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9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **LOS ANGELES DIVISION**

12 In re:

13 BGM PASADENA, LLC, a Delaware  
limited liability company,

14 Debtor.

Case No. 2:15-bk-27833-BB

Chapter 11

**MOTION OF TRUSTEE PETER J. MASTAN  
FOR ENTRY OF (I) AN ORDER (A)  
APPROVING SALE AND BID PROCEDURES IN  
CONNECTION WITH SALE OF PROPERTY  
FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND INTERESTS; (B)  
APPROVING THE FORM AND MANNER OF  
NOTICE; (C) SCHEDULING AN AUCTION AND  
18 SALE HEARING; (D) APPROVING  
PROCEDURES FOR DETERMINING CURE  
19 AMOUNTS; AND (E) APPROVING BREAK-UP  
FEE; AND (II) AN ORDER (A) APPROVING  
20 THE SALE OF ASSETS PURSUANT TO AN  
AGREEMENT OF PURCHASE AND SALE AND  
21 JOINT ESCROW INSTRUCTIONS, AND (B)  
APPROVING ASSUMPTION AND  
22 ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES AND  
23 OTHER AGREEMENTS; DECLARATION OF  
PETER J. MASTAN IN SUPPORT THEREOF**

DATE: April 26, 2017

TIME: 2:00 p.m.

**(Hearing Date/Time Preapproved)**

JUDGE: Honorable Sheri Bluebond

PLACE: Courtroom 1539

Edward R. Roybal Federal Bldg.  
255 East Temple Street  
Los Angeles, California 90012

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1 Peter J. Mastan, Chapter 11 Trustee (the "Trustee") appointed in the above-entitled  
2 Chapter 11 bankruptcy case (the "Case") of Debtor, BGM Pasadena, LLC (the "Debtor"), hereby  
3 moves the Bankruptcy Court, pursuant to this motion (the "Motion" or the "Sale and Bid  
4 Procedures Motion"), for entry of an order (the "Sale and Bid Procedures Order") (I)(a)  
5 approving Sale and Bid Procedures (the "Sale and Bid Procedures") in connection with the sale  
6 (the "Sale") of certain of the within bankruptcy estate's (the "Estate") real property generally  
7 described as 210 S. Orange Grove Boulevard, Pasadena, California 91105 (the "210 Property"),  
8 244-248 S. Orange Grove Boulevard, Pasadena, California 91105 (the "244-248 Property"), and  
9 a parade easement (the "Easement," and together with the 210 Property and the 244-248  
10 Property, collectively, the "Real Property"), and more particularly described as the "Property" in  
11 the Asset Purchase Agreement (defined below) free and clear of all liens, claims, encumbrances  
12 and interests; (b) approving the form and manner of the bid deadline, the auction and the  
13 proposed Sale; (c) scheduling an auction (the "Auction") to be held at a date and time to be set by  
14 the Bankruptcy Court, and a sale hearing (the "Sale Hearing") to consider approving the Sale  
15 under the terms of that certain Agreement of Purchase and Sale and Joint Escrow Instructions in  
16 substantially the form attached hereto as **Exhibit "A"** (as it may be amended or modified, the  
17 "Asset Purchase Agreement"), with SPSSM Investments-IX,LP, as buyer ("SPSSM" or the  
18 "Stalking Horse Bidder"),<sup>1</sup> or to the highest or otherwise best bidder at the Auction (the  
19 "Successful Bidder") at the time of the Auction or otherwise in connection with the Sale  
20 Hearing; (d) approving procedures for determining cure amounts (the "Assumption and  
21 Assignment Procedures"); and (e) approving a break-up fee to SPSSM as the Stalking Horse  
22 Bidder; and (II) (a) approving the Sale of the Estate's assets pursuant to the Asset Purchase  
23 Agreement (or substantially similar agreement with the Successful Bidder); and (d) the  
24 assumption and assignment agreement of certain executory contracts and unexpired leases and/or  
25 other agreements as part of the Sale.

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27  
28 <sup>1</sup> Information concerning SPSSM and its principals as provided to the Trustee is set forth on **Exhibit "G"**  
and incorporated herein by reference.

1 The Trustee further requests that, at the conclusion of the Sale Hearing, the Bankruptcy  
2 Court enter an order (the "Sale Order"), authorizing the Trustee and the Estate to (a) sell the  
3 Property free and clear of all liens, claims, encumbrances and other interests to SPSSM or any  
4 other Successful Bidder, on substantially similar terms as those set forth in the Asset Purchase  
5 Agreement; (b) assume and assign the Assumed Contracts (as defined herein); and (c) enter into  
6 and perform the obligations under the Asset Purchase Agreement.

7 The Trustee further requests that the Bankruptcy Court approve and authorize the Trustee  
8 to execute and deliver the Asset Purchase Agreement and the related sale documents to  
9 effectuate the Sale.

10 In support of this Motion, the Trustee respectfully states as follows:

11 I.

12 **JURISDICTION**

13 1. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C.  
14 sections 157 and 1334. This Motion is a core proceeding within the meaning of 28 U.S.C.  
15 section 57(b)(2).

16 2. Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

17 3. The statutory bases for the relief requested herein are sections 105(a), 363, 365,  
18 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002,  
19 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the  
20 "Bankruptcy Rules").

21 II.

22 **PRELIMINARY STATEMENT**

23 4. On or about November 20, 2015 (the "Petition Date"), a voluntary petition for  
24 relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy  
25 Code") in the United States Bankruptcy Court of the Central District of California (the  
26 "Bankruptcy Court") was filed by the Debtor. On January 13, 2017, an Order Granting Joint  
27 Motion of Secured Creditors for Appointment of a Chapter 11 Trustee was entered whereby the  
28 Court, as further set forth therein, approved the appointment of a chapter 11 trustee in the Case.

1 On or about January 19, 2017, the Trustee filed the Statement Notice of Acceptance of  
2 Appointment as Chapter 11 Trustee and, on January 23, 2017, the Bankruptcy Court approved  
3 the appointment of the Trustee as the chapter 11 trustee in the Case.

4 5. The Estate in the Case includes the Real Property, generally as follows: (1) the  
5 210 Property is an office building located at 210 S. Orange Grove Blvd., Pasadena, California  
6 91105; (2) the 244-248 Property generally consists of two (2) four-unit luxury apartment  
7 buildings located at 244-248 S. Orange Grove Blvd., Pasadena, California 91105; and (3) the  
8 Easement, which is generally an easement that appears to run in favor of the owner of the 244-  
9 248 Property and permits the erecting of grandstand seating in connection with the Rose Bowl  
10 Parade.

11 6. Subject to approval of the Court, the Trustee has entered into the Asset Purchase  
12 Agreement with the Stalking Horse Bidder. The Asset Purchase Agreement will be used to  
13 establish a floor price at the Auction for the Property.

14 7. By this Motion, the Trustee seeks approval of Sale and Bid Procedures that will  
15 govern both the solicitation of competing bids by other potential purchasers and the Auction  
16 process. By this Motion, the Trustee also requests that the Bankruptcy Court schedule and  
17 conduct the Auction and the Sale Hearing and that at the Auction and the Sale Hearing the  
18 Bankruptcy Court approve the Sale of the Property to The Stalking Horse Bidder, or any other  
19 Successful Bidder at the Auction.

20 8. The proposed form of the order approving this Motion is attached hereto as  
21 **Exhibit "E."**<sup>2</sup>

### 22 III.

### 23 BACKGROUND

24 The Debtor filed a voluntary petition for reorganization under the Bankruptcy Code on the  
25 Petition Date. On January 13, 2017, an Order Granting Joint Motion of Secured Creditors for  
26 Appointment of a Chapter 11 Trustee was entered whereby the Court, as further set forth therein,  
27

28 <sup>2</sup> Exhibits "A"-**"D"** attached hereto are also Exhibits to such order; thus, the proposed form of order  
attached hereto is attached without the exhibits thereto.



1 approved the appointment of a chapter 11 trustee in the Case. On or about January 19, 2017, the  
2 Trustee filed the Statement Notice of Acceptance of Appointment as Chapter 11 Trustee and, on  
3 January 23, 2017, the Bankruptcy Court approved the appointment of the Trustee as the chapter  
4 11 trustee in the Case.

5 9. According to the Debtor's Disclosure Statement Describing Sixth Amended Plan  
6 of Reorganization filed on December 12, 2016 [Doc. No. 566] (the "Disclosure Statement") or  
7 preliminary title reports obtained by the Trustee, the Property or portions thereof, appear to be  
8 encumbered by liens or other interests in favor of the following (collectively, the "Alleged  
9 Secured Creditors"): (a) the County of Los Angeles (Real Property Taxes) in the estimated  
10 amount of approximately \$0.00 (based on Los Angeles County Tax Records); (b) Cantor Group,  
11 LLC ("Cantor") in the amount of approximately \$4,455,096.84 as of June 30, 2016 (not  
12 including default rate interest and/or attorneys fees and costs); (c) Smith Family Trust in the  
13 estimated amount of \$1,900,000.00, of which only \$500,000.00 is secured by the Real Property;  
14 (d) East West Bank in the estimated amount of approximately \$2,629,278.18; (e) the Einum  
15 Trust ("Einum") in the amount of approximately \$225,000.00 (however, Einum currently asserts  
16 that its secured claim is approximately \$900,000.00); (f) Ambassador West Master Association,  
17 Ambassador Cost Center 3, Ambassador Cost Center 4, and Ambassador Cost Center 5 in the  
18 estimated approximate amount of \$58,425.03; (g) Notice of Pendency of Action recorded  
19 February 12, 2014 by Pasadena Lots-70, LLC; (h) a Claim of Lien filed by Pasadena Lots-70,  
20 LLC recorded on July 3, 2013 in the amount of \$281,183.88; and (i) the Los Angeles County  
21 Tax Collector with respect to liens for unsecured property taxes recorded on March 4, 2014 and  
22 April 7, 2014. The Trustee is informed that the secured claims of Pasadena Lots-70, LLC, and  
23 Pasadena Apts-7, LLC and/or City Ventures (collectively, the "PA Creditors") have been paid in  
24 full.<sup>3</sup>

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27 <sup>3</sup> The Trustee estimates the alleged secured claims of the Alleged Secured Creditors (collectively, the  
28 "Alleged Secured Claims") are likely to be asserted to be higher when taking into account asserted additional  
interest (including default interest), attorneys' fees, costs and expenses. Nothing herein allows or validates any of  
the Alleged Secured Claims or security interests, liens or other interests asserted by the Alleged Secured Creditors.

IV.

**THE CASE AND THE PROPERTY**

10. The Case was commenced on November 20, 2015, approximately 1 1/2 years ago. Since that time, the Debtor has filed six (6) plans of reorganization, all of which have been denied at the disclosure statement or plan stage. Cantor also filed its own plan proposing a sale of the Property (which plan is on "hold" in light of the appointment of the Trustee). The history of the Case is well documented in the voluminous pleadings on file in the Case, and are incorporated herein by reference.

11. In light of the history of this Case, the Trustee believes that a sale of the Property presents the best opportunity to maximize value to the Estate.

V.

**THE PROPOSED SALE TO SPSSM**

12. The Asset Purchase Agreement sets forth the terms of the Sale of the Property to SPSSM, subject to higher or otherwise better offers at the Auction, free and clear of all liens, claims, encumbrances and other interests (except for "Conditions of Title" as defined in the Asset Purchase Agreement), pursuant to sections 105(a), 363, 365, 503, 507 and 9014 of the Bankruptcy Code. The following is a summary of the key provisions of the Asset Purchase Agreement.<sup>4</sup>

Provision	Description
Seller	Trustee/Estate
Buyer	SPSSM, or assignee
Purchase Price	\$11,300,000.00
Deposit	\$450,000.00
Purchased Assets	Seller shall sell, convey, assign, transfer and deliver to Buyer, free and clear of all liens, claims, encumbrances and other interests (collectively, the "Encumbrances") other than Conditions of Title, and Buyer shall purchase and acquire from Seller, the Real Property and ancillary personal property, as defined as the "Property" in and

<sup>4</sup> The following summary of the Asset Purchase Agreement is provided for the convenience of the Bankruptcy Court and parties in interest. To the extent that there are any discrepancies between this summary and the Asset Purchase Agreement, the terms and language of the Asset Purchase Agreement shall govern. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Asset Purchase Agreement, attached hereto as Exhibit "A."

Provision	Description
	as further in the Asset Purchase Agreement, other than the Excluded Assets.
Excluded Assets	The Estate's claims, causes of action and rights of recovery pursuant to sections 544 through 550 and section 553 of the Bankruptcy Code, including offsets, avoidance actions, counterclaims, defenses and affirmative defenses to claims, property of the Estate unrelated to the Property, and other assets excluded under the Asset Purchase Agreement.
Cure Amounts, Fees and Expenses	Buyer will pay all cure amounts associated with the Assumed Contracts.
Closing Date	The Closing Date shall occur promptly following conclusion of the Auction as set forth in the Asset Purchase Agreement.

VI.

**THE BREAK-UP FEE.**

13. Under the Asset Purchase Agreement, in recognition of SPSSM's (as the Stalking Horse Bidder) expenditures of time, energy and resources, if the Sale does not actually close with SPSSM but closes with another Bidder, or if another Bidder is the Successful Bidder but the Sale does not close with such other Bidder and such other Bidder's Deposit (or portion thereof) is forfeited, SPSSM will be paid a fixed break-up fee of \$100,000.00 (the "Break-Up Fee"). In the event Buyer is entitled to the Break-Up Fee, the Break-Up Fee shall be paid to SPSSM within five (5) business days after the closing of the Sale or after the forfeiture and release of the Deposit (or portion thereof) to the Estate, whichever occurs first. The Trustee believes that such Break-Up Fee is fair and reasonable. By this Motion, the Trustee requests approval of the Break-Up Fee.

VII.

**PROPOSED SALE AND BID PROCEDURES, AUCTION AND AUCTION PROCEDURES**

14. A copy of the proposed Sale and Bid Procedures is attached hereto as **Exhibit "B"** and incorporated herein by reference for all purposes (the "Sale and Bid Procedures"). All capitalized terms appearing in this section which are not separately defined shall have the meanings ascribed to such terms in the Sale and Bid Procedures. The following recitals of the Sale and Bid Procedures is subject in all respects to the Sale and Bid Procedures attached hereto,

1 and are not intended in any way to vary or impact the provisions of such Sale and Bid  
2 Procedures. Interested parties are encouraged to review the full and complete Bid Procedures  
3 with their own counsel.

4 15. The Sale and Bid Procedures include, without limitation:

5 (i) Each Bid must be to acquire all of the Property, in cash at closing (except  
6 to the extent the Alleged Secured Creditor is entitled to credit bid), and be unconditional and  
7 irrevocable save and except for the Bankruptcy Court's approval.

8 (ii) The Bidder's agreement that: (1) if its Bid is selected as the Successful  
9 Bid, the Bidder is ready, willing and able to close on the purchase of the Property by the Closing  
10 Date; and (2) if its Bid is selected as the Backup Bid to the Backup Bidder, the Backup Bidder is  
11 ready, willing and able to close on the purchase of the Property within two (2) business days of  
12 receipt of written notice from the Trustee of the election to close with the Backup Bidder;

13 (iii) Satisfactory information delivered to the Trustee, demonstrating (in the  
14 Trustee's sole discretion) a Bidder's financial capability to close the transaction proposed under  
15 the Bid and to provide "adequate assurance of future performance," within the meaning of  
16 section 365(f)(2)(B) of the Bankruptcy Code, in relation to any executory contracts, unexpired  
17 leases and other agreements to be assumed and assigned to such Bidder under the Sale.

18 Satisfactory financial information required in this subsection (iv) may be evidenced by: (1)  
19 recent financial statements of the Bidder and/or its direct or indirect equity interest holder(s),  
20 audited financial statements, non-contingent financing commitments, bank statements and  
21 similar items as more detailed in the Sale and Bid Procedures; or (2) such other evidence as may  
22 be reasonably satisfactory as determined by the Trustee, in each case as more fully detailed in the  
23 Sale and Bid Procedures. Without limiting the foregoing, a Bidder must establish the  
24 unconditional availability of funds to the Bidder sufficient to pay the Bid consideration in cash;

25 (iv) Evidence that the Bidder has or will have by closing any requisite  
26 organizational authorizations and approvals necessary to consummate the Sale;

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1 (v) Disclosure of all of the Bidder's connections (if any) with the Debtor, the  
2 Debtor's creditors, the Trustee, any other party in interest in the Case, and their respective  
3 attorneys and accountants or advisors;

4 (vi) Disclosure of any post-closing relationship or connection the Bidder then  
5 contemplates having with the Debtor (including any officer, director, shareholder, managing  
6 member, insider or affiliate of the Debtor), including a description of the Bidder's proposal (if  
7 any) to employ or otherwise retain any of the Debtor's employees and/or creditors if it  
8 successfully acquires the Property;

9 (vii) A Deposit in an amount of \$550,000, to be refunded to any Bidder who  
10 does not prevail in acquiring the Property, but subject to forfeiture if: (1) the Bidder is  
11 determined to be a Qualified Bidder and withdraws its Bid or withdraws any subsequent  
12 Increased Bid before the announcement of the Successful Bidder and Backup Bidder; (2) the  
13 Bidder is determined to be the Successful Bidder and attempts to modify or withdraw its Bid or  
14 any subsequent Increased Bid without closing the Sale transaction pursuant to such Bid or order  
15 of the Bankruptcy Court; (3) the Successful Bidder fails to close the Sale, except due to the  
16 failure of any conditions to close not the fault of the Successful Bidder; or (4) the Backup Bidder  
17 attempts to modify or withdraw its Backup Bid prior to closing the Sale, unless the Sale shall  
18 have closed with the Successful Bidder, and except due to the failure of any conditions to close  
19 not the fault of the Backup Bidder;

20 (viii) A form of an asset purchase agreement in substantially the form of the  
21 Asset Purchase Agreement, identifying executory contracts and unexpired leases to be assumed  
22 in connection with the Sale, and otherwise containing the same or substantially identical terms  
23 and conditions as the Asset Purchase Agreement, together with a "redlined" or otherwise marked  
24 copy reflecting any revisions made to conform the Bidder's asset purchase agreement to  
25 SPSSM's Asset Purchase Agreement (provided such Asset Purchase Agreement may be required  
26 to be conformed to the Successful Bid or Backup Bid as provided in the Sale and Bid  
27 Procedures); and

28 ///

1 (ix) Each Alleged Secured Creditor has the right to credit bid under section  
2 363(k) of the Bankruptcy Code to the extent permitted thereunder, except as the Bankruptcy  
3 Court orders otherwise; provided, any Alleged Secured Creditor who desires to credit bid must  
4 still submit a Bid Package and qualify as a Qualified Bidder as provided in the Sale and Bid  
5 Procedures and will only be permitted to credit bid an amount as agreed to by the Trustee or  
6 approved by the Bankruptcy Court.

7 16. The proposed Sale and Bid Procedures establish a Bid Deadline of 5:00 p.m.,  
8 prevailing Pacific Time, on such date to be set by the Bankruptcy Court at the hearing on the  
9 Motion.<sup>5</sup> Any Bidders submitting Qualified Bids then become Qualified Bidders. Alleged  
10 Secured Creditors must become a Qualified Bidder. The Initial Overbid must be for at least  
11 \$11,425,000.00.

12 17. In the event of competitive bidding, the Sale and Bid Procedures call for an  
13 Auction to be conducted by the Bankruptcy Court at or contemporaneously with the Sale  
14 Hearing. The Trustee has requested that the Court hold the Auction on May 17, 2017.  
15 Attendance at the Auction must be in person by the Bidder or its authorized representative.<sup>6</sup> The  
16 Sale and Bid Procedures provide that Bids will be placed in increments of at least \$25,000.00  
17 (above the Initial Overbid), and provide details on the process for conducting the Auction,  
18 making Increased Bids, and identifying the Successful Bid and Backup Bid.

19 18. The Sale and Bid Procedures: (i) facilitate the identification of Potential Bidders;  
20 (ii) provide a process for the qualification of Qualified Bidders; (iii) establish and identify  
21 opening Bids and Increased Bid requirements, as well as other provisions for conducting the  
22 Auction; and (v) establish the process for the consideration and selection of a Qualified Bid as a  
23 Successful Bid or Backup Bid for the Property.

24 ///

25 \_\_\_\_\_  
26 <sup>5</sup> Trustee requests that, if the auction/sale hearing is set on May 17, 2017, then the Bid Deadline be set for  
May 10, 2017.

27 <sup>6</sup> In the event that a Bidder submits a Bid prior to the Bid Deadline, and the Trustee determines pursuant to  
28 the Bid Procedures that such Bid is not a Qualified Bid, the Trustee shall make reasonable efforts to inform the  
Bidder of such disqualification and the reasons for the same, in order to attempt to allow the Bidder to remedy any  
such defects prior to the Bid Deadline.

VIII.

**BID AND SALE NOTICE AND OBJECTION DEADLINE**

19. On February 24, 2017, the Trustee filed his Application by Chapter 11 Trustee to Employ Keller Williams Silicon Beach Commercial Real Estate Broker to Market and Sell Real Properties [Doc. No. 671], which employment has been approved by the Bankruptcy Court. Keller Williams Silicon Beach Commercial (the "Broker") has been marketing the property and continues to do so. Under Bankruptcy Rule 2002(a), the Trustee proposes a process whereby the Trustee and/or his agents and representatives, including the Broker, notifies creditors and other possible purchasers of (a) the proposed sale of the Property; (b) the time and place of the Auction and Sale Hearing; (c) the terms and conditions of the Sale; and (d) the deadline for filing any objections as follows:

(i) Within two (2) business days of the entry of the Sale and Bid Procedures Order, the Trustee (or his agents and representatives) shall serve by first class mail, postage prepaid, copies of (a) the Sale and Bid Procedures Order, (b) the Sale and Bid Procedures, and (c) a notice regarding the bid deadline, the auction and the proposed Sale (the "Bid and Sale Notice") in substantially the form as **Exhibit "C"** attached hereto. The Sale and Bid Procedures Order, the Sale and Bid Procedures, and the Bid and Sale Notice will be served upon the following (collectively, the "Notice Parties"):

- (a) the Office of the U.S. Trustee;
- (b) counsel to the Debtor; and
- (c) all parties that have requested notice pursuant to Bankruptcy Rule 2002.

Further, the Broker will continue to market the Property for sale as provided in the applicable listing agreements with the Broker and subject to the Sale and Bid Procedures.

20. Finally, the Trustee proposes that the Bankruptcy Court establish the deadline for objecting to the Sale as five (5) business days before the Sale Hearing (the "Sale Objection

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1 Deadline"), and that the Trustee's reply, if any, be due by 12:00 noon (PST) the day before the  
2 hearing.<sup>7</sup>

3 IX.

4 **ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES**  
5 **AND OTHER AGREEMENTS**

6 21. In connection with the Sale, SPSSM has agreed to assume certain executory  
7 contracts and unexpired leases and other agreements (collectively, as such list may be modified,  
8 the "Assumed Contracts") as set forth in the Schedule of Assumed Contracts (as attached to an  
9 Exhibit to the Asset Purchase Agreement and referred to therein as the Schedule of Assumed  
10 Contracts (subject to the right to modify such schedule(s)).<sup>8</sup> Under the Asset Purchase  
11 Agreement, SPSSM or any other Successful Bidder at the Auction may modify the Schedule of  
12 Assumed Contracts up to five (5) days before the Sale Hearing, subject to order of the  
13 Bankruptcy Court and the terms of the Asset Purchase Agreement. In order to facilitate the  
14 Auction and Sale, the Trustee requests that the Bankruptcy Court set five (5) days prior to the  
15 Sale Hearing as the deadline for a Bidder to modify the list of Assumed Contracts (the  
16 "Assumption Designation Deadline") (subject to later deletion of Assumed Contracts as provided  
17 in Paragraph 26), with such notice and opportunity to object to assumption and assignment  
18 and/or the Cure Amount with respect to any added executory contract or unexpired lease or other  
19 agreements as the Bankruptcy Court shall require. The Trustee hereby seeks authority under  
20 section 365 of the Bankruptcy Code for the Trustee and the Estate to (a) assume and assign the  
21 Assumed Contracts, effective as of the closing of the Sale, and (b) execute and deliver to SPSSM  
22 or any other Successful Bidder at the Auction such documents or other instruments as may be  
23 necessary to effectuate the assignment and transfer of the Assumed Contracts.

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26 <sup>7</sup> By this Motion, the Trustee requests that the Sale Hearing be set at the same time as the Auction to occur  
27 immediately following conclusion of the Auction.

28 <sup>8</sup> Notwithstanding the listing of an executory contract or unexpired lease or other agreement in the Schedule  
of Assumed Contracts, SPSSM or other Successful Bidder reserves all rights to withdraw or add to any such  
designations.



1           22.     The Trustee believes that it is necessary to establish a process by which the  
2 Trustee and the counterparties (each, a "Counterparty") to the Assumed Contracts can establish  
3 the cure obligations (the "Cure Amounts"), if any, necessary to be paid in accordance with  
4 section 365 of the Bankruptcy Code for the assumption of the Assumed Contracts and for the  
5 Counterparties to assert any objection they may have to such assumption and assignment.

6           23.     To facilitate a resolution of any disputes relating to the Cure Amounts or to the  
7 assignment of the Assumed Contracts in general, the Trustee proposes the following Assumption  
8 and Assignment Procedures, which will be incorporated into the Sale and Bid Procedures Order  
9 (or incorporation may be part of an exhibit thereto), as follows:

10           (i)     By no later than three (3) business days after service of the Sale and Bid  
11 Procedures Order, the Trustee shall file and serve on all known Counterparties to an Assumed  
12 Contract the Schedule of Assumed Contracts as then existing that may be assumed and assigned  
13 to the Buyer, including the proposed cure amount required pursuant to section 365 of the  
14 Bankruptcy Code for their assumption and assignment, if any, pursuant to the notice (the  
15 "Contract Assumption Notice") in substantially the form as attached hereto as **Exhibit "D."**

16           (ii)    Each Counterparty would then have until seven (7) days before the  
17 Auction, or other period set by the Bankruptcy Court, to file and serve upon the Trustee any  
18 objection setting forth with particularity any objection to assumption and assignment of its  
19 contract, its asserted proper Cure Amount, documentation of same, and stating whether the  
20 objecting Counterparty may assert any objection to the assignment of its contract to the ultimate  
21 purchaser.

22           24.     To the extent that any objection to the assumption and/or assignment of any  
23 Assumed Contract included in the Asset Purchase Agreement is not resolved consensually prior  
24 to the Sale Hearing, the Trustee proposes that the Bankruptcy Court resolve any such objection at  
25 the Sale Hearing.

26           25.     Notwithstanding the Assumption Designation Deadline, this Motion requests that  
27 the Bankruptcy Court approve that the Successful Bidder may withdraw any contract, lease or  
28 other agreement as an Assumed Contract if the Bankruptcy Court determines the Cure Amount

1 to be in an amount materially greater than the amount provided in the Schedule of Assumed  
2 Contracts as provided in Paragraph 24(i).

3 X.

4 **SCHEDULE FOR THE SALE HEARING AND IMPLEMENTING THE SALE**

5 26. At the conclusion of the Auction and Sale Hearing, the Trustee requests that the  
6 Bankruptcy Court declare the identity of the Successful Bidder and the Backup Bidder and by  
7 this Motion the Trustee requests the Bankruptcy Court approve the sale of the Property to  
8 SPSSM, or if applicable, the Successful Bidder, at the Sale Hearing as well as the assumption  
9 and assignment of the Assumed Contracts to be assigned to the Buyer and any Cure Amounts  
10 required for same. The Trustee requests that this Bankruptcy Court's order approving the Sale  
11 and Bid Procedures and this Motion schedule the Auction and Sale Hearing at the same date and  
12 time.

13 XI.

14 **THE BREAK-UP FEE SHOULD BE APPROVED**

15 27. The Break-Up Fee should be approved by the Bankruptcy Court. The Break-Up  
16 Fee is fair and reasonable. SPSSM has and will continue to incur substantial costs, expenses and  
17 risks in continuing to make its offer available.

18 28. There is no obligation to pay the Break-Up Fee unless the Sale is actually closed  
19 with a Bidder other than SPSSM, or if the closing with the other Bidder does not occur but there  
20 is a forfeiture of the Deposit. In the event the Sale closes with another Bidder, the Estate will  
21 have sufficient funds to pay the Break-Up Fee as the Initial Overbid includes an amount that  
22 would cover the Break-Up Fee.

23 29. Sellers of assets often employ bidding protections in order to encourage the  
24 making of bids. Break-up fees and other arrangements, such as those proposed here, are  
25 "important tools to encourage bidding and to maximize the value of the debtor's assets." In re  
26 Integrated Resources, 147 B.R. 650, 659 (S.D. N.Y. 1992).

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**XIII.**

**POINTS AND AUTHORITY**

**A. SALE FREE AND CLEAR**

32. Based on the foregoing, the Trustee submits that the relief requested herein is necessary and appropriate and in the best interest of the Estate, creditors and other parties in interest.

33. The Bankruptcy Court may authorize the sale of the Property pursuant to sections 105 and 363(b)(1) of the Bankruptcy Code. So too the Bankruptcy Court may authorize the assumption and assignment of executory contracts and unexpired leases and other agreements pursuant to sections 105 and 365 of the Bankruptcy Code.

34. Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 authorize a trustee to sell assets of the estate other than in the ordinary course of business, after notice and a hearing. See, e.g., In re Quintex Entertainment, Inc., 950 F.2d 1492, 1495 (9th Cir. 1991). The sale of the assets of an estate other than in the ordinary course of business may be approved when: (i) there is a sound business reason for the sale; (ii) accurate and reasonable notice is provided to interested parties; (iii) the price is fair, reasonable and adequate; and (iv) the sale is made to the purchaser in good faith. See, e.g., In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); In re Stroud Ford, Inc., 163 B.R. 730, 732 (Bankr. M.D. Pa. 1993); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987). The Trustee is entitled to use his business judgment in determining whether to sell assets outside of the ordinary course of business. See Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986); In re JL Building, LLC, 452 B.R. 854, 859 (Bankr. D. Utah 2011). Accordingly the sale should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the sale. See Stephens Indus. Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re WBQ P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995). In short, a proposed use or sale of property pursuant to section 363(b) is appropriate if "some articulated business judgment" exists

1 for the transaction. See, e.g., Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P.  
2 9th Cir. 1988).

3 35. Similarly, the assumption of executory contracts is within the business discretion  
4 of the Trustee. Pursuant to section 365 of the Bankruptcy Code, a trustee, "subject to the court's  
5 approval, may assume or reject any executory contract or unexpired lease of the debtor." 11  
6 U.S.C. § 365(a). A trustee's decision to assume an executory contract or unexpired lease is  
7 subject to the "business judgment rule," meaning that a trustee's decision to assume an executory  
8 contract or unexpired lease should be approved by the Bankruptcy Court if the decision is  
9 supported by a sound business reason, with due deference to the trustee's business judgment. See  
10 NLRB v. Bildisco, 465 U.S. 513, 524 (1984)(providing that the business judgment standard is  
11 traditionally applied by courts when deciding if a debtor-in-possession may assume or reject  
12 pursuant to section 365(a) of the Bankruptcy Code); Orion Pictures v. Showtime Networks Inc.  
13 (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993). A trustee's decision to assume  
14 should be accepted, "except upon a finding of bad faith or gross abuse of [the debtor's] business  
15 discretion." Lubrizol Enters. Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal  
16 Finishers, Inc.), 759 F.2d 1043, 1047 (4th Cir. 1985).

17 36. Given the inability of the Debtor to propose a confirmable plan, and the  
18 subsequent appointment of the Trustee, the focus of the Case has shifted to a sale of the Property.  
19 The best opportunity for recovery for the Debtor's creditors is through a sale of the Property.

20 37. The paramount goal in any proposed sale of property of the estate is to maximize  
21 the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc., 107 F.3d  
22 558, 564-65 (8th Cir. 1997)(in bankruptcy sales, "a primary objective of the Code [is] to enhance  
23 the value of the estate at hand"); Official Committee of Subordinated Bondholders v. Integrated  
24 Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992)("It is a  
25 well-established principle of bankruptcy law that the objective of bankruptcy sales with respect  
26 to such sales is to obtain the highest price or overall greatest benefit possible for the estate."). In  
27 this case, the Trustee, with the assistance of its Broker has marketed the Property. The Trustee  
28 has determined that the Stalking Horse Bid is the highest and best offer received for the Property.

1 The Trustee will continue to market the Property to Potential Bidders through at least the date of  
2 the Bid Deadline in order to maximize the proceeds received by the Estate.

3 38. Further, section 363 of the Bankruptcy Code authorizes a sale free and clear of an  
4 interest in property. Section 363(f) provides as follows:

5 (f) The trustee may sell property under subsection (b) or (c) of this  
6 section free and clear of any interest in such property of an entity  
7 other than the estate, only if— (1) applicable nonbankruptcy law  
8 permits sale of such property free and clear of such interest; (2)  
9 such entity consents; (3) such interest is a lien and the price at  
10 which such property is to be sold is greater than the aggregate  
11 value of all liens on such property; (4) such interest is in bona fide  
12 dispute; or (5) such entity could be compelled, in a legal or  
13 equitable proceeding, to accept a money satisfaction of such  
14 interest.

15 39. Here, the Trustee submits that these conditions are met in this instance. First, the  
16 Trustee believes that the sale proceeds will be sufficient to pay all allowed secured claims in full.  
17 Second, the Trustee believes that the Alleged Secured Creditors desire that the sale occur, and  
18 therefore they have in effect consented to the sale. Third, bona fide disputes exist as to the  
19 amount of the Alleged Secured Claims, and in particular, as to the computation and right to  
20 default interest, charges, attorneys fees and costs; and as to Einum, the principal amount of its  
21 claim. See the Trustee's Motion for Order Approving Use of Property Outside Ordinary Course  
22 of Business to Tender Payment in Full to Creditor Einum Trust and Authority use Cash  
23 Collateral in Accordance Therewith [Doc. No. 681], and subsequent Order thereon [Doc. No.  
24 703].

25 40. The Trustee requests the Bankruptcy Court approve the Sale free and clear of all  
26 of the Alleged Secured Claims, and all other liens, claims, encumbrances and interests (except  
27 for the Conditions of Title, as defined in the Asset Purchase Agreement), all as more fully set  
28 forth on **Exhibit "F"** attached hereto and incorporated herein by reference, with such liens,  
claims, encumbrances and interests to attach to the sale proceeds in order of priority and subject  
to all disputes relating thereto; provided, the Trustee requests that the Bankruptcy Court permit  
(but not require) the Trustee in his discretion to pay Alleged Secured Claims and encumbrances

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1 and interests out of escrow or thereafter without further approval of the Bankruptcy Court to any  
2 portion of the Alleged Secured Claims, encumbrances and interests not disputed by the Trustee.

3 **B. THE SALE AND BID PROCEDURES ARE APPROPRIATE**

4 41. Applying Bankruptcy Code section 363, bankruptcy courts frequently have  
5 considered and approved auction and sale procedures in advance of a proposed sale of property  
6 of the estate. See, e.g., Doehring v. Crown Corp. (In re Crown Corp.), 679 F.2d 774, 775 (9th  
7 Cir. 1982) (noting that the district court had required specified minimum overbid amounts,  
8 deposits, and the form of purchase agreement to be used by bidders); In re Crowthers McCall  
9 Pattern, Inc., 114 B.R. 877, 879 (Bankr. S.D.N.Y. 1990)(noting that the bankruptcy court had  
10 entered an order requiring that overbids be made in specified minimum increments with  
11 deposits); In re Table Talk, Inc., 53 B.R. 937, 943 (Bankr. D. Mass. 1985) (noting that  
12 Bankruptcy Code section 363 requires notice and a hearing prior to the establishment of sale and  
13 bid procedures for the sale of property of the estate).

14 42. To that end, courts have uniformly recognized that establishing sale procedures in  
15 advance of the sale hearing itself may facilitate efforts to increase the value ultimately realized  
16 by the estate by, among other things: (a) creating a well-defined and orderly forum in which  
17 potential bidders are provided a fair opportunity to submit competing offers; (b) ensuring fair  
18 comparability among competing bids; and (c) helping to ensure that only serious bidders with the  
19 intention of and ability to consummate the transaction are involved in the process. See generally  
20 In re Financial News Network, Inc., 126 B.R. 152, 156 (S.D.N.Y. 1991); *appeal dismissed*, 931  
21 F.2d 217(2d Cir. 1991).

22 43. The Motion and Sale provide for an Auction process to provide for an open  
23 opportunity for other prospective purchasers. As set forth above, the Sale and Bid Procedures  
24 are designed to establish "ground rules" for the Auction, including rules governing the process  
25 by which a potential buyer may become a Qualified Bidder and submit a Qualified Bid; the  
26 deadline for the submission of bids; and the time and place of, and procedures governing the  
27 Auction, if Qualified Bids are received.

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1 **XV.**

2 **CONCLUSION**

3 WHEREFORE, the Trustee respectfully requests that the Bankruptcy Court enter an  
4 order, (a) approving the Sale and Bid Procedures in connection with the Sale; (b) approving the  
5 form and manner of Bid and Sale Notice; (c) scheduling the Auction and Sale Hearing; (d)  
6 approving the Break-Up Fee; (e) approving the Assumption and Assignment Procedures and the  
7 Contract Assumption Notice; (f) approving the Sale and assumption and assignment of the  
8 Assumed Contracts; and (h) granting such other and further relief as is fair and equitable.

9 Dated: April 5, 2017

BALLARD SPAHR LLP

10  
11 By: /s/ Christopher Celentino  
12 Christopher Celentino  
13 Mikel R. Bistrow  
14 Peter W. Bowie  
15 Dawn A. Messick  
16 Counsel to the Chapter 11 Trustee,  
17 Peter J. Mastan  
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**DECLARATION OF PETER J. MASTAN**

I, Peter J. Mastan, declare as follows:

1. I am an attorney duly licensed to practice before this Court and the courts of this State. I am the court-appointed Trustee in the within case.

2. I submit this declaration ("Declaration") in support of Motion of Trustee Peter J. Mastan for Entry of (I) an Order (A) Approving Sale and Bid Procedures in Connection With Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Approving the Form and Manner of Notice; (C) Scheduling an Auction and Sale Hearing; (D) Approving Procedures for Determining Cure Amounts; and (E) Approving Break-Up Fee; and (II) an Order (A) Approving the Sale of Assets Pursuant to an Agreement of Purchase and Sale and Joint Escrow Instructions, and (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Other Agreements (the "Motion").

3. The facts stated below are personally known to me, except for those matters based upon information and belief and as to those, I believe them to be true. If called as a witness, I could and would competently testify to the truth of such facts.

4. I have reviewed the Motion and the facts stated therein are true and correct to the best of my information and belief.

5. I have been engaged with and through my court-appointed broker, Derrick Vartanian of Keller Williams Silicon Beach Commercial Real Estate, to market the Property for sale. After submission of several formal and informal offers, including ones from affiliates of the Debtor's Principals and others affiliated with parties in the case, in the exercise of my business judgment, I have decided to select the third party offer of SPSSM Investments-IX,LP, as buyer and the "Stalking Horse Bidder" ("SPSSM"). Although an insider offer was slightly higher in amount than that of SPSSM, I decided in my business judgment that it was in the best interests of the Estate to select the SPSSM offer as the Stalking Horse Bid. I based this business judgment on at least the following: (1) Given the history of this case the climate that led to the appointment of the Trustee, selecting a Stalking Horse Bidder that was not otherwise a party to the case would bring additional integrity to the process that should galvanize the focus of the

1 parties to achieve the highest and best price for the Property, (2) the slightly higher insider offer  
2 required financing money from third parties (although there was no "financing contingency" in  
3 that offer), (3) selecting the third party bid brings an additional bidder to the process (in addition  
4 to the insiders) and in my judgment is more likely to lead to bidding at auction and a higher  
5 ultimate price for the Property, and (4) I believe the offer of SPSSM is in the range of anticipated  
6 purchase prices for the Property, and since it is devoid of contingencies, it represents a fair and  
7 reasonable price for the Property. With the assistance of my Broker, I intend to continue to  
8 market the Property in the hopes of securing an Overbidder at the Auction to be held concerning  
9 the Sale. I am in receipt of SPSSM's Deposit. Although there were several other offers  
10 presented to me, in the exercise of my business judgment, I believe that, in the event there is no  
11 overbid, SPSSM will be able to close without disruption or fanfare.

12 6. I am informed and believe that the proposed purchase price exceeds the likely  
13 allowed amount of each alleged secured claim against the Property, and that certain aspects of  
14 the alleged secured claims may be the subject of bona fide dispute with regard to fees, interest,  
15 and the like.

16 7. My dealings with SPSSM have been at arm's length, and have entailed detailed  
17 and serious negotiations. To the best of my knowledge, I have no prior association with any  
18 persons or principals of SPSSM, and believe the negotiations have been conducted by both  
19 parties in good faith. I submit that SPSSM qualifies as a "good faith purchaser" within the  
20 meaning of the Bankruptcy Code.

21 9. From my perspective, exercising my business judgment, it makes sense to  
22 conduct a quick sale and auction of the Property at this time. I have developed the proposed Bid  
23 and Sale Procedures, submitted with the Motion, with my counsel, and exercising my business  
24 judgment, believe them to be fair and reasonable, and designed to ensure that the sale results in  
25 receipt of the best possible price for the Property while containing the risk regarding closing.  
26 The case has been ongoing for nearly a year and a half, and the Property is a "high profile"  
27 property. It is my belief that buyers who are interested in the Property will be able to meet the

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1 overbid terms and procedures and meet the deadlines set forth therein. I believe the Motion is in  
2 the best interests of the estate and its creditors and parties in interest.

3 I declare under penalty of perjury under the laws of the United States, that the foregoing  
4 is true and correct, except for those matters stated upon the information and belief and as to  
5 those, I believe them to be true.

6 Executed this 4<sup>th</sup> day of April 2017, at Los Angeles, California.

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Peter J. Mastan

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**EXHIBIT "A"**  
Asset Purchase Agreement

**AGREEMENT OF PURCHASE AND SALE  
AND  
JOINT ESCROW INSTRUCTIONS**

**TO:** First American Title Insurance Company

Escrow No.: \_\_\_\_\_

Escrow Officer: \_\_\_\_\_

Title Order No. \_\_\_\_\_

Title Officer: \_\_\_\_\_

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\_\_\_\_\_  
("Escrow Holder")

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**"), dated as of March 29, 2017 (the "**Effective Date**"), is made by and between Peter Mastan, solely in his capacity as the duly appointed and acting trustee (the "**Trustee**") in the Bankruptcy Case (as defined below) of Debtor (as defined below) (the "**Seller**"), and SPSSM Investments-IX,LP (herein "**Buyer**," including any assignee of Buyer expressly permitted in accordance with the terms of **Section 19** below), with reference to the following:

**RECITALS**

**A.** On or about November 20, 2015 (the "**Petition Date**"), BGM Pasadena, LLC, a Delaware limited liability company ("**Debtor**"), filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), commencing a Chapter 11 case (Case No. 2:15-bk-27833-BB) (the "**Bankruptcy Case**") in the United States Bankruptcy Court of the Central District of California (the "**Bankruptcy Court**"). On January 13, 2017, an Order Granting Joint Motion of Secured Creditors for Appointment of a Chapter 11 Trustee was entered whereby the Court, as further set forth therein, approved the appointment of a chapter 11 trustee in the Bankruptcy Case. On or about January 19, 2017, the Trustee filed the Statement Notice of Acceptance of Appointment as Chapter 11 Trustee and, on January 23, 2017, the Bankruptcy Court approved the appointment of the Trustee as the chapter 11 trustee in the Bankruptcy Case.

**B.** The bankruptcy estate (the "**Estate**") of Debtor is the owner of certain real properties located in the City of Pasadena, County of Los Angeles, State of California, commonly known as 210 S. Orange Grove Boulevard, Pasadena, California (the "**210 Property**") and 244-248 S. Orange Grove Boulevard, Pasadena, California (the "**244-248 Property**"), and legally described on **Exhibits "A-1"** and "**A-2"** attached hereto, respectively (collectively, the "**Land**"). The 244-248 Property also includes a parade easement (the "**Easement**") as further described in **Exhibit "A-2."**

**C.** Seller desires to sell all of the Estate's right, title and interest in and to the Property (as defined herein) to Buyer, and Buyer desires to purchase all of the Estate's right, title and interest in and to the Property upon the terms and subject to the conditions hereinafter set forth and in the Sale Order (as defined herein).

**D.** It is intended that Buyer will be a "stalking horse bidder," and as inducement for being a "stalking horse bidder," Buyer may be entitled to a fixed Breakup Fee if Buyer is outbid for the Property (as defined below) as otherwise set forth in **Section 17** of this Agreement. It is contemplated by Buyer and Seller as set forth in **Section 17** of this Agreement, that Seller will file with the Bankruptcy Court, and request that the Bankruptcy Court approve prior to the Sale Hearing, the sale and bid procedures relating to the sale of the Property substantially in the form attached hereto as **Exhibit "G"** (the "**Sale and Bid Procedures**"). This Agreement and the sale of the Property to Buyer are subject to potential overbid pursuant to the Sale and Bid Procedures and to the Bankruptcy Court issuing an order (the "**Sale Order**") at a sale hearing in the Bankruptcy Case (the "**Sale Hearing**") approving the sale to Buyer under this Agreement, as the successful bidder pursuant to the Sale and Bid Procedures.

E. If Buyer is the successful bidder at the Sale Hearing, the Sale Order will authorize (1) the sale of the Property to Buyer pursuant to the terms and conditions of this Agreement and the other documents, instruments, certificates and agreements to be entered into to effectuate the transactions contemplated therein (collectively, the "**Transaction Documents**"), and (2) Seller's execution and delivery of this Agreement and the other Transaction Documents, and Seller to otherwise take such actions as reasonable and necessary to effectuate this Agreement and the other Transaction Documents, and the transactions contemplated herein and therein.

## AGREEMENTS

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree that the terms and conditions of this Agreement and the instructions to Escrow Holder with regard to the escrow (the "**Escrow**") to be created pursuant hereto are as follows:

1. **Purchase and Sale.** Subject to the Bankruptcy Court entering the Sale Order in favor of Buyer as the successful bidder at the Sale Hearing, Seller agrees to sell, transfer and convey to Buyer, and Buyer agrees to purchase from Seller, all of Seller's and the Estate's right, title and interest in and to the Property on an "as-is, where is" basis and subject to the Conditions of Title (as defined below), upon the terms and conditions of this Agreement and the Sale Order.

(a) For purposes hereof, the Property shall consist of all of Seller's and the Estate's right, title and interest in and to the following (collectively, the "**Property**"):

(1) the Land;

(2) any and all improvements located on the Land (collectively, the "**Improvements**"), including, without limitation, that certain office building located at 210 S. Orange Grove Boulevard, Pasadena, California and those certain two (2) four-unit apartment buildings located at 244 – 248 S. Orange Boulevard, Pasadena, California;

(3) any and all rights, privileges, easements, fixtures and appurtenances located on or in or inuring to the benefit of the Land and/or Improvements (collectively, the "**Land Rights**"), including the Easement;

(4) those executory contracts and unexpired leases and other related agreements of Debtor and/or the Estate (collectively, the "**Executory Contracts**") as set forth on **Schedule 1(a)(4)** attached hereto (the "**Schedule of Assumed Contracts**") and incorporated herein, as such may be amended from time to time, all subject to **Section 1(c)** below (collectively, the "**Assumed Contracts**"); provided, however, that the failure to transfer an Assumed Contract shall not represent a condition precedent to Buyer's performance of its obligations hereunder, or otherwise permit Buyer to terminate this Agreement;

(5) all deposits relating to the Assumed Contracts, including, without limitation, all security deposits (but only to the extent any such security deposits are in the actual possession of Seller, and with respect thereto, Buyer acknowledges that the only security deposit in Seller's actual possession is the security deposit in the amount of \$4,200.00 relating to the lease agreement with Jule Selbo and Mark Winkworth for Unit #103 at 244 S. Orange Grove Blvd., Pasadena, California), provided in connection therewith; provided, however, that the failure to transfer any such deposit shall not represent a condition precedent to Buyer's performance of its obligations hereunder, or otherwise permit Buyer to terminate this Agreement;

(6) all permits and all pending applications therefore relating to the Land, the Land Rights, the Improvements, and/or the Assumed Contracts (collectively, the "**Assumed Permits**") to the extent assignable or transferable in accordance with the terms and conditions of such permits and/or pending applications therefore or applicable law; provided, however, that the failure to transfer an Assumed Permit shall not represent a condition precedent to Buyer's performance of its obligations hereunder, or otherwise permit Buyer to terminate this Agreement; and

(7) all rights, claims, credits, causes of action, or rights of set off, if any, against third parties relating to the Land, the Land Rights, the Improvements and/or the Assumed Contracts, excluding any of the foregoing with respect to or relating to any liens, claims, encumbrances or interests against, in, with respect to or relating to the Property held by any person (including Cantor Group, LLC, East West Bank, the Smith Family Trust, Dove Street Capital, the Einum Trust, Ambassador West Master Association, Ambassador Cost Center 3, Ambassador Cost Center 4, Ambassador Cost Center 5, Pasadena Apartments-7, Pasadena Lots-70 and/or City Ventures, LLC, and including without limitation any claims relating to claims or liens of Pasadena Apartments-7 and/or the related relief from stay proceeding(s), the appeal(s) relating thereto and/or the surety bonds and related deposits).

(b) For the avoidance of doubt, notwithstanding the foregoing, the following assets, properties or rights of Debtor, Seller and/or the Estate, whether or not relating to the Property, shall be expressly excluded from the Property hereunder (collectively, the "**Excluded Assets**"):

(1) all of Seller's or the Estate's cash on hand and/or in financial institutions (other than deposits included in **Section 1(a)(5)** above), deposit accounts, cash equivalents, surety bonds (or deposits relating thereto), marketable securities and bonds and short-term investments;

(2) any and all of Seller's or the Estate's claims, causes of action, rights of setoff and rights of recovery relating to (A) any assets other than the Property, and (B) claims and causes of action under Sections 544 through 550 and 553 of the Bankruptcy Code.

(3) Seller's rights under this Agreement or the other Transaction Documents;

(4) all accounts receivable (including amounts relating to the Property, whether billed or unbilled, for the period (or for any due date) prior to the Closing), prepayments, prepaid expenses, retainers, deposits, instruments, stocks, securities, investments, bonds, promissory notes, surety bonds and/or claims or deposits related to surety bonds, financial investments and financial assets (other than deposits included in **Section 1(a)(5)** above), in each case whether relating to the Property or other property;

(5) all rights, suits, claims, choses in action, causes of action, defenses, rights of setoff, judgments, damages, rights to payment, litigation rights of any kind or nature whatsoever (whether arising in contract, tort or otherwise), or any equitable remedy for breach of performance if such breach gives rise to a right to payment ("**Claims**") or any interest in any of the foregoing;

(6) all claims for refunds, insurance proceeds and/or credits for taxes applicable to the period prior to the Closing;

(7) the minute books, organizational record books, financial statements, records, books of account and tax returns of Seller, Debtor or the Estate;

(8) any and all records relating to Excluded Assets;



(9) all Executory Contracts which are not Assumed Contracts (the "**Excluded Contracts**");

(10) all personnel records and other records that Debtor or Seller is required by law to retain in its possession and any retained copies of any record or document included in the Property (collectively, the "**Retained Records**");

(11) all actions or causes of action arising in favor of Seller or the Estate pursuant to the Bankruptcy Code, and all preference, avoidance and/or similar other rights, claims and actions of Debtor, Seller and/or the Estate, including, without limitation, any such rights, claims and actions arising under Sections 544, 545, 546, 547, 548, 549, 550 and 553 of the Bankruptcy Code;

(12) those items excluded pursuant to the provisions of **Section 1(a)** above;

(13) all records, writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(14) all rights, claims, offsets, credits, causes of action, defenses, counterclaims, affirmative defenses, rights of setoff and/or avoidance actions with respect to or relating to any liens, claims, encumbrances or interests against, in, with respect to or relating to the Property held by any person (including Cantor Group, LLC, East West Bank, the Smith Family Trust, Dove Street Capital, the Einum Trust, Ambassador West Master Association, Ambassador Cost Center 3, Ambassador Cost Center 4, Ambassador Cost Center 5, Pasadena Apartments-7, Pasadena Lots-70 and/or City Ventures, LLC, and including without limitation any claims relating to claims or liens of Pasadena Apartments-7 and/or the related relief from stay proceeding(s), the appeal(s) relating thereto and/or the surety bonds and related deposits); and

(15) the promissory note secured by property at 4729 Sandyland Road, Carpinteria, California and/or such security or claims relating thereto.

(c) Notwithstanding anything in this Agreement to the contrary, Buyer may revise **Schedule 1(a)(4) (Schedule of Assumed Contracts)** to include or exclude any Executory Contract as an Assumed Contract up to five (5) days prior to the Sale Hearing; provided, however, that, as a condition of designating any Executory Contract as an Assumed Contract: (1) Buyer must timely advise Seller of any such revision, (2) Seller upon timely receiving such notification by Buyer shall provide notice to those non-Debtor parties to the Executory Contracts that Buyer elects to designate as Assumed Contracts, and (3) the parties hereto acknowledge and agree that the amount of the Purchase Price shall not be increased or decreased based on which Executory Contracts are Assumed Contracts and/or whether an Assumed Contract is assigned to Buyer at the Closing. To the extent that any cure amounts arise in connection with any Assumed Contract, as to such obligation, Buyer shall be solely liable for satisfying in full any such cure amount.

(d) Without limiting the provisions of this **Section 1** or any other provision of this Agreement, Buyer acknowledges that Seller is not selling or otherwise transferring to Buyer any property that Seller may not sell or transfer under applicable law, including without limitation any such property the sale, transfer or use of which is restricted under applicable licensing, copyright, patent, trademark or other similar laws or which may not be transferred without the consent of a third party (including any licensor), and the use, disposition, sale or disposition of certain of the Property by Buyer may be limited as a result thereof. Buyer assumes responsibility for obtaining all required licenses, copyrights, patents, trademarks, permits and/or other agreements and/or rights as may be required so that Buyer may lawfully use, sell, operate or dispose of the Property and/or businesses thereon.

2. Purchase Price; Payment of Purchase Price; Assumption of Liability.

(a) The aggregate purchase price ("Purchase Price") for the Property shall be Eleven Million Three Hundred Thousand Dollars (\$11,300,000.00). The Purchase Price for the Property shall be paid to Seller by Buyer as follows:

(1) Upon execution hereof, Buyer shall deposit or cause to be deposited with Seller the sum of Four Hundred Fifty Thousand Dollars (\$450,000.00) in immediately available funds (the "Deposit"). [The Deposit shall be held by Seller and shall be nonrefundable except as otherwise expressly provided in Section 16(c)(2) below. The Deposit (without any interest thereon) shall be applicable to the Purchase Price upon the Closing.

BUYER AND SELLER AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN OR UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH SELLER'S DAMAGE BY REASON OF BUYER'S DEFAULT UNDER THIS AGREEMENT AND FAILURE TO CLOSE ESCROW. ACCORDINGLY, BUYER AND SELLER AGREE THAT IN THE EVENT OF A FAILURE TO CLOSE ESCROW AS A RESULT OF SECTION 16(a)(4) HEREUNDER, SUBJECT TO BUYER'S OBLIGATIONS TO PAY ALL COSTS AND EXPENSES AS DUE HEREUNDER, IT WOULD BE REASONABLE AT SUCH TIME TO AWARD SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW, "LIQUIDATED DAMAGES" EQUAL TO THE AMOUNT REPRESENTED BY THE DEPOSIT. THEREFORE, IF THE PARTIES HERETO FAIL TO CLOSE ESCROW AS A RESULT OF SECTION 16(a)(4) HEREUNDER, SELLER MAY, AMONG OTHER THINGS, RETAIN THE DEPOSIT AND/OR CANCEL THE ESCROW, WHEREUPON (A) SELLER SHALL IMMEDIATELY BE ENTITLED TO RETAIN THE DEPOSIT, (B) SELLER SHALL BE RELIEVED FROM ALL OBLIGATIONS AND LIABILITIES HEREUNDER, AND, (C) PROMPTLY FOLLOWING ESCROW HOLDER'S RECEIPT OF SUCH INSTRUCTION TO CANCEL THE ESCROW, ESCROW HOLDER SHALL CANCEL THE ESCROW.

  
Seller Initials

  
Buyer Initials

(2) Prior to the Closing, Buyer shall deposit or cause to be deposited with Escrow Holder in immediately available funds the balance of the Purchase Price plus Escrow Holder's estimate of Buyer's share of closing costs, pro-rations and charges payable pursuant to this Agreement.

(b) Buyer hereby agrees to assume the following obligations as of the Closing (the "Assumed Liabilities"): (1) any obligations of Debtor, Seller or the Estate as of the Closing relating to the Assumed Contracts, including, without limitation, cure costs if any, and all obligations relating to security or other deposits or prepayments, and (2) any and all obligations of Buyer under this Agreement or the other Transaction Documents. Except with respect to the Assumed Liabilities and the Conditions of Title, Buyer does not assume any other liabilities or obligations of Debtor, Seller or the Estate, of any type or nature whatsoever.

(c) The Purchase Price shall be allocated among the Property as provided in Section 10.

3. Escrow.

(a) **Opening of Escrow.** For purposes of this Agreement, Escrow shall be deemed opened on the date Escrow Holder shall have received a fully executed original or originally executed counterparts of this Agreement from Seller and Buyer, and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened and provide each of the parties hereto with a full set of signature pages to this Agreement. Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transactions contemplated by this Agreement; provided, however, that any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement or the Sale Order. To the extent of any inconsistency between the provisions of such supplemental instructions and the provisions of this Agreement and the Sale Order, the provisions of this Agreement and the Sale Order shall control.

(b) **Closing.** The consummation of the transactions contemplated hereby (the "**Closing**") shall be held at the offices of the Escrow Holder on the date (the "**Closing Date**") that is the first Business Day which is at least fifteen (15) days after the entry in the Bankruptcy Case of the Sale Order provided there is no stay then in effect of the Sale Order; provided, however, that the parties may mutually agree that the Closing Date may occur earlier if the Bankruptcy Court has waived the provisions of Bankruptcy Rules 6004(h) and 6006(d) as part of the Sale Order; and further provided that if the Closing Date does not occur by such date because of an uncured breach of this Agreement by Buyer, Seller shall have the right to extend the Closing Date; provided further, Buyer and Seller may mutually agree to extend the Closing Date. At the Closing, Seller and Buyer shall perform the obligations set forth in, respectively, **Sections 7 and 8** hereof, the performance of which obligations shall be concurrent conditions; provided that the Quitclaim Deeds (each a "**Quitclaim Deed**," and collectively, the "**Quitclaim Deeds**"), the forms of which are attached hereto as **Exhibits "B-1,"** and "**B-2**" shall not be recorded in the Official Records of the Los Angeles County, California Recorder's Office (the "**Official Records**") until Escrow Holder has received in escrow the full amount of the Purchase Price from Buyer, adjusted by prorations as set forth herein and approval from Seller and Buyer to proceed with the Closing. The Purchase Price and all documents shall be deposited with the Escrow Holder as escrowee.

4. **Conditions of Title.** It shall be a condition to the Closing for Buyer's benefit that title to the Land and Improvements portion of the Property shall be conveyed to Buyer by the Quitclaim Deeds subject to the following liens, claims, encumbrances and charges (the "**Conditions of Title**"):

(a) a lien to secure payment of general and special real property taxes and assessments, not delinquent;

(b) the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Paragraph 75 of the California Revenue and Taxation Code;

(c) matters affecting the Conditions of Title created by or with the written consent of Buyer; provided, however, that (1) Buyer shall have no right or authority to create or impose any such matters affecting the Conditions of Title prior to the Closing, and (2) such matters affecting the Conditions of Title shall not be recorded or effective prior to the Closing Date;

(d) all matters which a professional survey and inspection of the Property would disclose;

(e) all title exceptions noted in the Preliminary Reports issued by First American Title Insurance Company attached hereto as **Exhibits "H-1"** and "**H-2"** (collectively, the "**Title Report**"), other than with respect to liens (except those pursuant to clauses (a) and (b) this **Section 4**), mortgages, deeds of trust and other monetary encumbrances from which the Property will be transferred free and clear pursuant to the Sale Order;

(f) all leases for portions of the Property; and

(g) all other applicable easements, rights-of-way, covenants, conditions, restrictions, obligations, liabilities, laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) or other matters affecting the development, use, occupancy or enjoyment of the Property which are of record in the Official Records (as defined below) as of the Closing.

5. **Condition of the Property.** Buyer acknowledges having had the opportunity to review and investigate, in its sole discretion, all aspects as to the condition of the Property, including, without limitation, the Improvements, the soil, groundwater, and suitability for Buyer's intended use; and Buyer expressly acknowledges and agrees that Buyer is purchasing the Property on an "as is, where is" basis, subject to the Conditions of Title and that neither Seller nor any Person has made any representations, warranties, covenants or agreements of whatsoever kind and nature concerning the Property, including, without limitation, its merchantability, condition or use, which are not expressly set forth herein. As such, there are no such conditions to Buyer's obligation to consummate the transactions contemplated herein. Buyer further acknowledges and agrees that Buyer has retained independent counsel and advisors, and has had the opportunity to review and discuss this Agreement and the other Transaction Document, and understands the terms and conditions set forth in the Transaction Documents and the status and condition of the Property, all prior to entering into this Agreement and the other Transaction Documents. To the extent that Buyer has not undertaken investigations or other forms of due diligence in regard to the condition of the Property, Buyer hereby expressly acknowledges that Buyer is relying solely on Buyer's own due diligence and investigations, and further expressly waives any and all claims and causes of action of whatsoever kind and nature as to any matters which may have been disclosed if such investigations were undertaken.

BUYER AGREES THAT SELLER SHALL HAVE NO LIABILITY OR OBLIGATION WHATSOEVER FOR ANY INACCURACY IN OR OMISSION FROM ANY REPORT FURNISHED TO BUYER, AND BUYER HAS CONDUCTED ITS OWN INVESTIGATION OF THE CONDITION (INCLUDING THE ENVIRONMENTAL CONDITION) OF THE PROPERTY TO THE EXTENT BUYER DEEMS SUCH AN INVESTIGATION TO BE NECESSARY OR APPROPRIATE.

Without limiting the foregoing provisions of this Section 5, Buyer expressly acknowledges and agrees that: **THE PROPERTY IS BEING TRANSFERRED "AS IS" AND "WHERE IS"; BUYER AGREES TO ACQUIRE THE PROPERTY FROM SELLER "AS IS" AND "WHERE IS", AND ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROPERTY (INCLUDING AS TO THE ACTUAL NATURE, QUALITY, QUANTITY, OWNERSHIP, LOCATION OR VALUE), LIABILITIES, ASSUMED CONTRACTS OR ASSUMED LIABILITIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY REGARDING TITLE TO OR CONDITION OF THE PROPERTY, OR THE VALUE THEREOF, OR THE FITNESS, DESIRABILITY, OR MERCHANTABILITY THEREOF OR SUITABILITY THEREOF FOR ANY PARTICULAR PURPOSE, OR THE EXISTENCE OR AMOUNT OF ACCOUNTS, LIABILITIES, ASSUMED LIABILITIES, LIENS, CLAIMS OR ENCUMBRANCES. BUYER FURTHER ACKNOWLEDGES AND REPRESENTS THAT IT IS FULLY INFORMED AND ADVISED WITH RESPECT TO THE PROPERTY, ASSUMED CONTRACTS, ASSUMED LIABILITIES AND OPERATIONS OF THE PROPERTY, IT HAS REVIEWED AND INSPECTED THE PROPERTY, HAS HAD THE OPPORTUNITY TO INSPECT THE BOOKS AND RECORDS RELATING TO THE PROPERTY AND THE PUBLIC FILING RECORDS (INCLUDING LOS ANGELES COUNTY PROPERTY RECORDS AND FILINGS IN THE BANKRUPTCY CASE) AND ENTERS INTO THIS AGREEMENT AFTER INDEPENDENT INVESTIGATION OF THE FACTS AND CIRCUMSTANCES RELATING TO**

THE PROPERTY AND THE TRANSACTIONS DESCRIBED IN THIS AGREEMENT. BUYER FURTHER ACKNOWLEDGES THAT SELLER IS THE TRUSTEE APPOINTED IN THE BANKRUPTCY CASE AND HIS LITTLE OR NO INFORMATION RELATING TO THE PROPERTY AND MATTERS PERTAINING THERETO AND THAT ANY INFORMATION PROVIDED BY THE TRUSTEE OR HIS AGENTS OR REPRESENTATIVES IS BASED UPON INFORMATION PROVIDED BY DEBTOR OR ITS REPRESENTATIVES OR AGENTS AND/OR MATTERS FILED IN THE BANKRUPTCY CASE BY OTHER PERSONS OR PUBLIC RECORDS, AND SELLER HAS NOT INDEPENDENTLY REVIEWED ANY SUCH INFORMATION FOR ACCURACY OR COMPLETENESS. SELLER HAS NO OBLIGATION OR LIABILITY WHATSOEVER WITH RESPECT TO ANY SEPARATE AGREEMENTS, INDEMNITIES, REPRESENTATIONS OR WARRANTIES ENTERED INTO BY BUYER WITH ANY OTHER PERSON.

6. Conditions to Closing.

(a) Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated by this Agreement at the Closing is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions.

(1) The Bankruptcy Court shall have entered the Sale Order, which, among other things, approves and authorizes pursuant to applicable provisions of the Bankruptcy Code the sale and transfer of the Property to Buyer free and clear of liens, liabilities, adverse claims of ownership and other interests of any kind and nature (other than the Assumed Liabilities and the Conditions of Title), with such liens, liabilities, adverse claims of ownership and other interests, if any, to attach to the proceeds of the sale and provides (or related findings provide) a finding that Buyer is a good faith buyer of the Property under Section 363(m) of the Bankruptcy Code;

(2) All representations and warranties of Seller expressly set forth in this Agreement are true and correct in all material respects as of the Closing;

(3) No stay or injunction is in effect under applicable law or court order of the Sale Order or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement; and

(4) Seller shall have delivered to or for the benefit of Buyer all of Seller's Deliverables (as defined at Section 7 below), and otherwise timely performed all of the obligations required by the terms of this Agreement to be performed by Seller.

By way of illustration and not of limitation, Buyer expressly acknowledges and agrees that, except as expressly set forth in this Section 6(a), there are no "contingencies" to Closing, including, without limitation, no due diligence or financing contingency as a condition to Buyer's obligations hereunder.

(b) Conditions to Seller's Obligations. Seller's obligation to consummate the transactions contemplated by this Agreement at the Closing is subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions.

(1) The Bankruptcy Court shall have entered the Sale Order, which, among other things, approves and authorizes pursuant to applicable provisions of the Bankruptcy Code the sale and transfer of the Property to Buyer free and clear of liens, liabilities, adverse claims of ownership and other

interests of any kind and nature (other than the Assumed Liabilities and Conditions of Title), with such liens, liabilities, adverse claims of ownership and other interests, if any, to attach to the proceeds of the sale and provides (or related findings provide) a finding that Buyer is a good faith buyer of the Property under Section 363(m) of the Bankruptcy Code;

(2) The Bankruptcy Court has entered its order approving the Sale and Bid Procedures (the "**Sale and Bid Procedures Order**");

(3) No stay or injunction is in effect under applicable law or court order of the Sale Order or the Sale and Bid Procedures Order or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement;

(4) All representations and warranties of Buyer expressly set forth in this Agreement are true and correct as of the Closing;

(5) Buyer shall have delivered to or for the benefit of Seller all of the items as set forth in **Section 8** below, and otherwise timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer; and

(6) no action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

7. **Deposits by Seller.** At or prior to the Closing, Seller shall deposit or cause to be deposited with Escrow Holder the following documents and instruments (the "**Seller's Deliverables**"), each of which shall have been duly executed and, where applicable, acknowledged and/or sworn on behalf of Seller and shall be dated as of the Closing Date:

(a) the Quitclaim Deeds;

(b) an affidavit by Seller certifying that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, which affidavit shall be in such form as may be prescribed by federal regulations;

(c) a duly executed California Form 593-C with respect to California withholding requirements;

(d) a Bill of Sale, the form of which is attached hereto and incorporated herein as **Exhibit "D"** (the "**Bill of Sale**");

(e) a General Assignment and Assumption Agreement, the form of which is attached hereto and incorporated herein as **Exhibit "E"** (the "**Assumption Agreement**"); and

(f) any other documents, certificates, instruments and agreements reasonably requested by First American Title Insurance Company, or such other title company reasonably acceptable to Seller (the "**Title Company**"), or by Buyer, to consummate the sale of the Property as contemplated herein.

8. **Deposits by Buyer.** At or prior to the Closing, (a) Buyer shall deposit or cause to be deposited with Escrow Holder the balance of the Purchase Price in immediately available funds, and (b) Buyer shall

deliver for the benefit of Seller the following, each of which shall have been duly executed and, where applicable, acknowledged and/or sworn on behalf of Buyer and shall be dated as of the Closing Date:

- (a) the Assumption Agreement;
- (b) the Buyer's Certificate, the form of which is attached hereto as **Exhibit "F,"**
- (c) resolutions (in form and substance reasonable to Seller) from Buyer's general partner, duly authorizing Buyer to enter into and perform its obligations under this Agreement and the other Transaction Documents; and
- (d) any other documents, instruments, certificates and agreements reasonably requested by the Title Company and/or Seller to consummate the sale of the Property as contemplated herein.

9. **Taxes; Costs and Expenses.** The cost of all documentary transfer taxes and recording fees payable in connection with the recordation of the Quitclaim Deeds, and all taxes, fees, charges, costs and liabilities due in connection with the sale of the Property (other than income taxes due by Seller in connection with said sale) shall be the obligation of and promptly paid by Buyer. The escrow fee of Escrow Holder shall be shared equally by Seller and Buyer. Buyer and Seller shall pay, respectively, the Escrow Holder's reasonable and customary charges to buyers and sellers for document drafting and miscellaneous charges, which charges shall be provided in advance and in writing by each of Buyer and Seller prior to the Closing.

10. **Allocation; Fair Consideration.** Seller and Buyer shall allocate the Purchase Price among the Land and Improvements and other assets comprising the Property as follows: 210 Property - \$5,700,000.00; and 244-248 Property - \$5,600,000.00, or such other allocation as Seller and Buyer shall agree prior to the Closing (the "**Purchase Price Allocation**"). Seller and Buyer shall be bound by such allocation for all purposes, shall prepare and file (or cause to be prepared and filed) all tax returns in a manner consistent with such allocations, including the United States Internal Revenue Service (the "**IRS**") Form 8594, and shall not take any position inconsistent with such allocations in any tax return, proceeding before any governmental authority or otherwise. The parties acknowledge and agree that the Purchase Price represents fair consideration and reasonable equivalent value for the sale and transfer of the Property, and the transactions, covenants, and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm's-length good-faith negotiations among the parties and their respective representatives.

11. **Prorations and Liability.** Real property taxes and assessments, utilities, and the like, shall be prorated as of the Closing Date. Within a reasonable time not to exceed thirty (30) days from the Closing Date, Buyer and Seller shall make appropriate adjustments if such prorations are inaccurate at the Closing, and, as applicable, Buyer shall pay to Seller in immediately available funds the balance of the amounts owing with respect to such corrected prorations.

12. **Disbursements and Other Actions by Escrow Holder; Actions At Closing.**

(a) Upon the Closing, Escrow Holder shall promptly undertake all of the following in the manner indicated:

(1) **Recording.** Cause the Quitclaim Deeds and any other documents which the parties hereto may mutually direct, to be recorded in the Official Records, in the order directed by such parties.

(2) **Closing Statement.** Escrow Holder shall generate and circulate to each of Buyer and Seller a written closing statement ("**Closing Statement**"), listing, among other things, the flow of funds, and require that each of Buyer and Seller execute and deliver said Closing Statement as a condition of Closing.

(3) **Funds.** Pursuant to the Closing Statement, disburse from funds deposited by Buyer with Escrow Holder towards payment of the Purchase Price to Seller and payment of expenses expressly agreed to by Seller pursuant to the terms and conditions hereof and set forth in the Closing Statement, including, without limitation, payment of the broker fees to the brokers as set forth in **Section 15** below.

(4) Deliver to (i) Buyer: Seller's signatures with respect to the Bill of Sale, Assumption Agreement and Seller's Certificate, and (ii) Seller: Buyer's signatures with respect to the Assumption Agreement and Buyer's Certificate.

(b) Except as otherwise provided herein, upon the Closing (and subject to satisfaction of all of Buyer's obligations in connection therewith), title to all of the Property shall pass to Buyer, subject to the terms and conditions hereof, and Seller shall make available to Buyer, to the extent applicable, possession of all of the tangible personal property constituting the Property, if any; provided, however, that all costs and expenses associated with the retrieval or transfer of such tangible personal property shall be borne exclusively by Buyer.

**13. Seller Representations and Warranties.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller subject to the terms and conditions hereof, Seller hereby makes the following representations and warranties to Buyer as of the Effective Date of this Agreement:

(a) Subject to the entry of the Sale Order and the Sale and Bid Procedures Order in the Bankruptcy Case by the Bankruptcy Court, Seller (i) has the power and authority to enter into this Agreement and to consummate the transactions contemplated herein, and (ii) this Agreement and all instruments, documents and agreements to be executed by Seller in connection therewith are or when delivered will be duly authorized, executed and delivered by Seller and will be valid, binding and enforceable obligations of the Estate, subject to the Sale Order and general equity principles, in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting the rights of creditors generally.

(b) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (i.e., Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

**14. Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to consummate the transactions contemplated herein, Buyer hereby makes the following representations and warranties to Seller as of the Effective Date of this Agreement:

(a) Buyer is a limited partnership duly organized and validly existing under the laws of the State of California and is in good standing in California and in every jurisdiction in which the failure to be in good standing may have a material adverse effect on Buyer, its business and/or assets. Buyer has full organizational power and authority to enter into and execute this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby. This Agreement and such Transaction Documents and all transactions required hereunder and thereunder to be performed



by Buyer have, subject to the Sale Order, been duly and validly authorized and approved by all necessary action on the part of Buyer. This Agreement and such other Transaction Documents have been duly and validly executed and delivered on behalf of Buyer by its duly authorized partners/ officers, as the case may be, and constitute the valid and legally binding obligations of Buyer and are enforceable, subject to the Sale Order and general equity principles, in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting the rights of creditors generally. Furthermore, the undersigned represents and warrants that he/she is duly authorized to execute and deliver this Agreement by and on behalf of Buyer.

(b) Neither the execution and delivery of this Agreement or such Transaction Documents, nor the consummation of the transactions hereby or thereby contemplated, will constitute a violation or breach of any provision of any contract or other instrument to which Buyer is a party or by which any of the assets of such Buyer may be affected or secured, or any order, writ, injunction, decree, statute, rule, or regulation to which Buyer is subject, or will result in an acceleration of any debt or the creation of any lien, charge, or encumbrance on any of the assets of Buyer which will prevent or interfere with the consummation of the transactions contemplated herein and in the other Transaction Documents, or which might be deemed to adversely affect Buyer's ability to fully and promptly perform its obligations hereunder or under the other Transaction Documents.

(c) The execution and delivery by Buyer of this Agreement and the other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby in accordance with the Sale Order will not require the consent, approval or action of, or any filing with or notice to, any Person or any public, governmental, judicial, or regulatory authority, other than the Bankruptcy Court. There are no material actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Buyer, threatened) whether at law or in equity, which will prevent the consummation of the transactions as contemplated herein or which might otherwise affect Buyer's ability to close the transactions contemplated herein and in the other Transaction Documents.

(d) Buyer expressly acknowledges and agrees that Buyer has sufficient financial resources, including, without limitation, the necessary liquid funds, to promptly pay the balance of the Purchase Price and to pay and perform the Assumed Contracts and the Assumed Liabilities as and when due, and to consummate the transactions contemplated herein and in the other Transaction Documents, to assume and pay in full as due any claims, charges, expenses or liabilities due with respect to the Conditions of Title or otherwise arising in connection with the Assumed Contracts or any other Property, and to perform all of Buyer's obligations hereunder and under the other Transaction Documents. Furthermore, with respect to the Assumed Contracts, Buyer shall establish adequate assurance of the future performance of such Assumed Contracts as required by Sections 365(b)(1)(C) and/or 365(f)(2)(B) of the Bankruptcy Code, as applicable.

(e) There are no actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Buyer, threatened), at law or in equity, that might affect Buyer's ability to close the transactions contemplated hereby.

(f) **IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND/OR THE CONDITIONS OF TITLE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO TITLE. BUYER ACKNOWLEDGES AND AGREES THAT, UPON THE CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY SUBJECT TO THE CONDITIONS OF TITLE, "AS IS, WHERE IS, WITH ALL FAULTS." FURTHER, BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT**

LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING TRANSFERRED HEREUNDER SUBJECT TO THE CONDITIONS OF TITLE ON AN "AS IS, WHERE IS, WITH ALL FAULTS BASIS."

(g) BUYER ACKNOWLEDGES TO SELLER THAT BUYER HAS HAD THE OPPORTUNITY TO CONDUCT PRIOR TO THE EFFECTIVE DATE AND WILL CONDUCT PRIOR TO THE CLOSING DATE SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AND/OR CONDITIONS OF TITLE AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE PROPERTY AND ITS ACQUISITION THEREOF AND THE OBLIGATIONS IN CONNECTION THEREWITH. BUYER FURTHER WARRANTS AND REPRESENTS TO SELLER THAT BUYER WILL RELY SOLELY ON ITS OWN REVIEW AND OTHER INSPECTIONS AND INVESTIGATIONS IN THIS TRANSACTION AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER, OR ITS REPRESENTATIVES OR ANY OTHER PERSON WITH RESPECT THERETO. BUYER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S REVIEW AND INSPECTIONS AND INVESTIGATIONS, AND BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT HAS CONCLUDED ITS DUE DILIGENCE.

(h) Buyer represents and warrants that all materials submitted by Buyer, its Affiliates and its and their duly authorized representatives to Seller prior to the Effective Date in connection with Buyer, any such Affiliate, and its and their financial ability to consummate the transactions contemplated herein and in the other Transaction Documents (the "**Bid Documentation**") is true, correct, complete in all material respects and sets forth in a manner that is not misleading as of the Effective Date hereof and as of such date received by Seller through the Closing Date.

(i) Buyer represents, warrants, acknowledges and agrees that the only security or other deposits or prepayments from tenants at the Property which constitute a portion of the Property is the security deposit described in **Section 1(a)(5)** relating to Unit #103 of 244 S. Orange Grove Blvd., Pasadena, California, and that no other security or other deposits or prepayments shall be turned over or transferred by Seller to Buyer, and that Buyer shall have no claim against Seller or the Estate with respect to any security or other deposit or prepayment.

**15. Brokers.** Seller has retained Keller Williams Silicon Beach Commercial (the "**Broker**") to act as its broker in connection with the sale of the Property pursuant to the terms and conditions hereof. Buyer has also retained the Broker to act as its broker in connection with the sale of the Property pursuant to the terms and conditions hereof. Except with respect to the brokerage fees due to the Broker, Seller and Buyer each represent and warrant to the other that there are no commissions, finder's fees or brokerage fees arising out of the transactions contemplated by this Agreement. Buyer shall indemnify and hold Seller harmless from and against any and all liabilities, claims, damages, costs and expenses, including, without limitation, court costs and reasonable attorneys' fees, in connection with claims for any commissions, finder's fees or brokerage fees arising out of Buyer's conduct or the inaccuracy of the foregoing representations and/or warranty of Buyer. Notwithstanding the foregoing provisions of this **Section 15**, Buyer acknowledges that retention of and the amount and payment of compensation to the Broker (or any other broker) is subject to approval of the Bankruptcy Court and orders of the Bankruptcy Court relating thereto.

**16. Termination; Return of Deposit.**

(a) This Agreement may be terminated at any time prior to the Closing as follows:

(1) By mutual written consent of the parties;

(2) By Buyer if the Bankruptcy Court enters a Sale Order approving the sale of the Property and designating as the Successful Bidder a Person other than Buyer (unless Buyer is the approved Backup Bidder); provided, however, that Buyer is not then otherwise in default under this Agreement and/or the other Transaction Documents;

(3) By Seller if the Bankruptcy Court enters a Sale Order approving the sale of the Property and designating as the Successful Bidder a Person other than Buyer (unless Buyer is the approved Backup Bidder);

(4) By Seller if Buyer breaches, in any material respect, its representations or warranties or fails to perform in any material respect its covenants or agreements set forth in this Agreement or in the other Transaction Documents, subject to prior written notice and a three (3) calendar day cure period, if and only if such breach is subject to cure; provided, however, that Seller is not then otherwise in default under this Agreement and/or the other Transaction Documents;

(5) By Seller or Buyer (if Buyer is not then otherwise in default under this Agreement) if the Sale Order is not entered by June 15, 2017; or

(6) By Seller upon the closing of the sale contemplated herein with a Person other than Buyer; provided all rights of Seller against Buyer are preserved if Buyer is then in default under this Agreement.

(b) Upon termination of this Agreement as set forth in **Section 16(a)** above, Seller shall retain the Deposit as expressly provided in **Section 16(c)** below, and Seller shall retain any and all of its rights and remedies against Buyer, subject to the provisions of **Section 2(a)(1)** above relating to liquidated damages.

(c) With respect to the Deposit:

(1) Except as otherwise provided in **Section 16(c)(2)** below, the Deposit is nonrefundable. Upon the termination of this Agreement and written notice thereof to Buyer and Escrow Holder, Seller shall retain the Deposit, together with any and all interest that may have accrued thereon, pursuant to this **Section 16(c)(1)**.

(2) In the event that this Agreement is terminated by Buyer or Seller, as applicable pursuant to Sections 16(a)(2), (a)(3), (a)(5) or (a)(6), and subject to the other terms hereof, then Seller shall promptly refund the Deposit, without interest thereon, to Buyer pursuant to this **Section 16(c)(2)**.

(d) Without limiting the other provisions of **Section 16**, Buyer acknowledges that the Deposit is subject to forfeiture if:

(1) Buyer seeks to terminate this Agreement before the announcement of the Successful Bidder and Backup Bidder;

(2) Buyer is determined to be the Successful Bidder and attempts to modify or withdraw its offer or terminate this Agreement without closing the transactions contemplated hereby;

(3) Buyer is determined to be the Backup Bidder and attempts to modify or withdraw its offer or terminate this Agreement prior to closing on the sale, unless the sale shall have closed with the Successful Bidder; or

(4) if Buyer is determined to be the Successful Bidder and the sale with Buyer fails to close without any fault of Seller.

**17. Bankruptcy Court Approval; Sale Hearing; and Breakup Fee.**

(a) This Agreement, and the sale of the Property, are subject to possible overbid pursuant to the Sale and Bid Procedures and the Bankruptcy Court's entry of the Sale and Bid Procedures Order and the Sale Order in the Bankruptcy Case at the Sale Hearing. Promptly following execution of this Agreement, Seller will file the necessary pleadings (collectively, the "**Sale Motion**") in the Bankruptcy Case to request, and Seller and Buyer shall use good faith efforts to obtain, the Sale and Bid Procedures Order approving the following:

(1) the Sale and Bid Procedures; and

(2) this Agreement, subject to notice and possible overbid pursuant to the Sale and Bid Procedures at the Sale Hearing.

(b) In the event this Agreement and the sale and assignments contemplated herein are not approved by the Bankruptcy Court, this Agreement shall be null and void and the Deposit (without interest) shall be promptly returned to Buyer as set forth in **Section 16**, unless any modifying condition or term to this Agreement imposed or proposed by the Bankruptcy Court to this Agreement is reasonably acceptable to Seller and Buyer, in which event this Agreement will be modified accordingly. Except as otherwise provided in this Agreement or order of the Bankruptcy Court, upon Buyer being approved as the buyer, or if there is an overbid, the Successful Bidder, at the Sale Hearing, the Deposit will remain non-refundable and in the event of default by Buyer will be forfeited to Seller.

(c) The Sale and Bid Procedures Order shall be in a form as reasonably acceptable to Seller and Buyer, shall be entered by the Bankruptcy Court, and shall include without limitation (unless otherwise agreed to by Buyer) that the Sale and Bid Procedures are approved.

(d) (1) Buyer has expended substantial funds and other resources in connection with the transactions contemplated hereby, including costs in connection with legal and business due diligence, (2) Buyer has devoted significant internal resources and efforts in connection with the planning, due diligence and negotiation of this Agreement, the costs of which are not recoverable as a Reimbursement Amount hereunder, and (3) Buyer will be harmed if such transaction is not consummated, and that it would be unfair for Buyer to bear such harm in view of the fact that both Buyer, on the one hand, and Seller, on the other hand, hope to benefit from such transaction. Accordingly, in the event that, the Bankruptcy Court enters a Sale Order approving the sale of the Property and designating as the Successful Bidder a Person other than Buyer (an "**Alternative Transaction**"), and provided that Buyer is not then otherwise in default under this Agreement and/or the other Transaction Documents:

(1) Subject to approval of the Breakup Fee by the Bankruptcy Court, Seller shall pay, or cause the Escrow Holder to pay, to Buyer the Breakup Fee from the proceeds received from the sale of the Property in the Alternative Transaction at the time of the closing of the Alternative Transaction or within five (5) Business Days after the forfeiture and release of the purchase price deposit from the other Person to Seller, whichever occurs first.

Anything to the contrary contained herein notwithstanding, the failure to pay the Breakup Fee within the time periods set forth above shall not be deemed a breach of this Agreement by Seller; provided, however, that until the Breakup Fee is paid to Buyer, this payment obligation shall constitute an administrative expense of the Estate.

Further, anything to the contrary contained herein notwithstanding, Buyer acknowledges and agrees that: the Breakup Fee is subject to approval of the Bankruptcy Court; Seller will seek approval of the Breakup Fee by the Bankruptcy Court but makes no representation that the Breakup Fee will be approved; the Bankruptcy Court may not approve the Breakup Fee at all, or the Bankruptcy Court may approve the Breakup Fee in a reduced amount; and the failure of the Bankruptcy Court to approve the Breakup Fee, or the Bankruptcy Court's reduction in the amount of the Breakup Fee, or the Bankruptcy Court's imposition or change in terms relating to the Breakup Fee, shall not represent a condition precedent to Buyer's performance of its obligations under this Agreement or otherwise permit Buyer to terminate this Agreement nor give rise to any claim of Buyer against Seller or the Estate or to a right to any adjustment in the Purchase Price.

Further, anything to the contrary contained herein notwithstanding, no Breakup Fee, even if approved by the Bankruptcy Court, shall be payable to Buyer unless the Alternative Transaction actually closes or the purchase price deposit from the other Person is actually forfeited and released to Seller.

(e) Upon distribution or refund of the Deposit, as the case may be, together with any and all interest that may have accrued thereon, distribution of the Breakup Fee and Reimbursement Amount, all as subject to the terms and conditions hereof, and distribution of all other funds received and/or held by Escrow Holder in the Escrow pursuant to the terms and conditions hereof, as well as delivery of all of the documents, instruments, certificates and agreements required to be delivered by Escrow Holder to each of the parties hereto pursuant to the terms and conditions hereof, and to other non-Debtor parties pursuant to agreements entered into between Escrow Holder and such other non-Debtor parties, and subject to the approval of the Bankruptcy Court, Escrow Holder shall close the Escrow.

(f) For purposes hereof:

(1) "**Affiliate**" shall mean, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person;

(2) "**Auction**" shall mean the auction to be conducted at the Sale Hearing pursuant to the Sale and Bid Procedures pursuant to which Qualified Bidders submit the highest Qualified Bids to acquire the Property;

(3) "**Backup Bidder**" shall mean the bidder who submitted the next highest bid below the bid of the Successful Bidder as determined by Seller and confirmed by the Bankruptcy Court;

(4) "**Breakup Fee**" shall equal One Hundred Thousand Dollars (\$100,000.00);

(5) "**Person**" means and includes natural persons, corporations, limited partnerships, limited liability companies, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts, Indian tribes or other organizations, whether or not legal entities;

(6) "**Qualified Bid**" means a bid submitted by a Qualified Bidder that meets the requirements of a "Qualified Bid" as set forth in the Sale and Bid Procedures;

(7) "Qualified Bidder" means a "Qualified Bidder" as set forth in the Sale and Bid Procedures. Subject to receipt of the Deposit, Buyer is deemed a Qualified Bidder.

(8) "Successful Bid" shall mean the bid that is determined to be the highest and best bid submitted pursuant to the Sale and Bid Procedures; and

(9) "Successful Bidder" shall mean the bidder who submitted the Successful Bid as determined by Seller and confirmed by the Bankruptcy Court.

18. **Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or delivered by facsimile or email (provided a duplicate copy is also sent via pre-paid, first class, certified or registered air mail (or the functional equivalent in any country), return receipt requested, to the intended recipient thereof at its email, and/or facsimile number set out below) or by overnight courier such as FedEx, Express Mail, etc., for the next Business Day delivery, and shall be deemed received upon the earlier of (i) if personally delivered or sent via facsimile or email, the Business Day of delivery to the address of the person to receive such notice, or (ii) if delivered by overnight courier, the next Business Day.

If to Seller: Peter Mastan, Trustee  
c/o Gumport Mastan  
550 S. Hope Street, Suite 1765  
Los Angeles, California 90071  
Fax: \_\_\_\_\_  
Email: pmastan@gumportlaw.com

With a courtesy only copy to: Ballard Spahr LLP  
655 W. Broadway, Suite 1600  
San Diego, California 92101  
Attn: Christopher Celentino, Esq.  
Fax: 619-696-9629  
Email: celentinoc@ballardspahr.com

If to Buyer: SPSSM Investments-IX,LP  
4900 Santa Anita Ave #2C  
El Monte, CA 91731  
Fax: 626 575 3084  
Email: michael@pamamgt.com

With a courtesy only copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Escrow Holder: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_, Escrow Officer

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

Notice of change of address shall be given by written notice in the manner detailed in this **Section 18**. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Failure to provide "courtesy-only" copies shall not invalidate the notice otherwise given.

**19. Assignment.** This Agreement may not be assigned, nor may the obligations be delegated by, the parties hereto without the prior written consent of the other party or parties hereto, provided, however, that Buyer may assign its rights under this Agreement to an entity or entities (formed or to be formed) upon notice to Seller (provided, however, that Buyer directly or indirectly holds not less than a majority ownership interest in, and exercises exclusive control over, all such permitted assignee, and such assignment shall not limit, modify, amend or terminate any obligations of SPSSM Investments-IX,LP, as Buyer hereunder). Any assignment must be made and notice provided to Seller no later than five (5) Business Days prior to the Sale Hearing.

**20. Confidentiality.** As a condition of entering into this Agreement and discussing the transactions contemplated herein, Buyer represents, warrants and covenants to Seller that:

(a) Except as required by applicable law, or as mutually agreed upon by the parties in writing, Buyer shall maintain the confidentiality of, and may not disclose to any Person any confidential, secret, or proprietary information of or regarding Seller, the Estate and/or Debtor which is either marked "confidential" or "proprietary" or, by its nature, is confidential or proprietary to Seller, the Estate and/or Debtor ("**Confidential Information**"), including, without limitation, any Confidential Information obtained by Buyer and its officers, directors, Affiliates, agents and representatives, during its due diligence investigation of the Property. Seller makes no representations or warranties as to the accuracy or completeness of the Confidential Information. Buyer shall hold all Confidential Information of Seller in confidence and shall protect the same with reasonable care.

(b) For purposes hereof, the parties acknowledge and agree that any documents or information that are otherwise in the public domain (through no fault of Buyer) or are disclosed in connection with the Bankruptcy Case, and are not "sealed" by the Bankruptcy Court, shall not be deemed Confidential Information hereunder.

(c) Buyer reaffirms its obligations contained in the Confidentiality and Non-Disclosure Agreement previously executed by Buyer and/or its Affiliates in favor of Seller and the Estate.

**21. Cooperation; Bankruptcy Court Approvals.**

(a) The parties shall use commercially reasonable good faith efforts to assist the other party and cooperate with its respective legal counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement and the other Transaction Documents; and all parties shall use their commercially reasonable good faith efforts to promptly consummate the transactions contemplated herein and to fulfill their obligations hereunder. Buyer and Seller each agree to use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper, or advisable to satisfy the conditions to the other party's obligation to promptly consummate and make effective the transactions contemplated by this Agreement; provided, however, that nothing contained herein shall represent a covenant or guaranty of approval, completion or success with respect to any or all such procedures.

(b) From time to time following the Closing, Seller and Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions and releases, and such other instruments, and shall take such further actions as may be reasonably necessary or appropriate to assure fully to Buyer and its successors and assigns, all of the properties, rights, titles, interests, estates, remedies, powers, and privileges intended to be conveyed to Buyer under this Agreement and the other Transaction Documents, and to assure fully to Seller and its respective successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Buyer under this Agreement and the other Transaction Documents, and to otherwise make effective the transactions contemplated hereby and thereby.

(c) If, following the Closing, Seller receives or becomes aware that it holds any property, right, claim, demand or asset which constitutes Property, then Seller shall transfer such Property to Buyer as promptly as practicable for no additional consideration. If, following the Closing, Buyer receives or becomes aware that it holds any property, right, claim, demand or asset which does not constitute Property, then Buyer shall transfer or return such property, right, claim, demand or asset which does not constitute Property to Seller as promptly as practicable for no additional consideration.

(d) Buyer acknowledges that this Agreement and its terms will be made public as part of the Bankruptcy Case and filings therein.

(e) Buyer acknowledges that notwithstanding its execution of this Agreement, and/or the reference to the "Effective Date" herein, Seller's execution of and entry into this Agreement and the other Transaction Documents is expressly subject to obtaining approval of the Bankruptcy Court.

22. **Intentionally Omitted.**

23. **Indemnification.** From and after the Closing Date, Buyer agrees to indemnify, defend and save Seller, the Estate and its and their authorized agents, accountants, lenders, representatives, counsel and advisors, and their respective heirs, successors and assigns (each, an "**Indemnified Party**") from, and hold harmless each Indemnified Party against, and shall pay on demand, any and all claims, damages, obligations, costs, charges, fees, losses, liabilities and expenses (including, without limitation, the fees, charges and disbursements of counsel for any Indemnified Party) incurred by or asserted against any Indemnified Party, in each case arising out of or in connection with or resulting from (a) the ownership and/or use of the Property from and after the Closing, and (b) all payment and/or performance obligations due or owing by Buyer pursuant to this Agreement and the other Transaction Documents, including, without limitation, (1) payment in full of the costs, expenses, charges and liabilities due in connection with the Conditions of Title, the Assumed Contracts and the Assumed Liabilities and/or (2) any and other obligation of or on behalf of Buyer arising under this Agreement and/or the other Transaction Documents.

24. **Casualty Losses.**

(a) **Insurance.** In the event that there shall have been suffered between the Effective Date and the Closing any casualty loss relating to the Land or the Improvements, Seller will promptly notify Buyer of such event. Seller shall assign to Buyer at the Closing all claims to insurance proceeds and all other rights of Seller against third parties arising from such casualty loss (the "**Insurance Claims**"); provided, however, if either party determines, in the exercise of their commercially reasonable discretion, that the uninsured portion of any such casualty loss (deductibles being deemed uninsured losses for these purposes) is too high or the process to restore such loss would take too long, either party shall have the right to terminate this Agreement upon written notice to the other party; provided further that Buyer (if Seller is the terminating party) shall have the right to avoid any such termination and reinstate this Agreement by delivering written notice stating its agreement to consummate the transactions contemplated herein at the Purchase Price and to accept an assignment of the Insurance Claims as the sole



and exclusive remedy for the loss (and Seller shall have no obligation to repair any damage or destruction).

(b) **Condemnation.** If condemnation or eminent domain proceedings or an agreement with a governmental agency in lieu of such proceedings should affect all or a portion of the Land or the Improvements prior to the Closing, the parties shall consummate this transaction without abatement of the Purchase Price, provided, however, that Seller shall assign to Buyer all of Seller's right, title and interest in and to any award made or to be made in connection with such proceedings or agreement and shall permit Buyer to conduct all negotiations and enter into all agreements with respect thereto, provided any such entered agreement shall not be effective prior to the Closing.

**25. Miscellaneous.**

(a) **Survival of Covenants.** The covenants, representations and warranties of Buyer set forth in this Agreement shall survive the recordation of the Quitclaim Deeds and the Closing, and shall be deemed merged into the Quitclaim Deeds upon its recordation. The covenants, representations and warranties of Seller set forth in this Agreement shall not survive the recordation of the Quitclaim Deeds and/or the Closing.

(b) **Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof.

(c) **Captions.** Any captions or headings of the sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(d) **No Obligation to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon nor obligate either of Buyer or Seller to, any person or entity other than the parties hereto.

(e) **Exhibits and Recitals.** The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes. The Recitals set forth above are hereby incorporated by reference.

(f) **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(g) **Waiver.** Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but only if such waiver is evidenced by a writing signed by such party. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy created hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by any such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver by any party hereto of any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof.

(h) **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regards to the rules of such state relating to the conflict of laws. Subject to **Section 25(i)** below, the parties hereto hereby submit to personal jurisdiction in the State of California, County of Los Angeles.

(i) **Bankruptcy Court Jurisdiction.** The parties hereto agree that the Bankruptcy Court shall have exclusive jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this Agreement and the other Transaction Documents (and/or any ancillary document executed pursuant hereto) and/or the Property, provided, however, that if the Bankruptcy Court abstains from exercising, or declines to exercise jurisdiction with respect to any such action: (A) such abstention or refusal shall have no effect upon, and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such action, and (B) the parties hereto expressly agree that any disputes between such parties shall be submitted to any other court of competent jurisdiction in Los Angeles County, California.

(j) **Fees and Other Expenses.** In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements or any material inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees incurred in enforcing, perfecting and executing such judgment. Except as otherwise provided in this Section 25(j) or Section 9 above, each of the parties shall pay its own fees and expenses in connection with the negotiation and preparation of this Agreement.

(k) **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof; provided, however, that this Agreement and the other Transaction Documents remain subject to the Sale and Bid Procedures Order and the Sale Order. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. This Agreement shall not be altered or amended except by an instrument in writing signed by or on behalf of the party entitled to the benefit of the provision against whom enforcement is sought. In the event of any conflict between the terms and conditions of the Bid and Sale Procedures Order or the Sale Order, the terms and conditions of the applicable order shall control.

(l) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

(m) **Business Days.** As used in this Agreement, the term "Business Day" or "Business Days" shall be defined as any day on which national banking institutions in Los Angeles County, California, are open for the transaction of banking business (excepting any Saturday or Sunday).

(n) **Signatures by Electronic Delivery.** With the exception of the Quitclaim Deeds, any and all documents to be executed by any party hereto (including this Agreement) may when executed be transmitted to the other party and to Escrow Holder (as applicable) by facsimile and/or by email of a .pdf or other electronic data format, and such facsimile and/or email of a .pdf or other electronic data format transmission shall constitute delivery of such document, provided, however, that the original of such document bearing the original signature(s) is sent on the date of the facsimile or email of the .pdf or other electronic data format transmission to the recipient via overnight courier for the next Business Day delivery.

(o) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(p) **Partial Invalidity.** All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws, and are intended to be limited to the extent necessary to render this Agreement legal, valid and enforceable. If any term of this Agreement, or part thereof, not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms hereof, or part thereof shall constitute their agreement with respect to the subject matter hereof and all such remaining terms, or parts thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision that will implement the commercial purpose of the illegal, invalid or unenforceable provision.

(q) **No Construction Against Preparer.** No provision of this Agreement or the other Transaction Documents shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

(r) **LIMITATION OF LIABILITY-SELLER, THE ESTATE AND THEIR REPRESENTATIVES.** THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS TO THE CONTRARY, ANY CLAIM OF BUYER AGAINST SELLER AND/OR THE ESTATE SHALL BE EXPRESSLY LIMITED TO SELLER'S AND THE ESTATE'S INTEREST IN THE PROPERTY AND IN NO EVENT OR CIRCUMSTANCE WILL ANY OF SELLER, THE ESTATE OR THEIR RESPECTIVE EMPLOYEES, AGENTS, ATTORNEYS OR OTHER REPRESENTATIVES HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY ONE OR MORE OF THE FOLLOWING: (1) THIS AGREEMENT, (2) ANY ONE OR MORE OF THE OTHER TRANSACTION DOCUMENTS, OR (3) ANY OTHER AGREEMENT CONTEMPLATED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS TO THE CONTRARY, IN NO EVENT OR CIRCUMSTANCE WILL SELLER, THE ESTATE OR THEIR RESPECTIVE EMPLOYEES, AGENTS, ATTORNEYS OR OTHER REPRESENTATIVES BE LIABLE FOR NOR SHALL BUYER SEEK ANY CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY TYPE OR NATURE WHATSOEVER. THE PROVISIONS OF THIS SECTION 25(r) SHALL SURVIVE BOTH THE CLOSING AND THE TERMINATION OF THIS AGREEMENT REGARDLESS OF THE BASIS OR REASON FOR ANY SUCH TERMINATION.

FURTHER, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS, THE LIABILITY OF SELLER HEREUNDER AND THEREUNDER SHALL BE NONRECOURSE. SELLER IS SELLING THE PROPERTY SOLELY IN HIS CAPACITY AS TRUSTEE APPOINTED IN THE BANKRUPTCY CASE, AND NO LIABILITY OR OBLIGATION SHALL BE ASSERTED AGAINST OR ACCRUE TO SELLER AS A RESULT OF THE SALE OR OTHER TRANSACTIONS CONTEMPLATED HEREIN OR THE OTHER TRANSACTION DOCUMENTS OR OTHERWISE.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Agreement of Purchase and Sale and  
Joint Escrow Instructions effective as of the Effective Date.


**SELLER**

Peter Mastan, solely in his capacity as trustee in the bankruptcy  
case of BGM Pasadena, LLC

By:  \_\_\_\_\_

**BUYER**

SPSSM Investments-IX,LP, a California limited partnership

By:  \_\_\_\_\_  
Name: Michael Nijjar  
Title: President

**[SIGNATURE PAGE TO AGREEMENT OF PURCHASE AND SALE  
AND JOINT ESCROW INSTRUCTIONS]**

## JOINDER

Reference is made to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of March 29, 2017 (the "**Effective Date**"), by and between Peter Mastan ("**Trustee**"), solely in his capacity as trustee in the bankruptcy case of BGM Pasadena, LLC, a Delaware limited liability company (the "**Seller**"), and SPSSM Investments-IX,LP, a California limited partnership ("**Buyer**") (as amended from time to time, the "**Purchase Agreement**"). Unless otherwise provided herein, all capitalized terms shall have the meanings as set forth in the Purchase Agreement.

1. The undersigned has read and understands the terms and conditions of the Purchase Agreement and other Transaction Documents, has been advised to consult with, and has had the opportunity to consult with, independent legal counsel, concerning the Purchase Agreement and other Transaction Documents and this Joinder, and the terms and conditions thereof and hereof, and is entering into this Joinder knowingly and voluntarily.

2. The undersigned hereby enters into this Joinder for the purpose of agreeing to act as Escrow Holder as contemplated in the Purchase Agreement as if an original party thereto. In connection therewith, the undersigned expressly agrees to perform and discharge completely, and be bound by, all obligations of Escrow Holder under the Purchase Agreement and other Transaction Documents in accordance with their respective terms and conditions, subject to the Sale Order or other order of the Bankruptcy Court. Without limiting the generality of the foregoing, Escrow Holder shall (a) form and maintain the Escrow, (b) confirm receipt of the Deposit, (c) prepare the Closing Statement pursuant to the terms of the Purchase Agreement, (d) refund or distribute, as the case may be, the Deposit, the Breakup Fee, and other funds as expressly provided in the Purchase Agreement and other Transaction Documents, (e) distribute such documents, instruments, certificates and agreements as expressly provided in the Purchase Agreement or other Transaction Documents, and (f) take such other actions, and execute and deliver such other documents, certificates, instruments and agreements as reasonable and appropriate to consummate the transactions contemplated in the Purchase Agreement and other Transaction Documents.

3. The undersigned will provide Seller and Buyer and each of their respective authorized agents and representatives with all notices, documentation, evidences of funding and other materials concerning the formation of the Escrow, the compliance by the undersigned, Seller and Buyer with the terms and conditions of the Purchase Agreement and the other Transaction Documents, communications with Seller and/or Buyer and all activity concerning the Escrow, and provide Seller, Buyer and their respective authorized agents and representatives with reasonable access during regular business hours to review, inspect and copy all such documentation and materials.

4. The undersigned has all requisite consent and authority to enter into this Joinder, and perform its obligations in connection herewith, and that, upon the execution and delivery of this Joinder by the undersigned, this Joinder shall be a valid and binding obligation of the undersigned in accordance with its terms and conditions.

5. The undersigned will not enter into any agreement, contract or arrangement which modifies or amends, whether in whole or in part, any term of the Purchase Agreement or other Transaction Documents. In addition, the undersigned agrees that any dispute or issue with respect to this Joinder and the undersigned's obligations hereunder shall be governed exclusively by the terms and conditions of the Purchase Agreement as if the undersigned was an original party thereto.

6. The undersigned acknowledges and agrees that this Joinder shall inure to the benefit of Buyer and Seller and, for purposes hereof, both Buyer and Seller and their respective permitted successors and assigns shall be deemed third party beneficiaries of this Joinder.

**IN WITNESS WHEREOF**, the undersigned has caused this Joinder to be duly executed as of the Effective Date.

**ESCROW HOLDER**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**[SIGNATURE PAGE TO JOINDER]**

**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION OF LAND**

**210 Property**

Real property in the City of Pasadena, County of Los Angeles, State of California, described as follows:

LOT 10 OF TRACT NO. 63103, IN THE CITY OF PASADENA, AS PER MAP RECORDED IN BOOK 1369 PAGES 35 THROUGH 52 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AMENDED PURSUANT TO THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 2013 AS INSTRUMENT NO. 20131708591 OF OFFICIAL RECORDS.

APN: 5713-013-057

**EXHIBIT "A-2"**  
**LEGAL DESCRIPTION OF LAND**

**244-248 Property**

Real property in the City of Pasadena, County of Los Angeles, State of California, described as follows:

PARCEL 1:

LOT 12 OF TRACT NO. 63103, IN THE CITY OF PASADENA, AS PER MAP RECORDED IN BOOK 1369 PAGES 35 THROUGH 52 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AMENDED PURSUANT TO THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 2013 AS INSTRUMENT NO. 20131708591 OF OFFICIAL RECORDS.

PARCEL 2:

A RECIPROCAL ACCESS EASEMENT OVER THOSE AREAS SET OUT ON THE MAP DESCRIBED ABOVE.

PARCEL 3:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN CONSOLIDATED AMENDED AND RESTATED DRIVEWAY EASEMENT AGREEMENT (SOUTH ORANGE GROVE PARCELS) RECORDED DECEMBER 5, 2013 AS INSTRUMENT NO. 20131716500 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 4:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN AMENDED AND RESTATED DRIVEWAY EASEMENT AGREEMENT (DEL MAR PARCEL) RECORDED DECEMBER 5, 2013 AS INSTRUMENT NO. 20131716499 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 5:

AN EASEMENT FOR SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN ROSE PARADE GRANDSTAND EASEMENT AGREEMENT (ORANGE GROVE AVENUE) RECORDED JULY 21, 2005 AS INSTRUMENT NOS. 05-1721787 AND 05-1721788 BOTH OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 6:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN PARKING GARAGE EASEMENT AGREEMENT RECORDED JULY 2, 2007 AS INSTRUMENT NO. 20071579026 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.



PARCEL 7:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN PARKING  
EASEMENT AGREEMENT RECORDED DECEMBER 28, 2011 AS INSTRUMENT NO.  
20111763712 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT  
THEREIN.

APN: 5713-027-065

EXHIBIT "B-1"

FORM OF QUITCLAIM DEED

210 Property

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_

Mail Tax Statements To:

\_\_\_\_\_  
\_\_\_\_\_

(Space Above for Recorder's Use)

APN: 5713-013-057

QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_

- computed on full value of property conveyed, or
- computed on full value of items or encumbrances remaining at time of sale

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **PETER MASTAN** ("**Grantor**"), in his sole and limited capacity as the trustee appointed in the chapter 11 case of BGM PASADENA, LLC, a Delaware limited liability company ("**Debtor**"), and subject to proceedings pending in the United States Bankruptcy Court, Central District of California, Los Angeles Division (the "**Bankruptcy Court**") entitled In re: BGM Pasadena, LLC, a Delaware limited liability company, Debtor, Case No. 2:15-bk-27833-BB, hereby remises, releases and quitclaims to **SPSSM Investments-IX,LP**, a California limited partnership, the real property legally described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Real Property**"), along with other improvements located thereon (the "**Improvements**"), pursuant to that certain order of the Bankruptcy Court entered on \_\_\_\_\_ (Docket No. \_\_\_\_ ) approving, among other things, the sale of the Real Property and Improvements pursuant thereto (the "**Sale Order**").

DATED: \_\_\_\_\_, 2017

"GRANTOR"

PETER MASTAN, as trustee in the bankruptcy case of BGM Pasadena, LLC, a Delaware limited liability company

By: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT "A" TO QUITCLAIM**

**Real Property**

Real property in the City of Pasadena, County of Los Angeles, State of California, described as follows:

LOT 10 OF TRACT NO. 63103, IN THE CITY OF PASADENA, AS PER MAP RECORDED IN BOOK 1369 PAGES 35 THROUGH 52 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AMENDED PURSUANT TO THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 2013 AS INSTRUMENT NO. 20131708591 OF OFFICIAL RECORDS.

APN: 5713-013-057

**EXHIBIT "B-1"**

EXHIBIT "B-2"

FORM OF QUITCLAIM DEED

244-248 Property

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_

Mail Tax Statements To:

\_\_\_\_\_  
\_\_\_\_\_

(Space Above for Recorder's Use)

APN: 5713-027-065

QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_

- computed on full value of property conveyed, or
- computed on full value of items or encumbrances remaining at time of sale

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **PETER MASTAN** ("**Grantor**"), in his sole and limited capacity as the trustee appointed in the chapter 11 case of BGM PASADENA, LLC, a Delaware limited liability company ("**Debtor**"), and subject to proceedings pending in the United States Bankruptcy Court, Central District of California, Los Angeles Division (the "**Bankruptcy Court**") entitled In re: BGM Pasadena, LLC, a Delaware limited liability company, Debtor, Case No. 2:15-bk-27833-BB, hereby remise, releases and quitclaims to **SPSSM Investments-IX,LP**, a California limited partnership, the real property legally described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Real Property**"), along with other improvements located thereon (the "**Improvements**"), pursuant to that certain order of the Bankruptcy Court entered on \_\_\_\_\_ (Docket No. \_\_\_\_ ) approving, among other things, the sale of the Real Property and Improvements pursuant thereto (the "**Sale Order**").

DATED: \_\_\_\_\_, 2017

"GRANTOR"

PETER MASTAN, as trustee in the bankruptcy case of BGM Pasadena, LLC, a Delaware limited liability company

By: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT "A" TO QUITCLAIM**

**Real Property**

Real property in the City of Pasadena, County of Los Angeles, State of California, described as follows:

PARCEL 1:

LOT 12 OF TRACT NO. 63103, IN THE CITY OF PASADENA, AS PER MAP RECORDED IN BOOK 1369 PAGES 35 THROUGH 52 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AMENDED PURSUANT TO THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 2013 AS INSTRUMENT NO. 20131708591 OF OFFICIAL RECORDS.

PARCEL 2:

A RECIPROCAL ACCESS EASEMENT OVER THOSE AREAS SET OUT ON THE MAP DESCRIBED ABOVE.

PARCEL 3:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN CONSOLIDATED AMENDED AND RESTATED DRIVEWAY EASEMENT AGREEMENT (SOUTH ORANGE GROVE PARCELS) RECORDED DECEMBER 5, 2013 AS INSTRUMENT NO. 20131716500 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 4:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN AMENDED AND RESTATED DRIVEWAY EASEMENT AGREEMENT (DEL MAR PARCEL) RECORDED DECEMBER 5, 2013 AS INSTRUMENT NO. 20131716499 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 5:

AN EASEMENT FOR SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN ROSE PARADE GRANDSTAND EASEMENT AGREEMENT (ORANGE GROVE AVENUE) RECORDED JULY 21, 2005 AS INSTRUMENT NOS. 05-1721787 AND 05-1721788 BOTH OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 6:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN PARKING GARAGE EASEMENT AGREEMENT RECORDED JULY 2, 2007 AS INSTRUMENT NO. 20071579026 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 7:

AN EASEMENT SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN PARKING  
EASEMENT AGREEMENT RECORDED DECEMBER 28, 2011 AS INSTRUMENT NO.  
20111763712 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT  
THEREIN.

APN: 5713-027-065

**EXHIBIT "B-2"**



**EXHIBIT "C"**

**[INTENTIONALLY OMITTED]**

**EXHIBIT "C"**

**EXHIBIT "D"**

**FORM OF BILL OF SALE**

**BILL OF SALE**

This Bill of Sale is made as of \_\_\_\_\_, 2017 (the "Closing Date") by Peter Mastan ("Trustee"), solely in his capacity as trustee in the bankruptcy case of the BGM Pasadena, LLC, a Delaware limited liability company (the "Seller").

**RECITALS**

**WHEREAS**, Seller and SPSSM Investments-IX,LP, a California limited partnership ("Buyer"), have entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of \_\_\_\_\_, 2017 (the "Purchase Agreement"). Capitalized terms used in this Bill of Sale and not otherwise defined in this Bill of Sale shall have the meanings ascribed to them in the Purchase Agreement; and

**WHEREAS**, pursuant to the Purchase Agreement, Seller wishes to sell, assign and transfer all of its right, title and interest in and to the personal property included in the Property to Buyer, and Buyer wishes to accept such sale, assignment and transfer, on the terms and conditions set forth herein and in the Purchase Agreement.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing and of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties, agreeing to be legally bound, agree as follows:

1. Effective from and after the Closing, Seller does hereby sell, transfer, assign and deliver unto Buyer, subject to the terms and conditions set forth in the Purchase Agreement, all of Seller's right, title and interest in and to the tangible personal property included in the Property.
2. Nothing contained in this Bill of Sale is intended to provide any right or remedy to any Person, other than to the Buyer.
3. This Bill of Sale shall not be deemed to supersede or modify any of the provisions of the Purchase Agreement, and the representations and warranties contained in the Purchase Agreement are incorporated by reference herein and made a part hereof as if fully set forth herein. In the event of any conflict between this Bill of Sale and the provisions of the Purchase Agreement, the provisions of the Purchase Agreement shall prevail.
4. **ALL PROPERTY IS TRANSFERRED "AS IS" AND "WHERE IS." WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS BILL OF SALE, BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT: THE PROPERTY IS BEING TRANSFERRED "AS IS" AND "WHERE IS"; BUYER AGREES TO ACQUIRE THE PROPERTY FROM SELLER "AS IS" AND "WHERE IS", AND ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROPERTY (INCLUDING AS TO THE ACTUAL NATURE, QUALITY, QUANTITY, OWNERSHIP, LOCATION OR VALUE), LIABILITIES, ASSUMED CONTRACTS OR ASSUMED LIABILITIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY REGARDING TITLE TO OR CONDITION OF**

THE PROPERTY, OR THE VALUE THEREOF, OR THE FITNESS, DESIRABILITY, OR MERCHANTABILITY THEREOF OR SUITABILITY THEREOF FOR ANY PARTICULAR PURPOSE, OR THE EXISTENCE OR AMOUNT OF ACCOUNTS, LIABILITIES, ASSUMED LIABILITIES, LIENS, CLAIMS OR ENCUMBRANCES. BUYER FURTHER ACKNOWLEDGES AND REPRESENTS THAT IT IS FULLY INFORMED AND ADVISED WITH RESPECT TO THE PROPERTY, ASSUMED CONTRACTS, ASSUMED LIABILITIES AND OPERATIONS OF THE PROPERTY, IT HAS REVIEWED AND INSPECTED THE PROPERTY, HAS HAD THE OPPORTUNITY TO INSPECT THE BOOKS AND RECORDS RELATING TO THE PROPERTY AND THE PUBLIC FILING RECORDS (INCLUDING LOS ANGELES COUNTY PROPERTY RECORDS AND FILINGS IN THE BANKRUPTCY CASE) AND ENTERS INTO THIS BILL OF SALE AFTER INDEPENDENT INVESTIGATION OF THE FACTS AND CIRCUMSTANCES RELATING TO THE PROPERTY AND THE TRANSACTIONS DESCRIBED IN THE PURCHASE AGREEMENT. BUYER FURTHER ACKNOWLEDGES THAT SELLER IS THE TRUSTEE APPOINTED IN THE BANKRUPTCY CASE AND HIS LITTLE OR NO INFORMATION RELATING TO THE PROPERTY AND MATTERS PERTAINING THERETO AND THAT ANY INFORMATION PROVIDED BY THE TRUSTEE OR HIS AGENTS OR REPRESENTATIVES IS BASED UPON INFORMATION PROVIDED BY DEBTOR OR ITS REPRESENTATIVES OR AGENTS AND/OR MATTERS FILED IN THE BANKRUPTCY CASE BY OTHER PERSONS OR PUBLIC RECORDS, AND SELLER HAS NOT INDEPENDENTLY REVIEWED ANY SUCH INFORMATION FOR ACCURACY OR COMPLETENESS. SELLER HAS NO OBLIGATION OR LIABILITY WHATSOEVER WITH RESPECT TO ANY SEPARATE AGREEMENTS, INDEMNITIES, REPRESENTATIONS OR WARRANTIES ENTERED INTO BY BUYER WITH ANY OTHER PERSON. BUYER ACKNOWLEDGES THAT AS OF THE CLOSING IT HAS FULLY SATISFIED ITSELF THAT ALL CONDITIONS TO CLOSING HAVE OCCURRED.

5. The Property does not include the Excluded Assets.

6. This Bill of Sale is entered into pursuant to the Purchase Agreement. Buyer acknowledges that Seller shall have no liability nor shall Buyer have any recourse to Seller under the Purchase Agreement or hereunder, and no liability or obligation shall be asserted against or accrue to Seller as a result of the sale or otherwise.

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

**SELLER**

PETER MASTAN, as trustee in the bankruptcy case of BGM  
Pasadena, LLC, a Delaware limited liability company

By: \_\_\_\_\_

**EXHIBIT "E"**

**FORM OF ASSUMPTION AGREEMENT**

**GENERAL ASSIGNMENT AND ASSUMPTION AGREEMENT**

This General Assignment and Assumption Agreement is made as of \_\_\_\_\_, 2017 (the "Closing Date") by and between SPSSM Investments-IX,LP, a California limited partnership ("Buyer"), and Peter Mastan, solely in his capacity as trustee in the bankruptcy case of BGM Pasadena, LLC, a Delaware limited liability company (the "Seller").

**RECITALS**

**WHEREAS**, Seller and Buyer have entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of \_\_\_\_\_, 2017 (as at any time amended, the "Purchase Agreement"). Capitalized terms used in this General Assignment and Assumption Agreement and not otherwise defined in this General Assignment and Assumption Agreement shall have the meanings ascribed to them in the Purchase Agreement;

**WHEREAS**, pursuant to the Purchase Agreement, Seller wishes to assign all of Seller's right, title and interest in and to the Assumed Contracts, comprising a part of the Property to Buyer, and Buyer wishes to accept such assignment, on the terms and conditions set forth herein and in the Purchase Agreement; and

**WHEREAS**, pursuant to the Purchase Agreement, Buyer has agreed to assume the obligations remaining to be performed after the Closing Date under such Assumed Contracts and the Assumed Liabilities, all on the terms and conditions set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing and of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties, agreeing to be legally bound, agree as follows:

1. **Assignment of Assumed Contracts.** Seller does hereby grant, bargain, transfer, sell, assign and convey to Buyer, subject to the provisions of the Purchase Agreement, all of Seller's right, title and interest, in and to the Assumed Contracts, and Buyer does hereby accept such assignment, on the terms and conditions as set forth herein and in the Purchase Agreement.
2. **Assumption of Liabilities.** Buyer hereby assumes, subject to the terms and conditions of the Purchase Agreement, those obligations remaining to be performed from and after the Closing Date under such Assumed Contracts and the Assumed Liabilities, as set forth in the Purchase Agreement.
3. **Rights Conferred.** Nothing contained in this General Assignment and Assumption Agreement is intended to provide any right or remedy to any Person, other than to Seller.
4. **Purchase Agreement.** This General Assignment and Assumption Agreement shall not be deemed to supersede or modify any of the provisions of the Purchase Agreement, and the representations and warranties contained in the Purchase Agreement are incorporated by reference herein and made a part hereof as if fully set forth herein. In the event of any conflict between this General Assignment and Assumption Agreement and the provisions of the Purchase Agreement, the provisions of the Purchase Agreement shall prevail.

5. **Successors and Assigns.** This General Assignment and Assumption Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. **Choice of Law.** This General Assignment and Assumption Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of California without reference to conflict of laws principles.

7. **Notices.** All notices or other communications given under this General Assignment and Assumption Agreement shall be given in accordance with Section 18 of the Purchase Agreement.

8. **Counterparts.** This General Assignment and Assumption Agreement may be signed in one or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this General Assignment and Assumption Agreement as of the date first above written.

"BUYER"

SPSSM INVESTMENTS-IX,LP, a California limited partnership

By: Michael Nym  
Title: President

"SELLER"

PETER MASTAN, as trustee in the bankruptcy case of BGM Pasadena, LLC, a Delaware limited liability company

By: \_\_\_\_\_

[SIGNATURE PAGE TO GENERAL ASSIGNMENT AND ASSUMPTION AGREEMENT]

**EXHIBIT "F"**

**FORM OF BUYER'S CERTIFICATE**

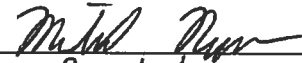
**BUYER'S CERTIFICATE**

Pursuant to Section 8(b) of that certain Agreement of Purchase and Sale and Joint Escrow Instructions (the "**Agreement**"), by and between Peter Mastan, solely in his capacity as trustee in the bankruptcy case of BGM Pasadena, LLC, a Delaware limited liability company (the "**Seller**"), and SPSSM Investments-IX,LP, a California limited partnership (herein "**Buyer**" including any permitted assignee as set forth therein), Buyer hereby certifies to Seller that all of Buyer's representations and warranties set forth in Section 14 of the Agreement are true, correct and complete in all respects as of the Closing Date (as defined in the Agreement) as if then made.

Dated: 3-28, 2017

**"BUYER"**

SPSSM INVESTMENTS-IX,LP, a California limited partnership

By:   
Title: President

**EXHIBIT "G"**

**SALE AND BID PROCEDURES**

**(see attached)**

## SALE AND BID PROCEDURES

The following sale and bid procedures (the "Bid Procedures") govern the sale (the "Sale") of certain assets of the estate (the "Estate"), and defined as the "Property" in the Agreement of Purchase and Sale with SPSSM Investments-IX,LP ("SPSSM") (such Purchase and Sale Agreement and Joint Escrow Instructions, as at any time amended or modified, the "Asset Purchase Agreement") in connection with the BGM Pasadena, LLC's (the "Debtor") Chapter 11 bankruptcy case, pending as Case No. Case No. 2:15-bk-27833-BB (the "Bankruptcy Case") before the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"). By order of the Bankruptcy Court, these Bid Procedures have been approved and are applicable to all Bidders and Bids, with any proposed Sale of the Property to be subject to the final approval of the Bankruptcy Court pursuant to Title 11 of the United States Code (the "Bankruptcy Code").<sup>1</sup>

### I. THE PROPERTY

A. The Property includes among other property, all of the Estate's right, title and interest in and to the real property owned by the Estate and generally referred to as 210 S. Orange Grove Boulevard, Pasadena, California 91105 (the "210 Property"), 244-248 S. Orange Grove Boulevard, Pasadena, California 91105 (the "244-248 Property") and a parade easement which is part of the 244-248 Property (the "Easement", and together with the 210 Property and the 244-248 Property, collectively, the "Real Property"), and ancillary personal property, all as more particularly described in the Asset Purchase Agreement. Interested parties are encouraged to consult the Debtor's bankruptcy Schedules, as amended, for a detailed listing of the Debtor's assets. Notwithstanding the foregoing, expressly excluded from Property are claims, causes of action and rights of recovery pursuant to sections 544 through 550 and section 553 of the Bankruptcy Code and other Excluded Property as defined in the Asset Purchase Agreement.<sup>2</sup>

B. The Property, as more particularly described in the Asset Purchase Agreement, is to be sold in a single aggregate lot at the Auction provided for under these Bid Procedures (the "Auction"), subject to competitive bidding in accordance with these Bid Procedures and Bankruptcy Court approval.

C. **"AS IS, WHERE IS".** THE SALE OF THE PROPERTY WILL BE ON AN "AS IS, WHERE IS" BASIS AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE, OR DESCRIPTION BY THE DEBTOR, ITS ESTATE, PETER MASTAN, THE TRUSTEE (THE "TRUSTEE") APPOINTED IN THE BANKRUPTCY CASE, OR THEIR RESPECTIVE AGENTS INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR HABITABILITY, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THE ASSET PURCHASE AGREEMENT.

**NONE OF THE DEBTOR, THE TRUSTEE NOR THEIR RESPECTIVE COUNSEL, PROFESSIONALS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS MAKES ANY REPRESENTATION OR WARRANTY REGARDING THE PROPERTY, OTHER INFORMATION OR REGARDING THE DEBTOR, ITS OPERATIONS, ASSETS, LIABILITIES, CONTRACTS, LIENS OR FINANCIAL CONDITION PROVIDED TO A POTENTIAL BIDDER IN CONNECTION WITH THE BID PROCEDURES SET FORTH HEREIN, THE SALE, THE AUCTION OR THE PROPERTY. CONSEQUENTLY, NO REPRESENTATION IS MADE BY THE DEBTOR, THE TRUSTEE OR THEIR RESPECTIVE COUNSEL, PROFESSIONALS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS REGARDING THE ACCURACY, RELIABILITY, VERACITY, ADEQUACY, OR COMPLETENESS OF ANY INFORMATION PROVIDED IN CONNECTION WITH OR RELATED TO**

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<sup>1</sup> All dates set forth herein are subject to Bankruptcy Court approval and may be revised by the Bankruptcy Court.

<sup>2</sup> The Asset Purchase Agreement, as defined herein, shall contain the definitive and controlling list of the Property and the Excluded Property and the description of such Property and the Excluded Property in these Bid Procedures is intended solely for informational purposes.



**THESE BID PROCEDURES, THE PROPERTY, THE AUCTION OR THE SALE AND ALL INTERESTED PARTIES ARE ENCOURAGED TO CONSULT WITH THEIR OWN ADVISORS REGARDING ANY SUCH INFORMATION.**

**D.** The Sale must be entirely for cash consideration, except as expressly provided otherwise herein or in the Asset Purchase Agreement.

**E.** Sale Free and Clear. All of the right, title, and interest in and to the Property will be sold free and clear of all liens, security interests, encumbrances, claims, charges, options, and interests thereon or therein (collectively, the "Liens") with the exception of "Conditions of Title" (as defined in the Asset Purchase Agreement), except as otherwise set forth herein.

After closing of the Sale, Liens will attach to any net cash proceeds from the Sale of the Property, in the order of their priority, with the same validity, force, and effect which they now have against the Property, except as to any such Lien which the Asset Purchase Agreement provides is a lien which shall remain as a Lien on the Property and that the Property shall be transferred subject to such Lien.

**F.** Asset Purchase Agreement. Except as otherwise set forth herein, any Sale will be made only under the same or substantially identical terms and conditions as set forth in the form of the Asset Purchase Agreement with SPSSM and attached to the order setting these bid procedures (the "Sale and Bid Procedures Order"). The Asset Purchase Agreement may be obtained by any Potential Bidder (as defined below) by contacting the Trustee's counsel as follows: Christopher Celentino, Esq., Ballard Spahr LLP, 655 W. Broadway, Suite 1600, San Diego, California 92101, Telephone: 619-696-9200, Facsimile: 619-696-9269, e-mail: celentinoc@ballardspahr.com.

**G.** Executory Contracts and Unexpired Leases. The Asset Purchase Agreement shall set forth each executory contract and unexpired lease and/or other agreement to be assumed and assigned to the purchaser pursuant thereto, and the estimate of any cure payment amount required for same. Contract counterparties shall have the opportunity to object to the assumption and/or assignment of any such executory contract or unexpired lease and/or other agreement and to the proposed cure amount related thereto, and to the extent not resolved consensually prior to the Sale Hearing (as defined below), the Bankruptcy Court shall resolve any such objection at the Sale Hearing (or other date set by the Bankruptcy Court).

## **II. STALKING HORSE BIDDER**

**A.** SPSSM is the stalking horse bidder (the "Stalking Horse Bidder") and the purchaser under the Asset Purchase Agreement to purchase the Property for Eleven Million Three Hundred Thousand Dollars (\$11,300,000.00) (the "Cash Component"), and such amount is the starting bid (the "Starting Bid"). The Purchase Price also includes other components, including Assumed Contracts (as defined in the Asset Purchase Agreement). The Starting Bid is subject to overbid and an auction as set forth herein as well as Bankruptcy Court approval.

**B.** For the purposes of these Bid Procedures, subject to SPSSM paying the "Deposit" as required under the Asset Purchase Agreement, SPSSM is a Qualified Bidder, as defined herein.

**C.** Subject to approval of the Bankruptcy Court, in recognition of SPSSM's (as the Stalking Horse Bidder) expenditure of time, energy and resources, if the Sale of the Property with SPSSM does not close with SPSSM but closes with another Bidder, or if another Bidder is the Successful Bidder but the Sale does not close with such other Bidder and such other Bidder's Deposit (or portion thereof) is forfeited, SPSSM will be paid a fixed break-up fee of \$100,000.00 (the "Break-Up Fee"). In the event SPSSM is entitled to the Break-Up Fee, the Break-Up Fee shall be paid to SPSSM at the time of the closing of the Sale or within five (5) business days after the forfeiture and release of the Deposit (or portion thereof) to the Trustee or the Estate, whichever occurs first.

### III. DUE DILIGENCE

A. Neither the Debtor, the Trustee, nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Property except as ordered by the Bankruptcy Court. Each interested bidder (a "Potential Bidder") is free to review filings made in the Bankruptcy Case and other public filings and information as it desires; provided, nothing herein precludes the Debtor, the Trustee or any other person or entity in their discretion from voluntarily providing information or access to the Property to Potential Bidders.<sup>3</sup>

B. Each Potential Bidder and Bidder shall be deemed to acknowledge that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection with the bidding process.

### IV. BID DEADLINE AND DISTRIBUTION OF QUALIFIED BIDS

A. Bid Deadline. Except as set forth in Article V hereof, a Potential Bidder that desires to make a Bid shall deliver written copies of its completed Bid Package to the Trustee as follows: c/o Christopher Celentino, Esq., Ballard Spahr LLP, 655 W. Broadway, Suite 1600, San Diego, California 92101, Telephone: 619-696-9200, Facsimile: 619-696-9269, e-mail: celentinoc@ballardspahr.com, not later than 5:00 p.m. prevailing Pacific Time on \_\_\_\_\_, 2017 (the "Bid Deadline"). A Bid will not be considered by the Trustee, and will not qualify as a Qualified Bid, unless the Bid Package is actually received by the Trustee, either hard copy or electronically, including evidence of the completion of the wire transfer or delivery of the cashier's check for the Deposit, on or prior to the Bid Deadline.

B. Transmission of Bids to Counsel for the Debtor, and to all Qualified Bidders. The Trustee shall transmit a summary of all Qualified Bids received by the Bid Deadline (including the identity of the Bidder), via e-mail, to James Tiemstra, counsel for the Debtor, and to all Qualified Bidders by 5:00 p.m., prevailing Pacific Time within two (2) business days after the Bid Deadline.

### V. BID PACKAGES

A. Bid Amount. In order for a Potential Bidder's initial bid to purchase the Property (each a "Bid") to qualify for consideration (upon such qualification, the Potential Bidder making such Qualified Bid (as defined herein) shall become a "Bidder"), the Cash Component of such Bid must be at least Eleven Million Four Hundred Twenty-Five Thousand Dollars (\$11,425,000.00) (the "Initial Overbid"). The Initial Overbid includes the amount of the Break-Up Fee. Under the Estate's listing agreements (the "Listing Agreements") with Keller Williams Silicon Beach Commercial (the "Broker"), subject to approval of the Bankruptcy Court, there will be a commission on the Sale of 1% to 4% depending on the identity of the Successful Bidder. The commission payable under the Asset Purchase Agreement with the Stalking Horse Bidder is 3.5%. Accordingly, if the actual commission payable based upon the Successful Bid is lower than 3.5%, the Successful Bidder will be entitled to either (i) a credit towards the purchase price in the amount equal to the difference between a commission calculated at 3.5% (i.e. the commission if SPSSM is the Successful Bidder) and the actual lower commission, or (ii) a reduction in the purchase price to the level that after taking into account the actual lower commission, results in the same after-commission proceeds to the Estate as a transaction with a 3.5% commission; provided, the commission will be calculated on the purchase price before reduction. Similarly, if the actual commission payable based upon the Successful Bid is greater than 3.5%, the purchase price payable by the Successful Bidder at closing shall be increased to the level that after taking into account the actual higher commission, results in the same after-commission proceeds to the Estate as a transaction with 3.5% commission; provided, the commission will be calculated on the purchase price before increase.

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<sup>3</sup> No such information, if any, shall act as a representation or warranty of any kind and shall not affect or modify the "AS IS, WHERE IS" nature of the Sale as provided in Article I.C above.

**B. Bid Packages.** In order for a Potential Bidder's initial Bid to qualify for consideration (upon such qualification, the Potential Bidder making such Qualified Bid (as defined herein) shall become a "Bidder"), such Bid must also consist of the following information and items (collectively, the "Bid Package") and be delivered to the Trustee as follows: c/o Christopher Celentino, Esq., Ballard Spahr LLP, 655 W. Broadway, Suite 1600, San Diego, California 92101, Telephone: 619-696-9200, Facsimile: 619-696-9269, e-mail: celentinoc@ballardspahr.com, so that it is actually received by no later than the Bid Deadline, without extension:

**1. Copy of Asset Purchase Agreement.** A written offer in the form of the Asset Purchase Agreement executed by the Bidder or its duly-authorized representative (if an entity), to acquire the Property for an exact amount of consideration, in U.S. Dollars, which must:

- a. provide such consideration payable by wire transfer at closing;
- b. be unconditional, save and except for Bankruptcy Court approval, and without limiting the generality of the foregoing, must not be conditioned upon acceptance of one or more other bids, financing or additional due diligence, and shall not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment;
- c. be for the entirety of the Property as described in the Asset Purchase Agreement; and
- d. contain the same or substantially identical terms and conditions as the Asset Purchase Agreement, or such other "other" terms as determined by the Bankruptcy Court.

**2.** A "redlined" or otherwise marked copy of the Asset Purchase Agreement reflecting any revisions, changes and differences made to conform the Asset Purchase Agreement to the Bidder's Asset Purchase Agreement, provided that such Asset Purchase Agreement shall not be effective until such Bidder is declared the Successful Bidder or Backup Bidder (and the Asset Purchase Agreement may be required to be conformed to the Successful Bid or Backup Bid) as provided in these Bid Procedures.

**3.** The Bidder's written, binding commitment that:

- a. the Bid, including the Deposit, is irrevocable until the closing of the Sale;
- b. the Bidder agrees to keep its Bid confidential except to the extent that disclosure is expressly contemplated or provided in these Bid Procedures;
- c. if the Bidder is selected as the Successful Bidder, such Bidder is ready, willing and able to close on the purchase of the Property with no contingencies whatsoever, other than Bankruptcy Court approval of the transaction; and
- d. if the Bidder is selected as the Backup Bidder, then should the Sale to the Successful Bidder fail to close for any reason and the Trustee notifies the Backup Bidder that it has elected to sell the Property to the Backup Bidder then the Backup Bidder is ready, willing and able to close on the purchase of the Property with no contingencies whatsoever other than Bankruptcy Court approval of the transaction, within two (2) business days of receipt of written notice from the Trustee of such election.

**4.** Satisfactory financial information (as determined in the Trustee's sole discretion) demonstrating an ability to close and consummate the transaction proposed under the Bid and to perform all obligations associated therewith:

- a. recent financial statements of the Bidder (or if the Bidder is an entity recently formed for the purpose of acquiring the Property, current financial statements of one or more direct or indirect equity holder(s) of the Bidder), current audited financial statements, a non-contingent financing commitment from an accredited financial institution, copies of current statements or correspondence from a bank or other accredited financial institution evidencing that the Bidder has sufficient liquid assets available to consummate the Sale and to perform all ongoing obligations associated therewith (together with a certification under oath that such assets shall not be withdrawn until the closing of the Sale (if the Bidder is the Successful Bidder or Backup Bidder) or until after the Auction (if the Bidder is not the Successful Bidder or Backup Bidder), as applicable), or other evidence reasonably satisfactory to the Trustee; and
- b. such other or alternative financial disclosure acceptable to the Trustee (including evidence that the Bidder has adequate resources to close the transaction) which demonstrates the financial capability of the Bidder to both consummate the Sale through its specific Bid and provide "adequate assurance of future performance," within the meaning of § 365(f)(2)(B) of the Bankruptcy Code, in relation to any executory contracts and unexpired leases and/or other agreements to be assumed and assigned to such Bidder under the proposed transaction.
- c. Without limiting the foregoing, evidence of financial capability means at a minimum the provision of documentation establishing the unconditional availability of funds or unconditional loan commitments to the Bidder sufficient to pay the Bid consideration in cash.

5. Evidence that the Bidder has obtained the requisite internal and legal authorizations and approvals necessary to consummate the proposed transaction without the necessity of obtaining the consent of any other person or entity;

6. A written statement identifying all of the Bidder's (including its officers, directors, shareholders, general partners, limited partners, managing members, managers, financial partners, and/or members, as applicable) connections (if any) with the Debtor, the Debtor's creditors, the Trustee, and any other party in interest in the Bankruptcy Case known to the Bidder;

7. A written statement setting forth any post-closing relationship or connection the Bidder contemplates having with the Debtor (including any officer, director, shareholder, member, insider or affiliate of the Debtor), including a description of the Bidder's plans (if any) to employ or otherwise retain any of the Debtor's employees if its successfully acquires the Property;

8. A cashier's check made payable to the Trustee (to be held in trust), as representative of the Estate for purposes of these Bid Procedures, or a wire transfer, in an amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) (the "Deposit"). Wire instructions shall be provided upon request. Among other things, the Bankruptcy Court's order approving these Bid Procedures shall expressly provide for the Bidder's forfeiture of the Deposit if:

- a. the Bidder is determined to be a Qualified Bidder and withdraws its Bid or withdraws any subsequent Increased Bid before the announcement of the Successful Bidder and Backup Bidder;
- b. the Bidder is determined to be the Successful Bidder and attempts to modify or withdraw its Bid or any subsequent Increased Bid (as defined below) without closing the Sale transaction pursuant to such Bid or order of the Bankruptcy Court;

- c. the Bidder is determined to be the Backup Bidder and attempts to modify or withdraw its designated Backup Bid prior to closing on the Sale, unless the Sale shall have closed with the Successful Bidder; or
- d. the Successful Bidder or Backup Bidder, as applicable, fails to close without any fault of the Trustee or the Estate.

The Deposit shall be returned to the Bidder if (i) the Bidder is determined not to be a Qualified Bidder, (ii) the Bidder is determined not to be the Successful Bidder or Backup Bidder, or (iii) the Bidder is determined to be the Backup Bidder and the Sale is closed with the Successful Bidder. Deposits shall be returned, as applicable, interest free, within five (5) business days following the Auction, provided however, that in the case of the Backup Bidder, its Deposit shall be returned, interest free, within five (5) business days of the closing of the Sale to the Successful Bidder. The Deposit shall be applied to the Purchase Price upon closing.

9. A completed "Bidder Information Sheet" in the form of Exhibit "A" attached hereto.

C. Form of Asset Purchase Agreement Required. In addition to the foregoing requirements, the Bid and Bidder's Asset Purchase Agreement (i) shall not contain terms that are materially more burdensome or conditional than the terms of the Asset Purchase Agreement, (ii) shall not be conditioned on the Bidder obtaining financing or additional due diligence, and (iii) shall not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment.

## VI. QUALIFIED BIDDERS

A. Only those Bidders who submit a Bid Package in strict compliance with all of the foregoing requirements on or before the Bid Deadline shall be entitled to have their respective Bids (a "Qualified Bid") considered by the Trustee (such a Bidder referred to herein as a "Qualified Bidder"). Each Qualified Bidder shall be notified of such designation by the Trustee. A Bidder who timely submits a written Bid but fails to satisfy all of the above requirements shall be promptly notified by the Trustee and given an opportunity to promptly cure such defects to the satisfaction of the Trustee, in his reasonable discretion. Only Qualified Bidders shall be allowed to participate at the Auction. Subject to SPSSM paying the "Deposit" as required under the Asset Purchase Agreement, SPSSM is deemed a Qualified Bidder. The Bankruptcy Court shall reserve jurisdiction to determine whether any Bidder is a Qualified Bidder and whether any Bid is a Qualified Bid.

## VII. CREDIT BIDDING/LIENHOLDERS

A. Pursuant to Section 363(k) of the Bankruptcy Code, a holder of Lien against the Property securing an allowed claim (each such holder, a "Secured Claim Holder," and each such allowed claim, as determined by the Bankruptcy Court, an "Allowed Secured Claim"), unless the Bankruptcy Court orders otherwise, may bid at the Auction, and if the Secured Claim Holder is the Successful Bidder (or Backup Bidder who purchases the Property), such holder may offset its Allowed Secured Claim against the purchase price of the Property, subject to the additional terms hereof:

1. A Secured Claim Holder who desires to be a Bidder must submit a Bidder Information Sheet and Bid Package prior to the Bid Deadline.
2. The Bankruptcy Court will determine the amount of the Secured Claim Holder's Allowed Secured Claim that is permitted to be "credit bid" towards and offset against the purchase price of the Property.

## VIII. THE AUCTION

A. Time and Place of Auction. The Auction will occur only if more than one Qualified Bid for the Property is received by the Trustee by the Bid Deadline. If no Qualified Bid is made other than the deemed

Qualified Bid made by SPSSM,<sup>4</sup> such Bid (i.e. the SPSSM Bid) shall be submitted to the Bankruptcy Court for approval at the Sale Hearing without the need for an Auction.

1. If an Auction is held, the Auction will be conducted on \_\_\_\_\_, 2017, at 10:00 a.m., prevailing Pacific Time, at the Bankruptcy Court before the Honorable Sheri Bluebond, United States Bankruptcy Court, Central District of California, 255 East Temple Street, Courtroom 1539, Los Angeles, California 90012. Attendance at the Auction must be in person or by an authorized representative.

**B. Auction Procedures.** The Bankruptcy Court will conduct the Auction in the manner that it determines is likely to result in the highest, best, or otherwise financially superior offer(s) for the Property taking into account the circumstances of the Case. In conducting the Auction, the following procedures (collectively, the "Auction Procedures") shall apply:

1. Prior to the Auction, the Trustee shall provide all Qualified Bidders with the amount of what the Trustee considers to be the highest and best Bid received, as determined by the Trustee taking into account all matters as the Trustee deems relevant (including price, including the cash and other consideration, modifications to the Asset Purchase Agreement, closing risk, risk of delay, financial condition and such other factors as the Trustee may deem relevant) (the "Qualified Opening Bid"), and the need to qualify for at least that amount in order to participate in the Auction. Qualified Bidders must qualify up to the amount of the Qualified Opening Bid in order to attend the Auction. Qualified Bidders who submit an Increased Bid above the level to which they have demonstrated financial capability to consummate a transaction to the satisfaction of the Trustee may be required to provide proof of their ability to consummate the Increased Bid prior to acceptance of such an Increased Bid. All Bidders are encouraged to prequalify to the amount for which they may wish to bid or to bring proof of financial capability at such higher level with them to the Auction.

2. At the outset of the Auction, the Trustee shall advise the Bankruptcy Court of the Qualified Opening Bid determined by the Trustee to be the highest and best Bid received, taking into account all relevant factors. The Bankruptcy Court shall then confirm and/or determine which Bid it determines to be the highest and best Bid, taking into account all relevant factors, which Bid shall be the "Opening Bid." Qualified Bidders will be permitted to increase their Bids at the Auction (each such increased Bid, an "Increased Bid"), provided however that:

- a. The minimum amount of increased consideration required for each successive Increased Bid (the "Minimum Bid Increment") after the Initial Overbid will be \$25,000;
- b. Qualified Bidders are free to submit an Increased Bid in an amount in excess of the Minimum Bid Increment; and
- c. Qualified Bidders may submit Increased Bids at the Auction by submitting the Increased Bid amount to the Trustee and the Bankruptcy Court verbally at the Auction.

3. Any party in interest in the Bankruptcy Case may challenge whether any Bidder is a Qualified Bidder and whether any Bid is a Qualified Bid; provided, subject to its payment of the "Deposit" as required under the Asset Purchase Agreement, SPSSM is deemed to be a Qualified Bidder and having made a Qualified Bid.

4. The Auction shall commence with the Opening Bid as confirmed or determined by the Bankruptcy Court. The Trustee and/or the Bankruptcy Court may limit a Bidder's time to submit a next Bid as

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<sup>4</sup> Subject to its payment of the "Deposit" as required under the Asset Purchase Agreement, SPSSM is deemed a Qualified Bidder, its proposed purchase under the Asset Purchase Agreement is deemed a Qualified Bid, and it is not required to submit a Bid Package.

determined reasonable by the Trustee or the Bankruptcy Court. All incremental Increased Bids at Auction shall be made and received in one room, on an open basis, and all Qualified Bidders shall be entitled to be present for all bidding with the understanding that the amount of each Increased Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

5. The Qualified Bidder with the highest and best final Bid for the Property at the close of the Auction (the "Successful Bid"), as advised by the Trustee, but subject to determination and confirmation by the Bankruptcy Court, shall be the "Successful Bidder." The Bankruptcy Court's final determination of what constitutes the first and second "highest and best" Bids will be based upon the exercise of the Trustee's and the Bankruptcy Court's discretion and may take into consideration price (including the cash and other consideration under the Asset Purchase Agreement), modifications to the Asset Purchase Agreement, closing risk, risk of delay, financial condition, and such other factors as the Trustee and/or the Bankruptcy Court may deem relevant. The Qualified Bidder having the next highest Bid below the Bid of the Successful Bidder (the "Backup Bid"), as determined and confirmed by the Bankruptcy Court shall be the "Backup Bidder."

- a. The Successful Bid shall remain open, irrevocable and binding on the Successful Bidder until the closing of the Sale and shall be deemed withdrawn only in the event it is not approved by the Bankruptcy Court.
- b. The Backup Bid shall remain open, irrevocable and binding on the Backup Bidder until the closing of the Sale to the Successful Bidder.
- c. No Successful Bid or Backup Bid is binding on the Trustee or the Estate until the Bankruptcy Court enters an Order approving the Sale of the Property to the Successful Bidder / Backup Bidder.
- d. Bids attempted to be made after the Auction is closed by the Bankruptcy Court are automatically disqualified.

6. At the conclusion of the Auction, the Bankruptcy Court shall declare the identity of the Successful Bidder and the Backup Bidder to all parties present at the Auction.

7. The Bankruptcy Court, in consultation with the Trustee, may adopt such other Auction procedures that, in the Bankruptcy Court's reasonable judgment, will best promote the goal of a fair and competitive bidding process consistent with these Bid Procedures and any applicable Bankruptcy Court orders.

8. At the conclusion of the Auction:

- a. The Successful Bidder and the Backup Bidder shall modify and execute the Asset Purchase Agreement to be consistent with the results of the Auction promptly after the Auction (but in any event within three (3) business days thereafter); and
- b. If the Successful Bidder fails to close due to the Successful Bidder's breach or default, without fault of the seller under the terms of the Asset Purchase Agreement, the Estate shall retain the Deposit.

## IX. SALE HEARING

A. The Trustee has filed a motion for approval of the Sale of the Property, subject to the completion of the sale process set out in these Bid Procedures (the "Sale and Bid Procedures Motion"). The Sale and Bid Procedures Motion seeks approval of the Sale. The Bankruptcy Court will hold a hearing to approve the Sale (the "Sale Hearing") immediately after conclusion of the Auction, at which hearing it will consider approval of the Sale to the Successful Bidder at the Auction.

**X. MISCELLANEOUS**

A. A party's participation in the sale process outlined herein shall constitute: (i) consent by such party to be subject to the jurisdiction of the Bankruptcy Court, for all purposes, in connection with any and all matters relating to the Sale of the Property and these Bid Procedures; and (ii) the party's acknowledgment of its review, understanding and acceptance of all of the Bid Procedures outlined herein.



EXHIBIT "A"

**BIDDER INFORMATION SHEET**

The following information is hereby provided by the Potential Bidder (as defined below) in accordance with the Bid Procedures approved by order of the United States Bankruptcy Court for the Central District of California in the case of BGM Pasadena, LLC, Case No. 2:15-bk-27833-BB (the "Bid Procedures"). Unless separately defined herein, all capitalized terms shall have the meanings assigned to them in the Bid Procedures.

**POTENTIAL BIDDER'S NAME:**

\_\_\_\_\_ ("Potential Bidder")

TAX IDENTIFICATION NUMBER: \_\_\_\_\_

**POTENTIAL BIDDER'S ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**POTENTIAL BIDDER'S LEGAL COUNSEL:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AUTHORIZED OFFICER(S)/AGENT(S):\***

\*such individuals as have been authorized to act on behalf of Potential Bidder in communicating on matters regulated by the Bid Procedures:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

[add additional names and contact information as appropriate]

**ACKNOWLEDGMENT**

By signing below, the undersigned (as the Potential Bidder or as the representative of the Potential Bidder authorized to execute and submit this Bidder Information Sheet on behalf of the Potential Bidder) hereby (i) represents that Potential Bidder has a bona fide interest in submitting a Bid for the purchase of the Property, as defined in the Bid Procedures, and that Potential Bidder is hereby submitting this executed Bidder Information Sheet to participate in the sale process established under the Bid Procedures; (ii) acknowledges that the undersigned has reviewed and understands all of the Bid Procedures and that Potential Bidder accepts and agrees to be bound by all of the Bid Procedures; (iii) acknowledges Potential Bidder's consent to be subject to the jurisdiction of the United States Bankruptcy Court for the Central District of California, for all purposes, in connection with any and all matters relating to the Sale of the Property and the Bid Procedures; and (iv) certifies, under penalty of perjury, that pursuant to Article V.4.a. of the Bid Procedures, the Potential Bidder has liquid assets sufficient to consummate the Sale and to perform all on-going obligations associated therewith and will not withdraw such assets until the closing of the Sale (if the Potential Bidder is the Successful Bidder or Backup Bidder) or until after the Auction (if the Potential Bidder is not the Successful Bidder or Backup Bidder), as applicable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[signature] [to be acknowledged on next page]  
Title: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT "H-1"**

**TITLE REPORT**

**210 Property**

**(see attached)**

Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: NCS-833699-ONT1  
Page Number: 1



**First American Title Insurance Company  
National Commercial Services**

**3281 E Guasti Road, Suite 440  
Ontario, CA 91761**

February 01, 2017

Caron C. Burke  
Ballard Spahr LLP  
655 West Broadway, Suite 1600  
San Diego, CA 92101-8494  
Phone: (619)798-3359  
Fax: (619)696-9269

Customer Reference: 210 South Orange Grove

Title Officer:	Greg Franke	Title Assistant:	Erin West
Phone:	(909)510-6233	Phone:	(909)510-6200
Email:	gfranke@firstam.com	Email:	ewest@firstam.com

Order Number: NCS-833699-ONT1

Property: 210 South Orange Grove Boulevard, Pasadena, CA

Attached please find the following item(s):

Commitment

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

**Customer First!**

**First American Title Insurance Company**  
**INFORMATION**

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This information is not part of the title insurance commitment.

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Conditions	

**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**  
**If you have any questions about the Commitment,**  
**please contact the issuing office.**

COMMITMENT FOR TITLE INSURANCE

Issued by

**First American Title Insurance Company**

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Sections 1 and 2 of Schedule B.

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**SCHEDULE A**

1. Commitment Date: January 06, 2017 at 7:30 A.M.

2. Policy or Policies to be issued:	Amount
(A) ALTA Owner's Policy ALTA Standard Owner Policy	\$To Be Determined

Proposed Insured:

To Be Determined

(B) ALTA Loan Policy To Be Determined	\$To Be Determined
--	--------------------

Proposed Insured:

To Be Determined

3. (A) The estate or interest in the land described in this Commitment is:

FEE

(B) Title to said estate or interest at the date hereof is vested in:

BGM Pasadena, LLC, a California limited liability company, subject to proceedings pending in the Bankruptcy Court of the Central District of the U. S. District Court, Los Angeles entitled in re: BGM Pasadena, LLC, debtor, Case No. 2:15-bk-27833-BB, and as evidenced by documents recorded December 03, 2015 as Instrument No. 20151516616, wherein a petition for relief was filed on November 20, 2015.

4. The land referred to in this Commitment is situated in the City of Pasadena, County of Los Angeles, State of California, and is described as follows:

LOT 10 OF TRACT NO. 63103, IN THE CITY OF PASADENA, AS PER MAP RECORDED IN BOOK 1369 PAGES 35 THROUGH 52 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AMENDED PURSUANT TO THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 2013 AS INSTRUMENT NO. 20131708591 OF OFFICIAL RECORDS.

APN: 5713-013-057

## **SCHEDULE B**

### **SECTION ONE REQUIREMENTS**

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (E) Releases(s) or Reconveyance(s) of Item(s): 10 through 14, 18 through 20, 27 through 34, 36 and 37
- (F) Other: None
- (G) You must give us the following information:
  - 1. Any off record leases, surveys, etc.
  - 2. Statement(s) of Identity, all parties.
  - 3. Other: None

The following additional requirements, as indicated by "X", must be met:

- (H) Provide information regarding any off-record matters, which may include, but are not limited to: leases, recent works of improvement, or commitment statements in effect under the Environmental Responsibility Acceptance Act, Civil Code Section 850, et seq.

The Company's Owner's Affidavit form (as provided by company) must be completed and submitted prior to close in order to satisfy this requirement. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.

- (I) An ALTA/NSPS survey of recent date, which complies with the current minimum standard detail requirements for ALTA/NSPS land title surveys, must be submitted to the Company for review. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.
- (J) The following LLC documentation is required:
  - (i) a copy of the Articles of Organization
  - (ii) a copy of the Operating Agreement, if applicable
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Company Consent to the current transaction



- (K) The following partnership documentation is required :
  - (i) a copy of the partnership agreement, including all applicable amendments thereto
  - (ii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iii) express Partnership Consent to the current transaction
  
- (L) The following corporation documentation is required:
  - (i) a copy of the Articles of Incorporation
  - (ii) a copy of the Bylaws, including all applicable Amendments thereto
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Corporate Resolution consenting to the current transaction
  
- (M) Based upon the Company's review of that certain partnership/operating agreement dated **Not disclosed** for the proposed insured herein, the following requirements must be met:

Any further amendments to said agreement must be submitted to the Company, together with an affidavit from one of the general partners or members stating that it is a true copy, that said partnership or limited liability company is in full force and effect, and that there have been no further amendments to the agreement. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (N) A copy of the complete lease, as referenced in Schedule A, #3 herein, together with any amendments and/or assignments thereto, must be submitted to the Company for review, along with an affidavit executed by the present lessee stating that it is a true copy, that the lease is in full force and effect, and that there have been no further amendments to the lease. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (O) Approval from the Company's Underwriting Department must be obtained for issuance of the policy contemplated herein and any endorsements requested thereunder. This Commitment will then be subject to such further requirements as may be required to obtain such approval.
  
- (P) Potential additional requirements, if ALTA Extended coverage is contemplated hereunder, and work on the land has commenced prior to close, some or all of the following requirements, and any other requirements which may be deemed necessary, may need to be met:
  
- (Q) The Company's "Indemnity Agreement I" must be executed by the appropriate parties.
- (R) Financial statements from the appropriate parties must be submitted to the Company for review.
- (S) A copy of the construction contract must be submitted to the Company for review.
- (T) An inspection of the land must be performed by the Company for verification of the phase of construction.
- (U) The Company's "Mechanic's Lien Risk Addendum" form must be completed by a Company employee, based upon information furnished by the appropriate parties involved.

## **SCHEDULE B**

### **SECTION TWO**

#### **EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. The printed exceptions and exclusions from the coverage of the policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this Commitment.

1. General and special taxes and assessments for the fiscal year 2017-2018, a lien not yet due or payable.
2. General and special taxes and assessments for the fiscal year 2016-2017.  
First Installment: \$18,006.15, PAID  
Penalty: \$0.00  
Second Installment: \$18,006.14, OPEN  
Penalty: \$0.00  
Tax Rate Area: 07500  
A. P. No.: 5713-013-057
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
4. Covenants, conditions, restrictions and easements in the document recorded as Book 32449, Page 143; in Book 32449, Page 152; in Book 32449, Page 166; in Book 32449, Page 173; in Book 34290, Page 121; in Book 34290, Page 86 and in Book 35539, Page 103, all of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Section 12955 of the California Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
5. The terms and provisions contained in the document entitled "Memorandum of Post-Closing Obligations" recorded May 14, 2004 as Instrument No. 04-1227594 of Official Records.
6. An easement for utility, roadway, walkway access and incidental purposes, recorded May 14, 2004 as Instrument No. 04-1227591 of Official Records.  
In Favor of: Worldwide Church of God, a California non-profit Religious corporation and Ambassador Acquisition Coalition Partners, LLC., a Delaware Limited Liability Company  
Affects: as described therein

The location of the easement cannot be determined from record information.

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7. An easement for utility and incidental purposes, recorded May 14, 2004 as Instrument No. 04-1227598 of Official Records.

In Favor of: Maranatha High School  
Affects: as described therein

The location of the easement cannot be determined from record information.

8. The terms and provisions contained in the document entitled "Memorandum Post-Closing Obligations" recorded July 21, 2005 as Instrument No. 05-1721784 of Official Records.
9. The terms, provisions and easement(s) contained in the document entitled "Driveway Easement Agreement (Rankin Parcel)" recorded July 21, 2005 as Instrument No. 05-1721786 of Official Records.

10. A Deed of Trust to secure an original indebtedness of \$4,850,000.00 recorded July 21, 2005 as Instrument 05-1721790 of Official Records.

Dated: July 1, 2005  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: Lawyers Title Insurance Corporation  
Beneficiary: Citizens Business Bank, a California banking corporation

Affects: The land and other property.

A document entitled "Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits (Fee)" recorded July 21, 2005 as Instrument No. 05-1721791 of Official Records, as additional security for the payment of the indebtedness secured by the deed of trust.

A document recorded August 12, 2009 as Instrument No. 20091234140 of Official Records provides that JLM Corporation was substituted as trustee under the deed of trust.

According to the public records, the beneficial interest under the deed of trust was assigned to Cantor Group LLC, a California limited liability company by assignment recorded April 01, 2016 as Instrument No. 20160358893 of Official Records.

According to the public records, the beneficial interest under the deed of trust was collaterally assigned to California Republic Bank by assignment recorded April 01, 2016 as Instrument No. 20160358894 of Official Records.

The interest of Citizens Business Bank, a California corporation under said Assignment of Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits was purportedly assigned to Cantor Group LLC, a California limited liability company by document recorded April 29, 2016 as Instrument No. 20160485855 of Official Records.

11. A Deed of Trust to secure an original indebtedness of \$1,500,000.00 recorded October 4, 2005 as Instrument No. 05-2388338 of Official Records.

Dated: September 23, 2005  
Trustor: BGM Pasadena, LLC, a Delaware Limited Liability Company  
Trustee: Lawyers Title Company  
Beneficiary: Dove Street Capital Lenders, LLC A California Limited Liability Company

Affects: The land and other property.

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A document recorded November 30, 2006 as Instrument No. 06-2651097, of Official Records provides that the Deed of Trust/Mortgage or the obligation secured thereby has been modified.

According to the public records, the beneficial interest under the deed of trust was assigned to Pasadena Apts-7 LLC, a Delaware limited liability company by assignment recorded November 12, 2010 as Instrument No. 20101626827 of Official Records.

The Deed of Trust/Mortgage was Partially reconveyed as to Lots A and 13 of Tract No. 63103 by instrument recorded February 04, 2015 under recording no. 20150125637 of Official Records.

A notice of default recorded February 09, 2015 as Instrument No. 20150142532 of Official Records.

A document recorded October 31, 2016 as Instrument No. 20161340100 of Official Records provides that Pasadena Apts-7 LLC, a Delaware limited liability company was substituted as trustee under the deed of trust.

The effect of a document entitled "Substitution of Trustee and Full Reconveyance", recorded October 31, 2016 as Instrument No. 20161340100 of Official Records.

Note: The Company will require satisfactory proof of full payment of the debt secured by said mortgage or deed of trust prior to removing this exception or insuring the contemplated transaction.

12. A financing statement recorded October 4, 2005 as Instrument No. 05-2388339 of Official Records.

Debtor: BGM Pasadena, LLC  
Secured party: Dove Street Capital Lenders, LLC

13. A Deed of Trust to secure an original indebtedness of \$4,102,800.00 recorded October 27, 2006 as Instrument No. 06-2387278 of Official Records.

Dated: October 23, 2006  
Trustor: BGM Pasadena, LLC, a Delaware Limited Liability Company  
Trustee: United Title Insurance Company  
Beneficiary: Keith B. Smith, as Trustee of The Smith Trust dated August 7, 1990

Affects: The land and other property.

The beneficial interest in the Deed of Trust was assigned to Keith B. Smith, as Trustee of The Smith Trust dated August 7, 1990 by mesne instruments of record, the last of which recorded May 25, 2011 as Instrument No. 20110729099 of Official Records.

14. A Deed of Trust to secure an original indebtedness of \$2,500,000.00 recorded May 25, 2007 as Instrument No. 20071276046 of Official Records.

Dated: May 15, 2007  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: East West Investment, Inc., a California corporation  
Beneficiary: East West Bank

Affects: The land and other property.

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A document recorded December 5, 2013 as Instrument No. 20131716501, of Official Records provides that the Deed of Trust/Mortgage or the obligation secured thereby has been modified.

15. Covenants, conditions, restrictions, easements, assessments, liens, charges, terms and provisions in the document recorded July 2, 2007 as Instrument No. 2007-1579024 of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Note: You may wish to contact the homeowners association referred to in the above document for information regarding assessments, transfer requirements or other matters.

Document(s) declaring modifications thereof recorded March 03, 2009 as Instrument no. 2009-0297679 of Official Records.

Document(s) declaring modifications thereof recorded October 31, 2013 as Instrument no. 20131553283 of Official Records.

Document(s) declaring modifications thereof recorded March 12, 2015 as Instrument No. 20150270219 of Official Records.

Document(s) declaring modifications thereof recorded December 21, 2015 as Instrument No. 20151601451 of Official Records.

16. The terms and provisions contained in the document entitled "Memorandum of Site Development Agreement" recorded July 02, 2007 as Instrument no. 2007-1579027 of Official Records.

Document(s) declaring modifications thereof recorded November 12, 2008 as Instrument no. 2008-1995401 of Official Records.

17. The terms and provisions contained in the document entitled "Consent, Subordination and Recognition Agreement" recorded July 02, 2007 as Instrument no. 2007-1579031 of Official Records.

18. A Deed of Trust to secure an original indebtedness of \$1,662,747.00 recorded October 22, 2007 as Instrument No. 20072389808 of Official Records.

Dated: September 28, 2007  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: Commonwealth Land Title Company  
Beneficiary: Dove Street Capital Lenders, LLC a California limited liability company

Affects: The land and other property.

A document recorded October 22, 2007 as Instrument No. 20072389810, of Official Records provides that the Deed of Trust/Mortgage or the obligation secured thereby has been modified.

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According to the public records, the beneficial interest under the deed of trust was assigned to Pasadena Apts-7, LLC, a Delaware limited liability company by assignment recorded November 12, 2010 as Instrument No. 20101626825 of Official Records.

The Deed of Trust/Mortgage was Partially reconveyed as to Lots A and 13 of Tract No. 63103 by instrument recorded February 04, 2015 under recording no. 20150125636 of Official Records.

A notice of default recorded February 09, 2015 as Instrument No. 20150142530 of Official Records.

A notice of trustee's sale recorded May 11, 2015 as Instrument No. 20150541501 of Official Records.

A document recorded October 31, 2016 as Instrument No. 20161340101 of Official Records provides that Pasadena Apts-7 LLC, a Delaware limited liability company was substituted as trustee under the deed of trust.

The effect of a document entitled "Substitution of Trustee and Full Reconveyance", recorded October 31, 2016 as Instrument No. 20161340101 of Official Records.

Note: The Company will require satisfactory proof of full payment of the debt secured by said mortgage or deed of trust prior to removing this exception or insuring the contemplated transaction.

19. A financing statement recorded October 22, 2007 as Instrument no. 2007-2389809 of Official Records.

Debtor: BGM Pasadena, LLC, a Delaware limited liability company  
Secured party: Dove Street Capital Lenders, LLC, a California limited liability company

20. A Deed of Trust to secure an original indebtedness of \$900,000.00 recorded March 26, 2008 as Instrument No. 2008518303 of Official Records.

Dated: March 7, 2008  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: Commonwealth Land Title Company  
Beneficiary: Bernice P. Einum, on behalf of and as Trustee of the Einum Trust dated June 27, 1988

Affects: The land and other property.

21. The terms and provisions contained in the document entitled "Resolution No. 8850 adopting a Declaration of landmark designation for 210 South Orange Grove Blvd." recorded May 2, 2008 as Instrument No. 20080779152 of Official Records.

22. An easement for landscaping and appurtenances and incidental purposes, recorded December 04, 2008 as Instrument No. 08-2131627 and Instrument No. 08-2131628, both of Official Records.

In Favor of: DB Pasadena Holdco LLC, a Delaware limited liability company  
Affects: as described therein

The location of the easement cannot be determined from record information.

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23. The terms, provisions and easement(s) contained in the document entitled "Construction Easement Agreement" recorded December 19, 2008 as Instrument no. 2008-2232728 of Official Records.
24. An easement for ingress, egress and incidental purposes, recorded December 19, 2008 as Instrument No. 08-2232727 of Official Records.  
In Favor of: DB Pasadena Holdco LLC, a Delaware limited liability company  
Affects: as described therein
- The location of the easement cannot be determined from record information.
25. The terms, provisions and easement(s) contained in the document entitled "Parking Easement Agreement" recorded December 28, 2011 as Instrument No. 20111763712 of Official Records.
26. An easement shown or dedicated on the map of Tract No. 63103 recorded March 15, 2012 on file in book 1369, page 35 through 52, of Tract Maps.  
For: Water line, reciprocal access and incidental purposes.
27. Claim of Lien for breach of Site Development Agreement in favor of Pasadena Lots-70, LLC, a Delaware limited liability company  
Against: BGM Pasadena, LLC, a Delaware limited liability company  
Amount: \$281,183.86  
Recorded: July 3, 2013 as Instrument No. 20130984259 of Official Records.
- A document recorded December 5, 2013 as Instrument No. 20131716502 of Official Records provides that the above document was subordinated to the document recorded May 25, 2007 as Instrument No. 20071276046 of Official Records.
28. Notice of pendency of action recorded February 12, 2014 as Instrument No. 20140154208 of Official Records.  
Court: Superior Court of the State of California County of Los Angeles,  
North Central District - Burbank  
Case No.: EC061863  
Plaintiff: Pasadena Lots-70, LLC  
Defendant: BGM Pasadena, LLC and DOES 1-25  
Purpose: Title to real property
29. A lien for unsecured property taxes, evidenced by a certificate recorded by the tax collector of Los Angeles County, recorded March 04, 2014, as Instrument No. 20140218204 of Official Records.  
Debtor: BGM Pasadena LLC  
Year & No.: 13/40586594  
Amount: \$969.21, and any other amounts due thereunder.
30. A lien for unsecured property taxes, evidenced by a certificate recorded by the tax collector of Los Angeles County, recorded April 07, 2014, as Instrument No. 20140345051 of Official Records.  
Debtor: BGM Pasadena LLC  
Year & No.: 13/49953725  
Amount: \$18,199.80, and any other amounts due thereunder.
31. A notice of homeowners association assessment lien recorded May 11, 2015 as Instrument No. 20150539838 of Official Records.

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- Association: Ambassador West Master Association  
Amount: \$7,807.06, and any other amounts due thereunder.
32. A notice of homeowners association assessment lien recorded May 22, 2015 as Instrument No. 20150604033 of Official Records.  
Association: Ambassador Cost Center 3  
Amount: \$1,882.60, and any other amounts due thereunder.
33. A notice of homeowners association assessment lien recorded May 22, 2015 as Instrument No. 20150604034 of Official Records.  
Association: Ambassador Cost Center 4  
Amount: \$1,542.46, and any other amounts due thereunder.
34. A notice of homeowners association assessment lien recorded June 16, 2015 as Instrument No. 20150710358 of Official Records.  
Association: Ambassador Cost Center 5  
Amount: \$809.87, and any other amounts due thereunder.
35. Proceedings pending in the Bankruptcy Court of the Central District of the U.S. District Court, Los Angeles , entitled in re: BGM Pasadena, LLC, debtor, Case No. 2:15-bk-27833-BB, and as evidenced by document recorded December 03, 2015 as Instrument No. 20151516616 wherein a petition for relief was filed on November 20, 2015.
36. A notice of homeowners association assessment lien recorded August 03, 2016 as Instrument No. 20160914361 of Official Records.  
Association: Ambassador Cost Center 5  
Amount: \$3, 704.04, and any other amounts due thereunder.
37. A notice of homeowners association assessment lien recorded August 03, 2016 as Instrument No. 20160914362 of Official Records.  
Association: Ambassador Cost Center 4  
Amount: \$8,862.13, and any other amounts due thereunder.
38. Water rights, claims or title to water, whether or not shown by the public records.
39. Rights of parties in possession.



**INFORMATIONAL NOTES**

NOTE to proposed insured lender only: No Private transfer fee covenant, as defined in Federal Housing Finance Agency Final Rule 12 CFR Part 1228, that was created and first appears in the Public Records on or after February 8, 2011, encumbers the Title except as follows: None

1. According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) Commercial Structure known as 210 South Orange Grove Boulevard, Pasadena, CA.
2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:  
  
None
3. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

**\*\*\*\*\*To obtain wire instructions for deposit of funds to your escrow file please contact your Escrow Officer.\*\*\*\*\***

## **CONDITIONS**

### **1. DEFINITIONS**

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### **2. LATER DEFECTS**

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

### **3. EXISTING DEFECTS**

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### **4. LIMITATION OF OUR LIABILITY**

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One  
or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### **5. CLAIMS MUST BE BASED ON THIS COMMITMENT**

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.

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*First American Title*

#### Privacy Information

##### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

#### Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

#### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

#### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

#### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

#### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

#### Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

#### Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

#### Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. [FirstAm.com](http://FirstAm.com) uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

#### Fair Information Values

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990**  
**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

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This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

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2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1.
  - (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
  - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or

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- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - (a) and use
  - (b) improvements on the land
  - (c) and division
  - (d) environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
  - (a) a notice of exercising the right appears in the public records on the Policy Date
  - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - (a) that are created, allowed, or agreed to by you
  - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
  - (c) that result in no loss to you
  - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
  - (b) in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**Covered Risks 14 (Subdivision Law Violation), 15 (Building Permit), 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability**

### EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protectionThis exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This exclusion does not limit the coverage described in Covered Risk 11 or 18.

### 12. THIRD GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (1/01/08)

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

### 13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or



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expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

#### **14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 13 above are used and the following exceptions to coverage appear in the policy.

#### **SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

#### **15. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

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- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

**16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 15 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**EXHIBIT "H-2"**

**TITLE REPORT**

**244-248 Property**

**(see attached)**

**EXHIBIT "H-2"**

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**First American Title Insurance Company  
National Commercial Services**

**3281 E Guasti Road, Suite 440  
Ontario, CA 91761**

January 30, 2017

Caron C. Burke  
Ballard Spahr LLP  
655 West Broadway, Suite 1600  
San Diego, CA 92101-8494

Customer Reference: 244 South Orange Grove

Title Officer:	Greg Franke	Title Assistant:	Erin West
Phone:	(909)510-6233	Phone:	(909)510-6200
Email:	gfranke@firstam.com	Email:	ewest@firstam.com

Order Number: NCS-833700-ONT1

Property: 244 South Orange Grove Boulevard, Pasadena, CA

Attached please find the following item(s):

Commitment

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

**Customer First!**

**First American Title Insurance Company**  
**INFORMATION**

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This information is not part of the title insurance commitment.

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**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**  
**If you have any questions about the Commitment,**  
**please contact the issuing office.**

COMMITMENT FOR TITLE INSURANCE

Issued by

**First American Title Insurance Company**

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Sections 1 and 2 of Schedule B.

**SCHEDULE A**

1. Commitment Date: January 05, 2017 at 7:30 A.M.

2. Policy or Policies to be issued:	Amount
(A) ALTA Owner's Policy ALTA Standard Owner Policy	\$To be determined

Proposed Insured:

To be determined

(B) ALTA Loan Policy To be determined	\$To be determined
--	--------------------

Proposed Insured:

To be determined

3. (A) The estate or interest in the land described in this Commitment is:

Fee Simple as to Parcel 1, an easement as to Parcels 2, 3, 4, 5, 6, and 7.

(B) Title to said estate or interest at the date hereof is vested in:

BGM PASADENA, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, SUBJECT TO PROCEEDINGS PENDING IN THE BANKRUPTCY COURT OF THE CENTRAL DISTRICT OF THE U. S. DISTRICT COURT, LOS ANGELES, ENTITLED IN RE: BGM PASADENA, LLC, DEBTOR, CASE NO. 2:15-BK-27833-BB, AND AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 03, 2015 AS INSTRUMENT NO. 20151516616, WHEREIN A PETITION FOR RELIEF WAS FILED ON NOVEMBER 20, 2015.

4. The land referred to in this Commitment is situated in the City of Pasadena, County of Los Angeles, State of California, and is described as follows:

PARCEL 1:

LOT 12 OF TRACT NO. 63103, IN THE CITY OF PASADENA, AS PER MAP RECORDED IN BOOK 1369 PAGES 35 THROUGH 52 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AMENDED PURSUANT TO THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 2013 AS INSTRUMENT NO. 20131708591 OF OFFICIAL RECORDS.

PARCEL 2:

A RECIPROCAL ACCESS EASEMENT OVER THOSE AREAS SET OUT ON THE MAP SHOWN ABOVE.

PARCEL 3:

AN EASEMENT FOR THE PURPOSES HEREIN STATED AND SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN CONSOLIDATED AMENDED AND RESTATED DRIVEWAY EASEMENT AGREEMENT (SOUTH ORANGE GROVE PARCELS) RECORDED DECEMBER 5, 2013 AS

INSTRUMENT NO. 20131716500 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 4:

AN EASEMENT FOR THE PURPOSES HEREIN STATED AND SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN AMENDED AND RESTATED DRIVEWAY EASEMENT AGREEMENT (DEL MAR PARCEL) RECORDED DECEMBER 5, 2013 AS INSTRUMENT NO. 20131716499 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 5:

AN EASEMENT FOR THE PURPOSES HEREIN STATED AND SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN ROSE PARADE GRANDSTAND EASEMENT AGREEMENT (ORANGE GROVE AVENUE) RECORDED JULY 21, 2005 AS INSTRUMENT NOS. 05-1721787 AND 05-1721788 BOTH OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 6:

AN EASEMENT FOR THE PURPOSES HEREIN STATED AND SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN PARKING GARAGE EASEMENT AGREEMENT RECORDED JULY 2, 2007 AS INSTRUMENT NO. 20071579026 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

PARCEL 7:

AN EASEMENT FOR THE PURPOSES HEREIN STATED AND SUBJECT TO THE TERMS AND PROVISIONS OF THAT CERTAIN PARKING EASEMENT AGREEMENT RECORDED DECEMBER 28, 2011 AS INSTRUMENT NO. 20111763712 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS SET OUT THEREIN.

APN: 5713-027-065



## SCHEDULE B

### SECTION ONE REQUIREMENTS

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (E) Releases(s) or Reconveyance(s) of Item(s): 10 through 14, 18 through 20, and 26 through 30
- (F) Other: None
- (G) You must give us the following information:
  - 1. Any off record leases, surveys, etc.
  - 2. Statement(s) of Identity, all parties.
  - 3. Other: None

The following additional requirements, as indicated by "X", must be met:

- (H) Provide information regarding any off-record matters, which may include, but are not limited to: leases, recent works of improvement, or commitment statements in effect under the Environmental Responsibility Acceptance Act, Civil Code Section 850, et seq.  
  
The Company's Owner's Affidavit form (as provided by company) must be completed and submitted prior to close in order to satisfy this requirement. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.
- (I) An ALTA/NSPS survey of recent date, which complies with the current minimum standard detail requirements for ALTA/NSPS land title surveys, must be submitted to the Company for review. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.
- (J) The following LLC documentation is required:
  - (i) a copy of the Articles of Organization
  - (ii) a copy of the Operating Agreement, if applicable
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Company Consent to the current transaction

- (K) The following partnership documentation is required :
  - (i) a copy of the partnership agreement, including all applicable amendments thereto
  - (ii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iii) express Partnership Consent to the current transaction
  
- (L) The following corporation documentation is required:
  - (i) a copy of the Articles of Incorporation
  - (ii) a copy of the Bylaws, including all applicable Amendments thereto
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Corporate Resolution consenting to the current transaction
  
- (M) Based upon the Company's review of that certain partnership/operating agreement dated **Not disclosed** for the proposed insured herein, the following requirements must be met:

Any further amendments to said agreement must be submitted to the Company, together with an affidavit from one of the general partners or members stating that it is a true copy, that said partnership or limited liability company is in full force and effect, and that there have been no further amendments to the agreement. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (N) A copy of the complete lease, as referenced in Schedule A, #3 herein, together with any amendments and/or assignments thereto, must be submitted to the Company for review, along with an affidavit executed by the present lessee stating that it is a true copy, that the lease is in full force and effect, and that there have been no further amendments to the lease. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (O) Approval from the Company's Underwriting Department must be obtained for issuance of the policy contemplated herein and any endorsements requested thereunder. This Commitment will then be subject to such further requirements as may be required to obtain such approval.
  
- (P) Potential additional requirements, if ALTA Extended coverage is contemplated hereunder, and work on the land has commenced prior to close, some or all of the following requirements, and any other requirements which may be deemed necessary, may need to be met:
  
- (Q) The Company's "Indemnity Agreement I" must be executed by the appropriate parties.
- (R) Financial statements from the appropriate parties must be submitted to the Company for review.
- (S) A copy of the construction contract must be submitted to the Company for review.
- (T) An inspection of the land must be performed by the Company for verification of the phase of construction.
- (U) The Company's "Mechanic's Lien Risk Addendum" form must be completed by a Company employee, based upon information furnished by the appropriate parties involved.

## **SCHEDULE B**

### **SECTION TWO**

#### **EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. The printed exceptions and exclusions from the coverage of the policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this Commitment.

1. General and special taxes and assessments for the fiscal year 2017-2018, a lien not yet due or payable.
2. General and special taxes and assessments for the fiscal year 2016-2017.  
First Installment: \$22,625.17, PAID  
Penalty: \$0.00  
Second Installment: \$22,625.15, OPEN  
Penalty: \$0.00  
Tax Rate Area: 07500  
A. P. No.: 5713-027-065
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
4. Covenants, conditions, restrictions and easements in the document recorded as BOOK 32449, PAGE 143; IN BOOK 32449, PAGE 152; IN BOOK 32449, PAGE 166; IN BOOK 32449, PAGE 173; IN BOOK 34290, PAGE 121; IN BOOK 34290, PAGE 86 AND IN BOOK 35539, PAGE 103, ALL of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, genetic information, gender, gender identity, gender expression, source of income (as defined in California Government Code § 12955(p)) or ancestry, to the extent such covenants, conditions or restrictions violation 42 U.S.C. § 3604(c) or California Government Code § 12955. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
5. The terms and provisions contained in the document entitled "Memorandum of Post-Closing Obligations" recorded May 14, 2004 as Instrument No. 04-1227594 of Official Records.
6. An easement for utility, roadway, walkway access and incidental purposes in the document recorded May 14, 2004 as Instrument No. 04-1227591 of Official Records.  
  
The location of the easement cannot be determined from record information.
7. An easement for utility and incidental purposes in the document recorded May 14, 2004 as Instrument No. 04-1227598 of Official Records.  
  
The location of the easement cannot be determined from record information.

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8. The terms and provisions contained in the document entitled "Memorandum of Post-Closing Obligations" recorded July 21, 2005 as Instrument No. 05-1721784 of Official Records.
9. The Terms, Provisions and Easement(s) contained in the document entitled "Driveway Easement Agreement (Rankin Parcel)" recorded July 21, 2005 as Instrument No. 05-1721786 of Official Records.
10. A deed of trust to secure an original indebtedness of \$4,850,000.00 recorded July 21, 2005 as Instrument No. 05-1721792 OF OFFICIAL RECORDS.

Dated: July 01, 2005  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: Lawyers Title Insurance Corporation  
Beneficiary: Citizens Business Bank, a California banking corporation

Affects: The land and other property.

A document entitled "Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits (Fee)" recorded July 21, 2005 as Instrument No. 05-1721793 OF OFFICIAL RECORDS, as additional security for the payment of the indebtedness secured by the deed of trust.

A document recorded August 12, 2009 as Instrument No. 20091234141 OF OFFICIAL RECORDS provides that JLM Corporation was substituted as trustee under the deed of trust.

According to the public records, the beneficial interest under the deed of trust was assigned to Cantor Group LLC, a California limited liability company by assignment recorded April 01, 2016 as Instrument No. 20160358892 of Official Records.

According to the public records, the beneficial interest under the deed of trust was collaterally assigned to California Republic Bank by assignment recorded April 01, 2016 as Instrument No. 20160358894 of Official Records.

The interest of Citizens Business Bank, a California banking corporation under said Assignment of Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits was purportedly assigned to Cantor Group, LLC, a California limited liability company by document recorded April 29, 2016 as Instrument No. 20160485856 of Official Records.

11. A deed of trust to secure an original indebtedness of \$1,500,000.00 recorded October 04, 2005 as Instrument No. 05-2388338 OF OFFICIAL RECORDS.

Dated: September 23, 2005  
Trustor: BGM Pasadena, LLC, a Delaware Limited Liability Company  
Trustee: Lawyers Title Company  
Beneficiary: Dove Street Capital Lenders, LLC A California Limited Liability Company

Affects: The land and other property.

A document recorded November 30, 2006 as Instrument No. 06-2651097 OF OFFICIAL RECORDS provides that the deed of trust or the obligation secured thereby has been modified.

According to the public records, the beneficial interest under the deed of trust was assigned to Pasadena Apts-7 LLC, a Delaware limited liability company by assignment recorded November 12, 2010 as Instrument No. 20101626827 OF OFFICIAL RECORDS.

The Deed of Trust/Mortgage was Partially reconveyed as to Lots A and 13 of Tract No. 63103 by instrument recorded February 04, 2015 under recording no. 20150125637.

A notice of default recorded February 09, 2015 as Instrument No. 20150142532 OF OFFICIAL RECORDS.

A notice of trustee's sale recorded May 11, 2015 as Instrument No. 2015541516 of Official Records.

A document recorded October 31, 2016 as Instrument No. 20161340100 of Official Records provides that Pasadena Apts-7 LLC, a Delaware limited liability company was substituted as trustee under the deed of trust.

The effect of a document entitled "Substitution of Trustee and Full Reconveyance", recorded October 31, 2016 as Instrument No. 20161340100 of Official Records.

Note: The Company will require satisfactory proof of full payment of the debt secured by said mortgage or deed of trust prior to removing this exception or insuring the contemplated transaction.

12. A financing statement recorded October 04, 2005 as Instrument No. 05-2388339 of Official Records.

Debtor: BGM Pasadena, LLC  
Secured party: Dove Street Capital Lenders, LLC

Affects: The land and other property.

13. A Deed of Trust to secure an original indebtedness of \$4,102,800.00 recorded October 27, 2006 as Instrument No. 06-2387278 of Official Records.

Dated: October 23, 2006  
Trustor: BGM Pasadena, LLC, a Delaware Limited Liability Company  
Trustee: United Title Insurance Company  
Beneficiary: Keith B. Smith, as Trustee of The Smith Trust dated August 7, 1990

Affects: The land and other property.

The beneficial interest in the Deed of Trust was assigned to Keith B. Smith, as Trustee of The Smith Trust dated August 7, 1990 by mesne instruments of record, the last of which recorded May 25, 2011 as Instrument No. 20110729099

14. A Deed of Trust to secure an original indebtedness of \$2,500,000.00 recorded May 25, 2007 as Instrument No. 20071276046 of Official Records.

Dated: May 15, 2007  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: East West Bank Investments, Inc., a California corporation  
Beneficiary: East West Bank

Affects: The land and other property.

The Deed of Trust/Mortgage was Partially reconveyed as to property described in a Partial Reconveyance by instrument recorded December 05, 2013 under recording no. 20131716501.

A document recorded December 05, 2013 as Instrument No. 20131716501, of Official Records provides that the Deed of Trust/Mortgage or the obligation secured thereby has been modified.

15. Covenants, conditions, restrictions, easements, assessments, liens, charges, terms and provisions in the document recorded July 02, 2007 as Instrument No. 07-1579024 of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, genetic information, gender, gender identity, gender expression, source of income (as defined in California Government Code § 12955(p)) or ancestry, to the extent such covenants, conditions or restrictions violation 42 U.S.C. § 3604(c) or California Government Code § 12955. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

AMBASSADOR WEST MASTER Association is referenced in the above mentioned document.

Document(s) declaring modifications thereof recorded March 03, 2009 as Instrument no. 2009-297679 of Official Records.

Document(s) declaring modifications thereof recorded October 31, 2013 as Instrument no. 20131553283 of Official Records.

Document(s) declaring modifications thereof recorded March 12, 2015 as Instrument No. 20150270219 of Official Records.

Document(s) declaring modifications thereof recorded December 21, 2015 as Instrument No. 20151601451 of Official Records.

16. The terms and provisions contained in the document entitled "Memorandum of Site Development Agreement" recorded July 02, 2007 as Instrument no. 2007-1579027 of Official Records.

Document(s) declaring modifications thereof recorded November 12, 2008 as Instrument no. 2008-1995401 of Official Records.

17. The terms and provisions contained in the document entitled "Consent, Subordination and Recognition Agreement" recorded July 02, 2007 as Instrument no. 07-1579031 of Official Records.

18. A deed of trust to secure an original indebtedness of \$1,662,747.00 recorded October 22, 2007 as Instrument No. 20072389808 OF OFFICIAL RECORDS.

Dated: September 28, 2007  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: Commonwealth Land Title Company  
Beneficiary: Dove Street Capital Lenders, LLC, a California limited liability company

Affects: The land and other property.

A document recorded October 22, 2007 as Instrument No. 20072389810 OF OFFICIAL RECORDS provides that the deed of trust or the obligation secured thereby has been modified.

According to the public records, the beneficial interest under the deed of trust was assigned to Pasadena Apts-7, LLC, a Delaware limited liability company by assignment recorded November 12, 2010 as Instrument No. 20101626825 OF OFFICIAL RECORDS.

The Deed of Trust/Mortgage was Partially reconveyed as to Lots A and 13 of Tract No. 63103 by instrument recorded February 04, 2015 under recording no. 20150125636.

A notice of default recorded February 09, 2015 as Instrument No. 20150142530 OF OFFICIAL RECORDS.

A notice of trustee's sale recorded May 11, 2015 as Instrument No. 20150541501 OF OFFICIAL RECORDS.

A document recorded October 31, 2016 as Instrument No. 20161340101 of Official Records provides that Pasadena Apts-7, LLC, a Delaware limited liability company was substituted as trustee under the deed of trust.

The effect of a document entitled "Substitution of Trustee and Full Reconveyance", recorded October 31, 2016 as Instrument No. 20161340101 of Official Records.

Note: The Company will require satisfactory proof of full payment of the debt secured by said mortgage or deed of trust prior to removing this exception or insuring the contemplated transaction.

19. A financing statement recorded October 22, 2007 as Instrument No. 20072389809 of Official Records.  
Debtor: BGM Pasadena, LLC  
Secured party: Dove Street Capital Lenders, LLC

Affects: The land and other property.

20. A Deed of Trust to secure an original indebtedness of \$900,000.00 recorded March 26, 2008 as Instrument no. 2008-518303 of Official Records.  
Dated: March 7, 2008  
Trustor: BGM Pasadena, LLC, a Delaware limited liability company  
Trustee: Commonwealth Land Title Company  
Beneficiary: Bernice P. Einum, on behalf of and as Trustee of the Einum Trust dated June 27, 1988

Affects: The land and other property.

21. The terms and provisions contained in the document entitled "Resolution No. 8850 adopting a Declaration of landmark designation for 210 South Orange Grove Blvd." recorded May 02, 2008 as INSTRUMENT NO. 20080779152 of Official Records.

22. An easement for landscaping and appurtenances and incidental purposes in the document recorded December 04, 2008 as Instrument No. 08-2131627 and Instrument No. 08-2131628, both of Official Records.

The location of the easement cannot be determined from record information.

23. An easement for ingress, egress and incidental purposes in the document recorded December 19, 2008 as Instrument No. 08-2232727 of Official Records.

The location of the easement cannot be determined from record information.

24. The Terms, Provisions and Easement(s) contained in the document entitled "Parking Easement Agreement" recorded December 28, 2011 as Instrument No. 11-1763713 of Official Records.

25. An easement shown or dedicated on the map of Tract No. 63103 recorded March 15, 2012 and on file in Book 1369, Page 35 through 52, of Tract Maps.  
For: Reciprocal parking, reciprocal access and incidental purposes.

26. Claim of Lien for breach of Site Development Agreement in favor of Pasadena Lots-70, LLC, a Delaware limited liability company  
Against: BGM Pasadena, LLC, a Delaware limited liability company Amount: \$281,183.86  
Recorded: July 3, 2013 as Instrument No. 13-984259 of Official Records.

A document recorded DECEMBER 05, 2013 as Instrument No. 13-1716502 of Official Records provides that the above document was subordinated to the document recorded MAY 25, 2007 as Instrument No. 07-1276046 of Official Records.

27. Notice of pendency of action recorded FEBRUARY 12, 2014 as Instrument No. 14-154208 of Official Records.

Court: Superior Court of the State of California County of Los Angeles,  
North Central District - Burbank

Case No.: EC061863

Plaintiff: Pasadena Lots - 70, LLC

Defendant: BGM Pasadena, LLC and DOES 1-25

Purpose: AFFECTS TITLE TO REAL PROPERTY

28. A lien for unsecured property taxes, evidenced by a certificate recorded by the tax collector of Los Angeles County, recorded MARCH 04, 2014, as Instrument No. 14-218204 of Official Records.

Debtor: BGM Pasadena LLC

Year & No.: 13/40586594

Amount: \$969.21, and any other amounts due thereunder.

29. A lien for unsecured property taxes, evidenced by a certificate recorded by the tax collector of Los Angeles County, recorded APRIL 07, 2014, as Instrument No. 14-345051 of Official Records.

Debtor: BGM Pasadena LLC

Year & No.: 13/49953725

Amount: \$18,199.80, and any other amounts due thereunder.

30. A notice of homeowners association assessment lien recorded MAY 11, 2015 as Instrument No. 15-539839 of Official Records.

Association: Ambassador West Master Association

Amount: \$18,161.45, and any other amounts due thereunder.

31. Proceedings pending in the Bankruptcy Court of the Central District of the U.S. District Court, Los Angeles, entitled in re: BGM Pasadena, LLC, debtor, Case No. 2:15-bk-27833-BB, and as evidenced by document recorded December 03, 2015 as Instrument No. 20151516616, wherein a petition for relief was filed on November 20, 2015.

32. Water rights, claims or title to water, whether or not shown by the public records.



Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: NCS-833700-ONT1  
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33. Rights of parties in possession.

**INFORMATIONAL NOTES**

NOTE to proposed insured lender only: No Private transfer fee covenant, as defined in Federal Housing Finance Agency Final Rule 12 CFR Part 1228, that was created and first appears in the Public Records on or after February 8, 2011, encumbers the Title except as follows: None

1. According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) Multiple Family Residence known as 244 SOUTH ORANGE GROVE BOULEVARD, PASADENA, CA.
2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:  
  
None
3. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

**\*\*\*\*\*To obtain wire instructions for deposit of funds to your escrow file please  
contact your Escrow Officer.\*\*\*\*\***

## CONDITIONS

### 1. DEFINITIONS

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### 2. LATER DEFECTS

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

### 3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### 4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### 5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.



*First American Title*

#### **Privacy Information**

##### **We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

##### **Applicability**

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

##### **Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

##### **Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

##### **Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

##### **Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

##### **Information Obtained Through Our Web Site**

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

##### **Business Relationships**

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

##### **Cookies**

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

##### **Fair Information Values**

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990**  
**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions of area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy; (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the Insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the Insured claimant and not disclosed in writing to the Company by the Insured claimant prior to the date the Insured claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the Insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured claimant had paid value for the Insured mortgage.
4. Unenforceability of the lien of the Insured mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the Indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the Insured mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the Insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the Indebtedness secured by the Insured mortgage which at Date of Policy the Insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee Insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the Insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the Insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the Insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1.
  - (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
  - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the Insured claimant and not disclosed in writing to the Company by the Insured claimant prior to the date the Insured claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (I) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (II) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - (a) and use
  - (b) improvements on the land
  - (c) and division
  - (d) environmental protectionThis exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
  - (a) a notice of exercising the right appears in the public records on the Policy Date
  - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - (a) that are created, allowed, or agreed to by you
  - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
  - (c) that result in no loss to you
  - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
  - (b) in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**Covered Risks 14 (Subdivision Law Violation), 15 (Building Permit), 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability**



### EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protectionThis exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This exclusion does not limit the coverage described in Covered Risk 11 or 18.

### 12. THIRD GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (1/01/08)

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

### 13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or

expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any Improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

#### **14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 13 above are used and the following exceptions to coverage appear in the policy.

#### **SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

#### **15. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

**16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 15 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- 1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**SCHEDULE 1(a)(4)**

**LIST OF ASSUMED CONTRACTS**

1. Lease (including amendments and assignment) with Dorn Platz Management, Inc.,  
210 S. Orange Grove  
Estimated Cure Amount: \$0
2. Lease with Jule Selbo and Mark Winkworth, 244 S. Orange Grove # 103  
Estimated Cure Amount: \$0
3. Lease with Greg Galletly and Deborah Galletly, 244 S. Orange Grove #104  
Estimated Cure Amount: \$0
4. Lease with Joy Bass, 244 S. Orange Grove #203  
Estimated Cure Amount: \$0
5. Lease with Albert Hasson, 244 S. Orange Grove #204  
Estimated Cure Amount: \$0
6. Lease with Vincent Rojas and Kathleen Rojas, 248 S. Orange Grove #101  
Estimated Cure Amount: \$0
7. Lease with Walter Whitman Moore and Judith A. Moore, 248 S. Orange Grove #102  
Estimated Cure Amount: \$0
8. Lease with Chris Johnson and Laura Johnson, 248 S. Orange Grove #201  
Estimated Cure Amount: \$0
9. Lease with VXI Global Solutions (Dave Palmer and Nicolle Palmer),  
248 S. Orange Grove #202  
Estimated Cure Amount: \$0
10. Contract with Athens Services, P.O. Box 60009, City of Industry, CA 91716-0009  
Contract for waste removal  
Estimated Cure Amount: \$0
11. Contract with Dorn Platz Management, Inc.  
Management Agreement  
Estimated Cure Amount: \$0
12. Contract with Kioumehr Family Trust, Firouz Mosharraf, 990 S. Los Robles Ave., Pasadena, CA  
91106  
License Agreement for waste  
Estimated Cure Amount: \$0

13. Maranatha High School, 169 South Saint John Avenue, Pasadena, CA 91105  
Contract for chilled water supply  
Estimated Cure Amount: \$0
14. Event Management Agreement dated June 28, 2106 with BUNDB Productions, LLC  
Estimated Cure Amount: \$0
15. Assignment of Event Management Agreement dated June 28, 2016 with Orange Grove Seating,  
LLC  
Estimated Cure Amount: \$0
16. Grandstand License Agreement dated June 28, 2016 with Orange Grove Seating, LLC  
Estimated Cure Amount: \$0

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**EXHIBIT "B"**

Sale and Bid Procedures

## SALE AND BID PROCEDURES

The following sale and bid procedures (the "Bid Procedures") govern the sale (the "Sale") of certain assets of the estate (the "Estate"), and defined as the "Property" in the Agreement of Purchase and Sale with SPSSM Investments-IX,LP ("SPSSM") (such Purchase and Sale Agreement and Joint Escrow Instructions, as at any time amended or modified, the "Asset Purchase Agreement") in connection with the BGM Pasadena, LLC's (the "Debtor") Chapter 11 bankruptcy case, pending as Case No. Case No. 2:15-bk-27833-BB (the "Bankruptcy Case") before the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"). By order of the Bankruptcy Court, these Bid Procedures have been approved and are applicable to all Bidders and Bids, with any proposed Sale of the Property to be subject to the final approval of the Bankruptcy Court pursuant to Title 11 of the United States Code (the "Bankruptcy Code").<sup>1</sup>

### I. THE PROPERTY

A. The Property includes among other property, all of the Estate's right, title and interest in and to the real property owned by the Estate and generally referred to as 210 S. Orange Grove Boulevard, Pasadena, California 91105 (the "210 Property"), 244-248 S. Orange Grove Boulevard, Pasadena, California 91105 (the "244-248 Property") and a parade easement which is part of the 244-248 Property (the "Easement", and together with the 210 Property and the 244-248 Property, collectively, the "Real Property"), and ancillary personal property, all as more particularly described in the Asset Purchase Agreement. Interested parties are encouraged to consult the Debtor's bankruptcy Schedules, as amended, for a detailed listing of the Debtor's assets. Notwithstanding the foregoing, expressly excluded from Property are claims, causes of action and rights of recovery pursuant to sections 544 through 550 and section 553 of the Bankruptcy Code and other Excluded Property as defined in the Asset Purchase Agreement.<sup>2</sup>

B. The Property, as more particularly described in the Asset Purchase Agreement, is to be sold in a single aggregate lot at the Auction provided for under these Bid Procedures (the "Auction"), subject to competitive bidding in accordance with these Bid Procedures and Bankruptcy Court approval.

C. **"AS IS, WHERE IS". THE SALE OF THE PROPERTY WILL BE ON AN "AS IS, WHERE IS" BASIS AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE, OR DESCRIPTION BY THE DEBTOR, ITS ESTATE, PETER MASTAN, THE TRUSTEE (THE "TRUSTEE") APPOINTED IN THE BANKRUPTCY CASE, OR THEIR RESPECTIVE AGENTS INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR HABITABILITY, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THE ASSET PURCHASE AGREEMENT.**

**NONE OF THE DEBTOR, THE TRUSTEE NOR THEIR RESPECTIVE COUNSEL, PROFESSIONALS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS MAKES ANY REPRESENTATION OR WARRANTY REGARDING THE PROPERTY, OTHER INFORMATION OR REGARDING THE DEBTOR, ITS OPERATIONS, ASSETS, LIABILITIES, CONTRACTS, LIENS OR FINANCIAL CONDITION PROVIDED TO A POTENTIAL BIDDER IN CONNECTION WITH THE BID PROCEDURES SET FORTH HEREIN, THE SALE, THE AUCTION OR THE PROPERTY. CONSEQUENTLY, NO REPRESENTATION IS MADE BY THE DEBTOR, THE TRUSTEE OR THEIR RESPECTIVE COUNSEL, PROFESSIONALS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS REGARDING THE ACCURACY, RELIABILITY, VERACITY, ADEQUACY, OR COMPLETENESS OF ANY INFORMATION PROVIDED IN CONNECTION WITH OR RELATED TO**

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<sup>1</sup> All dates set forth herein are subject to Bankruptcy Court approval and may be revised by the Bankruptcy Court.

<sup>2</sup> The Asset Purchase Agreement, as defined herein, shall contain the definitive and controlling list of the Property and the Excluded Property and the description of such Property and the Excluded Property in these Bid Procedures is intended solely for informational purposes.

**THESE BID PROCEDURES, THE PROPERTY, THE AUCTION OR THE SALE AND ALL INTERESTED PARTIES ARE ENCOURAGED TO CONSULT WITH THEIR OWN ADVISORS REGARDING ANY SUCH INFORMATION.**

**D.** The Sale must be entirely for cash consideration, except as expressly provided otherwise herein or in the Asset Purchase Agreement.

**E.** Sale Free and Clear. All of the right, title, and interest in and to the Property will be sold free and clear of all liens, security interests, encumbrances, claims, charges, options, and interests thereon or therein (collectively, the "Liens"), all as more fully set forth on Exhibit "B" hereto and incorporated herein by reference as though fully set forth, with the exception of "Conditions of Title" (as defined in the Asset Purchase Agreement), except as otherwise set forth herein.

After closing of the Sale, Liens will attach to any net cash proceeds from the Sale of the Property, in the order of their priority, with the same validity, force, and effect which they now have against the Property, except as to any such Lien which the Asset Purchase Agreement provides is a lien which shall remain as a Lien on the Property and that the Property shall be transferred subject to such Lien.

**F.** Asset Purchase Agreement. Except as otherwise set forth herein, any Sale will be made only under the same or substantially identical terms and conditions as set forth in the form of the Asset Purchase Agreement with SPSSM and attached to the order setting these bid procedures (the "Sale and Bid Procedures Order"). The Asset Purchase Agreement may be obtained by any Potential Bidder (as defined below) by contacting the Trustee's counsel as follows: Christopher Celentino, Esq., Ballard Spahr LLP, 655 W. Broadway, Suite 1600, San Diego, California 92101, Telephone: 619-696-9200, Facsimile: 619-696-9269, e-mail: celentinoc@ballardspahr.com.

**G.** Executory Contracts and Unexpired Leases. The Asset Purchase Agreement shall set forth each executory contract and unexpired lease and/or other agreement to be assumed and assigned to the purchaser pursuant thereto, and the estimate of any cure payment amount required for same. Contract counterparties shall have the opportunity to object to the assumption and/or assignment of any such executory contract or unexpired lease and/or other agreement and to the proposed cure amount related thereto, and to the extent not resolved consensually prior to the Sale Hearing (as defined below), the Bankruptcy Court shall resolve any such objection at the Sale Hearing (or other date set by the Bankruptcy Court).

## **II. STALKING HORSE BIDDER**

**A.** SPSSM is the stalking horse bidder (the "Stalking Horse Bidder") and the purchaser under the Asset Purchase Agreement to purchase the Property for Eleven Million Three Hundred Thousand Dollars (\$11,300,000.00) (the "Cash Component"), and such amount is the starting bid (the "Starting Bid"). The Purchase Price also includes other components, including Assumed Contracts (as defined in the Asset Purchase Agreement). The Starting Bid is subject to overbid and an auction as set forth herein as well as Bankruptcy Court approval.

**B.** For the purposes of these Bid Procedures, subject to SPSSM paying the "Deposit" as required under the Asset Purchase Agreement, SPSSM is a Qualified Bidder, as defined herein.

**C.** Subject to approval of the Bankruptcy Court, in recognition of SPSSM's (as the Stalking Horse Bidder) expenditure of time, energy and resources, if the Sale of the Property with SPSSM does not close with SPSSM but closes with another Bidder, or if another Bidder is the Successful Bidder but the Sale does not close with such other Bidder and such other Bidder's Deposit (or portion thereof) is forfeited, SPSSM will be paid a fixed break-up fee of \$100,000.00 (the "Break-Up Fee"). In the event SPSSM is entitled to the Break-Up Fee, the Break-Up Fee shall be paid to SPSSM at the time of the closing of the Sale or within five (5) business days after the forfeiture and release of the Deposit (or portion thereof) to the Trustee or the Estate, whichever occurs first.



### III. DUE DILIGENCE

A. Neither the Debtor, the Trustee, nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Property except as ordered by the Bankruptcy Court. Each interested bidder (a "Potential Bidder") is free to review filings made in the Bankruptcy Case and other public filings and information as it desires; provided, nothing herein precludes the Debtor, the Trustee or any other person or entity in their discretion from voluntarily providing information or access to the Property to Potential Bidders.<sup>3</sup>

B. Each Potential Bidder and Bidder shall be deemed to acknowledge that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection with the bidding process.

### IV. BID DEADLINE AND DISTRIBUTION OF QUALIFIED BIDS

A. Bid Deadline. Except as set forth in Article V hereof, a Potential Bidder that desires to make a Bid shall deliver written copies of its completed Bid Package to the Trustee as follows: c/o Christopher Celentino, Esq., Ballard Spahr LLP, 655 W. Broadway, Suite 1600, San Diego, California 92101, Telephone: 619-696-9200, Facsimile: 619-696-9269, e-mail: celentinoc@ballardspahr.com, not later than 5:00 p.m. prevailing Pacific Time on \_\_\_\_\_, 2017 (the "Bid Deadline"). A Bid will not be considered by the Trustee, and will not qualify as a Qualified Bid, unless the Bid Package is actually received by the Trustee, either hard copy or electronically, including evidence of the completion of the wire transfer or delivery of the cashier's check for the Deposit, on or prior to the Bid Deadline.

B. Transmission of Bids to Counsel for the Debtor, and to all Qualified Bidders. The Trustee shall transmit a summary of all Qualified Bids received by the Bid Deadline (including the identity of the Bidder), via e-mail, to James Tiemstra, counsel for the Debtor, and to all Qualified Bidders by 5:00 p.m., prevailing Pacific Time within two (2) business days after the Bid Deadline.

### V. BID PACKAGES

A. Bid Amount. In order for a Potential Bidder's initial bid to purchase the Property (each a "Bid") to qualify for consideration (upon such qualification, the Potential Bidder making such Qualified Bid (as defined herein) shall become a "Bidder"), the Cash Component of such Bid must be at least Eleven Million Four Hundred Twenty-Five Thousand Dollars (\$11,425,000.00) (the "Initial Overbid"). The Initial Overbid includes the amount of the Break-Up Fee. Under the Estate's listing agreements (the "Listing Agreements") with Keller Williams Silicon Beach Commercial (the "Broker"), subject to approval of the Bankruptcy Court, there will be a commission on the Sale of 1% to 4% depending on the identity of the Successful Bidder. The commission payable under the Asset Purchase Agreement with the Stalking Horse Bidder is 3.5%. Accordingly, if the actual commission payable based upon the Successful Bid is lower than 3.5%, the Successful Bidder will be entitled to either (i) a credit towards the purchase price in the amount equal to the difference between a commission calculated at 3.5% (i.e. the commission if SPSSM is the Successful Bidder) and the actual lower commission, or (ii) a reduction in the purchase price to the level that after taking into account the actual lower commission, results in the same after-commission proceeds to the Estate as a transaction with a 3.5% commission; provided, the commission will be calculated on the purchase price before reduction. Similarly, if the actual commission payable based upon the Successful Bid is greater than 3.5%, the purchase price payable by the Successful Bidder at closing shall be increased to the level that after taking into account the actual higher commission, results in the same after-commission proceeds to the Estate as a transaction with 3.5% commission; provided, the commission will be calculated on the purchase price before increase.

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<sup>3</sup> No such information, if any, shall act as a representation or warranty of any kind and shall not affect or modify the "AS IS, WHERE IS" nature of the Sale as provided in Article I.C above.

**B. Bid Packages.** In order for a Potential Bidder's initial Bid to qualify for consideration (upon such qualification, the Potential Bidder making such Qualified Bid (as defined herein) shall become a "Bidder"), such Bid must also consist of the following information and items (collectively, the "Bid Package") and be delivered to the Trustee as follows: c/o Christopher Celentino, Esq., Ballard Spahr LLP, 655 W. Broadway, Suite 1600, San Diego, California 92101, Telephone: 619-696-9200, Facsimile: 619-696-9269, e-mail: celentinoc@ballardspahr.com, so that it is actually received by no later than the Bid Deadline, without extension:

1. **Copy of Asset Purchase Agreement.** A written offer in the form of the Asset Purchase Agreement executed by the Bidder or its duly-authorized representative (if an entity), to acquire the Property for an exact amount of consideration, in U.S. Dollars, which must:

- a. provide such consideration payable by wire transfer at closing;
- b. be unconditional, save and except for Bankruptcy Court approval, and without limiting the generality of the foregoing, must not be conditioned upon acceptance of one or more other bids, financing or additional due diligence, and shall not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment;
- c. be for the entirety of the Property as described in the Asset Purchase Agreement; and
- d. contain the same or substantially identical terms and conditions as the Asset Purchase Agreement, or such other "other" terms as determined by the Bankruptcy Court.

2. A "redlined" or otherwise marked copy of the Asset Purchase Agreement reflecting any revisions, changes and differences made to conform the Asset Purchase Agreement to the Bidder's Asset Purchase Agreement, provided that such Asset Purchase Agreement shall not be effective until such Bidder is declared the Successful Bidder or Backup Bidder (and the Asset Purchase Agreement may be required to be conformed to the Successful Bid or Backup Bid) as provided in these Bid Procedures.

3. The Bidder's written, binding commitment that:

- a. the Bid, including the Deposit, is irrevocable until the closing of the Sale;
- b. the Bidder agrees to keep its Bid confidential except to the extent that disclosure is expressly contemplated or provided in these Bid Procedures;
- c. if the Bidder is selected as the Successful Bidder, such Bidder is ready, willing and able to close on the purchase of the Property with no contingencies whatsoever, other than Bankruptcy Court approval of the transaction; and
- d. if the Bidder is selected as the Backup Bidder, then should the Sale to the Successful Bidder fail to close for any reason and the Trustee notifies the Backup Bidder that it has elected to sell the Property to the Backup Bidder then the Backup Bidder is ready, willing and able to close on the purchase of the Property with no contingencies whatsoever other than Bankruptcy Court approval of the transaction, within two (2) business days of receipt of written notice from the Trustee of such election.

4. Satisfactory financial information (as determined in the Trustee's sole discretion) demonstrating an ability to close and consummate the transaction proposed under the Bid and to perform all obligations associated therewith:

- a. recent financial statements of the Bidder (or if the Bidder is an entity recently formed for the purpose of acquiring the Property, current financial statements of one or more direct or indirect equity holder(s) of the Bidder), current audited financial statements, a non-contingent financing commitment from an accredited financial institution, copies of current statements or correspondence from a bank or other accredited financial institution evidencing that the Bidder has sufficient liquid assets available to consummate the Sale and to perform all ongoing obligations associated therewith (together with a certification under oath that such assets shall not be withdrawn until the closing of the Sale (if the Bidder is the Successful Bidder or Backup Bidder) or until after the Auction (if the Bidder is not the Successful Bidder or Backup Bidder), as applicable), or other evidence reasonably satisfactory to the Trustee; and
- b. such other or alternative financial disclosure acceptable to the Trustee (including evidence that the Bidder has adequate resources to close the transaction) which demonstrates the financial capability of the Bidder to both consummate the Sale through its specific Bid and provide "adequate assurance of future performance," within the meaning of § 365(f)(2)(B) of the Bankruptcy Code, in relation to any executory contracts and unexpired leases and/or other agreements to be assumed and assigned to such Bidder under the proposed transaction.
- c. Without limiting the foregoing, evidence of financial capability means at a minimum the provision of documentation establishing the unconditional availability of funds or unconditional loan commitments to the Bidder sufficient to pay the Bid consideration in cash.

5. Evidence that the Bidder has obtained the requisite internal and legal authorizations and approvals necessary to consummate the proposed transaction without the necessity of obtaining the consent of any other person or entity;

6. A written statement identifying all of the Bidder's (including its officers, directors, shareholders, general partners, limited partners, managing members, managers, financial partners, and/or members, as applicable) connections (if any) with the Debtor, the Debtor's creditors, the Trustee, and any other party in interest in the Bankruptcy Case known to the Bidder;

7. A written statement setting forth any post-closing relationship or connection the Bidder contemplates having with the Debtor (including any officer, director, shareholder, member, insider or affiliate of the Debtor), including a description of the Bidder's plans (if any) to employ or otherwise retain any of the Debtor's employees if it successfully acquires the Property;

8. A cashier's check made payable to the Trustee (to be held in trust), as representative of the Estate for purposes of these Bid Procedures, or a wire transfer, in an amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) (the "Deposit"). Wire instructions shall be provided upon request. Among other things, the Bankruptcy Court's order approving these Bid Procedures shall expressly provide for the Bidder's forfeiture of the Deposit if:

- a. the Bidder is determined to be a Qualified Bidder and withdraws its Bid or withdraws any subsequent Increased Bid before the announcement of the Successful Bidder and Backup Bidder;
- b. the Bidder is determined to be the Successful Bidder and attempts to modify or withdraw its Bid or any subsequent Increased Bid (as defined below) without closing the Sale transaction pursuant to such Bid or order of the Bankruptcy Court;

- c. the Bidder is determined to be the Backup Bidder and attempts to modify or withdraw its designated Backup Bid prior to closing on the Sale, unless the Sale shall have closed with the Successful Bidder; or
- d. the Successful Bidder or Backup Bidder, as applicable, fails to close without any fault of the Trustee or the Estate.

The Deposit shall be returned to the Bidder if (i) the Bidder is determined not to be a Qualified Bidder, (ii) the Bidder is determined not to be the Successful Bidder or Backup Bidder, or (iii) the Bidder is determined to be the Backup Bidder and the Sale is closed with the Successful Bidder. Deposits shall be returned, as applicable, interest free, within five (5) business days following the Auction, provided however, that in the case of the Backup Bidder, its Deposit shall be returned, interest free, within five (5) business days of the closing of the Sale to the Successful Bidder. The Deposit shall be applied to the Purchase Price upon closing.

9. A completed "Bidder Information Sheet" in the form of Exhibit "A" attached hereto.

C. Form of Asset Purchase Agreement Required. In addition to the foregoing requirements, the Bid and Bidder's Asset Purchase Agreement (i) shall not contain terms that are materially more burdensome or conditional than the terms of the Asset Purchase Agreement, (ii) shall not be conditioned on the Bidder obtaining financing or additional due diligence, and (iii) shall not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment.

## VI. QUALIFIED BIDDERS

A. Only those Bidders who submit a Bid Package in strict compliance with all of the foregoing requirements on or before the Bid Deadline shall be entitled to have their respective Bids (a "Qualified Bid") considered by the Trustee (such a Bidder referred to herein as a "Qualified Bidder"). Each Qualified Bidder shall be notified of such designation by the Trustee. A Bidder who timely submits a written Bid but fails to satisfy all of the above requirements shall be promptly notified by the Trustee and given an opportunity to promptly cure such defects to the satisfaction of the Trustee, in his reasonable discretion. Only Qualified Bidders shall be allowed to participate at the Auction. Subject to SPSSM paying the "Deposit" as required under the Asset Purchase Agreement, SPSSM is deemed a Qualified Bidder. The Bankruptcy Court shall reserve jurisdiction to determine whether any Bidder is a Qualified Bidder and whether any Bid is a Qualified Bid.

## VII. CREDIT BIDDING/LIENHOLDERS

A. Pursuant to Section 363(k) of the Bankruptcy Code, a holder of Lien against the Property securing an allowed claim (each such holder, a "Secured Claim Holder," and each such allowed claim, as determined by the Bankruptcy Court, an "Allowed Secured Claim"), unless the Bankruptcy Court orders otherwise, may bid at the Auction, and if the Secured Claim Holder is the Successful Bidder (or Backup Bidder who purchases the Property), such holder may offset its Allowed Secured Claim against the purchase price of the Property, subject to the additional terms hereof:

1. A Secured Claim Holder who desires to be a Bidder must submit a Bidder Information Sheet and Bid Package prior to the Bid Deadline.
2. The Bankruptcy Court will determine the amount of the Secured Claim Holder's Allowed Secured Claim that is permitted to be "credit bid" towards and offset against the purchase price of the Property.

## VIII. THE AUCTION

A. Time and Place of Auction. The Auction will occur only if more than one Qualified Bid for the Property is received by the Trustee by the Bid Deadline. If no Qualified Bid is made other than the deemed

Qualified Bid made by SPSSM,<sup>4</sup> such Bid (i.e. the SPSSM Bid) shall be submitted to the Bankruptcy Court for approval at the Sale Hearing without the need for an Auction.

1. If an Auction is held, the Auction will be conducted on \_\_\_\_\_, 2017, at 10:00 a.m., prevailing Pacific Time, at the Bankruptcy Court before the Honorable Sheri Bluebond, United States Bankruptcy Court, Central District of California, 255 East Temple Street, Courtroom 1539, Los Angeles, California 90012. Attendance at the Auction must be in person or by an authorized representative.

**B. Auction Procedures.** The Bankruptcy Court will conduct the Auction in the manner that it determines is likely to result in the highest, best, or otherwise financially superior offer(s) for the Property taking into account the circumstances of the Case. In conducting the Auction, the following procedures (collectively, the "Auction Procedures") shall apply:

1. Prior to the Auction, the Trustee shall provide all Qualified Bidders with the amount of what the Trustee considers to be the highest and best Bid received, as determined by the Trustee taking into account all matters as the Trustee deems relevant (including price, including the cash and other consideration, modifications to the Asset Purchase Agreement, closing risk, risk of delay, financial condition and such other factors as the Trustee may deem relevant) (the "Qualified Opening Bid"), and the need to qualify for at least that amount in order to participate in the Auction. Qualified Bidders must qualify up to the amount of the Qualified Opening Bid in order to attend the Auction. Qualified Bidders who submit an Increased Bid above the level to which they have demonstrated financial capability to consummate a transaction to the satisfaction of the Trustee may be required to provide proof of their ability to consummate the Increased Bid prior to acceptance of such an Increased Bid. All Bidders are encouraged to prequalify to the amount for which they may wish to bid or to bring proof of financial capability at such higher level with them to the Auction.

2. At the outset of the Auction, the Trustee shall advise the Bankruptcy Court of the Qualified Opening Bid determined by the Trustee to be the highest and best Bid received, taking into account all relevant factors. The Bankruptcy Court shall then confirm and/or determine which Bid it determines to be the highest and best Bid, taking into account all relevant factors, which Bid shall be the "Opening Bid." Qualified Bidders will be permitted to increase their Bids at the Auction (each such increased Bid, an "Increased Bid"), provided however that:

- a. The minimum amount of increased consideration required for each successive Increased Bid (the "Minimum Bid Increment") after the Initial Overbid will be \$25,000;
- b. Qualified Bidders are free to submit an Increased Bid in an amount in excess of the Minimum Bid Increment; and
- c. Qualified Bidders may submit Increased Bids at the Auction by submitting the Increased Bid amount to the Trustee and the Bankruptcy Court verbally at the Auction.

3. Any party in interest in the Bankruptcy Case may challenge whether any Bidder is a Qualified Bidder and whether any Bid is a Qualified Bid; having made its payment of the "Deposit" as required under the Asset Purchase Agreement, SPSSM is deemed to be a Qualified Bidder and having made a Qualified Bid.

4. The Auction shall commence with the Opening Bid as confirmed or determined by the Bankruptcy Court. The Trustee and/or the Bankruptcy Court may limit a Bidder's time to submit a next Bid as determined reasonable by the Trustee or the Bankruptcy Court. All incremental Increased Bids at Auction shall be

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<sup>4</sup> Having submitted its "Deposit" as required under the Asset Purchase Agreement, SPSSM is deemed a Qualified Bidder, its proposed purchase under the Asset Purchase Agreement is deemed a Qualified Bid, and it is not required to submit a Bid Package.

made and received in one room, on an open basis, and all Qualified Bidders shall be entitled to be present for all bidding with the understanding that the amount of each Increased Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

5. The Qualified Bidder with the highest and best final Bid for the Property at the close of the Auction (the "Successful Bid"), as advised by the Trustee, but subject to determination and confirmation by the Bankruptcy Court, shall be the "Successful Bidder." The Bankruptcy Court's final determination of what constitutes the first and second "highest and best" Bids will be based upon the exercise of the Trustee's and the Bankruptcy Court's discretion and may take into consideration price (including the cash and other consideration under the Asset Purchase Agreement), modifications to the Asset Purchase Agreement, closing risk, risk of delay, financial condition, and such other factors as the Trustee and/or the Bankruptcy Court may deem relevant. The Qualified Bidder having the next highest Bid below the Bid of the Successful Bidder (the "Backup Bid"), as determined and confirmed by the Bankruptcy Court shall be the "Backup Bidder."

- a. The Successful Bid shall remain open, irrevocable and binding on the Successful Bidder until the closing of the Sale and shall be deemed withdrawn only in the event it is not approved by the Bankruptcy Court.
- b. The Backup Bid shall remain open, irrevocable and binding on the Backup Bidder until the closing of the Sale to the Successful Bidder.
- c. No Successful Bid or Backup Bid is binding on the Trustee or the Estate until the Bankruptcy Court enters an Order approving the Sale of the Property to the Successful Bidder / Backup Bidder.
- d. Bids attempted to be made after the Auction is closed by the Bankruptcy Court are automatically disqualified.

6. At the conclusion of the Auction, the Bankruptcy Court shall declare the identity of the Successful Bidder and the Backup Bidder to all parties present at the Auction.

7. The Bankruptcy Court, in consultation with the Trustee, may adopt such other Auction procedures that, in the Bankruptcy Court's reasonable judgment, will best promote the goal of a fair and competitive bidding process consistent with these Bid Procedures and any applicable Bankruptcy Court orders.

8. At the conclusion of the Auction:

- a. The Successful Bidder and the Backup Bidder shall modify and execute the Asset Purchase Agreement to be consistent with the results of the Auction promptly after the Auction (but in any event within three (3) business days thereafter); and
- b. If the Successful Bidder fails to close due to the Successful Bidder's breach or default, without fault of the seller under the terms of the Asset Purchase Agreement, the Estate shall retain the Deposit.

## IX. SALE HEARING

A. The Trustee has filed a motion for approval of the Sale of the Property, subject to the completion of the sale process set out in these Bid Procedures (the "Sale and Bid Procedures Motion"). The Sale and Bid Procedures Motion seeks approval of the Sale. The Bankruptcy Court will hold a hearing to approve the Sale (the "Sale Hearing") immediately after conclusion of the Auction, at which hearing it will consider approval of the Sale to the Successful Bidder at the Auction.

**X. MISCELLANEOUS**

**A.** A party's participation in the sale process outlined herein shall constitute: (i) consent by such party to be subject to the jurisdiction of the Bankruptcy Court, for all purposes, in connection with any and all matters relating to the Sale of the Property and these Bid Procedures; and (ii) the party's acknowledgment of its review, understanding and acceptance of all of the Bid Procedures outlined herein.

**EXHIBIT "A"**

**BIDDER INFORMATION SHEET**

The following information is hereby provided by the Potential Bidder (as defined below) in accordance with the Bid Procedures approved by order of the United States Bankruptcy Court for the Central District of California in the case of BGM Pasadena, LLC, Case No. 2:15-bk-27833-BB (the "Bid Procedures"). Unless separately defined herein, all capitalized terms shall have the meanings assigned to them in the Bid Procedures.

**POTENTIAL BIDDER'S NAME:**

\_\_\_\_\_ ("Potential Bidder")

TAX IDENTIFICATION NUMBER: \_\_\_\_\_

**POTENTIAL BIDDER'S ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**POTENTIAL BIDDER'S LEGAL COUNSEL:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AUTHORIZED OFFICER(S)/AGENT(S):\***

\*such individuals as have been authorized to act on behalf of Potential Bidder in communicating on matters regulated by the Bid Procedures:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

[add additional names and contact information as appropriate]

**ACKNOWLEDGMENT**

By signing below, the undersigned (as the Potential Bidder or as the representative of the Potential Bidder authorized to execute and submit this Bidder Information Sheet on behalf of the Potential Bidder) hereby (i) represents that Potential Bidder has a bona fide interest in submitting a Bid for the purchase of the Property, as defined in the Bid Procedures, and that Potential Bidder is hereby submitting this executed Bidder Information Sheet to participate in the sale process established under the Bid Procedures; (ii) acknowledges that the undersigned has reviewed and understands all of the Bid Procedures and that Potential Bidder accepts and agrees to be bound by all of the Bid Procedures; (iii) acknowledges Potential Bidder's consent to be subject to the jurisdiction of the United States Bankruptcy Court for the Central District of California, for all purposes, in connection with any and all matters relating to the Sale of the Property and the Bid Procedures; and (iv) certifies, under penalty of perjury, that pursuant to Article V.4.a. of the Bid Procedures, the Potential Bidder has liquid assets sufficient to consummate the Sale and to perform all on-going obligations associated therewith and will not withdraw such assets until the closing of the Sale (if the Potential Bidder is the Successful Bidder or Backup Bidder) or until after the Auction (if the Potential Bidder is not the Successful Bidder or Backup Bidder), as applicable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[signature] [to be acknowledged on next page]  
Title: \_\_\_\_\_



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT "B"**

**SALE FREE AND CLEAR OF THE FOLLOWING LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES**

Affecting the property located at 210 South Orange Boulevard, Pasadena, California (the "210 Property"):

1. Liens to secure an original indebtedness of approximately \$4,850,000.00 as evidenced by (A) a Deed of Trust recorded July 21, 2005 as Instrument 20151721790 in the Official Records of Los Angeles County, California (the "Official Records"), and (B) an Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits (Fee) recorded July 21, 2005 as Instrument No. 21051721791 in the Official Records, each originally made by Debtor in favor of Citizens Business Bank, a California corporation ("CBB"), as beneficiary, and purportedly assigned by CBB to Cantor Group, LLC, a California limited liability company ("Cantor").

2. Liens for homeowners association assessments (A) in favor of Ambassador West Master Association ("AWMA") in an original amount of approximately \$7,807.06, as evidenced by a notice recorded May 11, 2015 as Instrument No. 20150539838 of Official Records, (B) in favor of Ambassador Cost Center 3 in an original amount of approximately \$1,882.60, as evidenced by a notice recorded May 22, 2015 as Instrument No. 20150604033 in the Official Records, (C) in favor of Ambassador Cost Center 4 ("ACC4") in an original amount of approximately \$1,542.64, as evidenced by a notice recorded May 22, 2015 as Instrument No. 20150604034 in the Official Records, (D) in favor of Ambassador Cost Center 5 ("ACC5") in an original amount of approximately \$809.87, as evidenced by a notice recorded June 16, 2015 as Instrument No. 20150710358 in the Official Records, (E) in favor of ACC5 in an original amount of approximately \$3,704.04, as evidenced by a notice recorded August 03, 2016 as Instrument No. 20160914361 in the Official Records, and (F) in favor of ACC4 in an original amount of approximately \$8,862.12, as evidenced by a notice recorded August 03, 2016 as Instrument No. 20160914362 in the Official Records.

Affecting the property located at 244-248 South Orange Boulevard, Pasadena, California (the "244-248 Property"):

3. Liens to secure an original indebtedness of approximately \$4,850,000.00, as evidenced by (A) a Deed of Trust recorded July 21, 2005 as Instrument 20151721792 in the Official Records of Los Angeles County, California, and (B) an Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits (Fee) recorded July 21, 2005 as Instrument No. 21051721793 in the Official Records, each originally made by Debtor in favor of CBB, as beneficiary, and purportedly assigned by CBB to Cantor.

4. Lien for a homeowners association assessment in favor of AWMA in an original amount of approximately \$18,161.45, as evidenced by a notice recorded May 11, 2015 as Instrument No. 20150539839 of Official Records.

Affecting both the 210 Property and 244-248 Property:

5. Liens to secure an original indebtedness of approximately \$1,500,000.00, to the extent not previously fully released, as evidenced by (A) a Deed of Trust recorded October 4, 2005 as Instrument No. 20052388338 in the Official Records, originally made by Debtor in favor of Dove Street Capital Lenders, LLC, a California limited liability company ("Dove Street"), as beneficiary, as modified by a document recorded November 30, 2006 as Instrument No. 20062651097 in the Official Records, and purportedly assigned by Dove Street to Pasadena Apts-7 LLC, a Delaware limited liability company ("PA 7"), and (B) a financing statement recorded October 4, 2005 as Instrument No. 20052388339 in the Official Records naming Debtor as the debtor and Dove Street as secured party.

6. Lien to secure an original indebtedness of approximately \$4,102,800.00, as evidenced by a Deed of Trust recorded October 27, 2006 as Instrument No. 20062387278 in the Official Records, originally made by Debtor in favor of Keith B. Smith, as Trustee of The Smith Trust dated August 7, 1990 (the "Smith Trustee").

7. Lien to secure an original indebtedness of approximately \$2,500,000.00, to the extent not previously released, as evidenced by a Deed of Trust recorded May 25, 2007 as Instrument No. 20071276046 in the Official Records, made by Debtor in favor of East West Bank, as beneficiary, as modified by a document recorded December 5, 2013 as Instrument No. 20131716501 in the Official Records.

8. Liens to secure an original indebtedness of approximately \$1,662,747.00, to the extent not previously fully released , as evidenced by (A) a Deed of Trust recorded October 22, 2007 as Instrument No. 20072389808 in the Official Records, originally made by Debtor in favor of Dove Street, as beneficiary, as modified by a document recorded October 22, 2007 as Instrument No. 20072389810 in the Official Records, and purportedly assigned by Dove Street to PA 7, and (B) a financing statement recorded October 22, 2007 as Instrument No. 20072389809 in the Official Records naming Debtor as the debtor and Dove Street as secured party.

9. Lien to secure an original indebtedness of approximately \$900,000.00, as evidenced by a Deed of Trust recorded March 26, 2008 as Instrument No. 2008518303 in the Official Records, made by Debtor in favor of Bernice P. Einum, on behalf of and as Trustee of the Einum Trust dated June 27, 1988, as beneficiary.

10. A claim of lien in favor of Pasadena Lots-70, LLC, a Delaware limited liability company ("PL-70"), for a purported breach of Site Development Agreement in an original amount of approximately \$281,183.86, as evidenced by a document recorded July 3, 2013 as Instrument No. 20130984259 in the Official Records.

11. Claims arising from a lawsuit brought by PL-70, as plaintiff, against Debtor, as defendant, as disclosed by a notice of pendency of action recorded February 12, 2014 as Instrument No. 20140154208 in the Official Records.

12. Lien for unsecured property taxes (A) in an amount of approximately \$969.21, as evidenced by a certificate recorded by the tax collector of Los Angeles County on March 04, 2014 as Instrument No. 20140218204 in the Official Records, and (B) in an amount of approximately \$18,199.80, as evidenced by a certificate recorded by the tax collector of Los Angeles County on April 07, 2014, as Instrument No. 20140345051 in the Official Records.

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**EXHIBIT "C"**

Bid and Sale Notice

1 Christopher Celentino, State Bar No. 131688  
Mikel R. Bistrow, State Bar No. 102978  
2 Peter W. Bowie, State Bar No. 50168  
Dawn A. Messick, State Bar No. 236941

3 **BALLARD SPAHR LLP**  
655 West Broadway, Suite 1600  
4 San Diego, CA 92101-8494  
Telephone: 619.696.9200  
5 Facsimile: 619.696.9269  
Email: celentinoc@ballardspahr.com  
6 bistrowm@ballardspahr.com  
bowiep@ballardspahr.com  
7 messickd@ballardspahr.com

8 Counsel to the Chapter 11 Trustee,  
Peter J. Mastan  
9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **LOS ANGELES DIVISION**

13 In re:  
14 BGM PASADENA, LLC, a Delaware limited  
liability company,  
15 Debtor.  
16  
17

Case No. 2:15-bk-27833-BB

Chapter 11

**NOTICE OF BID DEADLINE AND  
AUCTION IN CONNECTION WITH THE  
SALE OF CERTAIN PROPERTY OF THE  
ESTATE**

**NOTICE**

1  
2 **PLEASE TAKE NOTICE** that, on \_\_\_\_\_, 2017, Peter J. Mastan (the "Trustee")  
3 filed a Motion for Entry of (I) an Order (A) Approving Sale and Bid Procedures in Connection  
4 with Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests, (B)  
5 Approving the Form and Manner of Notice, (C) Scheduling an Auction and Sale Hearing, (D)  
6 Approving Procedures for Determining Cure Amounts, and (E) Approving Break-Up Fee; and (II)  
7 an Order (A) Approving the Sale of Assets Pursuant to an Agreement of Purchase and Sale and  
8 Joint Escrow Instructions, and (B) Approving Assumption and Assignment of Certain Executory  
9 Contracts and Unexpired Leases and Other Agreements [Docket No. \_\_\_\_] (as at any time  
10 amended, the "Sale Motion") with the United States Bankruptcy Court for the Central District of  
11 California (the "Bankruptcy Court").

12 **PLEASE TAKE FURTHER NOTICE** that on \_\_\_\_\_, 2017, the Bankruptcy Court  
13 entered its Order (I) (A) Approving Sale and Bid Procedures in Connection with Sale of Property  
14 Free and Clear of All Liens, Claims, Encumbrances and Interests, (B) Approving the Form and  
15 Manner of Notice, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for  
16 Determining Cure Amounts, and (E) Approving Break-Up Fee (the "Sale and Bid Procedures  
17 Order").

18 **PLEASE TAKE FURTHER NOTICE** that by its Sale and Bid Procedures Order, the  
19 Bankruptcy Court approved the Sale and Bid Procedures attached as Exhibit "B" to the Sale and  
20 Bid Procedures Order (the "Sale and Bid Procedures"). You should refer to the Sale and Bid  
21 Procedures Order for more particulars.

22 **PLEASE TAKE FURTHER NOTICE** that an Auction (as defined in the Sale and Bid  
23 Procedures) will be conducted for the sale of the property defined as the "Property" in the Asset  
24 Purchase Agreement (defined in the Sale and Bid Procedures Order) (the "Property") in the  
25 United States Bankruptcy Court for the Central District of California, located at 255 East Temple  
26 Street, Los Angeles, California 90012, Courtroom 1539, at which time all Qualified Bidders (as  
27 such term is defined in the Sale and Bid Procedures) may bid and participate in the Auction  
28 pursuant to the terms of the Sale and Bid Procedures. As described in the Sale and Bid  
Procedures and the Sale Motion, bids are being solicited for the Property. The Bid Deadline (as  
such term is defined in the Sale and Bid Procedures) is \_\_\_\_\_, 2017 at 5:00 p.m. (prevailing  
Pacific Time). Only bidders who submit bids in accordance with the Sale and Bid Procedures  
will be allowed to participate in the Auction.

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the complete terms  
and conditions of the Sale Motion, the Sale and Bid Procedures and the Sale and Bid Procedures  
Order, which shall control in the event of any conflict, and all parties in interest are encouraged to  
review such documents in their entirety. Copies of these pleadings as well as the Asset Purchase  
Agreement may be obtained by written request to counsel to the Trustee, 655 West Broadway,  
Suite 1600, San Diego, California 92101, Attn: Christopher Celentino. In addition, copies of the  
aforementioned pleadings and the Asset Purchase Agreement may be found at the Bankruptcy  
Court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), and are on file with the Bankruptcy Court and available  
for inspection during regular business hours at the office of the Clerk of the Bankruptcy Court,  
United States Bankruptcy Court for the Central District of California, 255 East Temple Street,  
Los Angeles, California 90012.

1 PLEASE TAKE FURTHER NOTICE that in the event that the hearing on the Sale (the  
2 "Sale Hearing") will be held immediately following the Auction, and is currently scheduled to be  
3 held before the Bankruptcy Court immediately following conclusion of the Auction. The Sale  
4 Hearing may be adjourned, from time to time, by announcement of adjournment in open court or  
5 on the Bankruptcy Court's docket.

6 PLEASE TAKE FURTHER NOTICE THAT ANY OBJECTIONS TO FINAL  
7 APPROVAL OF THE SALE, FREE AND CLEAR OF ALL LIENS, CLAIMS  
8 ENCUMBRANCES AND OTHER INTERESTS, AS AUTHORIZED BY AND PURSUANT  
9 TO THE BANKRUPTCY CODE, THE SALE MOTION, THE SALE AND BID  
10 PROCEDURES, THE SALE AND BID PROCEDURES ORDER AND AS SET FORTH IN  
11 THE ASSET PURCHASE AGREEMENT, MUST BE IN WRITING, FILED AND  
12 SERVED SO AS TO BE ACTUALLY RECEIVED BY \_\_\_\_\_, 2017 BY THE  
13 BANKRUPTCY COURT AND THE TRUSTEE'S COUNSEL, 655 WEST BROADWAY,  
14 SUITE 1600, SAN DIEGO, CALIFORNIA 92101, ATTN: CHRISTOPHER CELENTINO.

15 PLEASE TAKE FURTHER NOTICE THAT THE FAILURE TO ABIDE BY THE  
16 DEADLINES SET FORTH HEREIN, IN THE SALE AND BID PROCEDURES ORDER  
17 AND/OR THE SALE AND BID PROCEDURES MAY RESULT IN THE FAILURE OF  
18 THE BANKRUPTCY COURT TO CONSIDER A COMPETING BID OR AN  
19 OBJECTION TO THE PROPOSED SALE TRANSACTION.

20 Dated: \_\_\_\_\_, 2017

BALLARD SPAHR LLP

21 By: \_\_\_\_\_

22 Christopher Celentino  
23 Mikel R. Bistrow  
24 Peter W. Bowie  
25 Dawn A. Messick  
26 Counsel to the Chapter 11 Trustee,  
27 Peter J. Mastan  
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**EXHIBIT "D"**

Contract Assumption Notice



1 Christopher Celentino, State Bar No. 131688  
Mikel R. Bistrow, State Bar No. 102978  
2 Peter W. Bowie, State Bar No. 50168  
Dawn A. Messick, State Bar No. 236941

3 **BALLARD SPAHR LLP**  
655 West Broadway, Suite 1600  
4 San Diego, CA 92101-8494  
Telephone: 619.696.9200  
5 Facsimile: 619.696.9269  
Email: celentinoc@ballardspahr.com  
6 bistrowm@ballardspahr.com  
bowiep@ballardspahr.com  
7 messickd@ballardspahr.com

8 Counsel to the Chapter 11 Trustee,  
Peter J. Mastan  
9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **LOS ANGELES DIVISION**

13 In re:  
14 BGM PASADENA, LLC, a Delaware limited  
liability company,  
15 Debtor.

Case No. 2:15-bk-27833-BB

Chapter 11

**NOTICE OF PROPOSED ASSUMPTION  
AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES AND OTHER  
AGREEMENTS**

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20 **PLEASE TAKE NOTICE** that the above-captioned debtor ("Debtor") filed a voluntary  
21 petition for relief under Chapter 11 of the United States Code (the "Bankruptcy Code") in the  
22 United States Bankruptcy Court for the Central District of California, Los Angeles Division (the  
23 "Bankruptcy") on November 20, 2015 (the "Petition Date").

24 **PLEASE TAKE FURTHER NOTICE** that on \_\_\_\_\_, 2017, Peter J. Mastan (the  
25 "Trustee") filed a motion [Docket No. \_\_\_] (as at any time amended, the "Sale Motion") seeking,  
26 among other things, the entry of an order of (I) an Order (A) Approving Sale and Bid Procedures  
27 in Connection with Sale of Property Free and Clear of All Liens, Claims, Encumbrances and  
28 Interests, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and Sale

1 Hearing, (D) Approving Procedures for Determining Cure Amounts, and (E) Approving Break-  
2 Up Fee; and (II) (A) Approving the Sale of Assets Pursuant to an Agreement of Purchase and  
3 Sale and Joint Escrow Instructions; and (B) Approving Assumption and Assignment of Certain  
4 Executory Contracts and Unexpired Leases and Other Agreements.

5 **PLEASE TAKE FURTHER NOTICE** that on \_\_\_\_\_, 2017 the Bankruptcy Court  
6 entered an order [Docket No. \_\_] (the "Sale and Bid Procedures Order") granting the relief  
7 sought in the Sale Motion (subject to the terms therein), including, among other things,  
8 approving (a) the Sale and Bid Procedures (the "Sale and Bid Procedures") for the sale of  
9 property (the "Sale") (as described in the Sale Motion), and (b) procedures for the assumption  
10 and assignment of executory contracts and unexpired leases and/or other agreements (the  
11 "Assumption and Assignment Procedures").

12 **PLEASE TAKE FURTHER NOTICE** that, if the Sale occurs, upon the closing of the  
13 Sale, the executory contracts and unexpired leases and other agreements (collectively, the  
14 "Assumed Contracts") set forth on the Schedule of Assumed Contracts attached hereto as Exhibit  
15 "A" (the "Schedule of Assumed Contracts") may be assumed and assigned to SPSSM  
16 Investments-IX, LP ("SPSSM"), or any other successful bidder in the Sale. In addition, the cure  
17 amounts, if any, necessary for the assumption and assignment of the Assumed Contracts (the  
18 "Cure Amounts") are set forth on the attached Schedule of Assumed Contracts.

19 **YOU ARE RECEIVING THIS NOTICE BECAUSE THE TRUSTEE HAS**  
20 **IDENTIFIED YOU AS A COUNTERPARTY ("COUNTERPARTY") TO AN ASSUMED**  
21 **CONTRACT.** Under the terms of the Assumption and Assignment Procedures, SPSSM or other  
22 successful bidder may modify the list of Assumed Contracts to add or delete executory contracts  
23 and unexpired leases or other agreements thereto or therefrom.

24 **Obtaining Additional Information**

25 Copies of the Sale and Bid Procedures Order, the Sale and Bid Procedures and other  
26 related documents may be obtained by written request to counsel to the Trustee, Ballard Spahr  
27 LLP, 655 West Broadway, Suite 1600, San Diego, California 92101-8494, Attn: Christopher  
28 Celentino. In addition, copies of the aforementioned pleadings may be found at the Bankruptcy

1 Court's website, www.cacb.uscourts.gov, and are on file with the Bankruptcy Court and available  
2 for inspection during regular business hours at the office of the Clerk of the Bankruptcy Court,  
3 United States Bankruptcy Court for the Central District of California, 255 East Temple Street,  
4 Los Angeles, California 90012.

5 **Filing Assumption and Assignment Objections**

6 Each Counterparty to an Assumed Contract on the Schedule of Assumed Contracts  
7 attached hereto shall have until \_\_\_\_\_, 2017 (the "365 Objection Deadline") to file with the  
8 Bankruptcy Court and serve upon the Trustee any objection (a "365 Objection") setting forth  
9 with particularity any objection to assumption and assignment of its contract, its asserted proper  
10 Cure Amount, documentation of same, and stating whether the objecting Counterparty may  
11 assert any objection to the assignment of its contract to the ultimate purchaser. Service shall be  
12 made to the Trustee's counsel as follows: Ballard Spahr LLP, 655 West Broadway, Suite 1600,  
13 San Diego, California 92101-8494, Attn: Christopher Celentino.

14 To the extent that any 365 Objection to the assumption and/or assignment of any  
15 executory contract or unexpired lease or other agreement included in the Asset Purchase  
16 Agreement (as defined in the Sale and Bid Procedures Order) and the Schedule of Assumed  
17 Contracts is not resolved consensually prior to the Sale Hearing, the Bankruptcy Court shall  
18 resolve any such objection at the Sale Hearing.

19 The Schedule of Assumed Contracts and the list of Assumed Contracts may be modified,  
20 added to or deleted from as provided in the Sale and Bid Procedures Order.

21 **IN THE ABSENCE OF A TIMELY 365 OBJECTION TO THE CURE AMOUNT**  
22 **OF THE PROPOSED ASSUMPTION AND ASSIGNMENT OF AN ASSUMED**  
23 **CONTRACT BY THE 365 OBJECTION DEADLINE, THE CURE AMOUNT SET**  
24 **FORTH IN THE SCHEDULE OF ASSUMED CONTRACTS SHALL BE**  
25 **CONTROLLING (OR SUCH LESSER AMOUNT ACTUALLY OWING) AND ANY**  
26 **COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE OR**  
27 **OTHER AGREEMENT IN THE SCHEDULE OF ASSUMED CONTRACTS WILL BE**  
28 **BARRED FROM ASSERTING AN INCONSISTENT POSITION IN CONNECTION**

1 WITH THE ASSUMPTION OR ASSIGNMENT OF ANY EXECUTORY CONTRACT  
2 OR UNEXPIRED LEASE OR OTHER AGREEMENT; AND SUCH COUNTERPARTY  
3 WILL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND  
4 ASSIGNMENT OF SUCH ASSUMED CONTRACT.

5 Dated: \_\_\_\_\_, 2017

BALLARD SPAHR LLP

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By: \_\_\_\_\_  
Christopher Celentino  
Mikel R. Bistrow  
Peter W. Bowie  
Dawn A. Messick  
Counsel to the Chapter 11 Trustee,  
Peter J. Mastan

**EXHIBIT "A"**

**Schedule of Assumed Contracts**

1. Lease (including amendment and assignment) with Dorn Platz Management, Inc.,  
210 S. Orange Grove  
Estimated Cure Amount: \$0
2. Lease with Jule Selbo and Mark Winkworth, 244 S. Orange Grove # 103  
Estimated Cure Amount: \$0
3. Lease with Greg Galletly and Deborah Galletly, 244 S. Orange Grove #104  
Estimated Cure Amount: \$0
4. Lease with Joy Bass, 244 S. Orange Grove #203  
Estimated Cure Amount: \$0
5. Lease with Albert Hasson, 244 S. Orange Grove #204  
Estimated Cure Amount: \$0
6. Lease with Vincent Rojas and Kathleen Rojas, 248 S. Orange Grove #101  
Estimated Cure Amount: \$0
7. Lease with Walter Whitman Moore and Judith A. Moore, 248 S. Orange Grove #102  
Estimated Cure Amount: \$0
8. Lease with Chris Johnson and Laura Johnson, 248 S. Orange Grove #201  
Estimated Cure Amount: \$0
9. Lease with VXI Global Solutions (Dave Palmer and Nicolle Palmer), 248 S. Orange  
Grove #202  
Estimated Cure Amount: \$0
10. Contract with Athens Services, PO Box 60009, City of Industry, CA 91716-0009  
Contract for waste removal  
Estimated Cure Amount: \$0
11. Contract with Dorn Platz Management, Inc.  
Management Agreement  
Estimated Cure Amount: \$0
12. Contract with Kioumehr Family Trust, Firouz Mosharraf, 990 S. Los Robles Ave.,  
Pasadena, CA 91106  
License Agreement for waste  
Estimated Cure Amount: \$0
13. Maranatha High School, 169 South Saint John Avenue, Pasadena, CA 91105  
Contract for chilled water supply  
Estimated Cure Amount: \$0
14. Event Management Agreement dated June 28, 2106 with BUNDB Productions, LLC  
Estimated Cure Amount: \$0
15. Assignment of Event Management Agreement dated June 28, 2016 with Orange Grove  
Seating, LLC  
Estimated Cure Amount: \$0

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16. Grandstand License Agreement dated June 28, 2016 with Orange Grove Seating, LLC  
Estimated Cure Amount: \$0

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**EXHIBIT "E"**

Form of the Order Approving Motion

1 Christopher Celentino, State Bar No. 131688  
Mikel R. Bistrow, State Bar No. 102978  
2 Peter W. Bowie, State Bar No. 50168  
Dawn A. Messick, State Bar No. 236941  
3 **BALLARD SPAHR LLP**  
655 West Broadway, Suite 1600  
4 San Diego, CA 92101-8494  
Telephone: 619.696.9200  
5 Facsimile: 619.696.9269  
Email: celentinoc@ballardspahr.com  
6 bistrowm@ballardspahr.com  
bowiep@ballardspahr.com  
7 messickd@ballardspahr.com

8 Counsel to the Chapter 11 Trustee,  
Peter J. Mastan  
9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **LOS ANGELES DIVISION**

13 In re:  
14 BGM PASADENA, LLC, a Delaware limited  
liability company,  
15  
16 Debtor.

Case No. 2:15-bk-27833-BB

Chapter 11

**ORDER (I) (A) APPROVING SALE AND  
BID PROCEDURES IN CONNECTION  
WITH SALE OF PROPERTY FREE AND  
CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND INTERESTS, (B)  
APPROVING THE FORM AND MANNER  
OF NOTICE, (C) SCHEDULING AN  
AUCTION AND SALE HEARING, (D)  
APPROVING PROCEDURES FOR  
DETERMINING CURE AMOUNTS, AND  
(E) APPROVING BREAK-UP FEE; AND  
(II) (A) APPROVING THE SALE OF  
ASSETS PURSUANT TO AN  
AGREEMENT OF PURCHASE AND  
SALE AND JOINT ESCROW  
INSTRUCTIONS; AND (B) APPROVING  
ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES AND OTHER  
AGREEMENTS**

28



1 Upon the Motion of Trustee Peter J. Mastan for Entry of (I) an Order (A) Approving Sale  
2 and Bid Procedures in Connection with Sale of Property Free and Clear of All Liens, Claims,  
3 Encumbrances and Interests, (B) Approving the Form and Manner of Notice, (C) Scheduling an  
4 Auction and Sale Hearing, (D) Approving Procedures for Determining Cure Amounts, and (E)  
5 Approving Break-Up Fee; and (II) (A) Approving the Sale of Assets Pursuant to an Agreement of  
6 Purchase and Sale and Joint Escrow Instructions; and (B) Approving Assumption and Assignment  
7 of Certain Executory Contracts and Unexpired Leases and Other Agreements [Dkt. No. \_\_\_\_]  
8 (collectively, the "Motion")<sup>1</sup>, filed by Peter J. Mastan (the "Trustee") on \_\_\_\_\_,  
9 2017 in the above-captioned Chapter 11 bankruptcy case (the "Case"); this Court (the "Bankruptcy  
10 Court") having conducted a hearing to consider the relief requested therein (the "Hearing"); and  
11 having heard argument of counsel and any evidence presented in support of the relief requested in  
12 the Motion at the Hearing and the record before it; and it appearing that due notice of the Motion  
13 was provided; and it appearing that the relief requested in the Motion is fair, reasonable and  
14 appropriate; and any objections to the Motion having been considered and overruled as set forth  
15 on the record; and for other good cause appearing,

16 **The Bankruptcy Court Hereby Finds That:**

17 1. The Bankruptcy Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§  
18 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of  
19 this Case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

20 2. The statutory predicates for relief sought in the Motion are sections 105, 363 and  
21 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014.

22 3. Due and adequate notice of the Motion and the Sale and Bid Procedures has been  
23 given, and no other or further notice of the Motion, the Sale and Bid Procedures or any other form  
24 of relief granted herein is or shall be required.

25 4. The Sale and Bid Procedures, in the form attached hereto as Exhibit "B" (the "Sale  
26 and Bid Procedures"), are reasonable and appropriate under the circumstances of this Case.

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Motion, the Sale  
and Bid Procedures or the Asset Purchase Agreement, as applicable.

1 5. The Trustee has established facts to support approval of the Break-Up Fee (in the  
2 amount of \$100,000.00), to SPSSM Investments-IX,LP ("SPSSM") in its role as Stalking Horse  
3 Bidder as provided in the Motion, the Asset Purchase Agreement and the Sale and Bid Procedures;  
4 the amount of the Break-Up Fee is reasonable and appropriate in light of the size and nature of the  
5 proposed Sale and the efforts that have been and will be expended by SPSSM; and the Break-Up  
6 Fee is fair, reasonable and equitable under the current circumstances.

7 6. The form of notice regarding the bid deadline, the auction and the proposed sale  
8 (the "Bid and Sale Notice") attached hereto as Exhibit "C" is reasonably calculated to provide all  
9 interested parties with timely and proper notice of the Auction and the Sale.

10 7. The form of notice to Counterparties of the Assumed Contracts provided in  
11 accordance with the Assumption and Assignment Procedures (the "Contract Assumption Notice")  
12 attached hereto as Exhibit "D" is reasonably calculated to provide Counterparties to the Assumed  
13 Contracts with proper notice of the intended assumption and assignment of their executory  
14 contracts, unexpired leases or other agreements, any Cure Amounts relating thereto and the  
15 Assumption and Assignment Procedures.

16 8. Other findings are set forth on the record.

17 **It Is Hereby Ordered, Adjudged and Decreed That:**

18 9. The Motion is granted, subject to the terms hereof.

19 10. Any and all objections to the relief requested in the Motion and/or entry of this  
20 Order that have not been withdrawn, waived or settled or not otherwise addressed herein or at the  
21 hearing are hereby overruled.

22 11. The Agreement of Purchase and Sale and Joint Escrow Instructions (as at any time  
23 amended, the "Asset Purchase Agreement"), attached hereto as Exhibit "A," which is in  
24 substantially the form as filed by the Trustee in connection with the Hearing, is hereby approved  
25 in its entirety for use in connection with the Auction, the Sale and the Sale and Bid Procedures;  
26 provided, however, final approval of the Asset Purchase Agreement shall be made by the  
27 Bankruptcy Court in connection with the Sale and the Auction.

28 ///

1 12. The form of the Bid and Sale Notice and the Contract Assumption Notice are  
2 hereby approved. The Schedule of Assumed Contracts attached to the Contract Assumption Notice  
3 may be modified prior to the service thereof (as such service is provided for in Paragraph 22(a))  
4 and thereafter as permitted by this Order.

5 13. This Order is deemed to be the Sale and Bid Procedures Order as provided in the  
6 Asset Purchase Agreement.

7 14. The Sale and Bid Procedures, in the form attached hereto as Exhibit "B," are hereby  
8 approved and shall govern the Auction and Sale process. Bids that do not conform to the Sale and  
9 Bid Procedures will not be considered for participation in the Auction. The Trustee is authorized  
10 to take any and all actions necessary or appropriate to implement the Sale and Bid Procedures.

11 15. The deadline to submit Bids and Qualified Bids (as defined in the Sale and Bid  
12 Procedures) shall be 5:00 p.m. (prevailing Pacific Time) on \_\_\_\_\_, 2017 (the "Bid  
13 Deadline").

14 16. The dates, docket numbers and applicable deadline to be inserted into the Bid and  
15 Sale Notice, the Contract Assumption Notice and/or the Sale and Bid Procedures re entry of this  
16 Order may be inserted into the respective documents without the need for further approval of such  
17 documents.

18 17. The Auction, if a Qualified Bid other than the SPSSM Bid under the Asset  
19 Purchase Agreement, is received prior to the Bid Deadline. If no timely, conforming Qualified  
20 Bids other than the SPSSM Bid under the Asset Purchase Agreement are submitted by the Bid  
21 Deadline, the Auction will not be held, SPSSM will be the Successful Bidder, and the Trustee will  
22 seek authority to consummate the transactions contemplated by the Asset Purchase Agreement at  
23 the Sale Hearing. The Sale Hearing shall be held before the Bankruptcy Court on  
24 [\_\_\_\_\_, 2017] commencing at \_\_\_\_\_.m., located at 255 E. Temple Street,  
25 Courtroom 1539, Los Angeles, CA 90012.

26 18. The Bankruptcy Court will hold the Sale Hearing in conjunction with the Auction,  
27 at which hearing it will consider approval of the sale to the Successful Bidder at the Auction.

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1            19.    Objections, if any, to the Sale of the Property (as defined in the Asset Purchase  
2 Agreement) must (a) be in writing, (b) state the basis of such objection with specificity, conform  
3 to the Bankruptcy Rules, (d) be filed with the Bankruptcy Court electronically by registered users  
4 of the Bankruptcy Court's case filing system and, by all other parties in interest, so as to be  
5 actually received no later than \_\_\_\_\_, 2017 (the "Sale Objection Deadline"),  
6 provided, however, that objections to the assumption and assignment of the Assumed Contracts  
7 and the proposed Cure Amounts shall be filed in accordance with the Assumption and Assignment  
8 Procedures set forth herein.

9            20.    The failure of any objecting person or entity to timely file its objection shall be a  
10 bar to the assertion of any objection to the Motion and the consummation and performance of the  
11 Sale, and shall be deemed to constitute such party's consent to the Sale and the transactions and  
12 documents related thereto.

13           21.    On or before \_\_\_\_\_, 2017, the Trustee (or his agents or  
14 representatives) or other servicing agent on behalf of the Trustee shall serve by first class mail,  
15 postage prepaid, or via NEF electronically (pursuant to LBR 9036-1), copies of (a) this Order and  
16 the Exhibits attached hereto, and (b) the Bid and Sale Notice (collectively, the "Notice Parties")  
17 upon:

- 18                    (a)    the Office of the U.S. Trustee;
- 19                    (b)    counsel to the Debtor; and
- 20                    (c)    all parties that have requested notice pursuant to Bankruptcy Rule 2002.

21           22.    The following Assumption and Assignment Procedures (the "Assumption and  
22 Assignment Procedures") shall govern the assumption and assignment of Assumed Contracts in  
23 connection with the Sale of the Property:

24                    (a)    By no later than \_\_\_\_\_, 2017, the Trustee (or his agents or  
25 representatives) or other servicing agent on behalf of the Trustee shall file and serve on all known  
26 Counterparties to an Assumed Contract the Contract Assumption Notice, including the Schedule  
27 of Assumed Contracts attached thereto as then existing that may be assumed and assigned to the

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1 Buyer, including the proposed Cure Amount (as defined in the Motion) required pursuant to  
2 section 365 of the Bankruptcy Code for their assumption and assignment, if any.

3 (b) Each Counterparty to an Assumed Contract shall have until  
4 \_\_\_\_\_, 2017 (the "365 Objection Deadline") to file and serve upon the Trustee any  
5 objection (a "365 Objection") setting forth with particularity any objection to assumption and  
6 assignment of its contract or lease, its asserted proper Cure Amount, documentation of same, and  
7 stating whether the objecting Counterparty may assert any objection to the assignment of its  
8 contract to the ultimate purchaser.

9 (c) To the extent that any 365 Objection to the assumption and/or assignment  
10 of any executory contract or unexpired lease included in the Asset Purchase Agreement and/or the  
11 Schedule of Assumed Contracts is not resolved consensually prior to the Sale Hearing, the  
12 Bankruptcy Court shall resolve any such objection at the Sale Hearing.

13 (d) In the absence of any timely 365 Objection to the Cure Amount of the  
14 proposed assumption and assignment of an Assumed Contract by the 365 Objection Deadline, the  
15 Cure Amount set forth in the Schedule of Assumed Contracts shall be controlling (or such lesser  
16 amount actually owing) and any Counterparty to an executory contract or unexpired lease or other  
17 agreement in the Schedule of Assumed Contracts will be barred from asserting an inconsistent  
18 position in connection with the assumption or assignment of any executory contract or unexpired  
19 lease or other agreement; and such Counterparty will be deemed to have consented to the  
20 assumption and assignment of such Assumed Contract.

21 (e) No later than five (5) days prior to the Sale Hearing shall be the deadline for  
22 a Bidder to modify the Schedule of Assumed Contracts (the "Assumption Designation Deadline")  
23 (subject to the right to later modify such Schedule of Assumed Contracts as provided below), with  
24 such notice and opportunity to object to assumption and assignment and/or Cure Amount with  
25 respect to any added executory contract or unexpired lease or other agreement as the Bankruptcy  
26 Court shall require. Notwithstanding the Assumption Designation Deadline, the Successful Bidder  
27 may withdraw any contract or lease or other agreement as an Assumed Contract if the Bankruptcy

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1 Court determines the Cure Amount to be in an amount materially greater than the amount  
2 provided in the Schedule of Assumed Contracts served as provided in Paragraph 22(a) above.

3 23. The Trustee is authorized to take such actions as contemplated by the Sale and Bid  
4 Procedures, including receiving Bids and Bid Packages and reporting the information relating  
5 thereto as set forth in the Sale and Bid Procedures.

6 24. This Order is without prejudice to additional authorizations for the Trustee to  
7 implement and administer the Sale which may be ordered or approved as part of approval of the  
8 Sale (and/or in the Sale Order) or in other order of the Bankruptcy Court.

9 25. The Break-Up Fee (in the amount of \$100,000.00) is hereby approved and shall be  
10 paid to SPSSM if it becomes entitled to it as provided in the Motion, the Sale and Bid Procedures  
11 and the Asset Purchase Agreement.

12 26. As provided in the Sale and Bid Procedures, a Bidder shall forfeit its Deposit if: (a)  
13 the Bidder is determined to be a Qualified Bidder and withdraws its Bid or withdraws any  
14 subsequent Increased Bid before the announcement of the Successful Bidder and Backup Bidder;  
15 (b) the Bidder is determined to be the Successful Bidder and attempts to modify or withdraw its  
16 Bid or any subsequent Increased Bid without closing the Sale transaction pursuant to such Bid or  
17 order of the Bankruptcy Court; (c) the Bidder is determined to be the Backup Bidder and attempts  
18 to modify or withdraw its designated Backup Bid prior to closing on the Sale, unless the Sale shall  
19 have closed with the Successful Bidder; or (d) the Successful Bidder or Backup Bidder, as  
20 applicable, fails to close without any fault of the Trustee or the Estate. The Deposit shall be  
21 returned to the Bidder if the Bidder is determined not to be a Qualified Bidder, (ii) the Bidder is  
22 determined not to be the Successful Bidder or Backup Bidder, or (iii) the Bidder is determined to  
23 be the Backup Bidder and the Sale is closed with the Successful Bidder. Deposits shall be  
24 returned, as applicable, interest free, within five (5) business days following the Auction, provided  
25 however that, in the case of the Backup Bidder, its Deposit shall be returned, interest free, within  
26 five (5) business days of the closing of the Sale to the Successful Bidder. The Deposit shall be  
27 applied to the Purchase Price upon closing.

28 ///

1 27. The Trustee and his agents and representatives are authorized to take all actions  
2 necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and  
3 the Sale and Bid Procedures.

4 28. The Bankruptcy Court shall retain jurisdiction over any matter or dispute arising  
5 from or relating to the implementation of this Order, including but not limited to any matter, claim  
6 or dispute arising from or relating to the Sale and Bid Procedures, the Auction or the Sale.

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**EXHIBIT "A"**

**Asset Purchase Agreement**



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**EXHIBIT "B"**

**Sale and Bid Procedures**

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**EXHIBIT "C"**

**Bid and Sale Notice**

**EXHIBIT "F"**

Sale Free and Clear of the Following Liens, Claims, Interests and Encumbrances

Affecting the property located at 210 South Orange Boulevard, Pasadena, California (the "210 Property"):

1. Liens to secure an original indebtedness of approximately \$4,850,000.00 as evidenced by (A) a Deed of Trust recorded July 21, 2005 as Instrument 20151721790 in the Official Records of Los Angeles County, California (the "Official Records"), and (B) an Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits (Fee) recorded July 21, 2005 as Instrument No. 21051721791 in the Official Records, each originally made by Debtor in favor of Citizens Business Bank, a California corporation ("CBB"), as beneficiary, and purportedly assigned by CBB to Cantor Group, LLC, a California limited liability company ("Cantor").

2. Liens for homeowners association assessments (A) in favor of Ambassador West Master Association ("AWMA") in an original amount of approximately \$7,807.06, as evidenced by a notice recorded May 11, 2015 as Instrument No. 20150539838 of Official Records, (B) in favor of Ambassador Cost Center 3 in an original amount of approximately \$1,882.60, as evidenced by a notice recorded May 22, 2015 as Instrument No. 20150604033 in the Official Records, (C) in favor of Ambassador Cost Center 4 ("ACC4") in an original amount of approximately \$1,542.64, as evidenced by a notice recorded May 22, 2015 as Instrument No. 20150604034 in the Official Records, (D) in favor of Ambassador Cost Center 5 ("ACC5") in an original amount of approximately \$809.87, as evidenced by a notice recorded June 16, 2015 as Instrument No. 20150710358 in the Official Records, (E) in favor of ACC5 in an original amount of approximately \$3,704.04, as evidenced by a notice recorded August 03, 2016 as Instrument No. 20160914361 in the Official Records, and (F) in favor of ACC4 in an original amount of approximately \$8,862.12, as evidenced by a notice recorded August 03, 2016 as Instrument No. 20160914362 in the Official Records.

Affecting the property located at 244-248 South Orange Boulevard, Pasadena, California (the "244-248 Property"):

3. Liens to secure an original indebtedness of approximately \$4,850,000.00, as evidenced by (A) a Deed of Trust recorded July 21, 2005 as Instrument 20151721792 in the Official Records of Los Angeles County, California, and (B) an Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits (Fee) recorded July 21, 2005 as Instrument No. 21051721793 in the Official Records, each originally made by Debtor in favor of CBB, as beneficiary, and purportedly assigned by CBB to Cantor.

4. Lien for a homeowners association assessment in favor of AWMA in an original amount of approximately \$18,161.45, as evidenced by a notice recorded May 11, 2015 as Instrument No. 20150539839 of Official Records.

Affecting both the 210 Property and 244-248 Property:

5. Liens to secure an original indebtedness of approximately \$1,500,000.00, to the extent not previously fully released, as evidenced by (A) a Deed of Trust recorded October 4, 2005 as Instrument No. 20052388338 in the Official Records, originally made by Debtor in favor of Dove Street Capital Lenders, LLC, a California limited liability company ("Dove Street"), as beneficiary, as modified by a document recorded November 30, 2006 as Instrument No. 20062651097 in the Official Records, and purportedly assigned by Dove Street to Pasadena Apts-7 LLC, a Delaware limited liability company ("PA 7"), and (B) a financing statement

1 recorded October 4, 2005 as Instrument No. 20052388339 in the Official Records naming  
2 Debtor as the debtor and Dove Street as secured party.

3 6. Lien to secure an original indebtedness of approximately \$4,102,800.00, as  
4 evidenced by a Deed of Trust recorded October 27, 2006 as Instrument No. 20062387278 in the  
5 Official Records, originally made by Debtor in favor of Keith B. Smith, as Trustee of The Smith  
6 Trust dated August 7, 1990 (the "Smith Trustee").

7 7. Lien to secure an original indebtedness of approximately \$2,500,000.00, to the  
8 extent not previously released , as evidenced by a Deed of Trust recorded May 25, 2007 as  
9 Instrument No. 20071276046 in the Official Records, made by Debtor in favor of East West  
10 Bank, as beneficiary, as modified by a document recorded December 5, 2013 as Instrument No.  
11 20131716501 in the Official Records.

12 8. Liens to secure an original indebtedness of approximately \$1,662,747.00, to the  
13 extent not previously fully released , as evidenced by (A) a Deed of Trust recorded October 22,  
14 2007 as Instrument No. 20072389808 in the Official Records, originally made by Debtor in favor  
15 of Dove Street, as beneficiary, as modified by a document recorded October 22, 2007 as  
16 Instrument No. 20072389810 in the Official Records, and purportedly assigned by Dove Street  
17 to PA 7, and (B) a financing statement recorded October 22, 2007 as Instrument No.  
18 20072389809 in the Official Records naming Debtor as the debtor and Dove Street as secured  
19 party.

20 9. Lien to secure an original indebtedness of approximately \$900,000.00, as  
21 evidenced by a Deed of Trust recorded March 26, 2008 as Instrument No. 2008518303 in the  
22 Official Records, made by Debtor in favor of Bernice P. Einum, on behalf of and as Trustee of  
23 the Einum Trust dated June 27, 1988, as beneficiary.

24 10. A claim of lien in favor of Pasadena Lots-70, LLC, a Delaware limited liability  
25 company ("PL-70"), for a purported breach of Site Development Agreement in an original  
26 amount of approximately \$281,183.86, as evidenced by a document recorded July 3, 2013 as  
27 Instrument No. 20130984259 in the Official Records.

28 11. Claims arising from a lawsuit brought by PL-70, as plaintiff, against Debtor, as  
defendant, as disclosed by a notice of pendency of action recorded February 12, 2014 as  
Instrument No. 20140154208 in the Official Records.

Lien for unsecured property taxes (A) in an amount of approximately \$969.21, as  
evidenced by a certificate recorded by the tax collector of Los Angeles County on March 04,  
2014 as Instrument No. 20140218204 in the Official Records, and (B) in an amount of  
approximately \$18,199.80, as evidenced by a certificate recorded by the tax collector of Los  
Angeles County on April 07, 2014, as Instrument No. 20140345051 in the Official Records.

**EXHIBIT "G"**

**SPSSM Investments-IX,LP - Company Information and Background**

SPSSM Investments-IX,LP, is a California limited partnership. The general partner is SPSSM Investments - IX, Inc., a California corporation. The President of the corporate general partner is Michael-Preet S. Nijjar. The limited partner is his family trust, formed in 2012. Its purpose is to hold title to various real estate assets.

The entity current owns 52 properties with 67 residential units, all single family 1-4 unit properties.

The records are kept at PAMA Management, Inc., 4900 Santa Anita Ave., Suite 2C, El Monte, California, 91373. PAMA Management, Inc. is a Nijjar family owned property management company that manages all the family's assets.

The company was founded in 1978 by Swaranjit S. "Mike" Nijjar, Michael's father. The company manages 18,000 residential units, comprised of approximately 12,000 apartments, 4,000 single family 1-4 unit buildings, 2,000 mobile home park spaces, and some commercial, office and industrial properties.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
655 W. Broadway, Suite 1600, San Diego, California 92101

A true and correct copy of the foregoing document entitled (*specify*): **MOTION OF TRUSTEE PETER J. MASTAN FOR ENTRY OF (I) AN ORDER (A) APPROVING SALE AND BID PROCEDURES IN CONNECTION WITH SALE OF PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) APPROVING THE FORM AND MANNER OF NOTICE; (C) SCHEDULING AN AUCTION AND SALE HEARING; (D) APPROVING PROCEDURES FOR DETERMINING CURE AMOUNTS; AND (E) APPROVING BREAK-UP FEE; AND (II) AN ORDER (A) APPROVING THE SALE OF ASSETS PURSUANT TO AN AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS, AND (B) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND OTHER AGREEMENTS; DECLARATION OF PETER J. MASTAN IN SUPPORT THEREOF**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On April 5, 2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On April 5, 2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on April 5, 2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Overnight Delivery:**

The Honorable Sheri Bluebond  
United States Bankruptcy Court  
Central District of California  
Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1534 / Courtroom 1539  
Los Angeles, CA 90012  
**Federal Express Tracking No. 786144665077**

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 5, 2017  
Date

Caron Burke  
Printed Name

/s/ Caron Burke  
Signature

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

- Jason Balitzer jbalitzer@sulmeyerlaw.com,  
jbalitzer@ecf.inforuptcy.com; dwalker@ecf.inforuptcy.com; slee@sulmeyerlaw.com
- Robert D Bass rbass@greenbass.com,  
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- Michael E Bender attorneybender@gmail.com
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- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
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jvogel@ecf.inforuptcy.com; mviramontes@sulmeyerlaw.com
- Hatty K Yip hatty.yip@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:**

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Marina del Rey, CA 90292-7293

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Pasadena, CA 91105-1705

United States Trustee  
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Los Angeles, CA 90017

Emil Golub  
Fortune Investments Realty Company  
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Beverly Hills, CA 90210

Fortune Investments Realty Company  
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Michael Nijjar  
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El Monte, CA 91731

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