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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re
FOSTER ENTERPRISES, a California general
partnership,

Debtor.

Case No. 6:17-bk-15749-SC

Chapter 11

Jointly Administered with

In re
HOWARD DEAN FOSTER and ANNA MAE
FOSTER

Case No.: 6:17-bk-15915-SC

**DEBTOR'S MOTION FOR ORDER (1)
AUTHORIZING SALE OF REAL
PROPERTY (775 South Acacia Ave., Rialto,
California) FREE AND CLEAR OF LIENS,
CLAIMS, AND ENCUMBRANCES; (2)
DETERMINING THAT BUYER IS A
GOOD FAITH PURCHASER; AND (3)
WAIVING THE FOURTEEN (14) DAY
STAY PRESCRIBED BY RULE 6004(h)
OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
JEFFERY C. FOSTER AND MICHAEL G.
RADEMAKER IN SUPPORT THEREOF**

- ☐ Affects All Debtors
☒ Affects FOSTER ENTERPRISES, a
California general partnership
☐ Affects HOWARD DEAN FOSTER
and ANNA MAE FOSTER

Date: November 6, 2018
Time: 1:30 p.m.
Place: 3420 Twelfth Street
Video Hearing Room 126
Riverside, CA 92501

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE, SUITE 2100
LOS ANGELES, CALIFORNIA 90071

Alternative Location
411 West Fourth Street
Courtroom 5C
Santa Ana, California 92701

**TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY
JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE; ALL SECURED
CREDITORS; THE TWENTY LARGEST NON-INSIDER UNSECURED CREDITORS;
AND ALL PARTIES REQUESTING SPECIAL NOTICE:**

Through its Motion for Order (1) Authorizing Sale of Real Property (775 South Acacia Avenue, Rialto, California); (2) Determining that Buyer is a Good Faith Purchaser; and (3) Waiving the Fourteen (14) Day Stay Prescribed By Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, Foster Enterprises, a California general partnership (“Foster Enterprises” or the “Debtor”) and a debtor and debtor in possession in the above-captioned chapter 11 case, hereby seeks the entry of an order approving the sale of the Debtor’s interest in certain real property more commonly known as 775 South Acacia Avenue, Rialto, California 92376 (the “Property”) on the terms and conditions stated in the (i) “Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate” dated June 6, 2018, by and between the Debtor, as seller and Asian Pacific, Inc. (the “Purchaser” or “Asian Pacific”), as buyer. A true and correct copy of the Purchase Agreement is attached hereto as Exhibit “A” to the Declaration of Michael G. Rademaker (the “Rademaker Declaration”) and incorporated herein by reference. The Purchase Agreement provides that the purchase shall be the amount of \$775,000, cash. As part of the Motion, the Debtor seeks an order approving the sale free and clear of certain liens, claims and interests, with said defined liens, claims, and interests to attach to the sales proceeds in the same manner as under applicable law. Pursuant to Local Rule 6004-1(c)(3)(I), as a result of the sale, a portion of the Internal Revenue Service’s secured claim against the Property will be decreased. The Debtor believes that there will be minimal tax liability generated by the sale of the Property due to the Debtor’s prior losses.

This Motion is made and based upon the moving papers, the attached memorandum of

1 points and authorities and the supporting declarations of Jeffery C. Foster and Michael G.
2 Rademaker, the pleadings filed in the Debtor's case, all judicially noticeable facts, the arguments
3 and representations of counsel, and any oral or documentary evidence presented at the time of the
4 hearing.

5 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

- 6 (1) granting this Motion;
- 7 (2) authorizing and approving the sale of the Property to the Purchaser or the successful
8 bidder, free and clear of liens, claims, and encumbrances;
- 9 (3) authorizing the Debtor to execute any and all documents that may be necessary to
10 consummate the sale;
- 11 (4) determining that the Purchaser or the successful bidder is entitled to 11 U.S.C. §
12 363(m) protection;
- 13 (5) waiving the fourteen (14) day stay prescribed by Rule 6004(h) of the Federal Rules
14 of Bankruptcy Procedure; and
- 15 (6) granting such other and further relief as this Court deems just and proper under the
16 circumstances.

17 Dated: October 15, 2018

DYKEMA GOSSETT LLP

19 By: /s/ Gregory K. Jones

20 Gregory K. Jones
21 Counsel to Foster Enterprises
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. By this Motion, the Debtor requests approval of a sale of the real property more commonly known as 775 South Acacia Avenue, Rialto, California 92376 (the “Property”), on the terms and conditions stated in the “Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate” dated June 6, 2018 (the “Purchase Agreement”) by and between the Foster Enterprises (the “Debtor” or “Foster Enterprises”), as seller and Asian Pacific, Inc. (the “Purchaser” or “Asian Pacific”), as buyer, which is attached to the Rademaker Declaration as Exhibit “A” and incorporated herein by reference. The statutory predicates for the relief requested herein are 11 U.S.C. § 363(a), (b), (f), and (m). The Debtor believes all prerequisites for approval of the sale under applicable provisions of the Bankruptcy Code have been satisfied and therefore urges the Court to grant the Motion.

II. RELEVANT FACTS

A. Background of Debtor

Foster Enterprises filed a voluntary petition under chapter 11 of the Bankruptcy Code on July 10, 2017 (the “Petition Date”). On said date, the Howard Dean and Anna Mae Foster (the “Foster Individuals” and with Foster Enterprises, the “Debtors”) also filed a voluntary petition under chapter 11, and both chapter 11 cases have since been ordered to be jointly administered under Foster Enterprises’ case. The Debtors continue to operate their business and manage their property as debtors in possession under §§ 1107 and 1108 of the Bankruptcy Code.

The Foster family has been in the business of producing and distributing eggs in the Southern California region since 1941, with the family business now into its fourth generation. To formalize and expand the business, the Foster family formed Foster Enterprises as a general partnership in 1984, in which there are currently four general partners, Anna Foster and three of the Foster Individuals’ sons, Jeffery, Stanley, and Gary Foster.

Today, Foster Enterprises operates two lines of business. The first concerns the

1 management, maintenance, and construction of egg-production facilities, particularly for the
2 production of cage-free eggs, and the marketing and distribution of such eggs. These services are
3 provided to two egg-production companies, California Cage Free Egg Farms, LLC (“California
4 Cage Free”) and New Lakeview Farms, LLC (“New Lakeview”), that are also related to Foster
5 Enterprises and the Foster family. Foster Enterprises’ second line of business involves providing
6 warehousing and distribution services to perishable-food manufacturers and suppliers, typically
7 small businesses with contracts to sell frozen foods to the California prisons.

8 **B. Foster Enterprises’ Real Property**

9 On the Petition Date, Foster Enterprises’ bankruptcy estate included two real properties: (1)
10 real property commonly described as 10465 Stockton Road, Moorpark, California 93021 (the
11 “Moorpark Property”), located in Ventura County, and (2) the Property, which is a poultry ranch
12 with approximately 3.89 acres, with a structure used as an office and residence, located in San
13 Bernardino County. *See* Declaration of Jeffery C. Foster, which is attached to the Memorandum
14 (the “Foster Declaration”), ¶ 3. Allstar Financial Services (“Allstar”) obtained relief from the stay
15 as to the Moorpark Property.

16 The Internal Revenue Service (“IRS”) asserts a secured claim against the Property on
17 account of several notice of federal tax liens (the “NFTLs”) recorded in the San Bernardino County
18 Recorder’s Office on (1) October 4, 2010, (2) May 19, 2011, (3) June 4, 2012, (4) September 19,
19 2013, and (5) June 4, 2014 (collectively, the “San Bernardino NFTLs”).

20 **C. Summary of Proposed Sale**

21 In order to assist the Debtor in its efforts to sell the Property, the Debtor caused to be filed
22 an application seeking the employment of MGR Real Estate, Inc. (“MGR”) for the purpose of
23 procuring an offer to purchase the Property. On April 23, 2018, the Court entered an order
24 authorizing the Debtor’s employment of MGR. *See* Docket No. 268.

25 On July 27, 2018, the Debtor filed its “Debtor’s Motion for Order Authorizing and
26 Approving Bidding Procedures for Sale of Real Property (775 South Acacia Ave., Rialto,
27 California); Memorandum of Points and Authorities; Declaration of Jeffery C. Foster in Support
28 Thereof” (the “Bidding Motion”) [Docket No. 312]. After conducting a hearing, on August 31,

2018, this Court entered its “Order Granting Debtor’s Motion for Order Authorizing and Approving Bidding Procedures for Sale of Real Property (775 South Acacia Ave., Rialto, California)” (the “Bidding Procedures Order”) [Docket No. 341].

After marketing the Property, the Debtor entered into the Purchase Agreement. Under the Purchase Agreement, Asian Pacific has agreed to purchase the Property for the amount of \$775,000. Despite MGR’s marketing efforts, no other parties expressed an interest in the Property or placed a bid on the Property.

The Debtor believes that the present price to be paid is fair and reasonable and represents the highest and best offer the Debtor has received to date for the Property, and seeks Court approval of the Motion.

III. ARGUMENT

A. Sale of the Property is in the Best Interest of the Estate

A debtor may use, sell, or lease, other than in the ordinary course of business, property of the estate pursuant to section 363(b)(1) of the Code. The Ninth Circuit has held that there must be a good business reason for the use, sale, or lease of estate property outside the ordinary course of business. *See In re Walter*, 83 B.R. 14 (9th Cir. BAP 1988); *see also In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (relief under section 363(b) “is permissible if the ‘judge determining [the] . . . application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application’”) (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Continental Air Lines, Inc.*, 780 F.3d 1223 (5th Cir. 1986) (there must be some articulated business justification for the court to approve the use, sale, or lease of property outside of the ordinary course of business).

In approving a sale outside the ordinary course of business, the court must not only find a sufficient business reason for the sale, it must further find that the sale is in the best interests of the estate. In other words, the sale is fair and reasonable, it has been adequately marketed, it has been negotiated and proposed in good faith, and it is an “arms’ length” transaction. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830 (Bankr. C.D. Cal. 1991); *Matter of Phoenix Steel Corp.*, 82 B.R. 334, 335-56 (Bankr. D. Del. 1987).

1. Sound Business Justification for Sale

The Debtor has a sound business justification for the proposed sale of the Property to Asian Pacific or an alternate bidder. Based on the offer from Asian Pacific, the sale of the Property will enable the Debtor to satisfy certain of its secured obligations to the Internal Revenue Service. As a result, the sale of the Property is justified since it will generate funds for the estate and the price to be paid is fair and reasonable, as discussed below.

2. Adequate Notice of Proposed Sale

The Debtor has provided adequate notice of the proposed sale of the estate's interest in the Property. The Debtor will serve the Motion, Purchase Agreement, and the notice upon those parties that have expressed an interest in bidding to the Debtor and MGR, all entities on the master service list, and all persons required to receive notice pursuant to Bankruptcy Rules 6004(a), 6004(c), and 9014, with sufficient notice to allow any party in interest to object to the proposed sale or submit a competing bid on the Property.

3. The Sale Price is Fair and Reasonable

Based on an analysis provided to it by MGR, the Debtor believes that the sale price agreed to by Asian Pacific represents a fair and reasonable price for the estate's interest in the Property. Furthermore, the Debtor is confident that the price to be obtained for the Property is the highest and best price it can obtain for the estate's interest in the Property.

4. The Sale was Negotiated in Good Faith

The Agreement is the product of good faith, arms' length negotiations between the Debtor and Asian Pacific. Asian Pacific has represented that it is not related to the Debtor and it has no relationship with any creditor of the estate. Moreover, Asian Pacific is not an insider of the Debtor as that term is defined by 11 U.S.C. § 101(31). Further, as discussed above, the price offered by Asian Pacific represents a fair market price for the Property.

As such, the Debtor satisfies each of the elements governing the proposed sale of the Property and has articulated sound business reasons for entering into and seeking consummation of the sale. Given the present circumstances, the Debtor urges the Court to approve the sale, subject to qualified overbids.

B. The Debtor Requests that the Sale be Approved Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. § 363(f) and that Such Liens Attach to the Proceeds of the Property

Section 363(f) provides that a debtor may sell assets of the estate free and clear of any interest in such property of an entity other than the estate only if: (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in legal or equitable proceedings, to accept a money satisfaction of such interest. This section of the Bankruptcy Code has been interpreted to be in the disjunctive, rather than the conjunctive. Thus, a debtor need only demonstrate that one of the elements of this section exists. *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988).

The Debtor submits that a sale free and clear of all claims and interests is necessary to maximize the value of the Property. A sale subject to claims and interests would result in a lower purchase price and be of substantially less benefit to the Debtors' estate. A sale free and clear of liens is particularly appropriate under the circumstances because any lien in, to, or against the Property that exists immediately prior to the closing of any sale will attach to the net sale proceeds attributable to such assets with the same validity, priority, force and effect as it had at such time, subject to the rights and defenses of the Debtors or any party-in-interest. Alternatively, as of the filing of the Motion, the Debtor is seeking to obtain the consent of the IRS as to the sale, which would satisfy section 363(f)(2) of the Bankruptcy Code.¹

¹ As set forth in the Debtor's "Second Amended Plan of Reorganization Dated July 27, 2018" (the "Plan"), the Debtor is seeking a carve-out from the IRS' proceeds of the sale of the Property (the "Proceeds") for payment of administrative claims in the Debtor's case. As of the filing of this Motion, the Debtor and IRS had not reached an agreement as to the Proceeds. The Debtor respectfully requests that the sale of the Property be made free and clear of liens on the Property, and that such liens attach to the Proceeds, which will be placed in a client trust account pending Plan confirmation. The Debtors submit that the IRS' liens will be adequately protected by attachment to the net proceeds of the Sale, subject to any claims and defenses the Debtors may possess with respect thereto. Further, the Debtor reserves the right to file an application for authority to surcharge the Property for the payment of its bankruptcy counsel's fees and expenses under Bankruptcy Code section 506(c).

1 **C. The Sale is Proposed in Good Faith**

2 Bankruptcy Code section 363(m) authorizes the Court to make a finding that a buyer is a
3 good faith purchaser. When cloaked with section 363(m) protection, a good faith purchaser of
4 property is protected from the effects of reversal of the order authorizing the sale so long as the trial
5 court finds that the purchaser acted in good faith and the aggrieved party failed to obtain a stay of
6 the sale order. Section 363(m) gives purchasers of a debtor's assets "an assurance of finality" with
7 respect to "who has rights to estate property." *In re Gucci*, 126 F.3d 380, 387 (2d Cir. 1997). In
8 essence, sales of estate property under sections 363(b) and (c) are insulated from appeals by the safe
9 harbor provision of Section 363(m). *In re Filtercorp, Inc.*, 163 F.3d 570, 576 (9th Cir. 1998); *In re*
10 *PW, LLC*, 391 B.R. 25, 35 (9th Cir. BAP 2008).

11 Although the Bankruptcy Code does not define the term "good faith," courts have provided
12 guidance as to the appropriate factors to consider. In essence, the purpose of section 363(m) is to
13 disable courts from backtracking on promises with respect to bankruptcy sales in the absence of bad
14 faith. *Kham and Nate's Shoes No. 2 v. First Bank*, 908 F.2d 1351, 1355 (7th Cir. 1990). The
15 requirement that a purchaser act in good faith speaks to the integrity of his or her conduct in the
16 course of the sale proceeding and focuses primarily on the disclosure of all material sale terms and
17 the absence of fraud or collusion. According to the Ninth Circuit Bankruptcy Appellate Panel, a
18 "good faith purchaser" is one who buys "in good faith" and "for value." *In re M Capital Corp.*, 290
19 B.R. 743, 746 (9th Cir. BAP 2003).

20 Here, Asian Pacific (i) has no relation to Foster Enterprises or the Foster Individuals, or the
21 creditors of either estate, (ii) prepared and submitted the offer and executed the Agreement in good
22 faith, and (iii) has performed all of the conditions imposed on it in connection with the proposed
23 sale. *See* Foster Declaration. Since there are no facts raising the specter of bad faith, collusion, or
24 calling into question the propriety of the sale, the Court should extend section 363(m) protection to
25 Asian Pacific.

26 **D. The Court Should Waive the Fourteen Day Stay Set Forth by FRBP 6004(h)**

27 Under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, an order authorizing the
28 sale of property, other than cash collateral, is stayed until expiration of fourteen (14) days after the

1 entry of the order, unless the court orders otherwise. In this case, the Debtor believes that there is
2 cause to waive the fourteen day stay prescribed by Rule 6004(h) since a waiver of the fourteen day
3 period will expedite the consummation of the sale.

4 **CONCLUSION**

5 **WHEREFORE**, the Debtor respectfully requests that the Court (i) enter an order
6 granting the Motion, and (ii) provide for such other and further relief as this Court deems
7 appropriate under the circumstances.

8 Dated: October 15, 2018

DYKEMA GOSSETT LLP

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11 By: /s/ Gregory K. Jones
Gregory K. Jones
Counsel to Foster Enterprises
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DYKEMA GOSSETT LLP
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LOS ANGELES, CALIFORNIA 90071

DECLARATION OF JEFFERY C. FOSTER

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3 1. I am the chief executive officer and co-managing general partner of Foster
4 Enterprises, a California general partnership (“Foster Enterprises” or the “Debtor”), a debtor and
5 debtor in possession in one of the above-captioned chapter 11 cases. I am an authorized
6 representative of Foster Enterprises, with full authority to make the representations and statements
7 contained herein on behalf of Foster Enterprises.

8 2. I make this declaration in support of Foster Enterprises’ motion for an order
9 authorizing and approving bidding procedures, selling the property located at 775 South Acacia
10 Avenue, Rialto, CA (the “Property”) and seeking related relief (the “Motion”). The statements set
11 forth in this declaration are based upon my own personal knowledge, and if called to testify, I could
12 and would, without waiver of any applicable privilege, testify that the facts stated in this declaration
13 are true and correct to the best of my knowledge and information.

14 3. At the beginning of its case, Foster Enterprises’ bankruptcy estate included two real
15 properties: (1) real property commonly described as 10465 Stockton Road, Moorpark, California
16 93021 (the “Moorpark Property”), located in Ventura County, and (2) the Property, which is a
17 poultry ranch with approximately 3.89 acres, with a structure used as an office and residence,
18 located in San Bernardino County.

19 4. I believe that the Debtor has a sound business justification for the proposed sale of
20 the Property to Asian Pacific Inc. (“Asian Pacific”) pursuant to the “Standard Offer, Agreement and
21 Escrow Instructions for Purchase of Real Estate” (the “Purchase Agreement”). Based on the offer
22 from Asian Pacific, the sale of the Property will allow the Debtor to satisfy some of the secured
23 indebtedness of the Internal Revenue Service (the “IRS”). I believe that the price to be paid for the
24 Property is fair and reasonable.

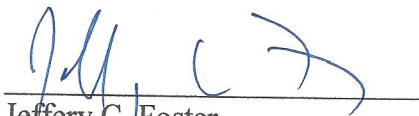
25 5. In addition, through the Debtor’s counsel, the Debtor intends to provide adequate
26 notice of the proposed sale of the Property. Through counsel, the Debtor will cause the Motion, the
27 Purchase Agreement, and the Notice to be served upon those parties who have expressed an interest
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1 in bidding to the Debtor or MGR Real Estate, Inc. ("MGR"), the realtor approved by this Court to
2 sell the Property.

3 6. By giving qualified bidders the opportunity to submit competing bids, I am confident
4 that the price to be obtained for the Property is the highest and best price the Debtor can obtain for
5 the Property.

6 7. In addition, through the Motion, the Debtor is requesting that the Court extend good
7 faith purchaser status to Asian Pacific (or a successful overbidder) since it has no relation to me, the
8 Debtor, Howard Dean Foster, Anna Mae Foster, or the creditors of the Debtor, and it made the offer
9 in good faith and has performed all of the terms and conditions imposed on it by the Purchase
10 Agreement. In this regard, it should be noted that the proposed sale to Asian Pacific is the result of
11 an arm's length transaction and there are no facts raising the specter of bad faith, collusion, or fraud
12 calling into question the propriety of the sale to Asian Pacific or any successful purchaser.
13 Therefore, pursuant to Bankruptcy Code section 363(m), the Court should find that the Purchase
14 Agreement has been entered into in good faith.

15 I declare under penalty of perjury that the foregoing is true and correct and that this
16 declaration was executed on October 13, 2018, at Ontario, California.

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19 Jeffery C. Foster
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DECLARATION OF MICHAEL G. RADEMAKER

I, Michael G. Rademaker, declare and state as follows:

1. I am over the age of eighteen and the chief executive officer of the brokerage firm MGR Real Estate, Inc. ("MGR"), the commercial real estate broker for Foster Enterprises, the debtor and debtor in possession in one of the above-captioned cases. I make this declaration in support of the motion for an order authorizing and approving bidding procedures, selling the property located at 775 South Acacia Avenue, Rialto, CA (the "Property") and seeking related relief (the "Motion"), pursuant to which the Debtor seeks, among other things, the entry of an order approving the sale of the Debtor's Property at 775 South Acacia Avenue, Rialto, CA (the "Property") on the terms and conditions of the "Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate" (the "Purchase Agreement"), by and between the Debtor, as seller, and Asian Pacific, Inc. ("Asian Pacific"), as buyer, which is attached hereto as Exhibit "A" and incorporated herein by reference. Each of the facts contained in this declaration is based on personal knowledge and, if called as a witness, I could and would competently testify thereto under oath.

2. In order to assist the Debtor in its efforts to sell the Property, the Debtor filed an application seeking the employment of MGR for the purpose of procuring an offer to purchase the Property. My understanding is that on April 23, 2018, the Court entered an order authorizing the Debtor's employment of MGR. Thereafter, our office undertook an extensive and comprehensive analysis of the Property in order to gauge its fair market value. After marketing the Property, the Debtor selected Asian Pacific as the stalking-horse buyer. MGR marketed the Property, but obtained no bids on the Property other than the one presented by Asian Pacific.

3. Based on MGR's internal analysis and my professional experience, I believe that the sales price agreed to by Asian Pacific represents a fair and reasonable price for the Property.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10 day of October, 2018, at Upland, California.


Michael G. Rademaker

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EXHIBIT 1

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AIR Commercial Real Estate Association

(Date for Reference Purposes)

FORM OFA-13-04/14E

3.2 If Buyer is taking title to the Property pursuant to an Existing Deed of Trust in which deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.

4. Deposits.

4.1 ☒ Buyer has delivered to Broker a check in the sum of \$ 10,000.00, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or _____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or ☐ within 2 or _____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder Buyer shall deliver to Escrow Holder a check in the sum of \$ _____. If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

4.2 Additional deposits:

(a) Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of \$ _____ to be applied to the Purchase Price at the Closing.

(b) Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (m) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of \$ _____ to be applied to the Purchase Price at the Closing.

(c) If an Additional Deposit is not received by Escrow Holder within the time period provided then Seller may notify Buyer, Escrow Holder, and Brokers, in writing that, unless the Additional Deposit is received by Escrow Holder within 2 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is _____. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

4.4 Notwithstanding the foregoing, within 5 days after Escrow Holder receives the monies described in paragraph 4.1 above, Escrow Holder shall release \$100 of said monies to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the contingency period to Buyer as herein provided. Such independent consideration is non-refundable to Buyer but shall be credited to the Purchase Price in the event that the purchase of the Property is completed.

5. ~~Financing Contingency. (Strike if not applicable)~~

~~5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least _____% of the Purchase Price, on terms reasonably acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.~~

~~5.2 Buyer hereby agrees to diligently pursue obtaining the New Loan. If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within _____ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.~~

~~5.3 If, after due diligence, Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.~~

6. ~~Seller Financing (Purchase Money Note). (Strike if not applicable)~~

~~6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of _____% per annum, with principal and interest paid as follows:~~

~~The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.~~

~~6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):~~

~~(a) Prepayment. Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.~~

~~(b) Late Charge. A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.~~

~~(c) Due On Sale. In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.~~

~~6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.~~

~~6.4 WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.~~

~~6.5 Seller's obligation to provide financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 3 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate, Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.~~

7. Real Estate Brokers.

7.1 The following real estate broker(s) ("Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check the applicable boxes):

☒ MGR REAL ESTATE, INC. represents Seller exclusively ("Seller's Broker");

☒ Michael Ramirez represents Buyer exclusively ("Buyer's Broker"); or

☐ _____ represents both Seller and Buyer ("Dual Agency");

The Parties acknowledge that Brokers are the procuring cause of this Agreement. See paragraph 24 regarding the nature of a real estate agency relationship. Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers named in paragraph 7.1, and no broker or other person, firm or entity, other than said Brokers is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Brokers by reason of any dealings or act of the indemnifying Party.

8. Escrow and Closing.

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through

the Escrow. Escrow Holder shall not prepare any documents resting in escrow unless specifically so instructed by the Parties or a Broker herein. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "Closing") by recording a general warranty deed (a grant deed in California) and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement.

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance. (See also paragraph 11)

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 9.5, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in paragraph 9.2, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall be promptly refunded all funds deposited by Buyer with Escrow Holder, less only the \$100 provided for in paragraph 4.4 and the Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this sale of the Property is not consummated for any reason other than Seller's breach or default, then at Seller's request, and as a condition to any obligation to return Buyer's deposit (see paragraph 21), Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property. Provided, however, that Buyer shall not be required to deliver any such report if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

9. Contingencies to Closing.

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies. **IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT.** Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer. Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. With regard to subparagraphs (a) through (m) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) *Disclosure.* Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR Commercial Real Estate Association ("AIR") standard form entitled "Seller's Mandatory Disclosure Statement") and provide Buyer with a completed Property Information Sheet ("**Property Information Sheet**") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within 10 or _____ days following the Date of Agreement. Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) *Physical Inspection.* Buyer has 10 or 90 days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the physical aspects and size of the Property.

(c) *Hazardous Substance Conditions Report.* Buyer has 30 or 90 days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "**Hazardous Substance**" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "**Hazardous Substance Condition**" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) *Soil Inspection.* Buyer has 30 or 90 days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within 10 days of the Date of Agreement.

(e) *Governmental Approvals.* Buyer has 30 or 90 days from the Date of Agreement to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

(f) *Conditions of Title.* Escrow Holder shall cause a current commitment for title insurance ("**Title Commitment**") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("**Underlying Documents**"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 or _____ days following the Date of Agreement. Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) *Survey.* Buyer has 30 or 90 days from the receipt of the Title Commitment and Underlying Documents to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("**ALTA**") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) *Existing Leases and Tenancy Statements.* Seller shall within 10 or _____ days of the Date of Agreement provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "**Existing Leases**") affecting the Property, and with a tenancy statement ("**Estoppel Certificate**") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.

(i) *Owner's Association.* Seller shall within 10 or _____ days of the Date of Agreement provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has 10 days from the receipt of such documents to satisfy itself with regard to the association.

(j) *Other Agreements.* Seller shall within 10 or _____ days of the Date of Agreement provide Buyer with legible copies of all other agreements ("**Other Agreements**") known to Seller that will affect the Property after Closing. Buyer has 10 days from the receipt of said Other Agreements to satisfy itself with regard to such Agreements.

(k) *Financing.* If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan

contingency.

(l) *Existing Notes*. If paragraph 3.1(c) has not been stricken, Seller shall within 10 or _____ days of the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "**Loan Documents**") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("**Beneficiary Statement**") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or _____ days from the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or _____ days of the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or _____ days from the receipt of such documents to satisfy itself with regard to the form and content thereof.

(m) *Personal Property*. In the event that any personal property is included in the Purchase Price, Buyer has 10 or _____ days from the Date of Agreement to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or _____ days of the Date of Agreement.

(n) *Destruction, Damage or Loss*. There shall not have occurred prior to the Closing, a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(o) *Material Change*. Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change. "**Material Change**" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(p) *Seller Performance*. The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(q) *Brokerage Fee*. Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Brokers ("**Brokerage Fee**"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers.

9.2 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "**Buyer's Contingencies**."

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("**Disapproved Item**"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("**Seller's Election**"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. The above time periods only apply once for each Disapproved Item. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions or to the Financing Contingency. Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.

10. Documents Required at or Before Closing:

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing:

- (a) Grant or general warranty deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.
- (b) If applicable, the Beneficiary Statements concerning Existing Note(s).
- (c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.
- (d) If applicable, Estoppel Certificates executed by Seller and/or the tenant(s) of the Property.
- (e) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.
- (f) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.
- (g) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.
- (h) If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.

10.3 Buyer shall deliver to Seller through Escrow:

- (a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date provided, however, that Buyer shall not be required to deposit such monies into Escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed Buyer need only provide Escrow with evidence establishing that the required monies were available.
- (b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.
- (c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.
- (d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.
- (e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.
- (f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the

Property vested in Buyer, subject only to the terms and conditions hereof. In the event Buyer purchases a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.

IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.

11. Prorations and Adjustments.

11.1 *Taxes.* Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 *Insurance.* **WARNING:** Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

11.3 *Rentals, Interest and Expenses.* Scheduled rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 *Security Deposit.* Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

11.6 *Variations in Existing Note Balances.* In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(s), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof ("**Existing Note Variation**"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.

11.7 *Variations in New Loan Balance.* In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.

11.8 *Owner's Association Fees.* Escrow Holder shall: (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up front fees required by the association from Buyer's funds.

12. Representations and Warranties of Seller and Disclaimers.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and any lawsuit or action based upon them must be commenced within such time period. Seller's warranties and representations are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers:

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in paragraph 9.1(n) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) *Hazardous Substances/Storage Tanks.* Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) *Compliance.* Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) *Notice of Changes.* Seller will promptly notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(o)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy, insolvency or probate proceeding.

(l) *Personal Property.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

13. Possession.

Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

14. Buyer's Entry.

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

15. Further Documents and Assurances.

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

17. Prior Agreements/Amendments.

17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.

17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.

19. Notices.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. Communications transmitted by facsimile transmission shall be deemed delivered upon telephonic confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

20. Duration of Offer.

Upland on the date of 07/01/2018

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

Buyer Initials

Seller Initials

22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("**COMMERCIAL RULES**"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. ANY SUCH CONTROVERSY SHALL BE ARBITRATED BY 3 ARBITRATORS WHO SHALL BE IMPARTIAL REAL ESTATE BROKERS WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THEY SHALL BE APPOINTED UNDER THE COMMERCIAL RULES. THE ARBITRATORS SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.

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

JK

Buyer Initials

Seller Initials

23.1 **Binding Effect.** This Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed.

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

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INITIALS

INITIALS

23.5 **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

23.6 **Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

23.7 **1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange.

23.8 **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.

24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) *Seller's Agent.* A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) *Buyer's Agent.* A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations: (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) *Agent Representing Both Seller and Buyer.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not without the express permission of the respective Party, disclose to the other Party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 *Confidential Information:* Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

25. Construction of Agreement. In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26 Additional Provisions:

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum consisting of paragraphs 27 through 31. (If there are no additional provisions write "NONE".)

☐ a energy disclosure addendum is attached;

27. BUYER shall have until September 30, 2018 for Due Diligence Period to review and conduct all aspects of review of property, including a Phase I environmental assessment of the Property. Buyer will pay for Phase 1 report. SELLER shall provide copies of all available environmental reports and all other studies, analyses or materials and information in their control or possession relating to the condition of the Property. SELLER will disclose any past or pending actions by any public agency. Upon acceptance of offer, SELLER shall deliver all information and materials within 3 days. Any delay will extend BUYER's due diligence by an equal amount of time.

28. Time Extensions: The Due Diligence Period may be extended for one 30 day period by the Buyer, and Close of Escrow dates may be extended for nine 30 day periods by the Buyer, by depositing an additional Ten Thousand Dollars for each occurrence within 10 days of the deadline date. Deposits are applicable to the Total Purchase Price.

29. Desert Sand Fly (DSF) Survey: SELLER shall deliver to BUYER a copy of any DSF surveys of the property in their control or possession. Upon acceptance, Seller shall allow a survey to be completed for the current survey period, July 2018 – September 2018. Survey to be paid for by BUYER.

If escrow does not close with BUYER, for any reason, SELLER to reimburse BUYER for survey cost, not to exceed \$2,500.00 per survey, 2017 and 2018, maximum of \$5,000.00 Buyer will assign all rights to report to SELLER.

30. Buyer and Seller aware and understand this sale is contingent upon bankruptcy court approval.

31. Buyer and Seller aware that sale may be subject to Auction process.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.

WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

NOTE:

1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
2. IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.
BROKER: **BUYER:**

<u>Michael Ramirez</u>	<u>Asian Pacific Inc.</u>
Attn: _____	By: <u></u>
Title: _____	Date: <u>June 11, 2018</u>
Address: <u>P.O. BOX 245 MONTEREY PARK, CA 91754</u>	Name Printed: <u>Joseph Zhang</u>
Telephone: (<u>760</u>) <u>810-8548</u>	Title: <u>General Manager</u>
Facsimile: () _____	Telephone: (<u>626</u>) <u>438-9195</u>
Email: _____	Facsimile: () _____
Federal ID No.: _____	Email: <u>APIYatai@gmail.com</u>
Broker/Agent BRE License #: <u>00933815</u>	By: _____
	Date: _____
	Name Printed: _____
	Title: _____
	Address: _____
	Telephone: () _____
	Facsimile: () _____
	Email: _____
	Federal ID No.: _____

27. Acceptance.

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 Seller acknowledges that Brokers have been retained to locate a Buyer and are the procuring cause of the purchase and sale of the Property set forth in this Agreement. In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to 6 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker 3.5 % and Buyer's Broker 2.5 %. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.

BROKER:

SELLER:

<u>MGR Real Estate, Inc.</u>	<u>Foster Enterprises</u>
Attn: <u>Jerry Tomeo, Michael Rademaker</u>	By: _____
Title: _____	Date: _____
Address: <u>1425 W. Foothill Blvd., Upland CA Suite 300</u>	Name Printed: _____
Telephone: (<u>909</u>) <u>981-4466</u>	Title: _____
Facsimile: () _____	Telephone: () _____
Email: _____	Facsimile: () _____
Federal ID No.: _____	Email: _____
Broker/Agent BRE License #: <u>01907707, 01991751, 00556679</u>	By: _____
	Date: _____
	Name Printed: _____
	Title: _____
	Address: _____
	Telephone: () _____
	Facsimile: () _____
	Email: _____
	Federal ID No.: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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ADDENDUM TO STANDARD OFFER, AGREEMENT AND
ESCROW INSTRUCTIONS FOR PURCHASE OF REAL PROPERTY

This Addendum is made a part of the "Standard Offer, Agreement and Escrow Instructions For Purchase of Real Property" between Foster Enterprises, Debtor and Debtor in Possession, ("Seller") and Asian Pacific, Inc. ("Purchaser") dated June 6, 2018 ("Agreement") and is incorporated therein.

Seller, as debtor in possession of the estate in the chapter 11 case captioned *In re Foster Enterprises*, Case No. 6:17-bk-15749 SC (jointly administered with Case No. 6:17-bk-15915 SC), currently pending in the United States Bankruptcy Court for the Central, District of California, Riverside Division, agree, subject to Bankruptcy Court approval, to sell the commercial real property commonly described as 775 South Acacia Avenue, Rialto, CA ("Property"), to Purchaser upon the terms and conditions set forth in the Agreement dated June 6, 2018, as amended by the following terms and conditions of this Addendum:

1. Addendum. This Addendum amends the Agreement. Notwithstanding any contrary terms and conditions in the Agreement, this Addendum shall govern.

2. No Liability. Seller is selling the Property to Purchaser in its capacity as the Chapter 11 Debtor in Possession of the bankruptcy estate, and not in its personal capacity, and no liability or obligations shall accrue to it personally as a result of such listing.

3. Conditions of Sale. Purchaser agrees and understands that any sale of the Property shall be subject to the following terms and conditions:

a. Seller is selling the Property in its capacity as debtor in possession of the bankruptcy estate, and not in its personal capacity, and no liability or obligations shall accrue to it personally as a result of any sale.

b. If for any reason, or no reason whatsoever, Seller is unable to deliver possession or title to the Property to Purchaser, the Purchaser's sole remedy shall be the return of any money that the Purchaser has deposited towards the purchase of the Property.

c. Seller is selling the Property in an "AS IS" condition or basis by quitclaim deed without any representations or warranties whatsoever including, without limitation, representations or warranties as to title, oil and mineral rights, city or government agency notifications regarding work to be done, marketability of title, ownership, physical condition, compliance with California, city or federal statutes, codes, ordinances, or regulations, geological stability, zoning, suitability for improvements, and fire insurance policies to cover any improvements on the Property, nor any assurances regarding the ability to subdivide the Property.

d. The sale of the Property is subject to Bankruptcy Court approval after notice to all creditors, the United States Trustee, and other parties in interest as required by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules.

e. Purchaser shall, at the Purchaser's sole expense, acquire any and all insurance policies that the Purchaser desires to cover the Property. Seller does not agree to acquire or transfer any insurance policies to the Purchaser.

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f. Purchaser is to arrange for all financing of the acquisition of the Property before the close of escrow.

g. All escrow fees shall be shared and paid on a 50/50 basis by the bankruptcy estate and the Purchaser.

h. Seller is not required to deliver to the Purchaser a written statement of compliance with any applicable state and local law.

i. Purchaser shall, at Purchaser's sole expense, obtain any and all pest control inspection repairs that Purchaser deems appropriate.

j. If any local ordinance requires that the Property be brought into compliance with minimum energy conservation standards as a condition of sale or transfer, the Purchaser shall comply with and pay for these requirements at Purchaser's sole expense.

k. Any sale is subject to the following conditions being satisfied before the close of escrow:

i. Seller must prevail with respect to any objections to the proposed sale; and

ii. Seller reserve the right to reject any and all offers which in its business judgment are insufficient.

l. The Property is being sold subject to:

i. All general and special taxes that are presently due, or may become due, regarding the Property, other than property taxes, which shall be prorated as of the close of escrow;

ii. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the California Revenue and Taxation Code; and

iii. Any and all easements, restrictions, rights and conditions of record and rights of way, against, on or regarding the Property. Title, however, is to be transferred free of secured claims of record.

4. Payment of Commission. The commissions to be paid to the brokers shall only be paid from the proceeds of the sale of the Property and subject to Court approval. If a sale is not consummated for any or no reason whatsoever, the brokers shall not be entitled to commissions.

5. Entire Agreement. This Addendum, any other addendum to the Agreement, and the Agreement, to the extent that such Agreement is not contrary to the terms and conditions herein, constitute the entire contract between the parties. All prior agreements between the parties are incorporated into this contract. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete, final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this agreement.

6. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction to resolve any and all disputes relating to this Addendum and the Agreement.

7. Continued Marketing of Property. The sale of the property through the Bankruptcy Court will be subject to overbid. As such, notwithstanding the Agreement, Seller, through its Broker, may continue to market the property for sale unless and until such time as there is a Bankruptcy

Court order approving the sale and such order is final and not subject to appeal or reconsideration. Seller, through its Broker, may, through the overbid process, accept a more desirable offer. Seller, subject to Bankruptcy Court override, is the sole determiner of what constitutes a more desirable offer based on whatever criteria Seller considers most significant, including not only the purchase price, but also timing, perceived likelihood of performance, and any other difference in sale conditions.

8. Additional Provisions. The Agreement, as modified, and this Addendum, are subject to approval by the Bankruptcy Court and is not binding on Seller until such approval is obtained by entry of an order thereon. Purchaser acknowledges that the sale is subject to an overbid process to be approved by the Bankruptcy Court on terms approved by the Bankruptcy Court.

Dated: July __, 2018

Foster Enterprises, a general partnership,
Debtor and Debtor in Possession

By: 
Jeffery Foster
Its: Co-Managing Partner

Dated: July 03, 2018

Asian Pacific, Inc.

By:  Joseph Zhang
Its: General Manager

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE, SUITE 2100
LOS ANGELES, CALIFORNIA 90071

PROOF OF SERVICE

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: DYKEMA GOSSETT LLP, 333 S. Grand Avenue, Suite 2100, Los Angeles, CA 90071

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S MOTION FOR ORDER (1) AUTHORIZING SALE OF REAL PROPERTY (775 South Acacia Ave., Rialto, California) FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (2) DETERMINING THAT BUYER IS A GOOD FAITH PURCHASER; AND (3) WAIVING THE FOURTEEN (14) DAY STAY PRESCRIBED BY RULE 6004(h) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF JEFFERY C. FOSTER AND MICHAEL G. RADEMAKER 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 (*date*) October 16, 2018, 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:

Alan F Broidy on behalf of Creditor Allstar Financial Services, Inc.
alan@broidylaw.com, sherrie@broidylaw.com

Gavin L Greene on behalf of Creditor UNITED STATES OF AMERICA on behalf of the INTERNAL REVENUE SERVICE
gavin.greene@usdoj.gov, USACAC.criminal@usdoj.gov

Gregory K Jones on behalf of Attorney Proposed Attorneys for Foster Enterprises
GJones@dykema.com, CAcossano@dykema.com, DocketLA@dykema.com

Gregory K Jones on behalf of Debtor Foster Enterprises, a California general partnership
GJones@dykema.com, CAcossano@dykema.com, DocketLA@dykema.com

Matthew D Pham on behalf of Debtor Foster Enterprises, a California general partnership
mpham@afrcf.com, msinclair@afrcf.com, afrcfecf@afrcf.com

Matthew D Pham on behalf of Interested Party Anna Mae Foster
mpham@afrcf.com, msinclair@afrcf.com, afrcfecf@afrcf.com

Matthew D Pham on behalf of Interested Party Howard Dean Foster
mpham@afrcf.com, msinclair@afrcf.com, afrcfecf@afrcf.com

Dean G Rallis, Jr on behalf of Debtor Foster Enterprises, a California general partnership
drallis@afrcf.com,
msinclair@afrcf.com, AFRCFECF@afrcf.com, mpham@afrcf.com, 4727965420@filings.docketbird.com

Dean G Rallis, Jr on behalf of Debtor Howard Dean Foster
drallis@afrcf.com,
msinclair@afrcf.com, AFRCFECF@afrcf.com, mpham@afrcf.com, 4727965420@filings.docketbird.com

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE, SUITE 2100
LOS ANGELES, CALIFORNIA 90071

Dean G Rallis, Jr on behalf of Interested Party Anna Mae Foster

drallis@afrc.com,
msinclair@afrc.com; AFRCTECF@afrc.com; mpham@afrc.com; 4727965420@filings.docketbird.com

Dean G Rallis, Jr on behalf of Interested Party Howard Dean Foster

drallis@afrc.com,
msinclair@afrc.com; AFRCTECF@afrc.com; mpham@afrc.com; 4727965420@filings.docketbird.com

Dean G Rallis, Jr on behalf of Joint Debtor Anna Mae Foster

drallis@afrc.com,
msinclair@afrc.com; AFRCTECF@afrc.com; mpham@afrc.com; 4727965420@filings.docketbird.com

Michael B Reynolds on behalf of Interested Party Courtesy NEF

mreynolds@swlaw.com, kcollins@swlaw.com

Jason K Schrader on behalf of U.S. Trustee United States Trustee (RS)

jason.K.Schrader@usdoj.gov

Bradley A Silva on behalf of Interested Party Star Milling Co.

basilva@sbcglobal.net

Valerie Smith on behalf of Interested Party Courtesy NEF

claims@recoverycorp.com

Jolene Tanner on behalf of Creditor UNITED STATES OF AMERICA on behalf of the
INTERNAL REVENUE SERVICE

jolene.tanner@usdoj.gov, USACAC.criminal@usdoj.gov

Mohammad Tehrani on behalf of U.S. Trustee United States Trustee (RS)

Mohammad.V.Tehrani@usdoj.gov

United States Trustee (RS)

ustpregion16.rs.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On October 16, 2018, 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.

Anglin, Flewelling, Rasmussen, Campbell & Trytten LLP
301 N. Lake Ave., Ste 1100
Pasadena, CA 91101-4158

☒ Service information continued on attached page

1 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**
2 **EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,
3 on (date) October 16, 2018, I served the following persons and/or entities by personal delivery, overnight
4 mail service, or (for those who consented in writing to such service method), by facsimile transmission
5 and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or
6 overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

7 Honorable Scott C. Clarkson
8 United States Bankruptcy Court
9 Central District of California
10 Ronald Reagan Federal Building and Courthouse
11 411 West Fourth Street, Suite 5130 / Courtroom 5C
12 Santa Ana, CA 92701-4593

13 ☐ Service information continued on attached page

14 I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

15 October 16, 2018 Caroline Acossano /s/ Caroline Acossano
16 *Date* *Printed Name* *Signature*

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE, SUITE 2100
LOS ANGELES, CALIFORNIA 90071

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MAILING LIST

2. SERVED BY UNITED STATES MAIL - CONT'D:

Foster Enterprises - Secured Creditors

Beverly Gross
1341 S. Lincoln Blvd.
Centralia, IL 62801

San Bernardino County Tax Collector
268 West Hospitality Ln First Floor
San Bernardino, CA 92415-0360

Ventura County Tax Collector
800 S Victoria Avenue
Ventura, CA 93009-1290

County of Ventura
Resource Management Agency
800 S Victoria Ave #1700
Ventura, CA 93009-1700

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Foster Enterprises - Twenty Largest Non-Insider Unsecured Creditors

ACI Commercial Insurance
505 E First St Suite E
Tustin, CA 92780

American Express Bank FSB
c/o Beckett and Lee LLP
P.O. Box 3001
Malvern, PA 19355-0701

Carol F Cramer
42105 Rockview Dr
Hemet, CA 92544-8001

County of Ventura
Resource Management Agency
800 S Victoria Ave #1700
Ventura, CA 93009-1700

Cypress Premium Funding Inc.
P.O. Box 3529
Mission Viejo, CA 92690

Frazer LLP
135 S State College Blvd
Suite 300
Brea, CA 92821

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333 SOUTH GRAND AVENUE, SUITE 2100
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- 1 Healthcare Cos Solutions
- 2 1200 Newport Center Dr Suite 190
- 3 Newport Beach, CA 92660
- 4
- 5 Henry Ishikawa
- 6 1470 S Bradshaw Avenue
- 7 Monterey Park, CA 91754-5424
- 8
- 9 Internal Revenue Service
- 10 P.O. Box 7346
- 11 Philadelphia, PA 19101-7346
- 12
- 13 Jose Rodriguez
- 14 19357 Nuthatch St
- 15 Perris, CA 92570-6521
- 16
- 17 Juying Wei
- 18 25 Bridgewood
- 19 Irvine, CA 92604
- 20
- 21 Mukesh Shah
- 22 2340 W 230th St
- 23 Torrance, CA 90501
- 24
- 25 POMA Distributing Co Inc
- 26 818 W Seventh St Suite 930
- 27 Los Angeles, CA 90017
- 28
- 29 Rypos Inc
- 30 40 Kenwood Circle
- 31 Franklin, MA 02038-3298
- 32
- 33 Southern California Edison Company
- 34 Attn Julia A Mosel
- 35 2244 Walnut Grove Avenue
- 36 Rosemead, CA 91770
- 37
- 38 State Compensation Insurance Fund
- 39 PO Box 7441
- 40 San Francisco, CA 94120
- 41
- 42 Teresa Cardenas
- 43 3593 Hillhaven Dr
- 44 West Covina, CA 91791
- 45
- 46 Western Milling LLC
- 47 31120 West Street
- 48 P O Box 1029
- 49 Goshen, CA 93227
- 50
- 51 Zang Zang Yang aka Vivian Higgens
- 52 510 Washington St Suite B
- 53 Northfield, MN 55057
- 54
- 55 Zwicker & Associates PC
- 56 80 Minuteman Rd
- 57 Andover, MA 01810
- 58
- 59 Cypress Premium Funding, Inc.
- 60 PO Box 3529
- 61 Mission Viejo, CA 92690