

LOT PURCHASE CONTRACT

This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

This Lot Purchase Contract ("Contract") is entered into effective as of the _____ day of _____, 20____, by and between **Quality Excavation Inc.**, ("Seller") and _____ ("Buyer").

EARNEST MONEY RECEIPT

Buyer offers to purchase the Property described below and deliver to _____ as Earnest Money, the amount of \$_____ in the form of _____ which, upon Acceptance of this offer by all parties, as defined in Section 24, shall be deposited in accordance with state law.

Received by: _____ on _____ (Date)
(Signature of Agent/Broker Acknowledge receipt of Earnest Money)

Brokerage: _____ Phone Number: _____

OFFER TO PURCHASE

- 1. **PROPERTY:** The subject of this Contract is Lot _____, Phase 1 **Tonaquint Terrace** Subdivision, City of St. George, County of Washington, State of Utah.
- 2. **PURCHASE PRICE:** The Purchase Price for the Property is \$_____.

The Purchase Price shall be paid as follows:

\$_____ (a) **Earnest Money Deposit. Under certain conditions described in this Contract THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.**

\$_____ (b) **New Loan.** Buyer agrees to apply for one or more of the following loans:
 CONVENTIONAL **OTHER** (specify)_____ If the loan is to include any particular terms, then check below and give details:
 SPECIFIC LOAN TERMS: _____

\$_____ (c) **Other (specify)** _____

\$_____ (d) **Balance of Purchase Price in Cash at Settlement**

\$_____ **PURCHASE PRICE. Total of lines (a) through (d)**

3. **SETTLEMENT AND CLOSING.** Settlement shall take place at Southern Utah Title Company (20 N Main, Suite 300, St. George, Utah) on the Settlement Deadline referenced in Section 25 (c), or at such place and time upon which Buyer and Seller agree in writing. Settlement shall occur only when **all** of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year shall be prorated at Settlement as set forth in the settlement statement. The transaction will be considered closed when Settlement has been completed, and when **all** of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four (4) calendar days of Settlement.

4. **CONFIRMATION OF AGENCY DISCLOSURE.** At the signing of this Contract:
 Seller's Initials Buyer's Initials

Listing Agent Lori Burgess of Quality Realty, represents
 Seller Buyer both Buyer and Seller as a Limited Agent;

Listing Broker _____, represents
 Seller Buyer both Buyer and Seller as a Limited Agent;

Buyer's Agent _____, represents
 Seller Buyer both Buyer and Seller as a Limited Agent;

Buyer's Broker _____, represents
 Seller Buyer both Buyer and Seller as a Limited Agent;

5. **AGENCY DISCLOSURE.** Buyer acknowledges that Lori Burgess, a member of Quality Excavation, Inc., is a licensed real estate Agent in the State of Utah.
 Buyer's Initials

6. **POSSESSION.** Seller shall deliver physical possession of the Property upon closing.

7. **TITLE INSURANCE:** At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.

8. BUYER'S RIGHT TO CANCEL IF NO LOAN APPROVAL: Buyer's obligation to purchase under this Contract is conditioned only upon the Buyer's approval of the terms and conditions of any loan reference in Section 2(b) above, upon the following terms and conditions:

(a) Loan Approval Deadline: No later than the Loan Approval Deadline referenced in Section 25(c) Buyer shall determine if the terms and conditions of any loan referenced in Section 2(b) above are acceptable to Buyer.

(b) Right to Cancel: If Buyer determines that the terms and conditions of any loan referenced in Section 2(b) above are unacceptable. Buyer may, no later than the Loan Approval Deadline, cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer.

(c) Failure to Cancel: If by the expiration of the Loan Approval Deadline, Buyer does not cancel this Contract as provided in Section 8(b), the Buyer's loan shall be deemed approved by Buyer; and the contingencies referenced in this Section 8 shall be deemed waived by Buyer.

9. SELLER WARRANTIES & REPRESENTATIONS:

(a) Condition of Title: Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by special warranty Deed. Buyer agrees to accept title to the Property subject to the following matters of record: easements, deed restrictions, covenants, conditions and restrictions ("CC&R's"), and rights-of-way; and subject to the contents of the Commitment for Title Insurance provided under Section 7, as agreed to by Buyer. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Seller will cause to be paid off by Closing all then existing mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

(b) Condition of Property: Seller warrants that on the date Seller delivers physical possession of the Property to Buyer, the Property will be free of debris and personal property of the Seller and will be in the same general condition as it was on the date of Acceptance.

10. FINAL PRE-CLOSING INSPECTION: Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a final pre-closing inspection of the Property to determine **only** that the condition of the Property complies with Section 9(b) above. If the condition of the Property does not comply with Section 9(b), Seller will, prior to Settlement, bring the Property into the warranted condition.

Page 3 of 8 pages Seller's Initials _____ Date _____ Buyer's Initials _____ Date _____

The failure of Buyer to conduct a final pre-closing inspection or to claim that the Property is not in the warranted condition shall not constitute a waiver by Buyer to receive the Property in warranted condition on the date of possession.

11. **PROPERTY SUBJECT TO COVENANTS.** Buyer represents and warrants that Buyer is aware that the Property is subject to CC&R's, which have been duly recorded. Buyer represents that Buyer has received a copy of said CC&R's, has reviewed the same, and agrees to be bound by, and fully comply with, the terms and conditions of that document.

12. **ADDITIONAL DEPOSITS.** At Settlement, Buyer shall deposit with Seller the sum of \$5,000.00 to be held by Seller in accordance with the CC&R's. The deposit will be divided with \$3,000.00 to be held by Seller to assure that the Buyer submits plans for construction on the Property to the Architectural Control Committee for approval prior to construction, as required by the CC&R's and \$2,000.00 shall be held by Seller in connection with the Buyer's obligation to complete landscaping improvements on the Property, as required by the CC&R's. All funds deposited shall be held, refunded and/or forfeited in accordance with the CC&R's.
[] **Buyer's initials**

13. **PURCHASE OF PROPERTY "AS IS" AND RELEASE OF SELLER.** Buyer represents and warrants that it is relying upon its own investigations and inspections of the Property in deciding to purchase the Property. Buyer is specifically purchasing the Property **"AS IS" AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.** Buyer hereby agrees that it is Buyer's sole responsibility to obtain and comply with recommendations from competent geotechnical and engineering professionals with regard to the inspection of the Property prior to purchase and construction on the Property. Buyer further acknowledges and agrees that the Seller makes no warranties whatsoever with regard to the Property other than as contained in Section 9(b) above. Buyer, for themselves and their heirs, representatives, successors and assigns, waive any and all known or unknown claims of whatever nature against the Seller and its agents, employees, officers, representatives, successors and assigns. Such waiver specifically includes, but is not limited to, any claims or damages caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock falls, rock, block or other walls installed by or for the Seller, or any other condition that may be associated with, or directly or indirectly related to, defects in design, construction, installation or management of improvements within, related to, or servicing the Property. Buyer represents that Buyer has inspected the Property as deemed advisable by the Buyer and accepts the Property in its current condition and waives any and all claims against the Seller and its agents, employees, officers, representatives, successors and assigns, in any way related to such Property, including, without limitation, claims related to or associated with the slope, elevation, or drainage of the Property and/or any adjoining properties.

14. **AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller.
15. **COMPLETE CONTRACT.** This Contract constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.
16. **DISPUTE RESOLUTION.** The parties agree that any dispute, arising prior to or after Closing, related to this Contract **MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation and one-half (1/2) of the costs of the mediator. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 16 shall prohibit any party from seeking emergency equitable relief pending mediation.
17. **DEFAULT.** If Buyer defaults, Seller may elect either to retain the Earnest Money as liquidated damages, or to retain such Earnest Money for future offset and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. In the event that the Seller retains the Earnest Money and sues the Buyer, such Earnest Money shall be held in an interest bearing account for the benefit of Buyer and offset against any judgment obtained by Seller, with any excess being returned to Buyer. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.
18. **ATTORNEY FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 16.
19. **NOTICES.** All notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.
20. **ABROGATION.** Except for the provisions of Sections 9(a), 9(b), 16 and 18, and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

- 21. **RISK OF LOSS.** All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.
- 22. **TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.
- 23. **FAX TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.
- 24. **ACCEPTANCE.** "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.
- 25. **CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this Contract: **Failure of Buyer to meet any of the following deadlines shall render non-refundable any and all Earnest Money held pursuant to the section above titled "Earnest Money Receipt."**

(a) Due Diligence Deadline _____ (Date)

(b) Loan Approval Deadline _____ (Date)

(c) Settlement Deadline _____ (Date)

26. **OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: _____
[] AM [] PM Mountain Time on _____ (Date), this offer shall lapse.

(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

(PLEASE PRINT)

Buyer's Names : _____

Address : _____

City, State, Zip Code : _____

Phone : _____

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[] **ACCEPTANCE OF OFFER TO PURCHASE:** Seller accepts the foregoing offer on the terms and conditions specified above.

[] **COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. ____.

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

Quality Excavation, Inc.
113 E 200 N #3
St George, Utah 84770
435 628-2000

[] **REJECTION:** Seller rejects the foregoing offer.

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

DOCUMENT RECEIPT

State law requires Broker to furnish Buyer and Seller with copies of this Contract bearing all signatures.

A. I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

(Buyer's Signature) (Date) (Buyer's Signature) (Date)

(Seller's Signature) (Date) (Seller's Signature) (Date)

B. I personally caused a final copy of the foregoing Contract bearing all signatures to be
 faxed mailed hand delivered on _____(Date), postage prepaid, to the
 Seller Buyer.

Sent/Delivered by _____