

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

9 HOUSTON LLC,

DEBTOR.

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§
§

CASE NO.: 17-35614

CHAPTER 11

EMERGENCY MOTION TO SELL APPROXIMATELY 3.378 ACRES OF LAND
LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS

Pursuant to Local Rule 9013:

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQEUSTED RELIEF OR IF YOU BELIEVE THAT EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

9 Houston, LLC (“**Debtor**”), files this *Emergency Motion to Sell Approximately 3.378 Acres of Land Located in Houston, Harris County, Texas, Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (“**Motion**”). In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This motion involves a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This Court has constitutional authority to enter a final order regarding this Motion. 11 U.S.C. §§ 363(b) and (f) have no equivalent in state law, thereby rendering the Supreme Court's opinion in *Stern v. Marshall* inapplicable. See *In re Carlew*, 469 B.R. 666, 672 (Bankr. S.D. Tex. 2012) (discussing *See Stern v. Marshall*, 564 U.S. 462 (2011)). In the alternative, the sale of property of a bankruptcy estate free and clear of liens, claims, and interests is an essential bankruptcy matter, triggering the "public rights" exception. See *Id.*

RELEVANT FACTUAL BACKGROUND

4. On September 30, 2017, Debtor filed a voluntary petition for protection under chapter 11 of the Bankruptcy Code. This initiated the above-captioned bankruptcy estate, creating its respective bankruptcy estate (the "**Estate**").
5. The Estate owns real property located 1317 Post Oak Park Drive, Houston, TX 77027. The Real Property consists of a 5.3968-acre site that was formerly improved as a multi-family residential project that has since been demolished. Of the 5.3968-acre site, the Debtor seeks to sell 3.378 acres of land (the "**Property**").
6. The Debtor is subject to the Bankruptcy Code's single asset real estate rules.¹ The Debtor continues to operate its business and to manage its Estate as a debtor-in-possession. No

¹ The Bankruptcy Code defines the term single asset real estate as, among other things, real property constituting a single property. 11 U.S.C. § 101(51B).

trustee or examiner has been appointed. No official committee of unsecured creditors has been appointed.

7. The Debtor's Schedule D indicates that the Property is encumbered by a secured claim in favor of CC3 Post Oak Park Holdings, LLC ("**CC3**") in the amount of \$17,474,382.16. CC3 posted the property for foreclosure prepetition. The Debtor also owes property taxes to Harris County in the amount of \$494,448.96 for tax years 2015 and 2016. The total amount of secured debt, not including 2017 real property taxes, totals approximately \$17,968,831.12.

8. The Debtor's Schedule F debt totals \$685,325.25. The total debt scheduled by the Debtor is \$18,654,156.37. For months, the Debtor has sought a solution that will result in payment to creditors. The Debtor, subject to Court approval, has found a potential purchaser for a portion of the Property.

9. On November 6, 2017, the Debtor filed an Application to Employ ("**Employment Application**") Jones Lang LaSalle Brokerage, Inc. ("**JLL**") as the real estate brokerage firm and Simmi Jaggi ("**Jaggi**") as the listing agent to assist the Debtor in marketing and selling the Property. The proposed employment order provides that the Debtor will pay the Broker a 2% commission on closing the sale of the Property at closing from the proceeds of the sale of the Property.

10. Jaggi, the proposed listing agent, has shown the Property to various prospective buyers. Martin Fein Interests, Ltd. ("**Purchaser**"), an independent purchaser with no relationship to the Debtor, made an offer to purchase an undivided interest in the Property, consisting of approximately 3.378 acres of land ("**Land**") with a purchase price of \$19,865,000.00, which equates to \$135 per square foot multiplied times the gross area of the land stated in square feet as determined and certified by a survey. The proposed Purchase and Sale Agreement ("**Purchase Agreement**") requires the Purchaser to pay \$150,000 earnest money deposit within three (3) days of execution of the Purchase Agreement, and an additional earnest money deposit of \$150,000 on or before the

expiration of the due diligence period. The due diligence period shall begin on the date of a final order on this motion to sell, and ending on the ninetieth day thereafter. Closing on the Land will occur not less than thirty days after the expiration of the due diligence period, provided, however, that the Purchaser may at its option extend the closing date for up to two periods of thirty days each. Closing will occur no later than 180 days after the date of a final sale order. A copy of the Executed Purchase Agreement is attached as **Exhibit A**.

11. The sale of the Land allows the Debtor to retain approximately two (2) acres of the Property. The sale of the Land is in the best interest of the bankruptcy estate because it allows for the payment of all ad valorem property taxes and a substantial portion of the secured debt. This sale allows the Debtor flexibility it needs to refinance the remaining land to pay the remaining portion of the secured debt and unsecured creditors. Indeed, simultaneously at the closing of this sale, the Debtor intends to close the refinancing of the remaining land and use those funds to pay creditors.

12. As stated previously, the total sales price is \$19,864,666.80. The distribution of sales proceeds will occur in the following “waterfall” distribution:

- a. Estimated title fee and closing costs: \$74,689.66;
- b. Broker’s commission: \$397,293.34;
- c. Estimated Ad Valorem taxes (2015, 2016, 2017, and 6 months proration for 2018) \$1,512,914.07;
- d. CC3 Post Oak Park Holdings, LLC (the “**Lender**”) or its assigns: \$17,879,769.73.

13. As of August 23, 2017, the payoff provided to the Debtor by the Lender totals \$17,190,739.24, with \$15,923,912.64 of that amount being the principal balance. However, the Debtor has not received a post-petition payoff quote from the Lender and the Lender has not filed a proof of claim. It is possible that the Lender will assert a claim for post-petition interest and attorneys’ fees, and that such additional fees and expenses may exceed \$17,879,769.73. Nevertheless, the payoff to the Lender will exceed its principal balance, and to the extent there is a

deficiency, such deficiency will attach to the remaining parcel of land and repaid when the Debtor refinances that property.

14. The Purchase Agreement was negotiated and proposed in good faith, the purchaser is proceeding in good faith, and the sale is an arms-length transaction.

RELIEF REQUESTED

15. The Debtor respectfully requests entry of an order (i) authorizing the Debtor to sell the Land to Purchaser on the terms and conditions set forth in the Purchase Agreement; (ii) authorizing Charter Title Company (“**Closing Agent**”) to disburse proceeds from the sale of the Property, to pay Broker’s 2% commission, property taxes, and closing costs at closing or promptly thereafter, with any other liens attaching to the net proceeds subject to further order of the Court.

16. Section 363(b) of the Bankruptcy Code provides that a debtor-in-possession “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

17. A sale of estate property outside the ordinary course of business is proper, but the debtor-in-possession must articulate a sound business reason for the sale and show that the sale is in the best interest of the estate (i.e. that it is fair and reasonable), that the sale has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that the sale is an arms-length transaction. *See, e.g., In re Continental Airlines, Inc.*, 780 F.2d 1223, 1225 (5th Cir. 1986). The business justification for a sale must be considered on a case-by-case basis. *Id.* at 1226. In evaluating such a sale, the Court must balance the need for flexibility with the concerns of affected creditors. *In re Terrace Gardens Park Partnership*, 96 B.R. 707, 715 (Bankr. W.D. Tex. 1989).

18. The Debtor submits that the proposed sale is in the best interest of the Estate because the proposed purchase price of \$19,865,000.00 for the Land is at market-value. It will generate significant funds to resolve the existing secured debt, and fully satisfy existing tax liens and will, in addition, provide the opportunity for the Debtor to refinance the remaining parcel of land that will

provide funds to the Debtor to satisfy existing claims. Moreover, this purchaser is ideal because it offers a cash deal and does not require the purchaser to obtain independent financing.

19. The Debtor proposes to sell the Property to the Purchaser free and clear of liens, claims, encumbrances, and other interests, pursuant to § 363(f) of the Bankruptcy Code. Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity 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) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

20. The proposed sale meets these criteria. The Debtor seeks to sell the property free and clear of the Lender's lien referenced below because the Debtor seeks to sell the Property free and clear of the Lender's lien to the extent it is not paid in full at closing. The Lender's interest is in bona fide dispute because post-petition interest and attorneys' fees remain unliquidated. The Lender's deed of trust and relevant assignments and modifications were filed in the Harris County real property records. The deed of trust has File Number 20140356728. The assignments and modifications have the following file numbers: 20140356729, 20140356730, RP-2016-390618, and RP-2017-112384.

21. The Lender will be adequately protected, because there is a substantial equity on the remaining parcel of land after the payoff of the secured lender. The Debtor intends to pay off the Lender's lien (to the extent there is a balance), and other unsecured creditors, using the remaining parcel of land as collateral.

22. The Debtor further seeks a finding that Purchaser is a buyer in good faith pursuant to § 363(m).

23. The Debtor further requests authority to make certain disbursements of proceeds from the sale of the Property at closing. Specifically, the Debtor seeks authority to disburse proceeds from the sale of the Property at closing or reasonably promptly thereafter to pay: (a) the Broker's 2% commission, (b) the secured lien of CC3 Post Oak Park Holdings, LLC (or its assigns); (c) ad valorem taxes assessed on the Property, to the extent necessary, and (d) any closing costs and related charges necessary to close a sale of the Property.

24. Emergency consideration is necessary because the due diligence period begins after an order approving this sale becomes a final order. The sooner this occurs, the sooner the sale will close and a plan can be funded.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, substantially in the form attached hereto, granting this Motion and: (i) approving the Executed Purchase Agreement and authorizing the Debtor to sell the Land to Purchaser on the terms and conditions set forth in the Contract; (ii) authorizing the Debtor to enter into the Executed Purchase Agreement with the Purchaser; and (iii) authorizing the Closing Agent to disburse the closing proceeds as set forth above at closing. The Debtor also requests such other and further relief to which he may be justly entitled.

Dated: November 27, 2017

Respectfully Submitted,

By: /s/ Jarrod Martin
Jarrod Martin
Texas Bar No. 24070221
jmartin@nathansommers.com

Nathan Sommers Jacobs,
A Professional Corporation
2800 Post Oak Blvd. 61st Floor

Houston, TX 77056
(713) 960-0303 (main)
(713)892-4800 (fax)

ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

The undersigned certifies that on November 27, 2017, a true and correct copy of the foregoing *Motion* was served electronically on all parties registered to receive electronic notice of filings in this case via this Court's ECF notification system. The undersigned further certifies that the foregoing *Motion* was served upon all parties listed below and on the attached Service List by no later than the next day after the filing of this Notice in accordance with Bankruptcy Local Rule 9013-1(f).

Attorney for Buyer:

Lee D. Schlanger
Schlanger Silver Barg & Paine, LLP
109 N. Post Oak Lane, Ste 300
Houston, TX 77024-7755

/s/ Jarrod B. Martin _____

Jarrod B. Martin



**PURCHASE AND SALE AGREEMENT
BY AND BETWEEN
9 HOUSTON LLC (“SELLER”)
AND
MARTIN FEIN INTERESTS, LTD. (“PURCHASER”)**

1. **PROPERTY/PURCHASE PRICE.**

1.1. Basic Terms

(a) Seller and Notice Address:

9 Houston LLC
212 West Ironwood, Suite D
PMB 304
Coeur d’Alene, Idaho 83814
Telephone: 248.961.8998
Email: dschmidt@asenyadevelopment.com

Seller Counsel:

Marvin D. Nathan, Esq.
Nathan Sommers Jacobs
2800 Post Oak Blvd., 61st Floor
Houston, Texas 77056
Telephone: 713.892.4833
Email: mnathan@nathansommers.com

(b) Purchaser and Notice Address:

Martin Fein Interests, Ltd.
1400 Post Oak Blvd., Suite 500
Houston, Texas 77056
Attention: Martin Fein
Telephone: 713.683.4820
Email: Martin Fein/martin@mfein.com,
Daniel Fein/daniel@mfein.com, and
Timm Wooten/twooten@mfein.com

Lee D. Schlanger, Esq.
Schlanger, Silver, Barg & Paine, LLP
109 N. Post Oak Lane, Suite 300
Houston, Texas 77024
Telephone: 713.785.1700
Email: lschlanger@ssbplaw.com

(c) Title Company and Escrow Agent:

Charter Title Company
609 Main Street, Suite 4325
Houston, Texas 77002
Attention: Garry Carr
Telephone: 713.331.3070
Email: gcarr@chartertitle.com

(d) Date of this Agreement:

The latest date of execution by Seller or Purchaser, as shown on the signature pages hereto.

- (e) Purchase Price: \$19,865,000.00. The Purchase Price for the Property shall be the product of (i) \$135.00 per square foot multiplied times (ii) the Gross Area (as defined below) of the Land stated in square feet as determined and certified by the Updated Survey.
- (f) Independent Consideration: \$100.00.
- (g) Earnest Money: Initial Deposit - \$150,000.00
Additional Deposit - \$150,000.00
(the Initial Deposit and the Additional Deposit collectively, the "Earnest Money").
- (h) Due Diligence Period: The period beginning on the date of a Final Sale Order and ending on the ninetieth (90th) day thereafter.
- (i) Closing Date: Not later than thirty (30) days after the expiration of the Due Diligence Period provided Purchaser may at its option extend the Closing Date for up to two (2) periods of thirty (30) days each.
- (j) Final Sale Order:

1.1 Final Sale Order. Duly signed and entered sale order of the Bankruptcy Court, which has not been stayed by a subsequent order of a court of competent jurisdiction, approving the sale of the Property to Purchaser, under the terms set forth in this Agreement, free and clear of all liens, claims and encumbrances of any kind pursuant to 11 U.S.C. § 363(f).

1.2. Property. Subject to the terms of this Purchase and Sale Agreement (this "Agreement"), Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller approximately 3.378 acres of land (the "Land") located in Houston, Harris County, Texas, more fully described on Exhibit A attached hereto and made a part hereof by this reference, together with of the all appurtenances, easements, and rights-of-way thereunto belonging or in anywise appertaining and all of Seller's rights in and to any causes of action for existing damage to the Land caused by third parties (the "Property"), and subject to all covenants, restrictions, reservations, and easements described on the final Title Commitment (hereinafter defined) (the "Permitted Exceptions"). The Property is a part of the land located in Houston, Harris County, Texas, owned by Seller and described in Exhibit A-1 attached hereto and incorporated herein (the "Seller Property"); the Seller Property, less and except the Property, is hereinafter referred to as the "Adjacent Property"). The Property and Adjacent Property are depicted on Exhibit A-2 attached hereto and incorporated herein.

1.3. Earnest Money. Within three (3) business days after receipt of a fully executed copy of this Agreement, Purchaser shall deliver the Initial Deposit of the Earnest Money to the Title Company. This Agreement shall not be valid and enforceable unless the Initial Earnest Money is timely deposited by Purchaser and the failure of Purchaser to timely deposit the Initial Earnest Money in accordance with this Section 1.3 shall automatically terminate this Agreement. Unless Purchaser shall have sooner terminated this Agreement, Purchaser shall deliver the Additional Deposit of the Earnest Money to the Title Company on or before the expiration of the Due Diligence Period, whereupon the total Earnest Money shall not be refundable to Purchaser except as otherwise expressly stated herein. If Purchaser fails to timely deliver the Additional Deposit of Earnest Money to the Title Company in accordance with this Section 1.3, such failure shall automatically terminate this Agreement, the Initial Deposit of the Earnest Money shall be disbursed by the Title Company to Seller, and neither Seller nor Purchaser shall have any rights or obligations hereunder except for those rights and obligations which expressly survive the termination of this Agreement. The Earnest Money shall be applied to the Purchase Price at Closing. If this Agreement terminates pursuant to any express right of Purchaser to terminate this Agreement, the Earnest Money shall be refunded to Purchaser promptly upon request, and all further rights and obligations of the parties under this Agreement shall terminate except as otherwise expressly stated herein. The Earnest Money shall be held and disbursed by the Title Company pursuant to Article 9 of this Agreement.

1.4. Independent Consideration. Notwithstanding anything in this Agreement to the contrary, \$100.00 of the Earnest Money (the "Independent Consideration") shall be paid to Seller upon any termination of this Agreement, it being the intent of the parties that the Independent Consideration is independent of any other consideration provided under this Agreement, shall be fully earned by Seller upon the Date of this Agreement, and is not refundable to Purchaser under any circumstances. Accordingly, and notwithstanding anything else in this Agreement to the contrary, if this Agreement is terminated pursuant to a right of termination in this Agreement and such provision calls for the Earnest Money to be returned to Purchaser, such provision shall be deemed to read "the Earnest Money, less the Independent Consideration, which Independent Consideration shall be released to Seller, and the balance of the Earnest Money shall be returned to Purchaser."

2. INSPECTIONS.

2.1. Property Information. Within three (3) days after the Date of this Agreement, Seller shall make available to Purchaser (the "Delivery Date"), to the extent in Seller's possession or reasonably available to Seller, if any, true, correct and complete (in all material respects) a copy of the information pertaining to the Property which is listed in Exhibit C attached hereto and made a part hereof for all purposes ("Property Information"). Purchaser acknowledges that Purchaser will rely upon its own investigations, inspections, studies, tests, and assessments of the Property, and Purchaser will not rely upon any Property Information that Seller shall make available to Purchaser hereunder.

2.2. Confidentiality. The Property Information and all other information, other than matters of public record or matters generally known to the public, furnished to or obtained through inspection of the Property by Purchaser or its affiliates, prospective lenders, lenders, employees, prospective investors, investors, attorneys, accountants and other professionals or agents, will be treated by Purchaser and its affiliates, lenders, prospective investors, employees and agents as confidential and will not be disclosed to anyone other than to Purchaser's consultants who agree to maintain the confidentiality of such information, and will be returned to Seller by Purchaser if the Closing does not occur. The confidentiality provisions of this Section 2.2 shall not apply to any disclosures made by Purchaser as required by law, by court order or in connection with any subpoena served upon Purchaser; provided Purchaser shall provide Seller with written notice before making any such disclosure. The provisions of this Section 2.2 shall survive the expiration or termination of this Agreement, but shall terminate upon Closing.

2.3. Inspections in General. After Purchaser delivers the Earnest Money to the Title Company and during business hours upon not less than twenty-four (24) hours notice, Purchaser and its agents, employees, and representatives shall have a continuing right of reasonable access to the Property during the pendency of this Agreement for the purpose of conducting surveys, engineering, geotechnical, and environmental inspections and tests, and any other inspections, studies, or tests reasonably required by Purchaser (all of the foregoing being collectively hereinafter referred to as the "Permitted Investigations") which notice shall include the identity of each person accessing the Property. Such access shall be at Purchaser's sole cost, expense, and risk. Such Permitted Investigations shall in no event include the installation of monitoring wells, soil borings, trenches, and the collecting, testing or sampling of (for purposes of example, not limitation), soil, surface water and groundwater unless the same are performed by a consultant qualified and licensed to perform such Permitted Investigations and approved in advance by Seller, which approval shall not be unreasonably withheld. Upon the completion of the Permitted Investigations, Purchaser, at its expense, shall promptly repair any damage resulting from or occurring in connection therewith, whether or not such damage results from a breach of Purchaser's obligations under this Agreement. Purchaser shall permit Seller, at Seller's sole cost and expense, to have one or more of its own representatives present at the Property during any Permitted Investigations. In the course of its investigations, Purchaser may make inquiries to third parties including, without limitation, lenders, contractors, and municipal, local, and other government officials and representatives. The obligations of the Purchaser under this section shall survive the termination of this Agreement for a period of two (2) years and one (1) day thereafter, but shall terminate upon Closing.

All tests and inspections of the Property shall be conducted in a good and workmanlike manner and in conformance with all applicable governmental and industry standards and all such inspections must be performed by qualified and duly licensed contractors (all of the foregoing being collectively hereinafter referred to as the "Purchaser's Contractors"). Purchaser shall furnish to Seller prior to the commencement of each test or inspection which Purchaser desires to conduct on the Property (a) a list of Purchaser's Contractors who will conduct such test or inspection, (b) a description of the work which each such contractor will perform at or about the Property with respect to such test or inspection, and (c) certificates of insurance from each such

contractor evidencing that such contractor is covered, at a minimum, for the following insurance: (i) workers' compensation insurance in an amount no less than the applicable statutory limits, to include all areas involved in operations and activities under this Agreement, and employer's liability insurance in an amount no less than \$1,000,000 per accident/\$1,000,000 per employee for disease/\$1,000,000 policy limit for disease; (ii) commercial automobile liability insurance in an amount no less than \$1,000,000 combined single limit for bodily injury and property damage for each accident for all owned, non-owned, or hired vehicles; (iii) commercial general liability insurance in an amount no less than \$1,000,000 combined single limit for bodily injury and property damage in an amount no less than \$2,000,000 aggregate specific to the Property and with limits of no less than \$1,000,000 per occurrence for personal injury and contractual liability and \$2,000,000 aggregate for products/completed operations; (iv) in the case of Purchaser only, umbrella commercial excess liability insurance in an amount no less than \$1,000,000 per occurrence; (v) pollution coverage in an amount no less than \$1,000,000 per claim and no less than \$2,000,000 aggregate (provided that pollution coverage need not be maintained by Purchaser's land surveyor); and (vi) in the case of consultants only, professional liability insurance with no exclusions for environmental consulting and remediation liabilities in amounts customarily maintained by consultants such as Terracon and Cirrus. Each policy of insurance shall (a) name Seller as additional insured (for commercial general liability, additional insured including completed operations) and alternate employer for workers compensation/employer's liability, as may be applicable; (b) state that such policy is primary and noncontributing with any insurance carried by Seller; (c) contain a provision that the naming of the additional insured shall not negate any right the additional insured would have had as a claimant under the policy if not so named; and (d) contain severability of interest clauses. No liability insurance policies shall contain cross liability exclusions, and all policies must contain a waiver of subrogation. ACORD Form 25 Certificates of Insurance (or other applicable form in the case of professional liability insurance) and all endorsements specified above evidencing the above insurance coverage shall be delivered to Seller at least twenty-four (24) hours prior to Purchaser's or Purchaser's Contractors' entry on the Property and such delivery shall be a condition precedent to the access rights granted Purchaser pursuant to this Section 2.3. Each liability insurance policy shall be issued on occurrence forms except for professional and pollution liability policies. Purchaser's commercial general liability insurance shall be endorsed to include contractual indemnity liability coverage with respect to Purchaser's indemnity obligations under this Agreement. The certificate shall expressly provide that no less than thirty (30) days' prior written notice shall be given Seller in the event of any material alteration to or cancellation or non-renewal of the coverages evidenced by said certificate, and a renewal certificate for each of the policies required in this Section 2.3 shall be delivered to Seller not less than thirty (30) days prior to the expiration date of the term of such policy. Purchaser agrees that if Seller or Purchaser terminates this Agreement as set forth in this Agreement, Purchaser will restore the Property to substantially the same condition which existed prior to any inspections or other activities of Purchaser thereon; be responsible for and pay or bond around any and all liens by contractors, subcontractors, materialmen, or laborers performing the inspections or any other work for Purchaser on or related to the Property; and pay and/or reimburse Seller for the payment of any actual out-of-pocket expenses (including reasonable attorneys' fees and court costs) incurred by Seller in enforcing the payment and/or performance of Purchaser's obligation herein above.

Purchaser and Purchaser's Contractors and their respective employees and agents shall enter on the Property solely at their own risk, and Seller shall not be liable in any way for any damages or injuries suffered by such parties except to the extent of any property damage or bodily injury caused by the gross negligence or willful misconduct of Seller and Seller's employees. Purchaser shall and does hereby agree to indemnify, defend and hold harmless Seller and Seller's members, managers, officers, and employees (all of the foregoing being collectively hereinafter referred to as the "Seller Related Parties") from claims, demands, suits, causes of action, obligations, payments, damages, losses, penalties, fines, liabilities, costs and expenses (including, without limitation, reasonable attorneys' and expert witness fees and costs of litigation) that may be made or asserted by any third party (including, without limitation, all representatives, agents, subcontractors, contractors, consultants or employees of Purchaser or Purchaser's Contractors), a tenant or occupant of the Property or governmental agency that are caused by, arise from or related to Purchaser's or Purchaser's Contractors' entry into or presence on the Property, but excluding therefrom any such indemnification obligation on the part of Purchaser that results from the gross negligence or willful misconduct of Seller or any of the Seller Related Parties, or the discovery of any existing Property condition or diminution of value related thereto. Purchaser and Purchaser's Contractors shall not engage in any activity or conduct on, at, or about the Property which materially disrupts or interferes with the use thereof by Seller or any tenant or occupant of the Seller Property, or otherwise causes or creates a nuisance or other material disturbance.

The provisions of this Section 2.3 shall survive Closing and any termination of this Agreement for a period of two (2) years and one (1) day thereafter, as applicable, and shall not be deemed to be merged into or waived by the instruments of Closing. The rights of Purchaser to enter on and inspect the Property shall cease upon the termination of this Agreement.

2.4. Developmental Approvals. "Development Approvals" as used in this Agreement shall mean site plan, platting and other applicable development approvals or permits required in connection with the development and construction of Purchaser's or its affiliates' proposed project from all applicable private and governmental authorities including public and private utility providers (collectively, "Governmental Authorities"), including without limitation any approvals required under any declaration of covenants, conditions and restrictions affecting the Property. During pendency of this Agreement, Seller agrees to reasonably cooperate with Purchaser, without expense or other liability to Seller, to enable Purchaser to apply for and obtain all Development Approvals. Seller shall execute all documents reasonably required by Governmental Authorities for the development approval process including the appointment of Purchaser as its agent or nominee to obtain any Development Approvals, including without limitation, Development Approvals in connection with a mid-rise multi-family project (the "Purchaser's Improvements"), so long as same does not materially and adversely impair or diminish the use and/or value of Seller's Property. Seller or its representative shall appear at public hearings, city staff meetings, or other meetings related to the approval of Purchaser's application(s) as may be reasonably requested by Purchaser. Purchaser shall promptly deliver to Seller a copy of all applications made by Purchaser for any such Development Approvals.

2.5. Termination of Development Approvals. Notwithstanding anything contained herein to the contrary, if (i) any Development Approvals are placed against or filed upon the Property prior to the date that Purchaser purchases the Property from Seller, and (ii) this Agreement is terminated, then Purchaser shall cause any Development Approvals that are unacceptable to Seller to be promptly, using commercially reasonable efforts, released from the Property at Purchaser's sole cost and expense after receipt of the Seller Development Approvals Termination Notice (hereinafter defined). In the event this Agreement is terminated, Purchaser shall provide written notice to Seller of all Development Approvals that were placed against or filed upon the Property on or before thirty (30) days after such termination and Purchaser shall cease to have any right or privilege to act as Seller's agent or nominee under Section 2.3 above. Seller shall provide written notice to Purchaser if any the Development Approvals are unacceptable to Seller on or before thirty (30) days after Seller's receipt of such written notice from Purchaser (the "Seller Development Approvals Termination Notice"). In order to secure Purchaser's obligation to release any such Development Approvals that are unacceptable to Seller, the Title Company shall withhold a portion of the Earnest Money to which Purchaser is entitled to receive hereunder in an amount equal to the estimated cost (as reasonably agreed upon by Seller and Purchaser) of satisfying Purchaser's obligations in this Section 2.5. Upon release of any such Development Approvals that are unacceptable to Seller, the Title Company shall disburse such withheld portion of the Earnest Money to Purchaser. This Section 2.5 shall survive any termination of this Agreement.

2.6. Property Condition Disclaimer.

(a) **BY ITS ACCEPTANCE OF THIS AGREEMENT, PURCHASER FURTHER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THE CLOSING DOCUMENTS (HEREINAFTER DEFINED) AND IN SECTION 6.3 AND ARTICLE 7 HEREOF (COLLECTIVELY, THE "SELLER REPRESENTATIONS AND WARRANTIES") (i) ANY INFORMATION PROVIDED BY SELLER TO PURCHASER PERTAINING TO THE PROPERTY HAS NOT BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY SELLER, (ii) SELLER IS NOT MAKING, AND HAS NOT MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION; AND (iii) SELLER IS NOT, AND WILL NOT BE, LIABLE OR BOUND IN ANY MANNER WHATSOEVER BY ANY WRITTEN OR VERBAL STATEMENT, REPRESENTATION, REPORT, SURVEY, OR INFORMATION FURNISHED TO PURCHASER, OR MADE BY ANY PARTY WITH RESPECT TO THE PROPERTY. EXCEPT FOR THE SELLER REPRESENTATIONS AND WARRANTIES, PURCHASER SPECIFICALLY AGREES THAT PURCHASER IS RELYING SOLELY UPON PURCHASER'S OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY SELLER. PURCHASER FURTHER AGREES THAT PURCHASER ACCEPTS THE PROPERTY IN ITS CURRENT, "AS IS," WITH ALL FAULTS CONDITION, AND ASSUMES THE RISK OF ANY MATTER OR CONDITION WHICH IS LATENT OR PATENT OR THAT COULD HAVE BEEN**

REVEALED BY ITS INVESTIGATIONS. EXCEPT FOR THE SELLER REPRESENTATIONS AND WARRANTIES, SELLER HAS NOT MADE (AND SELLER HEREBY EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WHATSOEVER, AS TO THE VALUE, CONDITION, NATURE, CHARACTER, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY, THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIAL OR OTHER ENVIRONMENTAL CONDITION OR COMPLIANCE OF THE LAND WITH, OR VIOLATION OF, ANY LAW, STATUTE, ORDINANCE, RULE, OR REGULATION, AND ANY OF SUCH REPRESENTATIONS AND WARRANTIES, AND ANY CLAIMS OR CAUSES OF ACTION AGAINST SELLER BASED IN WHOLE OR IN PART ON ANY VIOLATION OF, OR ARISING WITH RESPECT TO, ANY FEDERAL, STATE, OR LOCAL STATUTE, ORDINANCE, RULE, OR REGULATION ARE HEREBY EXPRESSLY WAIVED AND RELEASED BY PURCHASER.

(b) Except for the Seller Representations and Warranties, Purchaser acknowledges and agrees that Seller has not made, does not make, has not authorized anyone else to make, and specifically negates and disclaims, any representations, warranties, promises, covenants, agreements, guarantees or statements (collectively referred to herein as "Statements") of any kind or character whatsoever, whether express, implied, statutory or arising by operation of law, verbal or written, past, present, or future, of, as to, concerning or with respect to (i) the value, nature, quality, or adequacy of the physical condition of the Property; (ii) the value, nature, quality, or adequacy of the environmental, health or safety, condition of the Property, including without limitation, the surface water, groundwater, land, soil, and geology; (iii) the development potential or economics of operation of the Property; (iv) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose, or for Purchaser's intended use of the Property; (v) the compliance of the Property with any Environmental Requirements (as defined in Section 2.7), including the existence or presence, on, under, about, at, within, above or migrating onto or from the Property of any hazards or Hazardous Materials (as defined in Section 2.7); (vi) the existence or non-existence of access to or from the Property or any portion thereof or the availability of permits to access rights-of-way; (vii) the existence, quality, adequacy, availability, physical condition of, access to, or permits to access water, sewer, electrical, gas or other utilities or utility services on the Property or adjoining properties; (viii) the location of the Property or any portion thereof within any flood plain, flood prone area, watershed, or the designation of any portion of the Property as a wetland; (ix) the presence or absence of conditions on or about the Property that could give rise to a claim for personal injury, property or natural resource damages; (x) title (other than the special warranty of title in the Deed (defined below)); (xi) the number of square feet of land comprising the Property; or (xii) the legal status of the Property or any other public or private restrictions on the Property.

(c) Except for the Seller Representations and Warranties, no person acting on behalf of Seller has been authorized to make any written or verbal statement binding upon Seller, and by execution of this Agreement, Purchaser acknowledges, that no such statement made by any person purporting to act on behalf of Seller shall be valid or binding upon Seller.

(d) Except for the Seller Representations and Warranties, Purchaser acknowledges and agrees that any information provided or to be provided to Purchaser by Seller, whether pursuant to the documents referred to in Exhibit F or otherwise, with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations or warranties relating thereto, including any pertaining to its accuracy, truthfulness, sufficiency, or completeness. Except for the Seller Representations and Warranties, Seller is not liable or bound in any manner to Purchaser by any statement or information pertaining to the Property or its operation furnished by any real estate broker, consultant, attorney, agent, employee, servant, or any other person.

(e) The provisions of this Section 2.6 shall survive Closing and any termination of this Agreement and shall not be deemed to be merged into or waived by the instruments of Closing.

2.7. Hazardous Materials. For purposes of this Agreement, "Hazardous Materials" shall mean any substance, whether solid, liquid or gaseous in nature, which is or contains (a) any "hazardous substance" as now or hereinafter defined by CERCLA or any regulations promulgated under CERCLA, (b) any "hazardous waste" as now or hereinafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) ("RCRA") or any regulations promulgated under RCRA, (c) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), (d) gasoline, diesel fuel or other petroleum hydrocarbons or petroleum byproducts, (e) asbestos and asbestos containing materials, in any form, whether friable or non-friable, (f) polychlorinated biphenyls, (g) radon gas, (h) urea formaldehyde foam insulation, and (i) any additional substances, materials, or wastes which are now or hereafter classified or considered to be hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, or otherwise are or become regulated in any manner by any federal, state, or local, governmental agency under Environmental Requirements or the common law, or any other applicable laws related to the Property. Hazardous Materials shall include without limitation, any substance, whether solid, liquid, or gaseous in nature, the presence of which on the Property (a) requires reporting, investigation, or remediation under Environmental Requirements, (b) causes or threatens to cause a nuisance on the Property or to adjacent or neighboring properties, (c) poses or threatens to pose a hazard to health or safety of persons on or about the Property, (d) which, if emanated or migrated from the Property could constitute a trespass, or (e) which could give rise to a claim for damages or injunctive relief resulting from personal injury, or property or natural resource damages.

2.8. Environmental Requirements. The term "Environmental Requirements" shall mean all laws, statutes, codes, ordinances, rules, regulations, agreements, regulatory guidance or directives, licenses, permits, approvals, plans, authorizations, concessions, franchises or similar items, judgments, orders and decrees, existing now or hereinafter enacted, promulgated or amended, of the United States, the states, the cities, or any other political subdivisions in which the Property is located and any other political subdivision, agency or instrumentality exercising

jurisdiction over the owner of the Property, the Property or the use of the Property, relating to pollution or contamination, the protection or regulation of human health or safety, natural resources or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances, waste, or Hazardous Materials, or any other regulated substance, material or waste into the environment (including without limitation, surface water, groundwater, land, soil, or geology).

2.9. Termination During Due Diligence Period. If, before the expiration of the Due Diligence Period, Purchaser, in its sole discretion, determines that it does not desire to proceed with the purchase of the Property, Purchaser shall have the absolute right to terminate this Agreement by delivering to Seller written notice of termination not later than the expiration of the Due Diligence Period, in which event, the Earnest Money shall be refunded to Purchaser and neither party shall have any further rights, obligations or responsibilities hereunder, except those that expressly survive termination hereof.

2.10. Purchaser's Reliance on its Investigations. To the extent permitted by applicable law and except for the Seller Representations and Warranties, this sale will be made without representation, covenant or warranty of any kind (whether express, implied or to the maximum extent permitted by applicable law, statutory) by Seller. As a material part of the consideration for this Agreement, Purchaser agrees to accept the Property on an "as is" basis, with all faults, and without any representation or warranty, all of which Seller hereby disclaims, except for the Seller Representations and Warranties. Purchaser acknowledges that Purchaser has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance and legal condition of the Property and that Purchaser is not now relying and will not later rely upon any representations and warranties made by Seller or anyone acting or claiming to act by, through or under or on Seller's behalf concerning the Property, except for the Seller Representations and Warranties. The provisions of this Section 2.10 shall survive the Closing or the expiration or termination of this Agreement and shall not be merged into the Closing documents.

3. TITLE AND UPDATED SURVEY REVIEW.

3.1. Delivery of Title Commitment. Seller shall obtain and deliver to Purchaser on or before the expiration of fifteen (15) days after the Date of this Agreement a title insurance commitment issued by the Title Company (the "Title Commitment") covering the Property, together with a copy of all documents referenced therein.

3.2. Delivery of Updated Survey. Seller delivered to Purchaser a certain land survey issued by Brown & Gay Engineers, Inc. dated March 24, 2014 (the "Survey"). Within twenty (20) days after the Date of this Agreement, Seller at its expense shall obtain an update of the Survey (the "Updated Survey"). The Updated Survey shall contain a determination and certification of the Gross Area of the Land stated in square footage, which determination and certification shall be binding and conclusive against Seller and Purchaser absent manifest error. The term "Gross Area" shall mean all of the land comprising the Land as determined and

certified in accordance with the Updated Survey. The metes and bounds description of the Survey shall be used to describe the Land in the Deed.

3.3. Title Review and Cure. Purchaser shall on or before the expiration of the Due Diligence Period review the Permitted Exceptions, the Title Commitment, and the Updated Survey. Seller shall have no obligation to cure any title or survey objection other than any mortgages or deeds of trust, mechanic's liens, monetary judgments or similar monetary encumbrances that appear on the Title Commitment or any update thereof, all of which Seller shall be obligated to cause to be removed from the Title Commitment and satisfied on or before the Closing Date ("Monetary Exceptions"). While this Agreement is pending, Seller agrees not to create or declare any reservations, restrictions, covenants, easements, conditions, or other encumbrances against the Property. The term "Permitted Exceptions" shall include: (a) the specific exceptions (exceptions that are not part of the promulgated title insurance policy form) in the Title Commitment that the Title Company has not agreed to remove from the Title Commitment as of the end of the Due Diligence Period and that Seller is not required to remove as provided above; (b) items shown on the Updated Survey which have not been removed as of the end of the Due Diligence Period and all matters disclosed by the Updated Survey; and (c) real estate taxes and assessments not yet due and payable. In the event that Purchaser objects to any Permitted Exceptions, the Title Commitment, and/or the Updated Survey and Seller is unable or unwilling to cure such objections on or before the expiration of the Due Diligence Period, Purchaser's sole and exclusive remedy shall be either (a) to waive all uncured objections and close the purchase of the Property in accordance with Article 5 hereof or (b) to terminate this Agreement whereupon the Escrow Agent shall refund the Earnest Money and Seller shall refund the Independent Consideration to Purchaser and each party shall be released from all obligations hereunder and shall be deemed to have waived all rights hereunder except for any obligations and rights which by the express provisions of this Agreement survive its termination. Notwithstanding the above, Seller shall be obligated to cure or satisfy all Monetary Exceptions.

3.4. Delivery of Title Policy at Closing. As a condition to Purchaser's obligation to close, the Title Company shall deliver to Purchaser at Closing an Owner's Policy of Title Insurance (the "Title Policy"), issued by the Title Company as agent for Fidelity Title Insurance Company ("Fidelity") as of the date and time of the recording of the Deed, in the amount of the Purchase Price, insuring Purchaser as owner of good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. Seller shall execute at Closing an affidavit in such form as the Title Company shall reasonably require for the issuance of the Title Policy. The Title Policy may be delivered after Closing provided that Purchaser receives a "marked" title binder or pro forma policy at closing acceptable to Purchaser and its lender. The premium for the Owner's Title Insurance policy in the amount of the purchase price shall be paid by the Seller provided that Purchaser shall pay all premiums and other fees for any endorsements, annotations or deletions which may be requested by Purchaser to the title policy.

4. **OPERATIONS AND RISK OF LOSS.**

4.1. **Contracts.** During the pendency of this Agreement, without the prior written consent of Purchaser, Seller will not enter into any contract that will be an obligation affecting the Property subsequent to the Closing Date.

4.2. **Casualty.** The risk of loss of all or any portion of the Property shall be borne by Seller up to and including the actual time of the Closing and wire transfer of the Purchase Price to Seller, and thereafter by Purchaser.

4.3. **Condemnation.** By notice to Seller given within ten (10) days after Purchaser receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Purchaser the full 10-day period to make such election, Purchaser may: (i) terminate this Agreement and the Earnest Money shall be promptly refunded to Purchaser; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award, and Seller and Purchaser covenant and agree to mutually cooperate during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter.

5. **CLOSING**

5.1. **Closing.** The consummation of the transaction contemplated herein (the "Closing") shall occur on the Closing Date through escrow with the Escrow Agent whereby Seller and Purchaser and their counsel need not be physically present but may deliver executed original documents by overnight courier or similar means and Purchaser shall deliver funds by wire transfer to the Escrow Agent who will deliver and record documents and distribute funds pursuant to escrow instructions and a closing statement to which Seller and Purchaser have agreed. Notwithstanding the foregoing, Purchaser may at its option extend the Closing Date for up to two (2) periods of thirty (30) days each. The option to extend the Closing Date shall be exercisable by Purchaser by giving notice to Seller at least five (5) days prior to the original Closing Date and depositing with the Escrow Agent on or before the original Closing Date the sum of \$100,000.00 as additional Earnest Money (the "First Extension Fee") for the first 30-day extension period (the "Amended Closing Date"). The First Extension Fee shall be non-refundable to Purchaser except as otherwise expressly stated herein, and if Purchaser closes the purchase of the Property, the First Extension Fee shall be applied to the Purchase Price; and if Purchaser timely exercised its option to extend the original Closing Date as aforesaid and wishes to extend the Amended Closing Date for thirty (30) more days, such option shall be exercisable by Purchaser by giving notice to Seller at least five (5) days prior to the Amended Closing Date and depositing with Escrow Agent on or before the Amended Closing Date the sum of \$100,000.00 as additional Earnest Money (the "Second Extension Fee") for the second 30-day extension period. The Second Extension Fee shall be non-refundable to Purchaser except as

otherwise expressly stated herein, and if Purchaser closes the purchase of the Property, the First Extension Fee and the Second Extension Fee shall be applied to the Purchase Price. Notwithstanding anything to the contrary provided herein, the Closing Date shall in no event extend beyond one hundred eighty (180) days after the Date of this Agreement. It is expressly understood, agreed and stipulated that the First Extension Fee and the Second Extension Fee, if any, shall be deemed to be additional Earnest Money.

5.2. Seller's Deliveries in Escrow. On or before the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(a) Deed. A special warranty deed (warranting title for acts by, through or under Seller) (the "Deed"), in the form attached hereto as Exhibit B, executed and acknowledged by Seller, conveying Seller's title to the Property, subject only to the Permitted Exceptions. Any discrepancy between the legal description of the Property in Seller's acquisition deed and in the Deed shall be quitclaimed by Seller to Purchaser.

(b) Disclosures. Such disclosures and reports as are required by applicable federal, state and local law in connection with the conveyance of commercial real property;

(c) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller.

(d) Additional Documents. Any additional documents that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.3. Purchaser's Deliveries in Escrow. On or before the Closing Date, Purchaser shall deliver in escrow to the Escrow Agent the following:

(a) Purchase Price. The Purchase Price, less the Earnest Money that will be applied to the Purchase Price, plus or minus applicable prorations, deposited by Purchaser with the Escrow Agent in immediate, same day federal funds wired for credit into the Escrow Agent's escrow account.

(b) Disclosures. Such disclosures and reports as are required by applicable federal, state and local law in connection with the conveyance of commercial real property.

(c) Additional Documents. Any additional documents that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.4. Closing Statements. At the Closing, Seller and Purchaser shall deliver to the Escrow Agent executed closing statements consistent with this Agreement in the form required by the Escrow Agent.

5.5. Title Policy. The Title Policy, a marked binder or a pro forma policy shall be delivered at Closing as provided in Section 3.4.

5.6. Possession. Seller shall deliver possession of the Property to Purchaser as of the date and time of Closing.

5.7. Costs. Seller and Purchaser shall pay the following costs as indicated below:

(a) Seller shall pay (i) charges for the Updated Survey; (ii) charges to record instruments to remove encumbrances from title that Seller is obligated to remove; (iii) broker's fees, if any; (iv) Seller's attorney's fees; and (v) premium for owner's title insurance except for all premiums and other fees for any endorsements, annotations or deletions which may be requested by Purchaser to the title policy.

(b) Purchaser shall pay (i) charges to record the Deed; (ii) Purchaser's attorney's fees; and (iii) all premiums and other fees for any endorsements, annotations or deletions which may be requested by Purchaser to the title policy.

5.8. Close of Escrow. The Escrow Agent, as agent for the Title Company, shall agree in writing with Seller and Purchaser that (a) the recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statement and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (b) the release of funds to Seller shall irrevocably commit it as agent for Fidelity to issue the Title Policy in accordance with this Agreement. Upon satisfaction or completion of the foregoing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the documents described above to the appropriate parties and make disbursements in accordance with the closing statements executed by Seller and Purchaser and in accordance with escrow instructions by each party consistent with this Agreement.

6. PRORATIONS.

6.1. Prorations. The day of Closing shall belong to Purchaser and all prorations that are to be made as of Closing shall be made as of the end of the day before the Closing Date. In each such proration set forth below, the portion thereof applicable to periods beginning as of Closing shall be credited or charged to Purchaser and the portion thereof applicable to periods ending as of Closing shall be credited or charged to Seller.

(a) Taxes and Assessments. General real estate taxes and assessments imposed by governmental authority and any assessments imposed by private covenant constituting a lien or charge on the Property for the then current calendar year or other current tax period (collectively, "Taxes") not yet due and payable, shall be prorated. If the Closing occurs prior to the receipt by Seller of the tax bill for the calendar year or other applicable tax period in which the Closing occurs, Purchaser and Seller shall prorate Taxes for such calendar

year or other applicable tax period based upon the most recent previous tax bill and agree to adjust the tax proration when the tax bill for the year of Closing is received.

(b) Utilities. Utilities, including water, sewer, electric and gas, based upon the last reading of meters prior to the Closing Date shall be prorated. Seller shall endeavor to obtain meter readings on the day before the Closing Date and if such readings are obtained, there shall be no proration of such items. Seller shall pay at Closing the bills therefor for the period to the day preceding the Closing Date and Purchaser shall pay the bills therefor for the period subsequent thereto. If the utility company will not issue separate bills, Purchaser will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any utilities no more than thirty (30) days in advance in the ordinary course of business, then Purchaser shall be charged its portion of such payment at Closing.

6.2. Final Adjustment After Closing. If final prorations cannot be made at Closing for any item being prorated under Section 6.1, including Taxes, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing, to the effect that income and expenses are received and paid by the parties on an accrual basis with respect to their period of ownership. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. Adjustments under this Section 6.2 shall not be required unless the amount at issue exceeds \$1,000.00.

6.3. Sale Commissions. Seller and Purchaser represent and warrant, each to the other, that they have not dealt with any real estate broker, sales person or finder in connection with this transaction except for Jones Lang Lasalle Houston (the "Broker"). If and only if the sale and purchase of the Property is closed and funded in accordance with this Agreement, Seller shall pay to the Broker at the Closing a real estate fee and commission equal to two percent (2%) of the total Purchase Price in accordance and compliance with a certain written agreement between Seller and Broker. **IF ANY CLAIM IS MADE FOR A BROKER'S FEE, FINDER'S FEE, OR COMMISSION IN CONNECTION WITH THE NEGOTIATION, EXECUTION OR CONSUMMATION OF THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY BASED UPON ANY STATEMENT, REPRESENTATION, OR AGREEMENT OF SELLER OR PURCHASER, SUCH PARTY WHO ALLEGEDLY OR PURPORTEDLY MADE SUCH STATEMENT, REPRESENTATION, OR AGREEMENT SHALL DEFEND, INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM AND AGAINST ANY SUCH CLAIM.**

6.4. Survival. The provisions of this Article 6 shall survive the Closing and shall not be merged into the Deed.

7. **REPRESENTATIONS AND WARRANTIES.**

7.1. **Seller's Representations and Warranties.** As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

(a) **Organization.** Seller has been duly organized and is validly existing as a limited liability company in good standing in the State of Texas.

(b) **Subdivision.** The entire tract (the "Property" together with the Seller Property) may be subdivided as provided for herein without the necessity of a subdivision plat being approved by the City of Houston and should this not be the case, Seller shall cause such subdivision plat to be recorded in the Official Public Records of Real Property of Harris County, Texas prior to the Closing.

(c) **Bankruptcy.**

(i) Seller filed a voluntary petition on September 30, 2017, in the U.S. Bankruptcy Court for the Southern District of Texas, Bankruptcy Petition #17-35614-H4-11. Seller's bankruptcy case is pending, and accordingly, the terms and conditions of this Agreement are subject to orders now or hereafter entered by the U.S. Bankruptcy Court with respect to this Agreement and the assets, properties, liabilities, and obligations of Seller. Seller covenants and agrees to use commercially reasonable efforts to promptly apply for and obtain the Final Sale Order authorizing and empowering Seller to complete the sale of the Property to Purchaser in accordance with this Agreement.

(ii) All motions and Orders regarding sale of the Property, including the Final Sale Order, shall be in form and substance reasonably satisfactory to Purchaser. Seller further covenants and agrees (a) to promptly notify Purchaser about all applications filed or to be filed by or against Seller in connection with the bankruptcy case and to provide to Purchaser a copy thereof, (b) to promptly notify Purchaser of all hearings, conferences, and other proceedings held by the U.S. Bankruptcy Court in connection with the bankruptcy case, and (c) to promptly provide to Purchaser a copy of all orders entered by the U.S. Bankruptcy Court in connection with the bankruptcy case.

(iii) If the Final Sale Order is appealed, Seller and Purchaser shall use their respective reasonable efforts to defend such appeal. Any material changes to this Agreement, any other transaction documents, or the Final Sale Order resulting from such appeal shall be subject to the Purchaser's approval.

(iv) In the event that the U.S. Bankruptcy Court does not authorize and empower Seller to complete the sale of the Property in accordance with this Agreement, this Agreement shall terminate, the Earnest Money shall be refunded to Purchaser, and

each of the parties shall be released from its obligations under this Agreement except for those obligations which herein expressly survive the termination of this Agreement.

(d) Authority. Subject to entry of the Final Sale Order, Seller represents and warrants to Purchaser that Seller has the full right and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and this Agreement and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligations of Seller, enforceable in accordance with their terms.

7.2. Purchaser's Representations and Warranties. As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that Purchaser has the full right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligations of Purchaser, enforceable in accordance with their terms.

8. DEFAULT AND DAMAGES.

8.1. Default by Purchaser. If Seller obtains a Final Sale Order and delivers a certified copy thereof to Purchaser and if Purchaser thereafter shall default in its obligation to close hereunder or default in its obligation to deposit Earnest Money as required under this Agreement, Purchaser agrees that Seller shall have as its sole and exclusive remedy the right to receive and retain any Earnest Money actually deposited as liquidated damages to compensate Seller for time spent, cost of labor and services incurred by Seller, the loss of bargain, removal of the Property from the market during the pendency of this Agreement, changes in the economy and market conditions, carrying costs of the Property for real estate taxes, insurance premiums and loan costs, and lost opportunities. Purchaser and Seller agree that it would be impracticable or extremely difficult to affix damages if Purchaser so defaults and that the Earnest Money, together with any interest thereon, represents a reasonable estimate of Seller's damages. Seller agrees to accept the Earnest Money as Seller's total damages and relief hereunder if Purchaser defaults in its obligation to close, and Seller hereby expressly waives all other rights and remedies that he may otherwise have at law or in equity.

8.2. Default by Seller. Except as otherwise expressly stated in Section 3.3, if Seller defaults for any reason or cause to sell and convey the Property to Purchaser pursuant to this Agreement, Purchaser's sole and exclusive remedy shall be to elect one of the following: (a) to terminate this Agreement, in which event Purchaser shall be entitled to the return of the Earnest Money and the Independent Consideration, or (b) to commence within sixty (60) days of the date the Closing was to have occurred an action against Seller to enforce specific performance of this Agreement. In the event Purchaser does not timely file an action against Seller to enforce specific performance of this Agreement, Purchaser shall be deemed conclusively to have elected to terminate this Agreement and to receive the return of the Earnest Money.

8.3. Waiver. Neither party shall be liable for any special, direct, indirect, consequential, or other damages which arise or occur by reason or in consequence of its default hereunder.

9. **EARNEST MONEY PROVISIONS.**

9.1. Investment and Use of Funds. The Title Company shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Purchaser, shall not commingle the Earnest Money with any funds of the Title Company or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. If the Closing under this Agreement occurs, the Title Company shall deliver the Earnest Money to, or upon the instructions of, Purchaser on the Closing Date.

9.2. Terminations. Upon a termination of this Agreement, either party to this Agreement (the "Terminating Party") may give written notice to the Title Company and the other party (the "Non-Terminating Party") of such termination and the reason for such termination. Such request shall also constitute a request for the release of the Earnest Money to the Terminating Party. The Non-Terminating Party shall then have five (5) business days in which to object in writing to the release of the Earnest Money to the Terminating Party. If the Non-Terminating Party provides such an objection, then the Title Company shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment. If the Non-Terminating Party does not object to the release of the Earnest Money within such five (5) business day period, the Title Company shall promptly deliver the Earnest Money to the Terminating Party whereupon the parties shall be released from their obligations under this Agreement except for any agreements, covenants, obligations, and liabilities which by the express terms of this Agreement survive any termination of this Agreement.

9.3. Interpleader. Seller and Purchaser mutually agree that in the event of any controversy regarding the Earnest Money, unless mutual written instructions are received by the Title Company directing the Earnest Money's disposition, the Title Company shall not disburse the Earnest Money, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Title Company's option, the Title Company may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Title Company may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Title Company, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

9.4. Liability of Title Company. The parties acknowledge that the Title Company is acting solely as a stakeholder at their request and for their convenience, and that the Title Company shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for actions or omissions taken or made by the Title Company in bad faith, in disregard of this Agreement or involving gross negligence or willful misconduct on the part of the Title Company.

10. Intentionally Omitted.

11. MISCELLANEOUS.

11.1. Parties Bound. Purchaser may assign its rights hereunder to a partnership or limited liability company in which Purchaser, an affiliate of Purchaser or a principal of Purchaser is a partner or a member or any other entity or person without Seller's consent; provided notice of such assignment is given to Seller at least three (3) days prior to Closing. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11.2. Headings. The article and section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

11.3. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be and remain valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other term or provision in the future.

11.4. Governing Law. This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Texas.

11.5. Survival. The indemnification provisions and representations and warranties of this Agreement shall survive the termination of this Agreement or the Closing, whichever occurs, and shall not be merged into the Closing documents but shall survive until the applicable statute of limitations with respect to any claim, cause of action, suit or other action relating thereto shall have fully and finally expired.

11.6. No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies upon any person or entity as a third party beneficiary or otherwise, except as may be expressly provided herein.

11.7. Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the

Property except for any confidentiality agreement binding on Purchaser, which shall not be superseded by this Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. The signature of the Escrow Agent shall not be required on any amendment or supplement to this Agreement.

11.8. Time. Time is of the essence in the performance of this Agreement.

11.9. Attorneys' Fees. Should either party employ an attorney to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred in connection therewith.

11.10. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.1. Any such notice shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, (b) sent by facsimile with written confirmation by overnight or first class mail, in which case notice shall be deemed delivered upon receipt of confirmation transmission of such facsimile notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt, or (d) sent by email, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or personal delivery and delivered after 5:00 p.m. Houston, Texas time shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

11.11. Construction. The parties acknowledge that the parties and their counsel have reviewed and have had an opportunity to comment upon and to revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

11.12. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the State of Texas, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Houston, Texas time.

11.13. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. In order to expedite the transaction contemplated herein, electronically transmitted signatures (whether by facsimile or email) may be used in place of

original signatures on this Agreement and any documents to be delivered pursuant hereto. Seller and Purchaser intend to be bound by electronically transmitted signatures and are aware that the other party will rely on the electronically transmitted signatures, and hereby waive any defenses to the enforcement to the terms of this Agreement or such other documents based upon the form of signatures.

11.14. Notice to Purchaser. In accordance with the terms of the Texas Real Estate License Act, Purchaser is hereby advised that it should have the abstract covering the Property examined by an attorney of its selection or be furnished with or obtain a policy of title insurance.

11.15. Counsel. Each party acknowledges and agrees that it is represented by legal counsel; it is not relying on and has not been induced to enter into this Agreement based on any representations except for the express representations stated in Section 7 of this Agreement; and there are no covenants, agreements, or other obligations between the parties regarding the sale and purchase of the Property except for the express covenants, agreements, and obligations stated in this Agreement.


11.16. Acceptance Deadline. The parties hereto agree that the submission of an unexecuted copy or counterpart of this Agreement by one party to another is not intended by either party to be, or be deemed to be a legally binding contract or an offer to enter into a legally binding contract. All costs incurred by either party whether for architects, engineers, contractors, attorneys, or otherwise, shall be at the sole risk of the party incurring such costs. The parties shall be legally bound pursuant to the terms of this Agreement if only if and when both Seller and Purchaser have fully executed and delivered to each other and the Title Company a fully signed counterpart of this Agreement on or before 5:00 o'clock p.m., Houston, Texas, time, November 27, 2017.

[Signatures on Following Pages]

IN WITNESS WHEREOF, Seller has executed this Agreement on the date appearing below his signature.

SELLER:

9 HOUSTON LLC

By: 
Name: David Schmitt
Title: Manager

Date: November 23, 2017

(Signatures continued on following two pages)

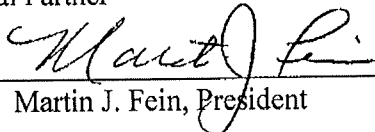
IN WITNESS WHEREOF, Purchaser has executed this Agreement on the date appearing below its signature.

PURCHASER:

MARTIN FEIN INTERESTS, LTD.

By: MFI G.P., L.L.C.

Its: General Partner

By: 
Martin J. Fein, President

Date: November 22, 2017.

(Signatures continued on following page)

Escrow Agent has executed this Agreement to confirm that it has received and shall hold the Earnest Money and the interest earned thereon, if any, and the original documents delivered to it, in escrow, and shall disburse the Earnest Money, and the interest earned thereon, if any, and deliver the documents pursuant to the provisions of this Agreement.

ESCROW AGENT:

CHARTER TITLE COMPANY

By: _____

Name: _____

Title: _____

Date: _____, 2017

EXHIBIT A

Legal Description of the Property

POST OAK HILLS
3.378 ACRES

NOVEMBER 20, 2017
JOB NO. 5438-00

DESCRIPTION OF A 3.378 ACRE TRACT OF LAND SITUATED
IN THE WILLIAM WHITE SURVEY, ABSTRACT NO. 836
CITY OF HOUSTON
HARRIS COUNTY, TEXAS

BEING a 3.378 acre (147,166 square feet) tract of land situated in the William White Survey, Abstract No. 836, City of Houston of Harris County, Texas and being a portion of Lot 2, Block 1, of POST OAK PARK, a subdivision per plat recorded under Volume 134, Page 25, of the Harris County Map Records (H.C.M.R.) and being a portion of a called 5.397 acre tract of land described in an instrument to 9 Houston LLC, recorded under Harris County Clerk's File Number (H.C.C.F. No.) 20140356727, said 3.378 acre tract of land described by metes and bounds as follows:

BEGINNING at a Railroad Spike found for the southwest corner of RIVERHOLLOW a subdivision per plat recorded under Volume 166, Page 124 H.C.M.R., being on the north right-of-way line of River Hollow Lane (50 foot width) as recorded in Volume 166, Page 124 H.C.M.R., same being the southeast corner of said Lot 2 and the herein described tract;

THENCE, S $86^{\circ}53'45''$ W, a distance of 253.24 feet along the north right-of-way line of said River Hollow Lane and the south line of said Lot 2, to a 1/2-inch iron pipe with cap stamped "Brown & Gay" found for the northeast intersection corner of Post Oak Park Drive (60 foot width) recorded under Volume 134, Page 25 H.C.M.R. and said River Hollow Lane, being the southwest corner of said Lot 2 and the herein described tract and being the beginning of a non-tangent curve to the left having a radial bearing and distance of S $62^{\circ}48'07''$ W, 330.00 feet;

THENCE, along the easterly right-of-way lines of said Post Oak Park Drive and the westerly lines of said Lot 2, the following courses and distances:

In a Northwesterly direction, along said curve to the left, a distance of 29.98 feet, having a radius of 330.00 feet, a central angle of $05^{\circ}12'19''$ and a chord which bears N $29^{\circ}48'03''$ W, 29.97 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" found for the point of tangency;

N $32^{\circ}24'12''$ W, a distance of 30.00 feet to a 5/8-inch iron rod found for the point of curvature of a tangent curve to the right;

In a Northerly direction, along said curve to the right, a distance of 144.03 feet, having a radius of 270.00 feet, a central angle of $30^{\circ}33'47''$ and a chord which bears N $17^{\circ}07'19''$ W, 142.32 feet to a 1/2-inch iron rod found for the point of tangency;

N $01^{\circ}50'25''$ W, a distance of 289.50 feet to a MAG Nail set for the northwest corner of the herein described tract;

THENCE, over and across said 5.397 acre tract and said Lot 2, the following courses and distances:

N $88^{\circ}09'35''$ W, a distance of 275.00 feet to an "X" in concrete set for the beginning of a tangent curve to the right;

POST OAK HILLS
3.378 ACRES

NOVEMBER 20, 2017
JOB NO. 5438-00

In a Southeasterly direction, along said curve to the right, a distance of 29.85 feet, having a radius of 19.00 feet, a central angle of $90^{\circ}00'00''$ and a chord which bears $S 46^{\circ}50'25'' E$, 26.87 feet to an "X" in concrete set for the point of tangency;

$S 01^{\circ}50'25'' E$, a distance of 17.00 feet to an "X" in concrete set for an interior corner of the herein described tract;

$N 88^{\circ}09'35'' E$, a distance of 26.00 feet to an "X" on top of brick wall set on the west line of said RIVERHOLLOW, same being the east line of said Lot 2 and being the most easterly northeast corner of the herein described tract;

THENCE, $S 01^{\circ}50'25'' E$, a distance of 437.51 feet along the common line of said RIVERHOLLOW and said Lot 2 to the **POINT OF BEGINNING** and containing 3.378 acres (147,166 square feet) of land.

Bearing orientation is based on the plat of POST OAK PARK, recorded in Volume 134, Page 25, of the Harris County Map Records and is referenced to the monuments cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description.

EXHIBIT A-1

Legal Description of Seller's Property

Legal Description

DESCRIPTION OF A 5.397 ACRE TRACT OF LAND SITUATED
IN THE WILLIAM WHITE SURVEY, ABSTRACT NO. 836
HARRIS COUNTY, TEXAS

BEING a 5.397 acre (235,089 square feet) tract of land situated in the William White Survey, Abstract No. 836 of Harris County, Texas and being all of Lot 2, Block 1, of POST OAK PARK, a subdivision recorded in Volume 134, Page 25, of the Harris County Map Records, same being POST OAK PARK TOWNHOMES, a condominium project in Harris County, Texas, according to the Declaration and Master Deed recorded in Volume 26, Page 37, amended in Volume 31, Page 27 of the Condominium Records of Harris County and under Harris County Clerk's File No. F046333, said 5.397 acre tract of land described by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod (control monument) found for the northwest corner of said Lot 2, in the east right-of-way line of Post Oak Park Drive (60 feet wide) as recorded in Volume 134, Page 25, of the Harris County Map Records, and being a southerly corner of Lot 1 of said Block 1;

THENCE, N 88°09'35" E, a distance of 340.19 feet along the common line of said Lot 1 and said Lot 2, to a point for the northeast corner of the herein described tract of land in the west line of RIVERHOLLOW, a subdivision recorded in Volume 166, Page 124, of the Harris County Map Records;

THENCE, S 01°50'25" E, a distance of 744.01 feet along the common line of said RIVERHOLLOW and said Lot 2, to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the southeast corner of said Lot 2 and the herein described tract, lying in the north right-of-way line of River Hollow Lane (50 feet wide) as recorded in Volume 166, Page 124, of the Harris County Map Records;

THENCE, S 86°53'45" W, a distance of 253.24 feet along said north right-of-way line to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the southwest corner of said Lot 2 and the herein described tract, same being the northeast intersection corner of said Post Oak Park Drive and said River Hollow Lane and being the beginning of a non-tangent curve to the left having a radial bearing and distance of S 62°48'07" W, 330.00 feet;

THENCE, along the east right-of-way line of said Post Oak Park Drive the following courses and distances:

In a Northwesterly direction, along said curve to the left, a distance of 29.98 feet, having a radius of 330.00 feet, a central angle of 05°12'19" and a chord which bears N 29°48'03" W, 29.97 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the point of tangency;

N 32°24'12" W, a distance of 30.00 feet to a 5/8-inch iron rod found under a tree root (control monument) for the point of curvature of a tangent curve to the right;

In a Northerly direction, along said curve to the right, a distance of 144.03 feet, having a radius of 270.00 feet, a central angle of 30°33'47" and a chord which bears N 17°07'19" W, 142.32 feet to a 1/2-inch iron rod found for the point of tangency;

N 01°50'25" W, a distance of 505.00 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the point of curvature of a tangent curve to the left;

In a Northerly direction, along said curve to the left, a distance of 59.82 feet, having a radius of 85.00 feet, a central angle of 40°19'13" and a chord which bears N 22°00'02" W, 58.59 feet to the **POINT OF BEGINNING** and containing 5.397 acres (235,089 square feet) of land.

EXHIBIT A-2

Depiction of Property and Adjacent Property

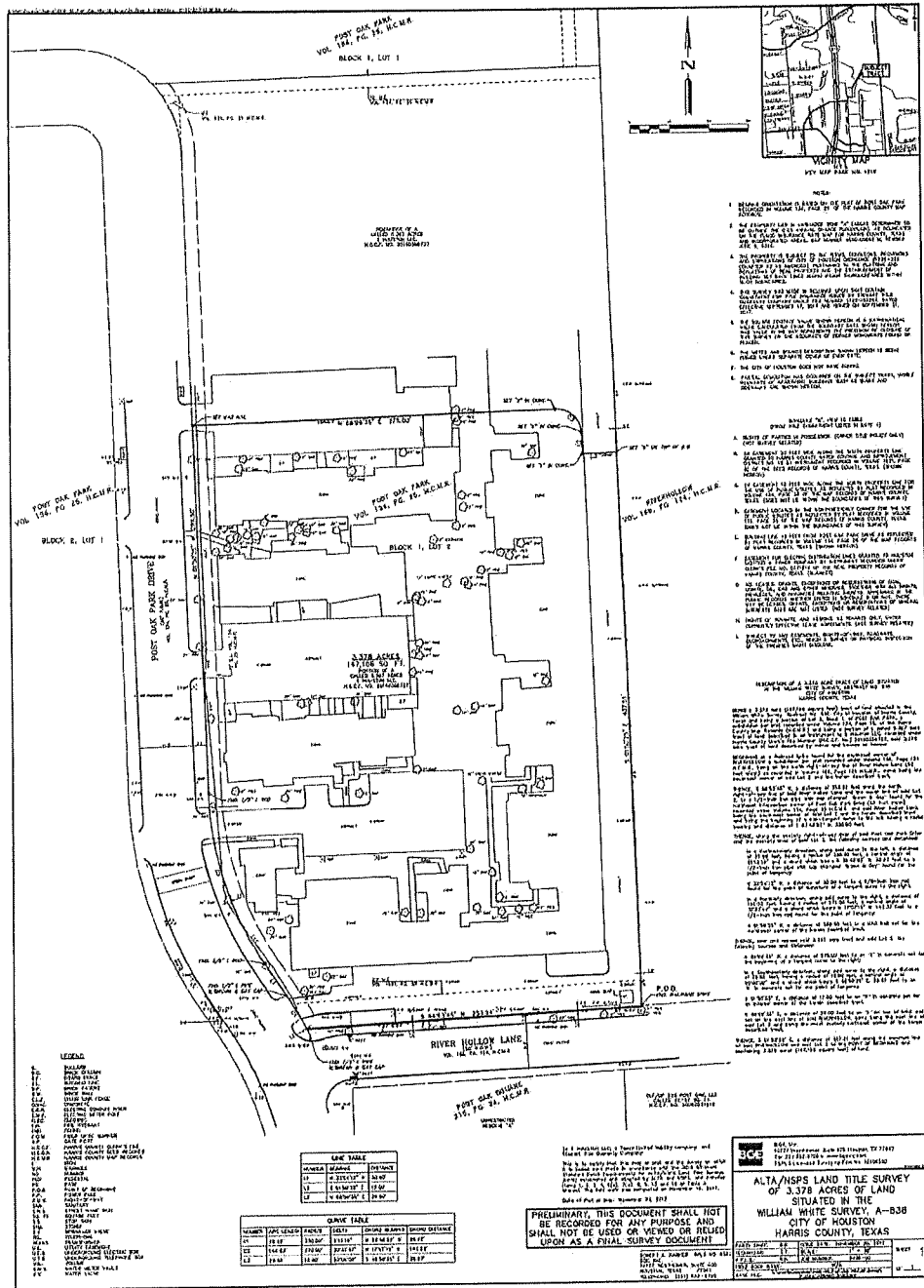


EXHIBIT B

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

SPECIAL WARRANTY DEED

THE STATE OF TEXAS
COUNTY OF HARRIS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

That **9 HOUSTON LLC** ("Grantor"), whose mailing address is 212 West Ironwood, Suite D, PMB 304, Coeur d'Alene, Idaho 83814, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt and adequacy of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY to _____ ("Grantee"), whose mailing address is 1400 Post Oak Blvd., Suite 500, Houston, Texas 77056, (i) all of the real property (the "Land") situated in Harris County, Texas, described on Exhibit A attached hereto and made a part hereof; (ii) all right, title and interest of Grantor in and to all strips and gores belonging or in any way appertaining to the Land including the beds of any ways, streets, roads, and passages in front of, adjoining, or adjacent to the Land; (iii) all right, title and interest of Grantor in and to all appurtenances, easements, and rights-of-way belonging to the Land and (iv) all of Grantor's rights in and to any causes of action for existing damage to the Land cause by third parties (collectively, the "Property").

This conveyance is made and accepted subject to (i) all outstanding real property taxes for the year 2017 and subsequent years, and (ii) each and every reservation, restriction, covenant, easement, or condition described on Exhibit B attached hereto and made a part hereof existing in favor of a third party and filed in the Real Property Records of Harris County, Texas, to the extent that the same are applicable and validly exist with respect to the Property (collectively, the "Permitted Exceptions"). Real property taxes for the year 2017 have been prorated between Grantor and Grantee as of the date hereof, and the payment thereof is assumed by Grantee.

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee its successors, legal representatives and assigns forever; and Grantor does hereby bind themselves, their heirs, legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND, all and singular the said Property, subject to the Permitted Exceptions, unto Grantee,

its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

[Signatures on Following Page]

EXECUTED effective the ____ day of _____, 2017.

GRANTOR:

9 HOUSTON LLC

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged on this ____ day of _____, 2017, by _____, _____ of 9 Houston LLC, a Texas limited liability company, on its behalf.

Notary Public, State of Texas

Exhibit List:

Exhibit A – Property Description

EXHIBIT C

Property Information

1. Any existing surveys or plats of the Property in CAD and PDF.
2. 2014, 2015 and 2016 tax bills.
3. All reports, studies, and correspondence in Seller's possession concerning wetlands, flood zone, environmental, site utilities and drainage, engineering, geotechnical, soils, etc.
4. All approvals/agreements from/with the City of Houston, Harris County, and any other authority that has jurisdiction over the development of the Property.