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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)**

In re	)	Case No. 17-40333 WJL 11
)	
GREATER ST. PAUL MISSIONARY	)	Chapter 11
BAPTIST CHURCH,)	
Debtor(s).)	
	)	Date: October 18, 2017
	)	Time: 10:30 a.m.
	)	Ctrm: U.S. Bankruptcy Court
	)	1300 Clay Street, Ctrm 220
	)	Oakland, CA 94612
	)	Judge: Hon. William J. Lafferty, III
)	
)	

**MOTION FOR ORDER APPROVING SALE OF REAL PROPERTY AND SALE FREE
AND CLEAR OF CERTAIN CLAIMS OF LIEN AND OTHER INTERESTS;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

Case No. 17-40333 WJL 11; *Greater St. Paul Missionary Baptist Church*
Motion for Order Approving § 363 Sale; MPA in Support

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**TO: ALL CREDITORS; ALL PARTIES WHO HAVE REQUESTED NOTICE;
THE OFFICE OF THE UNITED STATES TRUSTEE; ALL ADDITIONAL PARTIES IN
INTEREST; AND THE FOLLOWING INVOLUNTARY LIENHOLDERS:**

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-1-

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2 **UNITED STATES**
3 **DEPARTMENT OF JUSTICE**
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5 **P.O. Box 683**
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LABOR COMMISSIONER OF THE
STATE OF CA. DIV OF LABOR
STANDARDS ENFORCEMENT
Dept. of Industrial Relations
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

8 (the "INVOLUNTARY LIENHOLDERS")

9 **PLEASE TAKE NOTICE**, hereby given, that on **October 18, 2017 at 10:30 a.m.**, or as
10 soon thereafter as the matter may be heard, before the Honorable William J. Lafferty, III, United
11 States Bankruptcy Judge, United States Bankruptcy Court, 1300 Clay Street, Ctrm 220 Oakland,
12 CA 94612, GREATER ST. PAUL MISSIONARY BAPTIST CHURCH, , the Debtor and Debtor
13 in Possession ("DIP"), will move, and hereby does move the Court for an order authorizing the
14 DIP to sell the Debtor's REAL PROPERTY commonly known as

- 15 • 1918 Martin Luther King Jr. Way, Oakland, CA (the "Office Building"), Proposed
16 Purchase Price: \$3,250,000.00.
- 17 • Parking lot located at 18th Street and Martin Luther King Jr. Way, Oakland, CA, A.P.N.
18 3-61-6-3 (the "18th Street Lot"), Proposed Purchase Price: \$1,750,000.00

19 (the "DIP'S TWO SALE PARCELS")

20 to Bitzer Banker Development ("BBD" and/or the "Nominee")

21 and sell said assets Free and Clear of Certain Claims of Lien and Other Interests of the
22 aforementioned INVOLUNTARY LIENHOLDERS, all cash, "as-is", with no contingencies
23 (outside inspections), with a deposit figure already held in escrow as follows:

24 The DIP will deposit all collective proceeds from the sale into an appropriate escrow
25 account and administer pursuant to the following two (2) provisions:

- 26 a. That the judgments, liens, claims and interests of the parties herein, attach to any
27 proceeds from the sale of these assets, to the same priority and extent that they
28 attach to the subject assets.

1 b. That the proceeds from the sale of the assets described above be held in an interest
2 bearing account until further order of this Court to determine the validity, priority
3 and extent of the judgments, liens, claims and interests of the parties herein.

4 Subject to subsequent Bankruptcy court approval, the DIP reasonably anticipates paying
5 the secured lien of CLEARINGHOUSE COMMUNITY DEVELOPMENT FINANCIAL
6 INSTITUTION, A CALIFORNIA CORPORATION (“CCDFI”) in full, reasonably estimated at
7 approximately \$3,700,000.00,¹ as well as ordinary and reasonable title and escrow charges and
8 broker commissions, all outlined on the proposed seller’s statement, attached hereto as Exhibit C
9 to Mr. Karnad’s Declaration. The DIP proposes NOT TO PAY any sums to the aforementioned
10 INVOLUNTARY LIENHOLDERS and to keep any and all remaining proceeds in an escrow
11 account or trust account, as determined by the Court, absent further order.

12 The Buyer is purchasing the DIP’S TWO SALE PARCELS “as-is” with no condition or
13 warranties except that DIP does not have any actual knowledge of any liens, security interests, or
14 claims against the DIP’S TWO SALE PARCELS, other than as represented in the UCC liens
15 included in the title report attached to the motion as well as the liens and claims of lien disclosed
16 in the motion.

17 The sale is subject to overbid as described hereinbelow.

18 Although Bankruptcy Rule 6004(h) provides for a 14-day stay of a sale order unless the
19 Bankruptcy Court orders otherwise, the DIP requests that the Bankruptcy Court waive the stay
20 provisions of Bankruptcy Rule 6004(h) so that the sale may close as expeditiously as possible. The
21 DIP believes that the Buyer is buying the DIP’S TWO SALE PARCELS in good faith and for fair
22 and adequate consideration and thus the DIP also requests that the Court make a good-faith
23 finding.

24 **OPPORTUNITY TO OVERBID:**

25 **PLEASE TAKE FURTHER NOTICE** that the sale is subject to overbid. The DIP’s sale
26 of the DIP’S TWO SALE PARCELS identified hereinabove is subject to overbid. Anyone

27 ¹ As of July 31, 2017, CCDFI’s payoff figure was \$3,645,369.36.

1 interested in purchasing the DIP'S TWO SALE PARCELS must submit a written overbid (an
2 offer) in the form of a signed Asset Purchase Agreement ("APA") similar to the Buyer's
3 agreement with the DIP, except for the identity of the buyer, the buyer's broker (if applicable), and
4 the purchase price, and the proposed financing arrangement and closing timetable, if any, and
5 provide verified financial information evidencing their ability to perform on the sale contract,
6 including the source of funding for the purchase price, as well as the amount of any cash or third-
7 party financing that will close and result in a cash payable transaction payable to the DIP's estate
8 at the close of escrow.

9 As part of the underlying motion, the DIP is also requesting that Court authorize a **break-**
10 **up/termination fee, in the amount of \$20,430** payable by the close of escrow, representative of
11 the approximate amount payable by the Nominee to conduct necessary, time-sensitive due
12 diligence in order to close said transaction – subject to Court approval.

13 The DIP reserves the right to reject any overbid. The DIP reserves the right to determine
14 which overbid, if any, is in the best interests of the estate and its creditors.

15 Any overbids must be transmitted, with the written overbid and financial information to
16 the DIP's counsel, Matthew D. Metzger, Esq., Belvedere Legal, PC, 1777 Borel Place, Suite 314,
17 San Mateo, CA 94402 Tel. 415.513.5980/ Fax 415.513.5985 **by October 11, 2017 at 5:00 p.m.**
18 **Pacific Standard Time**. Overbids must be in the minimum amount of

- 19 • 1918 Martin Luther King Jr. Way, Oakland, CA (the "Office Building"), Proposed
20 Purchase Price: **\$3,413,000.00.**
- 21 • Parking lot located at 18th Street and Martin Luther King Jr. Way, Oakland, CA, A.P.N.
22 3-61-6-3 (the "18th Street Lot"), Proposed Purchase Price: **\$1,838,000.00.**

23 which equals a minimum overbid increase of five percent (5%) of the purchase price, plus
24 \$500.00, with a deposit of at least \$50,000.00 for each parcel (the same deposit amount as the
25 Nominee). If overbids are received, the DIP will conduct an overbid procedure at the court
26 hearing on October 18, 2017 at 10:30 a.m. at the above-captioned Court. As for the bid procedure,
27 bidding for the sale of the DIP'S TWO SALE PARCELS will begin with the amount of the

1 highest, written, timely submitted overbid. The bidding procedure will be conducted in minimum
2 increments of at least one percent (1%) of the immediately prior bid.

3 Anyone interested in overbidding should obtain a copy of: 1) the Nominee's APAs; and 2)
4 proof of ability to close by or before October 31, 2017. If any prospective overbidder desires to
5 obtain a copy of the motion, accompanying memorandum of points and authorities, and all
6 supporting declarations, the prospective overbidder may contact Debtor's counsel directly at
7 counsel's contact information on the top left page of the caption and/or download copies from the
8 PACER.

9 If any prospective overbidder desires to inspect the DIP'S TWO SALE PARCELS prior to
10 submission of an overbid, such overbidder should contact the DIP's counsel directly, telephone
11 number (415) 513-5980.

12 **NOTICE OF MOTION FOR SALE FREE AND CLEAR OF CERTAIN CLAIMS**
13 **OF LIEN AND OTHER INTERESTS**

14 **PLEASE TAKE FURTHER NOTICE** that this motion is brought pursuant to BLR 6004-
15 1, BLR 9014-1, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, and 11
16 U.S.C. §§ 363(b)(1), and (f)(4) to sell the DIP'S TWO SALE PARCELS free and clear of any all
17 claims of lien the aforementioned INVOLUNTARY LIENHOLDERS in that a bona fide dispute
18 exists to each and every claim of lien of the INVOLUNTARY LIENHOLDERS, as outlined in the
19 DIP's Motion. The DIP will keep all excess proceeds in an appropriate escrow or trust account
20 pending resolution of the controversies.

21 The DIP will deposit all collective proceeds from the sale into an appropriate escrow
22 account and administer pursuant to the following two (2) provisions:

- 23 a. That the judgments, liens, claims and interests of the parties herein, attach to any
24 proceeds from the sale of these assets, to the same priority and extent that they
25 attach to the subject assets.

1 b. That the proceeds from the sale of the assets described above be held in an interest
2 bearing account until further order of this Court to determine the validity, priority
3 and extent of the judgments, liens, claims and interests of the parties herein.

4 The motion is based on the Notice of Hearing and Opportunity for Overbid, the
5 accompanying Memorandum of Points and Authorities, the declaration of Joseph Simmons,
6 Debtor's Principal, ("Simons Dec."), the declaration of Kiran Karnad, Debtor's Broker, "Karnad
7 Decl."), and the declaration of Reed Bitzer (Nominee's Principal, "Bitzer Decl."), all of which are
8 incorporated herein by reference, as well as the filings and docket history of the above-captioned
9 case.

10 **I. JURISDICTION AND VENUE**

11 This Court has jurisdiction to hear and determine this Motion pursuant to 28 U.S.C. §§ 1334
12 and 157. The Court's consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b).
13 Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. The
14 statutory authority for the Motion is Section 363 of the Bankruptcy Code.

15 **II. STATEMENT OF FACTS**

16 **A. Status of Operations**

17 1. On January 4, 2017 (the "Petition Date"), the Debtors filed an emergency
18 bankruptcy petition under chapter 11 of the Bankruptcy Code in order to invoke the automatic stay
19 provisions of § 362(a) to stop a foreclosure sale.

20 2. The Debtor remains in possession of its estate and continue to operate and manage
21 its business affairs. It is the Debtor's intent to propose a plan of reorganization for the treatment
22 and disposition of all property and obligations within their estate.

23 3. Among the assets of the Debtor's chapter 11 estate are the following real
24 properties: 1827 Martin Luther King Jr. Way, Oakland, CA; 1918 Martin Luther King Jr. Way,
25 Oakland, CA (the "Office Building"); 1807 Martin Luther King Jr. Way, Oakland, CA; and 1905
26 Martin Luther King Jr. Way, Oakland, CA. CCDFI holds a first-priority security interests
27

1 encumbering each of the Collateral Real Estate, in order to secure payment of all amounts owing
2 from the Debtor to CCDFI (collectively, the "Collateral Real Estate"):

3 4. Also among the assets of the Debtor's chapter 11 estate is the following real
4 property: A parking lot located at 18th Street and Martin Luther King Jr. Way, Oakland, CA,
5 A.P.N. 3-61-6-3 (the "18th Street Lot"). CCDFI does not presently hold a lien or security interest
6 encumbering the 18th Street Lot.

7 5. On May 26, 2017, the Debtor and CCDFI executed and filed in the Debtor's
8 chapter 11 case the Stipulation Between Debtor and Secured Creditor Clearinghouse CDFI For
9 Relief From the Automatic Stay (the "RFS Stipulation," docket no. 61). The RFS Stipulation was
10 approved by the Bankruptcy Court by its order entered on June 6, 2017 (docket no. 68). All
11 capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the
12 RFS Stipulation.

13 6. In the RFS Stipulation, the Debtor and CCDFI agreed and stipulated, inter alia, that
14 CCDFI holds a senior-most, valid, perfected and fully enforceable lien encumbering all of the
15 Collateral Real Estate, and all proceeds, profits and issue arising therefrom, pursuant to the Loan
16 Documents; that as of February 28, 2017, CCDFI's secured claim was \$3,526,026.35, with
17 interest, legal fees and other charges continuing to accrue on the obligation; and that the Debtor
18 has no defenses, offsets or counterclaims against such obligation or against CCDFI.

19 7. Also in the RFS Stipulation, inter alia, the Debtor agreed to a termination of the
20 automatic stay of Section 362(a) of the Bankruptcy Code with respect to CCDFI's exercise of its
21 rights under the Loan Documents, and CCDFI agreed to forbear temporarily from conducting a
22 foreclosure sale under the Loan Documents with respect to the Collateral Real Estate, upon certain
23 terms and conditions set forth in the RFS Stipulation.

24 8. In particular, CCDFI agreed in the RFS Stipulation that in the event that a
25 Qualifying Contract was presented to CCDFI on or before August 24, 2017, and provided that
26 other specified conditions were satisfied as well, CCDFI would forbear from conducting a
27 foreclosure sale of the Collateral Real Estate prior to October 31, 2017. The RFS Stipulation also

1 provided that CCDFI retained unilateral discretion to determine whether a submission constituted
2 a Qualifying Contract.

3 9. On August 24, 2017, the Debtor presented to CCDFI two proposed sale contracts
4 (the "Proposed Sale Contracts"), for the sale of the Office Building and the 18th Street Lot. After
5 careful consideration, the Debtor elected to list and sell only the Office Building and the 18th
6 Street Lot as the sale of said real property would: a) realize a fair market sales price of \$5,000,000
7 sufficient to pay off in full CCDFI's cross-collateralized lien against all affected real property held
8 by the Debtor; and b) leave the Debtor with sufficient remaining real property assets (free of
9 CCDFI's cross-collateralized lien) to remain in operations for the benefit of the community.

10
11 **B. Marketing Efforts**

12 10. On September 20, 2017, the Court entered an Order approving Kiran Karnad as the
13 estate's broker ("ECF/Docket No. 78").

14 11. All real property of the DIP has been advertised on public real estate indices since
15 June 2017.

16 12. Specifically, Mr. Karnad advertised the DIP's real property on Loopnet, Costar,
17 Multiple Listing Services (the "Public Real Estate Indexes") as well as on the Wall Street Journal.

18 13. Mr. Karnad received over 100 inquiries.

19 14. Pursuant to the stipulation that the Debtor negotiated with the lienholder,
20 Clearinghouse Community Development Financial Institution, a California Corporation
21 ("CCDFI"), the Debtor needed to submit a Qualified Written Offer by or before August 24, 2017
22 (the "Offer Submission Deadline") and needed to close the real estate transactions to pay CCDFI
23 by or before October 31, 2017 (the "CCDFI Payment Deadline").

24 15. Mr. Karnad received a total of seven (7) offers prior to the Offer Submission
25 Offer, which offers Mr. Karnad reviewed with the Debtor and the Debtor's principal, Mr. Joseph
26 Simmons.

16. The offer from Bitzer Banker Development (“BBD”) was the highest offer submitted by the Offer Submission Deadline

17. Additionally, the BBD Offer is an “all cash” offer and presented the highest likelihood of closing by or before the CCDFI Payment Deadline, due to solid proof of financial backing that BBD supplied to the Debtor, and the Debtor shared with CCDFI.

C. The Proposed Transaction

18. The proposed transaction is represented by the real property purchase agreement and related addendum are attached as Exhibits A-C to the declaration of Mr. Bitzer.

19. In the sum, the Debtor proposes to sell the following two (2) parcels:

- 1918 Martin Luther King Jr. Way, Oakland, CA (the “Office Building”), Proposed Purchase Price: \$3,250,000.00.
- Parking lot located at 18th Street and Martin Luther King Jr. Way, Oakland, CA, A.P.N. 3-61-6-3 (the “18th Street Lot”), Proposed Purchase Price: \$1,750,000.00

(the “DIP’S TWO SALE PARCELS”)

D. The Present Fair Market Value of the DIP'S TWO SALE PARCELS is \$5,000,000.00

20. It is Mr. Karnad's professional opinion that BBD's proposed purchase prices of the DIP'S TWO SALE PARCELS represents the fair market value prices.

21. Mr. Karnad also notes that the sheer number of offers received indicate that the present time represents a “hot market”

22. Mr. Karnad also observed that it is certainly possible that DIP may have received higher offers, had the Debtor had more time to submit a qualified written offer before expiration of the Offer Expiration Deadline.

23. However, there is reasonable uncertainty whether any other potential nominees would be able to close within the CCDFI Payment Deadline.

24. In order to work within the above constraints – and still obtain the highest and best offer for the estate and its creditors – Mr. Karnad intend to publish the Notice and Opportunity for Overbid on the Public Real Estate Indexes, advertising that the deadline to submit an overbid is October 11, 2017 at 5pm.

E. Potential for Overbids and Request for a Breakup Fee

25. Any and all parties are encouraged to overbid, pursuant to the schedule outlined in the accompany Notice and Opportunity for Overbid.

26. It reasonable to anticipate overbids.

27. To ensure that BBD can close the proposed transactions by or before the October 31, 2017 deadline, BBD needed to incur certain costs and expenses in order to conduct necessary due diligence. The sum total of said due diligence costs is \$20,430. A breakdown of said costs is attached as Exhibit D to Mr. Bitzer's declaration.

28. Additionally, in the event of a successful overbid, the Debtor agreed in the Addendum executed by and between the Debtor and BBD to request that the Court reimburse to BBD from the proceeds of the sale a breakup fee of \$20,430 to cover said due diligence costs.

F. Arms' Length Negotiations with the Nominee

29. As verified by the supporting declarations of Messrs Simmons, Bitzer, and Karnad, neither BBD nor Mr. Bitzer have past or present connections with the Debtor or Mr. Simmons, outside the transactions proposed in the instant motion..

30. Neither BBD nor Mr. Bitzer have any future plans with the Debtor or Mr. Simmons.

31. The negotiations have been at arms' length.

32. BBD and Mr. Bitzer first learned of the DIP'S TWO SALE PARCELS from Mr. Karnad but BBD is represented by a separate broker, KW Commercial.

33. Both Buyer and Seller are represented by separate brokers; there is no dual agency.

34. There is no collusion on behalf of BBD and/or Mr. Bitzer, and one hand, and any other entity or party.

G. The Net Gain to the Estate

35. The purchase price, all cash, is five-million dollars (\$5,000,000.00)

36. Subject to subsequent Bankruptcy court approval, the DIP reasonably anticipates paying the secured lien of CLEARINGHOUSE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION, A CALIFORNIA CORPORATION (“CCDFI”) in full, reasonably estimated at approximately \$3,700,000.00, as well as ordinary and reasonable title and escrow charges and broker commissions, all outlined on the proposed seller’s statement, attached hereto as Exhibit A. The DIP proposes NOT TO PAY any sums to the aforementioned INVOLUNTARY LIENHOLDERS and to keep any and all remaining proceeds in an escrow account or trust account, as determined by the Court, absent further order.

37. The approximate total figure of all disputed liens is \$454,075.27. Simmons Decl. ¶ 48.

38. Per the estimated seller’s statement, the total amount of anticipated fees payable at closing for escrow fees, title fees, transfer taxes, is approximately \$294,126.52. Karnad Decl., Exh. C.

39. Thus, the projected net gain to the estate, after payment to CCDFI and anticipated closing costs is approximately \$1,005,873.48 (the “Net Proceeds Figure”).

40. Said Net Proceeds Figure is more than sufficient to cover the estate’s administrative expenses (reasonably estimated at no to exceed \$100,000.00, subject to Court approval), scheduled unsecured claims (listed at \$8,709.05), and quarterly fees owed to the Office of the United States Trustee (the “UST”) and the UST’s filed Proof of Claim) (taken together, approximately \$25,000.00), as well as maintain a disputed claim reserve well in excess of the disputed lien figure, until all lien controversies are resolved via a compromise or court order.

41. From the proceeds of the sale, the DIP to keep all sale proceeds in an escrow account or trust account – as the discretion of the Court.

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III. RELIEF REQUESTED

By this Motion, the DIP seeks an order authorizing the sale of the DIP'S TWO SALE PARCELS to the Nominee (or overbidder) for the all cash purchase price of \$5,000,000.00 free and clear of the claims of lien of the INVOLUNTARY LIENHOLDERS due to a bona fide dispute. 11 U.S.C. § 363(f)(4).

IV. DISCUSSION

A. Bankruptcy Code Section 363 and Relevant Case Law Provide Authority for the Court to Approve the Proposed Sale.

After notice and a hearing, the DIP may sell property of the estate outside the ordinary course of business. 11 U.S.C. § 363(b). Bankruptcy Code section 363 provides, in pertinent part:

(b)(1) The trustee, after notice and a hearing, may . . . sell . . . other than in the ordinary course of business, property of the estate.

11 U.S.C. § 363(b). Under applicable legal standards, approval of a sale is appropriate if the court finds that the transaction represents a reasonable business judgment by the trustee. *Myers v. Martin* (In re Martin), 91 F.3d 389 (3d Cir. 1996); *In re Abbots Dairies of Pennsylvania, Inc* , 788 F.2d 143 (3d Cir. 1986); *In re Wild Horse Enter., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).

In the Ninth Circuit, "cause" exists for authorizing a sale of estate assets if it is in the best interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington, Ltd.*, 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988). In determining whether a sale satisfies the business judgment standard, courts have held: (1) that there be a sound business reason for the sale; (2) that accurate and reasonable notice of the sale be given to interested persons; (3) that the sale yield an adequate price (i.e., one that is fair and reasonable); and (4) that the parties to the sale have acted in good faith. *Titusville Country Club v. Pennbank* (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); see also, *In re Walter*, 83 B.R. at 19-20.

1 The DIP'S TWO SALE PARCELS are property of the estate under § 541 of the
2 Bankruptcy Code, and the sale by the DIP is outside the ordinary course of business. The
3 liquidation price will yield a net gain to the estate in excess of \$ \$1,000,000.00.

4 The DIP is currently noticing the sale of the Real Property pursuant to Bankruptcy Rule
5 2002. Also, the sale is subject to overbid and in the Notice, the DIP has set forth an overbid
6 procedure. If the DIP receives an overbid, the DIP will conduct a bidding procedure among the
7 Buyer and all overbidders. Thereafter, the DIP will request that the Court approve the sale to the
8 Buyer or any overbidder submitting the highest and best offer. Given the marketing of the
9 property, the DIP believes the sale to the Buyer is fair and reasonable, and the liquidation of the
10 DIP'S TWO SALE PARCELS will benefit the affected secured creditors.

11 Moreover, the DIP respectfully submits that it is in the best interests of the estate to
12 encourage overbids as to the DIP'S TWO SALE PARCELS "The purpose of procedural bidding
13 orders is to facilitate an open and fair public sale designed to maximize value for the estate. To
14 accomplish that goal, bankruptcy courts are necessarily given discretion and latitude in conducting
15 the sale." *In re Edwards*, 228 B.R. 552, 561 (Bankr.E.D.Pa., 1998). Here, the DIP respectfully
16 submits that it is in the best interests of the estate to consummate the sale of the
17 DIP'S TWO SALE PARCELS as two (2) separate parcels to encourage overbids to either or both
18 parcels. The proposed bidding strategy is the best strategy to maximize the return to the Estate
19 with a possible overbid while ensuring the DIP'S TWO SALE PARCELS can liquidate in timely
20 fashion for benefit of all the estate's creditors.

21 Bankruptcy Rule 6004(h) provides for a 14-day stay of a sale order, unless the Court
22 orders otherwise. The DIP does not believe that there is any reason for the sale of the DIP'S TWO
23 SALE PARCELS to be stayed, and the DIP desires to close the sale as soon as possible after Court
24 approval. Thereafter, the DIP requests that the Court waive the stay provisions of Bankruptcy rule
25 6004(h).

1 **B. The Court Should Authorize a Break-up/Termination Fee**

2 “The fact . . . that there are risks and costs related to the . . . transaction does not set
3 this transaction apart from any other business transaction in bankruptcy proceedings. *In re*
4 *Fruit of the Loom, Inc.*, 274 B.R. 631, 633 (D. Del. 2002). “Compromises are a normal part
5 of the process of reorganization, oftentimes desirable and wise methods of bringing to a close
6 proceedings otherwise lengthy, complicated and costly.” *Id.*(citing *In re Cajun Electric*
7 *Power Cooperative, Inc.*, 119 F.3d 349 (5th Cir.1997)). Starting from the presumption that
8 the Nominee is entitled to the same or equivalent consideration as a “stalking horse” bidder
9 as it would enjoy in a regular § 363(b) transaction, the applicable question is whether the
10 Debtor and the Nominee reached a reasonable accommodation between the amount of the
11 break-up/termination fee – \$20,430 – and the interests of the creditors.

12 Here, given the exigencies, it is critical to find a buyer willing to purchase the

13 DIP’S TWO SALE PARCELS in its “as-is/ where-is” condition, with Phase II
14 environmental testing uncompleted, all cash, with no financing contingencies. H&E has
15 demonstrated a willingness and capability to move forward on said terms. The sales also
16 must close by or before October 31, 2017. Thus, the Nominee needed to start incurring
17 immediately due diligence costs. Accordingly, in the event of a bona fide overbid, the
18 break-up fee of up to \$20,430.00 payable to BBD is reasonable and appropriate, subject to a
19 review and accounting of costs actually expended by BBD as part of due diligence.

20 **C. The Sale Should be Free and Clear of the Claims of Lien**

21 To enable the proposed sale, the DIP seeks authorization to sell free and clear of the
22 disputed lien. Pursuant to Bankruptcy Code section 363(f), a DIP may sell property under
23 section 363 “free and clear of any interest in such property of an entity other than the estate” only
if one of the following conditions is satisfied:

- 24 (1) applicable non-bankruptcy law permits sale of such property
 free and clear of such interest;
- 25 (2) such entity consents;
- 26 (3) such interest is a lien and the price at which such property is
27 to be sold is greater than the aggregate value of all liens on such property;

- (4) such interest is in bona fide dispute; or
(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *In re General Bearing Corp.*, 136 B.R. 361, 363-64 (Bankr. S.D.N.Y. 1992) (listing requirements). Here, as articulated herein below and in the supporting declaration of Mr. Simmons, the Debtor proposes to sell free and clear of the following claims of lien.

1. The Sale Should Be Free and Clear of the Pre-Petition Claim of Lien of the Labor Commissioner of the State of CA, Division of Labor Standards Enforcement.

The Labor Commissioner of the State of California, Division of Labor Standards Enforcement (the "DLSE") has a judgment lien recorded on or about July 2, 2008 in the Alameda County Assessor Recorder's Office as Instrument No. 2008205938 (the "Labor Commission Lien"). The approximate amount of the Labor Commission Lien is \$13,007.23. On information and belief, the Debtor satisfied the Labor Commission Lien pre-petition. For said reason, the Labor Commission Lien was listed as "disputed" on Schedule D. Prior to the October 18, 2017 hearing, the Debtor will attempt to confirm with the DLSE that said lien has been satisfied and/or produce in a supplemental filing proof of satisfaction of said lien. The DIP will set aside proceeds from the sale pending outcome of the controversy.

2. The Sale Should Be Free and Clear of the Pre-Petition Lien of Xerox Corporation.

Xerox Corporation ("Xerox") has a judgment lien recorded on or about December 29, 2008 in the Alameda County Assessor Recorder's Office as Instrument No. 2009-398500 (the "Xerox Lien"). On information and belief, the Debtor satisfied the Xerox Lien pre-petition. For said reason, the Xerox Lien was listed as "disputed" on Schedule D. The approximate amount of the Xerox Lien is \$128,334.10. Prior to the October 18, 2017 hearing, the Debtor will attempt to confirm with Xerox that said lien has been satisfied and/or produce in a supplemental filing proof of satisfaction of said lien. The DIP will set aside proceeds from the sale pending outcome of the controversy.

1 The Debtor is a non-profit entity. As a non-profit entity the Debtor is exempt from paying
2 certain taxes. On information and belief, the Alameda County Tax Collector will remove tax
3 assessment against the Debtor, provided the Debtor submits to the Tax Collector of non-profit
4 status in the form of certain documents required by the Tax Collector. The Debtor is in the
5 process of preparing said forms for submission to the Tax Collector. On information and belief,
6 the Tax Collector may release and/or adjust the aforementioned statutory tax liens upon
7 submission and acceptance of said paperwork. For said reason, the Alameda County tax liens
8 were listed as "disputed" on Schedule D. Prior to the October 18, 2017 hearing, the Debtor will
9 attempt to confirm with the Alameda County Tax Collector a compromise of the controversy. The
10 DIP will set aside proceeds from the sale pending outcome of the controversy.

11
12 **5. The Sale Should Be Free and Clear of the Pre-Petition Lien of the George
Ballard Company**

13 The George Ballard Company ("GBC") has a judgment lien recorded on or about October
14 7, 2008 in the Alameda County Assessor Recorder's Office as Instrument No. 2008294803 (the
15 "GBC Lien"). On information and belief, the Debtor satisfied the GBC Lien pre-petition. For said
16 reason, the GBC Lien was listed as "disputed" on Schedule D. The approximate amount of the
17 GBC Lien is \$38,164.18. Prior to the October 18, 2017 hearing, the Debtor will attempt to confirm
18 with GBC that said lien has been satisfied and/or produce in a supplemental filing proof of
19 satisfaction of said lien. The DIP will set aside proceeds from the sale pending outcome of the
20 controversy.

21
22 **6. The Sale Should Be Free and Clear of the Pre-Petition Lien of the Department of
Treasury/Internal Revenue Service**

23 The Department of Treasury/Internal Revenue Service (the "IRS") filed Proof of Claim 1-
24 1, which claim identifies the following four (4) statutory tax liens:
25
26
27

<u>Kind of Tax</u>	<u>Tax Period</u>	<u>Amount</u>	<u>Penalty</u>	<u>Interest to Petition Date</u>
WT-FICA	9/30/2010	\$5,000.00	\$2,895.83	\$3,524.95
WT-FICA	12/31/2010	\$17,858.72	\$15,445.99	\$4,078.75
WT-FICA	3/31/2011	\$22,601.98	\$16,136.88	\$4,519.08
WT-FICA	6/30/2011	\$22,022.31	\$15,601.58	\$4,138.00
			Total Secured Claim	\$133,824.17

(the "IRS Liens")

The Debtor is preparing an Objection to Claim 1-1, based, inter alia, on the fact that penalties and interest, and possibly the base amounts, may be waivable, due to the non-profit status of the Debtor and the reason for the pre-petition tax assessments, provided the Debtor can meet the related requirements under the Internal Revenue Code. For said reason, the IRS Liens were listed as "disputed" on Schedule D. Prior to the October 18, 2017 hearing, the Debtor will attempt to negotiate a compromise of the controversy with the IRS and/or file an Objection to the Proof of Claim filed by the IRS.

D. The Buyer Should be Afforded the Protections of Bankruptcy Code Section 363(m).

Although Bankruptcy Code section 363(b) does not explicitly require good faith, courts have also required that a sale be made in good faith. *In re Ewell*, 958 F.2d 276 (9th Cir. 1992); *In re Abbotts Dairies of Pennsylvania*, 788 F.2d 143 (3d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (Bankr. W.D. Pa. 1991). Courts have followed equitable principles of a good faith purchaser being one who purchases in good faith and for fair value. *Ewell*, 958 F.2d at 281. Good faith may be shown by an absence of fraud or collusion between the seller and purchaser or the absence of any attempt to take grossly unfair advantage of other bidders. *Id.* The DIP knows of no reason why the Buyer should not be afforded the protection of section 363(m). Pursuant to the record established via the filed declarations, the DIP believes that the Buyer is purchasing the CERCLA in good faith and

1 for fair and adequate consideration and therefore the DIP also requests that the Court make
2 a good-faith finding. 11 U.S.C. § 363(m). Additionally, the Nominee's principal, Mr. Reed
3 Bitzer, has demonstrated via declaration that Mr. Bitzer has no connections, past, present, or
4 future, with the Debtor or Debtor's Principal, Mr. Joseph Simmons, other than the proposed
5 transactions.

6 **V. NOTICE**

7 Notice of Hearing on this Motion with opportunity for overbid (the "Notice") has been
8 served on the United States Trustee, all parties requesting special notice, and the creditor matrix.
9 The Notice of Hearing document also invites interested parties to obtain copies of the sale
10 agreements from the DIP's counsel or from the documents on file with the Court. The Notice,
11 together with the motion and all supporting declarations were also all served on the affected
12 lienholders and all other interest holders pursuant to Bankruptcy Rule 7004(b).

13 **VI. CONCLUSION**

14 WHEREFORE, the DIP respectfully requests that the Court enter an order as follows:

- 15 1. Approving the sale of the DIP'S TWO SALE PARCELS to the Nominee for the
16 sum of \$5,000,000.00 all cash, or to a qualified overbidder, in the event of an overbid, pursuant to
17 the terms of the Purchase Agreement, or, in the alternative, to such qualified overbidder
18 submitting a higher and better overbid pursuant to the overbid procedures being noticed by the
19 DIP;
- 20 2. Authorizing the break-up fee of \$20,430 in the event of a qualified overbid, payable
21 to the Nominee;
- 22 3. Finding the Nominee to be purchasing the DIP'S TWO SALE PARCELS in good
23 faith per 11 U.S.C. § 363(m);
- 24 4. Waiving the stay of the sale order provided by Bankruptcy Rule 6004(h);
- 25 5. Approving the sale of the DIP'S TWO SALE PARCELS free and clear of the
26 claims of lien of all INVOLUNTARY LIENHOLDERS due to a bona fide dispute that exists as to
27

1 each and every of the INVOLUNTARY LIENHOLDERS' claims of lien, 11 U.S.C. § 363(f)(4),
2 with the understanding

- 3 a. That the judgments, liens, claims and interests of the parties herein, attach to
4 any proceeds from the sale of these assets, to the same priority and extent that
5 they attach to the subject assets; and
6 b. That the proceeds from the sale of the assets described above be held in an
7 interest bearing account until further order of this Court to determine the
8 validity, priority and extent of the judgments, liens, claims and interests of the
9 parties herein.

10 6. Authorizing the DIP to pay CCDFI and the aforementioned escrow, title, and
11 related closing costs;

12 7. Authorizing the DIP to deposit all remaining sale proceeds in the appropriate
13 escrow and/or trust account; and

14 8. Authorizing the DIP to execute any and all documents, and to take any and all
15 reasonable and necessary steps to conclude the foregoing sale.

16 WHEREFORE, PREMISES CONSIDERED, the DIP prays for said order.

17 Respectfully submitted this 20th day of September, 2017

18 BELVEDERE LEGAL, PC

19
20 By: /s/ Matthew D. Metzger
21 MATTHEW D. METZGER
22 *Attorneys for Debtor*
23
24
25
26
27

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Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)**

In re	)	Case No. 17-40333 WJL 11
)	
GREATER ST. PAUL MISSIONARY	)	Chapter 11
BAPTIST CHURCH,)	
Debtor(s).)	
)	
	)	Date: October 18, 2017
	)	Time: 10:30 a.m.
	)	Ctrm: U.S. Bankruptcy Court
	)	1300 Clay Street, Ctrm 220
	)	Oakland, CA 94612
	)	Judge: Hon. William J. Lafferty, III
)	
)	

DECLARATION OF REID BITZER
IN SUPPORT OF
MOTION FOR ORDER APPROVING SALE OF REAL PROPERTY AND SALE FREE AND
CLEAR OF CERTAIN CLAIMS OF LIEN AND OTHER INTERESTS

I, Reid Bitzer, declare as follows:

1. I am a founder and co-director of acquisitions, design, development and construction of Bitzer Banker Development (“BBD”), a real estate development company that focuses on urban infill opportunities in the San Francisco Bay Area. I make this declaration in support of Motion for Order

1 Approving Sale of Real Property and Sale Free and Clear of Certain claims of Lien and Other
2 Interests (the "Motion"). I have personal knowledge of the matters stated herein and if called as a
3 witness, I could and would competently testify to the following.

4 2. BBD is the proposed purchaser of the following two parcels of the estate:

- 5 • 1918 Martin Luther King Jr. Way, Oakland, CA, A.P.N 3-41-08 (the "Office
6 Building"), Proposed Purchase Price: \$3,250,000.00.
- 7 • Parking lot located at 18th Street and Martin Luther King Jr. Way, Oakland, CA,
8 A.P.N. 3-61-6-3 (the "18th Street Lot"), Proposed Purchase Price: \$1,750,000.00
9 (the "DIP'S TWO SALE PARCELS")

10 3. I first learned of the DIP'S TWO SALE PARCELS via Kiran Karnad, the broker for the
11 above-captioned Chapter 11 estate.

12 4. A true and correct copy of the mutually executed real estate purchase agreement and
13 addendum for the Office Building is attached hereto as Exhibit A.

14 5. A true and correct copy of the mutually executed real estate purchase agreement and
15 addendum for the 18th Street Lot is attached hereto as Exhibit B.

16 6. A true and correct copy of the mutually executed Addendum that applies to both
17 proposed sale of the Office Building and the proposed sale of the 18th Street Lot is attached hereto as
18 Exhibit C. Said Addendum includes as a contractual requirement that BBD receive reimbursement for a
19 "break-up" fee for reasonable costs incurred for necessary due diligence, in the event of overbid.

20 7. Specifically, to ensure that BBD can close the proposed transactions by or before the
21 October 31, 2017 deadline, BBD needed to incur certain costs and expenses in order to conduct
22 necessary due diligence. The sum total of said due diligence costs is \$20,430. In the event of a
23 successful overbid, BBD respectfully requests reimbursement of said sum. A true and correct copy of
24 the breakdown of the \$20,430 is attached hereto as Exhibit D.

25 8. Lastly, a true and correct copy of letter of introduction from BBD for any and all
26 interested parties to read and review is attached hereto as Exhibit E.

1 **Arms' Length Transaction**

2 9. Neither BBD nor I have any previous connection with the Debtor or its principal, Mr.
3 Joseph Simmons.

4 10. Neither BBD nor I have any future plans with the Debtor or its principal, Mr. Joseph
5 Simmons.

6 11. The proposed agreement is a bona-fide arms' length transaction.

7 12. BBD's negotiations with the Debtor have been at arms' length.

8 13. Outside the proposed transaction, neither I nor BBD have any connection with the
9 Debtor, any of their creditors, any other parties in interest, their respective attorneys or accountants, the
10 United States Trustee, or any person employed in the Office of the United States Trustee, outside of
11 what has been disclosed in this declaration.

12 14. There has been no collusion in the proposed sale between BBD and/or myself, on one
13 hand, and any other party, on the other hand.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct, and that this declaration was executed on September 20, 2017 at
16 Emeryville, California.

17 /s/ Reid Bitzer

18 Reid Bitzer
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EXHIBIT A



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

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

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

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

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller:

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

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee).

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

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

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☒ Buyer ☐ Seller ☐ Lessor ☐ Lessee 8/23/2017
BBD Management LLC, or assignee Date: _____

☐ Buyer ☐ Seller ☐ Lessor ☐ Lessee _____ Date: _____

Agent KW Commercial BRE Lic. # 02029039
Real Estate Broker (Firm)

By: Aziz Khatri BRE Lic. # 01050721 Date: 8/23/2017
 (Salesperson or Broker-Associate) Aziz Khatri

NOTE:

- When the listing brokerage company also represents Buyer/Lessee: The Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and a second Agency Disclosure form signed by Buyer/Lessee
- When Seller/Lessor and Buyer/Lessee are represented by different brokerage companies: (i) the Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and (ii) the Buyer's/Lessee's Agent shall have one Agency Disclosure form signed by Buyer/Lessee and either that same or a different Agency Disclosure form presented to Seller/Lessor for signature prior to presentation of the offer. If the same form is used, Seller/Lessor may sign here:

Joseph E. Simmons Date: 8/23/2017
 Seller/Lessor Greater St. Paul Missionary Ba

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

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 YES
 INITIALS

PAGE 1 OF 3

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 RB
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AD-2.00, Revised 01-03-2017

KW Commercial Oakland, 4937 Telegraph Ave, Suite A Oakland, CA 94609
 Phone: 510.368.8347 Fax: 510-439-2667 Aziz Khatri

BBD, 1918 MLK

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP**CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

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

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

2079.16 Reproduced on Page 1 of this form.

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

(DO NOT COMPLETE, SAMPLE ONLY)

(Name of Listing Agent)

is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.

(DO NOT COMPLETE, SAMPLE ONLY)

(Name of Selling Agent if not the same as the Listing Agent)

is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or ☐ both the buyer and seller.

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

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AD-2.00, Revised 01-03-2017

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

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

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

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

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

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

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

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

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POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: **(a)** Broker, without the prior written consent of the Buyer, will not disclose to seller that the Buyer is willing to pay a price greater than the offered price; **(b)** Broker, without the prior written consent of the seller, will not disclose to the buyer that seller is willing to sell property at a price less than the listing price; and **(c)** other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller	<u>Joseph E Simmons</u>	<u>8/23/2017</u>	<u>Greater St. Paul Missionary Baptist Church</u>	Date	_____
Seller	<u>FC643EB41783411...</u>			Date	_____
Buyer	<u>Reid Bitzer</u>	<u>8/23/2017</u>	<u>BBD Management LLC, or assignee</u>	Date	_____
Buyer	<u>D378DC8184A24EC...</u>			Date	_____
Real Estate Broker (Firm)	<u>Realty One</u>	<u>8/23/2017</u>	CalBRE Lic # <u>01175179</u>	Date	_____
By	<u>Kiran Karnad</u>		CalBRE Lic # <u>01175179</u>	Date	_____
Real Estate Broker (Firm)	<u>KW Commercial Oakland</u>	<u>8/23/2017</u>	CalBRE Lic # <u>02029039</u>	Date	_____
By	<u>Aziz Khatri</u>		CalBRE Lic # <u>01050721</u>	Date	_____

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Reviewed by _____ Date _____



PRBS 11/14 (PAGE 1 OF 1)

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

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Aziz Khatri

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BBD, 1918 MLK



STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE (Non-Residential)

Dated: August 23, 2017

1. Buyer.

1.1 BBD Management LLC, or assignee, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow ("Escrow") to close 30 or 20 days after the waiver or expiration of the Buyer's Contingencies, ("Expected Closing Date") to be held by Chicago Title Company ("Escrow Holder") whose address is 9210 Medau Place, Oakland, CA

, Phone No. (510) 987-7177, Facsimile No. _____ upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. Property.

2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) 3 Story commercial building

is located in the City of Oakland, County of Alameda, State of CA, is commonly known by the street address of 1918 MLK Jr. Way and is legally described as: _____

(APN: 3-41-8).

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Chicago Title Company ("Title Company"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("HVAC"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and _____

_____ (collectively, the "Improvements").
2.4 The fire sprinkler monitor: ☐ is owned by Seller and included in the Purchase Price, ☐ is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, ☐ ownership will be determined during Escrow, or ☒ there is no fire sprinkler monitor.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and

all of which shall be removed by Seller prior to Closing.

3. Purchase Price.

3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be \$ 3,250,000.00, payable as follows:

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): \$ 3,250,000.00

(Strike if not applicable) (b) Amount of "New Loan" as defined in paragraph 5.1, if any: \$ _____

(c) ~~Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s))":~~

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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):

☒ Realty One represents Seller exclusively ("**Seller's Broker**");

☒ K.W. Commercial Oakland represents Buyer exclusively ("**Buyer's Broker**"); or

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

The Parties acknowledge that other than the Brokers listed above, there are no other brokers representing the Parties or due any fees and/or commissions under 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 further escrow instructions restating or amending the Agreement 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. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

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.

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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 any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, 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 40 days following 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 40 days following 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 40 days following 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 40 days following 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 40 days following 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 following the Date of Agreement provide both

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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 following 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 following 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 following 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 following 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 following 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 40 days following 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 following the Date of Agreement.

(n) **Destruction, Damage or Loss.** Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction, 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. 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.

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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 exceptions approved by Buyer. In the event there is 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.

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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, soil 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

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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 and costs. 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. Broker's Rights.

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.

18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.

19. Notices.

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger or by mail, postage prepaid, to the address set forth in this Agreement or by facsimile transmission, electronic signature, digital signature, or email.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. 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. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

20. Duration of Offer.

20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of _____ on the date of _____,

it shall be deemed automatically revoked.

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.

21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties).

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$50,000.00. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

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Buyer Initials

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Seller Initials

22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)

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. THE NUMBER OF ARBITRATORS SHALL BE AS PROVIDED IN THE COMMERCIAL RULES AND EACH SUCH ARBITRATOR SHALL BE AN IMPARTIAL REAL ESTATE BROKER 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. THE ARBITRATOR OR ARBITRATORS SHALL BE APPOINTED UNDER THE COMMERCIAL RULES AND 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 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.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

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.

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


Buyer Initials


Seller Initials

23. Miscellaneous.

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.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

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

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

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. **Seller and Buyer must initial any and all 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. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 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


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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. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. 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. 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 or addenda consisting of paragraphs 27 through 30. (If there are no additional provisions write "NONE".)

27. Any Deposits shall be fully refundable to Buyer if any of the Contingencies to Closing in Section 9 are not waived.

28. Paragraph 9.1: All contingencies will be removed in writing

29. Buyer is responsible for EBMUD sewer Lateral compliance

30. Subject to Bankruptcy Court approval

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR CRE 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.

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PAGE 10 OF 11

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OFA-20.00, Revised 01-03-2017

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

8/23/2017

BROKER

K.W. Commercial Oakland

Att: Aziz KhatriTitle: DirectorAddress: 4937 Telegraph Ave, Suite A
Oakland, CA 94609Phone: (510)368-8347

Fax: _____

Email: aziz@kw.com

Federal ID No.: _____

Broker/Agent BRE License #: 01050721/02029039

Date: _____

BUYER

BBD Management LLC, or assignee

DocuSigned by:

Reid Bitzer

D378DC8164A24EC...

By: _____

Name Printed: Reid BitzerTitle: MemberPhone: (310)749-0775

Fax: _____

Email: wrBitzer@gmail.com

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: 1250 45th Street, Suite 300Emeryville, CA 94608

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 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 5.000 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker 3.000 % and Buyer's Broker 2.000 %. 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.

8/23/2017

Date: _____

BROKER

Realty One

Att: Kiran KarnadTitle: BrokerAddress: 718 Long Bridge Street, #417
San Francisco, CA 94158Phone: (510)368-8888

Fax: _____

Email: kkarnad@Funding1.com

Federal ID No.: _____

Broker/Agent BRE License #: 01175179**SELLER**

Greater St. Paul Missionary Baptist Church

DocuSigned by:

Joseph E Simmons

FC643EB41783411

By: _____

Name Printed: Greater St. Paul Missionary Ba

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: JosephSimmons01@gmail.com

Address: _____

Federal ID No.: _____

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CALIFORNIA
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REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (FOR BUYER REPRESENTATIVES)

(C.A.R. Form RCSD-B, Revised 6/16)

This form is not an assignment. It should not be used to add new parties after a contract has been formed. The purpose of this form is to identify who the principal is in the transaction and who has authority to sign documents on behalf of the principal

This is a disclosure to the ☒ Purchase Agreement, ☐ Buyer Representation Agreement, ☐ Other ROFA, dated 08/23/2017 ("Agreement"), for the property known as 1918 MLK Jr. Way ("Property"), between Greater St. Paul Missionary Baptist Church ("Seller", ☐ "Buyer Broker") and BBD Management LLC, or assignee ("Buyer")

If a trust, identify Buyer as the trustee(s) of the trust or by simplified trust name (e.g. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust 3.) Full name of trust should be identified in 1A below. If power of attorney, insert principal's name as Buyer.

1. ☐ A. **TRUST:** (1) Assets used to acquire/lease the Property are held in trust pursuant to a trust document titled _____ dated _____.

☒ B. (2) The person(s) signing below is/are Sole/Co/Successor Trustee(s) of the Trust. **ENTITY:** Buyer is a ☐ Corporation, ☒ Limited Liability Company, ☐ Partnership ☐ Other: _____ which has authorized the officer(s), managing member(s), partner(s) or person(s) signing below to act on its behalf. An authorizing resolution of the applicable body of the entity described above ☐ is ☐ is not attached.

☐ C. **POWER OF ATTORNEY:** Buyer ("Principal") has authorized the person(s) signing below ("Attorney-In-Fact", "Power of Attorney" or "POA") to act on his/her behalf pursuant to a General Power of Attorney (☐ Specific Power of Attorney for the Property), dated _____. **This form is not a Power of Attorney. A Power of Attorney must have already been executed before this form is used.**

2. Buyer's Representative represents that the trust, entity or power of attorney for which that Party is acting already exists.

Buyer:

By Ried Bitzer DocuSigned by: _____ Date: 8/23/2017
(Sign Name of Trustee, Officer, Managing Member, Partner, or Attorney-in-Fact) Title: Managing Member
(Print Representative Name) Ried Bitzer

By _____ Date: _____
(Sign Name of Trustee, Officer, Managing Member, Partner, or Attorney-in-Fact) Title: _____
(Print Representative Name) _____

Acknowledgement of Receipt By Other Party:

(Buyer Broker) KW Commercial Oakland DocuSigned by: _____ Date: 8/23/2017
By Aziz Khatri 162F4CADBF10490

(Seller) Joseph E Simmons Date: 8/23/2017
(Print Seller Name) Greater St. Paul Missionary Baptist Church

(Seller) _____ Date: _____
(Print Seller Name) _____

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Reviewed by _____



RCSD-B REVISED 6/16 (PAGE 1 OF 1)

REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (RCSD-B PAGE 1 OF 1)

KW Commercial Oakland, 4937 Telegraph Ave, Suite A Oakland, CA 94609
Aziz Khatri

Phone: 510.368.8347 Fax: 510-439-2667
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

BBD, 1918 MLK

EXHIBIT B



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

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

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

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

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller:

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

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee).

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

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

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☒ Buyer ☐ Seller ☐ Lessor ☐ Lessee 8/23/2017
Date: _____

BBD Management LLC, or assignee

☐ Buyer ☐ Seller ☐ Lessor ☐ Lessee _____ Date: _____

Agent KW Commercial BRE Lic. # 02029039
Real Estate Broker (Firm)

By: Aziz Khatri BRE Lic. # 01050721 Date: 8/23/2017

162 (Salesperson or Broker-Associate) Aziz Khatri

NOTE:

- When the listing brokerage company also represents Buyer/Lessee: The Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and a second Agency Disclosure form signed by Buyer/Lessee
- When Seller/Lessor and Buyer/Lessee are represented by different brokerage companies: (i) the Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and (ii) the Buyer's/Lessee's Agent shall have one Agency Disclosure form signed by Buyer/Lessee and either that same or a different Agency Disclosure form presented to Seller/Lessor for signature prior to presentation of the offer. If the same form is used, Seller/Lessor may sign here:

Joseph E. Simmons Date: 8/23/2017
Seller/Lessor Greater St. Paul Missionary Ba

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

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AD-2.00, Revised 01-03-2017

KW Commercial Oakland, 4937 Telegraph Ave, Suite A Oakland, CA 94609
Phone: 510.368.8347 Fax: 510-439-2667 Aziz Khatri

BBD, 1918 MLK

Case: 17-40333 Doc# 98-1 Filed: 09/20/17 Entered: 09/20/17 22:55:42 Page 22 of 49

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP**CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

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

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

2079.16 Reproduced on Page 1 of this form.

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

(DO NOT COMPLETE, SAMPLE ONLY)

(Name of Listing Agent)

is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.

(DO NOT COMPLETE, SAMPLE ONLY)

(Name of Selling Agent if not the same as the Listing Agent)

is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or ☐ both the buyer and seller.

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

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

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

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

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

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

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

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

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

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POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: **(a)** Broker, without the prior written consent of the Buyer, will not disclose to seller that the Buyer is willing to pay a price greater than the offered price; **(b)** Broker, without the prior written consent of the seller, will not disclose to the buyer that seller is willing to sell property at a price less than the listing price; and **(c)** other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller	<u>Joseph E Simmons</u>	<u>8/23/2017</u>	<u>Greater St. Paul Missionary Baptist Church</u>	Date	_____
Seller	<u>FC643EB41783411...</u>			Date	_____
Buyer	<u>Reid Bitzer</u>	<u>8/23/2017</u>	<u>BBD Management LLC, or assignee</u>	Date	_____
Buyer	<u>D378DC8164A24EC...</u>			Date	_____
Real Estate Broker (Firm)	<u>Realty One</u>	<u>8/23/2017</u>	CalBRE Lic # <u>01175179</u>	Date	_____
By	<u>Kiran Karnad</u>		CalBRE Lic # <u>01175179</u>	Date	_____
Real Estate Broker (Firm)	<u>KW Commercial Oakland</u>	<u>8/23/2017</u>	CalBRE Lic # <u>02029039</u>	Date	_____
By	<u>Aziz Khatri</u>		CalBRE Lic # <u>01050721</u>	Date	_____

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PRBS 11/14 (PAGE 1 OF 1)

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

KW Commercial Oakland, 4937 Telegraph Ave, Suite A Oakland, CA 94609
Aziz Khatri

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Phone: 510.368.8347

Fax: 510.439.2667

BBD, 1918 MLK



STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE (Non-Residential)

Dated: August 23, 2017

1. Buyer.

1.1 BBD Management LLC, or assignee, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow ("Escrow") to close 30 or 20 days after the waiver or expiration of the Buyer's Contingencies, ("Expected Closing Date") to be held by Chicago Title Company ("Escrow Holder") whose address is 9210 Medau Place, Oakland, CA

, Phone No. (510) 987-7177, Facsimile No. _____ upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. Property.

2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) Vacant surface Lot @ 18 & MLK Jr. Way

is located in the City of Oakland, County of Alameda, State of CA, is commonly known by the street address of Lot @ 18 & MLK Jr. Way and is legally described as: _____

(APN: 3-61-6-3).

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Chicago Title Company ("Title Company"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("HVAC"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and _____

_____ (collectively, the "Improvements").
2.4 The fire sprinkler monitor: ☐ is owned by Seller and included in the Purchase Price, ☐ is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, ☐ ownership will be determined during Escrow, or ☒ there is no fire sprinkler monitor.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and

all of which shall be removed by Seller prior to Closing.

3. Purchase Price.

3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be \$ 1,750,000.00, payable as follows:

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): \$ 1,750,000.00

(Strike if not applicable) (b) Amount of "New Loan" as defined in paragraph 5.1, if any: \$ _____

(c) ~~Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s))":~~

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OFA-20.00, Revised 01-03-2017

BBD, Lot @ 18 &

(i) ~~An Existing Note ("First Note") with an unpaid principal balance as of the Closing of approximately:~~ \$ _____
~~Said First Note is payable at \$ _____ per month,~~
~~including interest at the rate of _____ % per annum until paid (and/or the~~
~~entire unpaid balance is due on _____).~~
 (Strike if not applicable)

(ii) ~~An Existing Note ("Second Note") with an unpaid principal balance as of the Closing of approximately:~~ \$ _____
~~Said Second Note is payable at \$ _____ per month,~~
~~including interest at the rate of _____ % per annum until paid (and/or the~~
~~entire unpaid balance is due on _____).~~
 (Strike if not applicable)

(d) Buyer shall give Seller a deed of trust ("**Purchase Money Deed of Trust**") on the property, to secure the promissory note of Buyer to Seller described in paragraph 6 ("**Purchase Money Note**") in the amount of: \$ _____

Total Purchase Price: \$ 1,750,000.00

3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such 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 \$ _____, 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 \$ 50,000.00. 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 \$ 50,000.00 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.

4.5 Upon waiver of all of Buyer's contingencies the Deposit shall become non-refundable but applicable to the Purchase Price except in the event of a Seller breach, or in the event that the Escrow is terminated pursuant to the provisions of Paragraph 9.1(n) (Destruction, Damage or Loss) or 9.1(o) (Material Change).

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: _____~~

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YES

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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):

☒ Realty One represents Seller exclusively ("**Seller's Broker**");

☒ K.W. Commercial Oakland represents Buyer exclusively ("**Buyer's Broker**"); or

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

The Parties acknowledge that other than the Brokers listed above, there are no other brokers representing the Parties or due any fees and/or commissions under 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 further escrow instructions restating or amending the Agreement 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. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

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.

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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 any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, 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 40 days following 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 40 days following 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 40 days following 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 40 days following 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 40 days following 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 following the Date of Agreement provide both

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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 following 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 following 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 following 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 following 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 following 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 40 days following 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 following the Date of Agreement.

(n) **Destruction, Damage or Loss.** Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction, 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. 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.

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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 exceptions approved by Buyer. In the event there is 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.

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INITIALS

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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, soil 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

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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 and costs. 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. Broker's Rights.

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.

18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.

19. Notices.

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger or by mail, postage prepaid, to the address set forth in this Agreement or by facsimile transmission, electronic signature, digital signature, or email.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. 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. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

20. Duration of Offer.

20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of _____ on the date of _____,

it shall be deemed automatically revoked.

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.

21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties).

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$50,000.00. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.



Buyer Initials



Seller Initials

22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)

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. THE NUMBER OF ARBITRATORS SHALL BE AS PROVIDED IN THE COMMERCIAL RULES AND EACH SUCH ARBITRATOR SHALL BE AN IMPARTIAL REAL ESTATE BROKER 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. THE ARBITRATOR OR ARBITRATORS SHALL BE APPOINTED UNDER THE COMMERCIAL RULES AND 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 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.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

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.

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


Buyer Initials


Seller Initials

23. Miscellaneous.

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.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

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

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

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. **Seller and Buyer must initial any and all 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. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 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


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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. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. 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. 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 or addenda consisting of paragraphs 27 through 30. (If there are no additional provisions write "NONE".)

27. Any Deposits shall be fully refundable to Buyer if any of the Contingencies to Closing in Section 9 are not waived.

28. Paragraph 9.1: All contingencies will be removed in writing

29. Buyer is responsible for EBMUD sewer Lateral compliance

30. Subject to Bankruptcy Court approval

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR CRE 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.

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OFA-20.00, Revised 01-03-2017

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

8/23/2017

BROKER

K.W. Commercial Oakland

Att: Aziz KhatriTitle: DirectorAddress: 4937 Telegraph Ave, Suite A
Oakland, CA 94609Phone: (510)368-8347

Fax: _____

Email: aziz@kw.com

Federal ID No.: _____

Broker/Agent BRE License #: 01050721/02029039

Date: _____

BUYER

BBD Management LLC, or assignee

DocuSigned by:

Reid Bitzer

D378DC8164A24EC...

By: _____

Name Printed: Reid BitzerTitle: MemberPhone: (310)749-0775

Fax: _____

Email: wrBitzer@gmail.com

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: 1250 45th Street, Suite 300Emeryville, CA 94608

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 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 5.000 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker 3.000 % and Buyer's Broker 2.000 %. 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.

8/23/2017

Date: _____

BROKER

Realty One

Att: Kiran KarnadTitle: BrokerAddress: 718 Long Bridge Street, #417
San Francisco, CA 94158Phone: (510)368-8888

Fax: _____

Email: kkarnad@Funding1.com

Federal ID No.: _____

Broker/Agent BRE License #: 01175179**SELLER**

Greater St. Paul Missionary Baptist Church

DocuSigned by:

Joseph E Simmons

FC643EB41783411...

By: _____

Name Printed: Greater St. Paul Missionary Ba

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: JosephSimmons01@gmail.com

Address: _____

Federal ID No.: _____

AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email contracts@aircre.com

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OFA-20.00, Revised 01-03-2017



CALIFORNIA
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REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (FOR BUYER REPRESENTATIVES)

(C.A.R. Form RCSD-B, Revised 6/16)

This form is not an assignment. It should not be used to add new parties after a contract has been formed. The purpose of this form is to identify who the principal is in the transaction and who has authority to sign documents on behalf of the principal

This is a disclosure to the ☒ Purchase Agreement, ☐ Buyer Representation Agreement, ☐ Other ROFA, dated 08/23/2017 ("Agreement"), for the property known as Lot @18 & MLK Jr. Way ("Property"), between Greater St. Paul Missionary Baptist Church ("Seller", ☐ "Buyer Broker") and BBD Management LLC, or assignee ("Buyer")

If a trust, identify Buyer as the trustee(s) of the trust or by simplified trust name (e.g. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust 3.) Full name of trust should be identified in 1A below. If power of attorney, insert principal's name as Buyer.

1. ☐ A. **TRUST:** (1) Assets used to acquire/lease the Property are held in trust pursuant to a trust document titled _____ dated _____.

☒ B. (2) The person(s) signing below is/are Sole/Co/Successor Trustee(s) of the Trust. **ENTITY:** Buyer is a ☐ Corporation, ☒ Limited Liability Company, ☐ Partnership ☐ Other: _____ which has authorized the officer(s), managing member(s), partner(s) or person(s) signing below to act on its behalf. An authorizing resolution of the applicable body of the entity described above ☐ is ☐ is not attached.

☐ C. **POWER OF ATTORNEY:** Buyer ("Principal") has authorized the person(s) signing below ("Attorney-in-Fact", "Power of Attorney" or "POA") to act on his/her behalf pursuant to a General Power of Attorney (☐ Specific Power of Attorney for the Property), dated _____. **This form is not a Power of Attorney. A Power of Attorney must have already been executed before this form is used.**

2. Buyer's Representative represents that the trust, entity or power of attorney for which that Party is acting already exists.

Buyer: DocuSigned by: Reid Bitzer
By D378DC8164A24EC... Date: 8/23/2017
(Sign Name of Trustee, Officer, Managing Member, Partner, or Attorney-in-Fact)
(Print Representative Name) Ried Bitzer Title: Managing Member

By _____ Date: _____
(Sign Name of Trustee, Officer, Managing Member, Partner, or Attorney-in-Fact)
(Print Representative Name) _____ Title: _____

Acknowledgement of Receipt By Other Party:

(Buyer Broker) KW Commercial Oakland DocuSigned by: Aziz Khatri
By _____ Date: 8/23/2017
162F4CADBF10490...

(Seller) _____ DocuSigned by: Joseph E Simmons Date: 8/23/2017
(Print Seller Name) Greater St. Paul Missionary Baptist Church FC643EB41783411...

(Seller) _____ Date: _____
(Print Seller Name) _____

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Reviewed by _____



RCSD-B REVISED 6/16 (PAGE 1 OF 1)

REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (RCSD-B PAGE 1 OF 1)

KW Commercial Oakland, 4937 Telegraph Ave, Suite A Oakland, CA 94609
Aziz Khatri

Phone: 510.368.8347 Fax: 510-439-2667
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

BBD, Lot @ 18 &

EXHIBIT C



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ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. one

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☒ Other **Standard Offer, Agreement & Escrow Instructions for Purchase of Real Estate (Non-Residential)**, dated August 23, 2017, on property known as 1918 MLK Jr Way APN # 3-41-8

Oakland, CA 94612
in which BBD Management LLC or Assignee is referred to as ("Buyer/Tenant")
and Greater St Paul Missionary Baptist Church is referred to as ("Seller/Landlord").

1. Deliver Earnest Money Deposit check with Chicago Title Company with in two days.

2. Both APN # 3-61-6-3 & APN # 3-41-8 to be closed concurrently.

3. The 30 day due diligence period ends on October 16th and the Earnest Money Deposit down payment will become non-refundable at this time.

4. The Court may allow a open competitive bidding, resulting in the property being sold to the highest bidder.

5. In case of a qualified over-bidder that purchases the property instead of the buyer, the buyer can request that the Court reimburse fees spent on due diligence as a part of escrow & the Court may approve, provided the buyers fees are reasonable and the buyer can provide documentation to Court for the "break up fee".

6. Buyer to provide a proposed budget for Due Diligence expenditure.

7. Buyer to submit a "break up" fee reimbursement request.

8. Seller has the right to get copies of all inspections.

9. Buyer to close escrow by October 16th as per BK Court requirement. Upon entry of order approving sale from Court, escrow shall close on October 31st 2017.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date September 12, 2017 DocuSigned by: Subject Addendum 2

Date September 12, 2017 DocuSigned by: Pastor Joseph E. Simmons

Buyer/Tenant BBD Management LLC or Assignee

Seller/Landlord Greater St Paul Missionary Baptist Church

Buyer/Tenant _____

Seller/Landlord _____

Received

DS
kk

Kiran Karnad 9/20/2017

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ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

Realty One, 4616 Rockingham Court Oakland, CA 94619 Phone: 510-368-8888 Fax: 510-263-6052 1918 MLK Jr
Kiran Karnad Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



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ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. one

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☒ Other Standard Offer, Agreement & Escrow Instructions for Purchase of Real Estate (Non-Residential), dated August 23, 2017, on property known as Lot 19 on 18th & MLK Jr Way

APN # 3-61-6-3,
in which BBD Management LLC or Assignee is referred to as ("Buyer/Tenant")
and Greater St Paul Missionary Baptist Church is referred to as ("Seller/Landlord").

1. Deliver Earnest Money Deposit check with Chicago Title Company with in two days.

2. Both APN # 3-61-6-3 & APN # 3-41-8 to be closed concurrently.

3. The 30 day due diligence period ends on October 16th and the Earnest Money Deposit down payment will become non-refundable at this time.

4. The Court may allow a open competitive bidding, resulting in the property being sold to the highest bidder.

5. In case of a qualified over-bidder that purchases the property instead of the buyer, the buyer can request that the Court reimburse fees spent on due diligence as a part of escrow & the Court may approve, provided the buyers fees are reasonable and the buyer can provide documentation to Court for the "break up fee".

6. Buyer to provide a proposed budget for Due Diligence expenditure.

7. Buyer to submit a "break up" fee reimbursement request.

8. Seller has the right to get copies of all inspections.

9. Buyer to remove all contingencies by October 16th as per BK Court requirement. Upon entry of order approving sale from Court, escrow shall close on October 31st 2017.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date September 15, 2017 DocuSigned by: Subject Addendum 2 Date September 15, 2017 DocuSigned by: Pastor Joseph E. Simmons
Buyer/Tenant BBD Management LLC or Assignee Seller/Landlord Greater St Paul Missionary Baptist Church
Buyer/Tenant _____ Seller/Landlord _____
Received Kiran Karnad 9/20/2017

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ADDENDUM (ADM PAGE 1 OF 1)

Realty One, 4616 Rockingham Court Oakland, CA 94619 Phone: 510-368-8888 Fax: 510-263-6052 Bishop Joseph
Kiran Karnad Produced with zipForm® by zipLogix 16070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com




COURT CONFIRMATION ADDENDUM
(C.A.R. Form CCA, 11/12)

This is an addendum to the ☐ California Residential Purchase Agreement, ☒ Counter Offer No. one, ☐ Other _____ ("Agreement"), dated August 23, 2017, on
property known as Lot 19 on 18th & MLK Jr Way, APN # 3-61-6-3, ("Property"),
between BBD Management LLC or assignee ("Buyer"),
and Greater St Paul Missionary Baptist Church ("Seller").

The Agreement is contingent upon court confirmation on or before October 18, 2017 (date). If court confirmation is not obtained by that date, Buyer may cancel the Agreement in writing. Court confirmation may be required in probate, conservatorship, guardianship, receivership, bankruptcy, divorce or other proceedings. The court may allow open, competitive bidding, resulting in the Property being sold to the highest bidder. Broker recommends that Buyer appear at the court confirmation hearing. Buyer understands that (i) Broker and others may continue to market the Property; and (ii) Broker may represent other competitive bidders prior to and at the court confirmation.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Court Confirmation Addendum.

Date 9/20/2017

DocuSigned by:

Buyer BBD Management LLC or assignee

Date 09/12/2017
 DocuSigned by:
 Seller Pastor Joseph E. Simmons 09/12/2017
 Greater St Paul Missionary Baptist Church

Buyer _____

Seller _____

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COURT CONFIRMATION ADDENDUM (CCA PAGE 1 OF 1)

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Kiran Karnad Producer

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Phone: 510-368-8838

Fax: 510-263-6052

Bishop Joseph



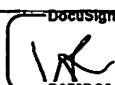
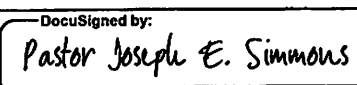
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COURT CONFIRMATION ADDENDUM
(C.A.R. Form CCA, 11/12)

This is an addendum to the ☐ California Residential Purchase Agreement, ☒ Counter Offer No. one, ☐ Other
("Agreement"), dated August 23, 2017, on
property known as 1918 MLK Jr Way, APN # 3-41-8, ("Property"),
between BBD Management LLC or assignee ("Buyer"),
and Greater St Paul Missionary Baptist Church ("Seller").

The Agreement is contingent upon court confirmation on or before October 18, 2017 (date). If court confirmation is not obtained by that date, Buyer may cancel the Agreement in writing. Court confirmation may be required in probate, conservatorship, guardianship, receivership, bankruptcy, divorce or other proceedings. The court may allow open, competitive bidding, resulting in the Property being sold to the highest bidder. Broker recommends that Buyer appear at the court confirmation hearing. Buyer understands that (i) Broker and others may continue to market the Property; and (ii) Broker may represent other competitive bidders prior to and at the court confirmation.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Court Confirmation Addendum.

Date		Date	<u>09/12/2017</u>
	DocuSigned by:		DocuSigned by:
Buyer		Seller	
	9/15/2017		
	<u>BBD Management LLC or assignee</u>		<u>Greater St Paul Missionary Baptist Church</u>
Buyer		Seller	

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COURT CONFIRMATION ADDENDUM (CCA PAGE 1 OF 1)

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Kiran Karnad

Phone: 510-368-8888 Fax: 510-263-6052
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Bishop Joseph



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ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. Two

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☒ Other AIR Form OFA

dated _____, on property known as Lot @18 & MLK Jr. Way
Oakland, CA 94612

in which BBD Management LLC, or assignee is referred to as ("Buyer/Tenant")
and Greater St. Paul Missionary Baptist Church is referred to as ("Seller/Landlord").

Reference to Addendum number One dated August 23, 2107:

Paragraph 3:

*** Due Diligence period to be 40 days. At any time during the Due Diligence Period, and for any reason, Buyer may terminate this Agreement by written notice to Seller and Deposit will be fully refunded to Buyer.**

Paragraph 5:

*** Buyer to be re-imbursed actual Due Diligence costs provided in Exhibit A.**

Paragraph 9:

*** Closing of Escrow to be on or before 10/31/17.**

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 9/15/2017

Buyer/Tenant

BBD Management LLC, or assignee

Buyer/Tenant

DocuSigned by:

0376D08104A24EC...

Date 9/20/2017

Seller/Landlord

Greater St. Paul Missionary Baptist Church

Seller/Landlord

DocuSigned by:

F08A3ED417B3411...

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KW Commercial Oakland, 4937 Telegraph Ave, Suite A Oakland, CA 94609
Aziz Khatri

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Phone: 510.368.8347

Fax: 510-439-2667

BBD, Lot @ 18 &



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ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. Two

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☒ Other AIR Form OFA

dated August 23, 2017, on property known as 1918 MLK Jr. Way

Oakland, CA 94612

in which BBD Management LLC, or assignee is referred to as ("Buyer/Tenant")
and Greater St. Paul Missionary Baptist Church is referred to as ("Seller/Landlord").

Reference to Addendum number One dated August 23, 2107:

Paragraph 3:

*** Due Diligence period to be 40 days. At any time during the Due Diligence Period, and for any reason, Buyer may terminate this Agreement by written notice to Seller and Deposit will be fully refunded to Buyer.**

Paragraph 5:

*** Buyer to be re-reimbursed actual Due Diligence costs provided in Exhibit A.**

Paragraph 9:

*** Closing of Escrow to be on or before 10/31/17.**

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 9/15/2017
DocuSigned by: [Signature]

Buyer/Tenant BBD Management LLC, or assignee

Buyer/Tenant _____

Date 9/20/2017
DocuSigned by: Pastor Joseph E.

Seller/Landlord Greater St. Paul Missionary Baptist Church

Seller/Landlord _____

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Aziz Khatri

Phone: 510.368.8347
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Fax: 510-439-2667

BBD, 1918 MLK

EXHIBIT D

EXHIBIT A to ADDENDUM

Below are the inspection report costs to be 100% Reimbursed to Buyer (BBD Management LLC or its Assignee) within 30 days if Seller accepts another bid during the Due Diligence period:

ALTA Survey 1918 MLK:	\$6,000	<i>Bay Area Land Surveying, Inc.</i>
ALTA Survey Lot 19:	\$5,400	<i>Bay Area Land Surveying, Inc.</i>
Phase I Assessment:	\$3,500	<i>Gribi & Associates</i>
Lead & Asbestos Survey and Sample Collection:	\$3,945	<i>Pro-Tech Cal</i>
Preliminary Geo-technical Survey and Sample Collection:	\$1,585	<i>Hallenbeck/Allwest</i>

DocuSigned by:

D378DC8164A24EC...

9/15/2017

DocuSigned by:
Pastor Joseph E. Simmons
FC843EB41783411...

9/20/2017

EXHIBIT E

Bitzer Banker Development

1250 45th Street, Suite 300, Emeryville, CA 94608

Reid Bitzer
Bitzer Banker Development
1250 45th Street, Suite 300
Emeryville, CA 94608

Tuesday, August 22, 2017

RE: Purchase of the Building at 1918 M.L.K. Jr. Way & the Lot 19 at 19th Street and M.L.K. Jr. Way – Background of Bitzer Banker Development

To Whom it May Concern:

Bitzer Banker Development (“Bitzer Banker”) is a real estate development company that focuses on urban infill opportunities in the San Francisco Bay Area. Our development experience includes residential, commercial and mixed-use projects. We specialize in all facets of the development cycle including acquisitions, design, governmental approvals, construction, management and disposition. Since its inception in 2008, Bitzer Banker has developed ground-up apartments, ground-up commercial, adaptive reuses of industrial buildings, single family home subdivisions and value-add repositioning of all kinds.

A creative approach to design, commitment to quality and an established equity platform has led Bitzer Banker’s team to develop award-winning projects including its recent Piedmont Walk mixed-use apartment development on Piedmont Avenue in Oakland and its industrial to creative office conversion in San Francisco for Word Press/ Automattic in the SOMA neighborhood of San Francisco. Further, our capital allows us to continue to own and manage close 100% of Bitzer Banker projects – including its portfolio of apartment buildings in the cities of Oakland and Berkeley. We have a commitment to quality and on-going management in the communities around our projects.

Our creative office conversion in SOMA included a change-of-use approval from the City of San Francisco, a full structure upgrade to current standards, and a complete build-out to Class A creative office space. Bitzer Banker ran the project from the initial vision, entitlements, construction and the tenant improvements. The project has received design accolades from top design publications such as ArchDaily and Materials & Sources. This SOMA creative office project is similar to the type of redevelopment that Bitzer Banker envisions at 1918 M.L.K. Jr. Way.

Our Piedmont Walk mixed-use ground-up development consists of three mixed-used buildings with contemporary urban apartments over creative commercial space. The development was praised by John King, the San Francisco Chronicle’s top architectural critic. King published the following: “For me, the unapologetic punch of Piedmont Walk is a knockout. The forms are simple but they’re delivered with conviction rather than repetition. And the closer you look the better it gets...”. Our Piedmont Walk development is similar to the type of use we envision at Lot 19 at 19th Street and M.L.K. Jr. Way.

The following is biography of each of the two primary principals:

Bitzer Banker Development

1250 45th Street, Suite 300, Emeryville, CA 94608

Reid Bitzer co-directs all stages of acquisitions, design, development and construction. Reid was born and raised in downtown Chicago where his passion for the built environment and design began. He started his career in L.A. as a Development Associate for Festival Companies, a national retail developer. While at Festival, Reid managed major projects including the redevelopment of the Royal Hawaiian Shopping Center in Waikiki. Reid then moved to Development Director for Regent Properties, a national development and investment company, where his projects included successfully entitling the largest residential development ever at that time in the City of West Hollywood. Reid moved to the Bay Area in 2008 to start Bitzer Banker Development. Reid earned his Master of Real Estate Development degree with honors from the University of Southern California and his Bachelor degree with honors in Urban Land Economics from the University of Wisconsin, Madison.

Blair Banker co-directs all stages of acquisitions, design, development and construction for Bitzer Banker Development. He was born and raised in the East Bay where family members helped introduce him to the real estate business at a young age. He started his career as an Asset Manager for The Vesta Industrial Real Estate Fund in Mexico City, Mexico. This was a unique opportunity to work in a rapidly expanding real estate environment involving various international partnerships and clients. Upon returning to California, he was an asset manager for Bridge Partners where he managed various multifamily projects. In 2007 he joined Myers Development Company in San Francisco where he helped develop the Centennial Towers project in South San Francisco. Blair graduated from the University of Denver with a Business Administration degree focused on Real Estate and Construction Management.

Thank you very much for the opportunity to make an offer on these two important properties in downtown Oakland. Feel free to visit our website at bitzerbanker.com for further information on our team. We look forward to hopefully moving forward and entering into a purchase contract soon.

Sincerely,

Reid Bitzer