

RESOLUTION NO. 2012/014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY TO BETA-KELSEY STATION, LLC OR ITS ASSIGNS.

WHEREAS, the City of Monroe owns the real property legally described in the Commercial & Investment Real Estate Purchase & Sale Agreement ("Purchase & Sale Agreement"), appended hereto as Attachment A and incorporated herein by this reference as if set forth in full; and

WHEREAS, the City desires to sell, and Beta-Kelsey Station, LLC desires to purchase, said property in accordance with terms and conditions set forth in the Purchase & Sale Agreement; NOW, THEREFORE

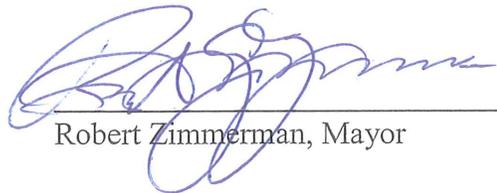
IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONROE AS FOLLOWS:

Section 1. Approval of Agreement of Purchase and Sale. The City Council hereby declares the property described in the attached Purchase & Sale Agreement to be surplus to the City's needs and authorizes its disposition in accordance with said agreement. The Mayor is authorized to execute the Purchase & Sale Agreement on behalf of the City, together with such minor revisions as the mayor deems appropriate, specifically including without limitation revision of the legal description of the subject property.

Section 2. Effective Date. This resolution shall take effect immediately upon passage.

PASSED BY THE MONROE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 5TH DAY OF JUNE, 2012.

CITY OF MONROE



Robert Zimmerman, Mayor

ATTEST/AUTHENTICATED:



Eadye Martinson, Deputy City Clerk,

Exhibit A

See attached Purchase & Sale Agreement.

Grubb & Ellis Company
601 Union St, Suite 1400
Seattle, WA 98101
Phone: (206) 388-3000
Fax: (206) 388-3001

EXHIBIT A

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Association 2011
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~~ORIGINAL~~

CBA Form PS-1A
Purchase & Sale Agreement
Rev. 1/2011
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COPY

COMMERCIAL & INVESTMENT REAL ESTATE
PURCHASE & SALE AGREEMENT

This has been prepared for submission to your attorney for review and approval prior to signing. No representation is made by licensee as to its sufficiency or tax consequences

Reference Date: June 5, 2012

Beta-Kelsey Station, LLC and/or Assigns ("Buyer") agrees to buy and City of Monroe ("Seller") agrees to sell, on the following terms, the commercial real estate and all improvements thereon (collectively, the "Property") commonly known as Galaxy Theater Fee Title and Reduction Premises in the City of Monroe, Snohomish County, Washington, legally described on attached Exhibit A. The Reference Date above is intended to be used to reference this Agreement and is not the date of "Mutual Acceptance," which is defined in Section 23.

1. **PURCHASE PRICE.** The purchase price is Two Million Dollars (\$2,000,000) payable as follows (check only one):

- All cash at closing with no financing contingency- AND ALLOCATED PER THE ATTACHED ADDENDUM.
- All cash at closing contingent on new financing in accordance with the Financing Addendum (attach CBA Form PS_FIN).
- \$ _____ OR _____% of the purchase price in cash at closing with the balance of the purchase price paid as follows (**check one or both, as applicable**): Buyer's assumption of the outstanding principal balance as of the Closing Date of a first lien note and deed of trust (or mortgage), or real estate contract, in accordance with the Financing Addendum (attach CBA Form PS_FIN); Buyer's delivery at closing of a promissory note for the balance of the purchase price, secured by a deed of trust encumbering the Property, in accordance with the Financing Addendum (attach CBA Form PS_FIN).
- Other: _____.

2. **EARNEST MONEY.** The earnest money in the amount of \$50,000 shall be in the form of Cash Personal check Promissory note (attached CBA Form EMN) Other: _____

The earnest money shall be held by Selling Firm Closing Agent. Selling Broker may, however, transfer the earnest money to Closing Agent.

Buyer shall deliver the earnest money no later than:

- _____ days after Mutual Acceptance.
- On the last day of the Feasibility Period defined in Section 5 below.
- Other: _____.

If the earnest money is to be held by Selling Firm and is over \$10,000, it shall be deposited to: Selling Firm's pooled trust account (with interest paid to the State Treasurer) A separate interest bearing trust account in Selling Firm's name. The interest, if any, shall be credited at closing to Buyer. If this sale fails to close, whoever is entitled to the earnest money is entitled to interest.

Selling Firm shall deposit any check to be held by Selling Firm within 3 days after receipt or Mutual Acceptance, whichever occurs later. Buyer agrees to pay financing and purchase costs incurred by Buyer. Unless otherwise provided in this Agreement, the earnest money shall be applicable to the purchase price.

3. **EXHIBITS AND ADDENDA.** The following Exhibits and Addenda are made a part of this Agreement:

- Exhibit A - Legal Description
- Earnest Money Promissory Note, CBA Form EMN
- Promissory Note, LPB Form No. 28A/
- Short Form Deed of Trust, LPB Form No. 20

INITIALS: Buyer TEB Date 6-5-12 Seller [Signature] Date 6-6-12
 Buyer _____ Date _____ Seller _____ Date _____



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- Deed of Trust Rider, CBA Form DTR
- Utility Charges Addendum, CBA Form UA
- FIRPTA Certification, CBA Form 22E
- Assignment and Assumption, CBA Form PS-AS
- Addendum/Amendment, CBA Form PSA
- Back-Up Addendum, CBA Form BU-A
- Vacant Land Addendum, CBA Form VLA
- Financing Addendum, CBA Form PS_FIN
- Tenant Estoppel Certificate, CBA Form PS_TEC
- Defeasance Addendum, CBA Form PS_D
- Other Exhibit B - April 11, 2012 letter to Galaxy Cinemas Northwest, LLC. Seller's Disclosure.
- Other -Exhibit C - Parcel Identification

4. **SELLER'S UNDERLYING FINANCING.** Unless Buyer is assuming Seller's underlying financing, Seller shall be responsible for confirming the existing underlying financing is not subject to any "lock out" or similar covenant which would prevent the lender's lien from being released at closing. In addition, Seller shall provide Buyer notice prior to the end of the Feasibility Period if Seller is required to substitute securities for the Property as collateral for the underlying financing (known as "defeasance"). If Seller provides this notice of defeasance to Buyer, then the parties shall close the transaction in accordance with the process described in CBA Form PS_D or any different process identified in Seller's defeasance notice to Buyer.

5. **FEASIBILITY CONTINGENCY.** Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the contracts and leases affecting the property; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within forty-five (45) days (30 days if not filled in) (the "Feasibility Period") of Mutual Acceptance stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section 5 shall be deemed to be satisfied.

a. **Books, Records, Leases, Agreements.** Seller shall make available for inspection by Buyer and its agents within 5 days (2 days if not filled in) after Mutual Acceptance all documents in Seller's possession or control relating to the ownership, operation, renovation or development of the Property, excluding appraisals or other statements of value, and including: statements for real estate taxes, assessments, and utilities for the last three years and year to date; property management agreements and any other agreements with professionals or consultants; leases or other agreements relating to occupancy of all or a portion of the Property and a suite-by-suite schedule of tenants, rents, prepaid rents, deposits and fees; plans, specifications, permits, applications, drawings, surveys, and studies; maintenance records, accounting records and audit reports for the last three years and year to date; and "Vendor Contracts" which shall include maintenance or service contracts, and installments purchase contracts or leases of personal property or fixtures used in connection with the Property. Buyer shall determine within the Feasibility Period: (i) whether Seller will agree to terminate any objectionable Vendor Contracts; and (ii) whether Seller will agree to pay any damages or penalties resulting from the termination of objectionable Vendor Contracts. Buyer's waiver of the Feasibility Contingency shall be deemed Buyer's acceptance of all Vendor Contracts which Seller has not agreed in writing to terminate. Buyer shall be solely responsible for obtaining any required consents to such assumption and the payment of any assumption fees. Seller shall cooperate with Buyer's efforts to receive any such consents but shall not be required to incur any out-of-pocket expenses or liability in doing so. Seller shall transfer the Vendor Contracts as provided in Section 17.

INITIALS: Buyer JSB Date 6-5-12 Seller AS Date 6-6-12
 Buyer _____ Date _____ Seller _____ Date _____



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b. Access. Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soils conditions, sensitive areas, wetlands, or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security, confidentiality, and disruption of Seller's tenants. Buyer shall not perform any invasive testing including environmental inspections beyond a phase I assessment or contact the tenants or property management personnel without obtaining the Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall restore the Property and improvements to the same condition they were in prior to inspection. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims, and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This agreement to indemnify and defend Seller shall survive closing. Buyer may continue to enter the Property in accordance with the foregoing terms and conditions after removal or satisfaction of the feasibility contingency only for the purpose of leasing or to satisfy conditions of financing.

c. Buyer waives the right to receive a seller disclosure statement ("Form 17-Commercial") if required by RCW 64.06. However, if Seller would otherwise be required to provide Buyer with a Form 17-Commercial, and if the answer to any of the questions in the section of the Form 17-Commercial entitled "Environmental" would be "yes," then Buyer does not waive the receipt of the "Environmental" section of the Form 17-Commercial which shall be provided by Seller.

6. TITLE INSURANCE.

a. Title Report. Seller authorizes Buyer, its Lender, Listing Broker, Selling Broker or Closing Agent, at Seller's expense, to apply for and deliver to Buyer a standard extended (standard, if not completed) coverage owner's policy of title insurance. If an extended coverage owner's policy is specified, Buyer shall pay the increased costs associated with that policy including the excess premium over that charged for a standard coverage policy, and the cost of any survey required by the title insurer. The title report shall be issued by First American Title Company (a title company of Seller's choice, if not completed). If Seller previously received a preliminary commitment from a title insurer that Buyer declines to use, Buyer shall pay any cancellation fee owing to the original title insurer. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed.

b. Permitted Exceptions. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of: (1) twenty (20) days after Mutual Acceptance of this Agreement; or (2) the expiration of the Feasibility Period. This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within five (5) days of Buyer's notice of such objections (1) Seller agrees, in writing, to remove all objectionable provisions or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within five (5) days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within two (2) days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided, however, that the lien securing any financing which Buyer has agreed to assume shall be a Permitted Exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title

INITIALS: Buyer TEB Date 6-5-12 Seller [Signature] Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____



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matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy shall contain no exceptions other than the General Exclusions and Exceptions common to such form of policy and the Permitted Exceptions. *Buyer and Seller agree that the Ground Lease between Seller and Galaxy Cinemas Northwest, LLC, as Tenant, and Galaxy Theaters, LLC, as Tenant's Guarantor, is a Permitted Exception.*

7. CLOSING OF SALE. The sale shall be closed on See Addendum, 20 ("Closing") by First American Title Company ("Closing Agent") (Seller shall select the Closing Agent, if not completed). Buyer and Seller shall deposit with Closing Agent by 12:00 p.m. on the scheduled Closing date all instruments and monies required to complete the purchase in accordance with this Agreement. "Closing" shall be deemed to have occurred when the deed is recorded and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. Sale proceeds shall be considered available to Seller, even though they cannot be disbursed to Seller until the next business day after Closing. Notwithstanding the foregoing, if Seller informed Buyer during the Feasibility Period that Seller's underlying financing requires that it be defeased and may not be paid off, then Closing shall be conducted in accordance with the three-day closing process described in CBA Form PS_D. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided the same are consistent with this Agreement.

8. CLOSING COSTS AND PRORATIONS. Seller shall deliver an updated rent roll to Closing Agent not later than two (2) days before the scheduled Closing date in the form required by Section 5(a) and any other information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for Closing. Seller certifies that the information contained in the rent roll is correct as of the date submitted. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable to any extended coverage or endorsements requested by Buyer, and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Any real estate excise taxes shall be paid by the party who bears primary responsibility for payment under the applicable statute or code. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of Closing. If tenants pay any of the foregoing expenses directly, then Closing Agent shall only pro rate those expenses paid by Seller. Buyer shall pay to Seller at Closing an additional sum equal to any utility deposits or mortgage reserves for assumed financing for which Buyer receives the benefit after Closing. Buyer shall pay all costs of financing including the premium for the lender's title policy. If the Property was taxed under a deferred classification prior to Closing, then Seller shall pay all taxes, interest, penalties, deferred taxes or similar items which result from removal of the Property from the deferred classification. At Closing, all refundable deposits on tenancies shall be credited to Buyer or delivered to Buyer for deposit in a trust account if required by state or local law. Buyer shall pay any sales or use tax applicable to the transfer of personal property included in the sale.

a. Unpaid Utility Charges. Buyer and Seller WAIVE DO NOT WAIVE (do not waive if neither box checked) the right to have the Closing Agent disburse closing funds necessary to satisfy unpaid utility charges affecting the Property pursuant to RCW 60.80. If "do not waive" is checked, then attach CBA Form UA ("Utility Charges" Addendum) to this Agreement.

9. POST-CLOSING ADJUSTMENTS, COLLECTIONS, AND PAYMENTS. After Closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at Closing based upon estimates. Any bills or invoices received by Buyer after Closing which relate to services rendered or goods delivered to the Seller or the Property prior to Closing shall be paid by Seller upon presentation of such bill or invoice. At Buyer's option, Buyer may pay such bill or invoice and be reimbursed the amount paid plus interest at the rate of 12% per annum beginning fifteen (15) days from the date of Buyer's written demand to Seller for reimbursement until such reimbursement is made. Notwithstanding the

INITIALS: Buyer Date 6-5-12 Seller Date 4-6-12
Buyer _____ Date _____ Seller _____ Date _____



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foregoing, if tenants pay certain expenses based on estimates subject to a post-closing reconciliation to the actual amount of those expenses, then Buyer shall be entitled to any surplus and shall be liable for any credit resulting from the reconciliation. Rents collected from each tenant after Closing shall be applied first to rentals due most recently from such tenant for the period after closing, and the balance shall be applied for the benefit of Seller for delinquent rentals owed for a period prior to closing. The amounts applied for the benefit of Seller shall be turned over by Buyer to Seller promptly after receipt. Seller shall be entitled to pursue any lawful methods of collection of delinquent rents but shall have no right to evict tenants after Closing.

10. OPERATIONS PRIOR TO CLOSING. Prior to Closing, Seller shall continue to operate the Property in the ordinary course of its business and maintain the Property in the same or better condition than as existing on the date of Mutual Acceptance but shall not be required to repair material damage from casualty except as otherwise provided in this Agreement. After the Feasibility Period, Seller shall not enter into or modify existing rental agreements or leases (except that Seller may enter into, modify, extend, renew or terminate residential rental agreements or residential leases in the ordinary course of its business), service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.

11. POSSESSION. Buyer shall be entitled to possession on closing _____ (on closing, if not completed). Buyer shall accept possession subject to all tenancies disclosed to Buyer during the Feasibility Period.

12. SELLER'S REPRESENTATIONS. Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated in Section 5 above, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof: (a) Seller is authorized to enter into the Agreement, to sell the Property, and to perform its obligations under the Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement comprise all material documents in Seller's possession or control regarding the operation and condition of the Property; (c) Seller has not received any written notices that the Property or the business conducted thereon violate any applicable laws, regulations, codes and ordinances; (d) Seller has all certificates of occupancy, permits, and other governmental consents necessary to own and operate the Property for its current use; (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after Closing; (f) There is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at Closing) all local, state and federal taxes (other than real and personal property taxes and assessments described in Section 8 above) attributable to the period prior to closing which, if not paid, could constitute a lien on Property (including any personal property), or for which Buyer may be held liable after Closing; (h) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

If prior to Closing Seller or Buyer discovers any information which would cause any of the representations above to be false if the same were deemed made as of the date of such discovery, then the party discovering the same

INITIALS: Buyer TEB Date 6-5-12 Seller [Signature] Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____



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shall promptly notify the other party in writing. If the newly-discovered information will result in costs or liability to Buyer in excess of the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement, or will materially adversely affect Buyer's intended use of the Property, then Buyer shall have the right to terminate the Agreement and receive a refund of its earnest money. Buyer shall give notice of termination within five (5) days of discovering or receiving written notice of the new information. Nothing in this paragraph shall prevent Buyer from pursuing its remedies against Seller if Seller had actual knowledge of the newly-discovered information such that a representation provided for above was false.

13. AS-IS. Except for those representations and warranties specifically included in this Agreement: (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness for a particular purpose, tenantability, habitability and use; (iii) Buyer otherwise takes the Property "AS IS;" and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

14. PERSONAL PROPERTY.

a. This sale includes all right, title and interest of Seller to the following tangible personal property: None That portion of the personal property located on and used in connection with the Property, which Seller will itemize in an Exhibit to be attached to this Agreement within ten (10) days of Mutual Acceptance (None, if not completed). The value assigned to the personal property shall be \$ _____ (if not completed, the County-assessed value if available, and if not available, the fair market value determined by an appraiser selected by the Listing Broker and Selling Broker). Seller warrants title to, but not the condition of, the personal property and shall convey it by bill of sale.

b. In addition to the leases and Vendor Contracts assumed by Buyer pursuant to Section 5(a) above, this sale includes all right, title and interest of Seller to the following intangible property now or hereafter existing with respect to the Property including without limitation: all rights-of-way, rights of ingress or egress or other interests in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on, or across, in front of, abutting or adjoining the Property; all rights to utilities serving the Property; all drawings, plans, specifications and other architectural or engineering work product; all governmental permits, certificates, licenses, authorizations and approvals; all rights, claims, causes of action, and warranties under contracts with contractors, engineers, architects, consultants or other parties associated with the Property; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; any name of or telephone numbers for the Property and related trademarks, service marks or trade dress; and guaranties, warranties or other assurances of performance received.

15. CONDEMNATION AND CASUALTY. Seller bears all risk of loss until Closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and obtain a refund of the earnest money if improvements on the Property are destroyed or materially damaged by casualty before Closing, or if condemnation proceedings are commenced against all or a portion of the Property before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with closing, in which case, at Closing, Seller shall assign to Buyer all claims and right to proceeds under any property insurance policy and shall credit to Buyer at Closing the amount of any deductible provided for in the policy.

16. FIRPTA - TAX WITHHOLDING AT CLOSING. Closing Agent is instructed to prepare a certification (CBA or NWMLS Form 22E, or equivalent) that Seller is not a "foreign person" within the meaning of the Foreign

INITIALS: Buyer AB Date 6-5-12 Seller A Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____



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Investment in Real Property Tax Act, and Seller shall sign it on or before Closing. If Seller is a foreign person, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

17. CONVEYANCE. Title shall be conveyed by a Statutory Warranty Deed subject only to the Permitted Exceptions. If this Agreement is for conveyance of Seller's vendee's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a contract vendee's assignment sufficient to convey after acquired title. At Closing, Seller and Buyer shall execute and deliver to Closing Agent CBA Form No. PS-AS Assignment and Assumption Agreement transferring all leases and Vendor Contracts assumed by Buyer pursuant to Section 5(a) and all intangible property transferred pursuant to Section 14(b).

18. NOTICES AND COMPUTATION OF TIME. Unless otherwise specified, any notice required or permitted in, or related to, this Agreement (including revocations of offers and counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and must be delivered to Seller and Listing Broker with a courtesy copy to any other party identified as a recipient of notices in Section 28. A notice to Seller shall be deemed delivered only when received by Seller, Listing Broker, or the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and must be delivered to Buyer, with a copy to Selling Broker and with a courtesy copy to any other party identified as a recipient of notices in Section 28. A notice to Buyer shall be deemed delivered only when received by Buyer, Selling Broker, or the licensed office of Selling Broker. Selling Broker and Listing Broker have no responsibility to advise of receipt of a notice beyond either phoning the represented party or causing a copy of the notice to be delivered to the party's address provided in this Agreement. Buyer and Seller shall keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice. If any party is not represented by a licensee, then notices must be delivered to and shall be effective when received by that party at the address, fax number, or email indicated in Section 28.

Unless otherwise specified in this Agreement, any period of time in this Agreement shall mean Pacific Time and shall begin the day after the event starting the period and shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which case the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or legal holidays. Notwithstanding the foregoing, references to specific dates or times or number of hours shall mean those dates, times or number of hours; provided, however, that if the Closing Date falls on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, or a date when the county recording office is closed, then the Closing Date shall be the next regular business day.

19. AGENCY DISCLOSURE. At the signing of this Agreement,

Selling Broker Jane Lanford

represented Beta-Kelsey Station, LLC and/or Assigns

and the Listing Broker Jane Lanford

represented City of Monroe.

Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to the Brokers' Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as a dual agent. If Selling Broker and Listing Broker are the same person representing both parties, then both Buyer and Seller

INITIALS: Buyer [Signature] Date 6-5-12 Seller [Signature] Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____



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confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

20. ASSIGNMENT. Buyer may may not (may not, if not completed) assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise herein. If the "may not" option is selected and the words "and/or assigns" or similar words are used to identify the Buyer, then this Agreement may be assigned with notice to Seller but without Seller's consent only to an entity which is controlled by or under common control with the Buyer identified in this Agreement. Any other assignment requires Seller's consent. The party identified as the initial Buyer shall remain responsible for those obligations of Buyer stated in this Agreement notwithstanding any assignment and, if this Agreement provides for Seller to finance a portion of the purchase price, then the party identified as the initial Buyer shall guarantee payment of the Seller financing.

21. DEFAULT AND ATTORNEY'S FEE.

a. Buyer's default. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then (**check one**):

Seller may terminate this Agreement and keep the earnest money as liquidated damages as the sole and exclusive remedy available to Seller for such failure; or

Seller may, at its option, (a) terminate this Agreement and keep as liquidated damages the earnest money as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.

b. Seller's default. In the event Seller fails, without legal excuse, to complete the sale of the Property, then (**check one**):

As Buyer's sole remedy, Buyer may either (a) terminate this Agreement and recover all earnest money or fees paid by Buyer whether or not the same are identified as refundable or applicable to the purchase price; or (b) bring suit to specifically enforce this Agreement and recover incidental damages, provided, however, Buyer must file suit within sixty (60) days from the scheduled date of closing or from the date Seller has informed Buyer in writing that Seller will not proceed with closing, whichever is earlier; or

Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

Neither Buyer nor Seller may recover consequential damages such as lost profits. If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. In the event of trial, the amount of the attorney's fee shall be fixed by the court. The venue of any suit shall be the county in which the Property is located, and this Agreement shall be governed by the laws of the state where the Property is located.

22. MISCELLANEOUS PROVISIONS.

a. Complete Agreement. This Agreement and any addenda and exhibits thereto state the entire understanding of Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect the Agreement.

b. Counterpart Signatures. This Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

c. Electronic Delivery. Electronic delivery of documents (e.g., transmission by facsimile or email) including signed offers or counteroffers and notices shall be legally sufficient to bind the party the same as delivery of an

INITIALS: Buyer JE Date 6-5-12 Seller AS Date 6-6-11
Buyer _____ Date _____ Seller _____ Date _____



**COMMERCIAL & INVESTMENT REAL ESTATE
PURCHASE & SALE AGREEMENT
(CONTINUED)**

original. At the request of either party, or the Closing Agent, the parties will replace electronically delivered offers or counteroffers with original documents.

d. Section 1031 Like-Kind Exchange. If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party agrees to cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding Section 20 above, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

- 23. ACCEPTANCE; COUNTEROFFERS.** Seller has until midnight of _____, 20____ (if not filled in, the third business day) following the day Buyer delivers the offer to accept this offer, unless sooner withdrawn. If this offer is not timely accepted, it shall lapse and the earnest money shall be refunded to Buyer. If either party makes a future counteroffer, the other party shall have until 5:00 p.m. on the _____ business day (if not filled in, the second business day) following receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the earnest money shall be refunded to the Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller, the Listing Broker or the licensed office of the Listing Broker. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer, the Selling Broker or the licensed office of the Selling Broker. "Mutual Acceptance" shall occur when the last counteroffer is signed by the offeree, and the fully-signed counteroffer has been received by the offeror, his or her broker, or the licensed office of the broker. If any party is not represented by a broker, then notices must be delivered to and shall be effective when received by that party.
- 24. INFORMATION TRANSFER.** In the event this Agreement is terminated, Buyer agrees to deliver to Seller within ten (10) days of Seller's written request copies of all materials received from Seller and any non-privileged plans, studies, reports, inspections, appraisals, surveys, drawings, permits, applications or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.
- 25. CONFIDENTIALITY.** Until and unless closing has been consummated, Buyer and Seller shall follow reasonable measures to prevent unnecessary disclosure of information obtained in connection with the negotiation and performance of this Agreement. Neither party shall use or knowingly permit the use of any such information in any manner detrimental to the other party.
- 26. SELLER'S ACCEPTANCE AND BROKERAGE AGREEMENT.** Seller agrees to sell the Property on the terms and conditions herein, and further agrees to pay a commission in a total amount computed in accordance with the listing or commission agreement. If there is no written listing or commission agreement, Seller agrees to pay a commission of 3% of the sales price or \$____. The commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing or any co-brokerage agreement. If there is no listing or written co-brokerage agreement, then Listing Firm shall pay to Selling Firm a commission of N/A% of the sales price or \$N/A. Seller assigns to Listing Firm and Selling Firm a portion of the sales proceeds equal to the commission. If the earnest money is retained as liquidated damages, any costs advanced or committed by Listing Firm or Selling Firm for Buyer or Seller shall be reimbursed or paid therefrom, and the balance shall be paid one-half to Seller and one-half to Listing Firm and Selling Firm according to the listing agreement and any co-brokerage agreement. In any action by Listing Firm or Selling Firm to enforce this Section, the prevailing party is entitled to reasonable attorneys' fees and expenses. Neither Listing Firm nor Selling Firm are receiving compensation from more than one party to this transaction unless disclosed on an attached addendum, in which case Buyer and Seller consent to such compensation. The Property described in attached Exhibit A is commercial real estate. Notwithstanding Section 25 above, the pages containing this Section, the parties' signatures and an attachment describing the Property may be recorded.

INITIALS: Buyer YAB Date 6-5-12 Seller AL Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____

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27. LISTING BROKER AND SELLING BROKER DISCLOSURE. EXCEPT AS OTHERWISE DISCLOSED IN WRITING TO BUYER OR SELLER, THE SELLING BROKER, LISTING BROKER, AND FIRMS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OR CONDUCTED ANY INDEPENDENT INVESTIGATION CONCERNING THE LEGAL EFFECT OF THIS AGREEMENT, BUYER'S OR SELLER'S FINANCIAL STRENGTH, BOOKS, RECORDS, REPORTS, STUDIES, OR OPERATING STATEMENTS; THE CONDITION OF THE PROPERTY OR ITS IMPROVEMENTS; THE FITNESS OF THE PROPERTY FOR BUYER'S INTENDED USE; OR OTHER MATTERS RELATING TO THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE PROPERTY'S ZONING, BOUNDARIES, AREA, COMPLIANCE WITH APPLICABLE LAWS (INCLUDING LAWS REGARDING ACCESSIBILITY FOR DISABLED PERSONS), OR HAZARDOUS OR TOXIC MATERIALS INCLUDING MOLD OR OTHER ALLERGENS. SELLER AND BUYER ARE EACH ADVISED TO ENGAGE QUALIFIED EXPERTS TO ASSIST WITH THESE DUE DILIGENCE AND FEASIBILITY MATTERS, AND ARE FURTHER ADVISED TO SEEK INDEPENDENT LEGAL AND TAX ADVICE RELATED TO THIS AGREEMENT.

INITIALS: Buyer GB Date 6-5-12 Seller AS Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____

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(CONTINUED)**

28. IDENTIFICATION OF THE PARTIES. The following is the contact information for the parties involved in this Agreement:

Buyer

Contact: Beta-Kelsey Station, LLC and/or Assigns
Rich Brunhaver
Address: 18827 Bothell Way NE, Suite 110
Bothell, WA 98011
Business Phone: 425-482-6626
Mobile Phone: _____
Fax: _____
Email: rich@betacommercial.com

Selling Firm

Name: Grubb & Ellis
Assumed Name (if applicable) : _____
Selling Broker: Jane Lanford
Address: 601 Union St., Suite 4200, Seattle, WA 98101
Business Phone: 206-652-3419
Mobile Phone: _____
Email: jane.lanford@grubb-ellis.com
Fax: _____
MLS Office No.: _____

Licensed Office of the Selling Broker

Address: _____
Business Phone: _____
Email: _____
Fax: _____
CBA Office No.: _____

Seller

Contact: City of Monroe
Jeff Sax
Address: 806 West Main Street
Monroe, WA
Business Phone: 360-863-4521
Mobile Phone: _____
Fax: _____
Email: jsax@monroewa.gov

Listing Firm

Name: Grubb & Ellis
Assumed Name (if applicable) : _____
Listing Broker: Jane Lanford
Address: 601 Union St., Suite 4200, Seattle, WA 98101
Business Phone: 206-652-3419
Mobile Phone: _____
Email: jane.lanford@grubb-ellis.com
Fax: _____
MLS Office No.: _____

Licensed Office of the Listing Broker

Address: _____
Business Phone: _____
Email: _____
Fax: _____
CBA Office No.: _____

INITIALS: Buyer RB Date 6-5-12 Seller JS Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____

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PURCHASE & SALE AGREEMENT
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Courtesy Copy of Notices to Buyer to:

Name: _____
Address: _____
Business Phone: _____
Fax: _____
Mobile Phone: _____
Email: _____

Courtesy Copy of Notices to Seller to:

Name: _____
Address: _____
Business Phone: _____
Fax: _____
Mobile Phone: _____
Email: _____

IN WITNESS WHEREOF, the parties have signed this Agreement intending to be bound.

Buyer UBB
Printed name and type of entity
Buyer [Signature]
Signature and title

Buyer _____
Printed name and type of entity
Buyer _____
Signature and title

Date signed 6-5-12

Date signed _____

Seller A
Printed name and type of entity
Seller [Signature] Mayor
Signature and title

Seller _____
Printed name and type of entity
Seller _____
Signature and title

Date signed 6-6-12

Date signed _____

INITIALS: Buyer UBB Date 6-5-12 Seller A Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____

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PURCHASE & SALE AGREEMENT
(CONTINUED)

EXHIBIT A *

[Legal Description]

Galaxy Theater Fee Title Premises:

Lot 3, City of Monroe Short Plat SP 200303, recorded under Recording No. 200504255259, records of Snohomish County, Washington, situate in County of Snohomish, State of Washington.

Reduction Premises:

Lot 2, City of Monroe Short Plat SP 200303, recorded under Recording No. 200504255259, records of Snohomish County, Washington, situate in County of Snohomish, State of Washington.

(INTENTIONALLY LEFT BLANK.)

INITIALS: Buyer RES Date 6-8-2012 Seller R Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____

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**COMMERCIAL & INVESTMENT REAL ESTATE
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(CONTINUED)**

(INTENTIONALLY LEFT BLANK.)

* To ensure accuracy in the legal description, consider substituting the legal description contained in the preliminary commitment for title insurance or a copy of the Property's last vesting deed for this page. Do not neglect to label the substitution "Exhibit A." You should avoid transcribing the legal description because any error in transcription may render the legal description inaccurate and this Agreement unenforceable.

INITIALS: Buyer *YAB* Date 6-5-12 Seller *X* Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____

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COMMERCIAL & INVESTMENT REAL ESTATE
PURCHASE & SALE AGREEMENT
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EXHIBIT B



April 11, 2012

Galaxy Cinemas Northwest, LLC
c/o Galaxy Theatres, Inc.
Attn: Frank Rimkus
15060 Ventura Boulevard, Suite 350
Sherman Oaks, CA 91403

Re: City of Monroe/Galaxy Theatres Ground Lease—Notice of Sale Offer (Section 21.2)

Dear Mr. Rimkus:

Please accept this correspondence as the City of Monroe's formal notice pursuant to Section 21.2 of the August 11, 1999, Ground Lease between the City and Galaxy Theatres. As you are aware, that provision grants Galaxy a right of first offer in the event the City desires to sell the fee title to the Leased Premises as defined in the Ground Lease. In accordance with Section 21.2, the City hereby notifies you of its desire and intent to sell the fee title to the Leased Premises subject to the following price, terms and conditions:

- Purchase price of \$2,000,000 payable in cash at closing.
- Conveyance of both: (i) the fee title interest currently leased by Galaxy under the Ground Lease, and (ii) the area generally identified as the Reduction Premises pursuant to the First Amendment to Ground Lease executed on August 1, 2001, and more accurately identified as Lot 2, City of Monroe's Short Plat SP 2003023 (the "Reduction Parcel").
- Closing on the Leased Premises to occur 60 days after mutual acceptance. Closing on the Reduction Parcel to occur within 120 days of mutual acceptance.
- Execution of a common maintenance agreement for drive aisles, parking areas and street front improvements between Kelsey Station to the south, the landfill property (Tract 999 of Monroe Short Plat SP 200303) to the west and the Galaxy property, inclusive of both the Leased Premises and the Reduction Parcel. Maintenance charges would not be imposed against the landfill property or the Reduction Parcel unless and until each site has been physically developed and has received a certificate of occupancy from the City of Monroe. All parties shall cause such common maintenance agreement to be executed and shall secure any

INITIALS: Buyer FR Date 6-5-12 Seller AB Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____



**COMMERCIAL & INVESTMENT REAL ESTATE
PURCHASE & SALE AGREEMENT
(CONTINUED)**

necessary approval of tenants or subtenants to enter into such agreement, as a condition of closing.

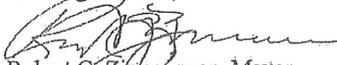
- Granting of cross-easements by the Kelsey Station property and Leased Parcel to and for each of the parcels referenced above. It is anticipated that the access easement will be granted through the main driveway, north to south, at the Galaxy entrance, then west adjacent to the northern boundary of the Kelsey Station property, then north to access the Reduction Parcel (this a westerly access that would extend to the landfill property to provide access to that property). All parties shall cause such cross-easements to be executed and shall secure any necessary approval of tenants or subtenants to enter into such agreement, as a condition of closing.
- Removal of all ecology blocks presently located between Kelsey Station and Galaxy. All parties shall cause such removal to occur and shall secure any necessary approval of tenants or subtenants to such removal, as a condition of closing.
- Boilerplate provisions governing legal relations between purchaser and seller as would commonly be contained in a standard Purchase and Sale Agreement. These provisions include without limitation, clauses addressing earnest money deposit, title review, venue (Snohomish County) and governing law (Washington State), liquidated damages, severability, non-waiver of breach, time-of-the-essence, specific performance, identification of brokers, and award of attorneys' fees to the substantially prevailing party in any dispute.

As set forth in Section 21.2 of the Ground Lease, Galaxy has 30 days to accept the proposed offer subject to the terms and conditions enumerated above by providing written notice of acceptance to the City. If Galaxy opts to accept this offer, closing shall occur within the timeframe established by Section 21.2.

Enclosed for your consideration is a Waiver of Right of First Offer. If Galaxy wishes to decline the offer set forth in this notice, you are encouraged, but not required, to sign and return the enclosed waiver to the City. Doing so will facilitate and expedite the City's conveyance of this offer to other potentially interested parties.

Thank you for your good faith consideration of the above. Please feel free to contact City of Monroe Economic Development Manager Jeff Sax or me with any questions.

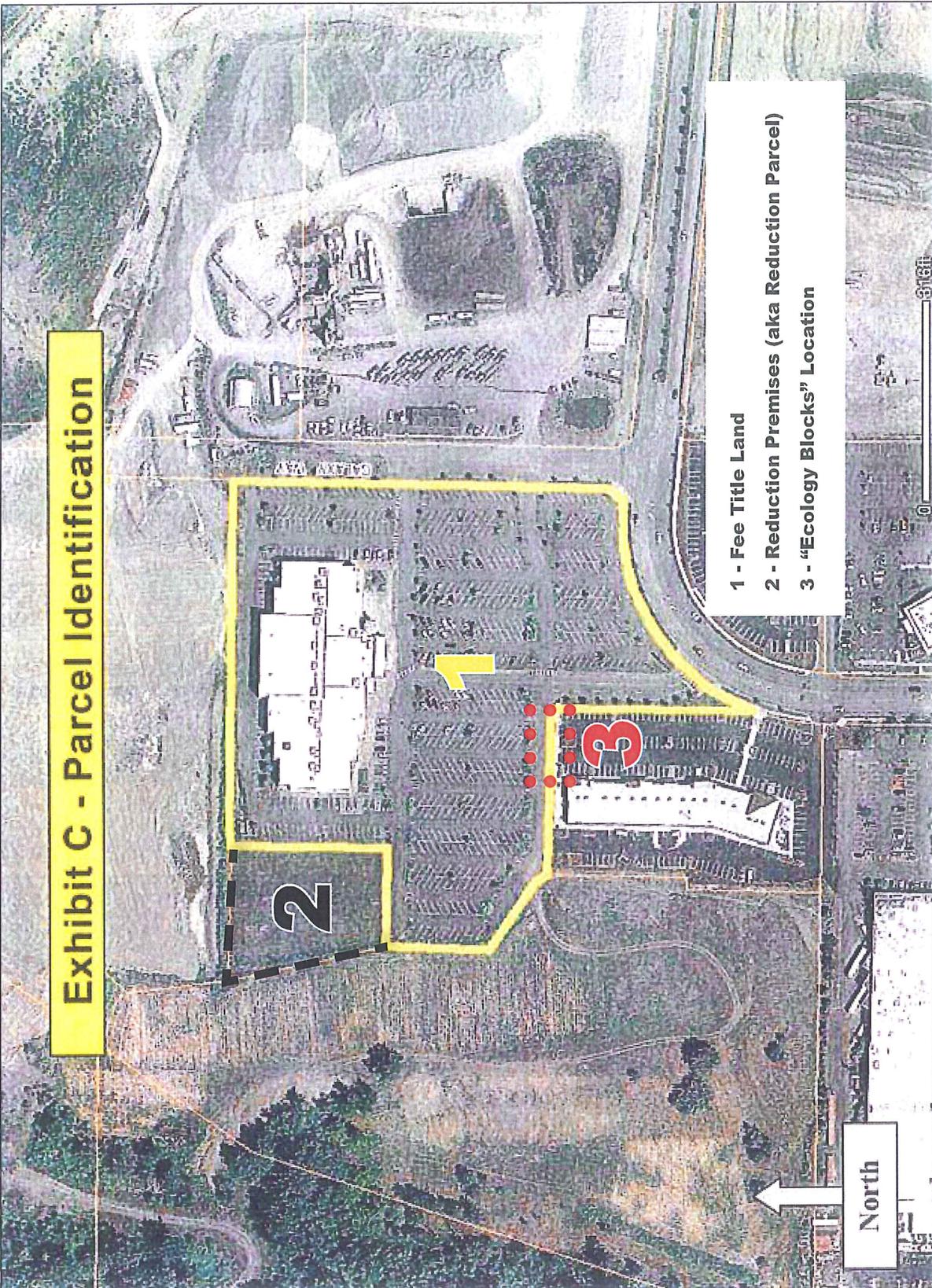
Looking Forward,


Robert G. Zimmerman, Mayor
City of Monroe

cc: Jeff Sax

INITIALS: Buyer *AB* Date *6-5-12* Seller *AS* Date *6-6-12*
Buyer _____ Date _____ Seller _____ Date _____

Exhibit C - Parcel Identification



Handwritten: 6-5-12 R 6-6-12

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E/M Promissory Note
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EARNEST MONEY PROMISSORY NOTE

\$ 50,000

Place: _____

Date: June 5, 2012

FOR VALUE RECEIVED, Beta-Kelsey Station, LLC and/or Assigns ("Buyer") agrees to pay to the order of First American Title Company ("Holder") the sum of Fifty Thousand Dollars (\$50,000) as follows:

- _____ days (3 days if not filled in) following mutual acceptance of the Purchase and Sale Agreement.
- Upon satisfaction or waiver of the feasibility contingency stated in the Purchase and Sale Agreement.
- Other _____*.

This Note is evidence of the obligation to pay earnest money under the purchase and sale agreement (the "Agreement") between Buyer and City of Monroe ("Seller") dated June 5, 2012 for the property ~~located at~~ KNOWN AS Galaxy Theater Fee Title and Reduction Premises. Buyer's failure to pay the earnest money strictly as above shall constitute default on the Agreement as well as on this Note.

If Holder, *OR THE CITY OF MONROE, AT ITS OPTION*, retains an attorney for collection of amounts due pursuant to this Note, or if Holder, *OR THE CITY OF MONROE, AT ITS OPTION*, brings suit to collect any amounts due on this Note, Buyer shall pay a reasonable attorney's fee and costs. This Note shall bear interest at the rate of twelve percent (12%) per annum after default.

BUYER

By: 

Printed Name and Title: _____

* Do not enter "on closing" as the date this Note becomes due and payable because closing under the Agreement is not certain to occur. Instead, insert a specific date or an event that is certain to occur.

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Addendum/Amendment
to PSA
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**ADDENDUM/AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

CBA Text Disclaimer: Text deleted by licensee indicated by strike.
New text inserted by licensee indicated by small capital letters.

The following is part of the Purchase and Sale Agreement dated June 5, 2012 (the "Agreement") between Beta-Kelsey Station, LLC and/or Assigns ("Buyer") and City of Monroe ("Seller") regarding the sale of the property known as Galaxy Theater Fee Title and Reduction Premises (the "Property").

IT IS AGREED BETWEEN THE BUYER AND SELLER AS FOLLOWS:

1. Buyer will agree to terms "not more favorable" than as stipulated in Exhibit B ("April 11, 2012 letter to Galaxy Cinemas Northwest, LLC", aka "Letter to Galaxy") attached hereto and incorporated herein.
2. Closing on the Fee Title Premises will be fourteen (14) days after the forty-five (45) day Feasibility Contingency period.
3. Closing on the Reduction Premises (also known at "Reduction Parcel") shall be not later than October 5, 2012.
4. Purchase Price shall be allocated as follows: \$1,700,000 to the Fee Title Premises and \$300,000 to the Reduction Premises, as more fully illustrated in Exhibit C.
5. Both the Fee Title Premises and the Reduction Premises must be purchased, without exceptions, other than potential delayed closing as mutually agreed to by both parties.

ALL OTHER TERMS AND CONDITIONS of the Agreement remain unchanged.

INITIALS: Buyer TAB Date 6-5-12 Seller R Date 6-6-12
Buyer _____ Date _____ Seller _____ Date _____