



**Dominic
Dutra**

STANDARD TERMS AND CONDITIONS IN A LETTER OF INTENT

A Standard Sales Contract, which can be over 50 pages in length, is much more appropriately handled by an attorney familiar with the respective laws of the state, and is more typically referred to as a Purchase and Sales Agreement (or PSA).

I focus here on the standard terms and conditions that would be included in a Letter of Intent (LOI), which is more general in nature, and is something that a real estate broker/agent would present from a buyer to a seller as an initial offer for property. The Letter of Intent details the price, terms, and conditions that are being offered for a property, and, if accepted, are then incorporated into a PSA by the attorney.

With the above in mind, the role of the real estate broker/agent is to create and review with the Church a template LOI outlining the general terms and conditions which the Church would consider as the basis for a PSA with a prospective buyer. By way of example, if a church sold the property to a residential buyer, these terms and conditions may include, but are not necessarily be limited to, the following;

PROPERTY: This should include a brief description of the property including acreage, building square footage, property address, and Property Tax Assessor's Number (or some other appropriate legal description of the property).

PURCHASE PRICE: For a buyer that intends to construct a residential subdivision on the property, this is the value that they will pay once the requisite approvals are obtained from the city and/or county. This process is often referred to as the entitlement period. The residential builder may also choose to qualify this offer based on the number of residential lots that are ultimately approved. The Church should attempt to establish a minimum value for the property, while avoiding any cap on a higher value.





Dominic Dutra

Finally, the purchase price will be reduced by any nonrefundable deposits that are released to the Church during the initial due diligence and subsequent entitlement period. For example, a recent transaction had the purchase price of Nine Million Nine Hundred Thousand Dollars (\$9,900,000) paid as follows:

1. On or before five (5) business days from the execution of the Agreement, Buyer shall deposit with the Escrow Holder the sum of Nine Hundred Thousand Dollars (\$900,000), the "Deposit", of which Fifty Thousand Dollars (\$50,000) shall be released immediately to Seller and Eight Hundred Fifty Thousand Dollars (\$850,000) shall be deposited into an interest-bearing account with the interest accruing to Buyer's benefit. The Deposit shall be applicable to the Purchase Price, and only the remaining unreleased portion of the Deposit shall be refundable to the Buyer if the Agreement is cancelled prior to the expiration of the Feasibility Period.
2. Upon expiration of the Feasibility Period, if Buyer elects to continue with the purchase of the Property, the Deposit shall be applicable to the Purchase Price and become non-refundable in the event of Buyer default. The Deposit shall remain in escrow until Close of Escrow or termination of the Agreement by Buyer, with the exception of:
 - Two Hundred Thousand Dollars (\$200,000) which shall be released within three (3) days after the expiration of the Feasibility Period and,
 - Two Hundred Fifty Thousand Dollars (\$250,000) which shall be released one hundred twenty (120) days after expiration of the Feasibility Period.
3. The remaining Deposit ("Remaining Deposit") shall be released to Seller after the Property has been rezoned to the desired residential zoning ("Residential Resolution"), with a release of:
 - Two Hundred Thousand Dollars (\$200,000) released within three (3) days after Residential Resolution and,
 - Two Hundred Thousand Dollars (\$200,000) released within three (3) days after the approved Tentative Map and expiration of all appeal periods.
4. Close of Escrow, Buyer shall deposit the balance of the Purchase Price, in cash, with the Escrow Holder.

At any time between the expiration of the Feasibility Period and the Close of Escrow, Buyer may terminate the Agreement by providing written notice of such termination to the Seller. In the event of such termination, the Deposit in escrow shall be released to Buyer, and Buyer and Seller shall have no further Liabilities or obligations to one another under the Agreement, provided however, that Buyer shall release all plans and studies pertaining to the Property completed by third parties on behalf of Buyer. A Notice of Interest and/or Memorandum of Agreement shall be recorded on the property at each deposit release.





Dominic Dutra

INITIAL FEASIBILITY PERIOD: The initial feasibility period shall typically take approximately 60-90 days to complete and include, but is not necessarily be limited to, the following;

PHYSICAL INSPECTION FEASIBILITY PERIOD: Buyer will have a period of 60-days (“Physical Inspection Feasibility Period”) from the effective date of the Purchase Agreement (“Agreement”) to satisfy the following contingencies.

Approval of Title. A preliminary title report for the Property, together with copies of the documents evidencing title exceptions referred to therein, shall be delivered by Seller to Buyer within five (5) days of the Effective Date of the Agreement. Buyer shall have thirty (30) days after receiving the preliminary title report within which to notify Seller of any objections Buyer may have thereto. Seller shall then have ten (10) days in which to notify Buyer of any exceptions that Seller is unable or unwilling to remove prior to close of escrow.

Leases: Buyer’s approval of any and all leases, easements, or other encumbrances, whether recorded or unrecorded on the property which shall be delivered by Seller to Buyer within five (5) days of the Effective Date of the Agreement.

Inspections: Upon executing the Agreement, Buyer, at Buyer’s sole cost and expense, may enter upon the Property, meet with governmental and quasi-governmental officials, and do all other things reasonably necessary for the purpose of conducting its feasibility and financial study thereof. Buyer also may retain engineers, contractors, soils and geologic consultants, architects and any other advisors to perform tests, studies and investigations regarding the Property that Buyer, in its sole discretion, deems appropriate in order to determine if the Property is suitable for Buyer. Said inspections to include, but not be limited to; roof, framing, foundation, building exterior, plumbing systems, heat and air conditioning, electrical systems, site conditions (paving, drainage, etc.), lead, asbestos, mold and Phase I and Phase II Environmental Site Assessments. Buyer shall leave the Property in substantially the same condition after the tests as Buyer found the Property, and Buyer shall hold Seller harmless from any damage to the extent resulting from such tests, except that Buyer shall have no liability for and no obligation to remedy any conditions or defects found on or under the Property that were not caused by Buyer, including those conditions and defects discovered during Buyer’s investigations and inspections.

Records and Plans: Buyer’s approval of all records and plans made available by





Dominic Dutra

Seller in connection with the ownership of the property. Within five (5) days of the Effective Date of the Agreement, Seller shall provide any and all reports or inspection records of systems and subsystems pertaining to the building that Seller has in its possession including, but not limited to; service contracts, recent tax, maintenance and utility bills, breakout of expenses for the current and previous year, Hazardous Materials reports, soil and ground water conditions, topography and drainage, land or building surveys, Phase I and II Environmental Reports, original and/or updated Geology, Environmental, and Engineering reports, Soil Reports, Site Plans, Structural Calculations, Architectural Drawings, Civil Drawings, Mechanical Drawings, Electrical Drawings, Plumbing, "As- BUILTS", and/or other documents plans related to the condition, design, construction and/or eventual modifications to the original condition, design, and construction of the building.

Notwithstanding the above, Buyer shall retain the right to cancel the Agreement at any time during this Physical Inspection Feasibility Period if, in Buyer's sole and absolute discretion, the project is not feasible for the uses intended by Buyer. Unless Buyer notifies Seller of Buyer's satisfaction in writing, the contingencies shall be deemed not waived, the deposit(s) shall be returned to Buyer, escrow shall be cancelled, and the parties will have no further responsibility to each other.

PRELIMINARY ENTITLEMENT REVIEW PERIOD: Buyer will have a period of 60-days ("Preliminary Entitlement Review Period") from the effective date of the Purchase Agreement ("Agreement") to satisfy the following contingencies.

Preliminary Entitlement Review: Upon acceptance of the Agreement, Buyer intends to review its proposed development and/or use with the City and/or County by participating in the Preliminary Review Procedure (PRP) or a similar process. The Preliminary Review Procedure (PRP) is designed to permit an applicant to receive responses to a preliminary development and/or use proposal from several city staff professional disciplines (such as planning, zoning, building, engineering, traffic, police, fire, hazardous materials, and landscape architecture) and other public agencies (such as flood control, water, and sanitary districts) prior to submitting a formal application for project approval. The Buyer intends to use this process to evaluate the potential for the subsequent formal approval of their development and/or use plan and obtaining of the required entitlements, if any. Approval of this The Preliminary Review Procedure (PRP) constitutes a contingency of the Agreement.

Notwithstanding the above, Buyer shall retain the right to cancel the Agreement





Dominic Dutra

at any time during this Preliminary Entitlement Review Period if, in Buyer's sole and absolute discretion, the project is not feasible for the uses intended by Buyer. Unless Buyer notifies Seller of Buyer's satisfaction in writing, the contingencies shall be deemed not waived, the deposit(s) shall be returned to Buyer, escrow shall be cancelled, and the parties will have no further responsibility to each other.

ENTITLEMENT PERIOD: The entitlement period is by far the most complex and time-consuming process. It can take approximately 6-24 months (or even longer) depending upon the practice of the city and/or county in which the property resides, which underscores the importance of the Church requiring the buyer to release periodic nonrefundable deposits to the Church as a way of both, (a) keeping the buyer "honest" regarding the success of their entitlement process and, (b) garnering a return for providing the buyer an exclusive right to acquire the property over this same period of time. For example, for the same transaction alluded to above, the conditions of close of escrow included the following;

A. Buyer acknowledges that a General Plan Update and rezone by the City is required prior to the City acting on a residential project on this Property. Buyer shall have sole responsibility and discretion during the entitlement process ("Entitlements"). All costs associated with Entitlements of the Property, shall be the responsibility of the Buyer. Seller shall have no obligation to reimburse for such costs regardless of Entitlements outcome.

B. If the General Plan Update and zoning has a substantial change in number and/or sizes of lots and/or product type that may have a substantial change to the economics of the Project, Buyer and Seller shall agree to arrive in good faith at a reasonable adjustment in Purchase Price. If this is not mutually achievable, Buyer may terminate the Agreement by providing written notice of such termination to the Seller. In the event of such termination, the Remaining Deposit and all interest accrued in escrow shall be released to Buyer, and Buyer and Seller shall have no further liabilities or obligations to one another under the Agreement, provided however, that Buyer shall release all plans and studies pertaining to the Property completed by third parties on behalf of Buyer.

C. If the approved Tentative Map results in a reduction of up to three (3) residential lots less than fifty-three (53) lots, Two Hundred Seventy-Five Thousand Dollars (\$275,000) shall be deducted from the Purchase Price for each lot reduced. If the Tentative Map results in less than fifty (50) residential lots, Buyer and Seller shall agree to arrive in good faith at a reasonable adjustment in Purchase Price. If this is not mutually achievable, Buyer may terminate the Agreement by providing written notice of such termination to the Seller. In the event of such termination, the Remaining Deposit and all interest accrued in escrow shall be returned and released to Buyer, and Buyer and Seller shall have no further liabilities or obligations to one another under the Agreement, provided however, that Buyer shall release all plans and studies pertaining to the Property completed by third parties on behalf of Buyer.





Dominic Dutra

D. In the event that the General Plan Update does not officially designate the property as the desired residential use and allow the necessary rezone, this shall not be deemed a default by Buyer, and Buyer may terminate the Agreement and the Remaining Deposit and all interest accrued shall be refunded to Buyer.

E. The Purchase Price is based on all units approved as market rate units, and payment of an inclusionary housing fee to the City. If the City requires on-site for-sale below market rate units ("BMR Unit"), the Purchase Price shall be adjusted the difference between market rate sales price and BMR Unit sales price for each unit, based on estimated sales prices at the time immediately prior to the Close of Escrow, less any savings in building and impact fees. If the inclusionary housing requirement is something other than on-site BMR Units or the City's inclusionary housing fee, and/or is a requirement that has a substantial change to the economics of the Project, Buyer and Seller shall agree to arrive in good faith at a reasonable adjustment in Purchase Price.

F. The Purchase Price assumes that the design and construction of frontage improvements is the responsibility of Buyer. If the City provides fee credits for installation of these offsite improvements, the sum of such credits shall be added to the Purchase Price.

G. The term of the Agreement shall be for nine (9) months after the City's General Plan Update and the rezoning of the property is officially adopted. If the Entitlements are not obtained by the end of nine (9) months, every 90 days thereafter until the Entitlements are fully approved, Buyer may elect to extend Close of Escrow by depositing an additional Deposit into Escrow in the amount of One Hundred Thousand Dollars (\$100,000), which shall be applicable to the Purchase Price, and shall be immediately released to Seller.

OTHER TERMS:

OPENING OF ESCROW: Escrow shall be established within three (3) business days after the Buyer and Seller have executed the Agreement. All property taxes, assessments and escrow charges, and fees shall be prorated as of the Close of Escrow as commonly done in transactions of this type in the City or County. This may vary based on the laws of the City, County, and State.

CLOSE OF ESCROW: Close of Escrow for the Property shall occur on or before thirty (30) days following the approval of a Tentative Map and any required environmental certification, and the expiration of all applicable appeal periods and resolution of any litigation, and resolution of a filed referendum, whichever occurs last.

If Seller prefers to close upon approval of the Final Map, Seller shall decide its preferred Close of Escrow choice within the Agreement, and Buyer shall agree to diligently pursue final approval, the Purchase Price shall increase by Two Hundred





Dominic Dutra

Fifty Thousand Dollars (\$250,000), and Close of Escrow shall occur at the earlier of a) on or before thirty (30) days following the approval of the Final Map by City or b) twelve (12) months after the approval of the Tentative Map.

BROKER: Buyer and Seller each represent and warrant to the other that it has not dealt with, consulted, or contacted any real estate broker, agent, or finder in connection with or in bringing about the sale of the property other than the Buyer's Representative and the Seller's Representative. The Church should be formally notified, in writing, if the broker is representing both parties to the transaction.

EXCLUSIVITY: Seller agrees to deal exclusively with Buyer with respect to the proposed sale of the Property for a period of thirty (30) days, during which time the Purchase and Sale Agreement is to be completed and mutually executed by both parties. During this period, neither Seller nor its broker shall solicit or accept any offers with respect to the Property or engage in discussions with other potential Buyers. As consideration for this period of exclusivity, Buyer shall pay to Seller the sum of five thousand dollars (\$5,000), which shall be delivered to Seller within five (5) business days following delivery to Seller of a counterpart of this Letter of Intent executed by Buyer, such amount to be credited to the purchase price. Such payment shall not be refundable to Buyer if the parties are unable to reach a mutually acceptable Purchase and Sale Agreement.

CONFIDENTIALITY: The parties have executed a Non-Disclosure Agreement (NDA); acknowledge this document, negotiations, and other information exchanged between the parties is subject to the NDA; and reaffirm their obligations and duties under the NDA.

NONBINDING: This Letter of Intent is non-binding on either party until fully executed Purchase and Sale documents are exchanged by both parties and is further subject to final review and approval by Buyer's legal counsel and officers.

