

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA**

IN RE: : CHAPTER 11  
: :  
ACORN PROPERTIES, INC, : CASE NO. 17-70661  
: :  
DEBTOR. : :

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**NOTICE OF HEARING**

COMES NOW, the Debtor, Acorn Properties, Inc, by and through its undersigned attorney and has filed documents with the court to sell free and clear of lien.

YOUR RIGHTS MAY BE AFFECTED. You should read these documents carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. If not served with this notice in accordance with the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, a copy of the motion may be obtained upon written request to counsel for the Movant or at the Clerk's office.

If you do not want the court to grant the Motion, or if you want the court to consider your views on the Motion, then you or your attorney shall attend the hearing scheduled to be held on **September 20, 2017 at 10:30 A.M. at U.S. Courthouse & Post Office, Room 257, North Patterson Street, Valdosta, GA 31601.**

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the motion.

This notice is sent by the undersigned pursuant to LBR-9007-1(c).

DATED this 16<sup>th</sup> day of August, 2017.

/s/ R. Bruce Warren  
R. Bruce Warren/ GA Bar No.: 738475  
Whitehurst, Blackburn, & Warren  
809 S. Broad Street  
Thomasville, GA 31792  
229-226-2161

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**MOTION TO SELL FREE AND CLEAR OF LIEN**

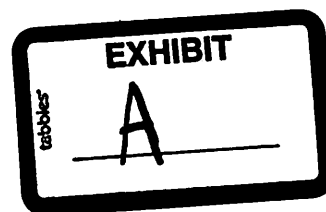
COMES NOW, Acorn Properties, LLC, Debtor in Possession, by and through its undersigned attorney and files this Motion to Sell Free and Clear of Lien and shows the Court the following:

1. The Debtor filed its Chapter 11 petition on June 30, 2017.
2. The Debtor was forced to file the bankruptcy to protect certain assets which RCH Loan Servicing, LLC held as security for a loan and had declared a default.
3. The Debtor has secured a contract for the sale of the property which is sufficient to pay off RCH Loan Servicing, LLC's loan. A copy of the contract is attached hereto and marked as Exhibit A.
4. The Debtor proposes to use the proceeds to pay off the claim of RCH Loan Servicing, LLC.

WHEREFORE, the Debtor prays that this Motion be granted and that RCH Loan Servicing, LLC lien attached to the proceeds to the extent of their claim.

DATED this 16<sup>th</sup> day of August, 2017.

/s/ R. Bruce Warren  
R. Bruce Warren/ GA Bar No.: 738475  
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**AGREEMENT OF PURCHASE AND SALE**

**ACORN PROPERTIES, INC, a  
Georgia Corporation**

**as Seller**

**AND**

**DEWAR INVESTMENTS, LLC, a  
Georgia limited liability company**

**(Or one of its affiliates or a newly  
formed limited liability company)**

**as Buyer**

**Wyndom Ridge Apartments  
located at  
2025 East Pine Tree  
Boulevard, Thomasville,  
Georgia 31792**

**Dated: AUGUST 3rd, 2017**

## **AGREEMENT OF PURCHASE AND SALE**

This Agreement of Purchase and Sale (the "Contract") is made and entered into as of the Contract Date by and between ACORN PROPERTIES, INC., a Georgia Corporation ("Seller"), and DEWAR INVESTMENTS, LLC, a Georgia limited liability company ("Buyer").

### **BACKGROUND**

- A. Seller owns the Property (defined below).
- B. Buyer desires to purchase the Property.

### **ARTICLE 1**

#### **DEFINED TERMS**

1.1 **Definitions.** As used herein, the following terms shall have the meanings set forth below:

"Business Day" means any day other than a Saturday, Sunday or national holiday on which National Banks in Thomasville, Georgia are open for business.

"Certified" means, with respect to any document, a written statement attached to such document stating that the information it contains is true and correct in all material respects, executed by the party charged with delivering such document.

"Closing" means consummation of the purchase of the Property by Buyer from Seller in accordance with the terms and conditions of Article 8.

"Closing Date" means the date specified in Section 8.1 on which Closing will be held.

"Contract Date" means the date that last of Buyer and Seller execute this Contract.

"Earnest Money Deposit" means the moneys deposited, from time to time, by Buyer in escrow with the Title Company at the times and in the amounts specified in Section 3.2 and Section 4.7.1, as applicable.

"Permitted Exceptions" means those exceptions or conditions that affect or may affect title to the Land and Improvements that are approved or deemed to be approved by Buyer in accordance with Sections 4.3 and 4.4.

"Project" means the apartment complex located upon the Land, commonly known as Gull Cove apartments.

"Property" means:

- (i) The tract or parcel of land situated in Thomas County, Georgia, described on Exhibit "A" hereto (the "Land");

- (ii) The improvements located on the Land, including, without limitation, the Project (the "Improvements");
- (iii) All of Seller's right, title and interest in and to appurtenances to the Land, including all of Seller's right, title and interest in and to adjacent streets, alleys, rights-of-way, any adjacent strips or gores of real estate, and all of Seller's rights, titles and interest appurtenant to the Land and the Improvements (the "Appurtenances");
- (iv) All of Seller's right, title and interest in and to any and all furniture, fixtures, equipment, vehicles, supplies or other similar personal property (except for items owned by Tenants) which is located upon, attached to or appurtenant to the Improvements, and which is used or utilized for or in connection with the operation or maintenance of the Land or Improvements (collectively, the "Personal Property");
- (v) All of Seller's right, title and interest in and to all maintenance and service contracts (the "Property Agreements") affecting the Land, Project and/or Improvements, provided, however, that all utility deposits shall remain the property of Seller;
- (vi) With respect to the Project, all of Seller's right, title and interest in and to all (1) warranties and guaranties, (2) licenses, permits, or similar documents, (3) telephone exchanges, Project-specific websites, trade names, marks, and other identifying material, including without limitation the name of the Project currently used by Seller (on a non-exclusive basis) (collectively, 1 through 3 are referred to as the "Intangible Property"); and
- (vii) All of Seller's right, title and interest in and to all residential tenant leases of the Project (collectively the "Tenant Leases", and individually a "Tenant Lease");
- (viii) All of Seller's right, title and interest in and to all leases in the Project other than the Tenant Leases (the "Other Leases") (collectively, the Tenant Leases and the Other Leases are referred to as the "Leases");
- (ix) All prepaid rents collected by Seller or its predecessor in interest from the residential tenants (collectively the "Tenants") holding under a Tenant Lease or from tenants under the Other Leases for any period subsequent to the Closing Date (the "Prepaid Rents"); and
- (x) All security and pet deposits collected by Seller or its predecessor in interest from the Tenants or which the landlord may be obligated to return to the Tenants (the "Deposits").

"Property Documents" means the items to be provided for Buyer's review pursuant to Section 4.6.

"Purchase Price" means the total consideration to be paid by Buyer to Seller for the purchase of the Property, in accordance with Section 3.1 hereof.

"Seller's Knowledge" means matters of which Acorn Properties Inc., is presently aware without any inquiry or investigation.

1.2 Other Defined Terms. Certain other defined terms shall have the respective meanings assigned to them elsewhere in this Contract.

## ARTICLE 2

### AGREEMENT OF PURCHASE AND SALE

On the terms and conditions stated in this Contract, Seller hereby agrees to sell and convey the Property to Buyer and Buyer hereby agrees to purchase and acquire the Property from Seller.

## ARTICLE 3

### PURCHASE PRICE

3.1 Purchase Price. The Purchase Price to be paid by Buyer to Seller for the Property at the Closing is One Million Three Hundred and Thirty Four Thousand and No/100 Dollars (\$1,334,000.00). The Purchase Price is payable in cash by wire transfer of certified funds at Closing.

3.1 Initial Earnest Money Deposit. Within seven (7) Business Days after the Contract Date, Buyer shall deliver the "Initial Earnest Money Deposit" (herein so called) in cash or other good and current funds to the Closing Attorney, and the Initial Earnest Money Deposit shall thereafter be held by the Closing Attorney in escrow to be applied or disposed of by it as is provided in this Contract. The Initial Earnest Money Deposit shall be in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00) and shall be held by the Closing Attorney subject to the terms and provisions of this Contract. The Earnest Money Deposit (as defined in Section 1.1 above) shall be deposited in a non-interest-bearing account at one or more federally insured national banking institutions. If the purchase and sale hereunder is consummated in accordance with the terms and conditions hereof, the Earnest Money Deposit shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money Deposit shall be disposed of by the Closing Attorney as provided elsewhere in this Contract.

ARTICLE 4

TITLE AND SURVEY AND INSPECTION

4.1 Title Commitment. Prior to the expiration of the Inspection Period (as defined below), Buyer shall obtain, at ~~Seller's~~ <sup>Buyer's</sup> costs, a current commitment for Title Insurance (the "Title Commitment") from the Title Company, as agent for the Title Underwriter. The Title Commitment shall be accompanied by copies of all instruments that create or evidence non-standard title exceptions affecting the Land and Improvements, including those exceptions pertaining to the indebtedness of Seller secured by the Property. The costs of the Title Commitment and the premium for the owner's title insurance policy shall be borne by ~~Seller~~ <sup>Buyer</sup>. The costs of the premium for any lender's title insurance policy, and any title endorsements shall be borne by Buyer.

4.2 Survey. Within five (5) business days after the Contract Date, Seller shall provide Buyer a copy of its most current survey of the Property in Seller's actual possession, if any exist. Prior to the expiration of the Inspection Period (as defined below), Buyer shall obtain an ALTA survey ("Survey") prepared by a licensed surveyor acceptable to the Title Company. If Seller's existing survey is provided to Buyer, Seller agrees to reasonably cooperate with Buyer in Buyer's attempt to have the surveyor revise the survey (including, without limitation, the surveyor's certificate). The costs of the Survey shall be borne by Buyer.

4.3 Review of Title Commitment and Survey. Buyer shall have until the expiration of the Inspection Period (the "Title Review Period") in which to review the Title Commitment and the Survey and give written notice to Seller specifying Buyer's objections (the "Objections"), if any, to the Title Commitment and the Survey. If Buyer fails to give written notice of Objections to Seller prior to the expiration of the Title Review Period, then all exceptions to title shown on Schedule B-2 of the Title Commitment and on the Survey shall be deemed to be Permitted Exceptions. Seller shall have until fifteen (15) business days prior to Closing (the "Cure Period") in which to cure such Objections.

4.4 Seller's Obligation to Cure. If Buyer timely notifies Seller in writing of Objections to the Title Commitment and/or the Survey, then Seller may, but is not obligated to, at any time within the Cure Period to give written notice ("Seller's Title Cure Notice") to Buyer of Seller's intention to satisfy the Objections prior to Closing. If Seller fails to timely give Buyer Seller's Title Cure Notice or if Seller notifies Buyer in writing during the Cure Period that Seller will not satisfy the Objections prior to Closing, then, in either event, Buyer shall have the exclusive option, which must be exercised on or before the later of (A) five (5) business days after receipt of Seller's Title Cure Notice, or (B) five (5) business days after the expiration of the Cure Period if Seller fails to give Seller's Title Cure Notice, to either (i) waive the unsatisfied Objections, in which event those unsatisfied Objections shall become Permitted Exceptions; provided, however, that with respect to any monetary lien or encumbrance of the type described below in this Section 4.4, Buyer shall be entitled to cure and remove such Objections and all of Buyer's reasonable costs and expenses incurred in connection with such cure shall be deducted from and credited against the Purchase Price, or (ii) terminate this Contract, in which event the entire Earnest Money Deposit shall be returned to Buyer, and Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract, except obligations expressly set forth herein as surviving termination; provided, however, that if Buyer elects to terminate this Contract because

of the existence of any Objection which results from a breach of Seller's covenant under Section 5.1.17 hereof, Buyer's cancellation shall be without prejudice to Buyer's right to sue Seller for damages suffered or incurred by Buyer as a result of Seller's breach of such covenant. If Buyer fails to timely terminate this Contract in accordance with this Section, Buyer is deemed to have waived the unsatisfied Objections (subject to the terms above). Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing, Seller shall (i) pay in full and cause to be canceled and discharged or otherwise cause the Title Company to insure over all mechanics' and contractors' liens which encumber the Land and/or Improvements as of the Closing Date and which have been placed on the Land and/or Improvements through no fault of Buyer, (ii) pay in full all past due ad valorem taxes, non-ad valorem taxes and assessments of any kind constituting a lien against the Property; and (iii) cause to be released any loan security documents which encumber the Land and/or Improvements. Notwithstanding the foregoing, Buyer shall have the continuing right to examine title to the Property after the expiration of the Inspection Period (as defined below) and, in connection with any document, instrument or notice filed subsequent to the effective date of the Title Commitment with respect to the Property, Buyer shall be entitled to send an additional notice of Objection to Seller, in which case, the time periods set forth herein to send a Seller's Title Cure Notice and a response thereto shall apply (with a corresponding extension of the Closing Date, if so required), and the rights and obligations of Buyer and Seller with regard to such additional notices shall be the same as the original notices.

**4.5 Title Policy.** At Closing, the Title Company shall be unconditionally committed to furnish the Buyer with the standard form ALTA 2006 Owner's Policy of Title Insurance (the "Owner's Title Policy"). The Owner's Title Policy (which the Title Company shall be committed to issue) shall be issued by the Title Underwriter, in the amount of the Purchase Price, and shall insure that Buyer has good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions.

**4.6 Inspection.** Buyer shall have the right until Closing to make such examination, studies, appraisals, on-sight inspections, engineering and environmental tests and investigations (the "Inspections") of the Property as Buyer may deem advisable; provided, however, that Buyer shall not cause any penetrations to be made in any structures or paved areas without the prior written consent of Seller (consent by e-mail shall suffice) which consent shall not be unreasonably withheld. Buyer hereby agrees to protect, defend, indemnify and hold Seller harmless from and against any physical damage to property or injury to persons caused by Buyer and its agents, representatives, and employees (collectively, the "Buyer's Agents") as a result of the Inspections. Buyer agrees that, in making the Inspections of the Property, all of Buyer's vendors entering onto the Property shall carry not less than \$2,000,000 aggregate (\$1,000,000 per occurrence) commercial general liability insurance insuring all activity and conduct of Buyer and such representatives while exercising such right of access.

Seller shall cooperate with Buyer in making the Property available for Buyer's Inspections, and shall make, to the extent such items are in Seller's actual possession, any and all books, records and other information relating to the Project available for Buyer's Inspections. If Buyer desires copies of such information, the same shall be made at Buyer's expense. All materials made available by Seller that were prepared by a third party shall be deemed provided without representation or warranty by Seller as to the accuracy of such materials or the ability of Buyer to rely upon such materials. Additionally, Seller agrees to deliver to Buyer copies of those due diligence items listed on Schedule 4.6 attached hereto that are in Seller's actual possession,



including, without limitation, the following items (collectively "Property Documents") within five (5) business days after the Contract Date (the "Property Document Delivery Period"):

4.6.1 A current "Rent Roll" (herein so called) certified and prepared by Seller or its management company, which Rent Roll shall reflect, as of the date thereof, in relation to Tenant Leases executed and in effect as of the Contract Date, unit numbers, tenant names, monthly rental, the amount of the tenant's security deposit, the expiration date of each Tenant Lease, and any existing delinquencies of such tenants;

4.6.2 Copies of rent rolls for the six (6) calendar months prior to the Contract Date which shall reflect, as of the date thereof, in relation to Tenant Leases executed and in effect as of the date of each such rent roll, unit numbers, tenant names, monthly rental, the amount of the tenant's security deposit, the expiration date of each tenant lease, and any existing delinquencies of such tenants;

4.6.3 A tenant occupancy history report for the twelve calendar months immediately preceding the Contract Date;

4.6.4 A general description of the usual tenant qualification standards utilized in renting residential apartment units at the Property;

4.6.5 A list, as of the date thereof, of units occupied at the Property, but for which Seller receives no rent;

4.6.6 Copies of the Property Agreements or, if unwritten, a summary of the terms thereof;

4.6.7 Copies of the property tax statements for the Property for the calendar years 2016 and 2017, if available;

4.6.8 A list of the personal property that will be conveyed by Seller to Buyer at Closing. Such list of the Personal Property will be used for the purposes of describing the tangible personal property to be conveyed by the bill of sale;

4.6.9 Copies of the year end profit and loss statement for the calendar years 2015, 2016 and the current year-to-date;

4.6.10 A copy of the standard form of lease usually utilized in renting residential apartment units at the Property;

4.6.11 Copies of certificates of occupancy with respect to the Property, to the extent same are in Seller's possession;

4.6.12 Copies of the Seller's gas, electric and water bills for the Property issued for the previous twelve (12) months prior to the Contract Date;

4.6.13 A schedule of capital expenditures at the Property for calendar years 2014, 2015, 2016 and the current year-to-date;

4.6.14 Month-end summaries of bank deposit batch reports for the months of January of 2017 through June of 2017;

4.6.15 Copy of any environmental reports for the Property performed for, or in the possession of, Seller, without representation or warranty as to the accuracy thereof;

4.6.16 Access to floor plans and marketing materials currently utilized in marketing the property to residential apartment tenants;

4.6.17 A current certificate of insurance regarding property casualty insurance at the Property; and

4.6.18 Any structural or property condition reports.

Additionally, Seller agrees to provide Buyer with access to the following, upon request:

4.6.19 The Tenant Leases.

4.6.20 Such other Property related items as Buyer may reasonably request.

All materials obtained by Buyer pursuant to this Section 4.6 shall be held in confidence by Buyer and disclosed only to its attorneys, accountants, agents and prospective lenders. If the parties fail to consummate the transaction described herein for any reason other than the Seller's default, Buyer shall, upon Seller's written request, deliver to Seller all information and reports obtained by Buyer pursuant to this Section 4.6, which obligation shall survive the termination of this Contract.

Buyer agrees to indemnify, defend and hold Seller harmless of and from any actual damages or injuries (collectively, "Claims") to persons or property arising from Buyer's inspection of the Property and, notwithstanding anything to the contrary in this Contract, and such obligations shall survive closing or any termination of the Contract, notwithstanding any limiting language which might otherwise be contained in this Contract. Notwithstanding anything to the contrary contained in this Contract, (i) the indemnity and hold harmless provision contained in this Section shall not apply to the extent such Claims arise in connection with Seller's negligence or willful misconduct, and (ii) provided further that Buyer shall have no liability to Seller or to any other person or entity by reason of, nor shall Buyer have any duty to indemnify, defend or hold any person or entity harmless from or against, any Claims, including, without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported (as may be required by law) any adverse physical condition, title condition, environmental condition or other defect with respect to the Property. Any claim for indemnification must be made within six (6) months after the date of Closing or termination of this Contract.

#### 4.7 Inspection Approvals.

4.6.1 For purposes of this Contract, the term "Inspection Period" shall mean the period commencing on the Contract Date and ending at 5:00 p.m. Thomasville, Georgia local time on the date that is sixty (60) days following the Contract Date.

4.7.1 Buyer shall have the right to terminate this Contract for any reason, or no reason at all, during the Inspection Period. If Buyer elects to terminate this Contract within the Inspection Period, then Buyer shall deliver written notice thereof to Seller and the Closing Attorney on or before the expiration of the Inspection Period stating such election; provided, however, that if Buyer does not deliver said notice, (A) Buyer is deemed to have elected to keep this Contract in full force and effect, and (B) the Earnest Money Deposit shall be nonrefundable to Buyer except in the event of Seller's default hereunder or as otherwise provided in this Contract under sections 4.4, 7.2, 9.2, 11.1.

4.7.2 If Buyer properly and timely elects to terminate this Contract, the Earnest Money Deposit shall be returned to Buyer, and Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract, except for matters expressly surviving termination.

4.8. Lead Warning. Attached hereto as part of this Contract are: (i) the "Lead Warning Statement" (herein so called), required by 42 U.S.C. § 4852d, attached hereto as Exhibit "B," and (ii) the "Lead Hazard Information Pamphlet" (herein so called), attached hereto as Exhibit "C." Buyer has the right to conduct a risk assessment or inspection for the presence of lead-based paint hazards during the Inspection Period. If such inspection reveals a lead-based paint hazard that is not acceptable to Buyer, Buyer has the right to terminate this Contract by written notice to Seller given prior to the expiration of the Inspection Period. If Buyer timely terminates this Contract pursuant to the preceding sentence, the entire Earnest Money Deposit shall be returned to Buyer, and Seller and Buyer have no further obligations, one to the other, with respect to the subject matter of this Contract, except for matters expressly surviving termination. If Buyer fails to timely give such termination notice, Buyer is deemed to have accepted any lead-based paint condition. Buyer hereby acknowledges that it has read the Lead Warning Statement and understands its contents, that it has been given at least a ten (10) day period from the Contract Date to conduct a risk assessment or inspection for the presence of lead-based paint hazards, and that Buyer has received and read the Lead Hazard Information Pamphlet.

4.9 Property Agreements. During the Inspection Period, Buyer shall notify Seller of any Property Agreements Buyer will assume at Closing. Any Property Agreements which Buyer does not elect to assume shall be terminated by Seller effective as of the Closing Date. Notwithstanding the foregoing, Buyer acknowledges that the Property Agreements listed on Schedule 4.9 cannot be terminated and must be assumed by Buyer at Closing.

## ARTICLE 5

### REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS OF SELLER

5.1 Representations and Warranties of Seller. The following representations and warranties of Seller are true and correct on the Contract Date:

5.1.1 All requisite action necessary to authorize Seller to enter into this Contract and to carry out Seller's obligations hereunder has been taken, or on the Closing Date will have been taken. Seller has the right, power and authority to (a) sell the Property to Buyer in accordance with the terms and conditions hereof, (b) execute and deliver this Contract and all other documents to be executed and delivered, either simultaneously herewith or at Closing, in connection with the transaction contemplated herein, and (c) perform all obligations of Seller that arise under this Contract or under such documents.

5.1.2 Seller has not received any written notice of any pending condemnation action with respect to all or any portion of the Property and, to Seller's Knowledge, there are no existing condemnation or other legal proceedings affecting the existing use of the Property by any governmental authority having jurisdiction over or affecting all or any part of the Property.

5.1.3 There are no adverse or other parties in possession of the Land, or of any part thereof as lessees (other than tenants under the Tenant Leases), tenants at sufferance or tenants at will (except as disclosed in the Rent Roll), or trespassers.

5.1.4 There is no action, suit, litigation, hearing or administrative proceeding relating to Seller, any entity comprising Seller, or to all or any portion of the Property, that, if adversely determined, would directly or indirectly affect all or any part of the Property or Seller's ability to convey the Property to Buyer in accordance with this Contract.

*Buyer has been informed that seller is in Chapter 11 Bankruptcy*  
5.1.5 There are no liens affecting the Personal Property, save and except security given for any existing mortgage loan on the Property which will be removed at or before Closing. *efw*

5.1.6 No Tenant has been granted any valid right or option to purchase the Property.

5.1.7 Seller is a *Corporation* ~~limited partnership~~ in good standing, duly formed and validly existing under the laws of the State of its formation.

5.1.8 Seller is the sole owner of good, fee simple, marketable and insurable title to all of the Property, subject only to the Permitted Exceptions. Seller has granted no outstanding options to purchase or rights of first refusal with respect to all or any part of the Property and has entered into no outstanding contracts with others for the sale, mortgage, pledge, hypothecation, assignment, lease or other transfer of all or any part of the Property except for the Leases any existing mortgage loan on the Property which will be removed at or before Closing.

5.1.9. To Seller's Knowledge:

- (a) no part of the Property is subject to any building or use restrictions that restrict or prevent the present use of the Property;
- (b) the Property is currently zoned Multi-Family under the applicable zoning ordinance of the City of Thomasville, Georgia or Thomas County, Georgia, and is properly and duly zoned for the present use of the Property;

- (c) there are no violations of any rule, regulation, code, resolution, ordinance, statute or law of any government, governmental agency or Insurance Board of Underwriters involving the use, maintenance, operation or condition of the Property or any part thereof;
- (d) there is no outstanding notice or order of any governmental authority having jurisdiction over the Property not fully and duly complied with, affecting the use or operation of any part of the Property, or requiring, as of the date hereof or a specified date in the future, any repairs or alterations or additions or improvements thereto; and
- (e) the Property is not located in any conservation or historic district or in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards.

5.1.10 To Seller's Knowledge, no buildings or other improvements of any kind encroach on the Property.

5.1.11 No labor has been performed or material furnished for the Property for which Seller has not heretofore fully paid, or for which mechanics' or materialmen's lien or liens, or any other lien, can be claimed by any person, party or entity that will not be paid in full at or prior to Closing.

5.1.12 The Property is not subject to any operating or maintenance agreements that cannot be terminated by Buyer, without charge or penalty, upon thirty (30) days' notice or less. Except as described in the Rent Roll, the Property is not subject to any leases, tenancies, licenses or occupancy agreements.

5.1.13 Neither the execution nor delivery of this Contract nor the consummation of the transactions contemplated hereby will: (a) result in the acceleration of any encumbrance pertaining to the Property that will not be paid off at Closing, (b) violate any restriction to which Seller is subject, or (c) result in the creation of any lien, charge or encumbrance upon any of the Property.

5.1.14 Seller has paid, or will pay at or prior to Closing, all taxes, assessments, charges, fees, levies and impositions, coming due prior to the Closing Date. Seller knows of no actual or pending imposition of any assessments for public improvements and, to Seller's Knowledge, no such improvements have been constructed or planned that would be paid for by means of assessments upon the Property.

5.1.15 Prior to the Closing, and until physical possession of the Property has been delivered unto Buyer, Seller will keep and maintain all of the Property in good order and condition, will not permit any waste with respect thereto, and will not permit any grading or any cutting of timber thereon.

5.1.16 Seller is not a "foreign person" for purposes of the withholding rules of the Foreign Investment in Real Property Act, as revised by the Deficit Reduction Act of 1984.

5.1.17 Between the date hereof and the Closing Date, Seller shall not grant or permit any new encumbrances on or about the Property, that will not be paid in full at or prior to closing, without the prior written consent of Buyer.

5.1.18 Seller has received no notice of any claims, demands, suits, or actions arising out of or relating in any way to any water damage, water intrusion, mold growth or mold infestation occurring in, on or about the Property.

5.1.19 The Rent Roll delivered to Buyer is true and accurate in all material respects.

5.1.20 (a) For purposes of this Contract, "Environmental Laws" means the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and all other applicable state, county, municipal, administrative or other environmental, hazardous waste or substance, health and/or safety laws, ordinances, rules, regulations and requirements pertaining to the environmental or ecological conditions on, under or about the Property. For purposes of this Contract, "hazardous substance" means any matter giving rise to liability under any of the Environmental Laws, or under any common law theory based on nuisance or strict liability.

(b) Seller warrants and represents that, to the Seller's Knowledge:

(i) the Property does not contain, and has not contained, any hazardous substance;

(ii) Seller has not conducted or authorized the generation, transportation, storage, treatment or disposal at or near the Property of any hazardous substance;

(iii) Seller is not aware of any pending or threatened litigation or proceeding before any court or any governmental or administrative agency in which any person or entity alleges the presence, release, threat of release, placement on, in or from the Property or any adjacent property, or the generation, transportation, storage, treatment, or disposal at the Property or any adjacent property, of any hazardous substance;

(iv) Seller has not received any notice of, and has no actual or constructive knowledge that any governmental authority or employee or agent thereof has determined, or threatens to determine, that there is a presence, release or threat of release or placement on, in or from the Property or any adjacent property, or the generation, transportation, storage, treatment, or disposal at the Property or any adjacent property, of any hazardous substance;

(v) there are no actions, communications or agreements with any governmental authority or agency (Federal, state or local) or any private entity, including, but not limited to, any prior owners of the Property,

relating in any way to the presence, release, threat of release or placement on, in or from the Property, or the generation, transportation, storage, treatment or disposal at the Property or any adjacent property, of any hazardous substance;

(vi) Seller has owned and operated the Property in compliance with all Environmental Laws and has obtained all necessary permits under the Environmental Laws for Seller's operations on the Property; and

(vii) there are no underground storage tanks located on the Property, and no underground storage tanks have been removed from the Property.

(c) Seller has delivered to Buyer copies of all reports or tests prepared for Seller with respect to the compliance of the Property with the Environmental Laws or the presence of hazardous substances on the Property that are in Seller's actual possession.

5.1.21. To the Seller's Knowledge, the Land has the legal right to vehicular and pedestrian ingress and egress to public, dedicated streets abutting or adjoining the Property.

5.1.22. Seller is the "landlord" or "lessor" under all of the Leases and owns unencumbered legal and beneficial title to all of the Leases and the rents and other income thereunder.

5.1.23 To the Seller's Knowledge and except as set forth in Schedule 5.1.23 hereto, (i) there currently exists no formal written claim by any tenant as to any defense, set off, or counterclaim with respect to its tenancy or its obligation to pay rent and other charges pursuant to its Lease, (ii) the Leases are valid and enforceable in accordance with their terms and (iii) are in full force and effect.

5.1.24 Attached hereto as Schedule 5.1.24 is a complete list of all Property Agreements or other agreements that are in force and effect as of the date hereof and affect the Property or the operation, repair or maintenance thereof, and Seller has (or will, as contemplated hereunder) deliver true, correct and complete copies of the Property Agreements to Buyer. Seller has no knowledge of any default or claim of default under any of the Property Agreements, and, except for the Property Agreements listed in Schedule 4.9, all such Property Agreements are terminable on no more than thirty (30) days' notice.

5.1.25 Neither Seller nor, to Seller's knowledge, any direct or indirect owner of Seller is (a) identified on the OFAC List (as hereinafter defined) or (b) a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, rule, regulation or Executive Order of the President of the United States. The term "OFAC List" shall mean the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any law, rule, regulation or Executive Order of the President of the United States, including,

without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States.

5.1.26. No lease commissions are due, or shall be due, with respect to the Leases.

Other than the representations and warranties made in this Section 5.1., Buyer is expressly purchasing the Property in its existing condition "AS IS, WHERE IS, AND WITH ALL FAULTS" based upon the condition (physical or otherwise) of the Property as of the Contract Date. Furthermore, Buyer (i) is, or will be at Closing, completely familiar with the Property and its physical condition, and (ii) has, or will have prior to Closing, conducted all examinations, investigations, and inspections of the Property which Buyer deems necessary.

Seller's representations and warranties shall survive Closing for a period of six (6) months and shall be deemed to have been remade by Seller at Closing; provided, however, any inaccuracies in Seller's representations and warranties of which Buyer has either actual or constructive knowledge before Closing, shall be deemed to have been waived by Buyer upon Closing and shall not survive Closing. Buyer hereby agrees that in the event of a breach of these representations and warranties by Seller, Buyer shall be entitled to actual damages only. Without limiting the immediately preceding sentence, in no event will Buyer be entitled to recover consequential damages, punitive damages, or other similar damages from Seller.

5.2 Covenants and Agreements of Seller. Seller covenants and agrees with Buyer as follows:

5.2.1 From the Contract Date until the Closing Date, Seller shall promptly notify Buyer in writing of any litigation, arbitration or administrative hearing before any court or governmental agency concerning or affecting the Property which is instituted after the Contract Date and of which Seller has Seller's Knowledge.

5.2.2 From the Contract Date until the Closing Date, Seller shall operate the Property as an apartment complex in the same manner and with the same care as it is currently doing. From the Contract Date until the Closing Date, Seller shall not enter into any Leases except in accordance with the following guidelines: (1) each lease for a vacant unit shall be for a term of not less than six (6) months or more than twelve (12) months; (2) unless approved in advance and in writing by Buyer, Seller will not permit or grant rent concessions, specials or new non-paying or discounted-for-service leases (i.e., former employees, family, etc.); (3) unless otherwise agreed to by Buyer, the rent charged under each lease shall be substantially similar to the rental amount assessed for similar units at the Project in the sixty (60) days immediately preceding the Contract Date as disclosed in the Rent Roll delivered to Buyer pursuant to this Contract; (4) Seller will screen prospective tenants in a manner consistent with prevailing industry standards, including without limitation, (i) verification that monthly income is equal to or greater than three times (3x) monthly rent; (ii) confirmation that they have not been involved in any prior apartment collection actions within the past five (5) years; and (iii) performance of a reasonably satisfactory criminal background check, confirming, among other things, that they have not been convicted of any violent crime, felony drug crime or sex crime; and (5) from the Contract Date through closing, Seller will provide Buyer with monthly lease activity reports showing new leases and renewals and the terms thereof. From the Contract Date, Seller shall not enter into or renew (whether such renewal is automatic or elective) any Property Agreements whose terms do not provide for a thirty (30) day cancellation provision.



5.2.3 From the Contract Date until the Closing Date, Seller shall not collect prepaid rentals from Tenants in excess of one (1) month in advance.

5.2.4 Seller covenants and agrees that Seller shall pay (or make arrangements to pay) any unpaid bills or claims in connection with any construction or repair of the Property occurring or contracted for by Seller prior to Closing (unless expressly assumed by Buyer).

5.2.5 At or prior to Closing, Seller shall terminate any existing property management agreement with respect to the Property.

#### ARTICLE 6

##### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF BUYER

6.1 Representations, Warranties and Covenants of Buyer. Buyer represents, warrants, covenants, and agrees with Seller that:

6.1.1 Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Contract and to carry out Buyer's obligations under this Contract, and all requisite action necessary to authorize Buyer to enter into this Contract and to carry out Buyer's obligations hereunder has been, or on the Closing Date will have been, taken;

6.1.2 Buyer acknowledges that Buyer has been advised in writing that Buyer should have an abstract covering the Land examined by an attorney of Buyer's own selection or that Buyer should be furnished with or obtain a policy of title insurance

#### ARTICLE 7

##### CONDITIONS PRECEDENT TO BUYER'S AND SELLER'S PERFORMANCE

7.1 Conditions Precedent to Buyer's Obligations. Buyer shall not be obligated to consummate the transaction described in this Contract unless, as of the Closing Date:

7.1.1 Seller shall have performed in all material respects all of the agreements, covenants and obligations contained in this Contract to be performed or complied with by Seller on or prior to the Closing Date;

7.1.2 All representations and warranties made by Seller hereunder shall be true, complete and accurate in all material respects as of the Closing Date;

7.1.3 The Property is duly zoned under the applicable zoning ordinance of the City of Thomasville, Georgia, for the Project;

7.1.4 Prior to the expiration of the Inspection Period, Seller shall have delivered to Buyer copies of any written notice given from the City of Thomasville, Georgia or Thomas County, Georgia to Seller indicating any violation of the City's or County's building code which are in Seller's actual possession;

7.1.5 At Closing, any existing property management agreement contracted for by Seller, shall have been terminated; and

7.1.6 From and after the last day of the Inspection Period, there shall have occurred no material adverse change to the Property (or any material portion thereof) which is continuing at the date and time scheduled for Closing which could have a materially adverse impact on Buyer's intended use of the Property.

7.2 Termination if Conditions Precedent not Satisfied or Waived. If any of the conditions precedent to the performance of Buyer's obligations under this Contract have not been satisfied, waived, or deemed waived by Buyer on the Closing Date then Buyer shall give Seller written notice of the specific conditions that have not been satisfied, waived or deemed waived, and if such specific conditions remain unsatisfied for seven (7) days after Seller has received written notice thereof, then Buyer may, at its option, by written notice delivered to Seller within one (1) Business Day following the expiration of such seven (7) day period, terminate this Contract in writing, in which event the entire Earnest Money Deposit shall be returned to Buyer and Buyer and Seller shall have no further obligations, one to the other, with respect to the subject matter of this Contract, except for obligations expressly surviving termination. If Buyer does not timely terminate this Contract in accordance with the preceding sentence, such condition precedent shall be deemed waived and this Contract shall continue in full force and effect as modified thereby.

## ARTICLE 8

### CLOSING

8.1 Date and Place of Closing. Closing shall take place as an escrow closing through the offices of the Title Company and need not be "face-to-face." The Closing Date shall be on or before the date which is thirty (30) days after the expiration of the Inspection Period, the exact date and time being designated by Buyer on prior reasonable notice to Seller. The Buyer may purchase an additional thirty (30) day extension period to close on the property upon a non-refundable payment of Twenty Thousand Dollars (\$20,000.00) to Seller. The \$20,000.00 payment shall be applicable to the Purchase Price.

8.2 Items to be Delivered at or Prior to Closing.

8.2.1 Seller. At Closing, Seller shall deliver or cause to be delivered to Buyer or the Closing Attorney, the following items fully executed and acknowledged where so indicated by all necessary parties:

8.2.1.1 the unconditional commitment of the Title Underwriter to issue Owner's Title Policy to Buyer, in the form specified in Section 4.5;

8.2.1.2 a Special Warranty Deed conveying the Property using the same legal

description of the Property for which Seller received title, duly executed and acknowledged by Seller, subject to the Permitted Exceptions;

8.2.1.3 an Assignment of Leases and Security Deposits, whereby Seller shall assign to Buyer all of Seller's right, title, and interest with respect to the Leases and shall agree to indemnify Buyer against and hold Buyer harmless from any claims, causes of action, damages and expenses, including court costs and attorneys' fees, resulting from any failure by Seller to perform the duties and obligations of the landlord or lessor arising prior to the date of Closing under such Leases (and Buyer shall similarly indemnify Seller for any such matters arising from and after the date of Closing);

8.2.1.4 a non-foreign certificate, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury Seller's United States identification number and that Seller is not a "foreign person" as that term is defined in Section 1445, duly executed by Seller;

8.2.1.5 appropriate evidence of authorization reasonably satisfactory to the Title Company regarding the consummation of the transaction contemplated by this Contract;

8.2.1.6 any other items reasonably requested by the Closing Attorney for consummating Closing;

8.2.1.7 a Bill of Sale and Assignment (i) conveying Seller's interest in the Personal Property and the Intangible Property to Buyer, without warranty, and (ii) assigning, without warranty to Buyer, Seller's interest in the Property Agreements which Buyer has elected to assume, with Buyer assuming such obligations under such Property Agreements;

8.2.1.8 originals, to the extent in Seller's possession, of all Leases and Property Agreements, and a Rent Roll (including a schedule of security deposits) dated not earlier than five (5) days prior to Closing (in accordance with the provisions of Section 4.6.1) certified by Seller or its management company;

8.2.1.9 such original plans and specifications, site plans, building and development permits, certificates of occupancy, operating permits, and other documents as shall be in the possession of Seller, if any, and which relate to the development, construction, governmental compliance, occupancy, or operation of the Property;

8.2.1.10 a recertification of Seller's representations and warranties contained in this Agreement; and

8.1.1.1 a Tenant Notice Letter, in a form reasonably acceptable to Seller and Buyer acknowledging that (i) the Property has been sold to Buyer, (ii) directing that all future rental payments be made to Buyer and that (iii) Buyer has received and is responsible for the Tenant's security deposit.

**8.2.2 Buyer.** At Closing, Buyer shall deliver or cause to be delivered to Seller or the Closing Attorney, the following items:

**8.2.2.1** the cash portion of Purchase Price, in cash or good funds, as required by Section 3.1, shall be delivered to the Closing Attorney for the benefit of Seller;

**8.2.2.2** appropriate evidence of authorization reasonably satisfactory to the Closing Attorney for the consummation of this transaction

**8.2.2.3** any other items reasonably requested by the Closing Attorney for consummating Closing;

**8.2.2.4** the Bill of Sale and Assignment referenced in Section 8.2.1.7 hereof, duly executed by Buyer;

**8.2.2.5** the Assignment of Leases and Security Deposits referenced in Section 8.2.1.3 hereof, duly executed by Buyer; and

**8.2.2.6** a Tenant Notice Letter, in a form reasonably acceptable to Seller and Buyer acknowledging that (i) the Property has been sold to Buyer, (ii) directing that all future rental payments be made to Buyer and that (iii) Buyer has received and is responsible for the Tenant's security deposit.

**8.3 Adjustments at Closing.** All income and obligations attributable to days preceding the Closing Date shall be allocated to Seller, and all income and obligations attributable to days from and after the Closing Date shall be allocated to Buyer. The following items shall be adjusted or prorated between Seller and Buyer as set forth below:

**8.3.1** Ad valorem, non-ad valorem and personal property taxes relating to the Property, if any, for the calendar year in which Closing occurs shall be prorated between Seller and Buyer as of the Closing Date based upon taxes actually paid by Seller if Seller has paid such taxes prior to Closing, and otherwise upon the taxes due assuming payment for the year of Closing is then due. If the actual amount of taxes for the calendar year in which Closing shall occur is not known as of the Closing Date, the proration shall be based on the most current assessed value and tax rates for the prior year with respect to the Property at the date of Closing (provided, if the tax rate for the current year has been finally established by the applicable taxing authority, then the current year tax rate shall be used instead of the prior year tax rate). There shall be no requirement that a tax bill statement has been sent for the tax rates to be known, rather, the tax rate must merely be established as final by the appropriate taxing authority. If final bills are not available at Closing, the tax proration made at Closing shall be subject to readjustment by Buyer and Seller as soon as reasonably possible after final bills become available from the taxing authority. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice of the amount of the adjustment accompanied by the final bill. The provisions of this Section 8.3.1 shall survive Closing for a period of one (1) year.

**8.3.2** Rents under the Leases shall be prorated as of 12:01 a.m. on the Closing Date.

At Closing, Buyer shall be given a credit for rents actually collected under the Leases attributable to all periods from and after the Closing Date. After Closing, Buyer has the right to collect rents from tenants for the entire month of Closing and thereafter. Seller shall retain the rights related to uncollected rents from such tenants for all times attributable to periods prior to the Closing Date ("Seller's Uncollected Rents"), provided, however, if Buyer collects any amount attributable to Seller's Uncollected Rents, Buyer shall pay such amount to Seller after Closing. Notwithstanding the fact that Seller shall retain the right to Seller's Uncollected Rents, after Closing Seller shall have no right to commence any proceedings with respect to the Property or any tenants of the Property. All rents under the Leases shall be attributed first to such tenant's current rent, and then to each month immediately preceding such month. The provisions of this Section 8.3.2 shall survive Closing.

8.3.3 Certified liens and assessments for governmental improvements as of the Closing Date, if any shall be paid in full by Seller and any pending liens for such improvements shall be assumed by Purchaser unless the improvements pertaining to same have been substantially completed by Closing, in which event Seller shall pay for such liens. If any liens and assessments for governmental improvements are to be paid in installments, all installments due prior to the Closing Date shall be the responsibility of Seller and all installments coming due following Closing Date shall be the responsibility of Purchaser.

8.3.4 Except as set forth in Sections, 8.3.1, and 8.3.2 (including, without limitation, any special assessments), all other income, other expenses, public utility charges, laundry bonus money, remodeling allowances or other upfront payments relating to a laundry lease, cable television bonus money, door fees or other upfront payments relating to a cable television contract, and monthly Property Agreement payments shall be prorated at Closing effective as of the Closing Date based upon the best available information. The obligation of the parties to adjust such items, to the extent unknown or not provided for at Closing, shall survive Closing and shall be paid by the party responsible therefor within ten (10) days after written demand has been made by the other party. Such demand shall include a copy of the bills or expense invoices for which payment or reimbursement is sought. All demands for reimbursement must be made within sixty (60) days after the Closing Date and thereafter the prorations made at Closing (adjusted in accordance with timely made demands for reimbursement) will be considered final for all purposes.

8.3.5 At Closing, Buyer shall be given a credit for the amount of the Deposits, which shall satisfy Seller's obligation to assign the Deposits to Buyer.

8.4 Possession. Possession of the Property shall be delivered to Buyer by Seller at Closing, subject only to the Permitted Exceptions and the Leases.

8.5 Costs of Closing. Each party is responsible for paying the legal fees of its counsel in negotiating, preparing, and closing the transaction contemplated by this Contract. Seller is responsible for any transfer taxes or documentary stamp taxes applicable to the conveyance of the Property. Seller is also responsible for the cost of the premium for the Owner's Title Policy described in Section 4.5. Buyer shall be responsible for any additional cost attributable to the issuance of the mortgagee title policies, the cost of any title policy endorsements, mortgage taxes, and any filing/recording fees for the conveyance documents. Buyer shall also be responsible for the cost of the Survey. All other closing expenses shall be allocated between the parties in the

customary manner for sales of real property similar to the Project in the city in which the Land is located.

## ARTICLE 9

### DEFAULTS AND REMEDIES

9.1 Default of Buyer. If Buyer fails or refuses to consummate the purchase of the Property pursuant to this Contract at Closing for any reason other than the termination of this Contract by Buyer pursuant to a right to so terminate expressly set forth in this Contract or on account of a Seller default, then such event(s) shall constitute a default by Buyer hereunder and Seller may, as Seller's sole and exclusive remedy for such default, terminate this Contract by giving written notice thereof to Buyer prior to or at Closing, whereupon neither party hereto shall have any further rights or obligations hereunder (except as expressly set forth herein as surviving termination), and the Title Company shall deliver the Earnest Money Deposit (to the extent not previously delivered) to Seller which shall constitute liquidated damages hereunder. It is agreed that the Earnest Money Deposit is a reasonable forecast of just compensation for the harm that would be caused by such default, which the parties agree is one that is incapable or very difficult of accurate estimation, and that payment of the Earnest Money Deposit upon such default shall constitute full satisfaction of Buyer's obligations hereunder, except as expressly set forth herein.

9.2 Default of Seller. If Seller fails or refuses to consummate the sale of the Property to Buyer pursuant to this Contract at Closing, or Seller fails to perform any of Seller's other obligations hereunder for any reason other than Buyer's failure to perform or Buyer's default in Buyer's obligations under this Contract, then such event(s) shall constitute a default by Seller hereunder and Buyer shall have the right, as its sole and exclusive remedy, to either: (i) enforce specific performance of Seller's obligations under this Contract if the nature of Seller's default has not rendered specific performance unavailable, and recover from Seller all reasonable costs and expenses incurred in enforcing specific performance, or (ii) Buyer shall receive a return of the entire Earnest Money Deposit (including the interest earned thereon) and Buyer may pursue any legal or equitable remedy available to Buyer for such default.

## ARTICLE 10

### BROKERAGE COMMISSIONS

10.1 Broker's Commission. Seller agrees to pay a brokerage commission. The Broker's right to its commission is conditioned upon Closing and shall not vest or be due or payable unless and until Closing has been consummated. Broker may divide any commission payable hereunder with other licensed real estate brokers, agents or salespersons, provided, however, that, notwithstanding any agreement for the division of the commission, Seller and Buyer shall be fully protected upon Seller's payment of the commission solely to Broker pursuant to the terms hereof.

10.2 Indemnity. Seller hereby represents and warrants to Buyer that Seller has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction other than as set forth in Section 10.1, and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or

commissions being due or payable to any party other than as set forth in Section 10.1 with respect to the transaction contemplated hereby. Buyer hereby represents and warrants to Seller that Buyer has not contracted or entered into any agreement with any real estate broker, agent, finder, or other party in connection with this transaction, and that, except in connection with the Broker, Buyer has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any party with respect to the transaction contemplated hereby. **EACH PARTY HEREBY INDEMNIFIES AND AGREES TO HOLD THE OTHER PARTY HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) RESULTING TO THE OTHER PARTY BY REASON OF A BREACH OF THE REPRESENTATION AND WARRANTY MADE BY SUCH PARTY IN THIS SECTION 10.2. THE INDEMNITIES SET FORTH IN THIS SECTION 10.2 SHALL SURVIVE CLOSING.**

## ARTICLE 11

### CASUALTY OR CONDEMNATION

11.1 Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property occurring after the Contract Date or of any taking or condemnation of all or any portion of the Property. If, after the Contract Date, there shall occur:

11.1.1 damage to the Property caused by fire or other casualty, which would cost more than One Hundred Thousand and No/100 Dollars (\$100,000.00) to repair (as determined by Buyer's architect, engineer or independent insurance adjuster); or

11.1.2 a taking or condemnation of all or any portion of the Property which would materially interfere with the present use of the Property;

then, in such event, Buyer shall have the right, as its exclusive remedy, to either (i) terminate this Contract by written notice delivered to Seller within ten (10) days after Buyer has received notice from Seller of such event or the date on which Buyer learns of such event, whichever shall first occur, and the Earnest Money Deposit shall be returned to Buyer and the parties shall have no further obligations to each other with respect to the subject matter of this Contract, except as expressly delineated herein, provided, however, that if Buyer does not timely deliver such termination notice, Buyer shall have waived its right to elect this provision; or (ii) not terminate this Contract and proceed to Closing, without a reduction in the Purchase Price, in which event Seller shall assign its rights to any insurance proceeds (including, but not limited to, loss-of-rents proceeds for the period after Closing) or condemnation proceeds resulting from such event, less any reasonable costs which Seller shall have actually incurred prior to the Closing to repair any of the damage, and Seller shall give a credit, for the benefit of Buyer, to the Purchase Price the amount of any deductible amount under such insurance policies (if such event is a casualty). Notwithstanding the foregoing, in the event that the cost of repairing or restoring such damage (referenced above) shall be covered by available insurance and such cost shall be reasonably estimated by Buyer's architect, engineer or independent insurance adjuster to be equal to or less than One Hundred Thousand and No/100 Dollars (\$100,000.00) or in the event of a taking or condemnation which does not materially interfere with the present use of the Property, then Buyer shall proceed to Closing and Seller shall assign to Buyer at Closing Seller's rights to any insurance proceeds or condemnation proceeds resulting from such event, less any costs which Seller shall have incurred prior to the Closing to repair any of the damage, and, in addition, Seller shall credit

the Purchase Price with the amount of any deductible under such insurance policies (if such event is a casualty).

11.2 Except as expressly modified by this Article 11, risk of loss resulting from a casualty or condemnation shall remain with Seller, until Closing.

ARTICLE 12

MISCELLANEOUS

12.1 Notices. Any notice or other communication required or permitted hereby shall be in writing and the same shall be deemed given upon delivery thereof in person, or upon deposit with an overnight delivery service such as Federal Express or Airborne, or immediately when sent by electronic mail transmission (provided actual receipt of such transmission by the intended party is concurrently confirmed by the person sending same) and shall be deemed received for purposes of commencing any response period upon delivery thereof in person or one business day after such notice is deposited with an overnight delivery service such as Federal Express or Airborne, and addressed or sent by electronic mail transmission as follows:

If to Seller: Acorn Properties, Inc.  
15 Wilkersonburg Ave  
Thomasville Ga 31757

Email: michelle.allerbestdev@gmail.com

With a Copy to: N/A \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer: Dewar Investments, LLC  
314 N. Patterson Street  
Valdosta, GA 31601  
Attn: Brandon Dampier  
Tel No. 229-316-2225  
Email: brandon.dampier@tishcollc.com AND  
jamey@dewarinc.com



Email addresses and voice telephone numbers are provided for informational purposes only and not deemed to be proper methods of notice.

**12.2 Governing Law.** This Contract is being executed and delivered, and is intended to be performed, in the State of Georgia, and the laws of Georgia shall govern the validity, construction, enforcement, and interpretation of this Contract. This Contract is performable in, and the exclusive venue for any action brought with respect hereto, shall lie in the county in which the land is located. The provisions of this Contract were negotiated at arm's length with all parties being represented by legal counsel, and shall be deemed to have been drafted by all parties hereto. Accordingly, the language in all parts of this Contract shall be construed in accordance with its fair meaning and not strictly for or against any of the parties hereto.

**12.3 Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Project, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

**12.4 Parties Bound.** This Contract shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors and permitted assigns, but shall not inure to the benefit of another party.

**12.5 Saturday, Sunday or Legal Holiday.** If any date set forth in this Contract for the performance of any obligation by Buyer or Seller or for the delivery of any instrument or notice should be on other than a Business Day, the compliance with such obligations or delivery shall be deemed acceptable on the next following Business Day.

**12.6 Time is of the Essence.** It is expressly agreed by Seller and Buyer that time is of the essence with respect to this Contract.

**12.7 Exhibits.** The Exhibits which are referenced in, and attached to, this Contract are incorporated in, and made a part of, this Contract for all purposes.

**12.8 Attorneys' Fees.** If either party hereto shall be required to employ an attorney to enforce or defend the rights of such party hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

12.9 Multiple Counterparts and Delivery by Either Facsimile or E-mail. This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and either of the parties hereto may execute this Contract by signing any such counterpart. The execution of this Contract and delivery thereof by either facsimile transmission or e-mail shall be sufficient for all purposes and shall be binding upon the party who so executes.

12.10 Severability. If any provision of this Contract shall, for any reason, be held to violate any applicable law, and so much of this Contract is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Contract which shall remain in full force and effect.

12.11 Assignment. This Contract may not be assigned by Buyer to any party without Seller's prior written consent, provided, however, that Seller is hereby deemed to consent to an assignment to an entity affiliated with or controlled by Buyer or Buyer's principals. No assignment shall release the Buyer from any obligation or liability under this Contract.

12.12 Like-Kind Exchange. Buyer and Seller agree to cooperate with each other so that Seller may dispose of the Property and/or Buyer may acquire the Property in a transaction intended to qualify in whole or in part as a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. In order to implement such exchange, Seller, may upon written notice to Buyer assign its rights, but not its obligations, under this Contract to a third party designated by Seller to act as a qualified intermediary (as such phrase is defined in applicable IRS regulations), and Buyer agrees to make all payments due hereunder to or as may be directed by such intermediary and to execute such instruments as Seller may reasonably request in connection therewith; provided, however, that Buyer shall not be required to incur any additional expense (unless Seller agrees to reimburse Buyer for same at the Closing) or liability (other than to de minimis extent) as a result of such cooperation, exchange or assignment.

12.13 Liability Regarding Property Operations. Notwithstanding anything to the contrary contained herein, Buyer assumes and shall assume at Closing no liabilities of Seller of any kind or nature whatsoever, whether known or unknown, fixed or contingent, in connection with or as a result of the acquisition of the Property or arising from or in connection with Seller's ownership of the Property or Seller's operation of any business, concern, or enterprise involving the Property, except for such liabilities arising from events or facts first occurring or arising after the date and time of Closing under the Leases and Property Agreements assumed by Buyer at Closing.

12.14 Escrow Provisions. Closing Attorney shall be liable only to hold the Earnest Money Deposit and to deliver same to the parties named herein in accordance with the provisions of this Contract. Closing Attorney, as escrow agent, is acting in the capacity of a depository only, and shall not be liable or responsible to anyone for any damages, losses or expenses unless same shall be caused by the gross negligence or willful malfeasance of Closing Attorney. In the event of any disagreement among any of the parties to this Contract or among them or any of them and any other person, resulting in adverse claims and demands being made in connection with or for any Property involved herein or affected hereby, Closing Attorney shall be entitled to refuse to comply with any such claims or demands as long as such disagreement may continue, and in so refusing, shall make no delivery or other disposition of any Property then held by it under this Contract, and in so doing Closing Attorney shall not become liable in any way for such refusal, and Closing Attorney

shall be entitled to continue to refrain from acting until (a) the rights of adverse claimants shall have been finally settled by binding arbitration or finally adjudicated in a court assuming and having jurisdiction of the Property involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement and Title Company shall have been notified in writing of such agreement signed by the parties hereto. Further, Closing Attorney shall have the right at any time after a dispute between the Seller and Buyer has arisen, to pay any deposits held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon Closing Attorney's obligations as escrow agent hereunder shall terminate.

**12.15 Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

### ARTICLE 13

#### SPECIAL STIPULATIONS

1. Seller shall deliver all units with fire extinguishers that are current and have not reached their expiration date.
2. Seller shall deliver all units with working smoke detectors that are current and have not reached their expiration date.
3. Seller shall replace all HVAC (Heating, Ventilation, and Air Conditioning) air filters at least forty-five (45) days prior to closing and notify the Buyer of the date on which they were replaced.
4. Any active water or roof leaks or clogged drains shall be repaired prior to closing
5. If major deterioration of underground or under-slab cast iron drains is observed, the Buyer may request a reasonable credit from the Seller for such repairs.

SIGNATURES ON THE FOLLOWING PAGE

**IN WITNESS WHEREOF**, the parties have caused this Contract to be executed by their duly authorized officers or representatives, under seal.

**EXECUTED** by Buyer on the 1st day of August, 2017.

**BUYER:**

**DEWAR INVESTMENTS, LLC**, a  
Georgia limited liability company

By: 


Name: James L. Dewar III

Title: Managing Member

**EXECUTED** by Seller on the 2 day of August, 2017.

**SELLER:**

**ACORN PROPERTIES, LLC**, a  
Georgia Corporation

By:  Pres.

Name: E Karl Weckwert II President

Title: President

**AGREED AND ACCEPTED**: this 3rd day of August, 2017.

**EXHIBIT "A"**

**Legal Description**

A tract or parcel of land situate, lying and being in the City of Thomasville, and original Land Lot Number 85 in the 13th Land District of Thomas County, Georgia, more particularly described as follows: **COMMENCE** at a concrete monument marking the intersection of the southerly boundary of the 60.00 foot right-of-way of Pine Lake Drive with the westerly boundary of the 80.00 foot right-of-way of Pine Tree Boulevard and run thence South 01 degree 3 minutes 42 seconds East along the westerly right-of-way boundary of said Pine Tree Boulevard 257.49 feet to the Point of Beginning. From said point of beginning continue thence South 01 degree 03 minutes 42 seconds East along said westerly right-of-way boundary 311.51 feet to a point of curve to the right, thence Southeasterly along said Westerly right-of-way boundary and said curve with a radius of 34,417.62 feet, through a central angle of 00 degrees 16 minutes 56 seconds, for an arc distance of 169.50 feet (the chord of said arc being South 00 degrees 55 minutes 14 seconds East 169.50 feet), thence South 83 degrees 13 minutes West 190.53 feet, thence North 01 degree 03 minutes 42 seconds West 500.00 feet, thence North 88 degrees 56 minutes 18 seconds East 190.00 feet to the Point of Beginning, contain 2.138 acres, more or less

**EXHIBIT "B"**

**LEAD WARNING STATEMENT**

**EVERY BUYER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY ON WHICH A RESIDENTIAL DWELLING WAS BUILT PRIOR TO 1978 IS NOTIFIED THAT SUCH PROPERTY MAY PRESENT EXPOSURE TO LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL DAMAGE, INCLUDING LEARNING DISABILITIES, REDUCED INTELLIGENCE QUOTIENT, BEHAVIORAL PROBLEMS, AND IMPAIRED MEMORY. LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT WOMEN. THE SELLER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE THE BUYER WITH ANY INFORMATION ON LEAD-BASED PAINT HAZARDS FROM RISK ASSESSMENTS OR INSPECTIONS IN THE SELLER'S POSSESSION AND NOTIFY THE BUYER OF ANY KNOWN LEAD-BASED PAINT HAZARDS. A RISK ASSESSMENT OR INSPECTION FOR POSSIBLE LEAD-BASED PAINT HAZARDS IS RECOMMENDED PRIOR TO PURCHASE.**

**EXHIBIT "C"**

**LEAD HAZARD INFORMATION PAMPHLET**

[ATTACHED HERETO]

**SCHEDULE 4.6**

1. **Income Statements – Current Year's Month-by-Month and Last 2 Years**
2. **Payroll Matrix (including position, pay rate, benefits, benefits' end date should employee be hired, etc...)**
3. **Non-Revenue and Employee Discount Units**
4. **Down Unit List**
5. **Concession Report**
6. **Lease Status Report**
7. **Current Delinquency/Aged Receivables Report**
8. **Loss Runs for last 3 years**
9. **Seller's Insurance Certificate (ACORD)**
10. **All Service Contracts including all Addendums**
11. **Termite Inspection Report / Termite Bonds**
12. **12 Month Common Area Utility Bills (Water/Sewer, Electric, Gas, Trash, Phone)**
13. **Work Order Report**
14. **List of Pending Litigation including all Insurance Claims, Lawsuits and Code Violations**
15. **Copy of Standard Lease Form with all addendums and qualify criteria**
16. **Copy of Current Business License**
17. **Capital Improvements List (3 years)**
18. **Last 3 months Rent Rolls (showing security deposits, rental amounts, lease end/start dates, etc...)**
19. **Tax Bills for current year and previous two years**
20. **Personal Property List (office, maintenance, model)**
21. **Copies of past Environmental Reports (to include O&M Plans)**
22. **Copies of past Appraisals**
23. **Copies of most recent Survey**
24. **Copy of current Owner's Title Insurance Policy (with copies of Exception Documents)**
25. **List of Unit Addresses, building-by-building**
26. **Occupancy History for past 12 months**
27. **Floorplans/Marketing Materials**
28. **Copies of Certificates of Occupancy**



**SCHEDULE 4.9**

**Non-Terminable Property Agreements**

[ATTACH]

**SCHEDULE 5.1.23**

**Claims by Tenants**

[ATTACH]

**SCHEDULE 5.1.24**

**Property Agreements**

[ATTACH]

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true and exact copy of the above and foregoing upon:

**United States Treasury**  
**Ustp.regional21.mc.ecf@usdoj.gov**

And those listed on the Creditor Matrix attached hereto.

electronically, if noted, and by placing same in the U.S. mail in a properly addressed envelope with adequate postage affixed thereto.

This the 16<sup>th</sup> day of August, 2017.

s/R. Bruce Warren  
R. Bruce Warren

Label Matrix for local noticing  
113G-7  
Case 17-70661  
Middle District of Georgia  
Valdosta  
Wed Aug 16 09:50:04 EDT 2017

Acorn Properties, Inc.  
PO Box 5765  
Thomasville, GA 31758-5765

RCH - GA, LLC  
P. O. Box 357  
St. Petersburg, FL 33731-0357

RCH Mortgage Fund VI-A, LLC  
360 Central Avenue  
Suite 1220  
St. Petersburg, FL 33701-3838

7  
901 Front Avenue  
P.O. Box 2147  
Columbus, GA 31902-2147

Halidon Holdings, LLC  
2025 E Pinetree Blvd  
Thomasville GA 31792-5302

James L. Dewar, III  
c/o Mark A. Gilbert  
Coleman Talley LLP  
P.O. Box 5437  
Valdosta, GA 31603-5437

Office of U.S. Trustee  
c/o Robert G. Fenimore  
Trial Attorney  
440 MLK Jr. Blvd Ste 302  
Macon, GA 31201-7987

PHG Thomasville AP LLC  
c/o Lisa Wolgast  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road NE  
Atlanta, Georgia 30326-1085

Peachtree Hotel Group  
One Alliance Center  
3500 Lenox Rd Ste 625  
Atlanta, GA 30326-4232

RCH - GA, LLC  
c/o John Turner Holt  
Alexander & Vann, LLP  
411 Gordon Avenue  
Thomasville, GA 31792-6643

RCH Loan Servicing, LLC  
360 Central Ave Ste 1220  
St. Petersburg, FL 33701-3838

RCH Mortgage Fund VI-A, LLC  
c/o Alexander & Vann, LLP  
John Turner Holt  
411 Gordon Avenue  
Thomasville, GA 31792-6643

U.S. Trustee - MAC  
440 Martin Luther King Jr. Boulevard  
Suite 302  
Macon, GA 31201-7987

Ronald B. Warren  
Whitehurst, Blackburn, Warren and Kelley  
809 South Broad Street  
Thomasville, GA 31792-6112

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)PHG Thomasville AP LLC

(u)James L. Dewar III

End of Label Matrix  
Mailable recipients 14  
Bypassed recipients 2  
Total 16

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA**

IN RE: : CHAPTER 11  
: :  
ACORN PROPERTIES, INC, : CASE NO. 17-70661  
: :  
DEBTOR. : :

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**ORDER ON MOTION TO SELL FREE AND CLEAR OF LIEN**

The Debtor's Motion to Sell Free and Clear of Lien, having come on for hearing on September 20, 2017;

IT IS HEREBY ORDERED that the Debtor may sell the property and the lien be satisfied;

END OF DOCUMENT

Prepared and submitted by:

/s/ R. Bruce Warren  
**R. Bruce Warren**  
Attorney for Debtor  
Ga. Bar 738475  
Whitehurst Blackburn & Warren  
809 S. Broad Street  
Thomasville, GA 31792  
[bankruptcy@wbwk.com](mailto:bankruptcy@wbwk.com)  
229-226-2161