

***How to Complete the
ASSIGNMENT & ASSUMPTION OF REPC (New Construction)
UAR FORM 28***

(Owner/Developer Consent Required!)

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- I. USE this form *only* when:**
- Buyer #1 has entered into a REPC with the present Owner/Developer of the property;
 - Buyer #1 wants to assign his position in the REPC to Buyer #2; *AND*
 - The Owner/Developer of the property **WILL ALLOW** Buyer #1 to assign his position in the REPC to Buyer #2.
- II. DO NOT USE this form if the Owner/Developer **WILL NOT** allow an assignment of the REPC. In such case – consider use of the *Simultaneous Closing Addendum (UAR Form 30)*.**

Sample Transaction

- Fred Smith is “Buyer #1”. Fred is represented by Tom at XYZ Realty.
- Big Time Construction, Inc. is the Owner/Developer. Big Time is represented by Jane at ABC Realty.
- Fred and Big Time have entered into a REPC for \$1,500,000.
- Fred has deposited \$100,000 Earnest Money and \$50,000 in finish-upgrades.
- It is a “hot market” and Fred is willing to assign his position in the REPC for \$300,000 (the “Assignment Fee”).
- John Doe is “Buyer #2”. John is represented by Jim Brown at QRS Realty.
- John wants to take over (buy-out) Fred’s position in the REPC with Big Time.
- Big Time recognizes that it is a hot market; and Big Time is willing to let Fred assign his position in the REPC to John Doe...but only if Fred shares with Big Time some of the Assignment Fee.
- Big Time wants \$60,000 from Fred in order to approve the assignment.
- Tom (Fred’s Agent) will represent Fred in completing the assignment of REPC.
- Jim (John’s Agent) will represent John in completing the assignment.
- Fred and John enter into an Assignment & Assumption of REPC as follows: (a) the Assignment Deposit is \$25,000; (b) Fred has until October 21st to give disclosure documents to John; (c) John has until November 10th to finish his own due diligence; and (d) if John decides to go forward with the assignment, John must buy-out Fred’s position by November 30th.
- Fred will be responsible to pay the brokerage fees for completing the assignment of the REPC.
- In this example, Fred and Tom’s brokerage (XYZ Realty) negotiate a brokerage fee in the amount of 7% of the Total Assignment Price for the property. The brokerage fee will be split evenly between XYZ Realty and QRS Realty.

CAREFULLY REVIEW THE ATTACHED SAMPLE ESTIMATE SHEETS & COMPLETED FORM

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**BUYER #2'S INITIAL COST ESTIMATE WORKSHEET
(For Assignment & Assumption of REPC – New Construction)**

THIS NET COST ESTIMATE SHEET is provided by Jim Brown at QRS Realty (the "Company")
to: John Doe ("Buyer #2") regarding the property located
at: 2255 Mountain Snow Drive, Park City, Utah (the "Property")

RECOMMENDATION TO OBTAIN LEGAL & TAX ADVICE

Buyer #2 has expressed interest in purchasing the position of another buyer (Buyer #1) in an existing Real Estate Purchase Contract (REPC). Buyer #2 is advised that there are numerous legal and tax consequences associated with the assignment and assumption of a REPC. Neither the Company, nor any agents affiliated with the Company, are licensed or trained to provide Buyer #2 with legal or tax advice. Consequently, the Company strongly encourages Buyer #2 to consult with both legal and tax advisors *prior* to entering into an agreement to purchase the position of Buyer #1 in the REPC. Buyer #2 acknowledges that this is **only an initial estimate**. The figures may vary substantially in a final transaction.

INITIAL COST ESTIMATE

The following is an initial estimate of Buyer #2's costs to purchase an assignment of Buyer #1 position in the REPC. (Note: Figures are based on sample transaction found on Page 1 of INSTRUCTION SHEET).

EXPENSES

• Assignment Fee	\$300,000
• Reimbursement of Earnest Money Deposit (to Buyer #1)	\$100,000 ^{Note #1}
• Reimbursement of Finish-Upgrades Deposit (to Buyer #1)	\$ 50,000 ^{Note #2}
• Escrow/Closing Fees for <i>Completion of Assignment</i>	\$ <u>300</u>
TOTAL AMOUNT DUE AT COMPLETION OF ASSIGNMENT	<u>\$450,300</u>

Note #1 This amount will be credited back to Buyer #2 on the Settlement Statement when Buyer #2 closes the purchase of the property from the Owner/Developer as provided in the REPC.

Note#2 This amount represents reimbursement to Buyer #1 for finish/upgrades prepaid by Buyer #1 to the Owner/Developer.

ACKNOWLEDGEMENT OF RECEIPT

Buyer #2 acknowledges that he/she has read and understands the terms of this Initial Cost Estimate Sheet.

Buyer #2's Signature

Date

Buyer #2's Signature

Date

Buyer #1's Initials [] Date: _____ Buyer #2's Initials [] Date: _____

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ASSIGNMENT & ASSUMPTION OF REAL ESTATE PURCHASE CONTRACT (New Construction)

Receipt of Assignment Deposit

John Doe (Buyer #2) offers to purchase from Fred Smith (Buyer #1) all of Buyer #1's rights and interests in an existing Real Estate Purchase Contract ("REPC") entered into between Buyer #1 and the current owner/developer of the Property ("Owner/Developer"). The REPC is for the purchase and sale of the Property described in Section 1. Buyer #2 hereby delivers to the Brokerage, as an Assignment Deposit, the amount of \$25,000 in the form of personal check which, upon Acceptance of this offer by all parties (as defined in Section 20), shall be deposited in accordance with state law. **Under certain conditions described in this Agreement this deposit may become totally non-refundable.**

Received by: Jim Brown (Signature) on October 12th (Date)
(Signature of agent/broker acknowledges receipt of Assignment Deposit)

Brokerage: QRS Realty Phone Number (435) 649-0000

Offer to Purchase the Assignment

1. **PROPERTY LOCATION:** 2255 Mountain Snow Drive also described as: Mountain Snow Condominiums City of Park City, County of Summit, State of Utah, Zip 84060 (the "Property").

2. **TOTAL ASSIGNMENT PRICE.** The total assignment price of \$1,800,000 ("Total Assignment Price") shall be paid as follows

\$ 300,000 (a) **Assignment Fee.** This amount shall be due as provided in Section 3. In addition to the *Assignment Fee*, Buyer #2 shall also reimburse Buyer #1 for all *Prior Deposits*, if any, paid by Buyer #1 as provided in Section 2.1.

\$ 1,500,000 (b) **Purchase Price for Property (as shown on the REPC).** This amount shall be paid directly to the Owner/Developer when and as required under the terms of the REPC.

\$ 1,800,000 (c) **TOTAL ASSIGNMENT PRICE.** This amount represents the total of lines (a) and (b) above.

2.1 **Prior Deposits by Buyer #1.** In addition to payment of the *Assignment Fee*, Buyer #2 agrees, at the completion of the assignment (as defined in Section 3 below) to reimburse Buyer #1 for all Earnest Money Deposits, construction deposits, Change Order payments, and all other amounts previously paid or provided by Buyer #1, if any, under the terms of the REPC (collectively referred to as the "*Prior Deposits*"). Buyer #2 shall have the right to review and approve any *Prior Deposits* as provided in Section 8, inclusive, below.

3. **COMPLETION OF ASSIGNMENT.** The "*Completion of the Assignment*" of the REPC from Buyer #1 to Buyer #2 ("*Completion of the Assignment*") shall take place on the Assignment Completion Deadline referenced in Section 21(c). The *Completion of the Assignment* shall be conducted at the escrow/closing office that was previously agreed to between Buyer #1 and the Owner/Developer. For purposes of this Agreement *Completion of the Assignment* shall have occurred only when **all** of the following have been completed: (a) Buyer #2 and Buyer

Buyer #1's Initials [] Date: _____ Buyer #2's Initials [] Date: _____

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#1 have signed and delivered to each other or to the escrow/closing office, all documents if any, required by this Agreement, by written escrow instructions, or by applicable law; (b) all monies required to be paid by Buyer #2 under this Agreement (including the *Assignment Fee* and reimbursement to Buyer #1 for all *Prior Deposits*) have been delivered by Buyer #2 to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Buyer #1 under these documents have been delivered to the escrow/closing office in the form of collected or cleared funds. Buyer #1 and Buyer #2 shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in *Completion of the Assignment*.

4. AGENCY DISCLOSURE. At the signing of this Agreement Buyer #1 and Buyer #2 acknowledge that they are respectively being represented by real estate agents and real estate brokerages as specifically identified below:

The Agent for Buyer #1 Tom at XYZ Realty, represents Buyer #1 Buyer #2
 Both Buyer #1 and Buyer #2 as a Limited Agent
The Broker for Buyer #1 Bill Broker at XYZ Realty, represents Buyer #1 Buyer #2
 Both Buyer #1 and Buyer #2 as a Limited Agent
The Agent for Buyer #2 Jim Brown at QRS Realty, represents Buyer #1 Buyer #2
 Both Buyer #1 and Buyer #2 as a Limited Agent
The Broker for Buyer #2 Bob Broker at QRS Realty, represents Buyer #1 Buyer #2
 Both Buyer #1 and Buyer #2 as a Limited Agent

5. AGREEMENT TO PAY BROKERAGE FEES. The Brokerage Fees due as a result of *Completion of the Assignment* shall be equal to: \$ _____ or 7% of the *Total Assignment Price*. Change Orders Are Are Not, included in calculation of the Brokerage Fees. Buyer #1 shall be responsible for payment of the Brokerage Fees. The escrow/closing office is authorized and directed to pay the Brokerage Fees at *Completion of the Assignment*. Unless otherwise agreed in writing by the Broker for Buyer #1 and the Broker for Buyer #2 (the Brokers), the Brokerage Fees shall be shared equally between the Brokers.

6. ASSIGNMENT. Upon *Completion of the Assignment* as defined in Section 3 above: (a) Buyer #1 shall be deemed to have assigned to Buyer #2, all of Buyer #1's rights and interests in the REPC (including all *Prior Deposits*, if any); (b) Buyer #2 shall be deemed to have: (i) accepted the assignment of all of Buyer #1's rights and interests in the REPC (the "Assignment"); and (ii) assumed all of the duties, obligations and liabilities of the "Buyer" under the REPC, whether accrued or which will accrue thereafter; and (iii) agreed to indemnify and hold harmless Buyer #1 against claims made against Buyer #1 arising out of the failure of Buyer #2 to fulfill the obligations assumed herein. The terms of this Section 6 shall survive the *Completion of the Assignment*.

7. BUYER #1 DISCLOSURES. Buyer #1 makes the following disclosures to Buyer #2:

7.1 Buyer #1 Does Not Own the Property. Buyer #1 advises Buyer #2 that Buyer #1 **DOES NOT** own the Property. Buyer #1 represents that Buyer #1 has previously entered into an existing Real Estate Purchase Contract (REPC) with the current owner/developer of the Property (Owner/Developer). Buyer #1 agrees to provide to Buyer #2 a copy of the REPC as provided in Section 7.2(b) below.

7.2 Delivery of Additional Disclosure Documents. No later than the Assignment Disclosure Deadline referenced in Section 21(a), Buyer #1 shall provide to Buyer #2:

- (a) a copy of all documents that have previously been provided to Buyer #1 as "Seller Disclosures" under Section 7 of the REPC;
- (b) a copy of the REPC (including all counteroffers, addenda and exhibits);
- (c) a copy of the Plans & Specifications for the Property (if this is new construction and construction has not started or is in progress);
- (d) a copy of all Change Orders, if any (including an accounting of all amounts paid and/or owing for Change Orders);
- (e) an accounting of all *Prior Deposits* previously paid or provided by Buyer #1 under the terms of the REPC;
- (f) copies of any inspection reports, surveys, and studies regarding the Property that are in Buyer #1's possession or available to Buyer #1;

Buyer #1's Initials [] Date: _____ Buyer #2's Initials [] Date: _____

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- (g) copies of all correspondence between Buyer #1 and the Owner/Developer regarding the Property, if any; and
- (h) Other (specify) _____

Items 7.2(a) through 7.2(h) are collectively referred to below as the "Disclosure Documents".

8. BUYER #2'S RIGHT TO CANCEL BASED ON DUE DILIGENCE. Buyer #2's obligation and right to purchase the Assignment **IS CONDITIONED** upon the Owner/Developer's written consent to the Assignment prior to expiration of the Assignment Due Diligence Deadline referenced in Section 21(b). This condition is referred to below as the "Owner/Developer's Consent Contingency". The Owner/Developer shall have the option to consent or, alternatively, to withhold consent to the Assignment as provided on Page 6 of this Agreement. In addition, Buyer #2's obligation to purchase the Assignment (**check applicable boxes**):

- (a) IS IS NOT conditioned upon Buyer #2's approval of the content of all the Disclosure Documents;
- (b) IS IS NOT conditioned upon Buyer #2's approval of a physical condition inspection of the Property;
- (c) IS IS NOT conditioned upon Buyer #2's approval of a survey of the Property by a licensed surveyor;
- (d) IS IS NOT conditioned upon Buyer #2's approval of the cost, terms and availability of homeowner's insurance coverage for the Property;
- (e) IS IS NOT conditioned upon the Property appraising for a value that is not less than the *Total Assignment Price*;
- (f) IS IS NOT conditioned upon Buyer #2's approval of the terms and conditions of any mortgage financing;
- (g) IS IS NOT conditioned upon Buyer #2's approval of the following tests and evaluations of the Property: (specify) Consultation with geotechnical engineer re: drainage issues

If any of the above items are checked in the affirmative, then Sections 8.1 through 8.3 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as Buyer #2's "Due Diligence". Unless otherwise provided in this Agreement, Buyer #2's Due Diligence shall be paid for by Buyer #2 and shall be conducted by individuals or entities of Buyer #2's choice. Buyer #1 agrees to cooperate with Buyer #2's Due Diligence.

8.1 Assignment Due Diligence Deadline. No later than the Assignment Due Diligence Deadline referenced in Section 21(b), Buyer #2 shall: (a) complete all of Due Diligence; and (b) determine if the results of the Due Diligence are acceptable to Buyer #2.

8.2 Right to Cancel. If Buyer #2, in Buyer #2's sole discretion, determines that the results of the Due Diligence are unacceptable, Buyer #2 may, no later than the Assignment Due Diligence Deadline, cancel this Agreement by providing written notice to Buyer #1, whereupon the Assignment Deposit shall be released to Buyer #2.

8.3 Failure to Respond. If by the expiration of the Assignment Due Diligence Deadline, Buyer #2 does not cancel this Agreement as provided in Section 8.2, then with the exception of the *Owner/Developer's Consent Contingency*: (a) the accounting for all *Prior Deposits* shall be deemed approved by Buyer #2, and Buyer #2 shall be responsible to reimburse Buyer #1 at *Completion of the Assignment* for all such *Prior Deposits*; and (b) all other conditions of purchase as referenced in Section 8(a) through 8(g) above, shall be deemed approved and waived by Buyer #2. **If the Owner/Developer's consent to the Assignment is not obtained by the Assignment Due Diligence Deadline, then except as otherwise agreed to in writing by Buyer #2 and Buyer #1, this Agreement shall automatically be deemed cancelled and the Assignment Deposit shall be released to Buyer #2.**

9. ADDITIONAL TERMS. There ARE ARE NOT addenda to this Agreement containing additional terms. If there are, the terms of the following addenda are incorporated into this Agreement by this reference: **Addendum No. _____.**

10. REPRESENTATIONS & WARRANTIES. Buyer #2 acknowledges and agrees that Buyer #1 makes no representations or warranties regarding the willingness or ability of the Owner/Developer to meet the Owner/Developer's obligations under the terms of the REPC. The failure of the Owner/Developer to meet the Owner/Developer's obligations under the REPC shall not give any rights to Buyer #2 against Buyer #1 for breach of contract, damages, or any other legal or equitable claims of any kind or nature. Buyer #2's sole remedy for the

Buyer #1's Initials [] Date: _____ Buyer #2's Initials [] Date: _____

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Owner/Developer's failure to perform shall be to pursue the remedies available to the "Buyer" under the terms of the REPC.

11. CHANGES DURING TRANSACTION. Buyer #1 agrees that from the date of Acceptance until the date of *Completion of the Assignment*, no changes to the REPC shall be made, and no further Change Orders shall be requested or agreed to by Buyer #1, without the prior written consent of Buyer #2.

12. AUTHORITY OF SIGNERS. If Buyer #2 or Buyer #1 is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Agreement on its behalf warrants his or her authority to do so and to bind Buyer #2 and Buyer #1.

13. COMPLETE AGREEMENT. This Agreement together with its addenda, any attached exhibits, and Disclosure Documents, constitutes the entire Agreement between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or Agreements between the parties. This Agreement cannot be changed except by written agreement of the parties.

14. DISPUTE RESOLUTION. The parties agree that any dispute related to this Agreement, arising prior to or after Closing of the Assignment of REPC (as defined in Section 3) **(check applicable box):**

SHALL

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. If mediation fails, the other procedures and remedies available under this Agreement shall apply. Nothing in this Section 14 shall prohibit any party from seeking emergency equitable relief pending mediation.

15. DEFAULT. If Buyer #2 defaults, Buyer #1 may elect either to retain the Assignment Deposit as liquidated damages, or to return it and sue Buyer #2 to specifically enforce this Agreement or pursue other remedies available at law. If Buyer #1 defaults, in addition to return of the Assignment Deposit, Buyer #2 may elect either to accept from Buyer #1 a sum equal to the Assignment Deposit as liquidated damages, or may sue Buyer #1 to specifically enforce this Agreement or pursue other remedies available at law. If Buyer #2 elects to accept liquidated damages, Buyer #1 agrees to pay the liquidated damages to Buyer #2 upon demand.

16. ATTORNEY FEES AND COSTS. In the event of litigation or binding arbitration to enforce this Agreement, 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 14.

17. NOTICES. Except as provided in Section 20, all notices required under this Agreement 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 Agreement.

18. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this Agreement. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Agreement: (a) performance under each Section of this Agreement 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. If the performance date falls on a Saturday, Sunday, State or Federal legal holiday, performance shall be required on the next business day.

19. FAX TRANSMISSION AND COUNTERPARTS. Facsimile (fax) transmission of a signed copy of this Agreement, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Agreement and any addenda and counteroffers may be executed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document.

20. ACCEPTANCE. "Acceptance" occurs when Buyer #1 or Buyer #2, 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.

Buyer #1's Initials [] Date: _____ Buyer #2's Initials [] Date: _____

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21. AGREEMENT DEADLINES. Buyer #2 and Buyer #1 agree that the following deadlines shall apply to this Agreement:

- (a) Assignment Disclosure Deadline October 21st (Date)
- (b) Assignment Due Diligence Deadline November 10th (Date)
- (c) Assignment Completion Deadline November 30th (Date)

22. OFFER AND TIME FOR ACCEPTANCE. Buyer #2 offers to purchase all of Buyer #1's rights and interests in the REPC (the "Assignment") on the above terms and conditions. If Buyer #1 does not accept this offer by: **5:00** [] AM [X] PM Mountain Time on October 13th (Date), this offer shall lapse; and the Brokerage shall return the Assignment Deposit to Buyer #2.

(John Doe's Signature) 10-12-0 _____
 (Buyer #2's Signature) (Offer Date) (Buyer #2's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

John Doe
 (Buyer #2's Name) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

- [] **ACCEPTANCE OF OFFER TO PURCHASE:** Buyer #1 ACCEPTS the foregoing offer on the terms and conditions specified above.
- [] **COUNTEROFFER:** Buyer #1 presents for Buyer #2's Acceptance, the terms of Buyer #2's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. ____.

 (Buyer #1's Signature) (Date) (Time) (Buyer #1's Signature) (Date) (Time)

 (Buyer #1's Name) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

- [] **REJECTION:** Buyer #1 REJECTS the foregoing offer.

 (Buyer #1's Signature) (Date) (Time) (Buyer #1's Signature) (Date) (Time)



Buyer #1's Initials [] Date: _____ Buyer #2's Initials [] Date: _____

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DOCUMENT RECEIPT

State law requires Broker to furnish Buyer #2 and Buyer #1 with copies of this Agreement bearing all signatures. (Fill in applicable section below.)

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

(Buyer #2's Signature) (Date) (Buyer #2's Signature) (Date)

(Buyer #1's Signature) (Date) (Buyer #1's Signature) (Date)

B. I personally caused a final copy of the foregoing Agreement bearing all signatures to be faxed mailed hand delivered on _____ (Date), postage prepaid, to the Buyer #1 Buyer #2.

Sent/Delivered by (specify) _____

OWNER/DEVELOPER'S CONSENT TO ASSIGNMENT

1. OWNER/DEVELOPER'S CONSENT. The undersigned Big Time Construction, Inc. (Owner/Developer), who is represented by: Jane at ABC Realty, hereby consents to the Assignment of the REPC by Buyer #1 to Buyer #2 based upon: (a) *Completion of the Assignment* between Buyer #1 and Buyer #2 as defined in Section 3 above; **and** (b) payment to the Owner/Developer in the amount of **\$60,000** (the "Owner/Developer Payment") at the *Completion of the Assignment*.

2. RELEASE OF BUYER #1. Upon: (a) *Completion of the Assignment* as defined in Section 3 above; **and** (b) receipt by the Owner/Developer of the Owner/Developer Payment, the Owner/Developer agrees that Buyer #1 shall be deemed released from all obligations under the REPC.

(Owner/Developer's Signature) (Date) (Time) (Owner/Developer's Signature) (Date) (Time)

(Owner/Developer's Name) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

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