

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
GEORGE'S HIDEWAY (PROPERTY)

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is made and entered into as of December 6, 2021, by and between Thomas J. Burger and Kim Menary, (“**Seller**”), and SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION a public body corporate and politic (“**Buyer**”). In consideration of the mutual agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell, and Buyer desires to purchase, the Property described below, for the Purchase Price and upon the terms and conditions set forth below:

ARTICLE 1
DEFINITIONS

- 1.1 “**Real Property**” means the Land and the Improvements, as such terms are defined below, generally located at 18084 Highway 116 Guerneville CA (“**Property**”). APNs 072-220-026, 072-220-027, and 027-240-029.
- 1.2 “**Purchase Price**” means Eight hundred Forty-Nine Thousand Dollars (\$849,000).
- 1.3 “**Deposit**” means Twenty-Six Thousand Dollars (\$26,000.00) in Good Funds (defined in Section 2.1 below), and any interest accrued thereon.
- 1.4 “**Inspection Period**” means the period means the period within **30 Days** from Acceptance.
- 1.5 “**Closing Date**” means **90 days** from Acceptance or sooner.
- 1.6 “**Buyer Broker**” means Coldwell Banker Realty.
- 1.7 “**Listing Broker**” means MMRE Commercial.
- 1.8 “**Business Day**” means a day that is not a Saturday, Sunday, or holiday observed by the federal government, State of California, or the majority of financial institutions in Sonoma County.
- 1.9 “**Effective Date**” means that date upon which the later of Buyer and Seller execute this Agreement. If Buyer is the second party to execute this Agreement, such execution shall be effective as of the date upon which the Board of Commissioners of the County of Sonoma authorizes such execution.
- 1.10 “**Property**” means, collectively, the Real Property, together with all right, title and interest of Seller, reversionary or otherwise, to such Real Property; all easements, rights, and appurtenances belonging or in anywise pertaining to such Real Property; and all of Seller’s right, title and interest, if any, in the Contracts, the Intangible Property, the Leases, the Personal Property and the Security Deposits, as such terms are defined below:
- 1.11 “**Land**” means those certain parcels legally described on Exhibit “A” attached hereto.
- 1.12 “**Appurtenances**” means all rights, privileges and easements appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water, water rights and water stock relating to the Real Property and any other easements, rights of way or appurtenances used in connection with the beneficial use and enjoyment of the Real Property;

- 1.13 “**Improvements**” means all buildings, structures, improvements and fixtures located on the Land, as well as all apparatus, equipment and appliances used in connection with the operation or occupancy of the Real Property, such as heating and air conditioning systems and facilities used to provide any utility services, refrigeration, ventilation, garbage disposal, recreation or other services on the Real Property, and parking;
- 1.14 “**Contracts**” means all service, supply, maintenance and construction contracts, if any, relating to the Real Property or Personal Property.
- 1.15 “**Intangible Property**” means all assignable intangible personal property, if any, owned by Seller as of the date of Closing and arising out of or in connection with Seller’s ownership of the Real Property and the Personal Property, including the right to use the current names, logos, trademarks, URLs, web addresses, websites, and trade names of the Real Property, the goodwill of Seller in connection with the Real Property, all licenses, permits and certificates of occupancy issued by governmental authorities relating to the use, maintenance, occupancy and/or operation of the Real Property and Personal Property, all plans, specifications and drawings relating to the construction of the Improvements, and all warranties and guaranties with respect to the Real Property.
- 1.16 “**Leases**” means all unexpired leases, subleases, occupancy agreements, licenses, and parking leases, if any, for the use, possession or occupancy now or hereafter affecting the Real Property. There are no current leases. Property to be delivered vacant.
- 1.17 “**Title Company**” means: Fidelity National Title
1101 College Avenue
Santa Rosa, CA 95404
Attn: Courtney Triola
Phone: 707-524-9543

Email:Courtney.triola@fnf.com

ARTICLE 2
PURCHASE PRICE; DEPOSIT

- 2.1 Purchase Price. The Purchase Price shall be payable to Seller at the closing of the transaction contemplated hereby (“**Closing**”) by wire transfer of immediately available funds (“**Good Funds**”), which must be delivered in a manner to permit Title Company to deliver to the Seller or its designee on the Closing Date.
- 2.2 Deposit. Buyer to deposit with Title Company \$26,000.00 within **12 days** of the Effective Date, which shall be governed retroactively and prospectively by this Agreement. Upon receipt of a copy of this executed Agreement, should Buyer so request, Title

Company shall deposit the Deposit into an interest-bearing money market account maintained at a federally insured state or national bank located in the state in which the Real Property is situated. All interest earned shall be held for the account of Buyer and reported to the Internal Revenue Service as income of Buyer. Buyer shall promptly execute all forms reasonably requested by Title Company in connection with depositing the Deposit in an interest-bearing account.

If any portion of the Deposit is not delivered by Buyer to Title Company within the required 12-day period, then such failure shall be deemed a Buyer Default and in addition to its other remedies hereunder, Seller may terminate this Agreement by delivering notice to Buyer and Title Company.

- 2.3 Disposition of Deposit. If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Deposit, [but not the interest accrued thereon], shall be credited against the Purchase Price at Closing. If this Agreement is terminated by either Seller or Buyer in a manner expressly set forth in this Agreement, Title Company shall deliver the Deposit to the party hereto entitled to same pursuant to the terms of this Agreement pertaining to such termination within two (2) Business Days after receipt of written termination notice by the terminating party to Title Company and the non-terminating party.

ARTICLE 3 INSPECTIONS AND TITLE

3.1 Buyer's Inspections.

3.1.1 Inspections, Tests and Studies. After two (2) Business Days' notice to Seller, Seller shall permit Buyer and its authorized agents and representatives to enter upon the Real Property at all reasonable times during normal business hours to inspect the Real Property and to conduct non-invasive and non-destructive tests, examinations, inspections, investigations and studies (collectively, "**Due Diligence**") of the Real Property that Buyer deems necessary or appropriate with Seller's approval, which shall not be unreasonably withheld or delayed. Such access if approved shall solely be for the purpose of evaluating the Property as part of its Due Diligence review. Buyer may conduct such Due Diligence of the Real Property to its full satisfaction to ascertain all facts, circumstances, and matters relating to the Property (including without limitation the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws, environmental conditions, engineering and structural matters), survey matters, and any other matters it deems necessary or appropriate for purposes of consummating this transaction. Such entry, inspection, studies and tests may be conducted only during the Inspection Period. At Seller's option, Seller may be present for any inspection, test or study. Buyer shall bear the cost of all inspections, tests and studies. Promptly after any and all testing and inspections conducted by or on behalf of Buyer, Buyer shall restore any damage to the Property caused by Buyer or its agents or consultants to the condition existing immediately prior to any testing and inspections. Buyer and any of its agents or consultants who desire to enter on to the Property shall have in effect and maintain commercial general liability insurance, with limits not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for personal injury, including bodily injury and death, and property damage. Prior to any entry on the Property, Buyer shall, upon request from Seller, deliver to Seller a certificate of insurance evidencing such coverage. Buyer shall make all inspections in good faith. Notwithstanding anything to the contrary, no boring, Phase II environmental testing or other invasive testing may be performed without Seller's prior written approval, which may be withheld in Seller's absolute discretion.

3.2 Document Review.

3.2.1 Documents. Seller believes that after the commencement of the Inspection Period and prior to the execution of this Agreement, Seller has delivered or made available to Buyer copies of those documents listed on **Exhibit "B"** attached hereto to the extent same exist and are in Seller's possession or control. To the extent Seller has not delivered any such documents to Buyer, Seller shall continue to make such documents available to Buyer, and its authorized agents or representatives, for inspection and copying, at Buyer's expense, at the Real Property upon two (2) Business Days' notice at any time during the Inspection Period. In addition to the documents listed on Exhibit B, Seller shall, upon Buyer's request, deliver or make available to Buyer, or its authorized agents or representatives, any other documents and property records (other than the Excluded Documents, as defined below) relating to the ownership, operation and maintenance of the Real Property in Seller's possession. In the event a document or property record relates to the ownership, operation and maintenance of another property, Seller reserves the right to redact all references to properties other than the Real Property. All of such documents and property records delivered to, made available to, copied and/or reviewed by Buyer pursuant to this Section 3.2 (including all Leases and Contracts) shall sometimes be referred to collectively herein as the "**Documents**". Notwithstanding anything in this Section 3.2 to the contrary, Seller shall have no obligation to make available to Buyer, and Buyer shall have no right to inspect or make copies of, any of the Excluded Documents. As used herein, "**Excluded Documents**" shall mean any documents directly involving either Seller's financing or refinancing of the Property (except to the extent that the same have been recorded or are otherwise available in the public record), any purchase and escrow agreements and correspondence pertaining to Seller's acquisition of the Property (other than documents pertaining to the physical or environmental condition of the Real Property), any documents pertaining to the potential acquisition of the Property by any past or prospective purchasers (other than documents relating to the physical or environmental condition of Real Property), any third party purchase inquiries and correspondence, and internal budgets, financial projections, or internal documents solely concerning the operations of the Owner and not the Property. Buyer shall promptly notify Seller if Buyer discovers that an item has not been furnished by Seller which was required to be furnished under this Section 3.2, and Seller shall promptly furnish such items to Buyer.

3.2.2 Proprietary Information. Buyer acknowledges and agrees that the Documents are proprietary and confidential in nature and have been or will be made available to Buyer solely to assist Buyer in determining the feasibility of purchasing the Property. Buyer agrees not to disclose the Documents or any of the provisions, terms or conditions thereof to any party outside of Buyer's organization except (i) to Buyer's attorneys, consultants, accountants, lenders, prospective lenders, investors, joint venture partners and/or prospective investors and/or joint venture partners (collectively, the "**Permitted Outside Parties**"), (ii) as may be required by law, court order, or regulatory action or requirement; (iii) to the extent that any of the Documents become available to the public from sources other than Buyer; (iv) to the extent that any of the information in the Documents can be shown by documentation to have been previously known to Buyer at the time of its disclosure or delivery by Seller; (v) to the extent that any information in the Documents was rightfully received by Buyer from a third party who did not acquire or disclose such information by a wrongful or tortious act; and (vi) to the extent that any of the information in the Documents can be demonstrated by Buyer to have been independently developed by Buyer without use of or reference to any information in the Documents. Buyer further agrees to notify all Permitted Outside Parties that the Documents and Buyer's Information are to be kept confidential and not disclosed to third parties. In permitting Buyer and the

Permitted Outside Parties to review the Documents to assist Buyer, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third-party benefits or relationships of any kind, either expressed or implied, have been offered, intended or created by Seller and any such claims are expressly rejected by Seller and waived by Buyer.

- 3.2.3 Return of Documents. Buyer shall promptly return to Seller or destroy all of the Documents and any and all copies Buyer has made of the Documents at such time as this Agreement is terminated for any reason, which obligation shall survive such termination. Should Buyer elect to destroy the Documents and copies thereof, Buyer shall provide Seller with written confirmation that Seller destroyed all such Documents and copies.
- 3.2.4 No Representation or Warranty By Seller. Buyer acknowledges that many of the Documents were prepared by third parties other than Seller, and in several instances, were prepared prior to Seller's ownership of the Property. Except to the extent expressly otherwise provided in **Article 5**, Seller makes no representations or warranties as to the accuracy of any Documents prepared by a third party.
- 3.2.5 Property Disclosure Report. Buyer and Seller acknowledge that, pursuant to California Civil Code Section 1103, Seller may be required to disclose if the Property lies within the following natural hazard areas or zones: (i) a special flood hazard area designated by the Federal Emergency Management Agency (California Civil Code Section 1103(c)(1)); (ii) an area of potential flooding (California Government Code Section 8589.5); (iii) a very high fire hazard severity zone (California Government Code Section 51178); (iv) a wild land area that may contain substantial forest fire risks and hazards (Public Resources Code Section 4125); (v) earthquake fault zone (Public Resources Code Section 2622); or (vi) a seismic hazard zone (Public Resources Code Section 2696) (sometimes all of the preceding are herein collectively called the "**Natural Hazard Matters**"). Buyer and Seller hereby agree to instruct Title Company, or an affiliate thereof (who, in such capacity, is herein called the "**Natural Hazard Expert**"), to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations, if and to the extent such obligations exist, with respect to the natural hazards referred to in California Civil Code Section 1103 et seq. and to report the result of its examination to Buyer and Seller in writing within fifteen (15) days following the opening of Escrow. The written report prepared by the Natural Hazard Expert regarding the results of its full examination will fully and completely discharge Seller from its disclosure obligations referred to herein, if and to the extent any such obligations exist, and, for the purpose of this Agreement, the provisions of California Civil Code Section 1103.4 regarding non-liability of Seller for errors or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. Buyer agrees to provide Seller with a written acknowledgment of its receipt of the Natural Hazard Disclosure Statement. The cost of such report shall be Seller's obligation. Buyer agrees that nothing contained in any disclosure shall release Buyer from its obligation to fully investigate the condition on the Property, including, without limitation, whether the Property is located in any natural hazard areas. Buyer further acknowledges and agrees that (a) the natural hazard disclosures will be made in the standard form of report prepared by a third party, (b) Seller shall have no liability for the accuracy or completeness of any such information, (c) the matters set forth in the natural hazard disclosures may change on or prior to the Closing and (d) Seller has no obligation to update, modify or supplement the natural hazard disclosures.

3.3 Title.

- 3.3.1 Review of Title. After the commencement of the Inspection Period and prior to the execution of this Agreement, Buyer caused the Title Company to deliver to Buyer: (i) a commitment for title insurance (the “**Title Report**”) for the Real Property issued by the Title Company dated not earlier than 30 days prior to the Effective Date; and (ii) legible copies of all documents (“**Title Documents**”) appearing as title exceptions shown on the Title Report. Seller further warrants that after commencement of the Inspection Period and prior to the execution of this Agreement, it has delivered to Buyer (i) copies of all existing and proposed easements, covenants, restrictions, agreements or other documents affecting title and which are known to Seller and not disclosed by the Title Report, or, if no such documents exist, a certification of Seller to that effect, and (ii) one copy of the most recent survey (if in Seller’s possession) of the Real Property in Seller’s possession and control. If any new survey or modified survey is required in order for the Title Company to issue the Title Policy, Buyer shall be solely responsible, at its sole cost and expense, for obtaining any such survey.
- 3.3.2 Title Objections. Buyer shall have the right up to and including the expiration of the Inspection Period (“**Title Objection Date**”) to object to any title matters appearing in the Title Report or any survey matters (each, a “**Title Objection**” and collectively, the “**Title Objections**”) by giving notice of all such Title Objections to Seller (“**Title Objection Notice**”). Title Objection Notice shall be in writing on or before the Title Objection Date and any survey prepared by or on behalf of or provided to Buyer, except for Mandatory Cure Items (as defined below) which shall be deemed Title Objections even if Buyer does not provide a Title Objection Notice for such Mandatory Cure Items.
- 3.3.3 Cure. Within five (5) days after receipt of Buyer’s Title Objection Notice, Seller shall notify Buyer in writing whether Seller elects to remove the same and if Seller makes such election, Seller shall use commercially reasonable efforts to remove or otherwise remedy to Buyer’s reasonable satisfaction each of the Title Objections identified in Buyer’s Title Objection Notice on or before the Closing Date. If Seller shall fail to timely deliver a written response to Buyer’s Title Objection Notice, Seller shall be deemed to have elected not to remove the Title Objections on or before the date of Closing. Seller shall have the right, within such 5-day period to either: (i) elect by notice to Buyer to cause one or more of the Title Objections to be removed of record or otherwise cured to the satisfaction of Buyer in its discretion by the Closing Date (“**Approved Title Objections**”), or (ii) elect not to cure any of the Title Objections; provided, however, that Seller shall be obligated to cause the removal of any general exceptions relating to the power, authority or good standing of Seller and any general exceptions that would be removed through Seller’s execution and delivery of an owner’s title affidavit in reasonable form and must cure deeds of trust, mortgages or liens, including, without limitation, (i) any mechanic’s or materialmen’s liens against the Real Property as a result of work done by or on behalf of Seller, and (ii) any tax or judgment liens against Seller (each, a “**Mandatory Cure Item**”), but such obligation shall expressly exclude liens and encumbrances caused directly or indirectly by any act or omission of Buyer. Notwithstanding anything to the contrary, Seller has no obligation to expend any funds to undertake or agree to undertake any obligations or otherwise to cure or agree to cure any Title Objections other than any Mandatory Cure Items. If, on or before the Closing Date, Seller is unable to cause all Approved Title Objections and Mandatory Cure Items to be removed at no cost or expense to Buyer, Buyer shall have the right on written notice to Seller to terminate this Agreement (and Seller and Buyer shall have no further obligations in connection herewith, except for the immediate refund of the Deposit to Buyer). Condition precedent set forth in this Section **3.3.3** shall be satisfied in writing

- 3.3.4 New Title Objections. Approval by Buyer of any additional exceptions to title or survey matters disclosed after the Title Objection Date (each, a “**New Title Objection**” and collectively, the “**New Title Objections**”) shall be a condition precedent to Buyer’s obligation to purchase the Property (Buyer may grant or withhold such approval in its absolute discretion). Unless Buyer gives notice that it disapproves any New Title Objections, identifying the exceptions so disapproved, on or before the sooner to occur of five (5) days after receipt of notice thereof or the scheduled Closing Date, Buyer shall be deemed to have approved such New Title Objections. Upon receipt of such notice from Buyer, Seller shall notify Buyer in writing within five (5) days after receipt of Buyer’s Title Objection Notice whether Seller elects to remove the same and if Seller makes such election, Seller shall use commercially reasonable efforts to remove or otherwise remedy to Buyer’s reasonable satisfaction the New Title Objections on or before the Closing Date. If Seller shall fail to timely deliver a written response to Buyer’s notice regarding New Title Objections, Seller shall be deemed to have elected not to remove the New Title Objections on or before the date of Closing. To the extent necessary, the Closing Date shall be extended to accommodate the time periods established in this Section 3.3.3. If, on or before the Closing Date, Seller fails to cause such New Title Objections so identified by Buyer in writing to be removed at no cost or expense to Buyer, Buyer shall have the right on written notice to Seller to terminate this Agreement (and Seller and Buyer shall have no further obligations in connection herewith, except for the immediate refund of the Deposit to Buyer). The condition precedent set forth in this Section 3.3.3 by notice to Seller shall be satisfied in writing.
- 3.3.5 Permitted Exceptions. Non-delinquent real property taxes and assessments and all matters set forth on the Title Report to which Buyer does not object or is deemed to have approved in accordance with Sections 3.3.2 and 3.3.3 are herein collectively called the “**Permitted Exceptions**”. The term “Permitted Exceptions” shall additionally include (i) any Title Objections and New Title Objections that are subsequently waived in writing by Buyer, (ii) any title matters objected to by Buyer, which objections are cured to Buyer’s satisfaction, (iii) exceptions caused by the acts or omissions of Buyer or Buyer’s contractors and their respective subcontractors, agents, employees, licensees, invitees or representatives, or any other parties, directly or indirectly, employed by any one of the foregoing, or under the control of any of the foregoing, or for whose acts any of the foregoing may be liable, including without limitation mechanics’ or materialmen’s liens or other liens or claims, or liens or claims resulting therefrom or arising in connection therewith, and (iv) exceptions that could reasonably be discovered by a physical inspection or survey of the Property. Approval by Buyer of the Permitted Exceptions shall not be a condition precedent to Buyer’s obligation to purchase the Property.
- 3.3.6 Owner’s Policy. Conclusive evidence of the availability of title insurance shall be the irrevocable written commitment of Title Company to issue to Buyer on the Closing Date a standard coverage owner’s title insurance policy (ALTA Form 2006) and all endorsements thereto deemed desirable or appropriate by Buyer (“**Title Policy**”), in the face amount of the Purchase Price, which Title Policy shall (i) show fee simple title to the Real Property to be vested of record in Buyer or its assignee pursuant to Section 10.3, and (ii) show the

Permitted Exceptions as the only exceptions to title. As a condition to Buyer's obligation to Close, the Title Company shall issue the Title Policy at Closing. In the event the Title Company does not issue the Title Policy at Closing, or indicates prior to Closing that it will not issue the Title Policy, such event shall not be deemed a Seller Default, and Buyer shall have the right to terminate this Agreement by delivering notice thereof to Seller and Title Company on or prior to the Closing Date, and failure by Buyer to timely deliver such notice of termination shall be deemed Buyer's waiver of such condition. In the event of any such termination, the entire portion of the Deposit then held by Title Company shall be promptly delivered to Buyer and thereafter neither party shall have any further rights or obligations hereunder, except as expressly set forth herein.

3.4 Inspection Obligations.

3.4.1. Buyer's Responsibilities. In conducting any investigations, inspections, tests and studies of the Property and/or Documents, Buyer and its agents and representatives shall: (i) not unreasonably disturb the Tenants or interfere with their use of the Property pursuant to their respective Leases; (ii) not unreasonably interfere with the operation, use and maintenance of the Property; (iii) not damage any part of the Property or any personal property owned or held by any Tenant or any third party; (iv) not injure or otherwise cause bodily harm to Seller or any of its partners, agents, contractors and employees, or any Tenant or other third party; (v) pay when due the costs of all tests, investigations, studies and examinations done with regard to the Property; (vi) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; (vii) fully restore the Real Property and Personal Property to the condition in which the same was found before any such inspections, tests or studies were undertaken; and (viii) not reveal or disclose any information obtained prior to Closing concerning the Property to anyone outside Buyer's organization except in accordance with the confidentiality standards set forth in [Section 3.2.2](#) above.

3.4.2. Buyer's Indemnity. Buyer shall indemnify, defend, protect and hold Seller and its agents, employees and contractors harmless from and against any and all liens, claims, losses, liabilities, damages, costs, expenses, causes of action and expenses (including reasonable attorneys' fees and court costs) caused by inspections, tests and/or studies of the Property and Documents by Buyer and/or Buyer's agents, employees, contractors or consultants; provided, however, such indemnity obligations shall not be applicable to Buyer's mere discovery of an adverse physical condition or matter at the Property and Buyer's compliance with any applicable reporting requirements. This obligation shall survive termination of this Agreement. Notwithstanding any provision to the contrary contained in this Agreement, Buyer's obligations and indemnity set forth in Section 3.4.1 and this Section 3.4.2 shall survive the Closing or earlier termination of this Agreement and shall not be merged with the Deed (as defined below) or any other Closing documents.

3.5 Contracts. On or before the Closing Date, Seller, at Seller's sole cost and expense, shall terminate all Contracts. If Seller is cancelling water, garbage, PG&E etc. before COE, "Buyer to be notified at least 48 hours before any cancellations".

3.6 Buyer's Contingency. If during the Inspection Period Buyer determines, in Buyer's absolute discretion, the Property is unsatisfactory for any reason, then Buyer shall deliver to Seller notice of Buyer's unconditional disapproval of the Property prior to the expiration of the Inspection Period ("**Disapproval Notice**"). In such case, and the Buyer may terminate the agreement in writing. This contingency shall remain active until buyer removes in writing. In the case of termination the Title Company shall promptly return the Deposit paid to Title Company, and neither Seller nor

Buyer shall have any further obligation or liability to the other hereunder, except as expressly provided for in this Agreement. If however during the Inspection Period Buyer (i) delivers to Seller notice of Buyer's unconditional approval of the Property ("**Approval Notice**") in writing, then Buyer shall be deemed to have elected to proceed to the Closing. Under such circumstances, Buyer shall be deemed to have waived its termination rights in this Section 3.6 and the remainder of the Deposit shall become non-refundable in all circumstances except as expressly set forth in this Agreement, released by Title Company to Seller without further consent or joinder by any other party, and applied to the Purchase Price.

- 3.7 Updated Rent Roll. Intentionally deleted.
- 3.8 Performance by Seller. The performance and observance in all material respects by Seller of all covenants and agreements of this Agreement to be performed or observed by Seller prior to or on the Closing Date shall be a condition precedent to Buyer's obligation to purchase the Property. Buyer shall have the option to waive the condition precedent set forth herein by notice to Seller. In the event of such waiver, such condition shall be deemed satisfied.
- 3.9 Performance by Buyer. The performance and observance in all material respects by Buyer of all covenants and agreements of this Agreement to be performed or observed by it prior to or on the Closing Date shall be a condition precedent to Seller's obligation to sell the Property. Seller shall have the option to waive the condition precedent set forth herein by notice to Buyer. In the event of such waiver, such condition shall be deemed satisfied.

ARTICLE 4 ESCROW AND CLOSING

- 4.1 Opening. Seller shall open an escrow (the "**Escrow**") with Title Company by delivering a fully executed copy of this Agreement to Title Company at the Title Company's address specified in Section 1.18. Any additional, supplementary and/or pre-printed or standard instructions shall not supersede or conflict with this Agreement, and any such conflict shall be governed by the terms of this Agreement.
- 4.2 Closing Date.
- 4.2.1 Initial Closing Date. The Closing shall occur through Escrow on the Closing Date, subject to extension as expressly set forth in this Agreement.
- 4.2.2 Buyer's Extension Option. Buyer shall have a one-time right to extend the Closing Date by thirty (30) days. To exercise such option, Buyer shall give written notice to Seller at least five (5) days prior to the initial Closing Date.
- 4.3 Seller's Deliveries to Title Company. Prior to the Closing Date, Seller shall deliver to Title Company the following:
- 4.3.1 A grant deed in the form attached hereto as Exhibit "C" attached hereto (the "**Deed**"), duly executed and acknowledged by Seller, conveying fee simple title to the Real Property to Buyer, subject to the Permitted Exceptions.
- 4.3.2 Two (2) counterpart originals of a bill of sale and general assignment in the form attached hereto as Exhibit "D" attached hereto (the "**Bill of Sale**"), duly executed by Seller.

- 4.3.3 A certification as required by the Foreign Investors Real Property Tax Act, as amended, in the form attached hereto as Exhibit "E" attached hereto (the "**FIRPTA**"), and the California Form 593C, (the "**Form 593C**", and with the FIRPTA, the "**Non-Foreign Certificate**"), each duly executed by Seller.
- 4.3.4 Two (2) counterpart originals of an Assignment and Assumption of Leases in the form attached hereto as Exhibit "F" attached hereto (the "**Assignment of Leases**"), executed by Seller.
- 4.3.5 A copy of the settlement statements separately approved by Buyer and Seller ("**Separate Statements**"), each accurately reflecting all prorations, adjustments and closing costs for the transfer of the Property from Seller to Buyer, duly executed by Seller.
- 4.3.6 Such other documents as may be reasonably required by Title Company.
- 4.4 Seller Deliveries to Buyer. Within 90 days of acceptance, but prior to Close of Escrow, Seller shall deliver to Buyer:
 - 4.4.1 A Certificate from the Secretary of State indicating that, as of the Closing Date, there are no filings against Seller in the office of the Secretary of State or other government official under the Uniform Commercial Code of California which would be a lien on any of the items specified in the Bill of Sale referred to in Section 4.3.2 above (other than such filings, if any, as are being released at the time of the Closing).
 - 4.4.2 Originals of all leases (and amendments thereto, if any, and all records and correspondence relating thereto).
 - 4.4.3 Estoppel certificates to Buyer in a form reasonably acceptable to Buyer from all Tenants that occupy a portion of the Property which confirm the material terms set forth in their respective leases. Attached hereto as Exhibit "H" is a form of estoppel certificate that is acceptable to Buyer. In the event a Tenant's Lease specifies a form of estoppel, the form thereof shall be deemed acceptable to Buyer.
 - 4.4.4 Originals or copies of any Contracts to be continued by Buyer after the Closing, and any warranties or guaranties received by Seller from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repairs or alterations of the Improvements or any tenant improvements.
 - 4.4.5 One complete set of the final as-built plans and specifications for the Improvements, certified by Seller and the architect and engineer for the design and construction of the Improvements if in Seller's possession.
- 4.5 Buyer's Deliveries. Prior to the Closing Date, Buyer shall deliver to Title Company the following:
 - 4.5.1 The Purchase Price, plus all net prorations, closing costs and other funds required to be paid or provided by Buyer under this Agreement (all monies Buyer is required to deliver

shall be wired to the account designated by Title Company and available for disbursement on the Closing Date).

- 4.5.2 Two (2) counterpart originals of the Bill of Sale, duly executed by Buyer.
 - 4.5.3 Two (2) counterpart originals of the Assignment of Leases, duly executed by Buyer.
 - 4.5.4 A copy of the Separate Statement duly executed by Buyer.
 - 4.5.5 Such other documents as may be reasonably required by Title Company.
- 4.6 Prorations. The following items shall be prorated between Seller and Buyer as of 11:59 pm Pacific Time on the day immediately preceding the Closing Date by increasing or decreasing, as the case may be, the funds to be delivered by Buyer at the Closing, with all items pertaining to the month of Closing to be prorated based on the actual number of days in the month in which the Closing occurs:
- 4.6.1 Taxes. Real property taxes and assessments and personal property taxes with respect to the Property shall be prorated based upon the latest available tax information such that Seller shall be responsible for all such taxes and assessments levied against the Property to and including the day prior to the Closing, and Buyer shall be responsible for all such taxes and assessments levied against the Property for the date of Closing and all periods thereafter. Any real property taxes and assessments arising out of the sale of the Real Property to Buyer or its assignee or a subsequent sale or change in ownership thereafter, and/or arising out of any construction pertaining to the Real Property following the Closing, shall be paid by Buyer when assessed.
 - 4.6.2 Expenses. Subject to Section 4.6.3 below, all costs and expenses with respect to the operation and maintenance of the Property and all assessments, dues or other charges due under any covenants, conditions and restrictions against the Property, shall be prorated such that Seller shall be responsible for all such costs and expenses to and including the day prior to the Closing and Buyer shall be responsible for all such costs and expenses for the date of Closing and all periods thereafter. Buyer shall effectuate the transfer of all utilities to its name as of the date of Closing, and where necessary, post deposits with the utility companies. Buyer and Seller shall cooperate to have all utility meters read by the appropriate utility companies as of the date of Closing. Seller shall be entitled to recover any and all deposits held by any utility companies as of the date of Closing; if any such deposits are not returned to Seller as of the date of Closing, such amounts shall be credited to Seller's account and increase the amount of funds payable by Buyer at Closing.
 - 4.6.3 Revenues. All rents, reimbursements, income, revenue and other charges pertaining to Leases or otherwise with respect to the Property (collectively, "**Revenues**") actually collected by Seller on or prior to the Closing (including prepaid Revenues but excluding Security Deposits) shall be prorated such that Seller shall be entitled to all such Revenues accruing up to and including the day prior to the Closing, and Buyer shall be entitled to all such Revenues for the date of Closing and all periods thereafter. However, there shall be no adjustment of the amount of funds to be delivered by Buyer at the Closing for Revenues from the Property which are attributable to the periods prior to and including the day prior to the Closing but which have not actually been collected by Seller as of the date of Closing (hereinafter called the "**Delinquent Revenues**"), although Seller shall be entitled to receive all such Delinquent Revenues as provided Buyer or Seller receives rents (or other tenant

charges) on or after the Closing Date, and such payments shall be applied (i) first to any Delinquent Revenues not theretofore received by Seller for the particular Lease or other particular revenue source and (ii) then to the earliest months for which Revenue remains unpaid for such Lease or revenue source, as the case may be. Buyer agrees to use commercially reasonable efforts to collect on behalf of Seller all Delinquent Revenues. Any Delinquent Revenues (including any Revenues allocated to Delinquent Revenues, as provided hereinabove) collected by Buyer after Closing shall be forthwith paid by Buyer to Seller as set forth in this Section 4.6.3. Notwithstanding any provision of this Agreement to the contrary, Seller shall be entitled to collect all Revenues which became due prior to the Closing from any of the Tenants, guarantors or other third parties responsible for the payment of such Revenues, provided, however, after the Closing, Seller shall not be entitled to pursue eviction proceedings or other actions to dispossess Tenants in connection with any such collection efforts. Notwithstanding the foregoing provisions to the contrary, to the extent taxes, utilities and any other expenses accruing with respect to the Property are paid by Tenants to the landlords pursuant to the terms of their Leases (“**Tenant Expenses**”), any refund of any Tenant Expenses to which a Tenant may be entitled as a result of overpayment shall be the responsibility of Seller or Buyer, whichever received such overpayment. Seller shall not be responsible for any underpayment by a Tenant of the Tenant Expenses.

4.6.4 Deposits. Seller shall retain the Security Deposits, if any, and the amount thereof shall be credited to the Purchase Price. If any Security Deposit is in the form of a letter of credit that is transferable by its terms, Seller shall deliver to Buyer at the Closing the original letter of credit together with any documents required to be executed by Seller in order to transfer the beneficial interest under such letter of credit to Buyer. If a security deposit in the form of a letter of credit is not transferable by its terms, Seller shall deliver to Buyer at Closing the original letter of credit and shall provide reasonable cooperation to Buyer and the applicable tenant (including after the Closing, but without the need for expenditure of funds) to facilitate the reissuance of a new letter of credit to replace the letter of credit previously held by Seller.

4.6.5 Reproration. Within twelve (12) months following the Closing (or such earlier date after the Closing when such figures are available), Seller and Buyer shall reprorate real and personal property taxes and other items of income and expenses based upon actual bills or invoices received after the Closing and any other items necessary to effectuate the intent of the parties that all income and expense items be prorated as provided above in this Section 4.6 only under the following conditions: (i) if original prorations were based upon estimates; and (ii) the amount owed by the reproration is in excess of Ten Thousand Dollars (\$10,000.00). Such amounts owed from reprorated items shall be promptly paid to the party entitled thereto.

4.6.6 The provisions of this Section 4.6 shall survive Closing.

4.7 Annual Reconciliation Statement. Buyer shall assume the obligation in the Leases, if any, to prepare and deliver to Tenants the annual reconciliation or accounting statements (“**Reconciliation Statements**”) for the property taxes, insurance premiums and other operating expenses at the Property for the calendar year in which the Closing occurs (“**Reconciliation Period**”). If such Reconciliation Statements discloses that a Tenant overpaid for such items during the Reconciliation Period and Buyer gives written notice to Seller by March 31st of the calendar year after that in which the Closing occurs, then Seller shall promptly remit its prorata portion of such overpayment to Buyer in order to pay the Tenant. If such Reconciliation Statements or a subsequent audit

discloses that a Tenant underpaid for such items in the year of the Closing, Buyer shall seek payment of such shortfall as if it were Delinquent Revenues under Section 4.6.3 and Buyer shall promptly remit such underpayment to Seller. To the extent that the landlord under any Lease is responsible for the cost of an audit of Reconciliation Statements conducted by Tenant, Buyer shall pay such audit cost to Tenant. Any dispute regarding this Section 4.7 shall be handled in the manner set forth in such applicable Lease between Seller, Buyer and such Tenant. The provisions of this Section 4.7 shall survive the Closing.

- 4.8 Actions of Title Company. On the Closing, Title Company shall promptly undertake all of the following in the manner herein below indicated:
- 4.8.1 Disbursement of Funds. Disburse all funds deposited with Title Company by Buyer in strict accordance with the Joint Statement and this Agreement.
- 4.8.2 Recordation. Cause the Deed and any other documents which the parties hereto may mutually direct to be recorded in the Official Records of the county wherein the Property is situated, and obtain conformed copies thereof for distribution to Buyer and Seller.
- 4.8.3 Delivery of Documents. Each of the following:
- 4.8.3.1 Within ten (10) days after Closing, cause the Title Policy to be issued to Buyer.
- 4.8.3.2 Combine each of the two (2) original counterparts of the Bill of Sale into two (2) separate fully executed originals and each of the two (2) original counterparts of the Assignment of Leases into two (2) separate fully executed originals of each such document.
- 4.8.3.3 Deliver to Seller one (1) fully executed original of the Bill of Sale and one (1) fully executed Assignment of Leases.
- 4.8.3.4 Deliver to Buyer one (1) fully executed original of the Bill of Sale and one (1) fully executed Assignment of Leases as well as the Non-Foreign Certificate.
- 4.9 Delivery of Possession of Real Property. Upon confirmation of the Closing, Seller shall deliver to Buyer possession of the Real Property, subject to the rights of Tenants pursuant to Leases and all Permitted Exceptions.
- 4.10 Closing Costs. Any escrow fee charged by Title Company shall be paid in full by Buyer. Upon the Closing, Seller shall pay all transfer taxes in full, unless Buyer stipulates the sale is exempt from such transfer taxes because Buyer is a public agency. Upon the Closing, Buyer shall pay (i) all costs for the recording of the Deed, (ii) the premium for the Title Policy, and (iii) the costs of any inspections, studies or tests Buyer authorizes or conducts. Except as otherwise provided in Section 7.4, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction which is the subject of this Agreement.
- 4.11 Treatment of Leasing Costs. Seller represents and warrants that there are no tenant improvement costs, leasing commissions or other tenant leasing costs still outstanding under those Leases in effect as of the Effective Date (“**Existing Leasing Costs**”). Notwithstanding anything to the contrary contained herein, Buyer shall be responsible for the payment of all Leasing Costs payable for (a) any new Lease entered into after the expiration of the Inspection Period that has been approved by Buyer, and (b) with Buyer approval the renewal, expansion or extension of the Leases

existing as of the Inspection Period and exercised or effected after the Effective Date (collectively, “New Leasing Costs”).

ARTICLE 5 Real Estate Commissions. If the Closing occurs, Seller has agreed to pay a Buyer broker’s commission to Broker in accordance with the terms of a separate agreement.

REPRESENTATIONS AND WARRANTIES; CERTAIN COVENANTS

5.1 General Disclaimer. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, EXCEPT AS SPECIFICALLY SET FORTH IN SUBSECTION 5.1.1 BELOW, IT IS UNDERSTOOD AND AGREED THAT NEITHER SELLER NOR ANY OF ITS PARTNERS, AGENTS, EMPLOYEES OR CONTRACTORS HAS MADE AND IS NOT NOW MAKING, AND BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON (DIRECTLY OR INDIRECTLY), ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO (I) MATTERS OF TITLE (OTHER THAN SELLER’S WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED AT CLOSING), (II) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF, (III) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES, (IV) WHETHER, AND TO THE EXTENT TO WHICH, THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD, (V) DRAINAGE, (VI) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING, (VII) ZONING TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT, (VIII) USAGES OF ADJOINING PROPERTY, (IX) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTIONS, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, (X) ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF, (XI) THE PRESENCE OF HAZARDOUS SUBSTANCES IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY, (XII) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS, (XIII) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS, (XIV) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE REAL PROPERTY, (XV) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY, (XVI) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY, (XVII) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (BUYER AFFIRMING THAT BUYER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF SELLER OR ASSET MANAGER OR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER

MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE) OR (XVIII) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT, USE OR PROVISIONS RELATING TO ANY TAX CREDITS).

5.1.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer that, as of the Effective Date and the Closing Date (each of which shall survive the Closing Date):

5.1.1.1 Seller **Sellers are individuals** Sellers possess all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged.

5.1.1.2 Due Authority. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Seller are and on the Closing Date will be duly authorized, executed and delivered by and binding upon Seller. Seller has the legal capacity and authority to execute this Agreement and consummate the transactions herein provided without the consent or joinder of any other person or entity (except as otherwise set forth in this Agreement).

5.1.1.3 Litigation. Seller has received no notice of any pending or threatened litigation, arbitration, condemnation or other proceeding against the Property or against Seller (or any of its partners or principals) with respect to the Property or that will adversely affect Seller's ability to perform its obligations hereunder.

5.1.1.4 Compliance. Seller has received no notice from any governmental authority having jurisdiction over the Property to the effect that the Property is not in compliance with applicable laws and ordinances or that all or any portion of the Real Property is the subject of any condemnation action or proceeding.

5.1.1.5 Contracts. On the Effective Date, Seller is not in monetary default or material nonmonetary default of any Contract that remains uncured, and on the Closing Date, Seller shall not be in monetary default or material nonmonetary default of any Contract that remains uncured.

5.1.1.6 Books and Records. The operating statements and rent roll for the Property are accurate in all material respects.

5.1.1.7 Hazardous Substances. Except as otherwise disclosed by Seller to Buyer in any environmental site assessments delivered to Buyer as part of the Documents, Seller represents and warrants that, to Seller's knowledge: (i) there are no Hazardous Substances, as defined herein, or underground storage tanks in, on, or under the Property, except those that are both (A) in compliance with applicable laws, rules, and/or regulations and with permits issued pursuant thereto (if such permits are required), if any, and (B) either (1) in the case of Hazardous Substances, in amounts not in excess of that necessary to operate the Property for the purposes set forth herein in compliance with all applicable Environmental Laws, or (2) fully disclosed to Buyer in writing; (ii) there are no past, present or threatened releases of Hazardous Substances in violation of any applicable law, rules, or regulation or which would require remediation by a governmental authority in, on, under or from the Property ("**Environmental Laws**"), except as described in the Documents; (iii) Seller does not have knowledge of, and has not received, any written or oral notice

or other communication from any person or agency relating to Hazardous Substances in, on, under, from, or adjacent to the Property that remain uncured; and (iv) Seller has truthfully and fully provided to Buyer, in writing, any and all information relating to Hazardous Substances in, on, under or from the Property known to Seller or contained in the Documents, including but not limited to any reports relating to Hazardous Substances in, on, under or migrating to or from the Property.

- 5.1.1.8 Bankruptcy. Seller has not (a) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (b) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (c) made an assignment for the benefit of creditors
- 5.1.1.9 Prohibited Persons and Transactions. Neither Seller nor any of its affiliates, nor any of its respective partners, members, shareholders or other equity owners, and none of its respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.
- 5.1.1.10 Seller Not a Foreign Person. Seller is not a foreign person under Section 1445 of the Internal Revenue Code of 1986, as amended, nor is any withholding required under California law in connection with the sale of the Property.
- 5.1.1.11 No Rights of Parties in Possession. As of the Closing Date, there shall be no tenants with a right to possession of any portion of the Property, except for the Tenants under the Leases listed on Exhibit “G” attached hereto or otherwise approved by Buyer.
- 5.1.1.12 Leases. There are no Leases of any portion of the Property, licenses, or other agreements to occupy or use all or any portion of the Property, which will be in force after the Closing other than the Leases listed on Exhibit “G” attached hereto. All of the Leases are in full force and effect as of the Effective Date. There are no uncured landlord defaults or breaches under the Leases, or, to Seller’s knowledge, any uncured tenant defaults or breaches, under the Leases, except as set forth in any Estoppel. There are no security deposits under the Leases except as set forth on Exhibit “G”. The rent rolls provided to Buyer pursuant to this Agreement are true, correct and complete in all material respects as of the date thereof and identify all Leases in effect as of the date of the applicable rent roll.

5.1.1.13 Lease Brokerage. Seller is not a party to any Lease brokerage agreements, leasing commission agreements or other agreements providing for payments of any amounts for leasing activities or procuring tenants with respect to the Property or any portion or portions thereof, and all leasing commissions and brokerage fees accrued or due and payable under any commission agreement or other similar compensation agreement with respect to the Property as of the date hereof have been or shall be paid in full.

5.1.1.14 Employee Matters. Seller has no employees, and there are no employment agreements, union agreements, benefit agreements, pension plans, or collective bargaining agreements, at or otherwise affecting the Property to which Seller is bound which will survive the Closing or for which Buyer will be responsible for or have any obligation or other liability for after the Closing.

5.1.1.15 Accurate and Complete Disclosures Seller has not withheld any documentation or information within its knowledge as defined herein that is either (1) required to be disclosed to Buyer by the terms of this Agreement or (2) that Buyer has a right to request by the terms of this Agreement and has made such request to Seller. Seller has further not made any disclosures or representations that Seller has knowledge, as defined herein, are false or incomplete.

5.2 Buyer Acknowledgments. BUYER REPRESENTS THAT, OTHER THAN SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING, IT HAS RELIED AND SHALL RELY SOLELY ON (I) ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS IN PURCHASING THE PROPERTY, AND (II) BUYER'S OWN KNOWLEDGE OF THE PROPERTY BASED ON ITS INVESTIGATIONS AND INSPECTIONS OF THE PROPERTY. BUYER HAS CONDUCTED, OR BY THE CLOSING WILL CONDUCT, SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMED OR SHALL DEEM NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. UPON CLOSING, BUYER SHALL, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER THE PROPERTY, AND SUBJECT TO THE EXPRESSED REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER IN THIS AGREEMENT OR IN THE CLOSING DOCUMENTS, BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS AND DEFECTS (LATENT AND APPARENT). BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT, EMPLOYEE OR CONTRACTOR OF SELLER, OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF SECTION 5.1 AND THIS SECTION 5.3 SHALL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND SHALL NOT BE INCORPORATED INTO THE DEED. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY SELLER, ANY REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN THE

CLOSING DOCUMENTS. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. BUYER HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT WITH ITS COUNSEL AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF.

BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN SECTION 5.1 AND THIS SECTION 5.2 ARE AN INTEGRAL PART OF THIS AGREEMENT AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN SECTION 5.1 AND THIS SECTION 5.2.


BUYER'S INITIALS

5.3 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that, as of the Effective Date and the Closing Date (each of which shall survive the Closing Date, and if Buyer assigns this Agreement in compliance with Section 10.3, then this Section 5.3 shall also apply to such assignee):

5.3.1 Organization. Buyer is a governmental authority, duly organized and is validly existing under the laws of the State of California and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged in each jurisdiction where it is required to be so qualified, including the state in which the Property is situated. Buyer possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged.

5.3.2 Due Authority. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Buyer are and on the Closing Date will be duly authorized, executed and delivered by and are binding upon Buyer. Buyer has the legal capacity and authority to execute this Agreement and consummate the transactions herein provided without the consent or joinder of any other person or entity (except as expressly set forth in this Agreement).

5.3.3 Litigation. Buyer has received no notice of any pending or threatened litigation, arbitration, condemnation or other proceeding against Buyer (or any of its partners or principals) with respect to the Property or that will adversely affect Buyer's ability to perform its obligations hereunder.

5.3.4 Bankruptcy. Buyer has not (a) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (b) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (c) made an assignment for the benefit of creditors.

5.3.5 Buyer. Buyer is a governmental organization with experience in the ownership, management and operation of real estate. Buyer is not in a materially disparate or inferior

bargaining position in relation to Seller. Buyer is represented by competent legal counsel in connection with the transaction contemplated by this Agreement. Buyer is purchasing the Property for business, commercial, investment or other similar purpose and not for use as Buyer's residence.

5.4 Buyer's Release of Seller.

5.4.1 Seller Released From Liability. Except to the extent Seller has specifically breached or violated a representation, warranty, or covenant expressly made by Seller herein or in the Closing Documents, Buyer and anyone claiming by, through or under Buyer, hereby waives its right to recover from and fully and irrevocably releases Seller and its employees, officers, directors, representatives, agents, servants, attorneys, affiliates, parent, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations in its behalf ("**Released Parties**") from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Substances or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under or in connection with this Agreement. This release includes claims or which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release to Seller.

In this connection and to the extent permitted by law, Buyer hereby agrees, represents and warrants that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses.

BUYER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BUYER, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE THERE UNDER, AS WELL AS UNDER ANY

OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING DATE.

DK

BUYER'S INITIALS

5.4.2 Buyer's Waiver of Objections. Buyer acknowledges that, as of the date of Closing, Buyer will have inspected the Property and observed its physical characteristics and existing conditions and will have had the opportunity to conduct such investigations and studies on and of said Property and adjacent areas as it deems necessary, and except to the extent Seller has specifically breached or violated a representation or warranty expressly set forth herein, Buyer hereby waives any and all objections to or complaints regarding the Property and its condition, including, but not limited to, federal, state or common law based actions and any private right of action under state and federal law to which the Property is or may be subject, including, but not limited to, CERCLA, RCRA, physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Substances on, under, adjacent to or otherwise affecting the Property. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Substances or other contaminants, may not have been revealed by its investigation.

Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this Section 5.4. Buyer has initialed below to further indicate its awareness and acceptance of each and every provision hereof.

DS
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BUYER'S INITIALS

5.4.3 Known Inaccuracies. Prior to Closing, if Seller has committed a Seller Default, and Buyer acquires actual and not implied knowledge of such breach or default, then Buyer may, at its election, deliver notice thereof to Seller. Seller shall have until the Closing Date to cure any such breaches or defaults to Buyer's reasonable satisfaction and shall cure, prior to the Closing Date any Seller Default within Seller's control. In the event that Seller does not cure a Seller Default to Buyer's reasonable satisfaction, Buyer shall have all rights and remedies for a Seller Default and shall be entitled to delay Closing or extend the Closing Date until five (5) Business Days following Buyer's receipt of reasonable supporting documentation of the correction of the Seller Default. Following the Closing, neither party shall have any liability to the other party which arises out of a Seller Default, in the case of Seller, or a Buyer Default, in the case of Buyer, which Seller or Buyer, as applicable, had actual and not implied knowledge prior to the Closing Date. Following the Closing, neither party shall commence a legal action or proceeding against the other party relating to (a) the Property, or (b) a breach of a representation, warranty, covenant or condition made in this Agreement or in connection with the transaction contemplated herein; unless (i) the factual basis of the claim or cause of action asserted in the action or proceeding was first identified to such party with reasonable clarity after the Closing Date notice for which was then delivered to the other party not later than the expiration of the time period set forth in Section 10.14; and (ii) the action or proceeding is commenced and duly served on the other party within ninety (90) days after the expiration of the time period set forth in Section 10.14. BUYER IS FAMILIAR WITH, AND HEREBY WAIVES ITS RIGHTS, IF ANY,

AT LAW OR IN EQUITY TO COMMENCE A LEGAL ACTION OR PROCEEDING AGAINST SELLER RELATING TO THE PROPERTY OR A BREACH OF A REPRESENTATION, WARRANTY, COVENANT OR CONDITION MADE IN THIS AGREEMENT BY SELLER OR IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREIN, AT ANY TIME AFTER THE EXPIRATION OF THE TIME PERIOD SET FORTH IN SECTION 10.14, INCLUDING, WITHOUT LIMITATION, ANY RIGHT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 337. The covenants, conditions, representations and warranties in this Agreement or otherwise made in connection with this transaction (if any) are personal to Buyer and Seller and shall not run with the land, and no person or entity other than Buyer and Seller, respectively, shall be entitled to bring any action based thereon. The provisions of this Section 5.4.3 shall survive the Closing.

5.5 Hazardous Substances Defined. For purposes of this Agreement, “**Hazardous Substances**” means any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 6901 et seq.), as amended (“**CERCLA**”), or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), as amended (“**RCRA**”), or any other federal, state or local law, ordinance, rule or regulation applicable to the Property, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), radon gas, urea formaldehyde, asbestos, lead or electromagnetic waves.

5.6 Interim Covenants of Seller.

5.6.1 From Effective Date until the Closing Date or the sooner termination of this Agreement, the following shall apply:

5.6.1.1 Maintenance. Seller shall use commercial reasonable efforts to maintain the Property in substantially the same manner as prior hereto pursuant to its normal course of business (such maintenance obligations not including extraordinary capital expenditures or expenditures not incurred in such normal course of business), subject to reasonable wear and tear and further subject to destruction by casualty or other events beyond the control of Seller. Seller shall maintain in full force and effect its existing insurance coverage with premiums paid through the Closing Date.

5.6.1.2 Notifications. Seller shall notify Buyer of any notice received by Seller or its property manager of any of the following matters promptly after Seller or its property manager has knowledge of such matter: notices of default or disputes from any Tenant, notices of disputes involving any Contract, condemnation, environmental, zoning or other land-use regulation proceedings specifically relating to the Property, notice of any violations of any laws specifically relating to the Property, and any litigation or notice of any claim relating to the Property.

5.6.1.3 New Contracts. Seller shall not execute any new Contract without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed, except those deemed reasonably necessary by Seller in the ordinary course of operating the Property that are cancelable on thirty (30) days’ notice (and Seller shall promptly provide Buyer with copies of all such additional service contracts), which

shall not require Buyer's consent. Buyer's failure to respond to Seller's request for consent within three (3) Business Days of such request shall be deemed to be consent thereof.

5.6.1.4 New Leases. Seller shall not execute any Lease after the Effective Date without Buyer's prior consent, nor shall Seller modify, extend, or renew any of the Leases without Buyer's prior consent, which shall not be unreasonably withheld or delayed. Buyer's failure to respond to Seller's request for consent within three (3) Business Days of such request shall be deemed to be consent thereof.

5.6.2 Lender Cooperation. At no cost or expense to Seller, Seller shall reasonably cooperate with Buyer's efforts to obtain financing for its acquisition of the Property. Such cooperation shall include requesting financial information, estoppel certificates and/or SNDAs from the Tenants, enforcing such requirements for estoppel certificates and SNDAs to the extent the same may be required under the Leases (but without any need to file claims or incur substantial costs), and allowing the lender's consultants to inspect the Property subject to the terms of Section 3.4 above. It is understood and agreed, however, that Buyer's ability to obtain financing for the acquisition of the Property is not a condition to Buyer's obligation to close on the purchase of the Property hereunder.

ARTICLE 6 CONDITIONS TO CLOSING

6.1 Buyer's Closing Conditions. The Closing shall not occur, unless and until each and every one of the following conditions precedent shall, in Buyer's absolute discretion, have been satisfied in writing prior to the Closing; provided, however, that Buyer shall be entitled to waive any of such conditions in writing to the Title Company and Seller in writing the manner set forth herein:

6.1.1 Seller Representations and Warranties and Deliverables. All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

6.1.2 Title. Title Company has given written notice to Buyer of its unconditional commitment to issue the Title Policy effective as of the Closing Date.

6.1.3 Board of Supervisors Approval. After the Board of Supervisors of the County of Sonoma has approved this transaction, staff shall have given written notice to Seller of such approval to consummate this transaction ("**Board Approval**").

6.1.4 CEQA. Compliance by Buyer with the California Environmental Quality Act of 1970, as determined to be necessary by Buyer

If any of the foregoing conditions are not satisfied, Buyer shall have the right to terminate this Agreement and obtain a refund of the Deposit.

6.2 Seller's Closing Conditions. The Closing shall not occur, unless and until each and every one of the following conditions precedent shall, in Seller's absolute discretion, have been satisfied prior to the Closing; provided, however, that Seller shall be entitled to waive any of such conditions in writing to the Title Company and Buyer in writing the manner set forth herein:

6.2.1 Buyer Representations and Warranties and Deliverables. All of Buyer’s representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

ARTICLE 7
DEFAULT AND REMEDIES

7.1 Buyer Default. IN THE EVENT THAT BUYER FAILS TO PERFORM ANY MATERIAL OBLIGATION OF BUYER UNDER THIS AGREEMENT, AND SUCH BREACH, DEFAULT OR FAILURE IS NOT CURED BY BUYER WITHIN FIVE (5) BUSINESS DAYS AFTER WRITTEN NOTICE FROM SELLER TO BUYER (“**BUYER DEFAULT**”), BUYER AND SELLER HEREBY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER AS A RESULT THEREOF. THEREFORE, BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER BREACHES THIS AGREEMENT AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER’S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AND AS THE FULL, AGREED AND LIQUIDATED DAMAGES FOR SUCH BREACH, AN AMOUNT EQUAL TO THE DEPOSIT.







SELLER’S INITIALS

BUYER’S INITIALS

7.2 Seller Default. In the event the Closing does not occur because Seller fails to perform any material obligations pursuant to this Agreement for any reason, which is not cured by Seller within five (5) Business Days after notice from Buyer to Seller (“**Seller Default**”) (with the Closing Date extended as may be necessary to accommodate such cure period), then Buyer may (i) pursue any right or remedy available to it under applicable law and to recover from Seller any reasonable out-of-pocket costs incurred by Buyer in connection with such enforcement action, plus to the extent the default or breach by Seller was intentional or willful, recover any and all damages arising out of such intentional or willful default or (ii) terminate this Agreement and receive back the Deposit and to recover from Seller an amount to compensate Buyer for its out-of-pocket costs incurred in connection with this Agreement, including Due Diligence costs, costs, losses and damages incurred to obtain financing, costs incurred pursuing joint ventures, costs of foregoing other business opportunities, and attorneys’ fees in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00). Notwithstanding anything herein to the contrary, Buyer shall be deemed to have elected to terminate this Agreement if Buyer fails to deliver to Seller notice of its intent to assert a claim or cause of action against Seller on or before thirty (30) days following the scheduled Closing Date, as same may have been extended pursuant to any term of this Agreement or written agreement of the parties or, having given such notice, fails to file a lawsuit asserting such claim or cause of action in the County within ninety (90) days following the scheduled Closing Date, as same may have been extended pursuant to any term of this Agreement or written agreement of the parties. Buyer’s remedies shall be limited to those described in this Section 7.2.

- 7.3 Limitation on Actions; Further Assurances. If the parties proceed to Closing after a dispute arises under this Agreement, then effective from and after the Closing, all conditions of Closing shall be deemed satisfied or waived, and neither party shall have any liability to the other if it is subsequently discovered that a condition was not satisfied at Closing; provided, however, that nothing in this Section 7.3 shall relieve Title Company or Title Company of any liability for failure to comply with this Agreement or with instructions from either Buyer or Seller. Notwithstanding the forgoing, each party will, whenever and as often as it shall be requested to do so by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further conveyances, assignments, approvals, confirmations, consents and any and all other documents and do any and all other acts as may be reasonably necessary to carry out the intent and purpose of this Agreement so long as no additional obligations or liabilities are created or imposed by same. The form of any such conveyances, assignments, approvals, confirmations, consents and/or other documents shall be in a form reasonably acceptable to the party to which the request is made. The provisions of this Section 7.3 shall survive the Closing.
- 7.4 Attorneys' Fees. If either party hereto fails to perform any of its obligations under this Agreement or if a dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provision of this Agreement and to survive and not be merged into any such judgment.
- 7.5 [Deleted].

ARTICLE 8 CONDEMNATION

- 8.1 If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to a condemnation of the Real Property, and the same is not dismissed prior to the Closing Date, Buyer shall be entitled, as its sole remedy, to terminate this Agreement upon notice to Seller (i) within fifteen (15) Business Days following notice by Seller to Buyer of such condemnation or the threatened condemnation or (ii) on the Closing Date, whichever occurs first. If Buyer does not terminate this Agreement pursuant to the preceding sentence, Buyer shall be conclusively deemed to have elected to accept such condemnation and waives any right to terminate this Agreement as a result thereof. If Buyer elects to terminate this Agreement under this Article 8, the entire Deposit shall be promptly returned to Buyer, and neither party to this Agreement shall thereafter have any further rights or obligations hereunder except as expressly set forth in this Agreement. If Buyer waives (or is deemed to have waived) the right to terminate this Agreement as a result of such a condemnation, despite such condemnation, Seller and Buyer shall proceed to Closing in accordance with the terms of this Agreement with no reduction in the Purchase Price, and Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to all proceeds resulting or to result from said condemnation.

ARTICLE 9
CASUALTY DAMAGE

9.1 If, prior to the Closing, any of the Real Property shall be damaged by fire or other casualty (collectively, “**Casualty**”), Seller shall deliver to Buyer notice (“**Casualty Loss Notice**”) of such Casualty together with Seller’s determination as to whether the damage constitutes a Material Damage (as defined below). For the purposes of this Article 9, “**Material Damage**” shall mean damage to the Real Property which is of such nature that the cost of restoring the same to their condition prior to the Casualty will, in Seller’s reasonable determination as provided in the Casualty Loss Notice, exceed five percent (5%) of the Purchase Price, whether or not such damage is covered by insurance. If, prior to the Closing, the Real Property sustains Material Damage by a Casualty, either Buyer or Seller may, at such party’s option, terminate this Agreement by delivering notice thereof to the other party and Title Company within the earlier of (i) ten (10) Business Days after Buyer’s receipt of the Casualty Loss Notice or (ii) the Closing Date. If the Real Property shall be damaged by a Casualty which is not a Material Damage, or if either Buyer or Seller fails to deliver notice of termination within the time period set forth hereinabove for a Material Damage, then: (A) the parties shall proceed to close this transaction in accordance with the terms of this Agreement; (B) at the Closing, Buyer shall receive a credit against the Purchase Price in an amount equal to the deductible under Seller’s casualty insurance policy; and (C) Seller shall, as part of the Intangible Property, assign to Buyer all of Seller’s rights in the resulting casualty insurance proceeds; provided, however, that in no event shall the sum of such credit for the deductible and the amount of the insurance proceeds assigned to Buyer pursuant to clauses (B) and (C) hereinabove exceed the lesser of (1) the Purchase Price or (2) the cost to complete the repair of the Casualty following the Closing. If Seller or Buyer elects to terminate this Agreement under this Article 9, the entire Deposit shall be returned to Buyer, and thereafter neither party shall thereafter have any further rights nor obligations hereunder, except as expressly set forth in this Agreement.

ARTICLE 10
MISCELLANEOUS

10.1 Notice.

10.1.1. Buyer address for Notice:

C/O Todd Mendoza/Mark Best
DRE 001190458/00753793
Coldwell Banker Realty
165 First Street
Petaluma CA

With copies to:

Seller address for Notice:
C/O Issac Raboy/Misty Platt
DRE 00875225/02072109
MMRE Commercial
470 First Street East
Sonoma CA

With copies to:
Thomas J Burger &
Kim Menary
P.O. Box 557
Monte Rio, CA
95462

- 10.2 Entire Agreement. This Agreement contains the entire agreement of the parties hereto, and supersedes all prior and contemporaneous written and oral agreements between the parties, with respect to the subject matter hereof. This Agreement can be amended only by written agreement signed by the parties hereto, and by reference, made a part hereof.
- 10.3 Assignment. Buyer may not assign this Agreement or its rights hereunder, or delegate any portion of its duties or obligations except with the express written consent of Seller, which will not be unreasonably withheld. Notwithstanding the foregoing, Buyer shall have the one-time right to assign this Agreement without consent from Seller only upon the following conditions: (i) the assignee of Buyer must be an Affiliate of Buyer or an entity which is directly owned or controlled by Buyer or any of Buyer's principals; (ii) all of the Deposit must have been delivered in accordance with Section 2.2; (iii) Buyer shall remain primarily liable for the performance of Buyer's obligations under this Agreement that survive the Closing; (iv) the assignee must expressly assume in writing all of Buyer's obligations under this Agreement, and Buyer shall deliver to Seller a copy of the fully executed written assignment and assumption agreement between Buyer and such assignee at least five (5) Business Days prior to Closing; and (v) there shall be no modification of this Agreement other than a change in the named Buyer. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto.
- 10.4 Notice. Notice shall be made parties described at **Section 10.1.1 and Q**. Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Agreement to be made or accepted by either party must be in writing. Notice may, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (ii) by depositing the same into custody of a nationally recognized overnight delivery service, (iii) by delivering the same to such party, or an agent of such party, in person or by commercial courier, or (iv) by email transmission. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified by 6:00 P.M. Pacific Time of any Business Day with delivery made after such hour to be deemed received the following Business Day. For the purposes of notice, the addresses of Seller, Buyer and Title Company shall, until changed as hereinafter provided, be as set forth in Articles 1 and 10. The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' notice to the other party.
- 10.5 Time of the Essence. Time is of the essence in all things pertaining to the performance of this Agreement.
- 10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Real Property is situated, without regard to any otherwise applicable principles of conflicts of laws.
- 10.7 Currency. All dollar amounts are expressed in United States currency.
- 10.8 Section Headings. The Article and section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections hereof.

- 10.9 Day and Calculation of Time Periods. The reference to “day” shall mean a calendar day, unless modified to be a Business Day. Unless otherwise specified, in computing any period of time described herein, the day of the act or event on which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is one other than a Business Day, in which event the period shall run until the end of the next Business Day.
- 10.10 No Recordation. Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto.
- 10.11 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the purchase and sale of the Property and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.
- 10.12 Severability. If any provision of this Agreement or application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is so determined invalid or unenforceable shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.
- 10.13 Construction. The parties acknowledge that with respect to the transactions contemplated herein (a) each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto; (b) neither party has received from the other any accounting, tax, legal or other advice, and (c) each party has relied solely upon the advice of its own accounting, tax, legal and other advisor.
- 10.14 Survival. Unless otherwise expressly provided for in this Agreement, the representations, warranties, indemnification obligations and covenants of the parties set forth in this Agreement shall survive consummation of the transaction contemplated by this Agreement and the delivery and recordation of the Deed.
- 10.15 1031 Exchanges. Seller and Buyer acknowledge and agree that the purchase and sale of the Property may be part of a tax-free exchange under Section 1031 of the Code (“**Exchange**”), for either Buyer or Seller. Each party hereby agrees to take all reasonable steps on or before the Closing Date to facilitate such Exchange if requested by the other party, provided that (a) no party making such accommodation shall be required to acquire any substitute property, (b) such Exchange shall not affect the representations, warranties, liabilities and obligations of the parties to each other under this Agreement, (c) no party making such accommodation shall incur any additional cost, expense or liability in connection with such Exchange (other than expenses of reviewing and executing documents required in connection with such Exchange), and (d) no dates in this Agreement will be extended as a result thereof. Notwithstanding anything to the contrary contained in the foregoing, if Seller so elects to close the transfer of the Property as an Exchange, then (i) Seller, at its sole option, may delegate its obligations to transfer the Property under this Agreement, and may assign its rights to receive the Purchase Price from Buyer, to a deferred exchange intermediary (an “**Intermediary**”) or to an exchange accommodation titleholder, as the case may be; (ii) such delegation and assignment shall in no way reduce, modify or otherwise affect the obligations of Seller pursuant to this Agreement; (iii) Seller shall remain fully liable for its obligations under this Agreement as if such delegation and assignment

shall not have taken place; (iv) Intermediary or exchange accommodation titleholder, as the case may be, shall have no liability to Buyer; (v) the closing of the transfer of the Property to Buyer shall be undertaken by direct deed from Seller (or, if applicable, from other affiliates of Seller whom Seller will cause to execute such deeds) to Buyer or to exchange accommodation titleholder, as the case may be; and (vi) Seller shall indemnify, protect, defend and hold harmless Buyer from and against any and all liability arising from and out of such Exchange by Seller. Notwithstanding anything to the contrary contained in the foregoing, if Buyer so elects to close the acquisition of the Property as an Exchange, then (A) Buyer, at its sole option, may delegate its obligations to acquire the Property under this Agreement, and may assign its rights to receive the Property from Seller, to an Intermediary or to an exchange accommodation titleholder, as the case may be; (B) such delegation and assignment shall in no way reduce, modify or otherwise affect the obligations of Buyer pursuant to this Agreement; (C) Buyer shall remain fully liable for its obligations under this Agreement as if such delegation and assignment shall not have taken place; (D) Intermediary or exchange accommodation titleholder, as the case may be, shall have no liability to Seller; (E) the closing of the acquisition of the Property by Buyer or the exchange accommodation titleholder, as the case may be, shall be undertaken by direct deed from Seller (or, if applicable, from other affiliates of Seller whom Seller will cause to execute such deeds) to Buyer or to exchange accommodation titleholder, as the case may be; and (F) Buyer shall indemnify, protect, defend and hold harmless Seller from and against any and all liability arising from and out of such Exchange by Buyer. No party participating in an Exchange transaction pursuant to this Section 10.15 shall make any representation or warranty to the other party concerning the tax treatment of such transaction.

- 10.16 No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture between Buyer and Seller.
- 10.17 No Third Party Beneficiaries. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party. Nothing in this Agreement is intended to benefit any third party or create any third party beneficiary.
- 10.18 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the party making the waiver.
- 10.19 Further Acts. Each party, at the request of the other, shall execute, acknowledge or have notarized (if appropriate) and deliver in a timely manner such additional documents, and do such other additional acts, also in a timely manner, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.
- 10.20 Not an Offer. Presentation of any draft of this Agreement by one party to the other shall not be deemed an offer, and this Agreement shall only become a binding and enforceable contract upon execution hereof by both parties.
- 10.21 Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all of which when taken together shall constitute one agreement.
- 10.22 Signatures and Delivery. Signatures to this Agreement transmitted by telecopy or scan/email, as well as signatures effectuated electronically by means of DocuSign eSignature or other similar computer software or application, shall be valid and effective to bind the party so signing. Each

party agrees, upon written request, to promptly deliver an execution original of this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement.

- 10.23 Multiple Counterparts/Email Signatures. This Agreement may be executed in multiple counterparts (each of which is to be deemed original for all purposes). Signatures hereon may be delivered by electronic mail and shall be deemed originals for all purposes.
- 10.24 Confidentiality. The terms and conditions of this Agreement, the reports, and the identity of Buyer, shall be strictly confidential until Close of Escrow, except the Parties may share such information with their respective attorneys, accountants, and other individuals who are necessary to this transaction.

[SIGNATURE PAGE TO FOLLOW]

JOINDER BY TITLE COMPANY

_____ Title Insurance Company, referred to in this Agreement as the "Title Company," hereby acknowledges that it received this Agreement executed by Seller and Buyer on _____, 2016, and accepts and agrees to perform each and all of the obligations of and instructions for the Title Company as set forth herein.

DATE: _____, 2016

By: _____

Name: _____

Title: Escrow Officer

Address: _____

LIST OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	List of Documents Provided by Seller
Exhibit "C"	Deed
Exhibit "D"	Bill of Sale
Exhibit "E"	Non-Foreign Affidavit

EXHIBIT "A"
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
LEGAL DESCRIPTION OF LAND

EXHIBIT "B"
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

CERTAIN DOCUMENTS TO BE MADE AVAILABLE FOR REVIEW BY BUYER

- (1) originals or copies of all Leases and all related correspondence;
- (2) originals or copies of all Contracts and unexpired warranties;
- (3) any and all plans and specifications and interior space plans relating to the Property;
- (4) any and all soils reports relating to the Property;
- (5) any and all environmental site assessments related to the Property;
- (6) any ALTA or other survey of the Land and Improvements in Seller's possession;
- (7) copies of the most recent real and personal property tax bills for the Property;
- (8) all licenses and permits relating to the Property, including, but not limited to, certificates of occupancy;
- (9) an inventory of the Personal Property;
- (10) a rent roll certified as true and correct by Seller setting forth the list of current tenants and for each tenant the unit number, lease commencement date, lease expiration date, size of premises, monthly rent, security deposit, monthly common area maintenance charges, and any delinquency;
- (11) copies of the last twenty-four (24) months' utility bills for the Property;
- (12) monthly operating reports for the Property for the two most recent years and the current year to date through the most recent full month; and
- (13) any notices of non-compliance affecting the Property issued by any governmental authority.

EXHIBIT "C"
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

DEED

EXHIBIT "D"
(PROPERTY ADDRESS)

BILL OF SALE AND GENERAL ASSIGNMENT

This BILL OF SALE AND GENERAL ASSIGNMENT ("Assignment") is made and entered into as of the ___ day of _____, 2020, by and between _____, a _____ limited liability company ("Assignor") and _____, a _____ ("Assignee").

R E C I T A L S:

A. Assignor and Assignee entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 2020 ("Agreement") with respect to the sale of the "Property" described therein.

B. Assignor desires to assign and transfer to Assignee all of Assignor's right, title and interest in and to the Intangible Property and Personal Property, as such terms are defined in the Agreement, and Assignee desires to accept such assignment and to assume and perform all of Assignor's covenants and obligations regarding such Intangible Property and Personal Property.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Intangible Property and Personal Property.

2. Assignee hereby accepts the above assignment and expressly assumes and covenants to keep, perform, fulfill and discharge all of the terms, covenants, conditions and obligations required to be kept, performed, fulfilled and discharged by Assignor regarding the Intangible Property and Personal Property.

3. Assignee agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, the "Losses") brought by a third party and asserted against Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder arising in connection with the Intangible Property and Personal Property and related to the period on or after the date hereof. Assignor agrees to indemnify Assignee and hold Assignee harmless from and against any and all Losses brought by a third party and asserted against Assignee by reason of or arising out of any failure by Assignor to perform or observe the obligations, covenants, terms and conditions arising in connection with the Intangible Property and Personal Property and related to the period prior to the date hereof.

4. As a material part of the consideration for this sale, Assignor and Assignee agree that Assignee is taking the Intangible Property and Personal Property "AS IS" and that there are no representations, disclosures, or express or implied warranties except those contained in the Agreement and this Assignment. Assignee has not relied on any information other than Assignee's inspection and the representations and warranties expressly contained in the Agreement and this Assignment.

5. This Assignment may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one and the same instrument, and shall be binding and effective when all parties hereto have executed and delivered at least one counterpart.

6. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of the respective parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the day and year first above written.

“Assignor”

a _____

By: _____

Name: _____

Title: _____

“Assignee”

a _____

By: _____

Name: _____

Title: _____

EXHIBIT "E"
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

NON-FOREIGN PERSON CERTIFICATE

