

# A Model Letter Of Intent For The Purchase And Sale Of Property

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## Catherine T. Goldberg

is a director in the Albuquerque office of Rodey, Dickason, Sloan, Akin & Robb, PA, and a member of the firm's Executive Committee. She practices in the areas of real estate financings, banking, foreclosures, commercial law, leases, contracts, and corporate law. Ms. Goldberg is a frequent speaker at meetings of the American College of Mortgage Attorneys, the American College of Real Estate Lawyers, the Real Property Institute of the Real Property, Probate and Trust Section of the New Mexico Bar Association, and other professional organizations. She is a member of the American College of Real Estate Lawyers, (ACREL) and the American College of Mortgage Attorneys (ACMA) where she is the State Chair for New Mexico; she is a member of the ACMA Opinions Committee and a past regent. Ms. Goldberg has been included in The *Best Lawyers in America* in real estate and banking continuously since 1995, and she has been listed in Chambers USA *America's Leading Business Lawyers* in real estate continuously since its inception in 2003. She is listed in *Southwest Super Lawyers* for 2007, 2008 and 2009 and in the 2007 and 2009 editions she is recognized as one of the Top 25 Lawyers in New Mexico. She can be reached at [cgoldberg@rodey.com](mailto:cgoldberg@rodey.com).

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**Know the deal before you do the deal.**

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**PARTIES CONTEMPLATING** real estate transactions have every reason to be careful. The investment is likely to be a major one. A mistake can be devastating. There always lurks the possibility of potential liabilities that may be extraordinarily difficult to identify. To assuage the concerns of all involved, a letter of intent will be an attractive prospect.

Letters of intent can take many forms. They can be straightforward and not bind the parties at all, or they can be quite detailed and bind the parties to quite a few terms. In many (possibly most) cases, both parties at the letter of intent stage have neither the intention nor the desire to be bound — for such parties, binding terms would defeat the purpose of a letter of intent altogether. However, in some circumstances the parties might, for a variety of reasons, be willing to bind themselves to certain terms at this stage. The following Model Letter of Intent was drafted for a sophisticated purchaser client, a business with a real estate department, that wanted to bind the seller to as many terms as possible from the very beginning. The purchaser wanted to start its due diligence immediately, without having to wait until the details of a purchase agreement were ironed out. As with all form documents, it is intended only as a starting point for consideration of the kinds of issues that a letter of intent with binding terms for the purchase and sale of property can address.

## LETTER OF INTENT

This letter of intent (“Letter”) will outline the terms and conditions under which the prospective buyer \_\_\_\_\_ (“Buyer”), with the consent of the prospective sellers \_\_\_\_\_ AND \_\_\_\_\_ (collectively, “Seller), may initiate due diligence investigations and, thereafter, at Buyer’s option, proceed toward the negotiation, in good faith, of an agreement of purchase and sale (“Purchase Agreement”) of property located in \_\_\_\_\_ County New Mexico, more particularly described in Section 1 below (the “Property”). Buyer and Seller are sometimes referred to in this Letter as the “parties.” Buyer and Seller agree as set forth below.

**1. Property Description.** The property subject to this Letter consists of all Seller’s right, title and interest in and to the \_\_\_\_\_ in \_\_\_\_\_ County, New Mexico, consisting of approximately \_\_\_\_\_ acres, as depicted on the map attached as Exhibit A, together with all appurtenant and related water rights and water rights-related property, including, more specifically, without limitation, all of the following (collectively, the “Property”), free and clear of rights of first refusal, other agreements and other encumbrances of any kind, except any to which Buyer consents in writing:

- a. All surface, mineral, and geothermal estates and/or rights and/or interests in the real property legally described more particularly in attached Exhibit B (the “Land”), together with and including all and singular the tenements, hereditaments, easements, rights-of-way and appurtenances belonging or in anywise appertaining or relating to the aforesaid real property, together with and including all improvements and fixtures of any kind located on the aforesaid real property and/or on any of the foregoing, and together with and including any and all rents, income, profits, proceeds, and products of and from any of the property described in this Section (1)(a) (collectively, the “Real Property”).
- b. All leasehold estates in real property adjacent to, or in the vicinity of, the Real Property, arising under lease agreements between Seller or any member(s) of Seller, as lessee, and the New Mexico Commissioner of Public Lands or any other third party, as lessor, including those lease agreements identified on attached Exhibit C, subject to the obtaining of lessor’s consent to the assignment to Buyer of the interests of Seller under any such lease agreements.
- c. All waters, water courses, water, riparian, and flood rights, and related property (whether appropriate, or otherwise, and whether or not appurtenant to the Real Property, and whether now or hereafter existing or acquired) including, but not limited to (i) any and all adjudicated, licensed, permitted, certificated, declared, perfected, unperfected, Mendenhall, and other water rights and/or flood rights, and claims to and applications for any such water rights and/or flood rights, appurtenant to or with a point of diversion and/or place of use on the aforesaid Real Property; (ii) the water rights and/or flood rights and claims to and applications for water rights and/or flood rights described with specificity on attached Exhibit D [describe by reference to State Engineer file number (and if adjudicated, case name, cause number and file and subfile numbers); quantity; point of diversion; place of use; and other characteristics]; (iii) ditches and ditch rights and reservoirs and reservoir rights; (iv) shares of stock and/

or other interests in any aforesaid water or water rights and/or flood rights, and/or in any irrigation or ditch companies; (v) any and all wells, pumps, casing, tubing, pipes, pipelines, electric power lines, tanks, dams, weirs and other diversion works, ditches, acequias, headgates, turnouts and other equipment, facilities, and property associated, used or useful in connection with any aforesaid water rights and/or flood rights and claims to and applications for such water rights and/or flood rights; and (vi) and any and all rents, income, profits, proceeds and products of and from any of the property described in this Section (1)(c) (collectively, the “Water Rights”).

**2. Letter Inspection Period.** From the date this Letter is fully executed (the “Letter Effective Date”), Buyer shall have a thirty (30)-day period within which to commence a due diligence investigation of the Property (the “Letter Inspection Period”). Seller and Buyer agree to the following during the Letter Inspection Period and beyond, as specified below:

a. Within five (5) business days of the Letter Effective Date, Buyer shall deposit into escrow with the Title Company (defined below), as escrow agent, a deposit of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) (“Letter Deposit”) to be applied toward the Agreement Deposit defined below upon execution of the Purchase Agreement. Seller may retain the Letter Deposit of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) (i) in the event the parties, though proceeding in good faith, are nonetheless unable to negotiate and execute a definitive Purchase Agreement, as independent consideration of Seller entering this Letter or (ii) in the event, in failing to execute a definitive Purchase Agreement, Buyer has not acted in good faith, as Seller’s sole and exclusive remedy, as liquidated damages, Seller’s actual damages being difficult, if not impossible, to ascertain. Buyer may obtain a return of the Letter Deposit of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_), in the event, in failing to execute a definitive Purchase Agreement, Seller has not acted in good faith, as Buyer’s sole and exclusive remedy, as liquidated damages, Buyer’s actual damages being difficult, if not impossible, to ascertain.

b. Seller shall provide to Buyer, at Seller’s cost, within one (1) day of the Letter Effective Date all documents pertinent to the Property, including, without limitation, the following, among others (collectively, the “Letter Inspection Documents”):

i. A current commitment of \_\_\_\_\_ issued through its \_\_\_\_\_, New Mexico office and through \_\_\_\_\_ in \_\_\_\_\_, New Mexico, in combination (collectively, the “Title Company”) on NM Form 6 (ALTA Form Rev. 6-17-06) (the “Commitment”), the form prescribed at N.M. Admin. Code §13.14.18.19 of the New Mexico Title Insurance Rules, N.M. Admin. Code §13.14.1.1 et seq. (“Title Insurance Rules”), for issuance of an Owner’s ALTA policy of title insurance on NM Form 1 (ALTA Form Rev. 6-17-06), the form prescribed and set forth in the Title Insurance rules at N.M.Admin. Code §13.14.18.14 (“Owner’s Policy”), together with copies of the vesting deeds and all documents cited in Schedule B-I and B-II of the Commitment;

ii. All plats of any of the Property, including, without limitation, survey plats;

- iii. All environmental audits and appraisals of any of the Property;
  - iv. Tax documents and business records relating to the Property; and
  - v. All adjudication decrees, licenses, certificates, permits, declarations, changes of ownership, extensions of time for applying water rights to beneficial use, surveys, studies, evaluations and other documents relating to any of the Water Rights.
- c. Beginning upon the Letter Effective Date and terminating at the expiration of thirty (30) days after Seller's delivery to Buyer of the Letter Inspection Documents, Buyer, including its representatives and agents, shall have the right, at any and all times, without further notice, to enter upon and, at its expense, to commence its due diligence inspection, investigation, and evaluation of the Property and to arrange for and coordinate any long lead time due diligence investigations, for example, but not by way of limitation, environmental and/or Real Property and Water Rights studies, surveys, and evaluations of the Property.
- d. Seller shall cooperate with Buyer in Buyer's inspections, investigations, and evaluations of the Property. In that connection, Seller agrees to refrain from actively marketing the Property during the Letter Inspection Period, during any and all negotiations between Seller and Buyer occurring thereafter, and during the period for which any Purchase Agreement between Buyer and Seller is in effect.
- e. Seller and Buyer, together, shall use their best efforts and otherwise cooperate to obtain from the holder of any mineral rights underlying the Real Property, an assurance that such holder will waive all rights to extract minerals of any kind from the Real Property, in the event of a purchase of the Property by Buyer.
- f. At the end of the Letter Inspection Period, if Buyer is not satisfied with the Property, in its sole and absolute discretion, it shall so notify Seller and shall have no further obligation to Seller, which may retain the Letter Deposit, subject to the provisions of Section (2)(a) above.

**3. Purchase Agreement.** If, at the end of the Letter Inspection Period, Buyer wishes to pursue the purchase, Buyer will prepare a draft Purchase Agreement within ten (10) days from the end of the Letter Inspection Period, based on the terms of this Letter, including as set out below, as well as on additional consistent terms negotiated by the parties. Seller shall continue to refrain from marketing the Property to others while negotiating the terms of the Purchase Agreement and while the Purchase Agreement remains in effect. Once the parties have reached agreement on the terms of the purchase and sale, the parties shall execute a Purchase Agreement with respect to the Property, and the Letter Deposit shall be applied to the Agreement Deposit (defined below) requirement. The Purchase Agreement shall include the provisions detailed below, among others.

- a. The purchase price for the Property shall be a total of \_\_\_\_\_ (\$\_\_\_\_\_), to be paid, after application of the Agreement Deposit (defined below), at a Closing (defined below) to

occur no later than \_\_\_\_\_, \_\_\_\_\_, unless such date is extended in writing by the parties. No debt of the Seller will be assumed.

b. At such time as a definitive Purchase Agreement is fully executed, including by the Title Company (“Agreement Effective Date”), Buyer shall deposit into escrow with the Title Company, as escrow agent, earnest money totaling \$\_\_\_\_\_ (“Agreement Deposit”) after application of the Letter Deposit. The Agreement Deposit will be fully refundable to Buyer until the expiration of the Agreement Inspection Period (defined below).

c. Buyer will have thirty-one (31) days (the “Agreement Inspection Period”) after a Purchase Agreement is signed to inspect and further investigate all aspects of the Property. During the Agreement Inspection Period, Buyer may continue evaluating the Letter Inspection Documents provided to it by Seller during the Letter Inspection Period. In addition, during the Agreement Inspection Period, Seller shall provide to Buyer, at Seller’s cost, except as otherwise indicated, all documents pertinent to the Property, including, without limitation, the following documents, among others, within one (1) day of the Agreement Effective Date (collectively, the “Agreement Inspection Documents”):

i. An updated Commitment and copies of any new documents of record cited in Schedule B-I and/or B-II;

ii. Any updated Letter Inspection Documents; and

d. All other investigations shall be at the sole cost of Buyer. Sellers will fully cooperate with all of Buyer’s investigations and will provide Buyer and its representatives full access to all books, records, files, reports, and information, as well as to the Property, and to all of Seller’s agents and employees with knowledge of the Property.

e. During the Agreement Inspection Period, Buyer shall review the status and standing of the Water Rights, as well as the condition of title to all the Property, including, without limitation, as reflected in the Commitment and applicable surveys, and determine, in its sole discretion, whether it desires to object to the condition of title, giving Seller the opportunity to cure title and/or survey or other defects, consistent with provisions of the Purchase Agreement, or to purchase the Property subject to its then existing condition.

f. Buyer may terminate the Purchase Agreement at any time during the Agreement Inspection Period for any reason, with no further liability.

g. The Purchase Agreement shall include customary representations and warranties by Sellers, for Buyer’s reliance, including the availability of utilities, absence of environmental conditions, the subdivision of the Property in accordance with applicable law, and the zoning of the Property. In addition, the Purchase Agreement shall obligate Seller to deliver, on the Agreement Effective Date, notice of the Purchase Agreement and its terms and conditions to any parties holding a right of first refusal on any

Water Rights or other Property and to provide Buyer with a copy of such notice immediately thereafter. Such notice delivered on the Agreement Effective Date shall be sufficient to trigger the running of any period for exercise of a right of first refusal. The Purchase Agreement shall further call for Buyer and Seller to use their best efforts and otherwise cooperate to obtain from the holder of any mineral rights underlying the Property, for the benefit of Buyer, a waiver of all such holder's rights to extract minerals of any kind from the Property.

h. The close of escrow, including, without limitation, Seller's delivery to Buyer of the Property by warranty deed, together with such change of ownership and other documentation as is necessary to transfer the Water Rights and/or any other parts of the Property, and Buyer's delivery to Seller of the Purchase Price ("Closing"), shall occur by the date set forth in Section (3)(a) above (the "Closing Date"). Closing will be subject to the satisfaction or waiver of conditions benefiting the Seller and Buyer which are customary in commercial transactions of the nature described herein.

i. At Closing, Buyer, as lessor, and Seller, or a member or affiliate of Seller, as lessee, shall, at Seller's option, enter into a lease agreement, for the lease back to Seller of the Real Property, for a lease term of five (5) years, at a rental rate of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) per year, payable, for the first year of the lease term, at Closing and, thereafter, for each of the four years remaining in the lease term, on the anniversary of the Closing Date. The lease shall include provisions permitting (i) Seller, as lessee, to cancel the lease, as to the entirety of the leased Real Property, upon thirty (30) days' advance written notice to Buyer; and (ii) Buyer, as lessor, to cancel the lease, in part, from time to time, (x) as to some or all portions of the leased Real Property, other than the house and the Land underlying and in the immediate vicinity of the house (collectively, the "Homestead"), as such Homestead is described on attached Exhibit E, upon thirty (30) days' advance written notice to Seller, as lessee, specifying the non-Homestead portion(s), including the number of acres therein, of the Real Property as to which the lease is being cancelled, and (y) as to the Homestead, after the expiration of one (1) year from the Closing Date, upon thirty (30) days' advance written notice to Seller, as lessee, specifying the Homestead, including the number of acres therein, as the portion of the Real Property as to which the lease is being cancelled. In the case of any cancellation of the Lease by Buyer, as lessor, the amount of annual rent owed for the Real Property remaining subject to the lease shall be reduced pro rata, effective as of the date of cancellation, based on the number of acres of Real Property removed from the lease by such cancellation in relation to the total acreage subject to the lease at the time of cancellation.

j. Closing costs shall be allocated in accordance with the custom in \_\_\_\_\_ County, New Mexico. Seller and Buyer shall each pay the fees and expenses of their respective legal counsel, accountants, and other consultants or advisors incurred in connection with the transaction. Real estate taxes, assessments, and any items of income and expense shall be prorated as of the Closing Date. Seller shall bear the cost of a standard Owner's Policy of title insurance in favor of Buyer, in the amount of the purchase price of the Real Property. The cost of deletions from the Owner's Policy of any standard exceptions in Schedule B-II of the Commitment, as well as the cost of any other affirma-

tive coverages and endorsements, shall be borne by Buyer. In addition, Buyer shall order, at its cost, an ALTA survey of the Real Property, as well as a Water Rights survey.

**4. Confidentiality.** Buyer and Seller shall keep any negotiations and communications between the parties regarding the potential purchase or purchase of the Property confidential, including through the Letter Inspection Period, the Agreement Inspection Period, and thereafter, and shall not disclose any matter related to such negotiations and communications to any third party, except, on a “need to know” basis, to either party’s attorneys, accountants, or similar consultants if such attorneys, accountants, or similar consultants agree to keep such negotiations, communications, and related matters confidential. This confidentiality provision shall apply throughout the Letter Inspection Period, the Agreement Inspection Period, and thereafter.

**5. Binding/Non-binding Nature of Provisions.** The provisions of this Letter applicable through the Letter Inspection Period are binding. The balance of the provisions of this Letter create no contractual obligation on the part of either party, but merely state a framework pursuant to which Buyer may consider negotiating and executing a Purchase Agreement with Seller, and the Letter will be superseded by the terms of any written Purchase Agreement signed by the parties.

**6. New Mexico Law Governs.** The provisions of this Letter, and those of any Purchase Agreement ensuing, shall be construed according to, and otherwise governed by, New Mexico law without reference to principles of choice of law.

**7. Execution in Counterparts.** This Letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

By signing below, the parties signify that the terms described in this letter are acceptable.

[Signatures]

#### **JOINDER OF TITLE COMPANY, INCLUDING AS ESCROW AGENT**

\_\_\_\_\_, including as escrow agent herein, joins in the execution of this Letter of Intent for the limited purposes of acknowledging and agreeing to the provisions regarding the acceptance, deposit, and disbursement of the Letter Deposit, and otherwise agreeing to perform its obligations hereunder in accordance with the provisions of this Letter of Intent.

[Signatures]

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[Signatures]

[Attach Exhibits as referenced in Main Document]

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