

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (“**Agreement**”) is effective this \_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”) between Consumer Direct Grant Creek Campus, LLC, a Montana limited liability company (the “**Seller**”) and the City of Missoula, a municipal corporation organized and existing under the laws of the State of Montana (the “**Buyer**”).

### RECITALS

Seller is the owner of certain real property located in Missoula County, Montana (the “**Property**”), legally described as follows:

Lot 1 of Consumer Direct Addition, a two-lot subdivision located in the NW ¼ of Section 8, Township 13 North, Range 19 West, P.M.M., City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

Together with certain improvements thereon, *specifically excluding* and reserving unto Seller that certain five-story building of approximately 72,102 gross square feet and any internal building fixtures and improvements located therein, the bike storage structure of approximately 660 square feet located adjacent to the building, and the chiller, generator, and playground equipment located on the Property.

Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer.

Immediately following Buyer’s acquisition of the Property, Seller and Buyer shall enter into that certain Ground Lease Agreement with Option to Purchase relating to the Property, which shall include the option for Seller to repurchase the Property (the “Ground Lease”).

### AGREEMENT

In consideration of the mutual covenants and provisions in this Agreement, it is agreed as follows:

**1. Property to be Conveyed.** Seller agrees to sell and convey, and Buyer agrees to purchase on the terms and conditions in this Agreement the Property. *The parties specifically acknowledge and agree that the defined term of “Property” shall not include any right, title or interest to or in that certain five-story building of approximately 72,102 gross square feet and any internal building fixtures and improvements located therein, the bike storage structure of approximately 660 square feet located adjacent to the building, and the chiller, generator, and playground equipment located on Lot 1 of Consumer Direct Addition, a two-lot subdivision located in the NW ¼ of Section 8, Township 13 North, Range 19 West, P.M.M., City of Missoula, Missoula County, Montana, according to the official recorded plat thereof, all of which shall be reserved by Seller.*

**2. Purchase Price.** The purchase price for the Property shall be \$1,999,920.00 (“**Purchase Price**”), payable at Closing in readily available funds. For purposes of this Section readily available funds shall mean wire transfers, certified funds or a cashier’s check in a form acceptable to escrow agent that would permit escrow agent to immediately disburse such funds.

3. **Title.** At least five (5) days prior to the Effective Date, Buyer received, and hereby acknowledges receiving, a commitment for a standard owner's policy of title insurance on the Property. Buyer has had a chance to obtain legible copies of all documents referred to in Schedule B of the commitment (the commitment and the documents are collectively referred to as the "**Title Report**"). Buyer acknowledges and agrees that it shall take the Property subject to the Permitted Exceptions (defined below), which shall include but not limited to that certain Deed of Trust (Bk: 958 Pg: 937, as modified at Bk: 974 Pg: 53), Assignment of Rents (Bk: 958 Pg: 938), Environmental Indemnification and Release Agreement (Bk: 958 Pg: 939), UCC Financing Statement (Bk: 958 Pg: 940), the Permanent Grant of Easement (Bk: 966 Pg: 1095), and that certain Landlord's Consent to Assignment executed concurrently herewith. All exceptions appearing on the Title Report that are not removed by the escrow agent, as of the Closing Date, shall be referred to in this Agreement as "**Permitted Exceptions.**" Seller acknowledges that upon closing of the sale and purchase provided for herein, Buyer shall execute and record a Trust Indenture on the Property and an Assignment of Lease in favor of the Montana Board of Investments ("MBOI"), and Seller and Buyer shall execute and record a Subordination Agreement providing that the MBOI Trust Indenture and Assignment of Lease shall be superior to and have priority over the above-referenced Deed of Trust, Assignment of Rents and Consent to Assignment.

4. **Buyer's Contingency AS IS.** This Agreement is being executed at Closing (defined below) and is not subject to any Buyer contingencies. Furthermore, Buyer acknowledges and agrees that prior to signing this Agreement Buyer has conducted such reviews, investigations, inspections and tests as it deems necessary in order to consummate its purchase of the Property. Buyer has satisfied itself in its sole, absolute and uncontrolled discretion as to the conditions of the Property. Buyer is purchasing the Property AS IS, WHERE IS, AND WITH ALL FAULTS and, except as specifically stated herein, without any representations or warranties of any kind whatsoever, express or implied, by Seller or any agent of Seller.

5. **Closing.** The closing and transfer of title ("**Closing**") shall take place in the office of the escrow agent (Stewart Title of Missoula) on the Effective Date ("**Closing Date**"). Some documents may be signed at other locations and provided to the escrow agent via mail or other means.

6. **Conditions to Closing.** Seller's obligations to close the transactions contemplated in this Agreement shall be subject to Buyer's execution of the Ground Lease.

7. **Closing Procedure.** At the Closing,

a. Seller shall:

i. Execute and deliver to the escrow agent for recording a special warranty deed, conveying title to the Property to Buyer, subject to the Permitted Exceptions;

ii. Execute and deliver the Ground Lease, and the related Memorandum and Notice of Lease and Option to Purchase Real Estate;

iii. Execute and deliver that certain Public Improvements Use Fee Agreement, and any Related Documents (as such term is defined therein);

iv. Execute and deliver that certain Landlord's Consent of Assignment;

v. Cause the escrow agent to deliver to Buyer a standard owner's policy of title insurance ("**Title Policy**") in the total amount of the Purchase Price in which Buyer appears as the insured, subject only to Permitted Exceptions. Should Buyer desire

extended coverage or policy endorsements, Seller shall cause the escrow agent to deliver the same, provided that Buyer shall pay for any additional premiums or other costs; and

vi. Execute all documents and do all things reasonably required to close the transaction, including, without limitation, execute all documents reasonably requested by the escrow agent or Buyer, such as settlement statements.

b. Buyer shall:

i. Deliver the Purchase Price is readily available funds; [Discuss timing of closing and MBOI loan funding.]

ii. Execute and deliver that certain special warranty deed and bill of sale, and accompanying escrow agreement, to be held and released by escrow agent if Seller exercises its option to purchase the Property;

iii. Execute and deliver the Ground Lease, and the related Memorandum and Notice of Lease and Option to Purchase Real Estate;

iv. Execute and deliver that certain Public Improvements Use Fee Agreement, and any Related Documents (as such term is defined therein);

v. Execute and deliver that certain Landlord's Consent of Assignment; and

vi. Execute all documents and do all things reasonably required to close the transaction, including, without limitation, execute all documents reasonably requested by the escrow agent or Seller, such as settlement statements.

#### **8. Closing Costs, Proration of Taxes, Etc.**

a. Escrow and Related Costs. The escrow agent's charges and all recording costs shall be paid by Seller.

b. Title Insurance. Seller shall pay such amount of the premium for the Title Policy. Buyer shall pay for extended coverage or any additional title insurance coverage.

c. Taxes. Seller shall continue to be obligated to pay real property taxes following the Closing Date pursuant to the Ground Lease.

d. Assessments. Seller shall cause all improvement district special assessments or other similar assessments on the Property to be paid current through the Closing Date. Any assessments not due and payable as of the Closing Date shall be prorated based upon the latest available information.

e. Attorneys. Each party shall bear its own attorneys' fees incurred in the preparation and negotiation of this Agreement.

**9. Brokerage.** Each party warrants and represents to the other that it has not engaged a real estate broker in connection with this transaction. Buyer shall be responsible for, and shall indemnify Seller for, any brokers' commissions or similar fees which another third party may attempt to claim as a

result of Buyer's actions, and Seller shall be responsible for, and shall indemnify Buyer for, any brokers' commissions or similar fees which another third party may attempt to claim as a result of Seller's actions.

**10. Miscellaneous Provisions.**

- a. The recitals to this Agreement are hereby incorporated by this reference.
- b. This, along with the agreements to be executed concurrently with this Agreement, is the entire agreement between the parties with respect to the subject matter hereof.
- c. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties.
- d. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Montana.
- e. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign its interest in this Agreement without the prior written consent of the other party.
- f. Time is of the essence with respect to the performance of all terms, conditions and provisions of this Agreement.
- g. Buyer and Seller will each sign and deliver such other documents as may be reasonably required to effectuate this transaction.
- h. This Agreement may not be amended or modified except by a document in writing signed by the parties hereto.
- i. Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any part, provision, representation or warranty of this Agreement which is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof. If the invalidity of any part, provision, representation or warranty of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, the parties shall negotiate in good faith to develop a structure the economic effect of which is as nearly as possible the same as the economic effect of this Agreement without regard to such invalidity.
- j. The waiver by any party of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
- k. This Agreement may be executed in any number of counterparts, including facsimile counterpart signature pages and counterpart signature pages in "portable document

format” (.pdf), all of which taken together shall constitute one and the same instrument, and each of the parties hereto may execute this Agreement by signing any such counterpart.

l. The terms “day” or “days” as used herein shall mean calendar day or days. As used herein, the term “business day” shall mean a day other than a Saturday, Sunday or day on which banking institutions in the City of Missoula, Montana are authorized or required by law or executive order to be closed. If this Agreement requires any act to be done or action to be taken on a date which is not a business day, that act or action will be deemed to have been validly done or taken if done or taken on the next succeeding business day.

m. No term or provision of this Agreement or the exhibits to this Agreement, if any, is intended to be, nor may any term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party to this Agreement (including, without limitation, any broker), and no other person, firm, corporation or entity has any right or cause of action under this Agreement.

n. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any other document, instrument or agreement executed in connection with or in furtherance of this Agreement, including any exhibits to this Agreement, the other document, instrument or agreement must be consistently interpreted in a manner as to give effect to the general purposes and intention as expressed in this Agreement, which must be deemed to prevail and control.

***[Remainder of Page Intentionally Left Blank – Signature Page(s) to Follow]***

**SIGNATURE PAGE  
TO  
REAL ESTATE PURCHASE AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**SELLER:**

Consumer Direct Grant Creek Campus, LLC

By: \_\_\_\_\_  
Name: Bruce Kramer  
Its: Authorized Member

**BUYER:**

City of Missoula

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_