

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division

In re:  
Shiraz Holdings, LLC,  
Debtor.

Case No. 17-17968-PGH  
Chapter 11

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**DEBTOR’S MOTION TO SELL DEBTOR’S REAL PROPERTY LOCATED AT  
1130 HURRICANE SHOALS ROAD, LAWRENCEVILLE, GA 30043  
FREE AND CLEAR OF CERTAIN LIENS BY AUCTION  
AND BID PROCEDURES ASSOCIATED THEREWITH**

Debtor and debtor-in-possession Shiraz Holdings, LLC (the “**Debtor**”), by and through undersigned counsel, hereby files this *Debtor’s Motion for Entry of Order Authorizing Auction Sale of Debtor’s Real Property Located at 1130 Hurricane Shoals Road, Lawrenceville, GA 30043 and Payment of Costs Associated Therewith* (the “**Sale Motion**”) seeking to sell Debtor’s property located at 1130 Hurricane Shoals Road, Lawrenceville, Georgia 30043 (the “**Hurricane Property**”) pursuant to: (1) 11 U.S.C. §§ 363(b), 363(f) and 1123(b); (2) Rules 2002(a)(2), (c)(1) and 6004(a), (h) of the Federal Rules of Bankruptcy Procedure; and (3) this Court’s *Order Granting Debtor’s Application to Employ Ten-X, LLC as Debtor’s Auctioneer and to Approve Payment Processes* (Doc. No. 128). In support of this Sale Motion, Debtor states the following:

**PRELIMINARY STATEMENT**

Debtor presently believes that in the absence of exit financing, a sale of the Hurricane Property by auction sale is the best means of achieving the greatest value for same.<sup>1</sup>

Accordingly, Debtor retained Fadi Elkhatib (“**Elkhatib**”) as its real estate agent and Ten-X, LLC (“**Ten-X**”) as Debtor’s auctioneer to sell and auction the Hurricane Property.

Debtor respectfully requests approval of the bid procedures and the sale to the highest and best bidder at the auction as described in this Sale Motion.

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<sup>1</sup> Debtor reserves the right to seek to effectuate a private sale or refinancing if such may maximize or preserve the value of the Property and satisfies all secured claims, including those of CCOP (defined herein) consistent with the Agreed Order (defined herein).

**JURISDICTION AND BACKGROUND**

1. On June 26, 2017 (the “**Petition Date**”), Debtor filed a voluntary petition in this Court for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). Since that time, Debtor has operated as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. As of the date hereof, no creditors’ committee has been appointed in this case. In addition, no trustee or examiner has been appointed.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (M) & (O).

4. On September 6, 2017, secured creditor CCOP, LLC (“**CCOP**”) filed its *Motion for Relief From Stay* (Doc. No. 63) with respect to the Hurricane Property.

5. Also on September 6, 2017, Debtor filed its motion to employ Elkhatab and Main Source Realty, LLC as its real estate broker (Doc. No. 59), which application was approved on September 13, 2017 (Doc. No. 63).

6. On November 27, 2017, as a result of discussions between CCOP and Debtor, this Court entered its *Agreed Order on Motion for Stay Relief From Stay or Adequate Protection* (Doc. No. 117) (the “**Agreed Order**”).

7. Among other things, the Agreed Order: (A) requires Debtor seek to sell the Hurricane Property by auction on or before February 28, 2018; and (B) holds that CCOP is entitled credit bid the entire amount of its claim unless CCOP’s claim is satisfied prior to the auction. The Agreed Order further requires an all cash closing within thirty (30) days of the auction.

8. On November 24, 2017, consistent with the Agreed Order, Debtor filed its *Application to Employ Ten-X, LLC as Debtor's Auctioneer and to Approve Payment Processes* (Doc. No. 1116) (the "**Application**"). On December 15, 2017, this Court entered its *Order Granting Debtor's Application to Employ Ten-X, LLC as Debtor's Auctioneer and to Approve Payment Processes* (Doc. No. 128) granting the Application.

9. Debtor's *Chapter 11 Plan of Reorganization for Shiraz Holdings, LLC* (Doc. No. 132) (the "**Plan**") and *Disclosure Statement in Connection with Chapter 11 Plan of Reorganization for Shiraz Holdings, LLC* (Doc. No. 133) (the "**Disclosure Statement**") were filed on December 23, 2017. Consistent with the Agreed Order, the Plan and Disclosure Statement contemplate the sale, refinancing, or other liquidation of the Hurricane Property. *See* Plan Article VII.

10. Pre-petition, Maria Ortiz, John Dickey and Paul Henry (together, "**Claimants**"), obtained a judgment against the Debtor (the "**Judgment**"). During the preference period as defined under Section 547 of the Bankruptcy Code, the Claimants filed the Judgment in the official records in Georgia that would appear to create a lien in favor of Claimants against the Hurricane Property (the "**Lien**"). Such Lien is indisputably an avoidable preference.

11. In connection with this bankruptcy case, it was agreed by the Debtor and Claimants that their Lien would be avoided.

12. Accordingly, on October 31, 2018 the Claimants filed their proof of claims (Claims ## 13, 14 and 15) as **unsecured** claims.

### **BID PROCEDURES AND RELIEF REQUESTED**

1. 11 U.S.C. § 363(b) authorizes a "trustee, after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate." Debtor has the

powers of a trustee under 11 U.S.C. § 1107.

2. A trustee may sell property of the estate “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions listed at 11 U.S.C. § 363(f) is satisfied with respect to each entity:

“(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) ***such entity consents***; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could not be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.” (emphasis added).

*See also S. Motor Co. v. Carter-Pritchett-Hodges, Inc.*, 385 B.R. at 367 (“Section 363 authorizes a trustee to sell property of the estate free and clear of an interest only if one of the elements of section 363(f) can be met.”); *In re Harbour East Dev., Ltd.*, 2012 Bankr. LEXIS 2250, at \*34 (Bankr. S.D. Fla. May 21, 2012); *Contrarian Funds, LLC v. Westpoint Stevens, Inc. (In re Westpoint Stevens, Inc.)*, 333 B.R. 30, 50 (S.D.N.Y. 2005) (“Where ... a sale is to be free and clear of existing liens and interests other than those of the estate, one or more of the criteria specified in section 363(f) of the statute must also be met.”).

3. Specifically, because the Claimants consent under §363(f)(2) to a sale free of the Lien, the Hurricane Property may be sold free and clear of same.

4. This Sale Motion, and the notice of hearing on same, shall be served via CM/ECF, and/or U.S. Mail upon those parties listed on the service list attached hereto. Such notice complies with the applicable Bankruptcy Rules and Local Rules.

5. The creditors are being provided notice of the salient details regarding the sale of the Hurricane Property in this Sale Motion. Accordingly, the creditors will receive sufficient notice as is contemplated by Section 363(b) of the Bankruptcy Code.

6. A sale of the Hurricane Property should be authorized pursuant to Section 363 of the Bankruptcy Code if a sound business reason exists for doing so. See *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) citing *In re Schipper*, 933 F.2d 513, 515 (7<sup>th</sup> Cir. 1991).

7. Debtor represents that the carrying costs and debt service of the Hurricane Property currently exceed the rents and profits derived therefrom and that, in the absence of a refinance or new tenants, a sale is in the best interests of creditors.

8. Debtor has retained Ten-X in order to facilitate a sale to maximize value of the Hurricane Property.

9. Since retention, Ten-X has been actively engaged in the marketing of the Hurricane Property. Consistent with this Court's Agreed Order, Ten-X has scheduled an auction sale of the Hurricane Property to start on February 26, 2018 and end February 28, 2018 (the "**Ten-X Auction**").

10. The Ten-X Auction will be a live bidding event through the Ten-X platform, consistent with and pursuant to the *Participation Terms* attached hereto as **Exhibit "A"** (the "**Participation Terms**")

11. Bidders may participate in the Ten-X Auction given that they agree to and satisfy the Participation Terms.

12. The key Participation Terms include, among others:<sup>2</sup>

A. All those interested in participating in the Ten-X Auction must (i) create an account and register with Ten-X, and (ii) agree to (a) the Participation Terms, (b) Ten-X' Website Terms of Use (available at <https://www.ten-x.com/company/legal/terms/>) and (c) the Ten-X Privacy

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<sup>2</sup> To the extent this Motion and the Participation Terms are inconsistent, the terms of the Participation Terms shall control. All parties in interest are advised to review the Participation Terms in their entirety.

Statement (available at <https://www.ten-x.com/company/legal/privacy/>).

B. It is each participant's responsibility to conduct its own due diligence relating to the Hurricane Property.

C. All offers tendered during the Ten-X Auction are irrevocable.

13. The identity of the winning bidder shall be determined by the Debtor as the participant making the "highest and best" offer.

14. Unless CCOP is the winning bidder through its credit bidding rights, Debtor and the winning bidder shall execute the *Purchase and Sale Agreement with Joint Closing Instructions* in substantially the form attached hereto as **Exhibit "B."** within the time and in the manner set forth in the Participation Terms.

15. As per the Agreed Order and explained above, Debtor and CCOP have agreed to the Ten-X Auction described through the Sale Motion. Debtor believes the Ten-X Auction is a sound exercise of business judgment.

16. Finally, Debtor asks this Court to waive the fourteen (14) day stay of an order authorizing sale of property pursuant to Rule 6004(h). *See* Rule 6004(h) ("An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, ***unless the court orders otherwise.***" (emphasis added)).

17. Debtor requests waiver out of an abundance of caution, to ensure the February 28, 2018 end date of the Ten-X Auction occurs without issue.

**WHEREFORE**, for all the reasons stated above, Debtor respectfully requests this Court enter an Order: (1) granting this Motion; (2) approving sale of the Hurricane Property through the Ten-X Auction described in this Motion and through the attached; (3) waiving the fourteen

(14) day stay at Rule 6004(h); and (3) granting any further or additional relief this Court deems necessary or appropriate.

Respectfully submitted on January 19, 2018.

MESSANA, P.A.  
*Counsel for Debtor, Shiraz Holdings, LLC*  
401 East Las Olas Boulevard, Suite 1400  
Fort Lauderdale, Florida 33301  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
Email: blieberman@messana-law.com

/s/ Brett D. Lieberman  
Thomas M. Messana, Esq.  
Florida Bar No. 991422  
Brett Lieberman, Esq.  
Florida Bar No. 69583  
Chris Broussard  
Florida Bar No. 0095894

EXHIBIT A  
PARTICIPATION TERMS



## Participation Terms

These Participation Terms (“Terms”) apply to each auction or other marketing or transaction event (each, an “Event”) conducted by Ten-X, Auction.com<sup>®</sup> and/or their affiliates (collectively, “Ten-X”) on behalf of a seller (each, a “Seller”) of real property or secured note(s) (each, a “Property”, and collectively, “Properties”). As used in these Terms, each prospective buyer who participates in any Event is a “Participant”. As used in these Terms, the terms “Ten-X”, “Seller” and “Participant” shall also refer to the respective principals, agents, and affiliates of each. “Winning Buyer” is the Participant that (a) submits the highest net bid in an auction Event and is acknowledged by Ten-X by email or telephone as the winning bidder, or (b) submits any offer during any Event that is accepted by Seller. As used in these Terms, each bid or offer submitted in any Event is an “Offer”.

Ten-X conducts Events solely on behalf of Seller, and is not acting as an agent for any Participant in any capacity. By registering for an Event or submitting an Offer at [www.ten-x.com](http://www.ten-x.com), [www.auction.com](http://www.auction.com) or any other Ten-X website (“Website”), Participant acknowledges having read and accepted these Terms. By submitting an Offer on a Property, Participant is deemed to have accepted any additional terms and conditions posted on the Property’s details page on the Website (“Property Page”) at the time the Offer was submitted, and such terms and conditions shall govern and control over these Terms to the extent of any conflict.

Ten-X’s Website Terms of Use ([www.ten-x.com/terms](http://www.ten-x.com/terms)) and Privacy Statement ([www.ten-x.com/privacy](http://www.ten-x.com/privacy)) are incorporated into these Terms by reference.

### 1. ACCOUNT CREATION AND REGISTRATION PROCESS

Participants must create a Ten-X account in order to participate in any Event.

Some Events may also require Event-level registration and, as part of that registration process, Participants may be required to place a deposit to secure compliance with these Terms (“Participation Deposit”). The amount of the Participation Deposit (if any) and acceptable deposit methods will be shown during registration.

Winning Buyer’s Participation Deposit (if any) may be applied towards the required “Earnest Money Deposit” (defined below), unless the Participation Deposit was made by a credit card hold, in which case such hold will be released after confirmation that the “Purchase Documents” (defined below) have been fully signed and the Earnest Money Deposit has been timely received. All Participation Deposits from Participants other than Winning Buyer will be released after the Event.

Ten-X may modify, waive, or impose additional participation requirements for certain Properties or Participants in its sole and absolute discretion or at the request of Seller.

### 2. DUE DILIGENCE

Purchase Documents. Prior to submitting an Offer, Participants must review the purchase and sale agreement, any applicable addenda, Seller’s disclosure documentation, and all other transaction documents (collectively, “Purchase Documents”), which can be accessed on the Property Page. All Offers must be based

on the posted Purchase Documents. For auction Events, the Purchase Documents are non-negotiable. For non-auction Events, all negotiable terms agreed to by both Seller and Winning Buyer shall be incorporated into the final Purchase Documents using the applicable blanks and checkboxes in the pre-printed provisions in the Purchase Documents.

Due Diligence. It is each Participant's responsibility to conduct its own due diligence and investigate all matters relating to each Property that Participant is interested in purchasing, including, without limitation, legal matters, physical condition and attributes, environmental matters, economic matters, encumbrances, and all other aspects. Participant must coordinate any such inspection with Seller. In some circumstances Seller may be unable to provide physical access for inspections, and Participants must submit Offers accordingly at their own risk. All Offers should be based solely on Participant's independent due diligence and any information contained in the Purchase Documents.

Property information has been gathered from a variety of sources and has not been independently verified by Ten-X. Participants are encouraged to consult with a licensed real estate broker, contractor, attorney, financial advisor, tax advisor, and/or other relevant professionals.

Participant is responsible for all liability, damages and/or costs directly or indirectly arising from Participant's inspection, visit, or investigation of the Property. Participant agrees to indemnify, defend and hold harmless Seller and Ten-X from any such liability, damages and/or costs, and to maintain all applicable policies of insurance insuring over such liability, damages and/or costs.

Property Value. The term "Previously Valued To" displayed on the Property Page for a Property refers to the highest of (a) the appraised value of the Property in connection with the most recent mortgage on the Property, (b) a recent asking price, (c) the assessed value, or (d) a recent broker price opinion.

### **3. BUYING**

Irrevocability of Offers. All Offers submitted during any Event are irrevocable, except where an Offer withdrawal option is expressly made available to Participants through the Website.

Signing Purchase Documents. The final Purchase Documents will be emailed to Winning Buyer for electronic signature using the email address associated with Winning Buyer's Ten-X account. Winning Buyer must sign the Purchase Documents within two hours after they are sent to Winning Buyer (unless a longer timeframe is specified in writing by Ten-X), time being of the essence. If Winning Buyer fails to timely sign the Purchase Documents, Ten-X or Seller may declare Winning Buyer to be in default of these Terms and Seller may reject Winning Buyer's Offer.

Payment of Earnest Money Deposit. The Purchase Documents for each Property require Winning Buyer to pay a deposit to the escrow/closing agent ("**Earnest Money Deposit**"). The amount of the Earnest Money Deposit is specified in the Purchase Documents or the Property Page for each Property. Unless otherwise specified in the Purchase Documents, the Earnest Money Deposit must be received no later than 5:00

PM in the time zone where the Property is located on the first business day after Winning Buyer is notified that Seller has countersigned the Purchase Documents, time being of the essence. If the Earnest Money Deposit is not timely received, Ten-X or Seller may declare Winning Buyer to be in default of these Terms and Seller may reject Winning Buyer's Offer.

Proof of Funds and Additional Information. Ten-X or Seller may require Participants to provide proof of readily available funds and/or additional information at any time prior to registration approval, submission of an Offer, and/or acceptance of an Offer. If Ten-X or Seller requires Winning Buyer to provide proof of funds or additional information and such proof of funds or additional information is not timely received, Ten-X or Seller may reject Winning Buyer's Offer.

Entity Buyers. Winning Buyers wanting to take title in the name of an entity (not as an individual) may be required to provide entity formation documents and resolutions authorizing the purchase within the timeframe specified by Ten-X (which may be before or after the Event, in Ten-X's sole discretion). Seller and/or the escrow/closing agent may require additional documentation prior to closing.

Buyer's Fee. If the Property Page for a Property states that a buyer's premium or transaction fee ("**Buyer's Fee**") applies to the sale, then Winning Buyer will be required to pay the Buyer's Fee in addition to Winning Buyer's Offer amount at closing. Unless otherwise specified for a particular Property, the Buyer's Fee will be added to Winning Buyer's Offer amount to establish the total purchase price payable by Winning Buyer. If the Property is anything other than a one to four unit residential property and Participant purchases it from the Seller outside of Ten-X's platform within 180 days after the date Participant acknowledges these Terms, Participant agrees to be responsible to Ten-X for full payment of the Buyer's Fee that would have been payable if Participant had purchased the Property through Ten-X's platform.

Short Sale Properties. Some Properties involve a sale in which the proceeds may fall short of the balance of debts secured by the Property ("**Short Sale**"). All Offers for Short Sale Properties are subject to the approval of the applicable lien holders ("**Short Sale Lender's Consent**"). If Short Sale Lender's Consent is not received, the transaction will be cancelled and the Earnest Money Deposit will be returned to Participant.

#### **4. AUCTION EVENTS**

Reserve Price. Except for Properties noted "Absolute Auction" or "Minimum Bid Auction", all Properties in auction Events have a minimum selling price established by Seller ("**Reserve Price**"). The starting bid is not the Reserve Price. Except where prohibited by law, Ten-X may counter bid on behalf of Seller on any Property up to the amount of the Reserve Price (and no such bid will result in a sale of the Property). If the Reserve Price is not met, Seller is under no obligation to sell the Property; however, Seller may accept a bid that is below the Reserve Price in its sole and absolute discretion.

Minimum Bid Auction Events. Properties to be auctioned without a Reserve Price but with a minimum bid will be listed in a "Minimum Bid Auction" and will be sold to the highest bidder at or above the minimum bid amount.

Absolute Auction Events. Properties to be auctioned without a Reserve Price or minimum bid will be listed in an “Absolute Auction” and will be sold to the highest bidder.

Managed Bid Events. For Properties to be marketed in a Managed Bid Event, Participants are invited by Ten-X or Seller to submit a non-binding indicative bid (“**Indicative Bid**”) before the Managed Bid Event. In order to submit an Indicative Bid, Participant must complete an Indicative Bid Form posted on the Property Page prior to the auction date. No deposit is required to submit an Indicative Bid; however, Participant registration may be required. Submission and acceptance of an Indicative Bid does not legally bind either Participant or Seller. If Seller decides to proceed with the Managed Bid Event, Seller will review the Indicative Bids for the Property and use them to determine which Participants may participate in the Managed Bid Event, in Seller’s sole and absolute discretion.

Extension of Auction Time. In order to allow final bids to be properly input and processed during auction Events, Ten-X may extend the time for bidding on any Property in its sole and absolute discretion to allow for additional bids.

Subject to Confirmation. Seller may designate certain Offers as “Subject To Confirmation” in its sole and absolute discretion, in which case Winning Buyer’s purchase is subject to, and contingent upon, Seller approving the purchase in its sole and absolute discretion within the time period set forth in the Purchase Documents. Winning Buyer will receive a refund of monies deposited if Seller chooses not to approve the purchase.

## **5. BROKER/AGENT PARTICIPATION**

We encourage real estate broker and agent participation. A cooperating broker commission or referral fee may be offered for some Properties. Please see the applicable Property Page for details regarding broker/agent participation and cooperating broker commissions or referral fees related to a specific Property.

For certain Events, a registered broker/agent may submit Offers on behalf of a buyer identified to Ten-X prior to Offer submission. By submitting an Offer on behalf of a buyer, the broker/agent (i) represents and warrants that the broker/agent has received all buyer authorizations and satisfied all legal requirements necessary to submit Offers on the buyer’s behalf, (ii) acknowledges and agrees that any Offer submitted will be binding upon the broker/agent and the buyer identified at registration to the same extent as if the buyer had submitted the Offer, and (iii) agrees to indemnify and hold harmless Ten-X from any breach of these representations or warranties.

## **6. GENERAL INFORMATION**

Seller and Ten-X reserve the right to deny, limit, or impose conditions on submitting Offers and/or access to the Website or any Event at any time, for any reason (including, without limitation, Participant’s solvency, credit history, transaction history, and Participation Deposit amounts).

Ten-X may postpone or cancel an Event, rearrange the order or sequence of the Properties in the Event, modify these Terms by posting notice of modification on the Property Page, remove any Property from the Event, or reject any or all Offers.

Ten-X, Sellers and/or their agents may issue press releases and other public communications regarding the Event and/or any Property offered or sold during an Event.

These Terms and the conduct of each Event shall be governed by the laws of Florida except in the case of auction Events involving real property located in California. With respect to auction Events involving real property located in California, these Terms and the conduct of each Event shall be governed by the laws of California.

Any information on any website, in any brochure, e-mail or postcard and any and all information available regarding the Properties shall not constitute an offer to sell or a solicitation of any offer to buy any of the Properties. Offers submitted or solicitations made during any Event are void where prohibited by law. If any sale would require registration or qualification under applicable state securities laws, no such sale may be consummated until such applicable requirements have been met.

As between Seller and Participant, no obligation to sell shall be binding on Seller unless and until the Purchase Documents have been signed and delivered by Seller and the Earnest Money Deposit has been received as required hereunder. After the Purchase Documents have been fully signed, the Purchase Documents shall govern the relationship between Winning Buyer and Seller.

#### **7. DISCLAIMERS; PARTICIPANT REPRESENTATIONS; CANCELLATION; LIQUIDATED DAMAGES**

TEN-X MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY, OR THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES OF ANY DOCUMENT PROVIDED BY TEN-X. EACH PARTICIPANT HEREBY RELEASES TEN-X AND ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, BROKERS AND AGENTS (COLLECTIVELY, "**REPRESENTATIVES**") FROM ANY AND ALL CLAIMS THAT ANY SUCH PARTICIPANT MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST TEN-X OR ANY OF ITS REPRESENTATIVES FOR ANY DAMAGE OR INJURY RESULTING FROM OR RELATING TO ANY ERRORS, OMISSIONS OR OTHER CONDITIONS AFFECTING ANY PROPERTY, THE DOCUMENTS USED IN EVALUATING OR ACQUIRING ANY PROPERTY, OR THE CONDUCTING OF ANY EVENT. THIS RELEASE INCLUDES CLAIMS OF WHICH PARTICIPANT IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN PARTICIPANT'S FAVOR WHICH, IF KNOWN BY PARTICIPANT, WOULD MATERIALLY AFFECT PARTICIPANT'S RELEASE OF TEN-X. EACH PARTICIPANT SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (AND OTHER SUBSTANTIALLY SIMILAR APPLICABLE STATE STATUTES) WHICH PROVIDES AS FOLLOWS:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

**CANCELLATION; LIQUIDATED DAMAGES. IF WINNING BUYER BREACHES THESE TERMS, WINNING BUYER'S OFFER MAY BE REJECTED BY TEN-X AND/OR SELLER, THE PROPERTY MAY BE IMMEDIATELY SOLD TO ANOTHER PARTICIPANT OR PLACED IN ANOTHER EVENT, AND WINNING BUYER WILL BE RESPONSIBLE FOR PAYING TEN-X LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO (A) THE AMOUNT OF THE PARTICIPATION DEPOSIT SHOWN AT THE TIME OF REGISTRATION (WHETHER OR NOT WINNING BUYER ACTUALLY MADE SUCH PARTICIPATION DEPOSIT), OR (B) IF NO PARTICIPATION DEPOSIT WAS SHOWN AT THE TIME OF REGISTRATION, 2% OF WINNING BUYER'S OFFER FOR THE PROPERTY. IF WINNING BUYER MADE A PARTICIPATION DEPOSIT BY CREDIT CARD HOLD, TEN-X IS AUTHORIZED TO CHARGE THE CREDIT CARD IN THE AMOUNT OF SUCH HOLD TO SATISFY ALL OR PART OF THE LIQUIDATED DAMAGES OWED BY WINNING BUYER. WINNING BUYER ACKNOWLEDGES THAT THE ACTUAL DAMAGES RESULTING FROM WINNING BUYER'S BREACH OF THESE TERMS WOULD BE DIFFICULT AND IMPRACTICAL TO CALCULATE, AND THAT THE LIQUIDATED DAMAGES AMOUNT SET FORTH HEREIN IS A REASONABLE PRE-ESTIMATE OF THE RESULTING DAMAGES TO TEN-X AND IS NOT A PENALTY OR FORFEITURE.**

\*Ten-X and Auction.com may operate under different trade names in some states. See [www.ten-x.com/licensing](http://www.ten-x.com/licensing).

These Participation Terms were last updated March 20, 2017.

**EXHIBIT B**  
**PURCHASE AND SALE AGREEMENT WITH JOINT CLOSING INSTRUCTIONS**

ITEM NO. \_\_\_\_\_

**PURCHASE AND SALE AGREEMENT WITH JOINT CLOSING INSTRUCTIONS**

Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, in accordance with the terms of this Purchase and Sale Agreement with Joint Closing Instructions ("Agreement"). This Agreement is effective as of the date Seller signs this Agreement ("Effective Date").

**1. KEY TERMS.**

- (A) Seller: \_\_\_\_\_  
 phone number: \_\_\_\_\_ email address: \_\_\_\_\_  
 mailing address: \_\_\_\_\_
- (B) Buyer: \_\_\_\_\_  
 phone number: \_\_\_\_\_ email address: \_\_\_\_\_  
 mailing address: \_\_\_\_\_
- (C) Purchase Price: \$ \_\_\_\_\_ (which equals Buyer's offer price of \$ \_\_\_\_\_ plus a Ten-X Transaction Fee of \$ \_\_\_\_\_).
- (D) Earnest Money Deposit: \$ \_\_\_\_\_ (if blank, then 5% of the Purchase Price, but no less than \$50,000 or more than \$500,000).
- (E) Property: Address: \_\_\_\_\_ as legally described on Exhibit A, including all permanent improvements thereon (but excluding any personal property unless specifically identified by addendum or amendment to this Agreement).
- (F) Closing Date: \_\_\_\_\_ (if blank, then (i) 30 calendar days after the Effective Date, or (ii) 60 calendar days after the Effective Date if Buyer obtains a letter of intent or other similar proposal for a loan for the Property from a lender referred by Ten-X Finance, and sends a copy of such letter of intent or proposal to Seller and Closing Agent within 5 days after the Effective Date). If the Closing Date falls on a weekend or a state or federally recognized holiday, the Closing Date shall be the next business day.
- (G) Closing Agent: \_\_\_\_\_ contact: \_\_\_\_\_  
 address: \_\_\_\_\_ phone number: \_\_\_\_\_  
 email address: \_\_\_\_\_.
- (H) Title Insurance Company: \_\_\_\_\_.
- (I) Closing Cost Allocations: As described in the Section below entitled "Closing Cost Allocations".

**2. EARNEST MONEY DEPOSIT.** Buyer must deposit the Earnest Money Deposit with Closing Agent on or before 5:00 PM in the time zone where the Property is located on the first business day after Seller countersigns this Agreement. The Earnest Money Deposit is non-refundable except as set forth in this Agreement, and may be applied towards the amounts payable by Buyer under this Agreement. The escrow ("Escrow") for the purchase of the Property shall be opened upon Closing Agent's receipt of the Earnest Money Deposit and a fully-signed copy of this Agreement.

**3. CLOSING.** The transactions contemplated by this Agreement shall be consummated ("Close" or "Closing") on or before the Closing Date. Any extension of the Closing Date requested by Buyer may be granted or denied by Seller in Seller's sole and absolute discretion, and Seller will charge Buyer an extension fee of at least \$1,000.00 per day for any such extension. Any such extension fee will be non-refundable and not constitute a credit towards the Purchase Price.

**4. CLOSING DELIVERIES.**

- (A) Seller's Deliveries. On or before the Closing Date, Seller shall deliver the following to Closing Agent ("Seller's Deliveries"):
  - (i) The transfer deed warranting against title defects arising by, through or under Seller (in the form customarily used for similar transactions in the state where the Property is located) ("Deed") signed by Seller and acknowledged in accordance with the laws of the state in which the Property is located.
  - (ii) A Non-Foreign Transferor Declaration signed by Seller, or evidence reasonably acceptable to Closing Agent and Buyer that Seller is exempt from the withholding requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), Internal Revenue Code Section 1445.
  - (iii) A counterpart of the "Settlement Statement" (defined below) signed by Seller.
  - (iv) A counterpart of the assignment and assumption of leases and contracts substantially in the form attached as Exhibit B ("Assignment of Leases and Contracts") signed by Seller.



- (v) Any and all other instruments reasonably required by Closing Agent or otherwise necessary to Close the transactions contemplated by this Agreement.

(B) **Buyer's Deliveries.** On or before the Closing Date, Buyer shall deliver the following to Closing Agent ("**Buyer's Deliveries**"):

- (i) An amount in immediately available "good funds" equal to the Purchase Price, plus Buyer's share of closing costs, prorations and expenses as set forth in this Agreement.
- (ii) A counterpart of the Settlement Statement signed by Buyer.
- (iii) A counterpart of the Assignment of Leases and Contracts signed by Buyer.
- (iv) Any and all other instruments reasonably required by Closing Agent or otherwise necessary to Close the transactions contemplated by this Agreement.

**5. CONDITIONS PRECEDENT TO CLOSING.**

(A) **Seller's Conditions.** Seller's obligations to Close are conditioned upon the following ("**Seller's Conditions**"):

- (i) All representations and warranties of Buyer in this Agreement shall be true, correct and complete in all material respects as of the Closing Date and Buyer shall have performed in all material respects all covenants and obligations required to be performed by Buyer on or before the Closing Date.

(B) **Buyer's Conditions.** Buyer's obligations to Close are conditioned upon the following ("**Buyer's Conditions**"):

- (i) All representations and warranties of Seller in this Agreement shall be true, correct and complete in all material respects as of the Closing Date and Seller shall have performed in all material respects all covenants and obligations required to be performed by Seller on or before the Closing Date.
- (ii) Title Insurance Company is irrevocably committed to issue to Buyer an owner's title insurance policy covering the Property with standard coverage customary in the state where the Property is located, showing liability in the amount of the Purchase Price and showing insurable title to the Property vested in Buyer, subject only to the following: (a) Title Insurance Company's standard exceptions; (b) liens for all current general and special real property taxes and assessments not yet due and payable; (c) liens of supplemental taxes, if any assessed; (d) any facts an accurate survey and/or a personal inspection of the Property may disclose; (e) the mortgage/deed of trust/deed to secure debt lien in connection with any Buyer financing; (f) any laws, regulations, ordinances (including but not limited to, zoning, building and environmental) as to the use, occupancy, subdivision or improvement of the Property adopted or imposed by any governmental body, or the effect of any non-compliance with or any violation thereof, including but not limited to, any disclosure and/or report required by ordinance; (g) rights of existing tenants and/or occupants of the Property (if any); (h) covenants, restrictions, easements and other matters that do not materially impair the value of the Property or the use thereof; (i) non-monetary encumbrances disclosed to Buyer in writing prior to entering into this Agreement; and (j) any other matter for which Title Insurance Company agrees to provide insurance at no additional cost to Buyer.

(C) **Waiver of Conditions.** Either party may waive its respective closing conditions in its sole discretion. By proceeding to Closing, each party waives its respective closing conditions and irrevocably releases the other party from any liability arising from any facts known by such waiving party that would otherwise have resulted in a failure of a closing condition.

**6. CLOSING INSTRUCTIONS TO CLOSING AGENT.** At Closing, Closing Agent is irrevocably instructed to do the following:

- (A) Record the Deed.
- (B) Pay all fees, costs, deed and transfer taxes for the sale of the Property which are required to be paid by Seller and Buyer under this Agreement, the portion of any fees charged by Closing Agent which are payable by Seller and Buyer (if any) and other expenses relating to the sale of the Property which are required to be paid by Seller and Buyer.
- (C) Pay to Seller the balance of the Purchase Price and any other funds remaining after Closing.

**7. COSTS AND PRORATIONS.**

- (A) **Pre-Closing Costs.** Buyer and Seller acknowledge that Closing Agent may incur certain costs while processing this transaction which must be paid prior to Closing. Closing Agent is authorized and instructed to release funds for payment of such costs prior to Closing from funds deposited into Escrow by Buyer. Such funds are not refundable and Closing Agent is released from any liability for payment of any such funds pre-released through the Escrow. Closing Agent is authorized to charge the appropriate party for costs incurred, or credit the appropriate party for credits, as applicable at Closing or upon termination of this Agreement.

- (B) **Prorations.** Closing Agent shall prorate as of the date of Closing (i) all real property taxes, assessments, utilities and other operating expenses customarily apportioned in similar situations (“**Property Expenses**”), and (ii) all rents and other income actually received and customarily apportioned in similar situations (“**Property Income**”), in each case based on the number of calendar days in the applicable period and in accordance with local customs. Despite anything to the contrary in this Agreement, insurance premiums will not be prorated, and Seller may cancel any existing insurance on the Property after Closing. If either party receives Property Income or a refund of Property Expenses attributable, in whole or in part, to the other party’s period of ownership, the party that received such Property Income or refund shall immediately submit to the other party the portion attributable to such other party’s period of ownership. Except as set forth in this Agreement, Seller shall not be responsible for any Property Expenses accruing after Closing. This paragraph shall survive Closing indefinitely.
- (C) **Closing Costs.** Seller and Buyer shall pay closing costs as described in the Closing Cost Allocations (and Closing Agent is authorized to (i) pay Seller’s costs from Seller’s proceeds, and (ii) pay Buyer’s costs from funds deposited into Escrow by Buyer).
- (D) **Settlement Statement.** On or before the third business day prior to Closing, Closing Agent shall prepare and deliver to Seller and Buyer a settlement statement setting forth the prorations and cost allocations set forth in this Agreement (“**Settlement Statement**”).

**8. TERMINATION AND CANCELLATION OF ESCROW.**

- (A) **Termination Resulting from Breach.** If Closing does not or cannot occur on or before the Closing Date due to a breach of this Agreement by Buyer or Seller, then the non-breaching party may terminate this Agreement and cancel the Escrow by written notice to the breaching party and Closing Agent. If Buyer fails to timely deposit the Earnest Money Deposit, then Seller may immediately terminate this Agreement by written notice to Buyer. Upon any such termination and/or cancellation, the breaching party shall pay all cancellation fees of Closing Agent and Title Insurance Company. If Seller is the breaching party, Closing Agent shall return the Earnest Money Deposit to Buyer, and Buyer shall be entitled to pursue remedies at law or in equity. If Buyer is the breaching party, then the following shall apply:

**BUYER AND SELLER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT TO DETERMINE SELLER’S ACTUAL DAMAGES RESULTING FROM A BREACH BY BUYER. IN THE EVENT OF A BREACH BY BUYER, SELLER SHALL BE ENTITLED TO AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER’S EXCLUSIVE REMEDY. BUYER AGREES THAT SUCH AMOUNT IS A REASONABLE PRE-ESTIMATE OF SELLER’S ACTUAL DAMAGES FOR BREACH OF THIS AGREEMENT AND IS NOT A PENALTY. IF CLOSING AGENT IS IN POSSESSION OF THE EARNEST MONEY DEPOSIT, THEN CLOSING AGENT SHALL DELIVER THE EARNEST MONEY DEPOSIT TO SELLER. DESPITE THE FOREGOING, IF APPLICABLE LAW LIMITS THE AMOUNT OF THE LIQUIDATED DAMAGES PAYABLE TO SELLER UPON A BREACH BY BUYER, SELLER SHALL ONLY BE ENTITLED TO THE AMOUNT PERMITTED BY LAW, AND ANY EXCESS SHALL BE PROMPTLY RETURNED TO BUYER.**

**SELLER’S INITIALS \_\_\_\_\_/\_\_\_\_\_**

**BUYER’S INITIALS \_\_\_\_\_/\_\_\_\_\_**

- (B) **Costs Upon Termination and Cancellation of Escrow.** Except as otherwise set forth in this Section, upon termination of this Agreement and cancellation of Escrow pursuant to this Section, all costs incurred in connection with the transactions contemplated by this Agreement (including, without limitation, payments for loan applications, inspections, appraisals, and other reports) shall be the sole responsibility of the party incurring such costs.
- (C) **Closing Agent Authorization.** If Closing Agent receives a written notice from a party to cancel the Escrow in accordance with this Section 8, and Closing Agent can confirm that the other party also received the notice, Closing Agent is authorized to comply with the notice if Closing Agent does not receive a written objection within 10 calendar days after such other party received the notice.

**9. BUYER’S REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants to Seller as follows:

- (A) **Authority.** Buyer has the necessary authority to enter into and perform its obligations under this Agreement. If Buyer is an entity, the natural person signing this Agreement on behalf of Buyer represents and warrants that (i) Buyer is duly formed and in good standing and (ii) the natural person signing on behalf of Buyer has the necessary authority to bind Buyer to this Agreement.
- (B) **Property Condition and Attributes.** Prior to entering into this Agreement, Buyer had the opportunity to conduct Buyer’s own due diligence and investigations. Except as expressly set forth in this Agreement, Buyer’s obligations under this Agreement are not contingent on any further due diligence and/or investigation. Buyer acknowledges that the square footage of the Property (including the square footage of the lot and any improvements thereon) is deemed approximate and not guaranteed. Except as otherwise expressly set forth in this Agreement or in written disclosures to Buyer signed by Seller, (i) Seller does not make, and expressly disclaims, any representation or warranty, express or implied, regarding the Property, and (ii) Buyer acknowledges and agrees that Seller is selling the Property “As Is,

Where Is, With All Faults and Limitations” and Seller shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property.

- (C) **Disclosures.** Prior to entering into this Agreement, Buyer has received (or, to the extent not received, Buyer irrevocably waives) all disclosure documents required to be provided by or on behalf of Seller or Seller’s representatives. Reports furnished by or on behalf of Seller shall be for informational purposes only and are not made part of this Agreement unless required under applicable law.
- (D) **Sophisticated Buyer.** Buyer (i) is a sophisticated purchaser, (ii) is capable of evaluating the merits and risks of purchasing the Property, (iii) understands and is able to bear the economic risks of purchasing the Property, including, without limitation, a total loss of investment and/or the risk that Buyer may be required to hold the Property indefinitely.

**10. SELLER’S REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Buyer as follows:

- (A) **Authority.** Seller has the necessary authority to enter into and perform its obligations under this Agreement. If Seller is an entity, the natural person signing this Agreement on behalf of Seller represents and warrants that (i) Seller is duly formed and in good standing and (ii) the natural person signing on behalf of Seller has the necessary authority to bind Seller to this Agreement.
- (B) **Property Condition and Attributes.** The written information regarding the Property provided to Buyer by or on behalf of Seller, taken as a whole (i.e. including any updates or revisions provided), is accurate in all material respects. This paragraph shall not survive Closing.
- (C) **No Violations.** Seller’s execution and performance of this Agreement will not result in any breach of, conflict with, or result in the creation of any encumbrance upon the Property pursuant to any indenture, mortgage, deed of trust, note, evidence of indebtedness, right of first refusal, right of first offer, or any other agreement or instrument by which Seller is bound with respect to the Property.
- (D) **Leases.** Except for the leases (including any amendments) listed in Exhibit C (“Leases”), Seller knows of no other agreement with respect to the occupancy of the Property that will be binding on Buyer after Closing, and to Seller’s knowledge, the information on Exhibit C and copies of any Leases delivered by Seller to Buyer are true, correct and complete in all material respects. Except as set forth on Exhibit C, and except as would not be reasonably expected to have a material adverse effect on the ongoing business or operation of the Property, to Seller’s actual knowledge, (i) each of the Leases is in full force and effect; (ii) there are no uncured defaults under any of the Leases or circumstances which with the giving of notice, the passage of time or both would constitute a default under any of the Leases; (iii) there are no unsatisfied concessions, abatements, offsets, defenses or other basis for relief or adjustment under any of the Leases; (iv) there is no outstanding obligation to provide any tenant with an allowance to perform any tenant improvements; (v) no tenant has requested in writing a modification of its Lease or a release of any material obligation under its Lease, or has given written notice terminating its Lease, or has been released of any material obligation under its Lease prior to the normal expiration of the term of the Lease; (vi) no tenant is the subject of a bankruptcy or insolvency proceeding; (vii) no guarantor has been released or discharged from any obligation in connection with any Lease; and (viii) all brokerage commissions currently due and payable with respect to the Leases have been paid.
- (E) **No Litigation.** Except as disclosed in writing to Buyer prior to signing this Agreement, there is no pending litigation affecting the Property or that would affect Seller’s ability to perform its obligations under this Agreement.
- (F) **No Mechanics’ Liens.** There are no unsatisfied mechanics’ or materialmen’s lien rights concerning the Property.

**11. SELLER’S COVENANTS.**

- (A) **Possession.** At Closing, Seller shall relinquish possession of the Property to Buyer and promptly provide Buyer with all keys, codes and other means of Property access in Seller’s possession.
- (B) **Utilities.** Seller shall reasonably cooperate with Buyer prior to Closing to allow Buyer to obtain responsibility for and maintain access to applicable utilities following Closing.
- (C) **Operation and Maintenance of Property.** Prior to Closing, Seller shall operate and maintain the Property consistent with past practice.
- (D) **Leases and Contracts.** Prior to Closing, Seller shall not enter into, terminate or amend any Lease or other material agreement with respect to the Property which would encumber or be binding upon the Property from and after Closing, without Buyer’s prior written consent, which consent may not be unreasonably withheld, conditioned or delayed.
- (E) **No Violations.** Prior to Closing, Seller shall comply in all material respects with the terms of the Leases and any other material document or agreement affecting the Property consistent with past practice.

(F) Notice of Material Changes or Untrue Representations. Prior to Closing, Seller shall promptly notify Buyer if Seller learns of any material change in any condition of the Property or any event or circumstance which makes any representation or warranty of Seller under this Agreement untrue or misleading.

**12. DISPUTE RESOLUTION. AT THE REQUEST OF EITHER PARTY TO THIS AGREEMENT, ANY DISPUTE ARISING UNDER THIS AGREEMENT SHALL BE FIRST SUBMITTED TO MEDIATION BEFORE A PARTY INITIATES ARBITRATION OR COURT ACTION. MEDIATION FEES SHALL BE DIVIDED EQUALLY AND EACH PARTY SHALL BEAR HIS/HER/ITS OWN ATTORNEYS' FEES AND COSTS.**

**BUYER AND SELLER HAVE READ AND UNDERSTAND THE ABOVE PARAGRAPH AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT TO MEDIATION PRIOR TO COMMENCEMENT OF ARBITRATION OR COURT ACTION.**

**SELLER'S INITIALS \_\_\_\_\_/\_\_\_\_\_**

**BUYER'S INITIALS \_\_\_\_\_/\_\_\_\_\_**

**13. MISCELLANEOUS.**

(A) Survival of Representations and Warranties. Except as otherwise set forth in this Agreement, (i) all representations and warranties of Seller and Buyer in this Agreement shall continue through and be deemed remade as of Closing and shall survive Closing for a period of one year, and (ii) no claim for breach of any representation or warranty in this Agreement may be made more than one year after Closing.

(B) No Assignment or Recording. Buyer may not assign or record all or any part of this Agreement without the express prior written consent of Seller. Despite the foregoing, Buyer may assign this Agreement to any entity wholly owned, directly or indirectly, by Buyer; provided, however, that, in such event, the undersigned Buyer shall remain liable for the obligations of Buyer under this Agreement.

(C) Casualty and Condemnation. If any material portion of the Property is damaged or taken by eminent domain (or is the subject of a pending taking) prior to Closing, Seller shall notify Buyer promptly after Seller obtains knowledge thereof. Within 10 business days after Buyer receives such written notice (if necessary, the Closing Date shall be extended until one business day after the expiration of such period), Buyer may, at its option, either (i) terminate this Agreement, or (ii) proceed to Closing in accordance with this Agreement. Buyer shall be deemed to have waived its right to terminate this Agreement if Buyer does not notify Seller in writing of its election to terminate this Agreement within such period. Buyer shall not be entitled to any insurance proceeds or obtain any rights with respect to any claims Seller may have with regard to insurance maintained by Seller with respect to the Property. In the event of a taking by eminent domain, Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to all awards, if any, for such taking.

(D) Common Interest Development. If the Property is in a common interest development, unless otherwise required by law, Buyer acknowledges that Buyer was provided for review (or, to the extent not provided, Buyer waives any right to review) the declaration of covenants, conditions, restrictions and/or bylaws and other documentation regarding such common interest development and Buyer acknowledges that Buyer has reviewed such documentation to the fullest extent Buyer deems necessary and, by signing this Agreement, Buyer accepts the declaration of covenants, conditions, restrictions and/or bylaws of the common interest community.

(E) Local Requirements. Some counties, cities, municipalities and other state subdivisions may require a certificate of occupancy, certificate of use or code compliance certificate and/or inspection ("Local Requirement") may be required in order to transfer and/or occupy the Property. If a Local Requirement is required for the Property to be transferred to or occupied by Buyer, Buyer waives such Local Requirements to the extent waivable. To the extent any such Local Requirement is not waivable by Buyer, Buyer shall comply with the Local Requirement at Buyer's sole cost, including, without limitation, the correction of any violations or performance of other work which may be required in connection therewith. Seller makes no representation as to whether a Local Requirement applies. Buyer shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to any Local Requirements. This paragraph shall survive Closing indefinitely.

Despite the foregoing, (i) Seller shall reasonably cooperate with Buyer in Buyer's efforts to comply with any applicable Local Requirement, but in no event shall Seller be required to expend any money in connection therewith, and (ii) if there is a Local Requirement discovered by Buyer after the Effective Date but before Closing (and unknown to Buyer prior to the Effective Date) that is not waivable by Buyer and would require Buyer to make improvements to the Property, or expend money, in either case in excess of 5% of the Purchase Price for the Property, Buyer may terminate this Agreement. Upon such termination, Closing Agent shall return the Earnest Money Deposit to Buyer, and Buyer and Seller shall each bear 50% of all cancellation fees of Closing Agent and Title Insurance Company.

(F) Counterparts, Electronic Signatures, and Complete Agreement. This Agreement and any addenda or other document necessary for Closing of the transactions contemplated by this Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Facsimile and

electronic signatures shall have the same legal effect as original signatures. This Agreement and any addenda or other document necessary for Closing of the transactions contemplated by this Agreement may be accepted, signed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act (UETA) and any applicable state law. This Agreement constitutes the entire agreement of Buyer and Seller with respect to the subject matter of this Agreement and supersedes any other instruments purporting to be an agreement of Buyer and Seller relating to that subject matter.

- (G) **Severability.** If any portion of this Agreement is judicially determined to be invalid or unenforceable, that portion shall be deemed severable from this Agreement and the remainder of this Agreement shall remain in full force and effect and be construed to fulfill the intention of the parties.
- (H) **Time is of the Essence.** Time is of the essence for the performance of each and every covenant under this Agreement and the satisfaction of each and every condition under this Agreement.
- (I) **Governing Law and Venue.** This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the state in which the Property is located. The state and federal courts located in the county in which the Property is located shall be proper forums for any legal controversy between the parties arising in connection with this Agreement, which courts shall be the exclusive forums for all such suits, actions or proceedings.
- (J) **Attorneys' Fees.** In any action, proceeding or arbitration arising out of this Agreement, the prevailing party (defined as the party who prevails as to a substantial part of the litigation or claim) shall be entitled to reasonable attorneys' fees and costs.
- (K) **Further Assurances.** The parties agree to execute such other documents, and to take such other actions as may reasonably be necessary, to further the purposes of this Agreement.
- (L) **Notices.** All notices and other communications contemplated under this Agreement shall be in writing and shall be deemed given and received upon receipt if: (i) delivered personally; or (ii) mailed by registered or certified mail return receipt requested, postage prepaid; (iii) sent by a nationally recognized overnight courier; and/or (iv) sent by email. Notice to Buyer and Seller shall be given as set forth on the first page of this Agreement or to such other address or addresses as may from time to time be designated by either party by written notice to the other.
- (M) **Prohibited Persons and Transactions.** Each party represents and warrants to the other that neither it, nor any of its affiliates, nor any of their members, directors or other equity owners (excluding holders of publicly traded shares), and none of their principal officers and employees: (i) is listed as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control ("**OFAC**"); (ii) is a person or entity with whom U.S. persons or entities are restricted from doing business under OFAC regulations or any other statute or executive order (including the September 24, 2001 "Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"); and (iii) is engaged in prohibited dealings or transactions with any such persons or entities.
- (N) **Brokers.** In connection with the transactions contemplated by this Agreement, Seller is represented by Listing Broker identified on the signature page hereto, Buyer is represented by Buyer's Broker identified on the signature page hereto, Ten-X is acting as the marketing firm and marketplace provider, and Seller and Buyer each represents and warrants that it has not dealt with any other broker, finder or other agent. Seller and Buyer shall each indemnify and hold harmless the other from and against any claims, losses, costs, damages, liabilities or expenses, including reasonable attorneys' fees, arising in connection with any breach by the indemnifying party of the representations and warranties in this paragraph. This paragraph shall survive Closing indefinitely.
- (O) **Form of Agreement.** Buyer and Seller acknowledge that no representation, recommendation or warranty is made by Ten-X or any broker relating to the legal sufficiency or tax consequences of this Agreement or any attachments hereto, and Buyer and Seller each represent and warrant that it has consulted with, had the opportunity to consult with or waived the right to consult with counsel in connection with this Agreement.

**14. CLOSING COST ALLOCATIONS.**

Closing Costs (as applicable)	Seller Pays	Buyer Pays	50% Seller/ 50% Buyer
Title Search Fee	<input checked="" type="checkbox"/>		
Owner's Title Insurance Policy (Standard Coverage)	<input checked="" type="checkbox"/>		
Additional Title Coverage or Endorsements Requested by Buyer		<input checked="" type="checkbox"/>	
Lender's Title Insurance Policy		<input checked="" type="checkbox"/>	
Closing Agent Fees			<input checked="" type="checkbox"/>
State and/or Local Transfer Taxes			<input checked="" type="checkbox"/>
Credit Reports, Loan Fees, Loan Points, Reports and Inspections Required by Buyer's Lender, Appraisal Fees, Mortgage Notarization and Recording Fees, and All Other Costs In Connection With Buyer's Loan		<input checked="" type="checkbox"/>	
Seller's Loan Prepayment Fees and All Other Costs In Connection With Seller's Existing Loan	<input checked="" type="checkbox"/>		
Deed Notarization and Recording Fees	<input checked="" type="checkbox"/>		
Real Estate Broker/Agent Commissions Due Listing Broker	<input checked="" type="checkbox"/>		
Offered Cooperating Real Estate Broker/Agent Commissions Due Buyer's Broker	<input checked="" type="checkbox"/>		
Additional Real Estate Broker/Agent Commissions Due Buyer's Broker (If Any)		<input checked="" type="checkbox"/>	
Common Interest Development Transfer Fee	<input checked="" type="checkbox"/>		
Common Interest Development Document Preparation Fees		<input checked="" type="checkbox"/>	
Private Transfer Fee	<input checked="" type="checkbox"/>		
Any Reports and Inspections Requested by Buyer		<input checked="" type="checkbox"/>	
Seller's Attorney Fees	<input checked="" type="checkbox"/>		
Buyer's Attorney Fees		<input checked="" type="checkbox"/>	
All Other Closing Costs		<input checked="" type="checkbox"/>	

**SELLER'S INITIALS** \_\_\_\_\_/\_\_\_\_\_

**BUYER'S INITIALS** \_\_\_\_\_/\_\_\_\_\_

**15. STATE-SPECIFIC PROVISIONS.** See state-specific rider attached hereto and incorporated herein by reference (if applicable).

*(Remainder of Page Intentionally Blank)*

**SELLER:**

**BUYER:**

\_\_\_\_\_

\_\_\_\_\_  
(and its permitted assigns under Section 13(B))

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

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

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

**LISTING BROKER (if any):**

**BUYER'S BROKER (if any):**

Broker Printed Name: \_\_\_\_\_  
Brokerage Printed Name: \_\_\_\_\_  
Brokerage License Number: \_\_\_\_\_ State: \_\_\_\_\_

Broker Printed Name: \_\_\_\_\_  
Brokerage Printed Name: \_\_\_\_\_  
Brokerage License Number: \_\_\_\_\_ State: \_\_\_\_\_

(Brokers must be licensed in the state where the Property is located.)

**DISCLOSURE AND CONFIRMATION OF AGENCY RELATIONSHIP**

Buyer and Seller acknowledge that, unless otherwise set forth in this Agreement, Ten-X is not acting as Seller's real estate agent or Buyer's real estate agent, and Ten-X is acting as a marketing firm and marketplace provider only.

**SELLER'S INITIALS** \_\_\_\_/\_\_\_\_

**BUYER'S INITIALS** \_\_\_\_/\_\_\_\_

**CLOSING AGENT ACKNOWLEDGEMENT**

Closing Agent acknowledges receipt of a copy of this Agreement and the Earnest Money Deposit set forth in Section 1(D) and agrees to act as Closing Agent in accordance with this Agreement.

\_\_\_\_\_

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**



**EXHIBIT B**

**ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS**

**ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS**

**Seller:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Property (Address):** \_\_\_\_\_

This Assignment and Assumption of Leases and Contracts, dated effective as of \_\_\_\_\_, is entered into between Buyer and Seller in connection with the transfer of the Property from Seller to Buyer concurrently herewith.

Seller is the landlord under those certain leases identified on Schedule 1 attached hereto (collectively, "Leases") relating to the Property. Seller desires to assign to Buyer, and Buyer desires to assume from Seller, all of Seller's right, title and interest in and to the Leases and all other transferable licenses, contracts, permits and agreements affecting the Property (collectively, "Contracts").

For valuable consideration, the receipt and sufficiency of which is acknowledged, Buyer and Seller agree as follows:

- 1. ASSIGNMENT.** Seller hereby assigns, transfers and conveys to Buyer all of Seller's right, title and interest in and to (a) the Leases and Contracts and (b) all security deposits, letters of credit and guarantees given in connection with the Leases.
- 2. ASSUMPTION.** Buyer hereby assumes all of Seller's obligations and liabilities under the Leases and Contracts and agrees to perform all of the landlord's obligations under the Leases, and Seller's obligations under the Contracts, arising from and after the date hereof. Buyer shall be solely responsible for notifying any tenants or occupants (a) that Seller has transferred ownership of the Property to Buyer, (b) regarding any change in place for payment of rentals, and (c) that Buyer is responsible for the security deposits of such tenants or occupants.
- 3. INDEMNIFICATION BY SELLER.** Seller hereby indemnifies Buyer and agrees to hold Buyer harmless from and against all claims, expenses, losses or damages to the extent arising out of (a) the landlord's obligations and liabilities under the Leases accruing prior to the date hereof, and/or (b) Seller's obligations and liabilities under the Contracts accruing prior to the date hereof.
- 4. INDEMNIFICATION BY BUYER.** Buyer hereby indemnifies Seller and agrees to hold Seller harmless from and against all claims, expenses, losses or damages to the extent arising out of (a) the landlord's obligations and liabilities under the Leases accruing from and after the date hereof, and/or (b) Seller's obligations and liabilities under the Contracts accruing from and after the date hereof.

**SELLER:**

**BUYER:**

\_\_\_\_\_

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

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

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

**Schedule 1 to Assignment and Assumption of Leases and Contracts**

**Leases**

**EXHIBIT C**

**LEASES**

**All leases posted to the Property's listing page on Ten-X's website (a) after the date of the attached list, and (b) before Buyer signs this Agreement are hereby incorporated herein by reference.**