

ADVISORY REGARDING FIRPTA TAX

1 This is an advisory and should not be relied upon as legal or tax advice.

2 **1. FIRPTA LAW SUMMARY:** Seller and Buyer are advised upon Closing, a Federal law known as the Foreign Investment in Real Property Tax Act of
 3 1980 ("FIRPTA") requires buyers to withhold a portion of a Seller's proceeds if the real property is located within the United States and the Seller is a "foreign
 4 person" who does not qualify for an exemption (the "Withholding Requirement"). A "foreign person" includes a nonresident alien individual, foreign corporation
 5 that has not made an election under Section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign partnership, foreign trust, or
 6 foreign estate but does not include a resident alien individual. Generally, the following rules apply under FIRPTA:

7 (a) There is no Withholding Requirement, even if the Seller is a "foreign person," if: (i) The purchase price of the property is not more than
 8 \$300,000; and (ii) The property will be occupied as a residence by a buyer who is an individual (or a member of that Buyer's family); and (iii) for at
 9 least 50% of the number of days (excluding days the property is vacant) it is used by such person during each of the first two 12-month periods
 10 following the date of Closing;

11 (b) The Withholding Requirement will be ten percent (10%) of the purchase price when the Seller is a "foreign person," and the purchase price is
 12 over \$300,000 but less than \$1,000,000, and (a)(ii) and (iii) above apply; and

13 (c) The Withholding Requirement will be fifteen percent (15%) of the purchase price when the Seller is a "foreign person," and the purchase price
 14 is over \$1,000,000, or the purchase price is less than \$1,000,000, and Seller does not qualify for any of the exemptions in (a) or (b) above.

15 If FIRPTA applies (that is, if Seller is a foreign person), even if there is an exemption, Seller and Buyer must inform Escrow to determine the extent to which
 16 Escrow can assist the parties in compliance with FIRPTA. Note Seller's failure or refusal to comply with FIRPTA requirements constitutes a material default
 17 under the real estate sale agreement.

18 If FIRPTA does not apply (that is, if Seller is not a foreign person), then Seller must complete, sign, and deliver to Escrow a form of certification of non-foreign
 19 status provided by Escrow complying with the requirements of 26 CFR § 1.1445-2 (the "Certificate") prior to Closing. Seller is advised the Certificate contains
 20 Seller's Social Security Number and other personal information, so Seller may want to contact Escrow to determine if Escrow is willing to act as a "Qualified
 21 Substitute" and deliver to Buyer a qualified substitute statement complying with the requirements of 26 USC§1445(b)(9) (the "Qualified Substitute Statement")
 22 in lieu of the Certificate at Closing, so Seller's personal information is protected from disclosure to Buyer. Note if Seller fails or refuses to complete, sign, and
 23 deliver the Certificate to Escrow prior to Closing, Seller will be presumed to be a foreign person, and the Withholding Requirement will apply to the transaction.

24 If Escrow is unable or unwilling to assist with the FIRPTA-related portion of the Closing (including, without limitation, providing the form Certificate or acting as a
 25 Qualified Substitute), Buyer or Seller (as applicable) has the right, but not the obligation, to move Escrow to another Oregon licensed escrow agent willing to
 26 assist with the FIRPTA-related portion of the Closing, in which case the parties shall share equally in the cost of any cancellation fees (if applicable). If, due to
 27 moving Escrow, the transaction cannot be closed by the Closing Date, the parties agree the Closing Date will be extended for a reasonable period not to
 28 exceed five (5) Business Days to accommodate moving the transaction to the new escrow agent.

29 If Seller is uncertain whether Seller is a "foreign person" or Seller or Buyer are uncertain about whether the Withholding Requirement applies or how to comply
 30 with the Withholding Requirements, Seller or Buyer (as applicable) should promptly consult their own experts familiar with FIRPTA related law and regulations.
 31 For further information, Seller and Buyer should go to: www.irs.gov.

32 **2. RIGHT TO RELY ON SELLER'S REPRESENTATION:** In submitting their offer, it is presumed, Buyer has no knowledge, information, or belief that
 33 Seller is a foreign person or the transaction is subject to FIRPTA. Furthermore, Buyer's and Seller's Agents, their respective Firms, and Escrow, its agents,
 34 employees, and representatives, shall have the absolute right to rely upon Seller's representations regarding Seller's non-foreign status as set forth in the
 35 Certificate. This right of reliance shall continue through the Closing Date and thereafter unless Seller has disclosed otherwise in writing to Buyer prior to
 36 Closing.

37 **ACKNOWLEDGMENT:** The undersigned acknowledge they have read and understand this Advisory and have been provided with a copy for their own files.

38 Buyer _____ Date _____ a.m. _____ p.m. ←

39 Buyer _____ Date _____ a.m. _____ p.m. ←

40 Seller _____ Date _____ a.m. _____ p.m. ←

41 Seller _____ Date _____ a.m. _____ p.m. ←

42 Buyer's Agent _____ Seller's Agent _____