

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WOODBRIIDGE GROUP OF COMPANIES, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-12560 (KJC)

(Jointly Administered)

Hearing Date:

July 10, 2018 at 11:00 a.m. (ET)

Objection Deadline:

July 3, 2018 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF 14112 ROSCOE BLVD., PANORAMA CITY, CALIFORNIA PROPERTY OWNED BY THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) APPROVING THE RELATED PURCHASE AGREEMENT; AND (III) GRANTING RELATED RELIEF**

Woodbridge Group of Companies, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) hereby move the court (this “Motion”) for entry of an order (the “Sale Order”), substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) (i) authorizing the sale (the “Sale”) of real property owned by the Debtor Hawthorn Investments, LLC (the “Seller”) located at 14112 Roscoe Blvd., Panorama City, California (the “Land”), together with Seller’s right, title, and interest in and to

<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC’s federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors’ noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the undersigned counsel for the Debtors.

the buildings located thereon and any other improvements and fixtures located thereon (collectively, the “Improvements” and together with the Land, the “Real Property”), and any and all of the Seller’s right, title, and interest in and to the tangible personal property and equipment remaining on the Real Property as of the date of the closing of the Sale (collectively, the “Personal Property” and, together with the Real Property, the “Property”) on an “as is, where is” basis, free and clear of any and all liens, claims, encumbrances, and other interests to Sunrise West, LLC (together with any assignee, the “Purchaser”) pursuant to the terms and conditions of that certain Contract to Buy and Sell Real Estate dated as of May 18, 2018 (as may be amended, supplemented, or otherwise modified from time to time, the “Purchase Agreement”) by and between the Seller and the Purchaser, a copy of which is attached as Exhibit 1 to the Sale Order; (ii) authorizing and approving the terms of the Purchase Agreement, and (iii) granting certain related relief. In support of the Motion, the Debtors respectfully represent as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rule 6004, and Local Rules 2002-1, 4001-2, and 6004-1.

### **CASE BACKGROUND**

2. On December 4, 2017, approximately 270 of the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. Thereafter, on February 9, 2018, March 9, 2018, March 23, 2018, and March 27, 2018, additional affiliated Debtors (27 in total) commenced voluntary cases under chapter 11 of the Bankruptcy Code (collectively, the “Petition Dates”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee has been appointed in the Chapter 11 Cases. An official committee of unsecured creditors (the “Committee”) was appointed in the Chapter 11 Cases on December 14, 2017 [D.I. 79]. On January 23, 2018, the Court approved a settlement providing for the formation of an ad hoc noteholder group (the “Noteholder Group”) and an ad hoc unitholder group (the “Unitholder Group”) [D.I. 357].

### **THE SALE**

4. The Property. As further detailed in the *Declaration of Bradley D. Sharp in Support of Debtors’ Motion to Sell 14112 Roscoe Blvd., Panorama City, California Property* filed on the date hereof (the “Sharp Declaration”), the Property consists of twelve unit residential apartment building situated on an approximately 9,900 square foot lot in Panorama City, California. The Seller purchased the Property in August 2016 for a purchase price of \$2,080,000. Sharp Decl. ¶ 3. The Purchaser made an offer under the Purchase Agreement to acquire the Property on an “as is” basis. *Id.* Accordingly, the Debtors have determined that selling the Property now on an “as is” basis best maximizes the value of the Property. *Id.* ¶ 4. The Property has been formally listed on the multiple-listing service for approximately 168 days,

and the sales price was adjusted once from \$2,399,000 to \$2,290,000. *Id.* The Property has received three offers in the past (before the Purchaser's offer). *Id.* The first offer was for \$2,100,000 and the second offer was for \$2,000,000. *Id.* The Debtors countered both offers at \$2,250,000 and received no response. *Id.* The third offer was for \$2,150,000, which the Debtors countered at \$2,250,000 and received no response. *Id.* The Purchaser's offer under the Purchase Agreement is the highest and otherwise best offer the Debtors have received. *Id.* Accordingly, the Debtors determined that selling the Property on an "as is" basis to the Purchaser is the best way to maximize the value of the Property. *Id.*

5. The Purchase Agreement. On April 27, 2018, the Purchaser made a \$2,180,000 offer on the Property. Sharp Decl. ¶ 5. The Debtors proposed a counter offer at \$2,200,000, and the Purchaser and the Debtors ultimately agreed to a purchase price of \$2,190,000. *Id.* The Debtors believe that this purchase price provides significant value. *Id.* Under the Purchase Agreement, the Purchaser agreed to purchase the Property for \$2,190,000, with a \$65,400 initial cash deposit. *Id.* The deposit is being held by A&A Escrow Services, Inc. (the "Escrow Agent") as escrow agent.

6. Broker's Fees. In connection with marketing the Property, the Debtors worked with Catherine O'Brien of Marcus & Millichap ("Seller's Broker"), a non-affiliated third-party brokerage company. A true and correct copy of the Exclusive Representation Agreement (the "Broker Agreement") is attached hereto as Exhibit B. The Broker Agreement provides the Seller's broker with the exclusive and irrevocable right to market the Property for a fee in the amount of 5% of the contractual sale price and authorizes the Seller's broker to compensate a cooperating purchaser's broker by contributing a share of such fee to the purchaser's agent. The Purchaser worked with Brett Howard of Howard Realty Group, Inc. ("Purchaser's Broker") as

the Purchaser's agent. The Purchase Agreement specifies that the fee to the Seller's Broker shall be in the amount of \$54,500 (which is approximately 2.5% of the contractual sale price) (the "Seller's Broker Fee") and the fee to the Purchaser's Broker shall be in the amount of \$54,500 (which is approximately 2.5% of the contractual sale price) (the "Purchaser's Broker Fee") and together with the Seller's Broker Fee, the "Broker Fees").

7. In the Debtors' business judgment, closing the Sale with Purchaser (and paying the associated Broker Fees) pursuant to the offer set forth in the Purchase Agreement is the best way to maximize value for the Debtors' estates and is more favorable than continuing to hold and market the Property for sale and thereby risking obtaining a lower purchase price for the Property on less favorable terms, while incurring additional carrying costs for the Property.

8. Other Closing Costs. In addition to the Broker Fees, the Seller must also satisfy certain required costs associated with the sale and transfer of title of the Property to comply with the Purchase Agreement (the "Other Closing Costs"). The Other Closing Costs include, but are not limited to, recording fees, title insurance policy costs, prorated property taxes, city and county transfer taxes, and other items noted on the title report for the Property. The Debtors also rely on outside vendors for escrow and title services in connection with property sales. In general, vendors are mutually agreed on by the applicable Debtors and a purchaser prior to the acceptance of an offer.

9. Absent authority to pay Other Closing Costs, the Seller will be unable to close the Sale and receive sale proceeds. If the Seller is unable to make these payments, the Purchaser may be entitled to rescind the Purchase Agreement or assert other remedies that could lead to additional and unnecessary claims. Accordingly, the Debtors seek the ability to pay Other Closing Costs in connection with the Sale.

10. Proceeds of the Sale. All proceeds of the Sale (net of the Broker Fees and Other Closing Costs) shall be paid to the Debtors into the general account of Debtor Woodbridge Group of Companies, LLC, and such net proceeds shall be disbursed and otherwise treated by the Debtors in accordance with the *Final Order on Debtors' Motion for Entry of Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507, and 552 Authorizing Debtors to (A) Obtain Postpetition Secured Financing, (B) Use Cash Collateral, (C) Grant Adequate Protection to Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (IV) Granting Related Relief* (the "Final DIP Order").

11. The Fund Liens. The Property is subject to a lien for the benefit of Woodbridge Mortgage Investment Fund 3A, LLC (the "Fund" and such lien, the "Fund Liens"), which secures indebtedness of the Seller to the Fund in connection with the purchase of the Property. The Fund has consented to the Sale of the Property free and clear of the Fund Lien.

### **RELIEF REQUESTED**

12. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, the Debtors request entry of the Sale Order substantially in the form of Exhibit A hereto (i) authorizing the closing of the Sale pursuant to the Purchase Agreement, (ii) authorizing and approving the Purchase Agreement, and (iii) granting related relief.

13. The Debtors further request that filing of a copy of an order granting the relief sought herein in Los Angeles County, California may be relied upon by Fidelity National Title Insurance Company (the "Title Insurer") to issue title insurance policies on the Property.

14. The Debtors further request authority to pay the Broker Fees in an amount not to exceed an aggregate amount of 5% of gross sale proceeds by (i) paying the Purchaser's Broker

Fee in an amount not to exceed 2.5% of the gross Sale proceeds out of such proceeds and (ii) paying the Seller's Broker Fee in an amount not to exceed 2.5% of the gross Sale proceeds out of such proceeds.

### **BASIS FOR RELIEF REQUESTED**

#### **I. Section 363 of the Bankruptcy Code Authorizes the Proposed Sale**

15. Section 363(c)(1) of the Bankruptcy Code provides that where, as here, the Debtors are authorized to operate their business under section 1108 of the Bankruptcy Code, the Debtors may enter into transactions, including the sale of property of the estate, in the ordinary course of business, without notice or a hearing. 11 U.S.C. § 363(c)(1). Because the Debtors believe that the Sale is within the ordinary course of their operations, the Sale should be approved pursuant to section 363(c)(1).

16. The Debtors do not believe that section 363(b)(1), which authorizes the sale of property of the estate other than in the ordinary course of business, applies to the Sale. Even if section 363(b)(1) did apply, however, authorization of the Sale would be appropriate because the Debtors have a sound business justification for the Sale. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under section 363(b) when there is a legitimate business justification); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983) ("Section 363(b) of the Code seems on its face to confer upon the bankruptcy judge virtually unfettered discretion to authorize the use, sale or lease, other than in the ordinary course of business, of property of the estate.").

17. In determining whether a sale satisfies the business judgment standard, courts in the Third Circuit require: (i) that there be sound business reasons for the sale; (ii) that accurate

and reasonable notice of the sale be given; (iii) that the sale yield an adequate price, *i.e.*, one that is fair and reasonable; and (iv) that the parties to the sale have acted in good faith. *See, e.g., Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

18. The proposed Sale unquestionably satisfies the foregoing test. First, the Sale is supported by sound business reasons: after listing the Property on the multiple-listings service for approximately 168 days and marketing the Property for sale, the Debtors have concluded that selling the Property on an “as is” basis pursuant to Purchaser’s offer is the best way to maximize value for the Debtors’ estates. Sharp Decl. ¶ 4. Second, the Debtors have provided reasonable and adequate notice of the sale to interested parties by serving notice of this Motion in accordance with Local Rule 9013-1(m), and submit that no other or further notice is necessary. Third, the Debtors believe that the Purchase Agreement and the purchase price reflected therein represent a fair and reasonable offer for the Property, which exceeds the Seller’s purchase price by \$110,000, and which the Debtors have determined is a reasonable sale price relative to comparable properties in the market in which the Property is located. Sharp Decl. ¶ 4. The Debtors received a total of four offers for the Property, and the Purchaser’s offer was the highest and best offer the Debtors received. *Id.* Fourth, the Debtors submit that the Purchase Agreement was the product of good faith, arm’s-length negotiations between the Purchaser and the Seller. *Id.* ¶ 6.

19. The Purchaser is not related to or an affiliate of the Debtors or any of their insiders or former insiders. *Id.* No non-debtor affiliate or current or former officer, director, employee, managing member or affiliate of any of the Debtors (other than Seller) is a party to, or

broker in connection with, the Sale. Accordingly, the Debtors believe that the Purchaser should be entitled to the protections of section 363(m) of the Bankruptcy Code.

**II. The Debtors Should Be Permitted to Sell the Property Free and Clear**

20. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property free and clear of liens, claims, encumbrances, and other interests if any one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) the [lienholder or claimholder] consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) [the lienholder or claimholder] could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

21. Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed Sale of the Property.<sup>2</sup> *See Folger Adam Sec., Inc. v. De Matteis/MacGregor, J.V.*, 209 F.3d 252, 257 (3d Cir. 2000) (section 363(f) authorizes the sale of a debtor's assets free and clear of all liens, claims, and interests if "any one of [the] five prescribed conditions" is satisfied); *In re Kellstrom Indus., Inc.*,

---

<sup>2</sup> Moreover, if a holder of a lien, claim, encumbrance, or other interest receives the requisite notice of this Motion and does not object within the prescribed time period, such holder will be deemed to have consented to the proposed Sale, and the Property may then be sold free and clear of such holder's liens, claims, encumbrances, and other interests pursuant to the terms proposed herein. *See, e.g., Veltman v. Whetzel*, 93 F.3d 517, 521 (8th Cir. 1996) (failure to object to notice of sale or attend hearing deemed consent to sale for purposes of section 363 of the Bankruptcy Code); *In re Enron Corp.*, No. 01-16034 (AJG), 2004 WL 5361245, at \*2 (Bankr. S.D.N.Y. Feb. 5, 2004) (same); *Hargrave v. Pemberton (In re Tabore, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (same); *In re Christ Hosp.*, 502 B.R. 158, 174 (Bankr. D.N.J. 2013), *aff'd*, No. CIV.A. 14-472 ES, 2014 WL 4613316 (D.N.J. Sept. 12, 2014) ("Given adequate notice, failure to object to a § 363 sale has been found to constitute consent per § 363(f)(2) to a "free and clear" sale of the non-objector's interests in property being sold.") (citations omitted).

282 B.R. 787, 793 (Bankr. D. Del. 2002) (property may be sold “free and clear” if at least one of the subsections of section 363(f) is met); *In re DVI, Inc.*, 306 B.R. 496, 504 (Bankr. D. Del. 2004) (upholding sale of debtors’ property free and clear where there was a bona fide dispute).

22. The Debtors will satisfy section 363(f)(2) with respect to the Fund Lien. The Fund has consented to the Sale free and clear of all liens, because the Sale provides the most effective, efficient, and timely approach to maximizing value with respect to the Property.

23. As further detailed in the *Motion for Entry of Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507, and 552 Authorizing Debtors to (A) Obtain Postpetition Secured Financing, (B) Use Cash Collateral, (C) Grant Adequate Protection to Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (IV) Granting Related Relief* (the “DIP Motion”), the noteholders of certain of the Debtors (the “Noteholders”) may assert security interests in the underlying loan documents for mortgage loans extended from such Debtors to the Debtor entities that individually own the Debtors’ properties. However, the Debtors contend that no Noteholder has perfected any such security interest. Accordingly, to the extent any Noteholder contends that it holds a valid lien on the Property, such lien is subject to bona fide dispute, and the Debtors may sell the Property free and clear of such purported lien under § 363(f)(4).

### **REQUEST FOR WAIVER OF STAY**

24. Any delay in permitting the Debtors to close the Sale could jeopardize the Sale with the Purchaser and therefore would be detrimental to the Debtors, their creditors, and their estates. Accordingly, and to successfully implement the foregoing, the Debtors seek a waiver of

the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of any order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**NOTICE**

25. The Debtors have provided notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the DIP Lender, (iii) counsel for the Committee, (iv) counsel for the Noteholder Group, (v) counsel for the Unitholder Group, (vi) all Noteholders known by the Debtors to have interests in any loan documents associated with the Property, (vii) all contractors and contract counterparties known by the Debtors to have been associated with the Property, (viii) the Title Insurer, (ix) the Escrow Agent, (x) the Seller's Broker, (xi) the Purchaser's Broker, and (xii) all parties that have requested notice in these Chapter 11 Cases pursuant to Local Rule 2002-1. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form filed herewith, granting the relief requested herein and such other and further relief as may be just and proper under the circumstances.

Dated: June 19, 2018  
Wilmington, Delaware

/s/ Ian J. Bambrick  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach (No. 4070)  
Edmon L. Morton (No. 3856)  
Ian J. Bambrick (No. 5455)  
Betsy L. Feldman (No. 6410)  
Rodney Square, 1000 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 571-6600  
Fax: (302) 571-1253

-and-

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Kenneth N. Klee (*pro hac vice*)  
Michael L. Tuchin (*pro hac vice*)  
David A. Fidler (*pro hac vice*)  
Jonathan M. Weiss (*pro hac vice*)  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, California 90067

*Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WOODBRIIDGE GROUP OF COMPANIES, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-12560 (KJC)  
(Jointly Administered)

Hearing Date:

July 10, 2018 at 11:00 a.m. (ET)

Objection Deadline:

July 3, 2018 at 4:00 p.m. (ET)

**NOTICE OF MOTION**

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE, (II) COUNSEL TO THE DIP LENDER, (III) COUNSEL FOR THE COMMITTEE, (IV) COUNSEL FOR THE NOTEHOLDER GROUP, (V) COUNSEL FOR THE UNITHOLDER GROUP, (VI) ALL NOTEHOLDERS KNOWN BY THE DEBTORS TO HAVE INTERESTS IN ANY LOAN DOCUMENTS ASSOCIATED WITH THE PROPERTY, (VII) ALL CONTRACTORS AND CONTRACT COUNTERPARTIES KNOWN BY THE DEBTORS TO HAVE BEEN ASSOCIATED WITH THE PROPERTY, (VIII) THE TITLE INSURER, (IX) THE ESCROW AGENT, (X) THE SELLER'S BROKER, (XI) THE PURCHASER'S BROKER, AND (XII) ALL PARTIES THAT HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO LOCAL RULE 2002-1.

**PLEASE TAKE NOTICE** that Woodbridge Group of Companies, LLC and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") have filed the attached *Debtors' Motion for Entry of an Order (I) Authorizing the Sale of 14112 Roscoe Blvd., Panorama City, California Property Owned by the Debtors Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Approving the Related Purchase Agreement; and (III) Granting Related Relief* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that responses or objections to the Motion must be filed on or before **July 3, 2018 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any response or

<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors' noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the undersigned counsel for the Debtors.

objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON JULY 10, 2018 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.**

**PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THEN THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: June 19, 2018  
Wilmington, Delaware

/s/ Ian J. Bambrick  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach (No. 4070)  
Edmon L. Morton (No. 3856)  
Ian J. Bambrick (No. 5455)  
Betsy L. Feldman (No. 6410)  
Rodney Square, 1000 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 571-6600  
Fax: (302) 571-1253

-and-

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Kenneth N. Klee (*pro hac vice*)  
Michael L. Tuchin (*pro hac vice*)  
David A. Fidler (*pro hac vice*)  
Jonathan M. Weiss (*pro hac vice*)  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, California 90067

*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**PROPOSED ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WOODBRIIDGE GROUP OF COMPANIES,  
LLC, et al.,<sup>1</sup>

Debtors.

Case No. 17-12560 (KJC)

(Jointly Administered)

Chapter 11

Ref. Docket Nos. \_\_\_\_\_

**ORDER (I) AUTHORIZING THE SALE OF 14112 ROSCOE BLVD., PANORAMA CITY, CALIFORNIA PROPERTY OWNED BY THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) APPROVING RELATED PURCHASE AGREEMENT; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”) for entry of an order (i) authorizing the sale (the “Sale”) of real property owned by the Debtor Hawthorn Investments, LLC (the “Seller”) located at 14112 Roscoe Blvd., Panorama City, California (the “Land”), together with Seller’s right, title, and interest in and to the buildings located thereon and any other improvements and fixtures located thereon (collectively, the “Improvements” and together with the Land, the “Real Property”), and any and all of the Seller’s right, title, and interest in and to the tangible personal property and equipment remaining on the Real Property as of the date of the closing of the Sale (collectively, the “Personal Property” and, together with the Real Property, the “Property”) on an “as is, where is” basis, free and clear of any and all liens, claims, encumbrances, and other interests to Sunrise West, LLC (together with

---

<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC’s federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Blvd #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors’ noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the undersigned counsel for the Debtors.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning assigned to such terms in the Motion.

any assignee, the “Purchaser”) pursuant to the terms and conditions of that certain Contract to Buy and Sell Real Estate dated as of May 18, 2018 (as may be amended, supplemented, or otherwise modified from time to time, the “Purchase Agreement”) by and between the Seller and the Purchaser, a copy of which is attached as Exhibit 1 hereto; (ii) authorizing and approving the terms of the Purchase Agreement, and (iii) granting certain related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that good and sufficient cause exists for granting the Motion; and it appearing that the relief requested in the Motion is appropriate in the context of these Chapter 11 Cases and in the best interests of the Debtors and their respective estates, their creditors, and all other parties-in-interest; and it appearing that notice of the Motion was adequate and proper under the circumstances of these Chapter 11 Cases, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Purchase Agreement is authorized and approved in its entirety.
3. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized, in their discretion and in the exercise of their business judgment, to sell the Property pursuant to the Purchase Agreement free and clear of all liens, claims, interests, and encumbrances, to perform all obligations under the Purchase Agreement (including payment of the Broker Fees and the Other Closing Costs out of the proceeds of the Sale), and to take any other reasonable actions that may be necessary in the Debtors’ good faith business judgment to effectuate closing of the Sale, and that any actions taken by the Debtors necessary or desirable to consummate such transactions prior to the entry of this Order are hereby ratified.

4. The Debtors and any intermediary financial institution, title company, and closing attorney participating in the closings of the Sale are authorized to transfer title and deed property, and take any other actions as may be necessary to transfer ownership of the Property to the Purchaser.

5. All persons and entities holding liens, claims, interests or encumbrances with respect to the Property are hereby barred from asserting such liens, claims, interests or encumbrances against the Purchaser, its successors or assigns, or the Property.

6. All proceeds of the Sale (net of the Broker Fees and Other Closing Costs) shall be paid to the Debtors into the general account of Debtor Woodbridge Group of Companies, LLC, and such net proceeds shall be disbursed and otherwise treated by the Debtors in accordance with the *Final Order on Debtors' Motion for Entry of Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507, and 552 Authorizing Debtors to (A) Obtain Postpetition Secured Financing, (B) Use Cash Collateral, (C) Grant Adequate Protection to Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (IV) Granting Related Relief.*

7. The Debtors are authorized and empowered to (i) pay the Purchaser's Broker Fee in an amount up to 2.5% of the gross sale proceeds, and (ii) pay the Seller's Broker Fee in an amount up to 2.5% of the gross sale proceeds.

8. The Purchase Agreement is undertaken by the Debtors and Purchaser in good faith and that, pursuant to Bankruptcy Code § 363(m), the reversal or modification on appeal of any sale consummated pursuant to the terms of this Order shall not affect the validity of such sale unless such sale was stayed pending appeal.

9. Filing of a copy of this Order in the county in which the Property is situated may be relied upon by all title insurers in order to issue title insurance policies on the Property.

10. Any title insurer, escrow agent, or other intermediary participating in a closing of the Sale of the Property is authorized to disburse all funds at the closing of the Sale pursuant to the applicable settlement statement or escrow instructions provided by the parties to such Sale.

11. The Debtors shall be authorized and empowered to take any necessary actions to implement and effectuate the terms of this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry notwithstanding any applicability of Bankruptcy Rule 6004(h).

13. The terms and provisions of this Order and any actions taken pursuant hereto shall (i) survive entry of any order converting the Debtors' cases to chapter 7 or dismissing the Debtors' cases (or any of them), and (ii) continue in this or any superseding case under the Bankruptcy Code of any of the Debtors.

14. The provisions of this Order shall be binding upon the Debtors and their successors and assigns, including, without limitation, any trustee or other fiduciary hereafter appointed as legal representative of the Debtors or with respect to property of the estates of the Debtors, whether under chapter 11 of the Bankruptcy Code, any confirmed plan, or any subsequent chapter 7 case.

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and to have satisfied Bankruptcy Rule 6004(a).

16. This Court shall retain jurisdiction and power with respect to all matters arising from or related to the interpretation and implementation of this Order.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

---

KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Purchase Agreement**

THIS COUNTEROFFER (this “**Counter-Offer**” or “**Agreement**”), dated as of May 18, 2018, is intended to set forth the terms and conditions of a contract for the purchase and sale to SUNRISE WEST, LLC, a California limited liability company (“**Buyer**”), from HAWTHORN INVESTMENTS, LLC, a California limited liability company (“**Seller**”) with respect to that certain land located at 14112 Roscoe Boulevard, in Panorama City, County of Los Angeles, State of California, identified by Assessor Parcel Number 2212-020-014 (the “**Land**”) and improved with a twelve (12) unit apartment building (the “**Improvements**”). This Agreement is a Counter-Offer to that certain Residential Income Property Purchase Agreement And Joint Escrow Instructions (CAR Form RIPA) signed by Buyer with respect to the Property (defined below) and dated as of April 26, 2018 (the “**Offer**”). When mutually executed by Buyer and Seller, this Agreement will constitute the complete agreement between Buyer and Seller with respect to the purchase and sale of the Property and will supersede and replace, in their entirety, all prior negotiations and written offers and counteroffers between Buyer and Seller with respect to the Property including, without limitation, the Offer. Buyer and Seller may be referred to herein each individually as a “**Party**” and collectively as the “**Parties**”.

### **RECITALS**

- A. Seller is the owner of the Property.
- B. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions set forth herein.
- C. Seller is currently the subject of bankruptcy proceedings pending in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) under case number 17-12560 (KJC) (the “**Bankruptcy Proceedings**”) and, therefore, the Agreement is subject to the approval of the Bankruptcy Court as more specially set forth herein.

### **AGREEMENT**

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

### **ARTICLE I SALE**

1.1 Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, all of the following (collectively, the “**Property**”):

- (a) the Land;
- (b) the Improvements;

(c) all personal property owned by Seller, used in connection with the maintenance and operation of the Property and located on the Land;

(d) all leases of units within the Improvements (the "Leases"), copies of which will be included in the Seller's Documents to be delivered to Buyer pursuant to Section 4.1(b)(i) below; and

(e) those contracts between Seller and third parties relating to the Property (the "Contracts"), copies of which will be included in the Seller's Documents delivered to Buyer pursuant to Section 4.1(b)(i) below.

## ARTICLE II PURCHASE PRICE

2.1. Purchase Price. The purchase price for the Property shall be the sum of Two Million One Hundred Ninety Thousand and No/100 Dollars (\$2,190,000.00) (the "**Purchase Price**"). The Purchase Price shall be subject to the closing adjustments as set forth in Section 5.4 hereof.

2.2. Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller as follows:

(a) Deposit. Within two (2) business days following the date this Agreement is mutually executed and delivered by the Parties (the "**Effective Date**"), Buyer shall deliver to A&A Escrow ("**Escrow Holder**"), the sum of Sixty-Five Thousand Four Hundred and No/100 Dollars (\$65,400.00) by wire transfer or cashier's check (the "**Deposit**"). Escrow Holder's contact information is as follows:

415 N. Crescent Drive, Suite 320  
Beverly Hills, CA 90210  
Attention: Antonia Delgado  
Phone No. (310) 550-6055  
Fax No.: (310) 550-6130  
Email address: Antonia@AAEscrow.com

If the Deposit is not received by Escrow Holder on or before the date required herein, Seller shall have the right to terminate this Agreement whereupon neither Party shall have any further rights or obligations hereunder other than those matters which expressly survive the termination hereof. Upon Buyer's approval (or deemed approval) of the Property under Section 4.1 below, the Deposit shall be deemed non-refundable to Buyer except in the event the sale of the Property is not consummated (i) solely because of Seller's breach or default under this Agreement, or (ii) failure to obtain Bankruptcy Court approval of this Agreement in accordance with Section 4.5 below. If the sale of the Property as contemplated hereunder is consummated, the Deposit shall be credited towards payment of the Purchase Price at the Closing.

(b) Balance of Purchase Price. The Purchase Price less the sum of the Deposit (the "**Purchase Price Balance**") shall be deposited with Escrow Holder by Buyer in

(c) Independent Consideration. As independent consideration for this Agreement, Buyer and Seller agree that if this Agreement is terminated for any reason, then Seller shall be entitled to receive Five Hundred and 00/100 Dollars (\$500.00) as consideration for Buyer's inspection and termination rights set forth in this Agreement independent of the Deposit (the "**Independent Consideration**"). If this Agreement is terminated, Escrow Holder shall immediately, and without further instruction, disburse such sum to Seller from the Deposit prior to disbursing the remaining balance of the Deposit to the Party entitled thereto pursuant to this Agreement.

### ARTICLE III ESCROW

3.1 Deposit with Escrow Holder and Escrow Instructions. Within two (2) business days following the Effective Date, each Party shall promptly deposit an executed copy of this Agreement with Escrow Holder with instructions to open an escrow for the transaction hereunder (the "**Escrow**"). This Agreement shall serve as the instructions to Escrow Holder for the consummation of the transaction contemplated hereby. The Parties shall execute such additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict or inconsistency between the terms and provisions of this Agreement and the terms and provisions of any such additional or supplementary escrow instructions, the terms and provisions of this Agreement shall control, notwithstanding that any such additional or supplemental escrow instructions constitute a later signed writing between the Parties.

3.2 Proof of Funds. Within two (2) business following the Effective Date, Buyer shall deliver to Seller proof of committed funds available to Buyer sufficient to enable Buyer to consummate the acquisition of the Property pursuant to this Agreement, which proof shall be in the form of a letter of credit, loan commitment, bank statement, or other form acceptable to Seller in Seller's sole discretion. If (i) Buyer fails timely to provide such proof of committed funds, or (ii) Seller determines, in Seller's sole discretion, that the proof of funds provided to Seller by Buyer is unacceptable, then Seller shall have the right, at Seller's option, to provide written notice to Buyer that this Agreement is terminated. If Seller exercises such termination right, then this Agreement shall be deemed terminated effective as of the date that Seller delivers written notice of termination to Buyer, whereupon (I) the Deposit (if theretofore deposited with the Escrow Holder) shall be returned to Buyer, and (II) Buyer and Seller shall each be relieved of any further obligations under this Agreement.

3.3 Closing. The closing hereunder (the "**Closing**") shall mean the recording, in the official records of Los Angeles County, of a Grant Deed conveying title to the Property from Seller to Buyer (the "**Deed**"). The Closing shall take place as soon as practicable after the entry of an order by the Bankruptcy Court approving the sale of the Property pursuant to this Agreement (the "**Sale Order**"), but no later than fourteen (14) days following the entry of the Sale Order (or the first business day thereafter, if such 14th day is not a business day) (the "**Closing Date**"), or on such later date as Buyer and Seller may mutually agree in writing;

provided, however, Seller shall have the right to extend the Closing Date by up to an additional five (5) business days upon delivery of written notice to Buyer. Subject to the provisions of **ARTICLE VIII** hereof, if the Closing does not occur on or before the Closing Date, Escrow Holder shall, unless it is notified by both Parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return or termination, shall not, however, relieve either Party of any liability it may have under the terms of this Agreement for its wrongful failure to close.

#### **ARTICLE IV CONTINGENCIES AND CONDITIONS TO CLOSING**

4.1 Buyer's Due Diligence Contingencies. Buyer's obligations under this Agreement are subject to the satisfaction or waiver of the following contingencies on or before the applicable dates specified below in this Section 4.1:

(a) Review and Approval of Title.

(i) Within ten (10) days after the Effective Date, Seller shall cause Fidelity Nation Title Company (attention, Janis Okerlund), or such other title insurance company of Seller's choice (the "**Title Company**") to provide Buyer with a preliminary report of the condition of title to the Property, including copies of underlying documents referred to in Schedule B thereof (collectively, the "**Title Report**"). Buyer may, within five (5) days following its receipt of the Title Report (the "**Title Review Date**"), deliver written notice (the "**Notice of Title Disapproval**") to Seller stating that Buyer disapproves the condition of title with respect to material matters that interfere with the use of the Property for the purpose for which it is currently used or intended to be used. The Notice of Title Disapproval must refer to the specific exception(s) in Schedule B of the Title Report and the specific underlying document(s) which are the basis for Buyer's disapproval. If Buyer fails to deliver a Notice of Title Disapproval within such five (5) day period, then Buyer shall be deemed to have accepted the condition of title as described in the Title Report.

(ii) Within five (5) days after Seller's receipt of a Notice of Title Disapproval, Seller may elect, via written notice to Buyer, and in Seller's sole discretion, to either (a) cancel this Agreement and instruct Escrow Holder to return the Deposit (less the Independent Consideration) to Buyer, or (b) cure the item(s) disapproved by Buyer, in which event the sale shall proceed subject to the terms, conditions and limitations set forth herein. Seller's failure to respond to a Notice of Title Disapproval within such five (5) day period shall be deemed Seller's refusal to cure any items disapproved by Buyer therein.

(iii) At the Closing, Seller shall convey and Buyer shall accept title to the Property as shown in Schedule B of the Title Report free and clear of all monetary liens, but subject to those changes made pursuant to this Section 4.1(a).

(iv) If Seller notifies Buyer in writing that it elects to cure any objections included in the Notice of Title Disapproval, but is unable to cure the same prior to the

Case 17-12560-KJC Doc 2012-2 Filed 06/19/18 Page 12 of 35  
Closing, Seller shall not be in default hereunder, but Buyer, at the Closing shall, at its option, either (x) accept title to the Property subject to: (1) those exceptions to title approved by Buyer on or prior to the Title Review Date, and (2) those exceptions disapproved by Buyer that Seller is unable to cure, all of which shall be deemed to be permitted exceptions, or (y) terminate this Agreement by notice in writing to Seller, in which event Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and neither Party shall have any further rights, duties or obligations hereunder, except for those provisions of this Agreement which expressly survive termination of this Agreement.

(v) Notwithstanding anything in this Section 4.1 to the contrary, if any conditions or exceptions to title arise or are first disclosed to Buyer subsequent to Buyer's waiver (or deemed waiver) of contingencies under this Section 4.1 and such conditions or exceptions are not caused or created in whole or in part by Buyer ("**New Exceptions**"), then Buyer shall have two (2) business days after Buyer obtains knowledge of such New Exception to review and approve or disapprove of the same in accordance with the procedure set forth above for Buyer's review of the Title Report. As set forth above, Seller shall have the option to either cure any New Exceptions objected to by Buyer or terminate this Agreement, in which event Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and neither Party shall have any further rights, duties or obligations hereunder, except for those provisions of this Agreement which expressly survive termination of this Agreement.

(b) Inspections and Studies.

(i) Prior to the date hereof Seller has, or within five (5) business days after the Effective Date Seller shall, (a) upload to a virtual data room (the "**Data Site**") all material documents in Seller's possession and relating to the physical condition and/or plans and entitlements for the development or renovation of the Property including, without limitation, the Leases and Contracts (collectively, the "**Seller's Documents**") and (b) provide Buyer with access to the Data Site and the Seller's Documents thereon; provided, however, all individuals accessing the Data Site on behalf of Buyer may be required, as a condition to being provided with access to the Seller's Documents, to execute a confidentiality agreement pursuant to which they covenant not to disclose the contents thereof to any persons other than their attorneys and consultants engaged in connection with the purchase of the Property. Seller provides the Seller's Documents without representation or warranty of any kind, including, without representation or warranty as to accuracy or completeness, and Seller encourages Buyer to conduct its own independent review of the Property and to obtain all such reports, studies and examinations as Buyer believes necessary or desirable to fully evaluate the Property.

(ii) Buyer shall have until 5:00 p.m. Pacific Time on the day that is seventeen (17) days after Effective Date (the "**Contingency Date**"), to review, inspect and evaluate the Property and all matters relating thereto, and to approve or disapprove of the foregoing in its sole and absolute discretion, including without limitation, the Seller's Documents. In connection therewith, subject to the limitations set forth below, Buyer shall have the right to carry out any and all inspections, investigations, tests and studies

and to review and approve or disapprove, in Buyer's sole and absolute discretion, any and all documents, instruments and matters contained therein or disclosed thereby. Without limiting the foregoing, Buyer may at its sole discretion select and employ, at Buyer's expense, a licensed engineer(s), architect(s), contractor(s), geologist(s), pest control licensee(s), environmental consultant(s), or other qualified professional(s) to make inspection(s) and investigations of the Property, including, but not limited to, (I) its general structure, plumbing, heating, air conditioning (if any), electrical system, built-in appliances, cesspool/sewer/septic system, well, roof, soils, foundation, mechanical systems, pool, spa, related equipment and filters, sprinklers, and those other matters affecting the desirability of the Property (all if and only to the extent any such structures, systems, and components are presently a part of the Property); (II) any actual or potential wood destroying pests or other conditions damaging to the Property or any portion thereof; (III) environmental hazards, substances, products, or conditions, including without limitation, asbestos, formaldehyde, lead, lead-based paint, contaminated soil or water, fuel, chemical storage tanks, hazardous waste, electromagnetic fields, and radon gas, any of which may constitute a health risk; (IV) the presence or absence of any required governmental permits, inspections, applications, approvals, and certificates of occupancy, and compliance or lack of compliance with building codes and laws applicable to the Property; (V) plans and specifications for the Property; (VI) all applicable zoning, municipal, county, state, and federal, including those affecting the past, current, or any future use of the Property; (VII) deed restrictions and other matters of public record which may govern, restrict, condition, or prohibit the use, alteration, or development of the Property; and (VIII) generally, without limitation, any and all other items and matters of whatsoever nature, character, or description, which Buyer deems material to Buyer's interests, in, on, or affecting the Property; and to approve or disapprove said inspection within the period and in the manner set forth in this Section 4.1(b). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Buyer shall not perform any intrusive or destructive testing at the Property without the Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. Buyer shall give Seller at least twenty-four (24) hours' prior notice of any entry onto the Property by Buyer or its agents for purposes of conducting any of the inspections, tests, investigations or other matters described herein and Seller and/or its agents shall have the right to be present during any such inspections, tests, investigations or other matters described herein.

(iii) If Buyer disapproves of any matters relating to the Property, Buyer may terminate this Agreement by delivering written notice of cancellation ("**Notice Of Cancellation**") to Seller prior to 5:00 p.m. Pacific Time on the Contingency Date. If Buyer fails to deliver a Notice of Cancellation to Seller prior to such date and time, then Buyer shall be deemed to have waived all Buyer's contingencies under this Section 4.1(b). If Buyer timely terminates the Agreement pursuant to this Section 4.1(b), then Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and, other than those matters which expressly survive the termination hereof, neither Party shall have any further rights or obligations hereunder. Buyer acknowledges that Seller has no obligation to cure or to undertake to cure any matters disapproved by Buyer.

(iv) Buyer agrees to maintain or to cause all its representatives or agents entering upon the Property or otherwise conducting any due diligence to maintain and have in effect commercial general liability insurance with limits of not less than Two Million and No/100 Dollars (\$2,000,000.00) covering personal injury, including bodily injury and death, and property damage, and a waiver of subrogation. Such insurance shall name Seller as an additional insured. Buyer shall deliver to Seller a copy of the certificates of insurance evidencing the insurance required hereunder prior to the commencement of such due diligence activities upon the Property. Buyer shall indemnify, defend and hold Seller harmless from and against any and all actions, claims, damages, liabilities, losses, costs and/or expenses (including, without limitation, reasonable attorneys' fees and expenses), incurred by the Seller and arising from: (a) injury to persons or damage to property, and/or (b) any liens or claims of liens against the Property or any portions thereof, arising from any such entry into and/or investigations concerning the Property or any portions thereof. The foregoing indemnity shall survive the Closing and any termination of this Agreement.

(v) Seller shall pay for and deliver to Buyer, no later than ten (10) business days following the Effective Date, a natural hazard zone disclosure report of the Property prepared by a vendor of Seller's choice.

(c) Financing. Buyer shall have until 5:00 p.m. Pacific Time on the day that is thirty (30) days after Effective Date (the "**Financing Contingency Date**") to obtain a commitment from a lender of Buyer's choice for a loan to be secured by a first deed of trust on the Property and on terms reasonably acceptable to Buyer (the "**Financing Contingency**"). Buyer shall use best faith efforts to satisfy the Financing Contingency on or before the Financing Contingency Date. Provided that Buyer has used such best faith efforts, Buyer may terminate this Agreement if it is unable to satisfy the Financing Contingency, by delivering a Notice Of Cancellation to Seller prior to 5:00 p.m. Pacific Time on the Financing Contingency Date. If Buyer fails to deliver a Notice of Cancellation to Seller prior to such date and time, then Buyer shall be deemed to have waived the Financing Contingency. If Buyer timely terminates the Agreement pursuant to this Section 4.1(c), then Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and, other than those matters which expressly survive the termination hereof, neither Party shall have any further rights or obligations hereunder. Buyer acknowledges that Seller has no obligation to cure or to undertake to cure any matters disapproved by Buyer.

4.2 Contracts. Buyer shall notify Seller in writing, on or before the Contingency Date, of those Contracts that Buyer intends to take assignment of at the Closing (collectively, the "**Assigned Contracts**"). If Buyer fails to deliver such notice on or before the Contingency Date, then Buyer shall be deemed to have elected not to take assignment of any Contracts at the Closing. Except for those Contracts that Buyer elects to take assignment of pursuant to this Section, Seller shall cause all the Contracts to be terminated on or before the Closing Date, at Seller's sole cost and expense.

4.3 Removal of Contingencies. If Buyer does not provide Seller with a written Notice of Cancellation prior to 5:00 p.m. Pacific Time on the Contingency Date or the Financing

Contingency Date, as applicable, or a Notice of Title Disapproval in accordance with the time periods set forth in Section 4.1(a) above, then Buyer's silence shall be deemed acceptance of the condition of the Property and Buyer shall be deemed to have satisfied and removed all of Buyer's contingencies under Section 4.1. Upon such removal of contingencies, Buyer shall be unconditionally obligated to proceed with the sale, subject only to (i) satisfaction of the contingency in Section 4.4 below, and (ii) Bankruptcy Court confirmation in accordance with Section 4.5 below. If Buyer waives, or is deemed to have waived, its due diligence contingencies pursuant to this Section, then Buyer shall be deemed to have represented to Seller that Buyer was afforded, prior to the Contingency Date, reasonable opportunity to inspect and investigate the Property and all other facts and circumstances deemed by Buyer relevant and significant to evaluate the condition of the Property and the suitability of the Property for Buyer's intended purposes.

4.4 Estoppel Certificates. Buyer's obligation to purchase the Property is conditioned upon Buyer's receipt of either an Acceptable Estoppel Certificate (defined below) or a Seller's Certificate (defined below) with respect to all of the Leases prior to the date (the "**Estoppel Contingency Date**") that is the earlier of (I) thirty (30) days following the Financing Contingency Date (or Buyer's earlier waiver of its contingencies under Section 4.1 above), or (II) ten (10) days prior to the Closing. An "**Acceptable Estoppel Certificate**" means, with respect to each Lease, a certificate that (i) is prepared using the California Association of Realtors Form TEC, or other form reasonably acceptable to Buyer, (ii) contains representations as to the financial terms of the subject Lease that are consistent, in all material respects, with the terms set forth in the copy of the subject Lease included in the Seller's Documents, (iii) does not allege a material default by the landlord under the subject Lease, and (iv) is duly executed by the party named as the tenant under the subject Lease. If Seller is unable to obtain Acceptable Estoppel Certificates with respect to all of the Leases, then (a) Seller shall not be deemed to be in breach of this Agreement, provided that Seller has used reasonable efforts to obtain Acceptable Estoppel Certificates, (b) Seller shall have the right, but not the obligation, to sign a certificate (each, a "**Seller's Certificate**") for each Lease for which Seller has been unable to obtain an Acceptable Estoppel Certificate, which certificate will include representations, qualified to Seller's knowledge, as to the statements of fact included in the California Association of Realtors Form TEC. If Seller fails to deliver to Buyer, on or before the Estoppel Contingency Date, either an Acceptable Estoppel Certificate or a Seller's Certificate for each of the Leases, then Buyer shall have the right to terminate this Agreement by delivering written notice of termination to Seller. Upon a termination of this Agreement pursuant to this Section, Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and neither Party shall have any further rights, duties or obligations hereunder.

4.5 Bankruptcy Sale. Buyer acknowledges that (i) Seller is a "debtor-in-possession" in the Bankruptcy Proceedings, and (ii) this Agreement is subject to notice to creditors and the approval of the Bankruptcy Court. Buyer acknowledges that, in order to obtain Bankruptcy Court approval of this Agreement, Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer possible for the Property. Buyer further acknowledges and agrees that Seller may decide not to seek the Bankruptcy Court's approval of this Agreement, if Seller determines that to do so would be inconsistent with its fiduciary duties, and, upon such determination, Seller may terminate this Agreement. If Seller does not obtain Bankruptcy Court approval of this Agreement, then Seller shall have the right to terminate this

Agreement by delivering written notice of termination to Buyer. Upon any termination of this Agreement pursuant to this Section, Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and neither Party shall have any further rights, duties or obligations hereunder.

## ARTICLE V CLOSING AND ESCROW

5.1 Delivery by Seller. Not later than one (1) business day prior to the Closing Date, Seller shall deposit with Escrow Holder the following:

(a) The original Deed, duly executed and acknowledged by Seller, in recordable form, and ready for recordation on the Closing Date;

(b) The original of a Bill of Sale, in the form attached hereto as Exhibit A, duly executed by Seller and transferring to Buyer all of Seller's rights, title and interest in and to the Personal Property;

(c) Two (2) duplicate originals of an Assignment of Leases in the form attached hereto as Exhibit B (the "Assignment of Leases"), duly executed in counterpart by Seller as "Assignor" and assigning to Buyer all of Seller's rights, duties and obligations under the Leases;

(d) Two (2) duplicate originals of an Assignment of Contracts in the form attached hereto as Exhibit C (the "Assignment of Contracts"), duly executed in counterpart by Seller as "Assignor" and assigning to Buyer all of Seller's rights, duties and obligations under the Assigned Contracts;

(e) Seller's estimated settlement statement in form and content consistent with this Agreement and otherwise reasonably satisfactory to Seller;

(f) A California Form 593-C, duly executed by Seller;

(g) A Non-Foreign Affidavit, duly executed by Seller and satisfying the requirements set forth in Section 1445 of the Internal Revenue Code of 1986, as amended; and

(h) Any other documents or instruments reasonably required by Escrow Holder, the Title Company or the Bankruptcy Court in order to convey the Property to Buyer at the Closing.

5.2 Delivery by Buyer. Not later than one (1) business day prior to the Closing Date, Buyer shall deposit with Escrow Holder the following:

(a) The Purchase Price Balance, together with Buyer's share of the closing adjustments pursuant to Section 5.4 below, for disbursement in accordance with the terms and provisions of this Agreement, to be held by Escrow Holder pursuant to disbursement instructions mutually acceptable to Buyer and Seller;

(b) Two (2) duplicate originals of the Assignment of Leases, duly executed in counterpart by Buyer as "Assignee";

(c) Two (2) duplicate originals of an Assignment of Contracts, duly executed in counterpart by Buyer as "Assignee";

(d) Buyer's estimated settlement statement in form and content consistent with this Agreement and otherwise reasonably satisfactory to Buyer; and

(e) Any other documents or instruments reasonably required by Escrow Holder, the Title Company or the Bankruptcy Court in order to convey the Property to Buyer at the Closing.

5.3 Other Instruments. In addition to the documents and instruments to be delivered as herein provided, each of the Parties shall, from time to time at the request of the other Party, execute and deliver to the other Party such other instruments of transfer, conveyance and assignment and shall take such other action as may be reasonably required to effectively carry out the terms of this Agreement; provided that no such document or act will impose additional obligations on either Party that are not already contemplated by this Agreement.

5.4 Prorations and Adjustments.

(a) Taxes. Real property taxes and assessments shall be prorated as of the Closing Date, and any required payments or credits shall be made by the applicable Party through Escrow upon receipt of said proration.

(b) Utilities. All charges and payments for utility services shall be prorated as of the Closing Date, all of which shall be read promptly before Closing, unless Seller elects to close its own applicable account, in which event Buyer shall open its own account and the respective charges shall not be prorated. Seller shall not assign to Buyer any deposits which Seller has with any utility companies servicing the Property.

(c) Insurance. Buyer shall be responsible for obtaining appropriate insurance covering the Property on and after the Closing Date; accordingly there shall be no proration of the same.

(d) Deposits. Buyer shall be credited through Escrow at the Closing with the total of all tenant security deposits held by Seller, as "Landlord" under the Leases, as of the date of the Closing.

(e) Rent. The Parties shall prorate, as of the Closing Date, any and all rents, revenues and other income generated by the Property ("**Rents**"). At the Closing, Buyer shall be credited with the amount of Rents actually received by Seller and applicable to the day of Closing and any period thereafter. All rights to Rents which are unpaid as of the Closing and allocable to any period prior to Closing ("**Delinquent Rent**") shall be and remain the property of Seller, and Buyer shall use commercially reasonable efforts for a period of twelve (12) months following the Closing to collect such Delinquent Rent; provided that Buyer shall have no obligation to enforce its rights under the Leases in a

court of law or equity, to threaten such enforcement, or to commence any action or proceeding whatsoever to enforce its rights under the Leases. Seller may pursue post-Closing, at Seller's sole cost and expense, claims against tenants of the Property for Delinquent Rent; provided, however, Seller shall have no post-Closing right to pursue actions for eviction. Rents received by Buyer post-Closing shall be first applied to any current rent then due and any balance to Delinquent Rent. Buyer shall promptly pay to Seller any and all Delinquent Rent received by Buyer post-Closing. Seller shall promptly pay to Buyer any Rents (other than Delinquent Rents) received by Seller after the Closing Date.

(f) Contracts. All amounts payable by Seller under the Assigned Contracts will be prorated as of the Closing Date. At the Closing, (i) Buyer shall be debited with all such amounts paid by Seller under the Assigned Contracts and attributable to the date of Closing and any period thereafter, and (ii) Buyer shall be credited with any amounts owing by Seller under the Assigned Contracts for the period prior to the date of Closing but not paid as of the Closing

(g) Survival. If any of the foregoing cannot be apportioned at the Closing because of the unavailability of the amounts which are to be apportioned, such items shall be apportioned by the Parties outside escrow as soon as practicable after the Closing Date. The post-Closing covenants of the Parties set forth in this Section 5.4 shall survive the Closing.

#### 5.5 Costs and Expenses.

(a) Seller shall pay, through the Escrow at the Closing, (i) the premium for the Buyer's owner's policy of title insurance (the "**Title Policy**") attributable to the CLTA standard coverage (i.e., without extended coverage and without endorsements), (ii) all City and County documentary transfer taxes, and (iii) one-half (1/2) of the escrow costs.

(b) Buyer shall pay, through the Escrow at the Closing, (i) that portion of the premium for the Title Policy attributable to the ALTA extended coverage (if Buyer elects to purchase ALTA extended coverage), the cost of any endorsements to the Title Policy requested by Buyer and the premium for any title policy and endorsements thereto issued to Buyer's lender, (ii) the cost of any recording fees applicable to the transaction, (iii) one-half (1/2) of the escrow costs, and (iv) all costs of complying with government retrofitting requirements including, without limitation, those relating to (I) installation of smoke alarm and carbon monoxide detectors, (II) bracing of water heaters, (III) low flow toilets, and (IV) shatterproof glass panels.

(c) Notwithstanding anything contained herein to the contrary, except as otherwise specifically set forth herein, each Party shall be responsible for its own legal and accounting expenses incurred in connection with the subject matter of this Agreement.

**ARTICLE VI**

**ACCEPTANCE OF PROPERTY AS IS, WHERE IS**

BUYER ACKNOWLEDGES AND AGREES THAT (I) SELLER HAS NEVER OCCUPIED THE PROPERTY AND, AS SUCH, SELLER IS NOT VESTED WITH KNOWLEDGE OF THE PROPERTY ORDINARILY EXPECTED OF A SELLER OF RESIDENTIAL PROPERTY, AND (II) BUYER WILL BE CONCLUDING THE PURCHASE OF THE PROPERTY BASED SOLELY UPON BUYER'S OWN INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, AND ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS, LATENT AND PATENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT NEITHER SELLER NOR ANY OF SELLER'S AGENTS OR REPRESENTATIVES HAS MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, ON WHICH BUYER IS RELYING AS TO ANY MATTER CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, MATTERS RELATING TO THE ZONING, LAND-USE OR OTHER ENTITLEMENTS, THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND/OR SOILS, SEISMIC, GEOTECHNICAL AND/OR OTHER MATTERS RELATING TO THE CONDITION OF THE PROPERTY.

BUYER ACKNOWLEDGES AND AGREES THAT (I) ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY BY OR ON BEHALF OF SELLER, INCLUDING, WITHOUT LIMITATION, THE SELLER'S DOCUMENTS, WAS OBTAINED FROM A VARIETY OF SOURCES, (II) SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION, (III) ALL SUCH INFORMATION HAS BEEN AND SHALL BE PROVIDED SOLELY AS AN ACCOMMODATION TO BUYER, (IV) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION, AND (V) SELLER IS NOT, AND SHALL NOT BE, LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT, REPRESENTATION OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION OR CONDITION THEREOF, FURNISHED BY OR ON BEHALF OF SELLER OR ANY CONSULTANT, ADVISOR, ATTORNEY, REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, OR OTHER PERSON. AS PART OF BUYER'S AGREEMENT TO PURCHASE AND ACCEPT THE PROPERTY "AS-IS, WHERE-IS," AND "WITH ALL FAULTS", AND NOT AS A LIMITATION ON SUCH AGREEMENT, BUYER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL CLAIMS OR RIGHTS AGAINST THE SELLER PARTIES (AS HEREINAFTER DEFINED) ARISING OUT OF THE INACCURACY OR INCOMPLETENESS OF ANY MATERIALS SO FURNISHED, ARISING OUT OF ANY ALLEGED DUTY OF THE SELLER PARTIES TO ACQUIRE, SEEK OR OBTAIN SUCH MATERIALS, ARISING OUT OF OR IN CONNECTION WITH THE ENVIRONMENTAL CONDITION OF THE PROPERTY AND ANY AND ALL ACTUAL OR POTENTIAL CLAIMS OR RIGHTS BUYER MIGHT HAVE REGARDING ANY FORM OF REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE PROPERTY. SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY. SUCH WAIVER INCLUDES, BUT IS NOT LIMITED

TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS, AND CLAIMS, LIABILITIES, DEMANDS OR CAUSES OF ACTION OF EVERY KIND AND TYPE, WHETHER STATUTORY, CONTRACTUAL OR UNDER TORT PRINCIPLES, AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH MIGHT HAVE BEEN DISCOVERABLE, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, PRODUCT LIABILITY CLAIMS, PRODUCT LIABILITY TYPE CLAIMS, ALL OTHER EXISTING OR LATER CREATED OR CONCEIVED STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS, AND ANY AND ALL CLAIMS RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS UNDER CERCLA AND RCRA.

EFFECTIVE UPON THE CLOSING DATE, AND TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS SELLER AND EVERY ENTITY AFFILIATED WITH SELLER AND ALL OF ITS AND THEIR RESPECTIVE PARTNERS, MEMBERS, MANAGERS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS AND INDEPENDENT CONTRACTORS AND THE SUCCESSOR OF EACH AND EVERY ONE OF THEM (COLLECTIVELY, THE "SELLER PARTIES") FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES WHICH BUYER MAY SUFFER OR INCUR RELATING TO THE PROPERTY. SPECIFICALLY, AND NOT BY WAY OF LIMITATION, BUYER HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS THE SELLER PARTIES FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES ARISING OUT OF OR OTHERWISE RELATING TO THE CONDITION OF THE PROPERTY. AS PART OF THE PROVISIONS OF THIS ARTICLE, BUT NOT AS A LIMITATION THEREON, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND BUYER HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS, INCLUDING WITHOUT LIMITATION, SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA OR ANY SIMILAR STATUTE, LAW, RULE OR REGULATION OF ANY OTHER STATE. BUYER ACKNOWLEDGES THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA 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."

IN THIS CONNECTION AND TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT FACTUAL MATTERS NOW UNKNOWN TO BUYER MAY HAVE GIVEN OR MAY HEREAFTER

Case 17-12560-KJC Doc 2012-2 Filed 06/19/18 Page 21 of 35  
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 THE SELLER PARTIES FROM ANY SUCH UNKNOWN CAUSES OF ACTION,  
CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND  
EXPENSES WHICH MIGHT IN ANY WAY BE INCLUDED IN THE WAIVERS AND  
MATTERS RELEASED AS SET FORTH IN THIS ARTICLE. THE PROVISIONS OF THIS  
ARTICLE ARE MATERIAL AND INCLUDED AS A MATERIAL PORTION OF THE  
CONSIDERATION GIVEN TO SELLER BY BUYER IN EXCHANGE FOR SELLER'S  
PERFORMANCE HEREUNDER. SELLER HAS GIVEN BUYER MATERIAL  
CONCESSIONS REGARDING THIS TRANSACTION IN EXCHANGE FOR BUYER  
AGREEING TO THE PROVISIONS OF THIS ARTICLE. BUYER HAS INITIALED THIS  
ARTICLE TO FURTHER INDICATE ITS AWARENESS AND ACCEPTANCE OF EACH  
AND EVERY PROVISION HEREOF.

  
BUYER'S INITIALS:

#### ARTICLE VII LOSS BY FIRE OR OTHER CASUALTY; CONDEMNATION

If, prior to the Closing, the Property is destroyed or materially damaged, or if condemnation proceedings are commenced against a material portion of the Property (each, a "**Material Loss**"), Buyer shall have the right, at its option, exercisable by giving written notice of such decision to Seller within five (5) business days after receiving written notice from Seller that the Property has suffered a Material Loss, to either: (a) terminate this Agreement, in which case Escrow Holder shall return the Deposit (less the Independent Consideration) to Buyer and, except for those matters which expressly survive any termination hereof, neither Party shall have any further rights or obligations hereunder, or (b) accept the Property in its then condition with no reduction of the Purchase Price. Buyer's failure to give written notice of its election within such timeframe shall be deemed to be Buyer's election not to terminate this Agreement and to accept the Property in its then condition in accordance with clause (b) of the immediately preceding sentence. If Buyer elects to accept (or is deemed to have accepted) the Property in its then condition, all proceeds of insurance or condemnation awards payable by reason of such damage, destruction or condemnation, if any, shall be paid or assigned to Buyer at the Closing. If the damage or condemnation does not result in a Material Loss, then (i) Buyer shall have no right to terminate this Agreement, and (ii) Seller shall assign to Buyer at the Closing all proceeds of insurance or condemnation awards payable by reason of such damage or condemnation, if any. As used in this ARTICLE VII, "destroyed" means complete destruction of the improvements upon the Property, and "material" damage, or the loss of a "material portion" of the Property, means any damage or loss that: (i) results in repair or restoration costs in excess of twenty percent (20%) of the Purchase Price; or (ii) results in Buyer not being able to occupy the Property for a period in excess of six (6) months following the Closing.

**ARTICLE VIII  
DEFAULT; REMEDIES**

**8.1 Seller's Remedies; Liquidated Damages. IF THE TRANSACTION CONTEMPLATED HEREBY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY BY REASON OF SUCH DEFAULT BY BUYER, THE AMOUNT OF THE DEPOSIT SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT, IN THE EVENT THE TRANSACTION CONTEMPLATED HEREBY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, SELLER'S ACTUAL DAMAGES BY REASON OF SUCH DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT OF THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES IN THE EVENT THE TRANSACTION CONTEMPLATED HEREBY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 8.1, IF BUYER BRINGS AN ACTION AGAINST SELLER FOR AN ALLEGED BREACH OR DEFAULT BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT, RECORDS A LIS PENDENS OR ENJOINS OR RESTRICTS SELLER'S ABILITY TO SELL AND TRANSFER THE PROPERTY OR REFUSES TO CONSENT TO OR INSTRUCT ESCROW HOLDER WITH REGARD TO THE RELEASE OF THE DEPOSIT TO SELLER IF REQUIRED BY ESCROW HOLDER (EACH, A "BUYER'S ACTION"), SELLER SHALL NOT BE RESTRICTED BY THE PROVISIONS OF THIS SECTION 8.1 FROM BRINGING AN ACTION AGAINST BUYER SEEKING EXPUNGEMENT OR RELIEF FROM ANY IMPROPERLY FILED LIS PENDENS, INJUNCTION OR OTHER RESTRAINT, AND/OR RECOVERING FEES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) WHICH SELLER MAY SUFFER OR INCUR AS A RESULT OF ANY BUYER'S ACTION, BUT ONLY TO THE EXTENT THAT SELLER IS THE PREVAILING PARTY; AND THE AMOUNT OF ANY SUCH FEES, COSTS AND EXPENSES AWARDED TO SELLER SHALL BE IN ADDITION TO THE LIQUIDATED DAMAGES SET FORTH HEREIN. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT BUYER'S LIABILITY TO SELLER FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF BUYER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR FOR ATTORNEYS' FEES AND COSTS AS PROVIDED IN SECTION 9.9 BELOW.**

  
\_\_\_\_\_  
BUYER'S INITIALS:

**8.2 Buyer's Remedies.**

(a) If the transaction contemplated by this Agreement is not consummated by the Closing Date because of a default hereunder on the part of Seller, then Buyer's sole

Case 17-12560-KJC Doc 2012-2 Filed 06/19/18 Page 23 of 35  
and exclusive remedy by reason of such default by Seller shall be to terminate this Agreement, in which event neither Party shall have any further rights, duties or obligations under this Agreement and the Deposit (less the Independent Consideration) shall be returned to Buyer. Buyer hereby expressly waives any and all rights to claim specific performance of this Agreement and to record a *lis pendens* upon the Property.

(b) If the Closing of the transactions hereunder shall have occurred, Seller shall have no liability to Buyer (and Buyer shall make no claim against Seller) for a breach of any alleged representation or warranty, failure to disclose, or any other covenant, agreement or obligation of Seller, or for indemnification under this Agreement or any document executed by Seller in connection with this Agreement.

8:3 The provisions of this ARTICLE VIII shall survive the Closing.

## ARTICLE IX MISCELLANEOUS

9.1 Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, or by facsimile, or by personal delivery (by overnight courier or otherwise), or by electronic mail (email) and addressed as follows:

If to Seller:                   c/o Woodbridge Group of Companies, LLC  
14225 Ventura Blvd., Suit 100  
Sherman Oaks, CA 91423  
Attn: Frederick Chin, CEO  
E-mail: [fchin1@gmail.com](mailto:fchin1@gmail.com)

With a copy to:               Glaser Weil LLP  
10250 Constellation Boulevard, 19th Floor  
Los Angeles, California 90067  
Attn: Saul Breskal, Esq.  
Fax No.: (310) 556-2920  
Email: [sbreskal@glaserweil.com](mailto:sbreskal@glaserweil.com)

And a copy to:               Klee, Tuchin, Bogdanoff & Stern, LLP  
1999 Avenue of the Stars, 39<sup>th</sup> Floor  
Los Angeles, California 90067  
Attention: David A. Fidler, Esq. and Jonathan M. Weiss, Esq.  
Fax No.: (310) 407-9090  
Email: [dfidler@ktbslaw.com](mailto:dfidler@ktbslaw.com); [jweiss@ktbslaw.com](mailto:jweiss@ktbslaw.com)

And a copy to:               Catherine Obrien  
[cobrien@marcusmillichap.com](mailto:cobrien@marcusmillichap.com)

If to Buyer:                   Sunrise West, LLC

---

Attn: Mehran

Email: \_\_\_\_\_

Fax No.: (     ) \_\_\_\_\_

If to Escrow Holder: At the address specified in Section 2.2(a) above.

or such other address as either Party may from time to time specify in writing to the other in the manner aforesaid. If sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, such notices or other communications shall be deemed delivered upon delivery or refusal to accept delivery as indicated on the return receipt. If sent by personal delivery (by overnight courier or otherwise), such notices or other communications shall be deemed delivered upon delivery, or refusal thereof. If sent by facsimile or email, such notices or other communications shall be deemed delivered upon delivery, provided such fax or email is sent prior to 5:00 p.m. Pacific Time on such date (otherwise such fax or email shall be deemed to be delivered and effective as of the next business day), and provided further that delivery is also made promptly thereafter by mail or overnight courier as provided above.

9.2 Brokers and Finders. In connection with the transactions contemplated by this Agreement: (a) Buyer hereby represents and warrants to Seller that, other than Brett Howard of Howard Realty Group, Inc. ("**Buyer's Broker**"), Buyer has not, and shall not, incur any obligation to any third party for the payment of any broker's fee, finder's fee, commission or other similar compensation in connection with the transactions contemplated by this Agreement, and (b) Seller hereby represents and warrants to Buyer that, other than Catherine O'Brien of Marcus Millichap ("**Seller's Broker**"), Seller has not, and shall not, incur any obligation to any third party for the payment of any broker's fee, finder's fee, commission or other similar compensation in connection with the transactions contemplated by this Agreement. Subject to Bankruptcy Court approval, Seller shall pay, through Escrow at the Closing, the following commissions: Fifty-Four Thousand Five Hundred Dollars (\$54,500) to Seller's Broker; and Fifty-Four Thousand Five Hundred Dollars (\$54,500) to Buyer's Broker. No commission or compensation shall be due or payable by Seller to any brokers, including Seller's Broker and Buyer's Broker, in connection with this Agreement or the sale of the Property, unless the Escrow closes in accordance with this Agreement. Buyer shall indemnify and defend Seller against any claims by third parties for payments of a finder's fee, commission or other similar compensation in connection herewith if such third party claims that it represented Buyer in connection with the transaction under this Agreement. The provisions of this Section 9.2 shall survive the execution and delivery (or termination) of this Agreement and the Closing.

9.3 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, administrators and assigns, except that Buyer shall not assign its interests under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Seller. Notwithstanding the foregoing, Buyer shall have the right to assign its rights under this Agreement to (i) any entity controlling, controlled by or under common control (directly or indirectly) with Buyer which assumes Buyer's obligations hereunder in writing, provided Buyer shall not be relieved

Case 17-12560-KJC Doc 2012-2 Filed 06/19/18 Page 25 of 35  
from any liability or obligations under this Agreement as a result of such assignment; and (ii) a qualified intermediary in connection with a tax deferred exchange under Internal Revenue Code Section 1031 in accordance with Section 9.18 hereof.

9.4 Amendments. This Agreement may be amended or modified only by a written instrument executed by both Buyer and Seller.

9.5 Interpretation. Whenever used herein, the term “including” shall be deemed to be followed by the words “without limitation.” Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof

9.6 Governing Law. This Agreement shall be interpreted and enforced pursuant to the laws of the State of California and the United States of America including the Bankruptcy Code, Title 11, United States Code.

9.7 Venue. The Bankruptcy Court shall have sole and exclusive jurisdiction to interpret and enforce the terms of this Agreement and the Parties hereby consent and submit to such exclusive jurisdiction.

9.8 Merger of Prior Agreements. This Agreement, including the exhibits hereto, constitutes the entire agreement between the Parties with respect to the transaction contemplated hereby and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof.

9.9 Attorneys' Fees. If either Buyer or Seller brings any suit or other proceeding with respect to the subject matter or enforcement of this Agreement, the prevailing Party (as determined by the court, agency, or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation (including, without limitation, reasonable attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, costs incurred in establishing the right to indemnification, or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11, or 13 of the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes).

9.10 Time of the Essence. Time is of the essence of this Agreement.

9.11 Election of Remedies. Except as otherwise provided in this Agreement, no right or remedy conferred upon Buyer or Seller in this Agreement is intended to be exclusive of any other right or remedy contained herein or now or hereafter available to Buyer or Seller at law or in equity, and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy contained in this Agreement or now or hereafter available to Buyer or Seller at law or in equity.

9.12 Authority. The individuals signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

9.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. In order to expedite matters, electronic signatures may be used in place of original signatures on this Agreement. The Parties intend to be bound by the signatures on the electronic document, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature; provided, however, that the Parties hereby agree to execute and provide to each other original signatures, upon the request made by either Party to the other.

9.14 No Third Parties Benefited. This Agreement is made and entered into for the benefit of Seller and Buyer, their successors and permitted assigns, and no other person or entity shall have any rights hereunder.

9.15 Severability. The invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity of enforceability of any of the other provisions of this Agreement.

9.16 Exhibits and Schedules. The exhibits and schedules attached hereto are hereby incorporated by reference herein.

9.17 Multiple Parties. If more than one person or entity is named herein as either Buyer or Seller, the obligations of such multiple parties shall be the joint and several responsibility of all persons or entities named herein as such Buyer or Seller.

9.18 IRC Section 1031 Exchange Cooperation. Seller agrees to accommodate Buyer in effecting a tax-deferred exchange under Internal Revenue Code Section 1031. Buyer shall have the right, expressly reserved here, to elect a tax-deferred exchange at any time before the Closing Date; however, Seller and Buyer agree that the consummation of this Agreement is not predicated or conditioned on any such exchange by Buyer. If Buyer elects to effect a tax-deferred exchange, Seller agrees to execute additional escrow instructions, documents, agreements, or instruments to effect such exchange; provided, however, that Seller shall not be required to incur additional costs, expenses, or liabilities in this transaction as a result of or connected with an exchange by Buyer. Buyer agrees to hold Seller harmless from and against any and all claims, liabilities, losses, costs, damages and/or expenses (including, without limitation, reasonable attorneys' fees and expenses), that may arise from Buyer's participation in such an exchange.

9.19 Counting of Days. Unless expressly specified herein, any reference to "**days**" shall mean calendar days. As used in this Agreement, "**business day**" shall be deemed to be any day other than a Saturday, Sunday or other day upon which banks in the state of California shall be permitted or required to close. To the extent the last day for any act under this Agreement is not a business day, then the last day for such act shall be extended to the next business day.

9.20 Confidential. Buyer shall not disclose or permit to be disclosed to any third party, the terms or existence of this Agreement or the underlying transaction, any of the reports or any other documentation or information provided to or obtained by Buyer which relate to the

Case 17-12560-KJC Doc 2012-2 Filed 06/19/18 Page 27 of 35  
Property (including, without limitation, the Seller's Documents) (collectively, the "Confidential Information") in any way without Seller's prior written consent, which may be granted or withheld (i) in Seller's sole and absolute discretion prior to the Closing, or (ii) in Seller's reasonable discretion after the Closing. Notwithstanding the foregoing, Buyer shall have a right to disclose the Confidential Information: (i) to Buyer's lenders, accountants, employees, attorneys and other agents upon whom Buyer will rely upon or consult with in making acquisition decisions in connection with the transaction contemplated herein, provided that (A) such parties have been advised of the confidential nature of the same and Buyer shall be responsible for such parties' breach of the confidentiality restrictions set forth herein, and (B) all such Confidential Information shall be used by such parties solely in connection with the transaction contemplated hereby; and (ii) if obligated by law or legal process to make such disclosure, in which case Buyer shall provide Seller with written notice prior to any such disclosure. The provisions of this Section shall survive the termination of the Agreement for any reason.

9.21 Expiration of Counter-Offer. This Counter-Offer shall expire if not accepted by Buyer by delivering a copy hereof, fully signed and initialed by Buyer, to seller on or before close of business on the third (3<sup>rd</sup>) day following the date hereof.

*[Signature Page Follows]*

**“SELLER”:**

HAWTHORN INVESTMENTS, LLC,  
a California limited liability company

By:  \_\_\_\_\_  
Name: Frederick Chin  
Its: CEO

**AGREED AND ACCEPTED:**

**“BUYER”:**

SUNRISE WEST, LLC,  
a California limited liability company

By:  \_\_\_\_\_  
Name: Mehman Rahvarza  
Its: \_\_\_\_\_

**EXHIBIT A**

**Form Bill of Sale**

THIS BILL OF SALE is made, executed and dated as of this \_\_\_ day of \_\_\_\_\_, 2018, by HAWTHORN INVESTMENTS, LLC, a California limited liability company (“**Seller**”) for the benefit of SUNRISE WEST, LLC, a limited liability company (“**Buyer**”) pursuant to that certain Seller’s Counteroffer dated as of May \_\_\_, 2018 (the “**Purchase Agreement**”), by and between Buyer and Seller, for the purchase and sale of that certain real property located at 14112 Roscoe Boulevard, Panorama City, California (the “**Property**”).

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby grant, bargain, sell, convey, assign, transfer and set over unto Buyer all of Seller’s right, title and interest in and to the personal property located on and used exclusively in connection with the ownership and operation of the Property. The foregoing grant, bargain, sale, conveyance, assignment, transfer and setting over by Seller is on an as-is, where-is basis, without warranty or representation of any kind, whether expressed or implied.

Seller agrees to execute such other instruments as Buyer may reasonably request, from time to time, to carry out the intent and purposes hereof. This Bill of Sale shall be governed by and interpreted in accordance with the laws of the State of California. If any action or proceeding is commenced by either Buyer or Seller with respect to this Bill of Sale, the prevailing party in such action or proceeding shall be entitled to recover its costs and expenses incurred in such action or proceeding, including reasonable attorneys’ fees and costs. This instrument shall be binding upon, and inure to the benefit of Buyer and Seller and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first above written.

“**SELLER**”:

HAWTHORN INVESTMENTS, LLC,  
a California limited liability company

By:   
Name: Frederick Chin  
Title: CEO

**EXHIBIT B**

**Form Assignment of Leases**

THIS ASSIGNMENT OF LEASES (this “**Assignment**”), dated as of \_\_\_\_\_, 2018, is made and entered into by and between HAWTHORN INVESTMENTS, LLC, a California limited liability company (“**Assignor**”) and SUNRISE WEST, LLC, a California limited liability company (“**Assignee**”), with reference to the following facts:

A. Assignor, as seller, and Assignee, as buyer, have entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of May \_\_\_\_, 2018 (together with any supplements, addenda, and amendments thereto, collectively, the “**Purchase Agreement**”), pursuant to which Assignor agreed to sell and convey to Assignee, and Assignee agreed to purchase from Assignor, that certain real property located at 14112 Roscoe Boulevard, Panorama City, California (the “**Property**”). All capitalized terms used, but not defined, in this Assignment, shall have the meaning given to such terms in the Purchase Agreement.

B. Assignor is the landlord under those leases affecting the Property and described in **Exhibit A** attached hereto (collectively, the “**Leases**”).

C. Assignor desires to assign the Leases to Assignee, and Assignee desires to accept the assignment of the Leases, on the terms and conditions stated below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor’s right, title and interest in, to and under the Leases, except for Assignor’s right to rent and other amounts owing to Assignor under the Leases for the period prior to the date hereof.

2. Assignee hereby accepts the foregoing assignment and assumes all of the obligations of Assignor under the Leases arising from and after the Closing.

3. Assignor shall indemnify and hold Assignee harmless from and against any and all liability, loss, cost, damage and/or expense (including, without limitation, reasonable attorneys’ fees and costs) arising out of the lessor’s obligations under the Leases and accruing prior to the date hereof.

4. Assignee shall indemnify and hold Assignor harmless from and against any and all liability, loss, cost, damage and/or expense (including, without limitation, reasonable attorneys’ fees and expenses) arising out of the lessor’s obligations under the Leases and accruing from and after the date hereof.

5. Assignor and Assignee agree to execute such other instruments as the other party may reasonably request, from time to time, to carry out the intent and purposes hereof.

6. This instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

7. Case 17-12560-KJC, Doc 2012-2 Filed 06/19/18 Page 35 of 35  
This instrument may be executed in any number of counterparts by original, facsimile or electronic PDF signatures), each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Leases as of the date first above written.

**“ASSIGNOR”:**

HAWTHORN INVESTMENTS, LLC,  
a California limited liability company

By:   
Name: Frederick Chin  
Its: CEO

**“ASSIGNEE”:**

SUNRISE WEST, LLC,  
a California limited liability company

By:   
Name: Mehran Rahnama  
Its: \_\_\_\_\_

**List of Leases**

[To be inserted prior to Closing]

**EXHIBIT C**

**Form Assignment of Contracts**

**ASSIGNMENT CONTRACTS**

THIS ASSIGNMENT OF CONTRACTS (the "**Assignment**") is dated, entered into and effective as of \_\_\_\_\_, 2018 ("**Effective Date**"), by and between HAWTHORN INVESTMENTS, LLC, a California limited liability company ("**Assignor**") and SUNRISE WEST, LLC, a California limited liability company ("**Assignee**"), with reference to the following:

**RECITALS:**

A Concurrently with the delivery of this Assignment, Assignor has sold to Assignee and Assignee has purchased from Assignor, that certain real property located at 14112 Roscoe Boulevard, Panorama City, California (the "**Property**") pursuant to that certain Seller's Counteroffer dated May \_\_, 2018, as same may have been amended from time to time (the "**Purchase Agreement**"). All capitalized terms used, but not defined, in this Assignment shall have the meaning given to such terms in the Purchase Agreement.

B Pursuant to the Purchase Agreement, Assignor agreed to assign to Assignee certain Assigned Contracts, and Assignee agreed to assume the same.

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

1. Assignor hereby assigns to Assignee all of Assignor's right, title and interest in, under and to the contracts described in the attached **Exhibit A** (the "**Assigned Contracts**"). Assignee assumes all of Assignor's obligations under the Assigned Contracts.

3. In the event of any litigation between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonable attorneys' fees and costs.

4. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors-in-interest and assigns.

5. Assignor hereby covenants that it will, at any time and from time to time upon written request therefor, without the assumption of any additional liability thereby, execute and deliver to Assignee, its successors and assigns, any new or confirmatory instruments and take such further acts as Assignee may reasonably request to fully evidence the assignment contained herein.

6. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument, and may be executed by way of facsimile signatures.

**“ASSIGNOR”:**

HAWTHORN INVESTMENTS, LLC,  
a California limited liability company

By:   
Name: Frederick Chin  
Its: CEO

**“ASSIGNEE”:**

SUNRISE WEST, LLC,  
a California limited liability company

By:   
Name: Mehcan Kehravan  
Its: \_\_\_\_\_

**EXHIBIT A to Assignment of Contracts**

SERVICE CONTRACTS

[Attached hereto]

**EXHIBIT B**

**BROKER AGREEMENT**

o

o

gm

# Marcus & Millichap

## EXCLUSIVE REPRESENTATION AGREEMENT

**THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. PLEASE READ IT CAREFULLY.**

The undersigned ("Seller") hereby employs Marcus & Millichap Real Estate Investment Services ("Broker") and grants to Broker, for a period of time (the "Term") commencing on July 25, 2016, (unless sooner terminated by Seller upon thirty (30) days prior written notice) and ending at midnight on January 23, 2017, and subject to modification as set forth in paragraph 17 below, the exclusive and irrevocable right and authority to sell that certain real property (the "Property") located in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows:  
An Approximately 9,020 SF multifamily building consisting of 12 residential units situated on approximately 9,852 Sf of land with an address of 14112 Roscoe Blvd., Panorama City, CA and an APN of: 2212-020-014

If the Property described above consists of more than one separate legal parcel, Seller agrees to sell all or any combination of such parcels, and the term "Property" as used herein shall refer to any such combination.

1) **TERMS AND CONDITIONS OF SALE:** Seller agrees to accept an offer containing the following terms and conditions of sale:

a. **PURCHASE PRICE:** \$ 2,500,000 or any lesser amount acceptable to Seller.

2) **TITLE:** Seller represents and warrants to Broker that fee title to the Property is now vested as follows Crossbeam Investments, LLC and or assignee or Hawthorn Investments, LLC. Further that Seller and the individuals executing this Representation Agreement on behalf of Seller are duly authorized and empowered to execute this Representation Agreement and any subsequent purchase agreement accepted by seller, and that execution hereof shall not result in any breach of, or constitute a default under, any contract or other agreement to which Seller is a party.

3) **COMMISSION:** In consideration of the brokerage services to be rendered by Broker, Seller agrees to pay to Broker if, as, and only when title to the Property passes to such buyer procured during the Term, a commission equal to five percent (5%) of the purchase price of the Property (or total consideration paid or assumed by Buyer for the Property, whichever is higher) upon the occurrence of any of the following events:

- a. Broker procures a buyer during the Term, or any extension thereof, who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller; or
- b. The Property is sold, exchanged or otherwise conveyed during the Term, or any extension thereof, whether by Seller or by or through any other person or entity. If no purchase price is identified, the commission shall be calculated as a percentage of the exchange value of the Property; or
- c. The Property is withdrawn from the market or made unmarketable by Seller during the Term, or any extension thereof, or this Representation Agreement is revoked by Seller, or Seller otherwise prevents or precludes Brokers performance hereunder; or
- d. A sale, exchange or other conveyance of the Property is made within nine (9) months after the expiration of the Term to a person or entity with whom Broker has negotiated (either directly or through another broker or agent), or to whose attention Broker has brought the Property, or who was introduced to Seller by Broker as a prospective purchaser (herein, "Prospective Purchaser"), provided that the name of any such person or entity has either been submitted to Seller by delivery of a written offer to purchase or letter of intent, prior to expiration of the Term, or by delivery to Seller by Broker of written notice of said Prospective Purchaser(s) within ten (10) calendar days following such expiration. With respect to a sale, exchange or other conveyance to any such person or entity, Broker shall conclusively be deemed to be the procuring cause. The term "Prospective Purchaser" shall include that person or entity to whose attention Broker has brought the Property, as well as any partnership, joint venture, corporation, limited liability company, trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

CA Rep

1 of 7 SELLER'S INITIALS

*[Handwritten Signature]*

BROKER'S INITIALS

*[Handwritten Signature]*

CA - Copyright Marcus & Millichap 2016

Broker's entitlement to a commission vests on the day of closing. If, as, and only when title to the property passes to such buyer procured during the term and this Agreement shall constitute an irrevocable instruction to Escrow to pay the applicable commission out of funds deposited for the closing of the transaction, as an express condition of closing. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Broker shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. ~~Seller and Broker agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Broker only an amount equal to one-half of any damages or other monetary compensation (including liquidated damages) collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected. However, the amount due Broker shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.~~

e. If Seller is a partnership, joint venture, corporation, trust or other similar entity (collectively "Business Entity"), Seller acknowledges and agrees that any transfer, sale, exchange, or conveyance of any controlling interest in such Business Entity to any person or entity that is not a partner, member, manager, officer, director, or shareholder of the Business Entity shall constitute a transfer, sale, exchange, or conveyance of the Property, for which a commission shall become due and payable as set forth herein, based on the purchase price of the Property.

4) **BOOKS AND RECORDS:** Seller agrees to provide Agent with items a-k listed below within seven (7) calendar days following the start of the aforementioned listing period (unless otherwise specified herein):

- a. All rental agreements, leases, service contracts, insurance policies, latest tax bill(s) and other written agreements or notices which affect the Property.
- b. The operating statements of the Property for the twenty four (24) calendar months immediately preceding the aforementioned listing period.
- c. For commercial properties, Copies of whatever documents the Seller may have regarding the financial condition, business prospects or prospective continued occupancy of any tenant (including but not limited to financial statements, credit reports, etc.). This subparagraph shall not apply to apartment transactions.
- d. All notes and security instruments affecting the Property.
- e. All notes and current rent roll, including a schedule of all tenant deposits and fees.
- f. A written inventory of all items of Personal Property to be conveyed to Buyer and included as part of the purchase price at close of escrow.
- g. Seller shall procure and cause to be delivered to Agent a preliminary title report on the Property.
- h. A report paid for by Seller by NHD, a professional provider, containing the Natural Hazard Disclosures (as defined below) concerning the Property. "Natural Hazard Disclosures" shall mean whether the Property is located within: (1) Special Flood Hazard Area; (2) Dam Failure Inundation Area; (3) Earthquake Fault Zone; (4) Seismic Hazard Zone; (5) High Fire Severity Area; and/or (6) Wildland Fire Area. Seller represents and warrants that, unless otherwise noted by Seller to Buyer in writing, Seller is unaware of any inaccuracies in the Natural Hazard Disclosures.
- i. Any and all documents, of any type or nature, which in any way references the existence of mold or mold-related problems with the Property.
- j. Any and all documents, of any type or nature, which in any way references the existence of lead-based paint or lead-based paint problems with the Property.
- k. The following items, if readily available to Seller, as well as any pending litigation affecting the property: \*\*\*.

5) **INSPECTION OF PROPERTY:** Seller agrees that Broker and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective purchasers at all reasonable times.

6) **SELLER'S REPRESENTATIONS AND WARRANTIES:**

- a. **Material defects:** Seller represents and warrants that Seller knows of no material defects of the Property, including, but not limited to, energy conservation and/or safety retrofit(s) required by local ordinance as a condition of transfer. (Note any exceptions: \*\*\*).
- b. **Compliance with law:** Seller represents and warrants that, to the best of Seller's knowledge, the Property and all improvements thereon are in compliance with all applicable laws, codes, regulations and other similar governmental standards and requirements and that no material structural modifications or alterations of the improvements on the Property have been made without appropriate permits. (Note any exceptions: \*\*\*).
- c. **Legal units:** Seller represents and warrants that the Property has twelve (12) legal units. (This paragraph applies to apartment complexes and mobile home parks only.)
- d. **Special studies zone/flood zone:** Seller represents and warrants that: (i) the Property (select one "X") \*\*\* is x is not located within a delineated Special Studies Zone as defined by California law regarding the construction or development of real property in areas found subject to the detrimental effects of earthquakes; and (ii) the Property (select one "X") \*\*\* is x is not in a flood zone as set forth on H.U.D. "Special Flood Zone Area Maps."
- e. **Hazardous materials:** Seller represents and warrants that, to the best of Seller's knowledge, the Property is not contaminated with any hazardous materials, including, but not limited to, asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks. (Note any exceptions: \*\*\*).

CA Rep

2 of 7 SELLER'S INITIALS

BROKER'S INITIALS

CA - Copyright Marcus & Millichap 2016

- f. **Lead-based paint hazards:** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 must be notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards. (SELLER TO CHECK ONE OF THE FOLLOWING AND INITIAL):

**SELLER'S DISCLOSURE**

Seller has provided the Agent with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

\*\*\*

Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

SELLER'S INITIALS RP

- g. **Mandatory Title 24 Lighting Requirements:** California's new Building Energy Efficiency Standards (Title 24, part 6), which took effect on July 1, 2014, established higher standards for improving energy efficiency in both residential and non-residential California real estate. Seller acknowledges and agrees that it is aware of and familiar with the standards and agrees to advise prospective purchasers of the mandatory Title 24 lighting requirements. For more information, see <http://www.energy.ca.gov/Title24/2013standards/>.
- h. **Records, financial data and marketing assistance:** Seller agrees to furnish, to certify as true and correct, and to make available to Broker and prospective buyers all financial data, rent statements, leases and other operating records of the Property, and to provide Broker with such assistance as Broker may reasonably request in marketing the Property. Seller agrees to refer promptly to Agent all inquiries of anyone interested in the Property.
- i. **Option to purchase/Right of First Refusal:** No person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement. (Note any exceptions: \*\*\*).
- j. **Indemnification:** Seller agrees to indemnify and hold Broker harmless from any and all liability, damages, losses, causes of action, or other claims (including attorneys' fees and other defense costs) arising from or asserted in connection with any incomplete or inaccurate information provided by Seller, or any material information concerning the Property which Seller has failed to disclose. Broker agrees to indemnify, and hold Seller harmless from any and all liability, damages, losses, causes of action, or other claims arising from or asserted in connection with any incomplete or inaccurate information provided by Broker.

7) **DISCLOSURE OF REAL ESTATE LICENSURE:**

\*\*\*

- 7a.  License disclosure
- 7b.  License disclosure

- 8) **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Broker shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Broker shall not, however, have authority to bind Seller to any contract or purchase agreement. Broker shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.
- 9) **LIMITATION OF LIABILITY:** Except for Broker's gross negligence or willful misconduct, Broker's liability for any breach or negligence in its performance of this Agreement shall be limited to the greater of \$50,000 or the amount of compensation actually received by Agent in any transaction hereunder.
- 10) **AFFILIATED BROKERS/DUAL AGENCY:** Broker is affiliated with other brokerage companies in other states. Broker shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes both Broker and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such dual representation.

CA Rep

3 of 7 SELLER'S INITIALS

RP

BROKER'S INITIALS

Co

CA - Copyright Marcus & Millichap 2016

11) **BROKER COOPERATION:** Broker is authorized to use its discretion whether to cooperate with other duly licensed real estate brokers. The sharing of commissions received by Broker with other brokers shall be at the sole and absolute discretion of Broker, and by separate agreement between Broker and any cooperating broker. Seller agrees that, in the event any broker other than Broker or a broker affiliated with Broker is involved in the disposition of the property, Broker shall have no liability to Seller for the acts or omissions of such other broker, who shall not be deemed to be a subagent of Broker.

12) **ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL:** All disputes arising between the Parties with respect to the subject matter of this Representation Agreement (including but not limited to the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

The arbitration will proceed in the county where Broker's office is located and be conducted by ADR Services, Inc. ("ADR"), or such other administrator as the parties shall mutually agree upon, in accordance with ADR's arbitration rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories; one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

**NOTICE:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

~~SELLER'S INITIALS~~ \_\_\_\_\_ ~~BROKER'S INITIALS~~ \_\_\_\_\_

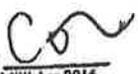
13) **ATTORNEYS' FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

14) **TAX WITHHOLDING:** Seller agrees to execute and deliver any instrument, affidavit or statement, or to perform any act reasonably necessary to carry out the provisions of the Foreign Investment in Real Property Tax Act and regulations promulgated thereunder.

15) **ADDENDA:** Any addendum attached hereto, and either signed or initialed by the parties shall be deemed a part hereof. This Agreement, including addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any future modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

16) **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CA Rep

4 of 7 SELLER'S INITIALS  BROKER'S INITIALS   
CA - Copyright Marcus & Millichap 2016

17) **Modification OF TERM:** Seller, at its sole discretion, shall have the unilateral right to terminate this Agreement upon 30 days prior written notice to Broker, at which date this Agreement shall be cancelled, void, and of no further effect, if an agreement or letter of intent for the sale of the Property is executed by all necessary parties, and/or an escrow is opened, and if said agreement or letter of intent is revoked, rescinded or otherwise terminated, and/or the escrow account is subsequently canceled, the Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect or the escrow was open, whichever is longer. The maximum extension permitted hereunder shall be the number of days remaining on the Term from the date the sale agreement or letter of intent was executed, or an escrow opened, whichever event occurred earlier. Notwithstanding the foregoing, this Representation Agreement shall expire in all cases no later than nine (9) months after the original termination date stated above. The purpose of this extension provision is to allow Broker the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement.

18) **OTHER TERMS AND CONDITIONS:**

\*\*\*\*

SELLER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL OR TAX ADVICE, AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM SELLER'S ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL

The undersigned Seller and Broker agree to the terms and conditions set forth in this Representation Agreement, and Seller acknowledges receipt of an executed copy hereof.

SELLER'S SIGNATURE (PRIMARY):

*[Handwritten Signature]*

ADDRESS:

\_\_\_\_\_

DATE:

\_\_\_\_\_

TELEPHONE:

*ON file*

SELLER'S SIGNATURE (SECONDARY):

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

DATE:

\_\_\_\_\_

TELEPHONE:

\_\_\_\_\_

BROKER: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES

BROKER'S SIGNATURE:

*[Handwritten Signature]*

ADDRESS:

*Encino, CA*

LICENSE NO.

*01203805*

DATE:

*7/21/16*

TELEPHONE:

*818 212 2758*

CA Rep

5 of 7 SELLER'S INITIALS

*[Handwritten Initials]*

BROKER'S INITIALS  
CA - Copyright Marcus & Millichap 2016

*[Handwritten Initials]*

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS**  
(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

**SELLER'S AGENT**

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**BUYER'S AGENT**

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**AGENT REPRESENTING BOTH SELLER AND BUYER**

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections. In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

SIGNED:

[Signature]  
AGENT'S SIGNATURE

7/22/14  
(date)

\_\_\_\_\_  
BUYER/SELLER SIGNATURE (PRIMARY) (date)

61203585  
ASSOCIATE LICENSEE/BROKER

7/22/14  
(date)

\_\_\_\_\_  
BUYER/SELLER SIGNATURE (SECONDARY) (date)

[Signature]

[Signature]

Civil Code Sections 2079.13 through 2079.34

Section 2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2195) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensee who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendor or lessee. (d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 701 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 1031.4 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing of an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2083, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (n) "Selling agent" means a listing agent who acts alone, or as an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 3 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

Section 2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (e), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

Section 2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

Section 2079.16. This disclosure appears on Page 1.

Section 2079.17. (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

NAME OF LISTING AGENT is the agent of (check one):  the seller exclusively; or  both the buyer and seller.  
NAME OF SELLING AGENT IF NOT THE SAME AS THE LISTING AGENT is the agent of (check one):  the buyer exclusively; or  the seller exclusively; or  both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosures required by Section 2079.14.

Section 2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

Section 2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

Section 2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

Section 2079.21. A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

Section 2079.22. Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

Section 2079.23. A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

Section 2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.