

PURCHASE AND SALE AGREEMENT WITH JOINT CLOSING INSTRUCTIONS

Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, in accordance with the terms of this Purchase and Sale Agreement with Joint Closing Instructions ("Agreement"). This Agreement is effective as of the date Seller signs this Agreement ("**Effective Date**").

1. KEY TERMS.

- (A) **Seller:**
phone number: _____ email address: _____
mailing address: _____
- (B) **Buyer:**
phone number: _____ email address: _____
mailing address: _____
- (C) **Purchase Price:** \$ _____ (which equals Buyer's offer price of \$ _____ plus a Ten-X Transaction Fee of \$ _____).
- (D) **Earnest Money Deposit:** \$ _____ (if blank, then 10% of the Purchase Price, but no less than \$50,000 or more than \$1,000,000).
- (E) **Property:** Address: _____ as legally described on Exhibit A, including all permanent improvements thereon (but excluding any personal property unless specifically identified by addendum or amendment to this Agreement).
- (F) **Closing Date:** _____ (if blank, then (i) 30 calendar days after the Effective Date). If the Closing Date falls on a weekend or a state or federally recognized holiday, the Closing Date shall be the next business day.
- (G) **Closing Agent:** _____ contact: _____
address: _____ phone number: _____
email address: _____
- (H) **Title Insurance Company:** _____
- (I) **Closing Cost Allocations:** As described in the Section below entitled "Closing Cost Allocations".

2. EARNEST MONEY DEPOSIT. Buyer must deposit the Earnest Money Deposit with Closing Agent on or before 5:00 PM in the time zone where the Property is located on the first business day after Seller countersigns this Agreement. The Earnest Money Deposit is non-refundable except as set forth in this Agreement, and may be applied towards the amounts payable by Buyer under this Agreement. The escrow ("**Escrow**") for the purchase of the Property shall be opened upon Closing Agent's receipt of the Earnest Money Deposit and a fully-signed copy of this Agreement.

3. CLOSING. The transactions contemplated by this Agreement shall be consummated ("**Close**" or "**Closing**") on or before the Closing Date.

4. CLOSING DELIVERIES.

- (A) **Seller's Deliveries.** On or before the Closing Date, Seller shall deliver the following to Closing Agent ("**Seller's Deliveries**"):
- (i) The transfer deed warranting against title defects arising by, through or under Seller (in the form customarily used for similar transactions in the state where the Property is located) ("**Deed**") signed by Seller and acknowledged in accordance with the laws of the state in which the Property is located.
 - (ii) A Non-Foreign Transferor Declaration signed by Seller, or evidence reasonably acceptable to Closing Agent and Buyer that Seller is exempt from the withholding requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), Internal Revenue Code Section 1445.
 - (iii) A counterpart of the "Settlement Statement" (defined below) signed by Seller.
 - (iv) A counterpart of the assignment and assumption of leases and contracts substantially in the form attached as Exhibit B ("**Assignment of Leases and Contracts**") signed by Seller.
 - (v) Any and all other instruments reasonably required by Closing Agent or otherwise necessary to Close the transactions contemplated by this Agreement.

(B) Buyer's Deliveries. On or before the Closing Date, Buyer shall deliver the following to Closing Agent ("Buyer's Deliveries"):

- (i) An amount in immediately available "good funds" equal to the Purchase Price (less the Earnest Money Deposit already deposited with Closing Agent), plus Buyer's share of closing costs, prorations and expenses as set forth in this Agreement.
- (ii) A counterpart of the Settlement Statement signed by Buyer.
- (iii) A counterpart of the Assignment of Leases and Contracts signed by Buyer.
- (iv) Any and all other instruments reasonably required by Closing Agent or otherwise necessary to Close the transactions contemplated by this Agreement.

5. **CONDITIONS PRECEDENT TO CLOSING.**

(A) Seller's Conditions. Seller's obligation to Close is conditioned upon the following:

- (i) All representations and warranties of Buyer in this Agreement shall have been true in all material respects as of the Effective Date.
- (ii) Buyer shall have performed in all material respects all covenants and obligations required to be performed by Buyer on or before the Closing Date.

(B) Buyer's Conditions. Buyer's obligation to Close is conditioned upon the following:

- (i) All representations and warranties of Seller in this Agreement shall have been true in all material respects as of the Effective Date.
- (ii) Seller shall have performed in all material respects all covenants and obligations required to be performed by Seller on or before the Closing Date.
- (iii) Title Insurance Company is irrevocably committed to issue to Buyer an owner's title insurance policy covering the Property with standard coverage customary in the state where the Property is located, showing liability in the amount of the Purchase Price and showing insurable title to the Property vested in Buyer, subject only to the following: (a) Title Insurance Company's standard exceptions; (b) liens for all current general and special real property taxes and assessments not yet due and payable; (c) liens of supplemental taxes, if any assessed; (d) any facts not shown by public records that an accurate survey and/or a personal inspection of the Property would have disclosed; (e) the mortgage/deed of trust/deed to secure debt lien in connection with any Buyer financing; (f) any laws, regulations, or ordinances regarding the use, occupancy, subdivision, or improvement of the Property, or the effect of any non-compliance with or any violation thereof; (g) rights of existing tenants and/or occupants of the Property, if any; (h) covenants, restrictions, easements, and other matters that do not materially impair the value or use of the Property; (i) non-monetary encumbrances disclosed to Buyer in writing prior to entering into this Agreement; and (j) any other matter for which Title Insurance Company agrees to provide insurance at no additional cost to Buyer.

(C) Duty to Cooperate in Good Faith to Resolve. Despite anything to the contrary in this Section, if either party learns that a closing condition is unlikely to be satisfied, such party shall promptly notify the other party, and both parties shall cooperate in good faith to fairly and promptly resolve the matter, and the party whose closing condition was not satisfied shall not be relieved of its obligation to Close unless (i) the other party fails to cooperate in good faith, (ii) fair and prompt resolution is not reached after the parties have cooperated in good faith, or (iii) fair and prompt resolution of the matter on or before the Closing Date would be impracticable.

(D) Waiver of Conditions. Either party may waive its respective closing conditions in its sole discretion. By proceeding to Closing, each party waives its respective closing conditions and irrevocably releases the other party from any liability arising from any facts known by such waiving party that would otherwise have resulted in a failure of a closing condition.

6. **CLOSING INSTRUCTIONS TO CLOSING AGENT.** At Closing, Closing Agent is irrevocably instructed to do the following:

- (A) Record the Deed.
- (B) Pay all fees, costs, deed and transfer taxes for the sale of the Property which are required to be paid by Seller and Buyer under this Agreement, the portion of any fees charged by Closing Agent which are payable by Seller and Buyer (if any) and other expenses relating to the sale of the Property which are required to be paid by Seller and Buyer.
- (C) Pay to Seller the balance of the Purchase Price and any other funds remaining after Closing.

Seller and Buyer acknowledge that Closing Agent shall have no liability in connection with its activity as Closing Agent except to the extent of Closing Agent's gross negligence, willful misconduct, or willful disregard of the terms of this Agreement.

7. COSTS AND PRORATIONS.

- (A) Pre-Closing Costs. Buyer and Seller acknowledge that Closing Agent may incur certain costs while processing this transaction which must be paid prior to Closing. Closing Agent is authorized and instructed to release funds for payment of such costs prior to Closing from funds deposited into Escrow by Buyer. Such funds are not refundable and Closing Agent is released from any liability for payment of any such funds pre-released through the Escrow. Closing Agent is authorized to charge the appropriate party for costs incurred, or credit the appropriate party for credits, as applicable at Closing or upon termination of this Agreement.
- (B) Prorations. The following shall be prorated as of the date of Closing, in each case based on the number of calendar days in the applicable period and in accordance with local customs: (i) all real property taxes, assessments, utilities and other operating expenses customarily apportioned in similar situations ("Property Expenses"), and (ii) all rents and other income actually received and customarily apportioned in similar situations ("Property Income"). Despite anything to the contrary in this Agreement, insurance premiums will not be prorated, and Seller may cancel any existing insurance on the Property after Closing. If either party receives Property Income or a refund of Property Expenses attributable, in whole or in part, to the other party's period of ownership, the party that received such Property Income or refund shall immediately submit to the other party the portion attributable to such other party's period of ownership. Except as set forth in this Agreement, Seller shall not be responsible for any Property Expenses accruing after Closing. This paragraph shall survive Closing indefinitely.
- (C) Closing Costs. Seller and Buyer shall pay closing costs as described in the Closing Cost Allocations (and Closing Agent is authorized to (i) pay Seller's costs from Seller's proceeds, and (ii) pay Buyer's costs from funds deposited into Escrow by Buyer).
- (D) Settlement Statement. On or before the third business day prior to Closing, Closing Agent shall prepare and deliver to Seller and Buyer a settlement statement setting forth the prorations and cost allocations set forth in this Agreement ("Settlement Statement").

8. TERMINATION AND CANCELLATION OF ESCROW.

- (A) Termination Resulting from Breach. If Closing does not or cannot occur on or before the Closing Date due to a breach of this Agreement by Buyer or Seller, then the non-breaching party may terminate this Agreement and cancel the Escrow by written notice to the breaching party and Closing Agent. If Buyer fails to timely deposit the Earnest Money Deposit, then Seller may immediately terminate this Agreement by written notice to Buyer. Upon any such termination and/or cancellation, the breaching party shall pay any cancellation fees of Closing Agent and Title Insurance Company. If Seller is the breaching party, Closing Agent shall return the Earnest Money Deposit to Buyer, and Buyer shall be entitled to pursue remedies at law or in equity. If Buyer is the breaching party, then the following shall apply:

BUYER AND SELLER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT TO DETERMINE SELLER'S ACTUAL DAMAGES RESULTING FROM A BREACH BY BUYER. IN THE EVENT OF A BREACH BY BUYER, SELLER SHALL BE ENTITLED TO AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY. BUYER AGREES THAT SUCH AMOUNT IS A REASONABLE PRE-ESTIMATE OF SELLER'S ACTUAL DAMAGES FOR BREACH OF THIS AGREEMENT AND IS NOT A PENALTY. IF CLOSING AGENT IS IN POSSESSION OF THE EARNEST MONEY DEPOSIT, THEN CLOSING AGENT SHALL DELIVER THE EARNEST MONEY DEPOSIT TO SELLER. DESPITE THE FOREGOING, IF APPLICABLE LAW LIMITS THE AMOUNT OF THE LIQUIDATED DAMAGES PAYABLE TO SELLER UPON A BREACH BY BUYER, SELLER SHALL ONLY BE ENTITLED TO THE AMOUNT PERMITTED BY LAW, AND ANY EXCESS SHALL BE PROMPTLY RETURNED TO BUYER.

SELLER'S INITIALS _____

BUYER'S INITIALS _____

- (B) Costs Upon Termination and Cancellation of Escrow. Except as otherwise set forth in this Section, upon termination of this Agreement and cancellation of Escrow pursuant to this Section, Seller and Buyer shall be jointly responsible for any cancellation fees of Closing Agent and Title Insurance Company, and all other costs incurred in connection with the transactions contemplated by this Agreement (including, without limitation, payments for loan applications, inspections, appraisals, and other reports) shall be the sole responsibility of the party incurring such costs.
- (C) Closing Agent Authorization. If Closing Agent receives a written notice from a party to cancel the Escrow in accordance with this Section 8, and Closing Agent can confirm that the other party also received the notice, Closing Agent is authorized to comply with the notice if Closing Agent does not receive a written objection within 10 calendar days after such other party received the notice.

9. BUYER'S REPRESENTATIONS AND WARRANTIES. Buyer represents and warrants to Seller as follows:

- (A) **Authority.** Buyer has the necessary authority to enter into and perform its obligations under this Agreement. If Buyer is an entity, the natural person signing this Agreement on behalf of Buyer represents and warrants that (i) Buyer is duly formed and in good standing and (ii) the natural person signing on behalf of Buyer has the necessary authority to bind Buyer to this Agreement.
- (B) **Property Condition and Attributes.** Prior to entering into this Agreement, Buyer had the opportunity to conduct Buyer's own due diligence and investigations. Except as expressly set forth in this Agreement, Buyer's obligations under this Agreement are not contingent on any further due diligence and/or investigation. Buyer acknowledges that the square footage of the Property (including the square footage of the lot and any improvements thereon) is deemed approximate and not guaranteed. Buyer acknowledges that except as otherwise expressly set forth in this Agreement or in written disclosures to Buyer signed by Seller, (i) Seller does not make, and expressly disclaims, any representation or warranty, express or implied, regarding the Property, and (ii) Buyer acknowledges and agrees that Seller is selling the Property "As Is, Where Is, With All Faults and Limitations" and Seller shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property.
- (C) **Disclosures.** Prior to entering into this Agreement, Buyer has received (or, to the extent not received, Buyer irrevocably waives) all disclosure documents required to be provided by or on behalf of Seller or Seller's representatives. Reports furnished by or on behalf of Seller shall be for informational purposes only and are not made part of this Agreement unless required under applicable law.
- (D) **Sophisticated Buyer.** Buyer (i) is a sophisticated purchaser, (ii) is capable of evaluating the merits and risks of purchasing the Property, (iii) understands and is able to bear the economic risks of purchasing the Property, including, without limitation, a total loss of investment and/or the risk that Buyer may be required to hold the Property indefinitely.

10. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to Buyer as follows:

- (A) **Authority.** Seller has the necessary authority to enter into and perform its obligations under this Agreement. If Seller is an entity, the natural person signing this Agreement on behalf of Seller represents and warrants that (i) Seller is duly formed and in good standing and (ii) the natural person signing on behalf of Seller has the necessary authority to bind Seller to this Agreement.
- (B) **Property Condition and Attributes.** Except as would not be reasonably expected to have a material adverse effect on the value or ongoing business or operation of the Property, the written information regarding the Property provided to Buyer by or on behalf of Seller, taken as a whole (i.e. including any updates or revisions provided, or any disclaimers in any information provided), fairly represents the Property. This paragraph shall not survive Closing.
- (C) **No Violations.** Except as disclosed in writing to Buyer prior to signing this Agreement, Seller's execution and performance of this Agreement will not result in any breach of, conflict with, or result in the creation of any encumbrance upon the Property pursuant to any indenture, mortgage, deed of trust, note, evidence of indebtedness, right of first refusal, right of first offer, or any other agreement or instrument by which Seller is bound with respect to the Property.
- (D) **Leases.** Except for the leases (including any amendments) listed in Exhibit C ("Leases"), Seller knows of no other agreement with respect to the occupancy of the Property that will be binding on Buyer after Closing, and to Seller's knowledge, the information on Exhibit C and copies of any Leases delivered by Seller to Buyer are true, correct and complete in all material respects. Except as disclosed in writing to Buyer prior to signing this Agreement and except as would not be reasonably expected to have a material adverse effect on the ongoing business or operation of the Property, to Seller's actual knowledge, (i) each of the Leases is in full force and effect; (ii) there are no uncured material defaults under any of the Leases or circumstances which with the giving of notice, the passage of time or both would constitute a material default under any of the Leases; (iii) there are no unsatisfied concessions, abatement, offsets, defenses or other basis for relief or adjustment under any of the Leases; (iv) there is no outstanding obligation to provide any tenant with an allowance to perform any tenant improvements; (v) no tenant has requested in writing a modification of its Lease or a release of any material obligation under its Lease, or has given written notice terminating its Lease, or has been released of any material obligation under its Lease prior to the normal expiration of the term of the Lease; (vi) no tenant is the subject of a bankruptcy or insolvency proceeding; (vii) no guarantor has been released or discharged from any obligation in connection with any Lease; and (viii) all brokerage commissions currently due and payable with respect to the Leases have been paid.
- (E) **No Litigation.** Except as disclosed in writing to Buyer prior to signing this Agreement, there is no pending litigation affecting the Property or that would affect Seller's ability to perform its obligations under this Agreement.
- (F) **No Mechanics' Liens.** Except as disclosed in writing to Buyer prior to signing this Agreement, there are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

11. SELLER'S COVENANTS.

- (A) Possession. At Closing, Seller shall relinquish possession of the Property to Buyer (subject to the Leases) and promptly provide Buyer with all keys, codes and other means of Property access in Seller's possession.
- (B) Utilities. Seller shall reasonably cooperate with Buyer prior to Closing to allow Buyer to obtain responsibility for and maintain access to applicable utilities following Closing.
- (C) Operation and Maintenance of Property. Prior to Closing, Seller shall maintain, and to the extent within Seller's reasonable control, operate, the Property consistent with past practice.
- (D) Leases and Contracts. Prior to Closing, Seller shall not enter into, terminate or amend any Lease or other material agreement with respect to the Property which would encumber or be binding upon the Property from and after Closing, without Buyer's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed.
- (E) No Violations. Prior to Closing, Seller shall comply in all material respects with the terms of the Leases and any other material document or agreement affecting the Property consistent with past practice.
- (F) Notice of Material Changes or Untrue Representations. Prior to Closing, Seller shall promptly notify Buyer if Seller learns of any material change in any condition of the Property or any event or circumstance which makes any representation or warranty of Seller under this Agreement untrue or misleading.
12. **DISPUTE RESOLUTION**. AT THE REQUEST OF EITHER PARTY TO THIS AGREEMENT, ANY DISPUTE ARISING UNDER THIS AGREEMENT SHALL BE FIRST SUBMITTED TO MEDIATION BEFORE A PARTY INITIATES ARBITRATION OR COURT ACTION. MEDIATION FEES SHALL BE DIVIDED EQUALLY AND EACH PARTY SHALL BEAR HIS/HER/ITS OWN ATTORNEYS' FEES AND COSTS.

BUYER AND SELLER HAVE READ AND UNDERSTAND THE ABOVE PARAGRAPH AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT TO MEDIATION PRIOR TO COMMENCEMENT OF ARBITRATION OR COURT ACTION.

SELLER'S INITIALS _____/_____

BUYER'S INITIALS _____/_____

13. MISCELLANEOUS.

- (A) Survival of Representations and Warranties. Except as otherwise set forth in this Agreement, (i) all representations and warranties of Seller and Buyer in this Agreement shall survive Closing for a period of one year, and (ii) no claim for breach of any representation or warranty in this Agreement may be made more than one year after Closing.
- (B) No Assignment or Recording. Buyer may not assign or record all or any part of this Agreement without the express prior written consent of Seller. Despite the foregoing, Buyer may assign this Agreement to any entity wholly owned, directly or indirectly, by Buyer; provided, however, that, in such event, the undersigned Buyer shall remain liable for the obligations of Buyer under this Agreement.
- (C) Casualty and Condemnation. If any material portion of the Property is damaged or taken by eminent domain (or is the subject of a pending taking) prior to Closing, Seller shall notify Buyer promptly after Seller obtains knowledge thereof. Within 10 business days after Buyer receives such written notice (if necessary, the Closing Date shall be extended until one business day after the expiration of such period), Buyer may, at its option, either (i) terminate this Agreement, or (ii) proceed to Closing in accordance with this Agreement. Buyer shall be deemed to have waived its right to terminate this Agreement if Buyer does not notify Seller in writing of its election to terminate this Agreement within such period. Buyer shall not be entitled to any insurance proceeds or obtain any rights with respect to any claims Seller may have with regard to insurance maintained by Seller with respect to the Property. In the event of a taking by eminent domain, Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to all awards, if any, for such taking.
- (D) Common Interest Development. If the Property is in a common interest development, unless otherwise required by law, Buyer acknowledges that Buyer was provided for review (or, to the extent not provided, Buyer waives any right to review) the declaration of covenants, conditions, restrictions and/or bylaws and other documentation regarding such common interest development and Buyer acknowledges that Buyer has reviewed such documentation to the fullest extent Buyer deems necessary and, by signing this Agreement, Buyer accepts the declaration of covenants, conditions, restrictions and/or bylaws of the common interest community.
- (E) Local Requirements. Some counties, cities, municipalities and other state subdivisions may require a certificate of occupancy, certificate of use or code compliance certificate and/or inspection ("Local Requirement") may be required in order to transfer and/or occupy the Property. If a Local Requirement is required for the Property to be transferred to or occupied by Buyer, Buyer waives such Local Requirements to the extent waivable. To the extent any such Local Requirement is not waivable by Buyer, Buyer shall comply with the Local Requirement at Buyer's sole cost, including, without limitation, the correction of any violations or performance of other work which may be required in connection therewith. Seller makes no representation as to whether a Local Requirement applies. Buyer shall indemnify, defend

and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to any Local Requirements. This paragraph shall survive Closing indefinitely.

- (F) **Counterparts, Electronic Signatures, and Complete Agreement.** This Agreement and any addenda or other document necessary for Closing of the transactions contemplated by this Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Facsimile and electronic signatures shall have the same legal effect as original signatures. This Agreement and any addenda or other document necessary for Closing of the transactions contemplated by this Agreement may be accepted, signed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act (UETA) and any applicable state law. This Agreement constitutes the entire agreement of Buyer and Seller with respect to the subject matter of this Agreement and supersedes any other instruments purporting to be an agreement of Buyer and Seller relating to that subject matter. No modification of this Agreement will be effective unless it is in writing and signed by both parties.
- (G) **Severability.** If any portion of this Agreement is judicially determined to be invalid or unenforceable, that portion shall be deemed severable from this Agreement and the remainder of this Agreement shall remain in full force and effect and be construed to fulfill the intention of the parties.
- (H) **Time is of the Essence.** Time is of the essence for the performance of each and every covenant under this Agreement and the satisfaction of each and every condition under this Agreement.
- (I) **Governing Law and Venue.** This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the state in which the Property is located. The state and federal courts located in the county in which the Property is located shall be proper forums for any legal controversy between the parties arising in connection with this Agreement, which courts shall be the exclusive forums for all such suits, actions or proceedings.
- (J) **Attorneys' Fees.** In any action, proceeding or arbitration arising out of this Agreement, the prevailing party (defined as the party who prevails as to a substantial part of the litigation or claim) shall be entitled to reasonable attorneys' fees and costs.
- (K) **Further Assurances.** The parties agree to execute such other documents, and to take such other actions as may reasonably be necessary, to further the purposes of this Agreement.
- (L) **Notices.** All notices and other communications contemplated under this Agreement shall be in writing and shall be deemed given and received upon receipt if: (i) delivered personally; or (ii) mailed by registered or certified mail return receipt requested, postage prepaid; (iii) sent by a nationally recognized overnight courier; and/or (iv) sent by email. Notice to Buyer and Seller shall be given as set forth on the first page of this Agreement or to such other address or addresses as may from time to time be designated by either party by written notice to the other.
- (M) **Prohibited Persons and Transactions.** Each party represents and warrants to the other that neither it, nor any of its affiliates, nor any of their members, directors or other equity owners (excluding holders of publicly traded shares), and none of their principal officers and employees: (i) is listed as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control ("OFAC"); (ii) is a person or entity with whom U.S. persons or entities are restricted from doing business under OFAC regulations or any other statute or executive order (including the September 24, 2001 "Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"); and (iii) is engaged in prohibited dealings or transactions with any such persons or entities.
- (N) **Brokers.** In connection with the transactions contemplated by this Agreement, Seller is represented by Listing Broker identified on the signature page hereto, Buyer is represented by Buyer's Broker identified on the signature page hereto, Ten-X is acting as the marketing firm and marketplace provider, and Seller and Buyer each represents and warrants that it has not dealt with any other broker, finder or other agent who would be entitled to any fee from Seller or Buyer. Seller and Buyer shall each indemnify and hold harmless the other from and against any claims, losses, costs, damages, liabilities or expenses, including reasonable attorneys' fees, arising in connection with any breach by the indemnifying party of the representations and warranties in this paragraph. This paragraph shall survive Closing indefinitely.
- (O) **Form of Agreement.** Buyer and Seller acknowledge that no representation, recommendation or warranty is made by Ten-X or any broker relating to the legal sufficiency or tax consequences of this Agreement or any attachments hereto, and Buyer and Seller each represent and warrant that it has consulted with, had the opportunity to consult with or waived the right to consult with counsel in connection with this Agreement.

14. CLOSING COST ALLOCATIONS.

Closing Costs (as applicable)	Seller Pays	Buyer Pays	50% Seller/ 50% Buyer
Title Search Fee	<input checked="" type="checkbox"/>		
Owner's Title Insurance Policy (Standard Coverage)	<input checked="" type="checkbox"/>		
Additional Title Coverage or Endorsements Requested by Buyer		<input checked="" type="checkbox"/>	
Lender's Title Insurance Policy		<input checked="" type="checkbox"/>	
Closing Agent Fees			<input checked="" type="checkbox"/>
State and/or Local Transfer Taxes			<input checked="" type="checkbox"/>
Credit Reports, Loan Fees, Loan Points, Reports and Inspections Required by Buyer's Lender, Appraisal Fees, Mortgage Notarization and Recording Fees, and All Other Costs In Connection With Buyer's Loan		<input checked="" type="checkbox"/>	
Seller's Loan Prepayment Fees and All Other Costs In Connection With Seller's Existing Loan	<input checked="" type="checkbox"/>		
Deed Notarization and Recording Fees	<input checked="" type="checkbox"/>		
Real Estate Broker/Agent Commissions Due Listing Broker	<input checked="" type="checkbox"/>		
Offered Cooperating Real Estate Broker/Agent Commissions Due Buyer's Broker	<input checked="" type="checkbox"/>		
Additional Real Estate Broker/Agent Commissions Due Buyer's Broker (If Any)		<input checked="" type="checkbox"/>	
Any Reports and Inspections Requested by Buyer		<input checked="" type="checkbox"/>	
Seller's Attorney Fees	<input checked="" type="checkbox"/>		
Buyer's Attorney Fees		<input checked="" type="checkbox"/>	
All Other Closing Costs		<input checked="" type="checkbox"/>	

SELLER'S INITIALS ____/____

BUYER'S INITIALS ____/____

15. STATE-SPECIFIC PROVISIONS. See state-specific rider attached hereto and incorporated herein by reference (if applicable).

(Remainder of Page Intentionally Blank)

SELLER:

BUYER:

_____ (and its permitted assigns under Section 13(B))

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Dated: _____

Dated: _____

LISTING BROKER (if any):

BUYER'S BROKER (if any):

Broker Printed Name: _____
Brokerage Printed Name: _____
Brokerage License Number: _____ State: _____

Broker Printed Name: _____
Brokerage Printed Name: _____
Brokerage License Number: _____ State: _____

(Brokers must be licensed in the state where the Property is located.)

DISCLOSURE AND CONFIRMATION OF AGENCY RELATIONSHIP

Buyer and Seller acknowledge that, unless otherwise set forth in this Agreement, Ten-X is not acting as Seller's real estate agent or Buyer's real estate agent, and Ten-X is acting as a marketing firm and marketplace provider only.

SELLER'S INITIALS ____/____

BUYER'S INITIALS ____/____

CLOSING AGENT ACKNOWLEDGEMENT

Closing Agent acknowledges receipt of a copy of this Agreement and the Earnest Money Deposit set forth in Section 1(D) and agrees to act as Closing Agent in accordance with this Agreement.

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

NON-NEGOTIABLE

EXHIBIT B

ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS

ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS

Seller: _____

Buyer: _____

Property (Address): _____

This Assignment and Assumption of Leases and Contracts, dated effective as of _____ is entered into between Buyer and Seller in connection with the transfer of the Property from Seller to Buyer concurrently herewith.

Seller is the landlord under those certain leases identified on Schedule 1 attached hereto (collectively, "Leases") relating to the Property. Seller desires to assign to Buyer, and Buyer desires to assume from Seller, all of Seller's right, title and interest in and to the Leases and all other transferable licenses, contracts, permits and agreements affecting the Property (collectively, "Contracts").

For valuable consideration, the receipt and sufficiency of which is acknowledged, Buyer and Seller agree as follows:

1. **ASSIGNMENT.** Seller hereby assigns, transfers and conveys to Buyer all of Seller's right, title and interest in and to (a) the Leases and Contracts and (b) all security deposits, letters of credit and guarantees given in connection with the Leases.
2. **ASSUMPTION.** Buyer hereby assumes all of Seller's obligations and liabilities under the Leases and Contracts and agrees to perform all of the landlord's obligations under the Leases, and Seller's obligations under the Contracts, arising from and after the date hereof. Buyer shall be solely responsible for notifying any tenants or occupants (a) that Seller has transferred ownership of the Property to Buyer, (b) regarding any change in place for payment of rentals, and (c) that Buyer is responsible for the security deposits of such tenants or occupants.
3. **INDEMNIFICATION BY SELLER.** Seller hereby indemnifies Buyer and agrees to hold Buyer harmless from and against all claims, expenses, losses or damages to the extent arising out of (a) the landlord's obligations and liabilities under the Leases accruing prior to the date hereof, and/or (b) Seller's obligations and liabilities under the Contracts accruing prior to the date hereof.
4. **INDEMNIFICATION BY BUYER.** Buyer hereby indemnifies Seller and agrees to hold Seller harmless from and against all claims, expenses, losses or damages to the extent arising out of (a) the landlord's obligations and liabilities under the Leases accruing from and after the date hereof, and/or (b) Seller's obligations and liabilities under the Contracts accruing from and after the date hereof.

SELLER:

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Dated: _____

BUYER:

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Dated: _____

Schedule 1 to Assignment and Assumption of Leases and Contracts

Leases

NON-NEGOTIABLE

EXHIBIT C

LEASES

All leases posted to the Property's listing page on Ten-X's website (a) after the date of the attached list, and (b) before Buyer signs this Agreement are hereby incorporated herein by reference.

NON-NEGOTIABLE

Addendum

This Addendum is made to that certain Purchase and Sale Agreement with Joint Closing Instructions [Item No. _____] (the "Purchase Agreement") by and between County of Sonoma ("Seller" or "County") and _____ ("Buyer") concerning the Property more fully described at Exhibit A to the Purchase Agreement. Notwithstanding anything to the contrary in the Purchase Agreement, the Parties agree as follows:

1. General Terms

- a. **Title Warranty:** Seller warrants that it has good and marketable title to the Property with the legal right to enter into and to consummate the transaction upon the County of Sonoma Board of Supervisors' approval and authorizing resolution, subject to the easements, rights and interests disclosed in the title commitment No. FSNX-7052003955-A) PJ dated July 13, 2021 ("Title Report") and any updates thereto delivered to Buyer or otherwise disclosed through delivery of due diligence materials and any and all updates thereto, or which would be disclosed through the performance of an ALTA survey of the Property.
- b. **As-Is Condition:** Buyer acknowledges that if it proceeds with the purchase, it will be acquiring the Property in an unentitled, 'as-is with all faults' condition and Buyer shall be responsible for any and all demolition and removal of buildings, structures, infrastructure, utilities, etc., site assessments, remediation, environmental review, CEQA compliance and receipt of all entitlements and approvals for its proposed development. **Any offer with a closing contingent on receipt of entitlements from the City of Santa Rosa or other jurisdiction shall be rejected.**
- c. **Affordable Housing Covenant:** Buyer acknowledges that at the Closing, County shall convey the entirety of the Property subject to affordable housing covenants, conditions and restrictions providing that Buyer shall develop for sale or lease no less than Fifteen Percent (15%) of any and all housing units as affordable consistent with State Surplus Land Act ("Affordable Housing Covenant") in the form of the attached Exhibit D. The Affordable Housing Covenant shall run with the Property and be binding on Buyer and its successors and assigns for the period of time set forth therein. The Affordable Housing Covenant shall be recorded against the Property immediately following delivery and recordation of the Deed (as defined in Section 4(A)(i) of the Agreement and shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes and assessments). Buyer shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to Seller for recordation in the Official Records of Sonoma County a subordination agreement in a form reasonably acceptable to County Counsel and to such lien holders subordinating such mortgages, deeds of trust and other liens to the Affordable Housing Covenant.

2. Access to Information

- a. **Access to Site.** Buyer acknowledges that Seller has fully cooperated to enable

representatives of Buyer to obtain the right of access to all portions of the Property. Prior to execution of this Purchase Agreement, Buyer acknowledges that it had the full and adequate opportunity at its election and expense to conduct surveys, investigations and tests to evaluate the development potential of the Property, including the investigation of the soils and environmental condition of the Property and the buildings thereon, all as deemed necessary and appropriate for Buyer's decision to purchase the Property. All costs, fees and expenses of investigating the physical and environmental condition of the Property and the buildings thereon, including a Phase 1, Phase 2, geotechnical and soils investigations, if any, shall be at Buyer's expense.

- b. **Seller's Prior Disclosure:** To the best of Seller's actual knowledge and without representation as to the completeness of Seller's analysis thereof, Seller has made available digital copies of all materials that is has determined in its own analysis and discretion may be material to the sale of the Property, receipt of which is hereby acknowledged by Buyer. Seller makes no warranty as to the completeness, accuracy, or materiality of such documents, and Buyer is relying solely on its own investigations and analysis of any documentation provided to or created by Buyer in entering into this Purchase Agreement. If the Purchase Agreement is terminated or the sale of the Property is not consummated for any reason, then at Seller's request, Buyer shall promptly provide Seller with a copy of any studies, reports, conclusions and opinions produced by Buyer, its employees and consultants regarding the Property, at no cost to Seller, which shall become the property of Seller.
- c. **Documents.** To the best of the Seller's actual knowledge (as defined herein) as of the Effective Date, Seller has furnished Buyer with copies or provided Buyer with access to any and all material existing surveys, inspection reports, environmental and/or Hazardous Materials reports, disclosures, information, photos and other data, reports and studies (collectively, "**Reports**"), pertaining to the physical, environmental and/or title condition of the Property, which are in Seller's possession or control. Further, to the best of the Seller's actual knowledge, as of the Effective Date , Seller, has furnished Buyer with copies of any and all unrecorded leases, service contracts, licenses and/or other unrecorded agreements affecting the Property, or any portion thereof ("**Unrecorded Agreements**"). Collectively, the Unrecorded Agreements and Reports are referred to herein as the "**Documents**" and are listed in the Auction page associated with the Property at <https://www.ten-x.com/>. If, prior to the Closing, Seller locates or becomes aware of any other Documents relating to the Property, Seller shall immediately provide such additional Documents to Buyer. Seller shall notify Buyer in writing of any material changes to any Documents of which Seller becomes aware of before Closing. Seller makes no representation or warranty regarding the completeness or accuracy of any Documents provided to Buyer. For purposes of this Agreement "Seller's Actual Knowledge" or words to such effect shall mean the present, actual knowledge of the County Administrator (currently Sheryl Bratton), the Director, General Services Department (currently Caroline Judy), excluding constructive knowledge or duty of inquiry, existing as of the Date of Agreement and at Closing to the extent any

representation or warranty of Seller is deemed to have been remade at the time of Closing.

3. Other Interests:

- a. **Leaseback of Public Health Lab Parcel:** At Closing, Seller shall retain a lease for the Public Health Lab (located on APN 180-090-001) containing 1,800 sq. ft., together with related parking and all necessary and convenient easements, for up to four (4) years after Closing at a monthly rent of \$1.00/per sq. ft./NNN, with the right to extend for two (2) additional 6- month periods. Annually on the anniversary of Closing, said rent shall increase by 3%. Seller is responsible for all real property taxes, maintenance, security, utilities, and other costs of operations for its use of said lab, parking and associated premises. The complete specific terms associated with this lease are provided in Exhibit C attached to this Purchase Agreement.
- b. **Leaseback of Morgue Parcel:** At Closing, Seller shall retain a lease for four (4) years for the County Morgue and Coroner's Office, (located on APN 180-090-006) containing 6,811 sq. ft., together with related parking and all necessary and convenient easements), for up to four (4) years at \$1.00/per sq. ft./NNN, with the right to extend for two (2) additional 6-month periods. Annually on the anniversary of Closing, said rent shall increase by 3%. Seller is responsible for all real property taxes, maintenance, security, utilities, and other costs of operations for its use of said morgue, parking and associated premises. The complete specific terms associated with this lease are provided in Exhibit C attached to this Purchase Agreement.
- c. **Historic Cemetery:** Buyer acknowledges that the Property contains the "Chanate Historical Cemetery" (the "Cemetery"), a Record of Survey for which was prepared June 2004 and recorded. Buyer acknowledges the statutory requirement to protect, preserve and provide permanent public access to the Cemetery in perpetuity, and shall take title subject to any appropriate recorded covenants and restrictions related thereto. Buyer shall not disturb or move any bodies from the cemetery. Buyer shall maintain the cemetery in perpetuity and may take actions to improve or enhance the same.
- d. **Access Easements:** Seller discloses and Buyer acknowledges that the Chanate Medical Center, Office Condominium units as set forth in that certain Final Map filed with the City of Santa Rosa as No. 79-168, and recorded with the County of Sonoma Recorder on September 20, 1979 in Book of Maps 294, Pages 13-15, have access on the driveway between Public Health Lab and former Hospital pursuant to that certain deed Book 3401 Page 644 recorded May 28, 1978. Any modification or relocation of said access shall be at Buyer's expense.
- e. **Sloan House:** Buyer shall assume Seller's obligations, as landlord, between Seller and Community Action Partnership for Sloan House under the existing lease and associated agreements, which use occupies approximately one-half acre of land at 3324 Chanate Road (County Farm Drive) subject to terms and conditions of said lease. Buyer shall not amend the Sloan House lease until after closing. Buyer shall agree to provide a temporary lease to CAP Sonoma for \$1 per year NNN until entitlement of Buyer's project. Buyer shall agree to deed the Sloan House parcel to CAP Sonoma for \$1 after entitlement of the Buyer's project and upon recordation of a map or lot line adjustment

for conveyance of said parcel.

- f. **Bird Rescue Center:** Buyer shall assume Seller's obligations, as Licensor under the existing license agreement between Seller and Bird Rescue Center, which licensee occupies approximately one-half acre of land and two Quonset huts located at 3324 Chanate Road (aka County Farm Drive) subject to terms and conditions of the current proposed amendment to said license with term to expire on or about October 31, 2021. Buyer shall provide BRC with an additional extension to remain on its current premises until at least December 31, 2022.
- g. **Further Disclosures:**
 - i. Seller discloses that it caused the removal of an Underground Storage Tank (UST) at the former Sutter Hospital site which site required formal closure by NCRWQCB. A Copy of the current permits are available at the Auction website. Seller caused the removal of the UST at the former Sutter Hospital site during October, 2020; Seller's consultant took water and soil samples, and submitted a report to the NCRWQCB requesting closure of the site, which closure was granted. Seller shall have no further liability regarding said UST.
 - ii. Seismic Study. Seller has conducted a Fault Investigation and received a seismic report dated June 22, 2021 by Kleinfelder and Buyer acknowledges said disclosure and receipt of said information.
 - iii. Constraints Map. Seller has prepared a Constraints Map by BKF Engineering for the Property including ground fault locations and setbacks and Buyer acknowledges said disclosure and receipt of said information.
 - iv. Additional Required State Disclosures. Seller makes the disclosures in Exhibit E, attached hereto and incorporated herein by reference and Buyer acknowledges receipt of the same.

4. Confidentiality of Information.

- a. Any information provided by Buyer to Seller, including financial information, (whether in written, graphic, electronic or any other form) that is clearly marked as "CONFIDENTIAL/ PROPRIETARY INFORMATION" ("Confidential Information") shall be subject to the provisions of this Section 5. Subject to the terms of this Section, County shall use good faith diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 et seq.) or other applicable local, state or federal disclosure law (collectively, "Public Disclosure Laws"). Notwithstanding the preceding sentence, Seller may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed. Buyer acknowledges that Seller has not made any representations or warranties that any Confidential Information Seller receives from Buyer will be exempt from disclosure under any Public Disclosure Laws. In the event the Seller's legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, Seller shall notify Buyer of Seller's intention to release the Confidential Information. If the County Counsel, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws,

Seller may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

- b. The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (a) is now, or hereafter becomes, through no act or failure to act on the part of Seller, generally known or available; (b) is known by the Seller at the time of receiving such information as evidenced by Seller's public records; (c) is hereafter furnished to Seller by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by Seller without any breach of this Agreement and without any use of or access to Buyer's Confidential Information as evidenced by Seller's records; (e) is not clearly marked "CONFIDENTIAL/PROPRIETARY INFORMATION" as provided above (except where Buyer notifies Seller in writing, prior to any disclosure of the Confidential Information, that omission of the "CONFIDENTIAL/PROPRIETARY INFORMATION" mark was inadvertent), or (f) is the subject of a written permission to disclose provided by Buyer to Seller.
- c. **Buyer's Duty to Defend.** If any litigation is filed seeking to make public any Confidential Information, Seller and Buyer shall cooperate in defending the litigation, and Buyer shall pay Seller's reasonable costs of defending such litigation and shall indemnify Seller against all costs and attorneys' fees awarded to the plaintiff in any such litigation. Alternatively, Buyer may elect to disclose the Confidential Information rather than defend the litigation. Buyer's indemnity obligations under this Section 5 shall survive the expiration or termination of this Agreement.

- 5. **Covenants Regarding Operation Management and Maintenance- Prior to Closing.** From the date this Agreement is fully executed until the closing or earlier termination of this Agreement, Seller shall operate, manage and maintain the Property in a manner generally consistent with the manner in which Seller has operated, managed and maintained the Property prior to the date hereof. Notwithstanding the foregoing, from and after the date of this Agreement is fully executed, excepting the continued use of all or a portion of the Property for Seller sponsored events or activities (which use shall require the prior written consent of Buyer not to be unreasonably withheld, conditioned or delayed), Seller shall not: (a) cause nor voluntarily permit, any new lien, encumbrance or any other matter to cause the condition of title to be changed, without Buyer's prior written consent in Buyer's sole discretion, other than liens or other assessments, bonds, or special district liens including without limitation, Community Facility Districts, that arise by reason of any local, City, municipal or County project or special district; (b) enter into any agreements with any governmental agency, utility company or any person or entity regarding the Property, which would remain in effect after the Closing (other than to implement any matter described in (a) above), without obtaining Buyer's prior written consent in Buyer's sole discretion; or (c) amend any existing licenses, agreements or leases, or enter into any new licenses, agreements or leases, that would give any person or entity any right of possession to any portion of the Property or which would remain in effect after the closing.
- 6. **Waivers and Releases.** Except as to Seller's representations and warranties set forth in Section 10 of the Purchase Agreement and Section 11 of this Addendum and in the documents to be

executed by Seller in connection with the Closing, if any, Buyer hereby waives, releases and discharges forever the Seller and Seller's officers, employees, contractors and agents from all present and future claims arising out of or in any way connected with any site conditions on the Property, whether discovered before or after the closing, and whether existing or created on the Property before or after the Closing, except for extension of existing interests disclosed to Buyer hereunder provided said extension shall not continue after closing hereunder without Buyer's consent.

Buyer acknowledges that it is aware of and 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."

As related to this Section, Buyer hereby waives and relinquishes all rights and benefits which it may have under California Civil Code Section 1542.

INITIALS: _____

7. Contact Persons. All communication from Buyer to Seller pursuant to this Purchase Agreement shall be directed to the Real Estate Manager and General Services Director, and their respective designees, as communicated by Seller to Buyer.

8. Addendum Prevailing Terms. In the event of any inconsistency between the terms of this Addendum and the Purchase Agreement to which this Addendum is attached, the terms and conditions of this Addendum shall prevail and control.

9. Notices

- a. All notices and other communications shall be in writing, personally delivered or mailed to the parties at the following addresses:

Buyer:

With a copy to:

Seller:

County of Sonoma

Facilities Development & Management

Attn: Real Estate Manager

2300 County Center Drive, A200

Santa Rosa, CA 95403

Ph: 707 565 2348

With a copy to:

County of Sonoma

General Services Department

Attn: Caroline Judy, General Services Director

2300 County Center Drive, A200

Santa Rosa, CA 95403

Ph: 707.565.8058

10. Hazardous Materials: Seller makes no representations or warranties about the condition of the Property with respect to condition of the buildings, presence of hazardous materials, condition of the soils or suitability for any purpose. Buyer shall be responsible for all investigations necessary to determine whether the Property is appropriate for Buyer's use. Upon its acquisition of the Property, Buyer shall be responsible for all alterations, improvements, modifications and remediation necessary to comply with any and all laws and regulations, including without limitation, those related to remediation or abatement of Hazardous Materials including asbestos-containing building materials, and pursuant to applicable seismic, safety and other codes.

Buyer shall defend, indemnify, and hold Seller harmless from and against any claims, liabilities or damages arising from the existence or alleged presence of any Hazardous Materials in, on, under or about the Property, released after the Closing, and for any release caused by Buyer or its agents during the Right of Entry term, and/or the Due Diligence Period, except for Hazardous Materials brought onto the Property by Seller or its employees, contractors prior to the Closing.

Buyer expressly acknowledges that many of the Buildings and structures on the Property were constructed in or before 1976, and may contain Hazardous Materials including asbestos-containing building materials. After and subject to the Closing, any and all Hazardous Materials required to be remediated shall be performed and paid for at Buyer's sole cost and expense, and shall be performed in compliance with all laws and best practices with respect to the existence or suspected existence of Hazardous Materials.

11. Miscellaneous

- a. Proposed Assignment or Transfer:** During the term of this Agreement, Buyer shall not assign or transfer its interests in the Property, whether voluntary or involuntary, without first seeking Seller's written consent, which consent shall be subject to Seller's sole discretion. Failure to first obtain such consent shall be deemed a default and such assignment or transfer shall be deemed void. Seller acknowledges that Buyer may immediately convey the Property after recordation of the Affordable Housing Covenant and after closing under the Sales Agreement and that Seller does not object to such back to back escrow transactions.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS ADDENDUM AS OF THE DATE(S) SET FORTH BELOW

BUYER:

By:
Name Printed:
Title:
Date:
Phone:
Email:

Seller:

By:
Name Printed:
Title:
Date:
Phone:
Email: