the net acres of the Property divided by the net acres of the entire tax parcel. Buyer and Seller will cooperate with each other after the Closing Date to cause the Property to be assessed as a separate tax parcel. At Closing, Buyer and Seller will execute and deliver a Tax Proration Agreement in the form that is attached as **Exhibit "G"**.

**Section 7.02. Title Insurance.** Seller will pay the cost of issuance of a standard owner's policy of title insurance in the full amount of the Purchase Price and Buyer will pay any additional title policy premium necessary to issue the Title Policy or any endorsements or to increase the Policy amount.

**Section 7.03. Closing Costs.** All costs and expenses of closing, including recording and escrow fees and charges, are to be allocated between Seller and Buyer in the manner contemplated by this



Contract or, if not dealt with under this Contract, according to the custom and practice of Escrow Agent. Seller agrees that all closing costs and any other sums required to be paid by Seller will be paid in full at Closing and may be deducted from the proceeds otherwise payable to Seller at Closing. Each party agrees to pay its own attorney fees. All prorations that are required to be made under this Contract will be made as of the 12:01 a.m. on the date of Closing on the basis of a 365 day year.

## ARTICLE VIII GENERAL PROVISIONS

**Section 8.01. Notices.** Except as otherwise required by law, any notice required or permitted under this Contract must be in writing and must be given either: (i) by personal delivery; (ii) by United States certified mail, return-receipt requested, postage prepaid, and properly addressed; (iii) by any private overnight, "same day", or "next-day" delivery service, delivery charges prepaid with proof of receipt; or (iv) by email or facsimile. Notice sent in any of the manners set forth above must be addressed or sent to Seller, Buyer, and/or Escrow Agent at the addresses set forth on the first page of this Contract. Any party may change its address for the purposes of delivery and receipt of notices by advising all other parties in writing of the change. Notice delivered in one of the foregoing manners will be deemed to be received: (I) on the date of delivery, if personally delivered; (II) on the date that is three days after deposit in the United States mail, if given by certified mail; (III) on the business day following the day deposited with an express delivery service, if given by overnight, "same day", or "next-day" delivery service, or (IV) the date of transmittal, if given by electronic mail or facsimile machine or telecopy. No notice will be deemed effective unless sent in one of the manners described above.

**Section 8.02. Broker's Commission.** Except for the Buyer's Broker, each party represents and warrants to the other that it has not engaged or dealt with any other broker or any other person who would be entitled to any brokerage commission concerning this purchase of the Property. Each party agrees to indemnify and hold the other entirely free and harmless for, from, and against any loss, damage, liability, or expense (including, without limitation, attorney fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. Each party further agrees to defend the other at its sole cost and expense from any claims. As used in this Contract, the term "**broker**" will refer to any real estate broker, salesperson, agent, listing agent, finder, or any other person entitled to a commission, and the term "**commission**" will refer to any brokerage, advisory, or finder's fees or commissions. If, but only if, the Escrow closes, Seller will pay commissions to the Buyer's Broker. The brokerage indemnity ("**Brokerage Indemnity**") referred to in this Section 8.02 will survive the cancellation or termination of this Contract and the related Escrow (and will be enforceable against the indemnifying party notwithstanding anything in this Section 8.02 to the contrary) and the Close of Escrow. If the sale contemplated by this Contract is not consummated for any reason whatsoever, no commission or any portion of the Earnest Money will be payable to the Buyer's Broker. Joinder of the Buyer's Broker will not be required to modify or cancel this Contract. The Buyer's Broker will not be deemed a third party beneficiary of this Contract. Seller acknowledges that Buyer has disclosed to Seller that certain members, principals, or employees of Buyer may be licensed real estate brokers or agents in the state in which the Property is located.

**Section 8.03. Buyer's Right to Nominate and Assign.** Buyer, by written notice to Seller and Escrow Agent, may assign its interest in this Contract, this Escrow, and the Property to a nominee or assignee. Upon any assignment, the nominee or assignee will be deemed the "**Buyer**" for all purposes and the original or previous Buyer, upon the assignment, will be relieved of all obligations under this Contract and the Escrow, except for the acts of that person or entity prior to the nomination.

**Section 8.04. Risk of Loss.** All risk of loss, damage, or taking of the Property that may occur prior to Close of Escrow will be borne by Seller. If any loss, damage, or taking occurs prior to Close of

Escrow, Buyer, at Buyer's sole option and by written notice to Seller and Escrow Agent, will be entitled to cancel this Contract and the related Escrow. Upon Buyer's cancellation of this Contract under the preceding sentence, the cancellation will be immediate and neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under the Contract, except as otherwise provided in this Contract, and Escrow Agent will return promptly to Buyer all Earnest Money. If Buyer waives the right to cancel this Contract because of any loss or damage to the Property and elects to close the Escrow, Seller, at Close of Escrow and as a condition precedent to closing, must either: (a) pay Buyer (or direct Escrow Agent to credit Buyer against the Purchase Price for) the amount of any insurance or condemnation proceeds actually received or to be received by Seller plus the amount of Seller's deductible under any insurance policy; or (b) if no insurance or condemnation proceeds have been received by Seller, assign to Buyer by proper written instrument all rights or claims to the insurance or condemnation proceeds and pay Buyer (or direct Escrow Agent to credit Buyer against the Purchase Price for) the amount of Seller's deductible under any insurance policy.

**Section 8.05. Seller's Default.** Seller shall be deemed to be in default under this Contract if Seller: (i) breaches its representations or warranties under this Contract as set forth in Section 3.03 hereof; (ii) fails to perform any of its obligations or covenants under this Contract for any reason other than Buyer's prior default or the permitted termination of this Contract by Seller or Buyer as herein expressly provided, or (iii) fails or refuses to comply in a timely manner with any of its obligations under this Contract or at the Closing (each referred to as an "*Event of Default*"). If there is an Event of Default by Seller hereunder, then Buyer may, at Buyer's sole election: (a) terminate this Contract by giving Seller timely written notice of such election prior to or at the Closing, and thereupon this Contract shall terminate, and Buyer shall be entitled to the immediate return of the Earnest Money, and all parties hereto or mentioned herein shall be relieved and released of all further obligations, claims and liabilities hereunder; (b) waive, prior to or at the Closing, the applicable objection or condition and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof; (c) enforce specific performance of Seller's obligations under this Contract; or (d) pursue any and all remedies available to Buyer at law or in equity, subject to Section 8.07 herein. No limitation herein on any remedies that Buyer may elect as the result of a failure by Seller to consummate the sale of the Property to Buyer pursuant to this Contract shall be applicable in any manner with respect to any cause of action that Buyer may have against Seller for a breach of any of Seller's representations or warranties in this Contract or any covenant of Seller in this Contract other than the covenant to convey the Property to Buyer at Closing. The foregoing provisions shall not modify Buyer's right to recover its fees and costs in enforcing this Contract as provided in Section 8.09.

**Section 8.06. Buyer's Default.** If Buyer breaches this Contract or fails to perform any of its covenants or obligations under this Contract or otherwise is in default under this Contract, and if Buyer fails to cure the breach or failure within five (5) days after receipt of written notice from Seller specifying the default, Seller, as its exclusive and sole right and remedy, will be entitled to cancel this Contract and related Escrow by giving Buyer and Escrow Agent written notice of cancellation. If Seller cancels the Contract, Escrow Agent will immediately pay to Seller the Earnest Money as full liquidated damages of Seller. The parties acknowledge that it is impossible to more precisely estimate the specific damage that would be suffered by Seller in the case of a default or breach by Buyer under this Contract, and the parties expressly acknowledge and intend that the forfeiture of the Earnest Money is an agreed and negotiated provision for liquidated damages and not a penalty. Upon receipt by Seller of the forfeited Earnest Money as provided above, neither party will have any further obligation or responsibility to the other hereunder, except as otherwise specifically established in this Contract. The foregoing provisions shall not modify Seller's right to recover its fees and costs in enforcing this Contract as provided in Section 8.09.

**Section 8.07. Waiver of Consequential Damages.** Each party hereby waives the right to seek and to recover any incidental, consequential, exemplary, extraordinary or punitive damages as a result of the breach by the other party of any of the provisions hereof.

**Section 8.08. Seller Indemnity for Past Acts.** Seller will indemnify, defend, and hold harmless Buyer for, from, and against any claims, expenses, liabilities, losses, liens, damages, and costs arising out of: (a) Seller's ownership and/or operation of the Property prior to the Closing Date; (b) any occurrence on the Property prior to the Closing Date resulting in personal injury, bodily injury, or property damage (except as caused by Buyer under this Contract); and (c) any hazardous material contamination or other environmental condition existing on, at, or under the Property as of the Closing Date (whether discovered before or after the Closing Date). This indemnity includes claims made by third parties or Governmental Authorities and includes lost profits resulting from any unreasonable disruption of Buyer's use of the Property. This indemnity will not include any claims, etc. resulting from Buyer's performance of the Cleanup if Buyer assumes control of the Cleanup. The indemnity obligations of Seller under this Section 8.08 will survive the Close of Escrow and the execution, delivery, and recordation of the Deed.

**Section 8.09. Attorney Fees.** If there is any litigation or arbitration between Seller and Buyer to enforce or interpret any provisions or rights of this Contract, the substantially unsuccessful party in the litigation or arbitration, as determined by the court or arbitrator, agrees to pay the substantially successful party, as determined by the court or arbitrator, all costs, legal fees, and expenses (through trial and appeal), including, but not limited to, attorney fees incurred by the successful party in a reasonable amount.

**Section 8.10. Waiver of Conditions.** Except as otherwise provided in this Contract regarding any deemed waivers for a failure to promptly act or elect, Buyer's contingencies or conditions precedent may be waived only by Buyer, and any waiver by Buyer may be done only in a writing signed by Buyer.

**Section 8.11. Governing Law.** This Contract will be governed by and construed and enforced in accordance with the laws of the state which the Property is located. Any action brought to interpret, enforce, or construe any provision of this Contract must be maintained in a court of competent jurisdiction for the county in which the Property is located (the "**County**") or in the United States federal judicial district for the County. All parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Contract.

**Section 8.12. Construction.** The terms and provisions of this Contract represent the results of negotiations between Seller and Buyer, neither of which have acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Contract should be interpreted and construed in accordance with their usual and customary meanings, and Seller and Buyer each waive the application of any rule of law that states that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party whose attorney prepared the Contract or any earlier draft of the Contract.

**Section 8.13. Interpretation.** The terms of this Contract supersede all prior and contemporaneous oral or written agreements and understandings of Buyer and Seller, all of which will be deemed to be merged into this Contract. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Contract and the terms and provisions of any document, instrument, letter, or other agreement executed in connection with or in furtherance of this Contract, the term, provision, document, instrument, letter, or other agreement will be consistently interpreted in a manner as to give effect to the general purposes and intention as expressed in this Contract.

**Section 8.14. Counterparts.** This Contract and any amendments may be executed in any number of original or facsimile counterparts, each of which will be effective on delivery and all of which together

will constitute one binding agreement of the parties. Any signature page of the Contract may be detached from any executed counterpart of the Contract without impairing the legal effect of any signatures and may be attached to another counterpart of the Contract that is identical in form to the document signed (but that has attached to it one or more additional signature pages).

**Section 8.15. Severability.** If any one or more of the provisions of this Contract or the applicability in any provision to a specific situation is held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of the provisions will not be affected by any such invalidity or unenforceability.

**Section 8.16. Miscellaneous Definitions and Standards.** The term “sole discretion” means that the act or decision of the party may be made in the party’s independent and individual choice of judgment, without regard to any objective or other standard of consideration. Except for those acts or decisions that may be made in a party’s “sole discretion”, all acts or decisions of any party to this Contract must be exercised with reasonable discretion. The term “will” denotes a mandatory obligation, and the term “may” is a permissive word denoting an option. All references in this Contract to the “Escrow Agent” will be deemed to include the applicable title insurance underwriter for the Title Policy.

**Section 8.17. Time is of the Essence.** Time is of the essence in the performance of all obligations under this Contract. In calculating any time period under the Contract which commences upon the receipt of any notice, request, demand, or document, or upon the happening of any event, the date upon which the notice, request, demand, or document is received or the date the event occurs (or is deemed to have occurred) is not included within the applicable time period, but the applicable time period will commence on the day immediately following. If the time for performance of any obligation or for taking any action under the Contract expires on a Saturday, Sunday, or Standard Federal Reserve Bank Holiday, the time for performance or for taking action will be extended to the next succeeding day which is not a Saturday, Sunday, or Standard Federal Reserve Bank Holiday and during which Escrow Agent is open for business.

**Section 8.18. IRS Real Estate Sales Property.** Escrow Agent is designated as the “Reporting Person” within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the closing of the transactions contemplated by the Contract. Escrow Agent acknowledges that it is an eligible person for reporting this transaction under Treasury Regulation Section 1.6045-4(e)(5)(ii) and agrees: (i) to comply on a timely basis with all reporting and filing requirements of Internal Revenue Code Section 6045(e); and (ii) to utilize the information in this Contract, as amended, for the purposes of supplying any required information to the Internal Revenue Service, for example, the identity of the transferee and transferor, and the description of the Land. Buyer and Seller agree to cooperate with Escrow Agent’s requests related to any required reporting or filing under Internal Revenue Code Section 6045(e), and Escrow Agent is authorized to disclose any information contained in the Contract to the Internal Revenue Service for the purposes of complying with Escrow Agent’s obligations under this paragraph. Escrow Agent agrees to be liable for all penalties and liabilities imposed by the Internal Revenue Service as a result of Escrow Agent’s failure to comply with its obligations under this paragraph.

**Section 8.19. Tax-Deferred Exchange.** Seller and Buyer agree to cooperate in a commercially reasonable manner with each other and any designated exchange intermediary or exchange accommodation titleholder by executing such documents or taking such action as such party requests in order to effectuate a tax deferred exchange of the Property under Section 1031 of the Internal Revenue Code. This obligation to cooperate does not include requiring the other party to take title to any other property to complete the exchange, to issue any legal opinions, to increase the potential liability of the non-exchange party, or to expend legal fees to review exchange documents.

**Section 8.20. Modifications.** This Contract cannot be changed orally, and no amendment shall be effective to waive, change, modify or discharge this Contract unless such amendment is in writing and is signed by both parties hereto.

**Section 8.21. No Third Party Beneficiary.** The provisions of this Contract and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Contract or of the documents to be executed and delivered at Closing.

**Section 8.22. Captions.** The section headings appearing in this Contract are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

**Section 8.23. No Recordation.** Neither this Contract nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record and any breach of this covenant shall, unless the party not placing the same of record is otherwise in default hereunder, entitle the party not placing same of record to pursue its rights and remedies under Article VIII.

**Section 8.24. Confidentiality.** Seller and Buyer agree to keep the terms of this Contract confidential and not make any public announcements or disclosures with respect to the subject matter hereof without the prior written consent of the other party; provided, however, Buyer shall be permitted to make any disclosure required by law and to its employees, attorneys, accountants or its agents, to the extent reasonably necessary for such employees, attorneys, accountants, or agents to properly analyze and evaluate the proposed transaction and for such employees, attorneys, accountants and agents to advise Buyer.

**Section 8.25. Force Majeure.** If either party hereto is delayed in the completion of its obligations hereunder by the act, delay in providing approval, or default of the other party through no fault of the delayed party, or by acts of God (which shall be deemed to include weather delays caused by rainfall, snow or other factors in excess of such weather for the season in which such performance is to occur that actually cause a delay in performance), fire, strikes, lockouts, unavoidable casualties, war, epidemics, pandemics, acts of terrorism, civil commotion, fire or other casualty, theft of materials, unseasonable shortages of materials or supplies, or any other cause whatsoever beyond the commercially reasonable control of the delayed party (other than the payment of monies) then the time herein fixed for completion of such obligations shall be extended by the number of days that the delayed party has thus been delayed. The delayed party shall provide the other party hereto with written notice of any delay within ten (10) days after commencement of such delay; provided, however, that only one notice is necessary in the case of a continuing delay.

**[SIGNATURES FOLLOW ON THE NEXT PAGE]**

**SELLER:**

WILLIAM G MALONE TRUST

**BUYER:**

CIRCLE K STORES INC.,  
a Texas corporation



By: William G Malone trust  
Name: William G Malone  
Title: trustee

By: [Signature]  
Name: MARIC TATE  
Title: VP OPERATIONS

**ESCROW AGENT'S ACCEPTANCE**

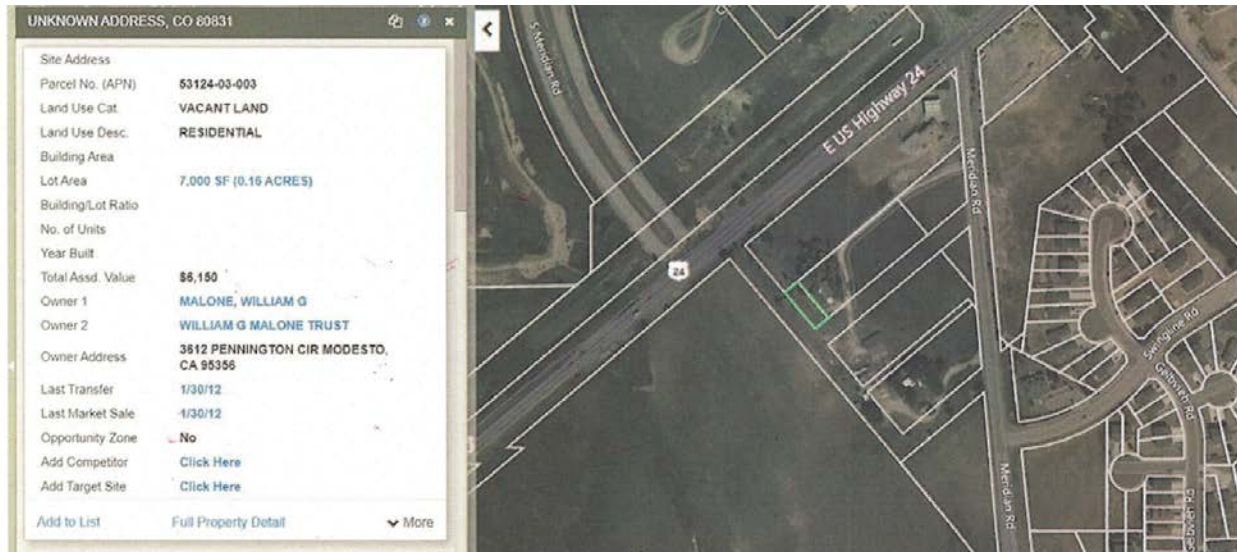
Escrow Agent hereby: (i) acknowledges receipt of the Contract executed by Buyer and Seller, (ii) agrees to be bound by the provisions and perform the obligations hereof applicable to Escrow Agent, and (iii) declares that the Effective Date is MARCH 04, 2021 (the "Effective Date").

Chicago Title Insurance Company  
CHICAGO TITLE OF TEXAS, LLC

By: [Signature]  
Name: NANCY SHIRAR  
Title: VP

**EXHIBIT "A"**  
**TO**  
**PURCHASE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(legal description and/or general depiction of the Land)



**EXHIBIT “B”  
TO  
PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS**

(Additional Escrow Instructions)

Buyer and Seller instruct Escrow Agent to allocate all closing proration and to pay all closing costs as follows:

ITEM	SELLER	BUYER
<b>PRORATIONS</b>		
• Real estate taxes: Prior to COE On and after COE	X	X
• Improvement lien assessments: Existing and pending (including future installments)	X	
• State and Local Taxes: Transaction privilege, sales, use, and personal property through COE	X	
• SRP/Irrigation district assessments: Prior to COE On and after COE	X	X
<b>CLOSING COSTS</b>		
• Escrow charges	½	½
• Recordation cost of Deed and Affidavit	X	
• Recordation cost of Releases/Reconveyance	X	
• Recordation cost of New Encumbrances		X
• Owner title policy (Form: Extended)	Std.	Ext.

“**Contract**” means the Purchase Agreement and Escrow Instructions to which these Additional Escrow Instructions are attached. “**COE**” means the Close of Escrow, as defined in the Contract. “**NA**” means not applicable. All taxes and assessments must be prorated based on the latest available information and a 365-day year. Unless otherwise indicated above or in the Contract, the COE will be used as the proration date for all proration.

Buyer, Seller, and Escrow Agent further agree that:

1. Buyer and Seller: (i) will deposit with Escrow Agent the necessary documents to complete the sale as established by the terms of the Contract; (ii) authorize Escrow Agent to deliver or record all documents at the time designated by the Contract; and (iii) authorize Escrow Agent to pay, from funds held by it under the Contract, all charges and obligations necessary to consummate this transaction.



2. Buyer and Seller will indemnify and hold harmless Escrow Agent from all costs, damages, attorney fees, expenses, and liabilities that Escrow Agent may incur or sustain in connection with the Contract, including any interpleader action brought by Escrow Agent, except for those matters arising out of the negligent acts or omissions of Escrow Agent.

3. When the Contract has been complied with by all parties, Escrow Agent will deliver, by recording in the appropriate public office, all necessary documents, disburse all funds, and issue the title insurance policies described in the Contract.

4. If any conflicting demands are made upon Escrow Agent concerning the Contract, Buyer and Seller agree that Escrow Agent may hold any money and documents deposited under this Contract until Escrow Agent receives mutual instructions from Buyer and Seller or until a civil action has been finally concluded in a court of competent jurisdiction determining the rights of Buyer and Seller. In the alternative and at its discretion, Escrow Agent may commence a civil action to interplead any conflicting demands in a court of competent jurisdiction. Escrow Agent's deposit with the court of all documents and funds concerning this Escrow will relieve Escrow Agent of all further liability and responsibility under the Contract, except for those matters arising out of the negligent acts or omissions of Escrow Agent.

5. Buyer and Seller instruct Escrow Agent to execute, on behalf of the Seller and Buyer, the real property transfer declaration, using the total consideration for the established value, unless instructed by Seller and Buyer to the contrary.

6. All title insurance policies will be issued by an underwriter approved by Buyer and Seller.

7. All disbursement of funds by Escrow Agent will be made by wire transfer of funds or Escrow Agent's check, as directed by Buyer or Seller as applicable.

**EXHIBIT “C”  
TO  
PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS**

(Intentionally Omitted)

(Buyer's Site Plan)



**EXHIBIT "E"**  
**TO**  
**PURCHASE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Access Agreement)

Site # \_\_\_\_\_  
\_\_\_\_\_

**ACCESS AGREEMENT**  
**Access for Former Owner**

This Access Agreement ("**Agreement**") is made as of the dates below by and between CIRCLE K STORES INC., located at 5500 South Quebec, Suite 100 Greenwood Village, Colorado ("**Grantor**") and WILLIAM G MALONE TRUST, whose address is 3612 Pennington Circle, Modesto, California 95356 ("**Grantee**"). It shall be effective on the date of the last signature to this Agreement.

**BACKGROUND**

A. Grantor is the owner of real property described on the attached **Exhibit "A"** and generally located at South-West corner of E. US Highway 24 & Meridian Road in El Paso County (the "**Property**").

B. Grantee is the former owner of the Property, having sold the Property to Grantor on or about \_\_\_\_\_, 20\_\_\_\_, pursuant to a Purchase Agreement and Escrow Instructions (the "**Contract**").

C. Grantee has an obligation pursuant to law and the Contract to assess, monitor, and/or remediate certain contamination at the Property.

D. Grantor and Grantee wish to establish the rights and responsibilities of the parties with respect to Grantee's entry to the Property.

**AGREEMENT**

In consideration of the premises and the mutual promises described in this Agreement, Grantor and Grantee agree as follows:

1. **Grant of License.** Grantor grants to Grantee and its employees, representatives, and contractors a non-exclusive license ("**License**") to enter upon the Property from time to time, at no charge to Grantee, to conduct the work as established below. This License shall continue in effect until \_\_\_\_\_, 20\_\_\_\_, as the date may be extended or shortened by agreement of the parties. If Grantee is required by the government agency with oversight authority regarding environmental matters at the Property (the "**Agency**") to maintain a well or other equipment on the Property beyond the term of this License, the License shall be extended until the requirement ceases. Upon the expiration of the License, Grantee shall, at no cost to Grantor: (a) remove all of its above-ground and below-ground equipment placed on the Property; (b) fill, level, and compact all ditches, ruts, and excavations, if any, caused by Grantee's entry on the Property; (c) remove all debris

resulting any work performed on the Property; and (d) restore the Property (including paving and landscaping) to substantially the same condition as existed prior to the date of this Agreement. Grantor expressly consents to Grantee's entry upon the Property for those purposes.

2. **Obligation to Remediate.** Grantee agrees to assess, monitor, and/or remediate all contamination ("**Covered Contamination**"), as defined in its broadest sense by applicable federal, state, or local law or regulation, that is present on, at, or under the Property, or that has migrated from the Property to other properties, to the extent that: (a) the Covered Contamination was present as of the date Grantor purchased the Property from Grantee or otherwise arose from Grantee's activities at the Property; and (b) the assessment, monitoring, and/or remediation is required under applicable federal, state, and local laws and regulations and/or Agency orders, guidelines, and timetables (collectively, "**Applicable Law**"). All work shall be performed at no cost to Grantor, in compliance with Applicable Law and in compliance with the requirements of this Agreement.

3. **Scope and Performance of Work.** Grantee's rights pursuant to the License shall include the right to test, sample, install, operate, maintain, monitor, and remove above-ground equipment or below-ground wells and/or piping at the Property, but shall not include the right to store the drums of soil and/or groundwater or other equipment not then being used for Grantee's work at the Property. Grantee agrees to coordinate its activities (including hours of entry) with Grantor to minimize any impairment of use of the Property. Grantee shall not allow any vehicles to remain on the Property except when the work is being performed and shall not block access to the Property. If any groundwater or extraction wells, trenches, related equipment, or other remediation equipment and structures are required by the Agency to be located on the Property, Grantee shall consult and cooperate with Grantor to place the facilities in a location on the Property that does not unreasonably interfere with the use of the Property, while at the same time satisfying the requirements of the Agency. To the extent wells are located in paved areas, the tops of the wells shall be flush with the paving and shall have traffic resistant well covers.

4. **Permits.** Grantee, at no cost or expense to Grantor, shall be responsible for obtaining any and all governmental permits and approvals that may be necessary for it to conduct any work or activities under this Agreement. Grantor shall coordinate and cooperate with Grantee in Grantee's activities to obtain all necessary government permits and permissions.

5. **Liens and Claims.** Grantee will not permit any mechanics' materialmen's, or similar liens or claims to stand against the Property for labor or material furnished in connection with any work performed by Grantee under this Agreement. Upon reasonable and timely notice of any lien or claim delivered to Grantee by Grantor, Grantee may bond and contest the validity and the amount of the lien, but Grantee will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense.

6. **Discovered Contamination.** If either Grantor or Grantee becomes aware of a new release at the Property or of conditions at the Property inconsistent with the previously known levels of Covered Contamination at the Property ("**Discovered Contamination**"), the discovering party shall promptly notify the other party. Grantor shall afterward take steps as may be reasonably required to determine whether the Discovered Contamination is a result of Grantor's operations or is previously undiscovered Covered Contamination. Grantor and Grantee shall meet and confer in good faith to allocate responsibility for any Discovered Contamination. If the Discovered Contamination is Covered Contamination, it shall be handled by Grantee in accordance with the terms and conditions of this Agreement.

7. **New Contamination.** Grantor shall be liable for the assessment, monitoring, and/or remediation of any Discovered Contamination that is not Covered Contamination (“**New Contamination**”). If the New Contamination commingles with the Covered Contamination (“**Commingled Contamination**”), and if the parties agree that the New Contamination will make Grantee’s work significantly more difficult, expensive, or time-consuming, Grantor shall become liable to Grantee for the incremental cost of assessment, monitoring, and/or remediation of the Commingled Contamination.

8. **Grantor’s Share.** Grantor shall promptly pay its share of costs and expenses to Grantee, as work is performed and invoices and supporting documentation for the work are presented to Grantor. Grantor’s share shall be calculated by dividing the additional cost to complete remediation of the Commingled Contamination by the estimated total cost to complete remediation of the Commingled Contamination. As an example, if Grantee’s estimated cost to complete remediation of Covered Contamination (when the Discovered Contamination is determined to be New Contamination) is \$60,000, and the estimated cost to complete remediation of the Commingled Contamination is \$100,000, then Grantor’s obligation shall be the \$40,000 additional cost, divided by the \$100,000 total cost, or 40% of the total remediation costs of the Commingled Contamination.

9. **Arbitration.** If the parties cannot in good faith agree upon the responsibility for Discovered Contamination, the impact of that release upon Grantee’s remediation or the allocation of costs to complete remediation of Commingled Contamination, the parties agree to submit the dispute to arbitration in accordance with the rules of JAMS, the American Arbitration Association, or another nationally-recognized alternative dispute resolution provider. The matter shall be submitted to one arbitrator that is, technically qualified and experienced in matters of assessment and remediation of contamination. The initial filing fee of the arbitrator shall be split equally by Grantor and Grantee, and the non-prevailing party shall pay all additional costs, including the attorney fees of the prevailing party. The arbitrator’s decision shall be final and binding upon the parties and shall have the same force and effect as a judgment in a civil action.

10. **Control of Cleanup.** In addition to any other rights of Grantor established in the Contract, Grantor may from time to time attempt to agree upon the remaining cost of remediation at the Property and the transfer of control for the remediation of Covered Contamination and/or Commingled Contamination from Grantee to Grantor. If the parties agree upon the cost and transfer, Grantee shall pay to Grantor an amount equal to the remaining remediation cost and Grantor shall afterward assume control of Grantee’s remaining work at the Property. The parties shall cooperate in good faith to ensure and maximize any available reimbursement for the costs of the work, including, if applicable, the naming of Grantor as a volunteer or as the designated representative of Grantee for the work.

11. **Reimbursement.** Each party shall be entitled to any reimbursement, payment, or refund available from the Agency (collectively “**Reimbursement**”) for its work at the Property, and each party shall reasonably cooperate with the other in collecting Reimbursement.

12. **Reports.** For as long as this Agreement is in force and effect, Grantee, promptly after receipt or delivery, shall deliver to Grantor copies of all correspondence to and from the Agency, and copies of all reports concerning Covered Contamination (or if applicable, Commingled Contamination) at the Property. These reports and correspondence shall be sent to Grantor’s address above, to the attention of the Regional Environmental Manager (William Bunch). If a Commingled Contamination occurs at the Property, Grantor shall similarly deliver to Grantee copies of correspondence and reports relating to its contamination at the Property.

13. **Indemnity; Insurance.** Grantee agrees that it will indemnify, defend, and hold harmless Grantor for, from, and against: (a) any loss, claim, liability, cost, expense, or damage (including attorney fees and other costs and expenses) caused in whole or in part: (i) by the negligence, intentional acts, or omissions, or unreasonable interference with Grantor's operations at the Property of Grantee or its authorized contractors, employees, and agents in conducting the activities under this Agreement; or (ii) by Grantee's failure to investigate, remediate, and/or clean up Covered Contamination on the Property in compliance with Applicable Law; and (b) any third party claims relating to the presence of Covered Contamination on, at, under, or migrating from the Property. Grantee (or its contractor) shall obtain and maintain workers' compensation, commercial general liability insurance and automobile liability insurance (including owned and non-owned auto coverage) in commercially reasonable amounts (these amounts shall not reduce Grantee's indemnity obligations under this Agreement) and shall show Grantor as an additional insured on the liability policies. This indemnity is expressly conditioned on the following:

If Grantor identifies any matter to which this indemnity may apply or receive a notice or claim from any third party of the matter, it shall promptly notify Grantee in writing of the matter. Failure to give notice of any matter shall not relieve Grantee of the obligation to provide indemnification, except to the extent that Grantee is prejudiced by the failure;

Grantor shall cooperate with Grantee by allowing Grantee and its agents, representatives, contractors, and consultants prompt and ready access to the Property for the purpose of investigating any matter to which this indemnity may apply. Grantor shall provide Grantee with copies of all investigative reports, data, or other information in any form that Grantor or its consultants, agents, or attorneys may have pertaining to any matter; and

This indemnity extends only to liability found to have been due to Grantee's comparative fault and shall not extend to any liability for New Contamination or for any claim determined to be due to the acts or omissions of Grantor, its agents, or employees.

14. **Notices.** Any notice required or permitted to be given to Grantor or Grantee shall be in writing and shall be delivered by hand, mailed by first class mail, postage prepaid, sent via facsimile, or sent by overnight courier to the addresses established at the beginning of this Agreement, as these addresses may be changed by either party by providing written notice of same to the other. Any notice shall be deemed to be received: (a) if delivered personally, on the date of the delivery; (b) if mailed, on the third business day following mailing; or (c) if telecopied or sent by overnight courier, on the first business day following confirmed transmission or delivery to courier.

15. **No Rights.** This Agreement provides only a right of use and does not give Grantee any added interest, title, estate, or right, prescriptive or otherwise, in the Property beyond its present interest. Nothing contained in this Agreement nor the acts of the parties to this Agreement or by any third party shall be deemed or construed to create the relationship of principal and agent, or a partnership, or a joint venture, or of any association between Grantor and Grantee.

16. **Attorney Fees.** If either party brings an action or proceeding against the other to enforce or interpret any term or condition of an action or proceeding, the substantially prevailing party in the action or proceeding shall be entitled to receive from the non-prevailing party its reasonable attorney fees and litigation-related costs and expenses, as determined by the court.

17. **Assignment; Successors and Assigns.** This Agreement may not be assigned by Grantee without the prior written consent of Grantor, whose consent shall not be unreasonably withheld. Any assignment by Grantee without the consent shall be void. Grantor may reasonably withhold consent to

any assignment by Grantee to an entity that does not have the same or better financial strength as Grantee or that cannot provide Grantor with reasonable assurance of its ability to complete the obligations of Grantee established in this Agreement and in the Contract. This Agreement shall be binding upon and inure to the benefit of the parties' respective representatives, successors, and permitted assigns.

18. **Entire Agreement; Modification; Severability.** This Agreement represents the full, complete, and entire agreement between the parties, and the rights and remedies of the parties shall be solely and exclusively those contained in this Agreement and in lieu of any remedies otherwise available at law or in equity. This Agreement may not be amended except in writing and signed by Grantor and Grantee. If any of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired.

19. **Governing Law.** This Agreement shall be construed and interpreted and governed by and in accordance with the local law of the state in which the Property is located.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one Agreement.

The Parties have executed this Agreement by their duly authorized representative as of the dates below.

**“Grantee”**

William G Malone Trust

**“Grantor”**

Circle K Stores Inc.,  
a Texas corporation

By: [EXHIBIT ONLY] \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: [EXHIBIT ONLY] \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT "F"**  
**TO**  
**PURCHASE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Deed)

**WHEN RECORDED RETURN TO:**

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**SPECIAL WARRANTY DEED**  
[Statutory Form - C.R.S. § 38-30-113]

WILLIAM G MALONE TRUST ("Grantor"), whose street address is 3612 Pennington Circle, Modesto, California 95356, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sell and convey to CIRCLE K STORES INC., a Texas corporation, whose street address is 5500 South Quebec, Suite 100, Greenwood Village, Colorado 80111, the real property in the County of El Paso and State of Colorado described on **Exhibit A** attached hereto and made a part hereof, with all its appurtenances, and warrants the title to the same against all persons claiming under Grantor, subject to the matters set forth on **Exhibit B** attached hereto and made a part hereof.

Signed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SIGNATURE PAGE FOLLOWS]

DATED as of \_\_\_\_\_, 20\_\_.

**“GRANTOR”**

WILLIAM G MALONE TRUST

By: \_\_\_\_ [EXHIBIT ONLY] \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of the William G Malone Trust.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**EXHIBIT “A”  
TO  
SPECIAL WARRANTY DEED**

(Legal Description)

**EXHIBIT “B”  
TO  
SPECIAL WARRANTY DEED**

(Permitted Exceptions)

15939060\_v2

**PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS  
(6810 & 6930 N. MERIDIAN RD., PEYTON, CO 80831)**

**Seller:** Randy L. Gibbs and Vicky L. Gibbs  
6810 N. Meridian Rd.  
Peyton, CO 80831  
Telephone: 719-495-4700  
E-Mail: GRVGIBB@AOL.COM

with a copy to: Re/MAX Real Estate Group  
12265 Oracle Blvd.  
Colorado Springs, CO 80921  
Attention: Sandra Lehmann  
E-Mail: sandralehmannsellshomes@gmail.com

**Buyer:** Circle K Stores Inc., a Texas corporation  
Circle K Stores Inc.  
5500 South Quebec, Suite 100  
Greenwood Village, Colorado 80111  
Attn: Real Estate Department  
Email: zpericak@Circlek.com

with a copy to: Circle K Stores Inc.  
19500 Bulverde Road, Suite 100  
San Antonio, Texas 78259  
Attn: Murray H. Van Eman, Senior Counsel  
Email: Murray.VanEman@circlek.com

**Escrow Agent:** Chicago Title Insurance Company  
3100 Monticello, Suite 800  
Dallas, TX 75205  
Attention: Nancy Shirar  
Telephone: (972) 764-4874  
Facsimile: (214) 520-5982  
E-mail: Nancy.Shirar@ctt.com

**Escrow:** 8000362100185

**Purchase Price:**

[REDACTED]

**Land:**

Approximately 208,324 square feet (4.78 acres) of unimproved real property generally located at 6810 & 6930 N. Meridian Rd., Peyton, CO 80831 in El Paso County, designated as County Assessor Parcel Nos. 5312403004, 5312402015, 5312405003, 5312404003, & 5312405005, and legally described and/or generally depicted on Exhibit "A".

**Initial Earnest Money:**

[REDACTED]

**Extension Deposit:**

[REDACTED]

**Investigation Period:**

One Hundred Eighty (180) days from the Effective Date (as defined below).

**Extension Periods:**

Five (5) 30-day extensions of the Investigation Period.

**Closing Date:**

Thirty (30) days after the expiration of the Investigation Period.

**Buyer's Broker:**

Legend Partners LLC  
5150 East Yale Circle, Suite 400  
Denver, Colorado 80222  
Attention: Nate Hansen

**Seller's Broker:**

Re/MAX Real Estate Group  
215 West Rockrimmon Blvd  
Colorado Springs, CO 80919  
Attention: Sandra Lehmann

**THE TERMS LISTED ABOVE ARE DEFINED TERMS THAT ARE REFERRED TO THROUGHOUT THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS.**

## ARTICLE I AGREEMENT, PROPERTY, AND PURCHASE PRICE

**Section 1.01. Agreement.** This Purchase Agreement and Escrow Instructions (inclusive of all exhibits, this “**Contract**”) will constitute a binding and effective agreement of Seller to sell the Property to Buyer and will constitute a binding and effective agreement of Buyer to purchase the Property from Seller effective as of the “**Effective Date**” (as defined in Section 1.05).

**Section 1.02. Inclusions in Property.** The “**Property**” includes the Land and all easements, licenses, interests, rights, privileges, and appurtenances held by Seller as of the Closing Date that in any way benefit the Property or relate to the ownership of the Property, including, without limitation: (i) any and all mineral, water, and irrigation rights running with or pertaining to the Property; (ii) all of Seller’s interest in any road, street, or alleyway adjoining the Property; (iii) any rights or interests that may accrue to the benefit of Seller or the land as a result of the abandonment of any road, street, or alleyway adjoining the Property; (iv) any and all buildings, trade fixtures, equipment, and improvements that may be located on the Property; (v) any and all replacements, renewals, substitutions, and additions of or to the Property that may be made or acquired after the Effective Date; and (vi) all transferable permits, licenses, warranties, and entitlements applicable to the Property.

**Section 1.03. Purchase Price.** To consummate its purchase of the Property, Buyer agrees to pay the Purchase Price to Seller in all cash. The Purchase Price will be paid by Buyer to Seller as follows:

- (a) Buyer will deposit the Initial Earnest Money into the Escrow within five (5) business days of the Effective Date.
- (b) After application of the Earnest Money, Buyer will pay the remaining balance (“**Closing Cash**”) due on the Purchase Price to Seller through Escrow on the Closing Date.

**Section 1.04. Earnest Money.** The term “**Earnest Money**” means the Initial Earnest Money and Extension Deposits (if any). If the Escrow closes, the Earnest Money will be credited and applied for the benefit of Buyer by Escrow Agent to the Purchase Price. Unless Buyer has previously canceled the Contract and Escrow, the Earnest Money will be nonrefundable on the later of its deposit or the expiration of the Investigation Period, except as otherwise provided in this Contract.

**Section 1.05. Effective Date.** The term “**Effective Date**” means the date upon which Escrow Agent has in its possession at least one fully executed original or electronic counterpart of this Contract and, by its execution below, accepts this Contract as its escrow instructions. Escrow Agent will indicate the date of the Effective Date on Escrow Agent’s Acceptance attached at the end of this Contract.

**Section 1.06. Close of Escrow.** The completion of the purchase and closing of the Escrow (referred to interchangeably as the “**Closing**” or the “**Close of Escrow**”) will occur on or before the Closing Date or any earlier date for which Buyer has provided at least five (5) business days' prior written notice to Seller and Escrow Agent.

**Section 1.07. Escrow Instructions.** This Contract, including the “**Additional Escrow Instructions**” attached as **Exhibit “B”**, will constitute the sole escrow instructions to Escrow Agent, and no standard form escrow instructions of Escrow Agent will be used for this Escrow.

**Section 1.08. Site Plan.** As used in this Contract, the term “**Buyer’s Site Plan**” means the preliminary site or land plan attached as **Exhibit “D”**, as may be modified from time to time, by Buyer

with the approval of any federal, state, or other political, governmental, or quasi-governmental authority or association or any other entity or third-party, including all applicable councils, boards, commissions, committees, departments, and agencies and all utility providers or regulators, having jurisdiction and/or approval rights over the ownership, operation, or use of the Property and/or the construction of improvements thereon (called, collectively, the “**Governmental Authorities**”).

**Section 1.09. Status Reports.** From and after the Effective Date, Buyer shall provide Seller with an update on the status of Buyer’s due diligence activities related to the Property not less than one (1) time per calendar month. Seller shall use commercially reasonable efforts to schedule a telephone conference with Seller to deliver such update; provided, however, that if the parties are unable to schedule a telephone conference then Buyer may deliver the status update in writing via email.

## ARTICLE II DUE DILIGENCE DOCUMENTS

**Section 2.01. Title.** Within twenty (20) days after the Effective Date, Escrow Agent will provide Buyer with a preliminary title report or title commitment for an ALTA extended owner’s policy of title insurance for the Property in the amount of the Purchase Price and complete and legible copies of all instruments and documents referred to as exceptions to title, including a copy of the so-called vesting deed (collectively, the “**Report**”). The Report must be issued by Escrow Agent or an acceptable title insurance underwriter, must include all title requirements for closing, and must be dated with an effective date and time after the Effective Date.

**Section 2.02. Survey.** During the Investigation Period, Buyer, at Buyer’s cost, shall cause to be prepared an ALTA/NSPS Land Title Survey (“**Survey**”) of the Property. The Survey will be certified to Buyer, Seller, and Escrow Agent, and Buyer will cause a copy of the Survey to be delivered to Seller and Escrow Agent. The Survey will be the basis for determining the final legal description for the Property.

**Section 2.03. Environmental.** During the Investigation Period, Buyer, at Buyer’s cost, may cause to be prepared a Phase I Environmental Site Assessment and, if necessary or desirable, a Phase II report (collectively, the “**ESA**”) of the Property in accordance with any current ASTM Standards. If prepared, the ESA will be certified to Buyer and Seller, and Buyer will cause a copy of the ESA to be delivered to Seller.

**Section 2.04. Due Diligence Documents.** Within twenty (20) days after the Effective Date, Seller will deliver to Buyer copies of all existing surveys, leases, environmental reports, water reports, soil tests, topography studies, archaeological tests, engineering reports, traffic studies, maintenance records, marketing studies, maintenance reports, appraisals, zoning reports, zoning stipulations, development agreements, cost estimates, infrastructure plans, licenses, tax abatement agreements, revenue sharing arrangements, and similar records relating to the Property that were delivered to or performed by or for Seller or its affiliates and/or that are in the possession of, or are readily available to, Seller, its agents, or its affiliates (collectively, the “**Due Diligence Documents**”). The Due Diligence Documents will be itemized in writing by Seller at the time of their delivery to Buyer. The Investigation Period shall be automatically extended one (1) day for each day that delivery of the Due Diligence Documents is delayed beyond the five (5) day period set forth above. Copies of any such items not in Seller’s possession upon the Effective Date (the “**Additional Due Diligence Documents**”) but which come into Seller’s possession prior to Closing, shall be delivered to Buyer within three (3) days after coming into Seller’s possession, but in no event later than the Closing Date (in either such case the Investigation Period and Closing Date, if necessary, shall be extended for a period of five (5) days solely to allow Buyer to review and approve or disapprove, in its sole and absolute discretion, such Additional Due Diligence Documents). If Seller does not possess an item of Additional Due Diligence Documents but has actual knowledge of the existence of



the same, Seller will completely disclose (to the extent of Seller's actual knowledge) the whereabouts of such information to Buyer and will cooperate, but without cost to Seller, with Buyer to allow Buyer to attempt to obtain such information. If underground storage tanks and/or related piping ("UST's") have ever been located under the Property, Seller will provide Buyer, concurrent with the delivery of the other Due Diligence Documents, copies of all tank registrations, tank and line tests, compliance tests and results, and inventory records for the three most recent years, together with all information in Seller's possession concerning any leakage from the UST's or contamination of the Property.

### ARTICLE III INTERIM SELLER OBLIGATIONS AND REPRESENTATIONS

**Section 3.01. Interim Acts of Seller.** Seller agrees that, from the Effective Date until the Closing or earlier termination of this Contract, without the prior written consent of Buyer, Seller will not (a) enter into any lease or other oral or written agreement affecting the Property, which might become binding upon Buyer or the Property, or that relates to the sale, lease, occupancy or transfer of the Property or any portion thereof, or that otherwise encumbers or restricts the Property in any manner whatsoever, (b) permit any modifications or additions to the Property (including, but not limited to, changing the native grade of the Property), (c) grant any easements with respect to the Property, (d) allow any liens to attach to the Property before the Closing that will not be satisfied out of Seller's Closing proceeds, except for any such liens which are caused by Buyer's actions on the Property which shall be satisfied by Buyer prior to Closing. Seller agrees that there will be no outstanding obligations of Seller with respect to the Property as of the Closing, except for obligations described in this Contract to be prorated at Closing, obligations that will be satisfied out of Seller's proceeds at Closing, or any indebtedness taken subject to or assumed by Buyer in writing.

**Section 3.02. Work on Property.** To the extent that there is any work performed on the Property by Seller, Seller's agents, or independent contractors engaged by Seller prior to the Closing, all invoices, liens, and/or payment requests will be paid in full by Seller by no later than the Closing. If requested by Buyer or Escrow Agent, Seller will deliver unconditional lien releases to Buyer and Escrow Agent for all work performed by Seller, Seller's agents, or any independent contractor engaged by Seller.

**Section 3.03. Representations and Warranties of Seller.** Seller represents and warrants to Buyer as follows:

(a) Seller is the owner of marketable fee simple title to the Property. The Property has access to one or more public roadways.

(b) To Seller's knowledge, the Property is not now being used and, to Seller's knowledge, has not previously been used for the generation, transportation, treatment, storage, or disposal of any hazardous or toxic wastes or substances that are subject to regulation under any federal, state, or local laws or regulations ("**Hazardous Waste Laws**"). To Seller's knowledge, there have been no past or current releases or substantial threats of a release of a hazardous or toxic waste or substance from or unto the Property that are or may be subject to regulation under the Hazardous Waste Laws.

(c) Seller has not received any notice by any person, authority, or agency having jurisdiction over the Property or Seller with regard to the violation of any applicable regulation, ordinance, requirement, covenant, condition, or restriction relating to the use or occupancy of the Property.

(d) To Seller's knowledge, there are no intended public improvements that will or could result in any charges being assessed against the Property and that will or could result in a lien or encumbrance upon the Property or its owners.

(e) To Seller's knowledge, there is no pending or contemplated condemnation or taking by inverse condemnation of all or any portion of the Property by any Governmental Authorities.

(f) To Seller's knowledge, there are no suits or claims pending or threatened with respect to or in any manner affecting the Property. Seller does not know of any circumstances that should or could reasonably form the basis for any suits or claims and that have not been disclosed in writing to Buyer by Seller.

(g) Other than this Contract, Seller has not entered into any written or oral agreement or option under which Seller is or could become obligated to sell or dedicate all or any portion of the Property and Seller will not enter into this type of agreement or option with respect to the Property during the term of the Escrow.

(h) The act of entering into this Contract and the completion of this transaction will not in any way violate any agreements to which Seller is a party or any laws to which Seller is subject.

(i) This Contract has been duly authorized and executed on Seller's behalf and constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms. Seller is not prohibited from consummating this transaction by the terms of its governing document or any judicial or governmental order or stay.

(j) Except for three (3) wells and two (2) septic tanks which Seller has previously disclosed to Buyer, to Seller's knowledge, there are no other wells, drilling holes, wellheads, or underground storage tanks located on or under the surface of the Property.

(k) Seller has not entered into any public or private shared expense agreements, repayment agreements, reimbursement agreements, impact fee credit agreements, or development payback agreements that affect all or any portion of the Property.

(l) Seller has not entered into any oral or written agreement with any third party that would subject the Property to any land use regulation, restriction, condition, or stipulation that would prevent or impair Buyer's contemplated development operation of the Property.

(m) To Seller's knowledge, there are no parties in adverse possession of the Property, and no party uses or is in possession of the Property other than Seller.

(n) To Seller's knowledge, the Property is not located in or classified as a special district, such as but not limited to any historic, landmark, restricted parking, overlay, planned urban development district.

(o) To Seller's knowledge, there are no items of archeological significance located on, about, or under the Property.

(p) The Property is not subject to any land use regulation, restriction, condition, or stipulation that may be imposed by any oral or written agreement between Seller and any third

party that would prevent or impair Buyer's contemplated development and operation of the Property.

(q) Seller is not a Prohibited Person<sup>1</sup> as defined in the USA PATRIOT Act, Public Law 107-56.

(r) The Property access to utilities, except for water and sewer, of a size and capacity that may be tapped into by Buyer.

(s) The Property is not subject to any lease or occupancy license that would give anyone other than Buyer the right to use or occupy the Property after the Closing Date.

All representations and warranties contained in this Contract are true on and as of the Effective Date, will be true on and as of the Close of Escrow, and will survive the Close of Escrow and the execution, delivery, and recordation of the conveyancing deed. Should Seller, at any time after the Effective Date and prior to Closing, learn that any of the foregoing representations and warranties are no longer true and correct, Seller shall promptly notify Buyer of such fact, stating with specificity the nature and extent to which Seller's representations and warranties have changed. Any breach of the warranties or representations made to Buyer by Seller under this Contract shall be deemed an Event of Default under Section 8.05 herein, and shall be subject to Buyer's remedies as set forth therein.

**Section 3.04. Buyer Representations and Warranties.** Buyer represents and warrants to Seller as follows:

(a) Buyer has the full power to execute, deliver, and carry out the terms and provisions of this Contract and has taken all necessary action to authorize the execution, delivery, and performance of this Contract;

(b) The execution and delivery of this Contract is not prohibited by, will not conflict with, constitute grounds for termination of, or result in the breach of any agreements or instruments to which Buyer is now a party or by which it is bound, or any order, rule, or regulation of any court or any other governmental agency or official; and

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<sup>1</sup> A "**Prohibited Person**" shall mean any person, organization, or entity: (i) listed in the Annex to, or is otherwise subject to, the provisions of Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Executive Order**"); (ii) owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) with whom a party is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the PATRIOT Act and the Executive Order; (iv) that commits, threatens, or conspires to commit or supports "**terrorism**" as defined in the Executive Order; (v) that is named as a "specifically designated national" or "blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn>, or at any replacement website or other replacement official publication of the list or is named on any other U.S. or foreign government or regulatory list maintained for the purpose of preventing terrorism, money laundering, or similar activities; (vi) that is covered by IEEPA, OFAC, or any other law, regulation, or executive order relating to the imposition of economic sanctions against any country, region, or individual pursuant to United States law or United Nations resolution; or (vii) that is an affiliate (including any principal, officer, immediate family member, or close associate) of a person or entity described in one or more of the above clauses of this definition of Prohibited Person.

(c) This Contract constitutes the valid and binding agreement of Buyer, enforceable in accordance with its terms, subject to the provisions of Section 5.06 below.

#### ARTICLE IV TITLE AND SURVEY CONTINGENCY

**Section 4.01. Buyer's Objections.** No later than thirty (30) days following the last to be delivered of the Report and Survey, Buyer shall advise Seller in writing that Buyer objects, in Buyer's sole discretion, to any matters contained in the Report or Survey ("**Buyer's Objections**"). If the Report or Survey is amended, Buyer will have until the later of the end of the Investigation Period or 10 business days following its receipt of the amended Report (including legible and complete copies of all new exceptions or requirements to title) or amended Survey to deliver Buyer's Objections to any new matter. If Buyer fails to timely deliver Buyer's Objections, Buyer will be deemed to have waived its right to deliver the Buyer's Objections to the Report or Survey, as applicable.

**Section 4.02. Seller's Cure.**

(a) Within 10 days of Seller's receipt of timely delivered Buyer's Objections, Seller will send written notice ("**Title Response**") to Buyer specifying in detail which of Buyer's Objections that Seller will or will not cure. Seller will have no obligation to cure any of Buyer's Objections, except as established below. If Seller commits to removing any of Buyer's Objections (or obtaining endorsements acceptable to Buyer) and fails to do so by the expiration of the Investigation Period, Seller will be in default under this Contract and Buyer, at Buyer's election, may pursue its remedies as established in this Contract. Within 10 days after Buyer's receipt of the Title Response from Seller, Buyer may elect, by delivering written notice to Seller and Escrow Agent, to either: (i) proceed with the purchase and sale of the Property (on the condition that Seller accomplishes any objectives described by Seller in the Title Response); or (ii) cancel this Contract and the Escrow. If Buyer exercises its cancellation remedy above, this Contract and the Escrow will be deemed cancelled as of the date of Buyer's notice and the cancellation will be governed by the provisions of Section 5.09.

(b) Notwithstanding anything to the contrary in this Contract and without the need to make any formal written objections, Buyer objects to: (i) all deeds of trust and/or mortgages and any ancillary encumbrances, including but not limited to, assignments of leases and rents and UCC-1 financing statements; (ii) any restrictions prohibiting use of the Property as or for a convenience store, for the sale of motor vehicle fuels, and/or any restrictions on hours of operation; (iii) all judgment liens, mechanic's liens, notices of lis pendens, tax liens, attachments, and any other matters evidencing monetary encumbrances (other than liens for non-delinquent property taxes); (iv) any options or rights of purchase; (v) notices of lease, possession, or occupancy rights to all or part of the Property; (vi) all restrictive easement agreements, conditions, covenants, restrictions and easements, site development agreements, and all other similar agreements and declarations.

(c) Seller, at Seller's sole cost and expense, will fully pay and discharge and release the Property from any and all recorded or unrecorded mortgages, deeds of trust, installment land contracts, judgments, tax liens, mechanics liens, lawsuits, or other monetary liens affecting or purporting to affect title to the Property (including any prepayment penalties), and Seller authorizes and directs Escrow Agent to use Seller's proceeds from the Closing to remove and discharge these matters.

**Section 4.03. Extension to Closing for Cure.** The Closing Date will be extended to the date that is five (5) business days following the later of: (a) the time period described in Section 4.01 for Buyer's review of any amended Report or Survey; or (b) the time period described in Section 4.02 for Seller's curing of Buyer's Objections, if Buyer has objected to any new exception or requirement contained in any amended Report or Survey.

## ARTICLE V OTHER BUYER CONTINGENCIES

**Section 5.01. Buyer Investigations.** Buyer will have until the end of the Investigation Period within which to conduct and approve any feasibility studies, physical inspections, environmental testing, due diligence investigations, economic studies, marketing reports, utility studies, soil tests, or other tests or investigations (collectively, the "**Buyer Investigations**") deemed necessary by Buyer, in its sole discretion, to determine the economic, physical, developmental, and operational feasibility of Buyer's purchase of the Property. Buyer's obligation to purchase the Property is conditioned on Buyer's approval of the results of the Buyer Investigations and the Due Diligence Documents, in Buyer's sole discretion. Buyer has the absolute right to terminate this Contract for any reason during the Investigation Period, and shall not be obligated to close the transaction for the purchase of the Property unless Buyer delivers to Seller, prior to the end of the Investigation Period, written notice that Buyer has waived its right to terminate this Contract (the "**Exercise Notice**"). The date on which Buyer delivers the Exercise Notice to Seller (so long as it is delivered on or prior to the end of the Investigation Period) is referred to herein as the "**Going Forward Date**" and the Investigation Period shall end on the Going Forward Date. Notwithstanding anything to the contrary contained herein, the Earnest Money shall be fully refundable to Buyer prior to Buyer delivering the Exercise Notice as provided above, and if Buyer fails to timely deliver the Exercise Notice to Seller, then this Contract shall immediately terminate at 11:59 p.m. Eastern Time (ET) on the last day of the Investigation Period and both parties shall be fully released herefrom, except as otherwise expressly provided in this Contract, as of 11:59 p.m. ET on the last day of the Investigation Period; provided, however that the Title Company shall immediately refund to Buyer all of the Earnest Money.

**Section 5.02. Right of Entry.** Seller grants to Buyer and Buyer's agents, employees, and contractors the right to enter upon the Property, at all reasonable times during the term of this Escrow, to conduct any Buyer Investigations. Seller agrees (at no cost to Seller) to cooperate in a reasonable manner with Buyer and its agents, employees, and contractors in the performance of the Buyer Investigations. To the extent Buyer damages or disturbs the Property, Buyer will return the Property to substantially the same condition that existed immediately prior to the Buyer Investigations. Buyer agrees to indemnify, defend, and hold Seller harmless for, from, and against any claim, damage, liability, cost (including reasonable court costs and attorney fees), loss, or injury arising as a direct consequence of Buyer Investigations, excluding any conditions which previously existed upon the Property. This inspection indemnity of Buyer will survive the cancellation of this Contract and Escrow and the Closing.

**Section 5.03. Declaration of Restrictions.** Prior to the end of the Investigation Period, Buyer and Seller agree to negotiate in good faith a declaration of restrictions (the "**Declaration**") burdening any real property owned directly or indirectly by Seller and located within two (2) miles of any part of the Property (the "**Burdened Property**") to be recorded at Closing and containing the following use restrictions and protections for Buyer and the Property:

- (a) No part of the Burdened Property will be used as a Convenience Store. The term "**Convenience Store**" means a retail store selling, renting or providing merchandise and/or services customarily sold, rented or provided from time to time at stores operated or franchised by Tenant within the State of Colorado, and including by way of example, but not limited to,

merchandise and/or services customarily sold, rented or provided from time to time at stores such as a Cumberland Farms, 7-Eleven, Stop N Shop, On the Run, High's, Store 24, WaWa, and Kwik Stop, and other regional or "mom and pop" convenience stores or businesses.

(b) No part of the Property will be used as a Motor Fuels Facility. The term "**Motor Fuels Facility**" means a full-service and/or self-service facility which provides for the retail sale and dispensing of gasoline, other petroleum products, or other common methods of propelling vehicles.

(c) No part of the Property will be used as a Liquor Store. The term "**Liquor Store**" means a retail store selling primarily beer, wine or other alcoholic beverages for off-premise consumption.

(d) Notwithstanding anything to the contrary in this Contract, Buyer will have the right to enforce any violation of the above declaration by any remedy available at law or in equity, including the right to injunctive relief without the necessity of posting a bond.

#### **Section 5.04. Entitlement Approvals.**

(a) Buyer's obligation to close this Escrow and consummate the purchase of the Property is conditioned upon Buyer's ability to obtain from the applicable Governmental Authorities on or before the expiration of the Investigation Period, all necessary final and written permits and approvals necessary for Buyer to develop and operate the Property as a convenience store (including, at Buyer's election, a quick serve restaurant and/or a car wash) selling alcoholic beverages, motor vehicle fuels, and lottery tickets (or other allowable gaming), including, without limitation, any zoning changes, zoning variances, Buyer's Site Plan approvals, use permits, liquor licenses, special use permits, gaming license, beer and wine license, subdivision approvals, lot divisions, lot consolidations, other land use entitlements and building permits and approvals necessary for Buyer's intended development of the Property, subject to only those conditions, stipulations, costs and other matters as are acceptable to Buyer in its sole and absolute discretion (collectively, the "**Entitlement Approvals**"). If Buyer delivers notice to Seller on or before the expiration of Investigation Period, as may be extended, that Buyer has been unable to obtain the Entitlement Approvals, then this Contract and the Escrow will be immediately deemed cancelled, and the cancellation will be governed by the provisions of Section 5.09.

(b) Notwithstanding the foregoing, if any referendum petition challenging any aspect of the Entitlement Approvals is filed with the Governmental Authorities within any applicable referendum petition filing period, Buyer will be permitted to cancel this Contract and the Escrow, even though the Investigation Period may have passed, by giving Seller and Escrow Agent written notice of cancellation within 15 days after the date Buyer receives notice of the filing of the referendum. Any cancellation above will be governed by the provisions of Section 5.09.

(c) Seller will cooperate in all reasonable respects with Buyer in applying for and obtaining the Entitlement Approvals, but all costs for any applications will be solely those of Buyer.

**Section 5.05. Post-Closing Occupancy Agreement.** Prior to the end of the Investigation Period, Buyer and Seller agree to negotiate in good faith an agreement pursuant to which Seller will be entitled to remain in possession of the Property for up to ninety (90) days after the Closing Date (the “**Post-Closing Occupancy Agreement**”).

**Section 5.06. Management Approval.** This transaction is subject to the approval of Buyer’s (or its corporate parent’s) senior management and/or Board of Directors (“**Management Approval**”). Buyer shall use reasonable efforts to obtain Management Approval and shall promptly notify Seller of the approval or disapproval of the transaction.

**Section 5.07. Extension.** Buyer may extend the Investigation Period for the Extension Periods by notifying Seller and Escrow Agent in writing prior to the expiration of the then-applicable Investigation Period and depositing with Escrow Agent the Extension Deposit within five (5) days after the commencement of such Extension Period.

**Section 5.08. Purchase of Adjacent Property.** Seller acknowledges that Buyer is or will become party to a binding contract (the “**Adjacent Property Purchase Contract**”) pursuant to which Buyer will acquire fee simple title to the real property adjacent to the Property and currently owned by the William G. Malone Trust (the “**Adjacent Property**”). Buyer’s obligation to purchase the Property is conditioned on the transaction contemplated in the Adjacent Property Purchase Contract on or prior to the Closing Date. Buyer has the absolute right to terminate this Contract at any time if the Adjacent Property Purchase Contract has not closed on or prior to the Closing Date or if the Adjacent Property Purchase Contract is terminated for any reason. In Buyer elects to terminate in accordance with this Section, this Contract shall immediately terminate upon Seller’s receipt of notice of Buyer’s election and both parties shall be fully released herefrom, except as otherwise expressly provided herein; provided, however that the Title Company shall immediately refund to Buyer all of the Earnest Money

**Section 5.09. Failure of Condition.** If Buyer properly provides written notice of its election to cancel this Contract and the Escrow, the cancellation will be immediate, neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under this Contract, and Escrow Agent will return promptly to Buyer all Earnest Money without the need for further documentation from either party. Buyer’s failure to timely deliver a written notice of cancellation for a failure of any of the contingencies described above will be deemed a waiver of Buyer’s right to cancel this Contract for a failure of that condition.

## ARTICLE VI CLOSING

**Section 6.01. Non-Foreign Affidavit.** At the Closing, Seller agrees to furnish to Buyer either a sworn affidavit stating, under penalty of perjury, that Seller is not a “foreign person” as defined in the Internal Revenue Code of 1986, as amended (“**Code**”) or other appropriate evidence that Buyer is not required to withhold taxes under Section 1445(a) of the Code. If Seller does not furnish the sworn affidavit or other appropriate evidence deemed satisfactory by Buyer and Escrow Agent, Buyer may withhold or direct Escrow Agent to withhold from Seller’s sale proceeds an amount equal to the amount required to be withheld pursuant to Section 1445 of the Code. Any withheld funds will be deposited by Escrow Agent with the Internal Revenue Service as required by Section 1445(a) and any applicable regulations. The amount withheld, if any, will nevertheless be deemed to be part of the Purchase Price paid to Seller.

**Section 6.02. Closing Deliveries.** Seller, on the Closing Date, will deposit with Escrow Agent (for recordation, if applicable, and delivery to Buyer): a warranty deed, in the form attached as

**Exhibit “F”**, subject to those title and/or survey matters approved by Buyer (the “**Deed**”), a bill of sale for any personal property, an assignment of any transferable permits, licenses, warranties, and entitlements (if Buyer elects to do so in a separate document), the Declaration, the Post-Closing Occupancy Agreement such other documents and instruments as may be required by applicable law, and all resolutions and authorizations required by Escrow Agent to insure Seller’s authority and ability to sell the Property. Buyer, on the Closing Date, will deliver to Escrow Agent (for disbursement to Seller) the Closing Cash, plus all additional sums necessary to pay Buyer’s portion of the closing costs and prorations, the Declaration, the Post-Closing Occupancy Agreement, and all resolutions and authorizations required by Escrow Agent to insure Buyer’s authority and ability to acquire the Property.

### **Section 6.03. Intentionally Omitted.**

**Section 6.04. Accuracy of Warranties.** Buyer’s obligation to purchase the Property is conditioned upon the truth and accuracy, in all respects, of Seller’s warranties and representations made under this Contract. Seller will indemnify, defend, and as of the Closing Date hold harmless Buyer for, from, and against any claims, expenses, liabilities, losses, liens, damages, and costs, including attorney fees in a reasonable amount, arising out of any inaccurate or untrue warranties and representations made by Seller. Buyer will indemnify, defend, and hold harmless Seller for, from, and against any claims, expenses, liabilities, losses, liens, damages, and costs, including attorney fees in a reasonable amount, arising out of any inaccurate or untrue warranties and representations made by Buyer. The indemnification obligations above will survive the Closing and the execution, delivery and recordation of the Deed.

**Section 6.05. Title Policy.** Buyer’s obligation to purchase the Property is conditioned upon Escrow Agent’s issuance of (or the unconditional written commitment of Escrow Agent to issue) an ALTA Extended Owner’s Policy of Title Insurance (“**Title Policy**”) in an insured amount at least equal to the Purchase Price effective no earlier than the actual Closing Date and insuring Buyer’s fee simple title to the Property, subject only to those matters approved by Buyer under this Contract.

## **ARTICLE VII CLOSING PRORATIONS AND COSTS**

### **Section 7.01. Real Estate Taxes and Assessments.**

(a) All non-delinquent real estate or ad valorem taxes on the Property will be prorated as of the Closing Date, based upon the most current information available. All delinquent real estate or ad valorem taxes will be paid in full by Seller on the Closing Date together with all penalties and redemption charges. No further adjustment in any tax figures will occur following the Closing. Seller will be entitled to receive any refunds or over-payments for taxes for tax years prior to the year in which the Closing occurs. All improvement liens, special taxing districts, or other special municipal or county assessments that affect the Property and that exist as of the Closing Date will be paid in full by Seller as of the Close of Escrow.

(b) If the Property is not assessed as a separate tax parcel on the assessment rolls of the applicable County Assessor for the tax year in which the Closing Date occurs, Escrow Agent will handle the proration and payment of the real estate taxes for the Property as follows: (i) Seller will pay all real estate taxes on the entire tax parcel (including the Property) through and including the Closing Date, based upon the most current information available; and (ii) Buyer will pay all real estate taxes on the Property after the Closing Date. Escrow Agent will calculate the portion of the real estate taxes attributable to the Property based on a comparison of the net acres of the Property divided by the net acres of the entire tax parcel. Buyer and Seller will cooperate with each other after the Closing Date to cause the Property to be assessed as a separate



tax parcel. At Closing, Buyer and Seller will execute and deliver a Tax Proration Agreement in the form that is attached as **Exhibit "G"**.

**Section 7.02. Title Insurance.** Seller will pay the cost of issuance of a standard owner's policy of title insurance in the full amount of the Purchase Price and Buyer will pay any additional title policy premium necessary to issue the Title Policy or any endorsements or to increase the Policy amount.

**Section 7.03. Closing Costs.** All costs and expenses of closing, including recording and escrow fees and charges, are to be allocated between Seller and Buyer in the manner contemplated by this Contract or, if not dealt with under this Contract, according to the custom and practice of Escrow Agent. Seller agrees that all closing costs and any other sums required to be paid by Seller will be paid in full at Closing and may be deducted from the proceeds otherwise payable to Seller at Closing. Each party agrees to pay its own attorney fees. All prorations that are required to be made under this Contract will be made as of the 12:01 a.m. on the date of Closing on the basis of a 365 day year.

## ARTICLE VIII GENERAL PROVISIONS

**Section 8.01. Notices.** Except as otherwise required by law, any notice required or permitted under this Contract must be in writing and must be given either: (i) by personal delivery; (ii) by United States certified mail, return-receipt requested, postage prepaid, and properly addressed; (iii) by any private overnight, "same day", or "next-day" delivery service, delivery charges prepaid with proof of receipt; or (iv) by email or facsimile. Notice sent in any of the manners set forth above must be addressed or sent to Seller, Buyer, and/or Escrow Agent at the addresses set forth on the first page of this Contract. Any party may change its address for the purposes of delivery and receipt of notices by advising all other parties in writing of the change. Notice delivered in one of the foregoing manners will be deemed to be received: (I) on the date of delivery, if personally delivered; (II) on the date that is three days after deposit in the United States mail, if given by certified mail; (III) on the business day following the day deposited with an express delivery service, if given by overnight, "same day", or "next-day" delivery service, or (IV) the date of transmittal, if given by electronic mail or facsimile machine or telecopy. No notice will be deemed effective unless sent in one of the manners described above.

**Section 8.02. Broker's Commission.** Except for the Buyer's Broker and the Seller's Broker (collectively, the "**Brokers**"), each party represents and warrants to the other that it has not engaged or dealt with any other broker or any other person who would be entitled to any brokerage commission concerning this purchase of the Property. Each party agrees to indemnify and hold the other entirely free and harmless for, from, and against any loss, damage, liability, or expense (including, without limitation, attorney fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. Each party further agrees to defend the other at its sole cost and expense from any claims. As used in this Contract, the term "**broker**" will refer to any real estate broker, salesperson, agent, listing agent, finder, or any other person entitled to a commission, and the term "**commission**" will refer to any brokerage, advisory, or finder's fees or commissions. If, but only if, the Escrow closes, Seller will pay commissions to the Brokers. The brokerage indemnity ("**Brokerage Indemnity**") referred to in this Section 8.02 will survive the cancellation or termination of this Contract and the related Escrow (and will be enforceable against the indemnifying party notwithstanding anything in this Section 8.02 to the contrary) and the Close of Escrow. If the sale contemplated by this Contract is not consummated for any reason whatsoever, no commission or any portion of the Earnest Money will be payable to the Brokers. Joinder of the Brokers will not be required to modify or cancel this Contract. The Brokers will not be deemed third party beneficiaries of this Contract. Seller acknowledges that Buyer has disclosed to Seller that certain members, principals, or

employees of Buyer may be licensed real estate brokers or agents in the state in which the Property is located.

**Section 8.03. Buyer's Right to Nominate and Assign.** Buyer, by written notice to Seller and Escrow Agent, may (a) assign its interest in this Contract, this Escrow, and the Property to any affiliated entity or franchisee without Seller's prior consent, or (b) assign its interest in this Contract, this Escrow, and the Property to any other party with Seller's prior consent, which shall not be unreasonably withheld, conditioned, or delayed. Upon any assignment, the nominee or assignee will be deemed the "**Buyer**" for all purposes and the original or previous Buyer, upon the assignment, will be relieved of all obligations under this Contract and the Escrow, except for the acts of that person or entity prior to the nomination.

**Section 8.04. Risk of Loss.** All risk of loss, damage, or taking of the Property that may occur prior to Close of Escrow will be borne by Seller. If any loss, damage, or taking occurs prior to Close of Escrow, Buyer, at Buyer's sole option and by written notice to Seller and Escrow Agent, will be entitled to cancel this Contract and the related Escrow. Upon Buyer's cancellation of this Contract under the preceding sentence, the cancellation will be immediate and neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under the Contract, except as otherwise provided in this Contract, and Escrow Agent will return promptly to Buyer all Earnest Money. If Buyer waives the right to cancel this Contract because of any loss or damage to the Property and elects to close the Escrow, Seller, at Close of Escrow and as a condition precedent to closing, must either: (a) pay Buyer (or direct Escrow Agent to credit Buyer against the Purchase Price for) the amount of any insurance or condemnation proceeds actually received or to be received by Seller plus the amount of Seller's deductible under any insurance policy; or (b) if no insurance or condemnation proceeds have been received by Seller, assign to Buyer by proper written instrument all rights or claims to the insurance or condemnation proceeds and pay Buyer (or direct Escrow Agent to credit Buyer against the Purchase Price for) the amount of Seller's deductible under any insurance policy.

**Section 8.05. Seller's Default.** Seller shall be deemed to be in default under this Contract if Seller: (i) breaches its representations or warranties under this Contract as set forth in Section 3.03 hereof; (ii) fails to perform any of its obligations or covenants under this Contract for any reason other than Buyer's prior default or the permitted termination of this Contract by Seller or Buyer as herein expressly provided, or (iii) fails or refuses to comply in a timely manner with any of its obligations under this Contract or at the Closing (each referred to as an "**Event of Default**"). If there is an Event of Default by Seller hereunder, then Buyer may, at Buyer's sole election: (a) terminate this Contract by giving Seller timely written notice of such election prior to or at the Closing, and thereupon this Contract shall terminate, and Buyer shall be entitled to the immediate return of the Earnest Money, and all parties hereto or mentioned herein shall be relieved and released of all further obligations, claims and liabilities hereunder; (b) waive, prior to or at the Closing, the applicable objection or condition and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof; (c) enforce specific performance of Seller's obligations under this Contract; or (d) pursue any and all remedies available to Buyer at law or in equity, subject to Section 8.07 herein. No limitation herein on any remedies that Buyer may elect as the result of a failure by Seller to consummate the sale of the Property to Buyer pursuant to this Contract shall be applicable in any manner with respect to any cause of action that Buyer may have against Seller for a breach of any of Seller's representations or warranties in this Contract or any covenant of Seller in this Contract other than the covenant to convey the Property to Buyer at Closing. The foregoing provisions shall not modify Buyer's right to recover its fees and costs in enforcing this Contract as provided in Section 8.09.

**Section 8.06. Buyer's Default.** If Buyer breaches this Contract or fails to perform any of its covenants or obligations under this Contract or otherwise is in default under this Contract, and if Buyer fails to cure the breach or failure within five (5) days after receipt of written notice from Seller specifying

the default, Seller, as its exclusive and sole right and remedy, will be entitled to cancel this Contract and related Escrow by giving Buyer and Escrow Agent written notice of cancellation. If Seller cancels the Contract, Escrow Agent will immediately pay to Seller the Earnest Money as full liquidated damages of Seller. The parties acknowledge that it is impossible to more precisely estimate the specific damage that would be suffered by Seller in the case of a default or breach by Buyer under this Contract, and the parties expressly acknowledge and intend that the forfeiture of the Earnest Money is an agreed and negotiated provision for liquidated damages and not a penalty. Upon receipt by Seller of the forfeited Earnest Money as provided above, neither party will have any further obligation or responsibility to the other hereunder, except as otherwise specifically established in this Contract. The foregoing provisions shall not modify Seller's right to recover its fees and costs in enforcing this Contract as provided in Section 8.09.

**Section 8.07. Waiver of Consequential Damages.** Each party hereby waives the right to seek and to recover any incidental, consequential, exemplary, extraordinary or punitive damages as a result of the breach by the other party of any of the provisions hereof.

**Section 8.08. Seller Indemnity for Past Acts.** Seller will indemnify, defend, and hold harmless Buyer for, from, and against any claims, expenses, liabilities, losses, liens, damages, and costs arising out of: (a) Seller's ownership and/or operation of the Property prior to the Closing Date; (b) any occurrence on the Property prior to the Closing Date resulting in personal injury, bodily injury, or property damage (except as caused by Buyer under this Contract); and (c) any hazardous material contamination or other environmental condition existing on, at, or under the Property as of the Closing Date (whether discovered before or after the Closing Date). This indemnity includes claims made by third parties or Governmental Authorities and includes lost profits resulting from any unreasonable disruption of Buyer's use of the Property. This indemnity will not include any claims, etc. resulting from Buyer's performance of the Cleanup if Buyer assumes control of the Cleanup. The indemnity obligations of Seller under this Section 8.08 will survive the Close of Escrow and the execution, delivery, and recordation of the Deed.

**Section 8.09. Attorney Fees.** If there is any litigation or arbitration between Seller and Buyer to enforce or interpret any provisions or rights of this Contract, the substantially unsuccessful party in the litigation or arbitration, as determined by the court or arbitrator, agrees to pay the substantially successful party, as determined by the court or arbitrator, all costs, legal fees, and expenses (through trial and appeal), including, but not limited to, attorney fees incurred by the successful party in a reasonable amount.

**Section 8.10. Waiver of Conditions.** Except as otherwise provided in this Contract regarding any deemed waivers for a failure to promptly act or elect, Buyer's contingencies or conditions precedent may be waived only by Buyer, and any waiver by Buyer may be done only in a writing signed by Buyer.

**Section 8.11. Governing Law.** This Contract will be governed by and construed and enforced in accordance with the laws of the state which the Property is located. Any action brought to interpret, enforce, or construe any provision of this Contract must be maintained in a court of competent jurisdiction for the county in which the Property is located (the "**County**") or in the United States federal judicial district for the County. All parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Contract.

**Section 8.12. Construction.** The terms and provisions of this Contract represent the results of negotiations between Seller and Buyer, neither of which have acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Contract should be interpreted and construed in accordance with their usual and customary meanings, and Seller and Buyer each waive the application of any rule of law that states that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party whose attorney prepared the Contract or any earlier draft of the Contract.

**Section 8.13. Interpretation.** The terms of this Contract supersede all prior and contemporaneous oral or written agreements and understandings of Buyer and Seller, all of which will be deemed to be merged into this Contract. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Contract and the terms and provisions of any document, instrument, letter, or other agreement executed in connection with or in furtherance of this Contract, the term, provision, document, instrument, letter, or other agreement will be consistently interpreted in a manner as to give effect to the general purposes and intention as expressed in this Contract.

**Section 8.14. Counterparts.** This Contract and any amendments may be executed in any number of original or facsimile counterparts, each of which will be effective on delivery and all of which together will constitute one binding agreement of the parties. Any signature page of the Contract may be detached from any executed counterpart of the Contract without impairing the legal effect of any signatures and may be attached to another counterpart of the Contract that is identical in form to the document signed (but that has attached to it one or more additional signature pages).

**Section 8.15. Severability.** If any one or more of the provisions of this Contract or the applicability in any provision to a specific situation is held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of the provisions will not be affected by any such invalidity or unenforceability.

**Section 8.16. Miscellaneous Definitions and Standards.** The term “sole discretion” means that the act or decision of the party may be made in the party’s independent and individual choice of judgment, without regard to any objective or other standard of consideration. Except for those acts or decisions that may be made in a party’s “sole discretion”, all acts or decisions of any party to this Contract must be exercised with reasonable discretion. The term “will” denotes a mandatory obligation, and the term “may” is a permissive word denoting an option. All references in this Contract to the “Escrow Agent” will be deemed to include the applicable title insurance underwriter for the Title Policy.

**Section 8.17. Time is of the Essence.** Time is of the essence in the performance of all obligations under this Contract. In calculating any time period under the Contract which commences upon the receipt of any notice, request, demand, or document, or upon the happening of any event, the date upon which the notice, request, demand, or document is received or the date the event occurs (or is deemed to have occurred) is not included within the applicable time period, but the applicable time period will commence on the day immediately following. If the time for performance of any obligation or for taking any action under the Contract expires on a Saturday, Sunday, or Standard Federal Reserve Bank Holiday, the time for performance or for taking action will be extended to the next succeeding day which is not a Saturday, Sunday, or Standard Federal Reserve Bank Holiday and during which Escrow Agent is open for business.

**Section 8.18. IRS Real Estate Sales Property.** Escrow Agent is designated as the “Reporting Person” within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the closing of the transactions contemplated by the Contract. Escrow Agent acknowledges that it is an eligible person for reporting this transaction under Treasury Regulation Section 1.6045-4(e)(5)(ii) and agrees: (i) to comply on a timely basis with all reporting and filing requirements of Internal Revenue Code Section 6045(e); and (ii) to utilize the information in this Contract, as amended, for the purposes of supplying any required information to the Internal Revenue Service, for example, the identity of the transferee and transferor, and the description of the Land. Buyer and Seller agree to cooperate with Escrow Agent’s requests related to any required reporting or filing under Internal Revenue Code Section 6045(e), and Escrow Agent is authorized to disclose any information contained in the Contract to the Internal Revenue Service for the purposes of complying with Escrow Agent’s obligations under this paragraph. Escrow Agent agrees to be

liable for all penalties and liabilities imposed by the Internal Revenue Service as a result of Escrow Agent's failure to comply with its obligations under this paragraph.

**Section 8.19. Tax-Deferred Exchange.** Seller and Buyer agree to cooperate in a commercially reasonable manner with each other and any designated exchange intermediary or exchange accommodation titleholder by executing such documents or taking such action as such party requests in order to effectuate a tax deferred exchange of the Property under Section 1031 of the Internal Revenue Code. This obligation to cooperate does not include requiring the other party to take title to any other property to complete the exchange, to issue any legal opinions, to increase the potential liability of the non-exchange party, or to expend legal fees to review exchange documents.

**Section 8.20. Modifications.** This Contract cannot be changed orally, and no amendment shall be effective to waive, change, modify or discharge this Contract unless such amendment is in writing and is signed by both parties hereto.

**Section 8.21. No Third Party Beneficiary.** The provisions of this Contract and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Contract or of the documents to be executed and delivered at Closing.

**Section 8.22. Captions.** The section headings appearing in this Contract are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

**Section 8.23. No Recordation.** Neither this Contract nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record and any breach of this covenant shall, unless the party not placing the same of record is otherwise in default hereunder, entitle the party not placing same of record to pursue its rights and remedies under Article VIII.

**Section 8.24. Confidentiality.** Seller and Buyer agree to keep the terms of this Contract confidential and not make any public announcements or disclosures with respect to the subject matter hereof without the prior written consent of the other party; provided, however, Buyer shall be permitted to make any disclosure required by law and to its employees, attorneys, accountants or its agents, to the extent reasonably necessary for such employees, attorneys, accountants, or agents to properly analyze and evaluate the proposed transaction and for such employees, attorneys, accountants and agents to advise Buyer.

**Section 8.25. Force Majeure.** If either party hereto is delayed in the completion of its obligations hereunder by the act, delay in providing approval, or default of the other party through no fault of the delayed party, or by acts of God (which shall be deemed to include weather delays caused by rainfall, snow or other factors in excess of such weather for the season in which such performance is to occur that actually cause a delay in performance), fire, strikes, lockouts, unavoidable casualties, war, epidemics, pandemics, acts of terrorism, civil commotion, fire or other casualty, theft of materials, unseasonable shortages of materials or supplies, or any other cause whatsoever beyond the commercially reasonable control of the delayed party (other than the payment of monies) then the time herein fixed for completion of such obligations shall be extended by the number of days that the delayed party has thus been delayed. The delayed party shall provide the other party hereto with written notice of any delay within ten (10) days after commencement of such delay; provided, however, that only one notice is necessary in the case of a continuing delay.

**[SIGNATURES FOLLOW ON THE NEXT PAGE]**

SELLER:

Randy L. Gibbs  
RANDY L. GIBBS

BUYER:

CIRCLE K STORES INC.,  
a Texas corporation

Vicky L. Gibbs  
VICKY L. GIBBS

By: See Next Page  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENT'S ACCEPTANCE

Escrow Agent hereby: (i) acknowledges receipt of the Contract executed by Buyer and Seller, (ii) agrees to be bound by the provisions and perform the obligations hereof applicable to Escrow Agent, and (iii) declares that the Effective Date is \_\_\_\_\_, 2021 (the "Effective Date").

Chicago Title Insurance Company

By: See Next Page  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
RANDY L. GIBBS

SEE PRIOR PAGE

\_\_\_\_\_  
VICKY L. GIBBS

**BUYER:**

CIRCLE K STORES INC.,  
a Texas corporation



By: [Signature]  
Name: MARK TATE  
Title: VP OPERATIONS

**ESCROW AGENT'S ACCEPTANCE**

Escrow Agent hereby: (i) acknowledges receipt of the Contract executed by Buyer and Seller, (ii) agrees to be bound by the provisions and perform the obligations hereof applicable to Escrow Agent, and (iii) declares that the Effective Date is MARCH 04, 2021 (the "**Effective Date**").

CHICAGO TITLE OF TEXAS LLC  
Chicago Title Insurance Company

By: [Signature]  
Name: NANCY SHIRAR  
Title: VP

Type text here



**EXHIBIT "A"**  
**TO**  
**PURCHASE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(legal description and/or general depiction of the Land)

Parcel A:

Lots 17 to 32, inclusive, EXCEPT the Northwesterly 20 feet thereof, lying West of the County Road in Block 24, Town of Falcon, El Paso County, Colorado, according to the Plat thereof recorded in Plat Book B at Page 37.

Parcel B:

Lots 19 to 32, inclusive, EXCEPT the Northwesterly 20 feet thereof, in Block 25, Town of Falcon, El Paso County, Colorado, according to the Plat thereof recorded in Plat Book B at Page 37.

Parcel C:

All that portion of Block 28 lying West of the County Line Road, including the Northeasterly 30.0 feet of vacated 7th Street, Town of Falcon, El Paso County, Colorado, according to the Plat thereof recorded in Plat Book B at Page 37.

Parcel D:

All of Block 29, including the Southwesterly 30.0 feet of vacated 7th Street, EXCEPTING therefrom that portion of Meridian Road lying across Block 29 and said vacated portion of 7th Street, Town of Falcon, El Paso County, Colorado, according to the Plat thereof recorded in Plat Book B at Page 37.

**EXHIBIT “B”  
TO  
PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS**

(Additional Escrow Instructions)

Buyer and Seller instruct Escrow Agent to allocate all closing prorations and to pay all closing costs as follows:

ITEM	SELLER	BUYER
<b>PRORATIONS</b>		
• Real estate taxes: Prior to COE On and after COE	X	X
• Improvement lien assessments: Existing and pending (including future installments)	X	
• State and Local Taxes: Transaction privilege, sales, use, and personal property through COE	X	
• SRP/Irrigation district assessments: Prior to COE On and after COE	X	X
<b>CLOSING COSTS</b>		
• Escrow charges	½	½
• Recordation cost of Deed and Affidavit	X	
• Recordation cost of Releases/Reconveyance	X	
• Recordation cost of New Encumbrances		X
• Owner title policy (Form: Extended)	Std.	Ext.

“**Contract**” means the Purchase Agreement and Escrow Instructions to which these Additional Escrow Instructions are attached. “**COE**” means the Close of Escrow, as defined in the Contract. “**NA**” means not applicable. All taxes and assessments must be prorated based on the latest available information and a 365-day year. Unless otherwise indicated above or in the Contract, the COE will be used as the proration date for all prorations.

Buyer, Seller, and Escrow Agent further agree that:

1. Buyer and Seller: (i) will deposit with Escrow Agent the necessary documents to complete the sale as established by the terms of the Contract; (ii) authorize Escrow Agent to deliver or record all documents at the time designated by the Contract; and (iii) authorize Escrow Agent to pay, from funds held by it under the Contract, all charges and obligations necessary to consummate this transaction.

2. Buyer and Seller will indemnify and hold harmless Escrow Agent from all costs, damages, attorney fees, expenses, and liabilities that Escrow Agent may incur or sustain in connection with the Contract, including any interpleader action brought by Escrow Agent, except for those matters arising out of the negligent acts or omissions of Escrow Agent.

3. When the Contract has been complied with by all parties, Escrow Agent will deliver, by recording in the appropriate public office, all necessary documents, disburse all funds, and issue the title insurance policies described in the Contract.

4. If any conflicting demands are made upon Escrow Agent concerning the Contract, Buyer and Seller agree that Escrow Agent may hold any money and documents deposited under this Contract until Escrow Agent receives mutual instructions from Buyer and Seller or until a civil action has been finally concluded in a court of competent jurisdiction determining the rights of Buyer and Seller. In the alternative and at its discretion, Escrow Agent may commence a civil action to interplead any conflicting demands in a court of competent jurisdiction. Escrow Agent's deposit with the court of all documents and funds concerning this Escrow will relieve Escrow Agent of all further liability and responsibility under the Contract, except for those matters arising out of the negligent acts or omissions of Escrow Agent.

5. Buyer and Seller instruct Escrow Agent to execute, on behalf of the Seller and Buyer, the real property transfer declaration, using the total consideration for the established value, unless instructed by Seller and Buyer to the contrary.

6. All title insurance policies will be issued by an underwriter approved by Buyer and Seller.

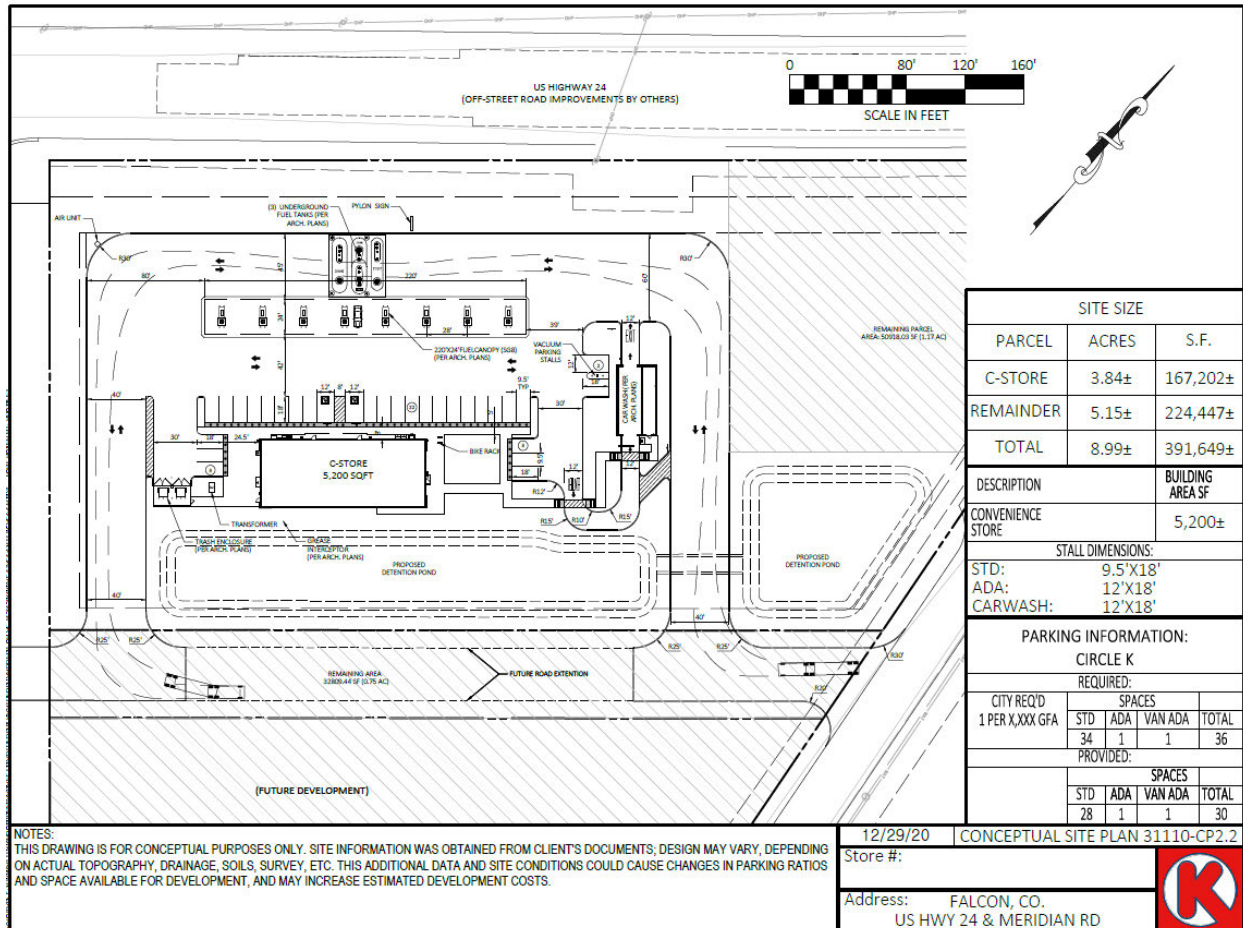
7. All disbursement of funds by Escrow Agent will be made by wire transfer of funds or Escrow Agent's check, as directed by Buyer or Seller as applicable.

**EXHIBIT “C”  
TO  
PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS**

(Intentionally Omitted)

# EXHIBIT "D" TO PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

(Buyer's Site Plan)



**EXHIBIT “E”  
TO  
PURCHASE AGREEMENT AND  
ESCROW INSTRUCTIONS**

(Intentionally Omitted)

**EXHIBIT "F"**  
**TO**  
**PURCHASE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Deed)

**WHEN RECORDED RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**SPECIAL WARRANTY DEED**  
[Statutory Form - C.R.S. § 38-30-113]

RANDY L. GIBBS, an individual and VICKY L. GIBBS, an individual (collectively "Grantor"), whose street address is 6810 N. Meridian Rd. Peyton, CO 80831, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sell and convey to CIRCLE K STORES INC., a Texas corporation, whose street address is 5500 South Quebec, Suite 100, Greenwood Village, Colorado 80111, the real property in the County of El Paso and State of Colorado described on **Exhibit A** attached hereto and made a part hereof, with all its appurtenances, and warrants the title to the same against all persons claiming under Grantor, subject to the matters set forth on **Exhibit B** attached hereto and made a part hereof.

Signed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SIGNATURE PAGE FOLLOWS]

DATED as of \_\_\_\_\_, 20\_\_.

**“GRANTOR”**

\_\_\_\_\_[EXHIBIT ONLY]\_\_\_\_\_  
RANDY L. GIBBS

\_\_\_\_\_[EXHIBIT ONLY]\_\_\_\_\_  
VICKY L. GIBBS

STATE OF \_\_\_\_\_)  
\_\_\_\_\_)ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by Randy L. Gibbs, an individual.

\_\_\_\_\_  
Notary Public

My Commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_)  
\_\_\_\_\_)ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by Vicky L. Gibbs, an individual.

\_\_\_\_\_  
Notary Public

My Commission expires:\_\_\_\_\_



**EXHIBIT “A”  
TO  
SPECIAL WARRANTY DEED**

(Legal Description)

**EXHIBIT “B”  
TO  
SPECIAL WARRANTY DEED**

(Permitted Exceptions)

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