

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE: §  
TNP TITAN PLAZA FUND, LLC § BANKRUPTCY NO. 16-50780-RBK  
DEBTOR § CHAPTER 11 CASE

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**DEBTOR’S MOTION FOR AUTHORIZATION TO (I) SELL PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363 AND (II) ASSUME AND ASSIGN EXECUTORY CONTRACTS PURSUANT TO 11 U.S.C. § 365**

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TNP Titan Plaza Fund, LLC, debtor and debtor-in-possession (the “Debtor”) in the above captioned case, by and through its counsel Pulman, Cappuccio, Pullen, Benson & Jones, LLP, hereby files this *Motion for Authorization to (I) Sell Property of the Estate Pursuant to 11 U.S.C. § 363 and (II) Assume and Assign Executory Contracts Pursuant to 11 U.S.C. § 365* (the “Motion”). In support of the Motion, the Debtor respectfully represents as follows:

**JURISDICTION, VENUE, & PROCEDURAL BACKGROUND**

1. This Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code. 28 U.S.C. §§ 157, 1334. This is a core proceeding pursuant to section 157(b)(2). 28 U.S.C. §§ 157(b)(2). Venue is proper before this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code. 28 U.S.C. §§ 1408-1409.

2. On May 27, 2015 (the “Petition Date”), the Debtor filed a voluntary petition under chapter 11, title 11 of the United States Code (the “Bankruptcy Code”).

3. Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On April 26, 2016, the United States

Trustee appointed the Official Committee of Unsecured Creditors. No trustee or examiner has been requested or appointed.

4. The statutory predicates for the relief requested herein are sections 363 and 365 of the Bankruptcy Code, Rules 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rule 6004(b) and 9014 of the Local Rules of Bankruptcy Procedure for the Western District of Texas.

5. Attached as Exhibit 1 hereto is the proposed order on the Motion.

#### **FACTUAL BACKGROUND**

6. The Debtor owns and leases commercial real estate located at 2700 NE Loop 410 and 8200 Perrin Beitel, San Antonio, Texas 78218 (the “Real Property”). The Debtor conducts no other business operations besides the management and leasing of the Real Property. The Real Property is “single asset real estate” (as defined under Section 101(51B) of the Bankruptcy Code) and the Debtor is a “single asset real estate” entity.

7. The Debtor’s largest creditor is Romeo Echo Oscar, LLC (“REO”), the successor-in-interest to an original lender and current holder of various loan documents—including a certain promissory note in favor of REO’s predecessor-in-interest in the principal amount of \$6.3 million (the “Note”)—dating back to or otherwise arising out of the Debtor’s purchase of the Real Property in 2010. REO, as the Note’s holder, filed a claim against the Debtor’s chapter 11 estate on July 26, 2016, for a total outstanding amount of approximately \$3.9 million under the Note and various allegedly applicable interest charges, late fees, and other charges. The REO claim is by far the largest secured claim against the Debtor’s estate, representing \$3.9 million of approximately \$4.061 million in total secured claims.

8. Unsecured claims against the Debtor's bankruptcy estate total approximately \$773,338, all of which are non-priority claims, bringing the overall total of all claims against the Debtor's estate to less than \$5 million.

9. Among the non-priority unsecured claims filed against the Debtor's estate is an unsecured claim filed by a tenant, VHS San Antonio Partners, LLC, d/b/a Baptist Health System ("VHS"), for approximately \$245,000 (the "VHS Claim") that VHS alleges Debtor owes it pursuant to a 2009 lease agreement involving certain improvements to the leased premises. The VHS Claim is currently the subject of a pending lawsuit filed in the Texas District Court for Bexar County, Texas.

10. On June 16, 2016, the Court entered its Order on the Application to Employ Endura Advisory Group as Broker. Docket No. 49. Pursuant to that order, the Debtor retained Endura Advisory Group ("Endura") as real estate broker for the marketing and sale of the Real Property, which comprises the vast majority of the Debtor's assets to be administered as part of the bankruptcy estate. Endura immediately began marketing the Real Property, and on July 18, 2016, Endura received several offers to purchase of the Real Property ranging between \$4.225 million and \$7.25 million.

11. Now having negotiated with several prospective buyers for the purchase of the Real Property, the Debtor is satisfied with the terms of the highest offer of \$7.25 million submitted by Brockwell Investments, LLC ("Brockwell") and now seeks to proceed with a private sale of the Real Property (the "Brockwell Sale") pursuant to Bankruptcy Code section 363. A true and correct copy of the purchase-and-sale agreement attendant to the Brockwell Sale is attached as Exhibit 2. In connection with the Brockwell Sale, Debtor proposes to pay all allowed Secured Claims, as well as any outstanding 2016 property taxes attributable to the Debtor at Closing. A plan of liquidation

will follow the Brockwell Sale to address the administration of unsecured claims and the proceeds from the Brockwell Sale will leave it with more than sufficient cash to satisfy all claims against the Debtor's bankruptcy estate.

12. Debtor also seeks to assume and assign the Tenant Leases listed on the attached Exhibit 3 to Brockwell, including the payment of the Cure Amounts set forth on Exhibit 3. In connection with cure amounts listed on Exhibit 3, Debtor would propose that the Court set a deadline of **November 4, 2016** for the filing of objections to the Cure Amount. Any objection filed to the Cure Amount must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of this chapter 11 case; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Amount, state the cure amount alleged to be owed to the objecting Tenant, together with any applicable and appropriate documentation in support thereof; and (iv) be filed with the Court by **November 4, 2016**. A properly filed objection to the Cure Amount will reserve such objecting party's rights against the Debtor only with respect to the assumption and assignment of the Unexpired Lease at issue and/or objection to accompanying Cure Amount, as set forth in the objection. Any objection to the proposed assumption and assignment of an Unexpired Lease or Cure Amount that remains unresolved shall be heard by the Court prior to the closing of the Brockwell Sale, which shall be no later than December 2, 2016.

**RELIEF REQUESTED**

13. By this Motion, Debtor requests that the Court authorize Debtor to finalize and execute the Brockwell Sale and convey the Real Property to Brockwell free and clear of any all liens, claims, and/or interests pursuant to section 363(f) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure.

14. Debtor also requests that the Court authorize Debtor to assume and assign the Tenant Leases listed on the attached Exhibit 3, pursuant to section 365(a) of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure. Furthermore, Debtor requests that the Court establish the procedures set forth above to address any objections to the Cure Amounts listed in Exhibit 3.

#### **AUTHORITIES & ARGUMENTS**

15. Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See Myers v. Martin (In re Martin)*, 91 F.2d 389, 395 (3d Cir. 1996); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1993). Additionally, a debtor may sell such property free and clear of all liens, claims and encumbrances under section 363(f) of the Bankruptcy Code. *Regions Bank of Louisiana v. Rivet*, 224 F.3d 483, 489 (5th Cir. 2000). Under the provisions of section 363(f), property of the estate may be sold free and clear of liens if, among other things, an entity holding a lien consents to the sale or a bona fide dispute exists as to the validity of the security interest. 11 U.S.C. § 363(f). A bona fide dispute exists when there is an objective basis for either factual or legal dispute as to the validity of an interest in property. *In re Robotics Vision Sys., Inc.*, 322 B.R. 502, 506 (Bankr. D.N.H. 2005) (citing *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr.N.D.Ill.1991)). A court need not determine the outcome of a dispute, just whether a bona fide one exists. *In re Octagon Roofing*, 123 B.R. at 590. The purpose behind § 363(f)(4) is to allow the sale of property of the estate free and clear of disputed interests so the liquidation of

the assets are not unnecessarily delayed while the disputes are being litigated. *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 171 (9th Cir. BAP 2001).

16. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession may assume any executory contract or unexpired lease, subject to the court's approval. 11 U.S.C. § 365(a). The Fifth Circuit has held that a debtor may assume an executory contract if it is a proper exercise of the debtor's business judgment. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1308-09 (5th Cir. 1985); *In re National Gypsum Co.*, 208 F.3d 498 (5th Cir. 2000). Courts apply the "business judgment test," requiring a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment. *In re Idearc Inc.*, 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009), *aff'd sub nom. In re Idearc, Inc.*, 662 F.3d 315 (5th Cir. 2011) (citing *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir.1985) ("The issue . . . is whether the decision of the debtor that rejection will be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."), cert. denied, 475 U.S. 1057 (1986); *In re Constant Care Cmty. Health Center, Inc.*, 99 B.R. 697, 702 (Bankr.D.Md.1989) (same). In the absence of a showing of bad faith or an abuse of business discretion, the debtor's business judgment will not be altered. *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir.1982), *aff'd*, 465 U.S. 513 (1984); *Lubrizol Enters.*, 756 F.2d at 1047.

17. The Tenant Leases are executory contracts. *See, e.g., In re Eldercare Properties*, 405 B.R. 816, 829 (Bankr. S.D. Tex. 2006), *aff'd sub nom. In re Eldercare Properties Ltd.*, 568 F.3d 506 (5th Cir. 2009). As of the Petition Date, the Debtor and its various tenants have obligations left unperformed pursuant to the Tenant Leases, such that a breach of the Tenant Leases by either landlord or tenant would lead to a material default of the Tenant Leases. Debtor seeks to

assume and assign the Tenant Leases to receive the benefit of its bargain pursuant to them in a timely manner.

18. Brockwell's purchase of the Real Property should be free and clear of all liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code. The Purchase Price will provide a full recovery to all creditors in this Case and allow payment to equity. In the event a party disputes the allowed Cure Amount, as set forth in Exhibit 3, the procedures set forth in this Motion will provide adequate protection to such parties and allow them to establish their Cure Amount prior to closing.

19. The Debtor requests that the Court's order also provide that, upon closing of Brockwell Sale, the Debtor be authorized to pay any and all closing costs, any outstanding amounts owed for real property taxes, the Allowed Claims owed to each of the Secured Creditors, as well as any Cure Amount established prior to closing. Such payments will reduce any additional costs and expenses that Debtor would unnecessarily incur by holding all of the sale proceeds pending approval of a plan of reorganization.

20. The Debtor also requests that the Court waive the requirements of Rule 6004(h), which states that an order authorizing the sale of property under section 363 of the Bankruptcy Code is stayed until the expiration of 14 days after the entry of the order. Such a waiver is proper in these circumstances so the Debtor may move forward as quickly as possible in consummation of the Brockwell Sale, the delay of which is in no party's best interest.

WHEREFORE, the Debtor respectfully requests entry of an order authorizing the Debtor to (a) sell the Real Property free and clear of any claims, interests, and encumbrances to Brockwell, (b) assume and assign the Tenant Leases to Brockwell and (c) for such other and further relief to which the Debtor may be justly entitled.

Respectfully submitted,

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By: */s/ Thomas Rice*

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**ATTORNEYS FOR TNP TITAN PLAZA FUND,  
LLC**



**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of October, 2016, a true and correct copy of the foregoing document was filed with the Court and served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system, as set forth below. I further certify that it has been transmitted by first class mail to the parties on the attached matrix.

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Label Matrix for local noticing  
0542-5  
Case 16-50780-rbk  
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Tue Oct 11 10:56:47 CDT 2016

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8655 NE Loop 410  
San Antonio, TX 78219-4304

Harris Trust dtd 5-17-97; Helen P. Harris  
c/o Helen P. Harris  
3502 E. 4th Street  
Tuscon, AZ 85716-4629

Heather MacGillis  
137 Aplewood  
Haslet, TX 76052-3809

Hein And Associates, LLP  
100 Spectrum Center Drive, Suite 650  
Irvine, CA 92618-4970

Hidalgo Industrial Services, Inc.  
2535 Brennan Avenue  
Fort Worth, TX 76106-8495

Hirschler Fleischer  
PO Box 500  
Richmond, VA 23218-0500

Holts Mechanical, LTD  
5522 Rittman Road  
San Antonio, TX 78218-4703

Houchin Family Trust  
c/o Richard A. & Mary K. Houchin  
7901 Hulbert Ave  
Playa Del Rey, CA 90293-7937

Houchin Family Trust dtd 10-12-06; Richa  
c/o Richard A. & Mary K. Houchin  
7901 Hulbert Avenue  
Playa del Rey, CA 90293-7937

Huber Family Trust dtd 3-16-89; John M.  
c/o John M. & Elizabeth A. Huber  
20538 Toluca Avenue  
Torrance, CA 90503-2236

Husch Blackwell, LLP  
c/o Gary L. Vincent  
190 Carondelet Plaza, #600  
Clayton, MO 63105-3433

Imperial Commercial Building Systems Inc  
PO Box 591606  
San Antonio, TX 78259-0130

Insite Architects, Inc.  
1633 Broadway  
San Antonio, TX 78215-1224

Internal Revenue Service  
Po Box 7346  
Philadelphia, PA 19101-7346

Interstate All Battery Center  
8143 Agora Parkway, Suite 125  
Selma, TX 78154-1357

J. Philip Collier  
7800 I-10 West, Suite 800  
San Antonio, TX 78230-4750

J. W. Dielmann, Inc.  
4019 Stahl Road, Suite 118  
San Antonio, TX 78217-1669

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Austin, TX 78759-8670

James B. Rubin  
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Austin, TX 78759-4394

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Taylor, TX 76574-4259

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Redondo Beach, CA 90277-4748

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Bulverde, TX 78163-2142

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San Antonio, TX 78209-5373

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c/o Jerry Giles  
1510 Falcon Ledge Drive  
Austin, TX 78746-6104

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1224 FM 2537  
San Antonio, TX 78221-9725

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5908 Henslee Ct.  
Granbury, TX 76049-6366

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2700 NE Loop 410, Ste 605  
San Antonio, TX 78217-4810

KGC Construction Services, Inc.  
601 NW Loop 410, Ste. 102  
San Antonio, Texas 78216-5595

KGC Construction Services, Inc.  
c/o Tiffanie S. Clausewitz  
The Rosenblatt Law Firm, P.C.  
16719 Huebner Road, Bldg 1  
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12119 Calm Harbor  
San Antonio, TX 78253-6351

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c/o Lucy Davila  
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Volente, TX 78641-9167

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c/o Patsy S. Davila  
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Dallas, TX 75211-2308

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c/o Timothy N. Waugh  
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Santa Ana, CA 92705-2661

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San Antonio, TX 78219-3003

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Foley, MN 56329-9294

Lorraine D. Meyer Trust dtd 5-14-92  
c/o Lorraine D. Meyer  
14885 - 18th Ave North  
Plymouth, MN 55447-4614

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San Antonio, TX 78247-2119

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Los Angeles, CA 90088-0001

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Attn: Lynn Hughes  
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San Antonio, TX 78219-2714

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Ault, CO 80610-9705

Mission Golf Cars & Industrial Vehicles  
18865 Redland Road  
San Antonio, TX 78259-3747

Mitchell Time and Parking  
4806 N. IH -35  
Austin, TX 78751

Mohr Partners, Inc.  
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Mom & Pop Plumbing  
9602 Annandale  
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100 Shockoe Slip, 4th Floor  
Richmond, VA 23219-4100

Move Solutions - San Antonio, Ltd.  
1473 Terre Colony  
Dallas, TX 75212-6220

Multilink Security, Inc.  
5005 West Avenue, Suite 900  
San Antonio, TX 78213-2711

Mutual Sprinklers, Inc.  
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San Antonio, TX 78233-5398

NBIZ Magazine Inc.  
PO Box 6352  
Katy, TX 77491-6352

NCH Corporation  
Chemsearch Division  
PO Box 152170  
Irving, TX 75015-2170

Nahid Khataw  
7914 Bee Cave Road  
Austin, TX 78746-4903

National Pest Control  
1526 N. Panam Expressway  
San Antonio, TX 78208-1158

Nolans Office Products, Inc.  
16120 College Oak, Suite 105  
San Antonio, TX 78249-4044

Official Committee of Unsecured Creditors  
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Kelly Hart & Hallman LLP  
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Ogletree, Deakins, Nash, Smoak & Stewart  
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Columbia, SC 29202-0089

P.T. & Kanchan P. Patel Liv Trust dtd 5-  
c/o Parsotam T. Patel  
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Austin, TX 78759-6832

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fbo Dea Etta W. Parks  
1 Pershing Plaza  
Jersey City, NJ 07399-0001

Pershing LLC #4GX-245246  
fbo Eric & Gail Benjamin  
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Jersey City, NJ 07399-0001

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Stamford, CT 06926-0700

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27 Waterview Dr 3rd Fl  
Shelton CT 06484-4361

Pitney Bowes Inc.  
PO Box 371896  
Pittsburgh, PA 15250-7896

Plant Interscapes, Inc.  
6436 Babcock Rd.  
San Antonio, TX 78249-2900

Pritchard Industries Inc.  
4040 Directors Row  
Houston, TX 77092-8702

Procure America, Inc.  
31103 Rancho Viejo Road, #D2102  
San Juan Capistrano, CA 92675-1759

Protection One Alarm Monitoring Inc.  
3660 Thousand Oaks Dr.  
San Antonio, TX 78247-3123

Purchase Power  
3001 Summer St.  
Stamford, CT 06905-4317

Pure Air Filter Co., Inc.  
4743 Whirlwind  
San Antonio, TX 78217-3720

Quality Window Cleaning, Inc.  
PO Box 680774  
San Antonio, TX 78268-0774

Quick Signs LLC  
8381 Perrin Beitel Rd. # 2  
San Antonio, TX 78218-1535

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Irvine, CA 92614-6671

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Oklahoma City, OK 73120-2073

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PO Box 78829  
Phoenix, AZ 85062-8829

Residential Land Services  
PO Box 28210  
Santa Ana, CA 92799-8210

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c/o Roland R. Manarin  
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c/o A10 Capital, LLC  
800 W. Main St., Suite 1100  
Boise, ID 83702-5970

Romeo Echo Oscar, LLC  
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Houston, Texas 77002-3009

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PO Box 691964  
San Antonio, TX 78269-1964

STI-GC, LLC  
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San Antonio, TX 78212-1232

Sammy D. & Sandy Tally  
c/o Sammy D. Tally  
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Hurst, TX 76054-2293

San Antonio Assoc. of Building Engineers  
PO Box 781261  
San Antonio, TX 78278-1261

San Antonio Water System  
2800 U.S. HWY 281 North  
San Antonio, TX 78212-3106

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c/o Scott D. & Christine S. Peckham  
16 Coolidge Road  
Andover, MA 01810-1707

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c/o Richard G Hatfield  
5403 Musket Ridge  
Austin, TX 78759-6223

Service Mechanical Group, LTD  
11011 Wye St.  
San Antonio, TX 78217-2615

Soldiers Angels  
2700 NE Loop 410, Ste 310  
San Antonio, TX 78217-4822

Solid Coat Construction  
10903 Silhouette  
San Antonio, TX 78216-3446

South Texas Interiors  
931 Basse Road  
San Antonio, TX 78212-1232

Springleaf  
2700 NE Loop 410, Ste 340  
San Antonio, TX 78217-4835

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ATTN BANKRUPTCY DEPT  
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OVERLAND PARK KS 66207-0949

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La Canada Flintridge, CA 91011-2461

Steven N. & Linda J. Cummings  
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Rolling Hills Estates, CA 90274-2425

Sun Edison  
12500 Baltimore Avenue  
Beltsville, MD 20705-6306

TMS  
dba Total Maintenance Solutions  
PO Box 149126  
Orlando, FL 32814-9126

TNP ARI Services  
3151 Airway Avenue, Suite #G3  
Costa Mesa, CA 92626-4624

TNP Property Manager, LLC  
3151 Airway Avenue, Suite #G3  
Costa Mesa, CA 92626-4624

Taarke Real Estate LLC  
Attn: Tina Aldatz  
3385 Bandit Circle  
Huntington Beach, CA 92649-1923

Taarke Real Estate, LLC  
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27752 Greenfield Dr.  
Laguna Hills, CA 92653-7818

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Bethesda, MD 20817-1849

Terry J. Hochsprung  
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Stewart, MN 55385-6809

(p)TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
REVENUE ACCOUNTING DIV - BANKRUPTCY SECTION  
PO BOX 13528  
AUSTIN TX 78711-3528

Texas Comptroller of Public Accounts  
c/o Office of the Attorney General  
Bankruptcy - Collections Division MC-008  
PO Box 12548  
Austin TX 78711-2548  
( 78711-2548

Texas Dept. of Banking  
State of Texas Facilities Commission  
PO Box 13047  
Austin, TX 78711-3047

Texas Dept. of Insurance  
State of Texas Facilities Commission  
PO Box 13047  
Austin, TX 78711-3047

Texas Dept. of Licensing & Regulation  
PO Box 12157  
Austin, TX 78711-2157

Texas Imaging Systems  
2600 Longhorn Blvd #102  
Austin, TX 78758-7672

Texas Workforce Commission  
TWC Building - Regulatory Integrity Div  
101 East 15th Street  
Austin, TX 78778-0001

Thad Ziegler Glass, Ltd.  
PO Box 8298  
San Antonio, TX 78208-0298

The Brandt Companies, LLC  
6023 Corridor Parkway, Suite 100  
Schertz, TX 78154-3214

The Chism Company Inc.  
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The D. Larsen First Family LP  
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8620 N. New Braunfels, Ste. 215  
San Antonio, TX 78217-6363

The Louis W. Meyer Trust dtd 12-30-08  
c/o Louis W. Meyer  
14601 Sherbrook Place, #106  
Fort Meyers, FL 33912-7080

The Sale Family Trust dtd 10-20-95  
c/o Charles S. & Elsa Sale, TTEEs  
30922 Steeplechase Dr.  
San Juan Capistrano, CA 92675-1928

The Wackenhut Corporation  
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Costa Mesa, CA 92626-4624

Thyssen Krupp Elevator Group  
3660 Thousand Oaks #210  
San Antonio, TX 78247-3126

ThyssenKrupp Elevator Corp.  
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Houston, TX 77027-3218

Transwestern Commercial Services, LLC  
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San Antonio, Texas 78230-3878

Transwestern Commercial Services, LLC  
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Austin, TX 78746

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San Antonio, TX 78201-6234

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Twana Lynn Becker  
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United States Trustee - SA12  
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 San Antonio, TX 78215

VHS San Antonio Partners, LLC  
 210 E. Quincy St., Ste 200  
 San Antonio, TX 78215

VHS San Antonio Partners, LLC  
 d/b/a Baptist Health System  
 c/o Kemp Smith LLP  
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 Lincoln, NE 68542-2159

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 Walter J. Plumb III  
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 San Antonio, TX 78201-3503

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 Dallas, TX 75201-1516  
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 San Antonio, TX 78201-2851

Worth Hydrochem of San Antonio, Inc.  
 23755 Bat Cave Rd.  
 San Antonio, TX 78266-2887

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 PO Box 33070  
 St. Petersburg, FL 33733-8070

c/o Kelly Hart & Hallman  
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Sprint  
 PO Box 4181  
 Carol Stream, IL 60197--4181

Texas Comptroller of Public Accounts  
 Revenue Accounting Division -Bankr. Sect  
 P.O. Box 13528 Capitol Station  
 Austin, TX 78711

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

(d)Geary, Porter & Donovan, P.C.

16475 Dallas Parkway

Suite 400

Addison, TX 75001-6837

(d)Kingdom Trust Co. c/o Henry B. Mayes Jr.

c/o Henry B. Mayes, Jr.

PO BOX 200339

Austin, TX 78720-0339

End of Label Matrix

Mailable recipients 320

Bypassed recipients 2

Total 322

# EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE:	§	
	§	
TNP TITAN PLAZA FUND, LLC	§	BANKRUPTCY NO. 16-50780-RBK
	§	CHAPTER 11 CASE
DEBTOR	§	

---

**ORDER APPROVING DEBTOR’S MOTION FOR AUTHORIZATION TO (I) SELL PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363 AND (II) ASSUME AND ASSIGN EXECUTORY CONTRACTS PURSUANT TO 11 U.S.C. § 365**

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Came on for consideration, the *Motion for Authorization to (I) Sell Property of the Estate Pursuant to 11 U.S.C. § 363 and (II) Assume and Assign Executory Contracts Pursuant to 11 U.S.C. § 365* (the “Motion”).<sup>1</sup> Based on the representations made in the Motion, the Court finds that (1) proper and adequate notice of the Motion has been given and no further notice is necessary; (2) no objections to the Motion have been filed; (3) it is in the best interest of the Debtor, its

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<sup>1</sup> Capitalized terms unless otherwise defined herein shall have the meaning as ascribed to them in the Motion.

bankruptcy estate, and all creditors for the Debtor to sell the Real Property to Brockwell, as set forth in the Brockwell PSA, and assume and assign the unexpired Tenant Leases to Brockwell pursuant to 11 U.S.C. § 365(a), and (4) based upon the record herein, after due deliberation, good and sufficient cause exists for the granting of the Motion as set forth herein.

**IT IS, THEREFORE, ORDERED** that the Motion is GRANTED as set forth herein.

**IT IS FURTHER ORDERED** that the Debtor may assume and assign the Tenant Leases to Brockwell.

**IT IS FURTHER ORDERED** that the Debtor is hereby authorized to enter into the Brockwell PSA and proceed to consummate the sale of the Real Property to Brockwell.

**IT IS FURTHER ORDERED** that upon closing of the Brockwell Sale, the Debtor is hereby authorized to pay any and all closing costs, any outstanding amounts owed for real property taxes, the Allowed Claims of all Secured Creditors and any Cure Amount owed under the assigned Tenant Leases that has been established by Order of this Court.

**IT IS FURTHER ORDERED** that any party wishing to object to the Cure Amount set forth on Exhibit 3 of the Motion, must: (i) file an objection in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of this chapter 11 case; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Amount, state the cure amount alleged to be owed to the objecting Tenant, together with any applicable and appropriate documentation in support thereof; and (iv) be filed with the Court by **November 4, 2016**.

**IT IS FURTHER ORDERED** that a properly filed objection to the Cure Amount will reserve such objecting party's rights against the Debtor only with respect to the assumption and



assignment of the Unexpired Lease at issue and/or objection to accompanying Cure Amount, as set forth in the objection.

**IT IS FURTHER ORDERED** that any objection to the proposed assumption and assignment of an Unexpired Lease or Cure Amount that remains unresolved shall be heard by the Court on November 14, 2016 at 10:00 a.m.

**IT IS FURTHER ORDERED** that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

# # #

**PROPOSED ORDER BY:**

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**ATTORNEYS FOR  
TNP TITAN PLAZA FUND, LLC**

# EXHIBIT 2

**AGREEMENT FOR PURCHASE AND SALE  
OF REAL PROPERTY AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS (“**Agreement**”) between TNP Titan Plaza Fund, LLC, and the parties that are signatory hereto as Seller (collectively, “**Seller**”), and Brockwell Investments, LLC, a Texas limited liability company, or its assigns (“**Buyer**”), is made and entered into as of the Effective Date (as defined below).

Recitals

A. Seller owns certain real property and improvements located at 2700 NE Loop 410, San Antonio, Texas 78218 and commonly known as The Titan Building and Plaza (the “**Land**”) and more specifically described in **Exhibit A** attached hereto, and certain other assets, as hereinafter described.

B. Subject to the terms and conditions set forth below, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property (as hereinafter defined).

C. For purposes of this Agreement, the “**Effective Date**” shall be the date upon which the Title Company acknowledges receipt of a fully executed original of this Agreement executed by both Seller and Buyer.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Purchase and Sale. The above “Recitals” are hereby incorporated into this Agreement as if fully set forth herein. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Property on the terms and conditions set forth herein. The purchase and sale includes all of Seller’s right and title, estate interest in and to all of the following (hereinafter sometimes collectively referred to as the “**Property**”):

1.1. The real property described on **Exhibit A** attached hereto, together with all structures, buildings, improvements and fixtures affixed or attached thereto and all easements and rights appurtenant thereto, including, without limitation: (i) all easements, privileges, tenements, hereditaments, appurtenances and rights belonging or in any way appurtenant to such real property; (ii) any strip or gore or any land lying in the bed of any street, road, alley or right-of-way, open or closed, adjacent to or abutting such real property; and (iii) any and all air rights, subsurface rights, development rights and water rights permitting to such real property (all of the foregoing being collectively referred to herein as the “**Real Property**”);

1.2. All leases, including associated amendments, with all persons (“**Tenants**”) leasing the Real Property or any portion thereof as of the Effective Date or entered into in

accordance with this Agreement prior to Closing (as hereinafter defined) (collectively, the **“Leases”**), together with all security deposits held in connection with the Leases and all of Seller’s right, title and interest in and to all guarantees and other similar credit enhancements providing additional security for such Leases;

1.3. Seller’s interest, if any, in (i) any and all tangible personal property owned by Seller located on or used exclusively in connection with the Real Property, including, without limitation, sculptures, paintings and other artwork, equipment, furniture, tools and supplies located on the Real Property as of the Effective Date (collectively, the **“Tangible Personal Property”**); and (ii) any and all plans and specifications, architectural and engineering drawings and the common name of the Real Property (collectively, the **“Intangible Personal Property,”** and collectively with the Tangible Personal Property, the **“Personal Property”**);

1.4. All service contracts which Buyer expressly agrees to assume in writing prior to the expiration of Buyer’s Inspection Period, entered into by Seller relating to the operation of the Property as of the Effective Date or entered into by Seller in accordance with this Agreement prior to Closing, excluding Seller’s insurance and Seller’s asset and property management agreements, which will be terminated at Closing and not assumed by Buyer (collectively, the **“Contracts”**); provided, however, that Seller shall, at Closing, provide notices of termination with regard to certain Contracts, as provided hereafter; and

1.5. To the extent transferable, any and all building permits, certificates of occupancy and other certificates, permits, consents, authorizations, variances or waivers, dedications, subdivision maps, licenses and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality relating to the Real Property (collectively, the **“Permits”**).

2. Purchase Price. Subject to the charges, prorations and other adjustments set forth in this Agreement, the purchase price for the Property shall be Seven Million Two Hundred Fifty Thousand and no/100 Dollars (\$7,250,000.00) (**“Purchase Price”**), payable as follows:

2.1. Deposit. Within three (3) Business Days after the Effective Date, Buyer shall deposit into Escrow (as hereinafter defined) the amount of Seventy-Two Thousand Five Hundred and No/100 Dollars (\$72,500.00) (together with any interest thereon, the **“Deposit”**), in the form of a wire transfer payable to Chicago Title Insurance Company, Attn: Doug Becker, 270 N. Loop 1604 E., Ste. 115, San Antonio, TX 78232 (**“Escrow Holder”**). Escrow Holder shall place the Deposit into an interest bearing money market account at a bank or other financial institution reasonably satisfactory to Buyer. Escrow Holder shall handle the local field work, but Ryan Huntsman of CHICAGO TITLE INSURANCE COMPANY [California] will be Seller’s representative in the transaction.

2.2. Deposit of the Balance of the Purchase Price at Closing. In accordance with Section 7.3.2 below, Buyer shall deposit into Escrow the balance of the Purchase Price (subject to adjustments and prorations as set forth herein) by wire transfer payable to Escrow Holder.

2.3. Independent Contract Consideration. One Hundred Dollars (\$100.00) of the Deposit will be non-refundable to Buyer and shall be distributed by Escrow Holder to Seller as independent consideration for Seller entering into this Agreement. Such independent consideration is fully earned by Seller, is non-refundable under any circumstances, but will be applied to the Purchase Price at Closing.

2.4. Credit to Purchase Price. Notwithstanding anything contained herein to the contrary, Seller and Buyer acknowledge that the Property sustained hail damage, and that Seller anticipates receiving insurance proceeds to be used for the related repair of the Property (the “**Insurance Proceeds**”). To the extent Seller receives the Insurance Proceeds and is permitted by Seller’s secured lender to use them, Seller shall begin and endeavor to complete the replacement of the roof of the building on the Property, to Buyer’s reasonable satisfaction, prior to the end of the Inspection Period, although Seller does not intend to complete other repairs to the hail damage on the Property. In the event that Seller is unable to timely complete the roof replacement prior to the end of the Inspection Period, Buyer shall be permitted, in Buyer’s sole discretion, to either (a) extend the Inspection Period for up to thirty (30) days to permit the Seller to complete the roof replacement, or (b) proceed to Closing and receive a credit against the Purchase Price for the dollar amount of the Insurance Proceeds allocated to the roof replacement for the Property less any deductible paid by Seller and less any documented amounts paid by Seller on the roof replacement. In the event Seller’s secured lender will not permit Seller to use the Insurance Proceeds, Buyer shall only be entitled to option (b) in the previous sentence. At Closing, Buyer shall receive a credit towards the Purchase Price of any Insurance Proceeds received by Seller for the repair of the Property due to the hail damage (not including Insurance Proceeds allocated to the roof replacement), less any deductible paid by Seller and less any documented amounts paid for the repair of the Property due to such damage. For the avoidance of doubt, the aforementioned credits in favor of Buyer shall only be applicable in the event Seller’s secured lender applies the unused balance of the Insurance Proceeds against Seller’s obligations to the secured lender. In the event Buyer receives any monies related to the Insurance Proceeds (all of which is subject to the express written consent of Seller’s secured lender), Seller will receive a dollar-for-dollar credit against the credit otherwise available to Buyer under this Section 2.4.

3. Title to Property. Within ten (10) days of the Effective Date, Seller shall provide to Buyer: (i) a current preliminary title report or title commitment (the “**Title Report**”) for the issuance of an extended coverage owner’s T-1 policy of title insurance written on Form 2006, with standard provisions and exceptions, together with such endorsements as may be commercially available and reasonably requested by Buyer (the “**Title Policy**”), to Buyer from Escrow Holder (sometimes referred to herein as the “**Title Company**”), together with copies of all documents constituting exceptions to the title as reflected in the Title Report (collectively referred to hereinafter as the “**Title Documents**”); and (ii) an existing survey of the Real Property (the “**Existing Survey**”) to the extent there is one in Seller’s possession, at Seller’s expense. Notwithstanding the foregoing, if there is no Existing Survey or the Existing Survey is not sufficient to permit the Title Company to issue the “shortages in area” endorsement, Buyer, at Buyer’s expense, shall cause a new ALTA ‘as-built’ survey of the Real Property to be performed that is sufficient to permit the Title Company to issue the “shortages in area” endorsement (such revised or new survey being referred to herein as the “**Survey**”). If the Title

Documents or Survey reflect or disclose any defect, exception or other matter affecting the Property that is unacceptable to Buyer, Buyer shall provide Seller with written notice to Seller thereof at least seven (7) days prior to the expiration of the Inspection Period (whether one or more, “**Buyer’s Objections**”). In its sole discretion, upon written notice to Buyer, Seller may elect to cure or remove Buyer’s Objections, and, if Seller elects to cure or remove Buyer’s Objections, it shall be a condition precedent to Buyer’s obligation to acquire the Property that Seller cures Buyer’s Objections prior to Closing. Unless Seller provides written notice to Buyer within five (5) business days of receiving Buyer’s Objections that Seller intends to cure or remove Buyer’s Objections, Seller shall be deemed to have elected not to cure or remove Buyer’s Objections, and Buyer shall be entitled, as Buyer’s sole and exclusive remedy, either to: (i) terminate this Agreement and obtain a refund of the Deposit by providing written notice of termination to Seller prior to the expiration of the Inspection Period and returning the Due Diligence Items (as hereinafter defined); or (ii) waive Buyer’s Objections and close this transaction as otherwise contemplated herein. If Buyer fails to terminate this Agreement during the Inspection Period, all matters described in the Title Report and the Title Documents and shown on the Survey, except for monetary liens for indebtedness of Seller (including judgments, liens, mechanic liens or other monetary encumbrances incurred prior to the date of the Closing), recorded documents pertaining to the tenancy in common ownership of Seller including any advisory or management agreement and any matters Seller has agreed to cure in writing (“**Mandatory Title Cure Items**”), shall be deemed “**Permitted Exceptions.**” Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation to cure any of Buyer’s Objections other than the Mandatory Cure Items. In the event additional exceptions to coverage are added to the Title Report or the Survey after the same has been approved or deemed approved by Buyer, in each such case and notwithstanding Buyer’s prior approval, Buyer shall be afforded an additional ten (10) days from the date upon which it receives a revised Title Report or Survey to review and approve (or disapprove) the updated Title Report or Survey. If no written disapproval of the updated Title Report or Survey is received by Seller from Buyer within the said ten (10) day period, the updated Title Report or Survey shall be deemed approved by Buyer.

4. Due Diligence Items.

4.1. On or prior to the Effective Date Seller shall deliver to Buyer, to the extent the same exist and are in Seller’s possession or control, the following (collectively, the “**Due Diligence Items**”). The date Seller provides Buyer with the last of the Due Diligence Items that are in Seller’s possession and control, together with a written notice stating that Seller has fully delivered all Due Diligence Items to Buyer, shall be referred to as the “**Due Diligence Delivery Date**”:

4.1.1. Any rental agreements (including any amendments, addenda or letter agreements, etc.), the Leases for the Property and any recorded Memorandum of Lease or Assignment of Memorandum of Lease pertaining to the Leases;

4.1.2. Any income and expense statements for the Property, CAM reconciliations, accounts receivable reports, tenant sales reports, and rent roll including back-up invoices;

- 4.1.3. Tax statements or bills with Parcel #'s;
- 4.1.4. Certificates of Occupancy;
- 4.1.5. Plans and specifications;
- 4.1.6. Guarantees and warranties (e.g. roof, HVAC);
- 4.1.7. Certificates of insurance from both Seller and Tenants;
- 4.1.8. Seller's existing owner's title policy, vesting deed, any preliminary title reports and underlying documents;
- 4.1.9. Environmental, geotechnical, engineering and seismic reports;
- 4.1.10. All notices received for the Property;
- 4.1.11. Any third party reports in Seller's possession or control;
- 4.1.12. A current rent roll for the Property;
- 4.1.13. Copies of the Contracts;
- 4.1.14. "As-built" drawings of the Property, including, but not limited to, HVAC, mechanical, and electrical drawings for all systems on the Property;
- 4.1.15. Information related to any outstanding legal claims, insurance claims, or pending or threatened lawsuits;
- 4.1.16. Schedule of outstanding tenant improvement costs and leasing commissions;
- 4.1.17. "As-built" ALTA survey for the Property (if available); and
- 4.1.18. Other items reasonably requested by Buyer, provided, however, that Seller's delivery of these items shall not extend the Inspection Period.

5. Inspections.

5.1. Buyer shall have a temporary non-exclusive license to enter and conduct non-invasive feasibility, environmental and physical studies collectively of the Property that Buyer may deem necessary or advisable (collectively, the "**Inspections**") during the Inspection Period, on the terms set forth in this Section 5. Notwithstanding the foregoing, Buyer shall not conduct invasive testing of any kind (including, without limitation, "Phase II" environmental testing) without Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. Buyer must arrange all Inspections requiring physical entry onto the Property with Seller at least two (2) business days in advance of any Inspections, and Buyer's right to conduct

the Inspections shall be subject to rights of Tenants and to such conditions as may be reasonably imposed by Seller in order to avoid disruption of the day to day operations at the Property. Buyer shall be permitted to interview Tenants ; provided, however, that Seller shall have the opportunity to have its representative present and Buyer shall coordinate any such communications with Seller at least two (2) business days in advance of same.

5.2. Buyer and its agents shall maintain equipment and other materials in an orderly manner while they are located on the Property and in locations specified by Seller. Buyer agrees to remove all debris and trash resulting from the Inspections on a daily basis and to remove all equipment and other materials used by Buyer or its agents as soon as the activity for which such equipment and other materials are used is completed. Buyer and its agents shall take all appropriate measures for the safety of persons and property on the Property related to the Inspections and shall comply with all applicable legal requirements. Buyer shall restore any damage to the Property resulting from the Inspections, including, but not limited to, repair of surface openings resulting from tests. Upon Seller's written request, Buyer shall promptly provide to Seller a copy of Buyer's Reports (as hereinafter defined). Buyer agrees to promptly discharge any liens that may be imposed against the Property as a result of the Inspections.

5.3. Buyer shall indemnify, save and hold Seller and Seller's officers, agents, employees, directors, trustees, invitees, successors and assigns (collectively "**Indemnitees**") harmless against all losses, costs, expenses, liabilities, claims, litigation, demands, proceedings and damages (including but not limited to attorney's fees) suffered or incurred by Seller or any such Indemnitees arising out of and limited to the Inspections, provided that Buyer shall not incur any liability due to its discovery, without exacerbation, of the condition of any "hazardous substances" or other circumstances at the Property.

5.4. To the extent Buyer intends to physically access the Property, Buyer shall maintain, and shall require any of its subcontractors and agents that intend to physically access the Property to maintain, insurance in form and substance reasonably satisfactory to Seller, with insurance companies reasonably acceptable to Seller, as follows: Comprehensive General Liability or Commercial General Liability Insurance, with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and not less than Two Million Dollars (\$2,000,000.00) on a general aggregate basis, for bodily injury, death and property damage. Each policy of insurance required hereunder shall name Seller as an additional insured. Further, each such policy of insurance shall state that such policy is primary and noncontributing with any insurance carried by Seller. A certificate, together with any endorsements to the policy required to evidence the coverage which is to be obtained hereunder, shall be delivered to Seller prior to entry on the Property. Any policies required by the provisions of this Section 5.4 may be made a part of a blanket policy of insurance with a "per project, per location endorsement" so long as such blanket policy contains all of the provisions required herein and does not reduce the coverage, impair the rights of the other party to this Agreement or negate the requirements of this Agreement.

5.5. During the course of its performance of the Inspections, Buyer will acquire knowledge concerning the Property and Seller, and knowledge of other matters of a sensitive business nature and Seller will acquire knowledge concerning Buyer, including the existence of



this possible purchase/sale transaction, the terms of sale and other matters of a sensitive and confidential nature (collectively, **“Privileged Information”**). Except as described below, neither Buyer, nor Seller, nor Brokers, nor their agents shall disclose to any third party, publicize or suffer or permit any of their respective employees to so disclose or publicize any such Privileged Information, other than to consultants, attorneys, agents and prospective investors as necessary for Buyer’s inspection and analysis of the Property. In the event that any party believes in good faith that it is required by any legal requirement to disclose any such Privileged Information, then such party shall promptly notify the other parties of such belief and the reasons for such belief. If within ten (10) days after receipt of such notice, such party advises the party that sent the notice that it shall itself disclose the information, then such party shall not make such disclosure (unless either such party reasonably believes that it must disclose such information by law). If such party reasonably believes that such disclosure is required to be made in less than the ten (10) day period, then the notice to the other party shall so state and the party’s time to respond will be reduced accordingly. In no event shall Privileged Information include: (a) information which is or becomes generally available to the public other than as a result of a disclosure by a party; or (b) was known by a party on a non-confidential basis prior to its disclosure to a party.

5.6. The obligations described in Sections 5.3 and 5.5 shall survive the Closing or any earlier termination of this Agreement for a term of one (1) year.

6. Approval.

6.1. Buyer shall have from the later of: (i) fifty-three (53) days after the Effective Date; or (ii) fifty-three (53) days after the Due Diligence Delivery Date (**“Inspection Period”**) to review and approve or disapprove the Due Diligence Items, the Inspections and the condition of the Property. If the Due Diligence Items or the Inspections show any fact, matter or condition to exist with respect to the Property that is unacceptable to Buyer, in Buyer’s sole discretion, then Buyer shall be entitled, as its sole and exclusive remedy, either: (i) to terminate this Agreement by providing written notice to Seller and Escrow Holder on or prior to the expiration of the Inspection Period (a **“Termination Notice”**); or (ii) to waive such facts, matters or conditions and proceed with the transaction contemplated by this Agreement. In the event that Buyer sends a timely Termination Notice, this Agreement shall become null and void, the Deposit shall be refunded to Buyer, and all rights, liabilities and obligations of the parties under this Agreement shall expire, except as otherwise expressly set forth herein. If Buyer fails to send a timely Termination Notice, the Due Diligence Items, Inspections and condition of the Property shall be deemed approved by Buyer; Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 6.1; and the parties shall be obligated to close the transaction contemplated hereby, except as may otherwise be provided herein, and the Deposit shall be nonrefundable to Buyer and paid to and retained by Seller upon Closing or termination of this Agreement without further instructions by Buyer to Escrow, except only as expressly provided herein.

6.2. Notwithstanding anything to the contrary contained in this Agreement, Buyer hereby agrees that, in the event this Agreement is terminated for any reason, Buyer shall promptly, and at its sole expense, return to Seller all Due Diligence Items which have been

delivered to Buyer no later than ten (10) days after the date that this Agreement is terminated, and, upon Seller's written request and payment to Buyer of fifty percent (50%) of the costs incurred by Buyer of Buyer's Reports (defined below), deliver to Seller copies of the following reports, all certified to both Seller and Buyer: (1) the Title Report; (2) the Survey; (3) a current Phase I environmental site assessment report in accordance with ASTM Standard E 1527-13 guidelines; (4) a zoning report including inquiries into pending or threatened condemnations impacting the Property (which information shall be reflected in the Survey); and (5) a current property condition report indicating that the improvements, roof and other components of the Property are in good condition and not in need of repair ("**Buyer's Reports**"), subject to restrictions on Buyer's ability to make any such materials available to Seller that are imposed in any agreement with a third party consultant preparing any such reports or materials; provided, however, that delivery of Buyer's Reports by Buyer shall be without warranty or representation whatsoever, express or implied, including, without limitation, any warranty or representation as to ownership, accuracy, adequacy or completeness thereof or otherwise. Buyer shall cooperate with Seller at no expense to Buyer in order to obtain a waiver of any such restrictions.

6.3. On or prior to the expiration of the Inspection Period, Buyer will designate in a written notice to Seller which Contracts, if any, Buyer will assume. At Seller's expense, Seller shall terminate as of the Closing and be responsible for the balance of the Contracts pertaining to the Property. Taking into account any credits or proration to be made pursuant to this Agreement for payments coming due after Closing but accruing prior to Closing, Buyer will assume the obligations arising from and after the Closing Date under those Contracts, if any, which Buyer has designated will be assumed.

7. Escrow.

7.1. Instructions. The purchase and sale of the Property shall be consummated through an escrow ("**Escrow**") to be opened with Escrow Holder. This Agreement shall be considered as the escrow instructions between the parties, with such further instructions as Escrow Holder may reasonably require in order to clarify its duties and responsibilities. If Escrow Holder shall reasonably require further escrow instructions, Escrow Holder may prepare such instructions on its usual form. Such reasonable further instructions shall be promptly signed by Buyer and Seller and returned to Escrow Holder within three (3) business days of receipt thereof. In the event of any conflict between the terms and conditions of this Agreement and such further instructions, the terms and conditions of this Agreement shall control.

7.2. Closing. Escrow shall close (the "**Closing**") on the date that is eight (8) days after the expiration of the Inspection Period (as the same may be extended in accordance with the terms of this Agreement, the "**Closing Date**").

7.3. Buyer Required to Deliver. Buyer shall deliver to Escrow, on or before the Closing Date except as specified in Section 7.3.1 the following:

7.3.1. Within three (3) Business Days after the Effective Date, the Deposit;

7.3.2. On or before 1:00 p.m. Pacific Standard or Daylight Savings Time, as applicable, on the Closing Date, the Purchase Price (less the Deposit), subject to the closing adjustments, credits and prorations contemplated hereby; provided, however, that, notwithstanding anything to the contrary in this Agreement, if Buyer fails to make such delivery by 1:00 p.m. Pacific Standard or Daylight Savings Time, as applicable, but nevertheless makes such delivery on the Closing Date, prorations shall be recalculated in accordance with Section 7.7 below and for purposes of prorations, the Closing Date shall be deemed the next Business Day;

7.3.3. On or before the Closing Date, such other documents as Title Company may reasonably require from Buyer in order to issue the Title Policy;

7.3.4. Two (2) original counterparts executed by Buyer of an assignment and assumption agreement in substantially the form attached hereto as **Exhibit B**, whereby Seller assigns and conveys to Buyer all of Seller's right, title and interest in, and Buyer assumes all of Seller's obligations under, the Leases, the Contracts being assumed, and the Permits (the "**Assignment and Assumption Agreement**"); and

7.3.5. Two (2) original counterparts executed by Buyer of the Closing Statement (as defined in Section 7.7.2 below); provided, however that such executed Closing Statement may be transmitted by facsimile and/or e-mail so long as two (2) original counterparts are deposited with Federal Express or other nationally recognized overnight delivery service on the Closing Date for delivery to Escrow Holder the next Business Day, if required by Escrow Holder.

7.3.6. In the event there is a Memorandum of Lease recorded against the Property, on or before the Closing, Buyer shall deliver to Escrow Holder a Memorandum of Assignment of Lease ("**Memorandum**") for the Property in the form agreed to between the parties, executed and acknowledged by Buyer.

7.3.7. All documents required by Buyer's Lender, if any (as hereinafter defined), its counsel or the Escrow Holder.

7.4. Seller Required to Deliver. On or before the Closing Date, Seller shall deliver to Escrow (unless otherwise noted) the following:

7.4.1. A duly executed and acknowledged special warranty deed, conveying fee title to the Property in favor of Buyer or Buyer's nominee (the "**Deed**");

7.4.2. As a condition to Buyer's obligation to close the purchase of the Property (and not as a default of Seller if not timely provided), Seller shall obtain and provide to Buyer at least five (5) days prior to the Closing Date, an estoppel certificate from Tenants occupying eighty-five percent (85%) of the currently leased portion of the Property ("**Estoppel Certificate**") in form reasonably acceptable to Buyer. The Estoppel Certificate shall be addressed to Buyer, and Buyer's lender, if applicable, its subsidiaries, affiliates, successors, and/or assigns. If a form of estoppel certificate is attached to or otherwise prescribed in the

Lease or if it is the policy of Tenant that a particular form of estoppel certificate be used, that form shall be deemed to be acceptable to Buyer. The Estoppel Certificate shall be deemed approved if Buyer has not objected prior to the earlier of: (a) the Closing Date; or (b) the later of: (i) the expiration of the Inspection Period; or (ii) three (3) days after receipt. Notwithstanding the foregoing, Buyer acknowledges and agrees (1) that the tenant "Lifestyles" has vacated its space; (2) that VHS Partners – Baptist Hospital has a pending lawsuit against Seller related to tenant improvements; and (3) that Estoppel Certificates from either Lifestyles or VHS Partners – Baptist Hospital either may not be received or will contain these disclosures and failure to receive either of these two Estoppel Certificates shall not be required as part of this Section 7.4.2.

7.4.3. An executed certificate of non-foreign status;

7.4.4. A bill of sale of the Personal Property, if any, without warranty, in favor of Buyer or Buyer's nominee and duly executed by Seller, in substantially the form attached hereto as **Exhibit C**;

7.4.5. Two (2) original counterparts executed by Seller of the Assignment and Assumption Agreement;

7.4.6. Two (2) original counterparts executed by Seller of the Closing Statement; provided, however, that such executed Closing Statement may be transmitted by facsimile and/or e-mail so long as two (2) original counterparts are deposited with Federal Express or other nationally recognized overnight delivery service on the Closing Date for delivery to Escrow Holder the next Business Day, if required by Escrow Holder;

7.4.7. Such other documents as Title Company may reasonably require from Seller in order to issue the Title Policy;

7.4.8. In the event there is a Memorandum of Lease recorded against the Property, on or before the Closing, Seller shall deliver to Escrow Holder a Memorandum for the Property in the form agreed to between the parties, executed and acknowledged by Seller.

7.4.9. A letter from Seller addressed to each Tenant informing such Tenant of the change in ownership and directing that future rent payments be made to Buyer;

7.4.10. Seller shall make available at the Property, all keys to all buildings and other improvements located on the Property, all keying charts related to the Property, combinations to any safes thereon, and security devices therein in Seller's possession; and

7.4.11. Seller shall make available at the Property all records and files relating to the management or operation of the Property, including, without limitation, all insurance policies, security contracts, tenant files (including correspondence), property tax bills and calculations used to prepare statements of rental increases under the Leases and statements of common area charges, insurance, property taxes and other charges which are paid by Tenants of the Real Property;

7.5. Buyer's Costs. Buyer shall be responsible for payment of Buyer's Reports and any other costs of Buyer's investigations if the Closing does not occur. In the event the Closing occurs, Buyer shall pay the following:

7.5.1. Any closing costs in connection with the financing of the purchase of the Property;

7.5.2. The costs of Buyer's investigations (not including Buyer's Reports); and

7.5.3. Buyer's attorneys' fees.

7.6. Seller's Costs. Seller shall pay the following:

7.6.1. All of Escrow Holder's fees, costs and expenses (including any recording fees);

7.6.2. Title Company's premium for the TLTA Title Policy (including search and exam fees and endorsements);

7.6.3. The costs of Buyer's Reports;

7.6.4. All documentary or other transfer taxes applicable to the sale;

7.6.5. The commission payable to Brokers;

7.6.6. Costs of Seller's counsel; and

7.6.7. All other costs not itemized above.

7.7. Prorations.

7.7.1. Items to be Prorated. The following shall be prorated between Seller and Buyer as of the Closing Date with Buyer being deemed the owner of the Property as of the Closing Date:

7.7.1.1. Taxes and Assessments. In the event Taxes are paid directly by Tenants to the taxing authority pursuant to the Leases, Taxes shall not be prorated between Buyer and Seller. Otherwise Taxes shall be prorated as follows: All non-delinquent real property taxes, assessments and other governmental impositions of any kind or nature, including, without limitation, any special assessments or similar charges (collectively, "**Taxes**"), which relate to the tax year within which the Closing occurs based upon the actual number of days in the tax year. The proration for Taxes shall be based upon the most recently issued tax bill for the Property, and shall be calculated based upon the maximum early payment discount available provided this is consistent with how Tenants reimburse Landlord for Taxes under the Leases. Upon the Closing, Buyer shall be responsible for Taxes payable from and after the Closing.

Upon the Closing, Seller shall be responsible for Taxes payable with respect to the period prior to the Closing. In no event shall Seller be charged with or be responsible for any increase in Taxes resulting from the sale of the Property to Buyer in this transaction or from any improvements made or leases entered into after the Closing. With respect to all periods for which Seller has paid Taxes, and subject to the terms and conditions of the Leases, Seller hereby reserves the right to institute or continue any proceeding or proceedings for the reduction of the assessed valuation of the Property, and, in its sole discretion, subject to the terms and conditions of the Leases, to settle the same. Subject to the terms and provisions of the Leases, Seller shall have the sole authority to control the progress of, and to make all decisions with respect to, such proceedings but shall provide Buyer with copies of all communications with the taxing authorities. All net tax refunds and credits which are attributable to any period prior to the Closing which Seller has paid or for which Seller has given a credit to Buyer shall belong to and be the property of Seller. All net tax refunds and credits attributable to any period on the date of and subsequent to the Closing shall belong to and be the property of Buyer. Buyer agrees to cooperate with Seller in connection with the prosecution of any such proceedings and to take all steps, whether before or after the Closing, as may be necessary to carry out the intention of this Subsection 7.7.1.1, including the delivery to Seller, upon demand, of any relevant books and records, including receipted tax bills and cancelled checks used in payment of such Taxes, the execution of any and all consent or other documents, and the undertaking of any acts necessary for the collection of such refund by Seller.

7.7.1.2. Rents. Buyer will receive a credit at the Closing for all rents payable by Tenants under the Leases as of the Closing and allocable to the period on and after the Closing based upon the actual number of days in the month. No credit shall be given Seller for accrued and unpaid rent or any other non-current sums due from Tenants until these sums are paid, and Seller shall retain the right to collect any such rent provided Seller does not sue to evict any Tenants or terminate any Leases. Buyer shall cooperate with Seller after the Closing to collect any rent under the Leases which has accrued prior to the Closing; provided, however, Buyer shall not be obligated to sue any Tenants or exercise any legal remedies under the Leases or to incur any expense over and above its own regular collection expenses. All payments collected from Tenants after the Closing shall first be applied to the month in which the Closing occurs, then to any rent due to Buyer for the period after Closing and finally to any rent due to Seller for the period prior to Closing; payments collected by either party after Closing shall be paid over to the party entitled thereto under this Section 7.7.1.2 within five (5) business days after receipt thereof.

7.7.1.3. Intentionally deleted.

7.7.1.4. [Reserved].

7.7.1.5. Operating Expenses. All operating expenses, including all charges under the Contracts which are assumed by Buyer, shall be prorated, and as to each service provider, operating expenses payable or paid to such service provider in respect to the billing period of such service provider in which the Closing occurs (the “**Current Billing Period**”), shall be prorated on a per diem basis based upon the number of days in the Current Billing Period prior to the Closing and the number of days in the Current Billing Period on and

after the Closing, and assuming that all charges are incurred uniformly during the Current Billing Period.

7.7.1.6. Security Deposits; Prepaid Rents. Prepaid rentals and other tenant charges and security deposits (including any portion thereof which may be designated as prepaid rent) under Leases, which have not been otherwise applied by Seller to any obligations of any Tenants under the Leases, shall be credited on the Closing Statement against the Purchase Price, and upon the Closing, Buyer shall assume full responsibility for all security deposits to be refunded to the Tenants under the Leases.

7.7.1.7. CAM Expenses. To the extent that Tenants are reimbursing the landlord under the Leases for common area maintenance and other operating expenses (collectively, "**CAM Charges**"), CAM Charges shall be prorated at Closing as of the Closing Date on a Lease-by-Lease basis with each party being entitled to receive a portion of the CAM Charges payable under each Lease for the CAM Lease Year (as defined below) in which Closing occurs, which portion shall be equal to the actual CAM Charges incurred during the party's respective periods of ownership of the Property during the CAM Lease Year. As used herein, the term "**CAM Lease Year**" means the twelve (12) month period as to which annual CAM Charges are owed under each Lease. Seller shall be responsible for the CAM Charges reconciliation on a Lease-by-Lease basis for their ownership period within the CAM Lease Year up to, but not including, the Closing Date. Buyer shall be responsible for the CAM Charges reconciliation on a Lease-by-Lease basis for its ownership period within the CAM Lease Year including the Closing Date. To the extent that any CAM Charges are paid by the Tenants to the Seller under the Leases based on an estimated payment basis for which a future reconciliation of actual CAM Charges to estimated payments is required to be performed at the end of a reconciliation period, Buyer and Seller shall make an adjustment at the Closing for the applicable reconciliation period based on a comparison of the actual CAM Charges to the estimated payments at the Closing. If, as of the Closing, Seller has received CAM Charges in excess of the amount that the Tenants will be required to pay, based on the actual CAM Charges as of the Closing, Buyer shall receive a credit against the Purchase Price on the Closing Statement in the amount of such excess. If, as of the Closing, Seller has received CAM Charges that are less than the amount that the Tenants would be required to pay based on the actual CAM Charges as of the Closing, Seller shall be entitled to receive such deficiency when and if such additional payments are made. CAM Charges that are not payable by the Tenants either directly or reimbursable under the Leases shall be prorated between Seller and Buyer and shall be reasonably estimated by the parties if final bills are not available. If final prorations cannot be made at the Closing for any item being prorated, then for any such proration ("**Post Closing Proration**"), Buyer and Seller agree to allocate such items on a fair and equitable basis as soon as invoices or bills are available and applicable reconciliation with Tenants have been completed, with final adjustment and payment to be made as soon as reasonably possible after the Closing (but in no event later than ninety (90) days after the Closing, except that adjustments arising from any tax protest shall not be subject to such ninety (90) days limitation, but shall be made as soon as reasonably possible), to the effect that income and expenses are received and paid by the parties on an accrual basis with respect to their period of ownership.

7.7.2. Closing Statement. Prior to the Closing Date, Seller and Escrow Holder shall jointly prepare a closing statement (the “**Closing Statement**”) which shall set forth the costs payable herein and the prorations and credits provided herein and elsewhere in this Agreement. The prorations and credits set forth in the Closing Statement which is signed by each party and delivered at Closing shall be final.

7.7.3. Items Not Prorated. Seller and Buyer agree that (i) on the Closing, the Property will not be subject to any financing arranged by Seller; (ii) none of the insurance policies relating to the Property will be assigned to Buyer, and Buyer shall be responsible for arranging for its own insurance effective immediately after the Closing Date; and (iii) to the extent not already in the Tenants’ name, utilities, including telephone, electricity, water and gas, shall be read on the Closing Date, and Buyer shall be responsible for all the necessary actions needed to arrange for utilities to be transferred to the name of Buyer immediately after the Closing Date, including the posting of any required deposits, and Seller shall be entitled to recover and retain from the providers of such utilities any refunds or overpayments to the extent applicable to the period prior to the Closing Date, and any utility deposits which it or its predecessors may have posted. Accordingly, there will be no prorations for debt service, insurance or utilities. In the event a meter reading is unavailable for any particular utility, such utility shall be prorated in the manner provided in Section 7.7.1.3 above.

7.7.4. Indemnification. Buyer and Seller shall each indemnify, protect, defend and hold the other harmless from and against any claim in any way arising from the matters for which the other receives a credit or otherwise assumes responsibility pursuant to this Section 7.7.

7.7.5. Survival. This Section 7.7 shall survive the Closing for a period of one (1) year.

## 8. Representations, Warranties, and Covenants.

8.1. Representations of Seller. Seller hereby represents and warrants as of the date hereof to Buyer as follows:

8.1.1. Each entity comprising Seller is a limited liability company duly formed and validly existing under the laws of the State of Delaware. Subject to receipt of the approval described in Section 10.2.2, Seller has full power and authority to enter into this Agreement, to perform this Agreement and to consummate the transactions contemplated hereby. This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

8.1.2. Seller is not a “foreign person” within the meaning of Section 1445(f) of the Internal Revenue Code of 1986, as amended (the “**Code**”).

8.1.3. To Seller’s knowledge, the execution, delivery and performance by Seller of this Agreement, and all other agreements, instruments and documents referred to or



contemplated herein or therein do not require the consent, waiver, approval, license or authorization of any person (except as described in Section 10.2.2) or public authority which has not been obtained and do not and will not contravene or violate (with or without the giving of notice or the passage of time or both), the organizational documents of Seller or any judgment, injunction, order, law, rule or regulation applicable to Seller.

8.1.4. Except as included in the Due Diligence Items, there are, to Seller's knowledge, no leases or occupying agreements (or any amendments or supplements thereto) to which Seller is a party or has consented in writing encumbering, or in force with respect to, the Property;

8.1.5. To Seller's knowledge, Seller has not received any actual written notice of any pending or threatened condemnation of all or any portion of the Property;

8.1.6. To Seller's knowledge, and except as set forth in Section 7.4.2 of this Agreement, Seller has not received actual written notice of any litigation that is currently pending or threatened with respect to the Property, except as may be the responsibility of Tenant under the Leases;

8.1.7. Except as set forth in the Due Diligence Items, to Seller's knowledge, Seller has not received any actual written notice from any governmental authority that all or any portion of the Property is presently in material violation of any applicable building codes or any applicable environmental law (relating to clean-up or abatement), zoning law or land use law, or any other applicable local, state or federal law or regulation relating to the Property;

8.1.8. To Seller's knowledge, there is no default under the Leases;

8.1.9. Seller is not knowingly acting, directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, or nation pursuant to any law that is enforced or administered by the Office of Foreign Assets Control, or engaging in, instigating or facilitating this transaction for or on behalf of any such person, group, entity or nation; and to Seller's knowledge, Seller is not engaging in this transaction, directly or indirectly in violation of any laws relating to drug trafficking, money laundering or predicate crimes to laundering money.

8.1.10. Seller has, in effect, casualty insurance covering the Property, in amounts sufficient to repair and restore the Property to the condition existing on the Effective Date.

8.1.11. In making the foregoing representations and warranties, Seller has not made or undertaken to make any investigation as to factual matters or as to the accuracy or completeness of any representation, warranty, data or any other information related thereto and hereby disclaims liability for any unintentional misstatement. Whenever the term "to Seller's knowledge" or similar language is used herein with respect to the existence or absence of facts, it

signifies that Seller has not undertaken any independent investigation of facts, but instead has based Seller's representation solely upon the current actual knowledge of Seller's manager (who assumes no personal liability of any kind by virtue of this Agreement or the Seller representations contained herein unless such individual is intentionally misleads Buyer or such conduct rises to the level of fraud or willful misconduct), and Seller disclaims any obligation to conduct any independent investigation with respect to such matters. .

8.2. Approval of Property; Limitations on Seller Representations and Warranties.

8.2.1. Except as is specifically provided in this Agreement, Seller makes no representations or warranties as to the truth, accuracy, completeness, methodology of preparation or otherwise concerning any engineering or environmental reports, audits, the materials prepared by Seller or any other materials, data or other information whatsoever supplied to Buyer in connection with Buyer's inspection of the Property; provided that Seller has no actual knowledge of the inaccuracy of such materials or information. It is the parties' express understanding and agreement that such materials are provided only for Buyer's convenience in making its own examination and determination prior to the expiration of the Inspection Period as to whether it wishes to purchase the Property, and, in doing so, Buyer shall rely exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by Seller. Except as may be specifically provided elsewhere in this Agreement, Buyer expressly disclaims any intent to rely on any such materials provided to it by Seller in connection with its inspection and agrees that it shall rely solely on its own independently developed or verified information. Except with respect to all obligations in this Agreement (including, without limitation, Seller's express representations and warranties) that are expressly stated to survive Closing (collectively, the "**Surviving Obligations**"), Buyer hereby releases Seller and its agents, representatives and employees from any and all claims, demands and causes of action, past, present and future that Buyer may have relating to (i) the condition of the Property at any time, before or after the Closing, including, without limitation, the presence of any hazardous materials; or (ii) any other matter pertaining to the Property. This release shall survive the Closing or the termination of this Agreement.

8.2.2. In the event of any material breach by Seller of any of the representations or warranties included in this Agreement which is discovered by Buyer prior to Closing, Buyer's sole remedy shall be either: (i) to give written notice to Seller describing such breach and stating that, if Seller is unable to cure the breach within seven (7) days, Buyer may elect in writing to terminate this Agreement whereupon this Agreement shall be canceled and the Deposit shall be paid to Buyer, and Seller shall pay to Buyer within five (5) Business Days, the Investigation Reimbursement (as defined in Section 10.1.5) for Buyer's Reports and, thereafter, neither Seller nor Buyer shall have any continuing obligations hereunder except as otherwise expressly set forth herein; or (ii) waive such breach and proceed with the Closing. In the event of any material breach by Seller of any of such representations or warranties or any other material breach by Seller of any other provision of this Agreement or any agreement delivered in connection herewith discovered after Closing, Seller shall be liable only for direct and actual damages suffered by Buyer on account of Seller's breach, up to the applicable limits described hereunder, and shall in no event be liable for consequential or punitive damages. Excluding Seller's reimbursement of Buyer's Reports referenced above, and excluding any intentional breaches of

Seller, any other liability of Seller hereunder for breach of any such representations or warranties shall be limited to (a) claims in excess of an aggregate of Ten Thousand No/100 Dollars (\$10,000.00) and (b) a maximum aggregate cap of Fifty Thousand and No/100 Dollars (\$50,000.00). Written notice of all such claims must be delivered to Seller no later than twelve (12) months after the Closing Date. Seller's representations and warranties set forth in Section 8.1 and the other Surviving Obligations of Seller, if any, shall survive the Closing for a period of nine (9) months. Any claim whatsoever against Seller regarding this Agreement, any document or agreement delivered hereunder, or the Property or this transaction must be asserted by written notice to Seller and commencement of a legal action, all within one (1) year following Closing, otherwise such claim is forever barred and waived, notwithstanding any longer period that would otherwise be available under any applicable statute of limitations. In no event shall Seller be liable for any indirect or consequential damages on account of Seller's breach of any representation or warranty contained in this Agreement. Additionally, notwithstanding the foregoing, if Buyer becomes aware prior to the Closing that any representation or warranty hereunder is untrue, or any covenant or condition to Closing has not been fulfilled or satisfied (if not otherwise waived by Buyer), and Buyer nonetheless proceeds to close on the purchase of the Property, then Buyer shall be deemed to have irrevocably and absolutely waived, relinquished and released all rights and claims against Seller for any damage or other loss arising out of or resulting from such untrue representation or warranty or such unfulfilled or unsatisfied covenant or condition. Buyer shall be deemed to be aware of any matter (i) regarding which any officer of Buyer has actual knowledge, (ii) which is disclosed in the Due Diligence Items and/or (iii) regarding which Buyer has received written notice, including, without limitation, any matters disclosed in Buyer's Reports.

8.2.3. Approval of Property. The consummation of the purchase and sale of the Property pursuant to this Agreement shall be deemed Buyer's acknowledgement that it has had an adequate opportunity to make such legal, factual and other inspections, inquiries and investigations as it deems necessary, desirable or appropriate with respect to the Property. Such inspections, inquiries and investigations of Buyer shall be deemed to include, but shall not be limited to, any leases and contracts pertaining to the Property, the physical components of all portions of the Property, the physical condition of the Property, such state of facts as an accurate survey, environmental report and inspection would show and the present and future zoning ordinance, ordinances and resolutions. Except as expressly provided in this Agreement or the Closing documents, Buyer shall not be entitled to and shall not rely upon, Seller or Seller's agents with regard to, and Seller will not make any representation or warranty with respect to: (i) the quality, nature, adequacy or physical condition of the Property including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities or the electrical, mechanical, HVAC, plumbing, sewage or utility systems, facilities or appliances at the Property, if any; (ii) the quality, nature, adequacy or physical condition of soils or the existence of ground water at the Property; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the Property; (iv) the development potential of the Property, its habitability or merchantability or the fitness, suitability or adequacy of the Property for any particular purpose; (v) the zoning or other legal status of the Property; (vi) the Property or its operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vii) the quality of any labor or materials relating in any way to the

Property; or (viii) the condition of title to the Property or the nature, status and extent of any right-of-way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting the Property except as expressly set forth in this Agreement. **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, SELLER HAS NOT, DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROPERTY AND SELLER SPECIFICALLY DISCLAIMS ANY OTHER IMPLIED WARRANTIES OR WARRANTIES ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. FURTHERMORE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, SELLER HAS NOT, DOES NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE INCLUDING, WITHOUT LIMITATION, ASBESTOS, PCB AND RADON. SUBJECT ONLY TO THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT OR CLOSING DOCUMENTS, BUYER WILL BE ACQUIRING THE PROPERTY "AS IS AND WHERE IS, WITH ALL FAULTS," IN ITS PRESENT STATE AND CONDITION, SUBJECT ONLY TO NORMAL WEAR AND TEAR AND BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS AND CONDITIONS MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER SHALL ALSO ACKNOWLEDGE AND AGREE THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS SECTION SHALL SURVIVE THE CLOSING, AND NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO IN THIS AGREEMENT OR THE CLOSING DOCUMENTS. EXCEPT WITH REGARD TO THE OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE CLOSING DOCUMENTS, BUYER HEREBY RELEASES SELLER AND ITS AGENTS, REPRESENTATIVES AND EMPLOYEES FROM ANY AND ALL LIABILITY RELATING TO THE CONDITION OF THE PROPERTY BEFORE OR AFTER THE CLOSING AND ANY OTHER MATTER RELATING TO THE PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE CLOSING. THIS SECTION SHALL SURVIVE CLOSING.**

Release, Limitation of Recourse. Except as expressly set forth in this Agreement to the contrary and except for any claims arising under the express representations, warranties or

covenants of Seller under this Agreement or under the indemnity provisions of any document delivered in connection with the Closing, Buyer for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges Seller, and any party related to or affiliated with Seller and their respective successors and assigns, including any direct or indirect member of Seller (collectively, the “**Seller Related Parties**”) from and against any and all claims at law or equity which Buyer or any party related to or affiliated with Buyer and their respective successors and assigns (each a “**Buyer Related Party**”), whether known or unknown at the time of this Agreement, which Buyer or a Buyer Related Party has or may have in the future, arising from or related to any matter or thing relating to or in connection with the Property, including but not limited to, the documents and information referred to in this Agreement, the Leases and the Tenants, any construction defects, errors or omissions in the design or construction and arising out of the physical, environmental, economic or legal condition of the Property, including, without limitation, any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et. seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners or operators for environmental matters.

Notwithstanding anything to the contrary in this Agreement, Buyer understands and agrees that the entities comprising Seller have no restriction on the making of distributions to their respective members at the time of Closing and Buyer agrees that notwithstanding any distribution of sales proceeds to any Seller Related Parties, Buyer shall not look to any of the Seller Related Parties and no property or assets of any Seller Related Parties shall be subject to levy, execution, or other enforcement procedures nor shall any deficiency judgment or other monetary judgment be sought, obtained or enforced against any of the Seller Related Parties for the satisfaction of any such rights or remedies, for the payment or performance of any such obligations, agreements or covenant shall not be considered a “liability” for purposes of Sections 10-608(b) and 18-804(c) of the Delaware Limited liability Company Act or the other. Any claims by Buyer against the Seller shall be limited solely to the Property (or, following the Closing, the net proceeds of sale received by each Seller therefrom) and shall have no recourse to the personal or individual property or assets of any Seller or of any other person or entity, or any trustee, officer, director, shareholder, partner, member, employee, manager, estate, representative, agent, successor or assign of any Seller, including specifically but without limitation the manager of Seller, and none of the forgoing persons or entities shall have any personal liability with respect hereto. Further, each individual Seller shall be severally liable only to the extent of such Seller’s interest in the Property (or, following Closing, the net proceeds of sale received by such Seller therefrom). The representations and warranties of Seller under this Agreement are several in nature, and no Seller is liable for the misrepresentation by any of the other Sellers. To the extent that the manager executes this Agreement, the Closing documents or any other document in connection therewith, manager is doing so solely in its capacity as a representative of the entity on behalf of which it is signing and manager shall have no personal or individual liability whatsoever under this Agreement. This Section 8.2.4 shall survive Closing indefinitely.

8.3. Covenants of Seller. Seller hereby covenants as follows:

8.3.1. At all times from the Effective Date through the Closing Date, Seller shall cause to be in force fire and extended coverage insurance upon the Property and public liability insurance with respect to damage or injury to persons or property occurring on the Property in at least such amounts as are maintained by Seller on the Effective Date.

8.3.2. Promptly following the Effective Date, and subject to Section 7.4.2 of this Agreement, Seller shall request and use commercially reasonable efforts to obtain at least five (5) days prior to the Closing Estoppel Certificates executed by each Tenant in a form that complies with its Lease.

8.3.3. From the Effective Date through the Closing Date, Seller shall not sell, assign or convey any right, title or interest whatsoever in or to the Property, or create or permit to attach any lien, security interest, easement, encumbrance, charge or condition affecting the Property (other than the Permitted Exceptions) without promptly discharging the same prior to Closing.

8.3.4. Except as may be necessary for health and safety, Seller shall not, without Buyer's written approval, (a) amend or waive any right under any Contract to be assumed by Buyer; or (b) enter into any agreement of any type affecting the Property that is not terminated as of the Closing.

8.3.5. From and after the Effective Date, Seller shall operate the Property in the manner in which Seller has previously operated the Property; provided, however, that Seller shall have no obligation to make any capital improvements subject to the terms of the Leases.

8.3.6. From the Effective Date until the Closing or sooner termination of this Agreement, Seller covenants as follows: (a) Seller shall not place any mortgage or, without prior notice to Buyer, any other encumbrance, easement, covenant, condition, right-of-way or restriction on the Property, amend or modify any such instrument, or voluntarily take any other action that materially and adversely affects title to the Property as same exists on the Effective Date; (b) Seller will give prompt written notice (in no event later than five (5) business days after any incident of fire or other casualty) to Buyer of any fire or other casualty affecting the Property after the Effective Date; (c) Seller will deliver to Buyer, promptly after receipt by Seller, a copy of (i) all current written default and other material notices to and from Tenants; (ii) all current written default and other material notices from the service providers under any Contracts; and (iii) all written notices of any violations issued to Seller by any governmental authority with respect to the Property prior to the Closing Date ("**Existing Violations**") and any other material notices received from any governmental authority with respect to the Property; (d) Seller will not apply any security deposit held by Seller under the Leases; (e) Seller shall perform its obligations under the Leases and Contracts; (f) Seller shall not settle any condemnation claim or insurance casualty claim without Buyer's prior written consent not to be unreasonably withheld or delayed; and (g) Seller shall immediately notify Buyer if Seller receives notice or knowledge of any information that would result in a misrepresentation under Section 8.1 hereof. If Seller is unable to cure any Existing Violation at or before the Closing, Seller shall have the right, in Seller's sole discretion, in lieu of curing any such Existing Violation but subject to Buyer's reasonable approval, to deposit in escrow with the Title Company at Closing a sum of money sufficient to

cure any such Existing Violation and Buyer shall have the right to expend the money so deposited for such purpose.

8.3.7. For the period commencing on the Effective Date and continuing until the expiration of the Inspection Period, Seller shall not market the Property to others. From and after the expiration of the Inspection Period, unless this Agreement is terminated by Buyer, Seller shall: (i) remove the Property from the market, and (ii) not actively solicit or negotiate with any other prospective purchasers of the Property, including back-up offers.

Initials of Seller \_\_\_\_\_ Initials of Buyer \_\_\_\_\_

8.4. Covenants of Buyer. Buyer hereby covenants as follows:

8.4.1. In the event Buyer elects to finance this transaction, prior to the expiration of the Inspection Period, Buyer shall make application for the financing, and Buyer shall use its commercial reasonable efforts to prosecute its application for and to obtain such financing.

9. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

9.1. Buyer is a limited liability company duly organized and validly existing under the laws of the State of Texas. Buyer has full power and authority to enter into this Agreement, to perform this Agreement and to consummate the transactions contemplated hereby. This Agreement is a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

9.2. The execution, delivery and performance by Buyer of this Agreement, and all other agreements, instruments and documents referred to or contemplated herein or therein do not require the consent, waiver, approval, license or authorization of any person or public authority which has not been obtained and do not and will not contravene or violate (with or without the giving of notice or the passage of time or both), the organizational documents of Buyer or any judgment, injunction, order, law, rule or regulation applicable to Buyer.

10. Conditions Precedent to Closing.

10.1. The obligations of Buyer pursuant to this Agreement shall, at the option of Buyer, be subject to the following conditions precedent:

10.1.1. All of the representations, warranties and agreements of Seller set forth in this Agreement shall be true and correct in all material respects as of the Effective Date and as of the Closing Date, and Seller shall not have on or prior to Closing, failed to meet, comply with or perform in any material respect any conditions or agreements on Seller's part as required by the terms of this Agreement.

10.1.2. There shall not exist any material, adverse encumbrance or title defect affecting the Property except for the Permitted Exceptions or matters to be satisfied at Closing.

10.1.3. Subject to Section 7.4.2 of this Agreement, Buyer shall have received and approved Estoppel Certificates executed by Tenants or Seller and certified to Buyer for each of the Leases.

10.1.4. Seller shall have obtained the TIC Approval (described below).

10.1.5. Seller shall have obtained the approval of the sale of the Property, as contemplated by this Agreement, from the Bankruptcy Court governing Seller (the “**Bankruptcy Approval**”). Seller agrees to use commercially reasonable efforts to obtain the Bankruptcy Approval on or before the expiration of the Inspection Period. If the Bankruptcy Approval is not timely obtained, Seller or Buyer may terminate this Agreement by delivering written notice of termination (which notice may be sent by email) at any time prior to the expiration of the Inspection Period. In the event of such termination, the Due Diligence Items shall be returned to Seller, the Deposit shall be paid to Buyer, plus reimbursement to Buyer for its actual costs incurred in connection with its investigation of the Property, including costs incurred for Buyer’s Reports, such amount not to exceed Fifteen Thousand Dollars (\$15,000.00) (the “**Investigation Reimbursement**”), and thereafter, neither Seller nor Buyer shall have any continuing obligations hereunder except as otherwise expressly set forth herein.

10.2. The obligations of Seller under this Agreement shall, at the option of Seller, be subject to the following conditions precedent:

10.2.1. All of the representations, warranties and agreements of Buyer set forth in this Agreement shall be true and correct in all material respects as of the Effective Date and as of the Closing Date, and Buyer shall not have on or prior to Closing, failed to meet, comply with or perform in any material respect any conditions or agreements on Buyer’s part as required by the terms of this Agreement.

10.2.2. Seller shall have received approval of the sale (“**TIC Approval**”) from all entities comprising Seller no later than the expiration of the Inspection Period. Seller agrees to use commercially reasonable efforts to obtain TIC Approval on or before the expiration of the Inspection Period. Notwithstanding anything herein to the contrary, Seller may terminate this Agreement by delivering to Buyer a written notice of termination (which notice may be sent by email) at any time prior to the expiration of the Inspection Period that Seller determines that the condition set forth in this Section 10.2.2 will not be satisfied. In the event of such termination, the Due Diligence Items shall be returned to Seller, the Deposit shall be paid to Buyer, plus the Investigation Reimbursement, and thereafter, neither Seller nor Buyer shall have any continuing obligations hereunder except as otherwise expressly set forth herein. Notwithstanding anything contained herein to the contrary, if Seller has not received the TIC Approval on or before the Closing Date, as it may be extended, either Buyer or Seller may terminate this Agreement by giving written notice of termination to the other party and Escrow Holder and the Due Diligence Items shall be returned to Seller, the Deposit and the Investigation Deposit shall be paid to



Buyer, and thereafter, neither Seller nor Buyer shall have any continuing obligations hereunder except as otherwise expressly set forth herein.

10.3. If any such condition is not fully satisfied by Closing, the party in whose favor the condition runs shall notify the other party and may terminate this Agreement by written notice (in all events such written notice shall be given on or prior to the Closing Date as it may be extended) whereupon this Agreement shall be canceled, the Due Diligence Items shall be returned to Seller, the Deposit and, if applicable, the Investigation Reimbursement, shall be paid to Buyer and, thereafter, neither Seller nor Buyer shall have any continuing obligations hereunder except as otherwise expressly set forth herein; provided, however, that if Buyer notifies Seller of a failure to satisfy the conditions precedent set forth in Subsections 10.1.1, 10.1.2, 10.1.3 and 10.1.4 Seller may, within five (5) days of receipt of Buyer's notice agree to satisfy the condition by written notice to Buyer, and Buyer shall thereupon be obligated to close the transaction contemplated hereby provided Seller so satisfies such condition and such Closing occurs within ten (10) days of the scheduled Closing Date.

11. Damage or Destruction Prior to Closing.

11.1. In the event that the Property should be damaged by any casualty prior to the Closing, Seller shall give prompt notice to Buyer. If the Property is "materially damaged" (as hereinafter defined) by a fire or other casualty event (a "**Casualty**") prior to Closing, Buyer may terminate this Agreement by written notice given to Seller within ten (10) Business Days after Buyer receives notice of the occurrence of such Casualty from Seller. If Buyer so terminates this Agreement, then the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except as set forth herein. If Buyer does not so terminate this Agreement, or if the Property is not deemed "materially damaged," Buyer will remain bound to purchase the Property for the full Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effect of the Casualty; provided that at Closing Seller will assign to Buyer Seller's interest in any property and lost income insurance proceeds payable to Seller under Tenant's insurance, but net of any costs and expenses reasonably incurred by Seller prior to Closing in connection with the Casualty and net of any pre-Closing rental loss resulting from the Casualty permitted by Tenants under the Leases, and Buyer shall receive a credit against the Purchase Price in the amount by which the cost of repair or restoration of the Property, as estimated by an engineer or contractor reasonably and timely selected by Seller and Buyer, exceeds the amount of any insurance proceeds. For purposes of this Section, the Property shall be deemed "**materially damaged**" if: (a) the estimated repair cost is greater than Five Hundred Thousand Dollars (\$500,000.00); or (b) Tenant is not responsible under the Lease for the repair or restoration of the Property; or (c) a Tenant has the right to terminate the Lease as a result of such Casualty and such right is not waived by the Tenant; or (d) the damage or destruction is not covered by Seller's insurance or if such insurance is not for full replacement cost, and the estimated repair cost is greater than Two Hundred Thousand Dollars (\$200,000.00). For the avoidance of doubt, any hail damage that occurred prior to the Effective Date of this Agreement.

12. Eminent Domain. If, before the Closing, proceedings are commenced, or notice of any condemnation or intent to condemn is given by exercise of the power of eminent domain with

respect to all or any portion of the Property (“**Condemnation**”) Seller shall give prompt written notice to Buyer. If the Condemnation, as reasonably determined by Buyer, would render the Property unacceptable to Buyer or unsuitable for Buyer’s intended use, Buyer shall have the right, by giving notice to Seller within thirty (30) days after Seller gives notice of the Condemnation to Buyer, to terminate this Agreement, in which event this Agreement shall terminate, the Deposit shall be returned to Buyer, the Due Diligence Items shall be returned to Seller and neither party shall have any further obligation to the other except as expressly provided herein. If Buyer has the right to terminate this Agreement pursuant to the preceding sentence but Buyer does not exercise such right, then this Agreement shall remain in full force and effect and, at the Closing, the condemnation award (or, if not therefore received, the right to receive such portion of the award) payable on account of the taking shall be transferred in the same manner as title to the Property is conveyed. Seller shall give notice to Buyer within three (3) business days after Seller’s providing written notice to Buyer of the commencement of any proceedings for the taking by exercise of the power of eminent domain of all or any part of the Property.

13. Notices. All notices, demands and other communications of any type given by any party hereunder, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section 13. All notices shall be in writing and shall be delivered (i) by courier; (ii) by Federal Express or other nationally recognized overnight delivery service; or (iii) by e-mail. Notices delivered by e-mail must be followed by confirmation via Federal Express or other nationally recognized overnight delivery service. Notices shall be deemed received (i) if by courier, upon delivery or refusal of same; (ii) if by Federal Express or other nationally recognized overnight delivery service, the business day following deposit; and (iii) immediately following e-mail transmission. Any notice received on a non-business day or after 5:00 p.m. Central Standard Time, as applicable, on a Business Day shall be deemed received on the next Business Day. Notices shall be given to the following addresses:

Seller: TNP TITAN PLAZA FUND, LLC  
c/o Anthony W. Thompson  
3151 Airway Avenue, Suite G-3  
Costa Mesa, CA 92626  
Telephone: (714) 656-0600  
E-mail: [tt@tnpre.com](mailto:tt@tnpre.com)

With Required Copies to: Joseph J. McQuade  
Attorney

MORAN REEVES CONN  
100 Shockoe Slip, 4<sup>th</sup> Floor  
Richmond, VA 23219  
Telephone No.: (804) 864-4812  
E-mail: [jmcquade@moranreevesconn.com](mailto:jmcquade@moranreevesconn.com)

Buyer: Brockwell Investments, LLC  
P.O. Box 6784  
San Antonio, TX 78209  
Attn: Todd L. Brockwell  
Telephone: (210) 215-7055  
E-mail: [tbrockwell@brockwelladvisors.com](mailto:tbrockwell@brockwelladvisors.com)

With a copy to: Robert A. Rosenthal  
Rosenthal Pauerstein Sandoloski Agather LLP  
755 E. Mulberry Ave., Ste. 200  
San Antonio, TX 78212  
Telephone: (210) 244-8860  
E-mail: [broenthal@rpsalaw.com](mailto:broenthal@rpsalaw.com)

14. Remedies.

14.1. Defaults by Seller. This Section 14.1 shall not apply to breaches of representations and warranties, which shall be governed by Section 8.2.2 above. If there is any material default by Seller under this Agreement, following notice to Seller and seven (7) days, during which period Seller may cure the default, Buyer may, as its sole option, elect to either (i) declare this Agreement terminated in which case the Deposit shall be returned to Buyer; or (ii) treat this Agreement as being in full force and effect and bring an action against Seller for specific performance. Upon Buyer's election of either remedy, Seller shall pay to Buyer within five (5) Business Days the Investigation Reimbursement for Buyer's Reports.

14.2. Defaults by Buyer. If there is any material default by Buyer under this Agreement, following notice to Buyer and seven (7) days, during which period Buyer may cure the default, then Seller may, as its sole remedy, declare this Agreement terminated, in which case the Deposit shall be paid to Seller as liquidated damages and each party shall thereupon be relieved of all further obligations and liabilities, except any which survive termination. Notwithstanding the foregoing, Buyer's right to cure shall not be applicable to a failure to close and the Closing shall in no event be extended pursuant to this Section. In the event this Agreement is terminated due to the default of Buyer hereunder, Buyer shall deliver to Seller, at no cost to Seller, the Due Diligence Items and, if requested in writing by Seller, any or all of Buyer's Reports.

15. Assignment. Buyer may assign its rights under this Agreement to any individual and/or entity; provided, however, that Buyer shall have no such right unless a written assignment is

delivered to Seller no later than seven (7) business days before the Closing Date; and further provided that no such assignment shall relieve Buyer of its obligations hereunder. In lieu of a formal assignment of this Agreement Buyer shall have the right to take title to the Property at the Closing in a name other than Buyer's name provided such nominee is wholly-owned by Buyer.

16. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the state in which the Real Property is located. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "successors and assigns" shall include the heirs, administrators, executors, successors, and assigns, as applicable, of any party hereto.

17. Amendment. This Agreement may not be modified or amended, except by an agreement in writing signed by the parties. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions and obligations.

18. Attorney's Fees. In the event it becomes necessary for either party to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees, expert fees and costs of court incurred in such suit, including those related to any appeal or review. This Section 18 shall survive Closing.

19. Entire Agreement; Survival. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement or in any Closing document, if any, shall be binding upon the parties hereto nor shall they affect or be effective to interpret, change or restrict the provisions of this Agreement. All of the obligations of the parties hereunder and all other provisions of this Agreement shall be deemed to have merged into the Deed and shall be extinguished at Closing or the earlier termination of this Agreement, except as expressly provided herein.

20. Multiple Originals; Counterparts; Signatures. The parties may execute numerous originals of this Agreement. Each such executed Agreement and copies of the same shall have the full force and effect of an original executed instrument. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute the entire Agreement. Signatures transmitted by E-mail shall be treated as originals in all respects for purposes of executing this Agreement, any amendments hereto and any notices delivered hereunder.

21. Time of the Essence; Business Day Convention. Time is of the essence of this Agreement. Except as provided in Section 7.3.2, time periods hereunder shall be deemed to expire at 5:00 p.m. Pacific Standard or Daylight Savings Time, as applicable. If the final date of any period or date of performance falls upon a Saturday, Sunday or legal holiday under Federal law, or the laws of the State in which the Real Property is located ("**Business Day**"), then in such

event the expiration date of such period or time of performance shall be extended to the next Business Day.

22. Real Estate Commission. Buyer and Seller each represent to the other that no broker's or real estate commissions or other finder's fees, other than a commission payable by Seller to Endura Advisory Group GP, LLC (the "**Broker**"), are or shall be due in respect to this transaction by reason of any agreement made or which may be alleged to have been made by Buyer or Seller. At Closing, Seller shall pay all commissions and fees owed to the Broker pursuant to Seller's separate agreement with the Broker. Each party agrees to indemnify and hold harmless the other from and against any and all claims, demands or the cost or expense thereof, including reasonable attorney's fees, arising out of any broker's commission, fee or other compensation due or alleged to be due in connection with the transactions contemplated by this Agreement based upon an agreement alleged to have been made or other action alleged to have been taken by the indemnifying party. This Section 22 shall survive Closing.

23. Exchange. Seller (or, if applicable, each entity comprising Seller) and Buyer reserve the right to structure the transfer of the Property as a like kind exchange pursuant to Section 1031 of the Code. In such event, Seller and/or Buyer shall have the right to assign its interest in this Agreement to a qualified exchange intermediary of its choosing to effect such exchange. Buyer or Seller as the case may be shall sign a customary assignment and/or notice of assignment, however, such assignment shall be at no cost or expense to the other party and shall not otherwise affect the term of this Agreement.

24. Confidentiality. Seller, Buyer and Broker agree on their own behalf and on behalf of their directors, officers, employees, affiliates, attorneys, accountants, auditors, lenders and others providing professional services, investors or prospective purchasers ("**Representatives**") that all Privileged Information (defined above) received shall be kept confidential as provided in this Section 24. Without the prior written consent of the other parties the Privileged Information shall not be disclosed by any party or its Representatives, in any manner whatsoever, in whole or in part, except to any party's Representatives who need to know the Property information for the purpose of evaluating the Property and who are informed by such party of and agree to maintain the confidential nature of the Privileged Information. The provisions of this Section 24 shall survive the Closing or any earlier termination of this Agreement for a period of one (1) year.

25. Parties Not Bound. Delivery of drafts of this Agreement, and all discussions and written communications regarding drafts of this Agreement, are preliminary discussions only and shall not serve as the basis for any claim of any kind between the parties including any claim of reliance, estoppel, breach of good faith or breach of contract. Neither party is bound unless and until a fully executed Agreement is delivered by both parties.

26. Disclosures.

26.1. District. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49 of the Texas Water Code requires Seller to deliver and Buyer to sign the

statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this Agreement.

- 26.2. Title Examination or Policy. The Buyer should have the Property examined by an attorney of the Buyer's choosing or the Buyer should be furnished with or obtain a title policy.
- 26.3. Certificated Service Area of a Utility Service Provider. If the Property is situated in a certificated service area of a utility service provider, Section 13.257 of the Texas Water Code requires Seller to deliver and the Buyer to sign the required statutory notice.
- 26.4. Pipelines. If a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product or hazardous substance, is located on or within the Property, Seller shall give Buyer statutory notice regarding such pipeline(s) as required by Section 5.013 of the Texas Property Code.
- 26.5. Public Improvement District. If the Property is in a public improvement district, Section 5.014 of the Texas Property Code requires Seller to deliver and the Buyer to sign the required statutory notice.

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SIGNATURES TO FOLLOW ON THE NEXT PAGE(S).]

**SIGNATURE PAGE(S) FOR  
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW  
INSTRUCTIONS**

IN WITNESS WHEREOF, the undersigned Seller and Buyer have executed this Agreement as of the Effective Date.

**SELLER:**

TNP Titan Plaza Fund, LLC, a Delaware limited liability company (“Landlord”) acting by and through TNP Property Manager, LLC (“Agent” for Owner)

By: TNP Property Manager, LLC  
a Delaware limited liability company  
Its: Agent for Owner

By: Thompson National Properties, LLC  
a Delaware limited liability company  
Its: Sole Member




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By: Joseph A. Byers  
Title: Asset Manager

**SIGNATURE PAGE(S) FOR  
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW  
INSTRUCTIONS**

**BUYER:**

Brockwell Investments, LLC

By:   
Name: Todd L. Brockwell II  
Title: President



**CONSENT OF ESCROW HOLDER**

Escrow Holder hereby agrees to perform its obligations under this Agreement and acknowledges receipt of (a) the Deposit from Buyer in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) and (b) a fully executed counterpart of this Agreement on \_\_\_\_\_, 2016.

**CHICAGO TITLE INSURANCE COMPANY**

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

**EXHIBIT A**

**Legal Description**

**TRACT 1: (Fee Simple)**

Lot 14, New City Block 12168, N.B.C. 2 Subdivision, as recorded in Volume 9502, Pages 86-87, Deed and Plat Records, City of San Antonio, Bexar County, Texas.

TPIN #12168-000-0140

Titan Building: 2700 NE Loop 410, San Antonio, TX

**TRACT 2: (Fee Simple)**

Lot 15, New City Block 12168, N.B.C. 2 Subdivision, as recorded in Volume 9502, Pages 86-87, Deed and Plat Records, City of San Antonio, Bexar County, Texas.

TPIN #12168-000-0150

Titan Plaza: 8200 Perrin Beitel, San Antonio, TX

**TRACT 3: (Non-Exclusive Easement)**

Being a 0.241 acre (10,502 sq. ft.) tract of land being all of the easement rights provided by instrument recorded in Volume 2671, Page 1124 of the real property records of Bexar County, Texas, as further conveyed by instrument recorded in Volume 7368, Page 851 of the real property records of Bexar County, Texas and being out of Lot 13, New City Block 12168, N.B.C. 1 Subdivision, City of San Antonio, Bexar County, Texas as recorded in Volume 9400, Page 134 of the deed and plat records of Bexar County, Texas, said 0.241 acre tract being more particularly described by metes and bounds as follows:

Beginning at a found "X" in concrete in the east right-of-way line of Perrin-Beitel Road (a variable right-of-way) at the south most corner of said Lot 13;

Thence N 13° 03' 31" W, 12.50 feet along the east right-of-way line of Perrin Beitel Road to a set ½" iron rod with a Vickrey & Associates property end cap;

Thence N 76° 56' 29" E, 304.20 feet to a set ½" iron rod with a Vickrey & Associates property end cap;

Thence N 13° 03' 31" W, 205.00 feet to a set ½" iron rod with a Vickrey & Associates property end cap;

Thence S 76° 56' 29" W, 305.98 feet to a point in the east right-of-way line of said Perrin-Beitel Road and a set ½" iron rod with a Vickrey & Associates property end cap;

Thence N 13° 03' 31" W, 12.50 feet along the east right-of-way line of Perrin-Beitel Road to a found "X" in concrete;

Thence N 76° 56' 29" E, 318.48 feet along the northwest line of said Lot 13 to a found nail and cap;

Thence S 13° 03' 31" E, 230.00 feet along the northeast line of said Lot 13 to a found nail and cap;

Thence N 76° 56' 29" W, 316.70 feet along the southeast line of said Lot 13 to the point of beginning and containing 0.241 acres (10,502 sq. ft.) of land, more or less.

TRACT 4: (Fee Simple)

Being a 0.094 acre (4,115 square feet) tract of land as recorded in Volume 2671, Page 1132 of the official public records of real property of Bexar County, Texas and being out of Lot 15, NCB 12168, NBC Unit 2 Subdivision, City of San Antonio, Bexar County, Texas as recorded in Volume 9502, Pages 86-87 of the deed and plat records of Bexar County, Texas said 0.094 acre tract being more particularly described as follows:

Beginning at a found "X" on concrete in the east right-of-way line of Perrin Beitel Road at the northwest corner of said Lot 15;

Thence N 76° 56' 29" E, 329.20 feet along the north line of said Lot 15 to a corner;

Thence S 13° 03' 31" E, 12.50 feet to a corner;

Thence S 76° 56' 29" W, 329.20 feet to a corner in the east right-of-way line of Perrin Beitel Road;

Thence N 13° 03' 31" W, 12.50 feet along the east right-of-way line of Perrin Beitel Road to the point of beginning and containing 0.094 acres (4,115 square feet) of land, more or less.

**EXHIBIT B**

**Form of Assignment and Assumption Agreement**

This Assignment and Assumption Agreement (this “**Assignment**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the entities who are signatories hereto as Assignor (collectively, “**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, sells, transfers, and assigns unto Assignee all of the rights, title, and interest of Assignor, if any, in, to, and under any and all of the following items (collectively, the “**Assumed Items**”), to the extent that they are related to that certain real property located at 2700 NE Loop 410, San Antonio, Texas 78218 , which is more particularly described in **Exhibit A** attached hereto (the “**Real Property**”) which Assignor is selling to Assignee pursuant to an Agreement for Purchase and Sale of Real Property and Escrow Instructions dated \_\_\_\_\_ (the “**Agreement**”):

- (a) All contracts or agreements, if any, to the extent that they relate to the Real Property, or improvements thereon, including, but not limited to, maintenance or utility contracts assumed by Buyer pursuant to the Agreement (collectively the “**Contracts**”);
- (b) Any and all plans and specifications, architectural and engineering drawings and the common name of the Real Property; and
- (c) All leases, including associated amendments, with all person leasing the Real Property; or any portion thereof (collectively, the “**Leases**”), together with all security deposits held in connection with the Leases and all of Seller’s right, title and interest in and to all guarantees, letters of credit and other similar credit enhancements providing additional security for such Leases.

Assignee hereby accepts the foregoing assignment and hereby (i) agrees to pay, perform and discharge, as and when due, all of the agreements and obligations related to the Contracts assumed by Buyer pursuant to the Agreement and Leases, that arises on or after the date hereof, (ii) agrees to be bound by all of the terms and conditions of the Contracts assumed by Buyer pursuant to the Agreement and Leases, and (iii) agrees to indemnify and defend Assignor from, for and against any claim or loss related to any of the Contracts assumed by Buyer pursuant to the Agreement or Leases first arising on or after the date hereof.

**EXCEPT AS SET FORTH IN THE AGREEMENT, ASSIGNOR HAS NOT MADE AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE ASSIGNED ITEMS AND ASSIGNOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS**

**FOR A PARTICULAR PURPOSE OR USE. ASSIGNEE ACKNOWLEDGES THAT ASSIGNEE IS A SOPHISTICATED PARTY FAMILIAR WITH THIS TYPE OF REAL PROPERTY AND THAT, SUBJECT ONLY TO THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT, IF ANY, ASSIGNEE IS ACQUIRING THE ASSIGNED ITEMS “AS IS AND WHERE IS, WITH ALL FAULTS,” IN THEIR PRESENT STATE AND CONDITION. ASSIGNEE SHALL ASSUME THE RISK THAT ADVERSE MATTERS AND CONDITIONS MAY NOT HAVE BEEN REVEALED BY ASSIGNEE’S INSPECTIONS AND INVESTIGATIONS.**

It is understood and agreed that, by its execution hereof, subject to the limitations set forth in the Agreement, Assignor hereby agrees to indemnify, save and hold harmless Assignee from any and all liability, claims or causes of action, loss, cost or expense (including reasonable attorneys’ fees) arising out of or relating to Assignor’s failure to perform any of the obligations of Assignor under the Leases or Contracts prior to the date hereof. It is understood and agreed that, by its execution hereof, Assignee agrees to indemnify, save and hold harmless Assignor from any and all liability, claims or causes of action, loss, cost or expense (including reasonable attorneys’ fees) arising out of or relating to Assignee’s failure to perform any of its obligations under the Leases or Contracts from and after the date hereof, but specifically excluding any liabilities, claims, causes of action, losses, or expenses that are the express responsibility of Assignor hereunder or under the Agreement or that are cause by the negligence, gross negligence, or willful misconduct of Assignor.

Assignor hereby covenants that it will, at any time and from time to time upon written request therefor, at Assignee’s sole expense and without the assumption of any additional liability therefor, execute and deliver to Assignee, and its successors and assigns, any new or confirmatory instruments and take such further acts as Assignee may reasonably request to fully evidence the assignment contained.

Claims under this Assignment are subject to the limitations set forth in the Agreement. The provisions of this Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee, respectively. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, Assignor and Assignee have caused their duly authorized representatives to execute this Assignment as of the date first above written.

ASSIGNOR: \_\_\_\_\_,

\_\_\_\_\_,  
each a Delaware limited liability company

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

Its: Agent

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

Name: \_\_\_\_\_

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

ASSIGNEE:

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

Name: \_\_\_\_\_

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

**EXHIBIT C**

**Form of Bill of Sale**

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties that are signatory hereto as Seller (collectively, “**Seller**”), do hereby give, grant, bargain, sell, transfer, assign, convey and deliver to \_\_\_\_\_ (“**Buyer**”), all tangible personal property of Seller located on or used exclusively in connection with that certain real property (the “**Real Property**”) located at \_\_\_\_\_ and \_\_\_\_\_, which Real Property is more particularly described on **Exhibit A** attached hereto.

The assets transferred hereby are conveyed AS-IS WHERE-IS WITHOUT ANY REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE WHATSOEVER.

Seller hereby covenants that it will, at any time and from time to time upon written request therefor, at Buyer’s sole expense and without the assumption of any additional liability thereby, execute and deliver to Buyer, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which Buyer, its nominees, successors and/or assigns, may reasonably request in order to fully assign and transfer to and vest in Buyer, its nominees, successors and/or assigns, and protect its or their rights, title and interest in and enjoyment of, all of the assets of Seller intended to be transferred and assigned hereby, or to enable Buyer, its nominees, successors and/or assigns, to realize upon or otherwise enjoy any such assets.

Claims under this Bill of Sale are subject to the limitations set forth in the Agreement for Purchase and Sale of Real Property and Escrow Instructions under which the Real Property is being sold and this Bill of Sale is delivered. All references to “Seller” and “Buyer” herein shall be deemed to include their respective nominees, successors and/or assigns, where the context permits.

Dated: \_\_\_\_\_, 2016

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SIGNATURES TO FOLLOW ON THE NEXT PAGE(S).]

**SIGNATURE PAGE(S) FOR EXHIBIT C TO THE  
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW  
INSTRUCTIONS**

**SELLER:**

\_\_\_\_\_,  
each a Delaware limited liability company

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

Its: Agent

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

Name: \_\_\_\_\_

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



# EXHIBIT 3

**PLAN SCHEDULE IV**

Assumed and Assigned Executory Contracts and Unexpired Leases

COUNTERPARTY	CURE AMOUNT
<b>Altus Hospice</b> 2700 NE Loop 410, Suite 125 San Antonio, Texas 78217	\$0
<b>APMI</b> AAM, LLC c/o Corporate Accounting 1600 W Broadway Rd., Ste. 200 Tempe, Arizona 85282	\$0
<b>Caterpillar</b> 2700 NE Loop 410, Suite 400 San Antonio, Texas 78217	\$0
<b>Comerica</b> 3501 Hamlin Road, MC 2220 Auburn, Michigan 48326	\$0
<b>Costal Solutions</b> 2700 NE Loop 410, Suite 270 San Antonio, Texas 78217	\$0
<b>Global Green Insurance</b> 2700 NE Loop 410, Suite 330 San Antonio, Texas 78217	\$0
<b>John Skogland</b> 2700 NE Loop 410, Suite 605 San Antonio, Texas 78217	\$0
<b>Soldiers Angels</b> 2700 NE Loop 410, Suite 310 San Antonio, Texas 78217	\$0
<b>Springleaf</b> 2700 NE Loop 410, Suite 340 San Antonio, Texas 78217	\$0
<b>Texas Department of Banking</b> c/o State of Texas Facilities Commission PO Box 13047 Austin, Texas 78711	\$0
<b>Texas Department of Insurance</b> c/o State of Texas Facilities Commission PO Box 13047 Austin, Texas 78711	\$0

<b>VHS San Antonio Partners, LLC</b> c/o Baptist Health System 215 E. Quincy, Ste. 200 San Antonio, Texas 78215	\$0 <sup>1</sup>
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<sup>1</sup> VHS San Antonio Partners, LLC has filed a proof of claim for \$244,875.33, which is the subject of pending litigation between the Debtor and VHS San Antonio Partners, LLC. Debtor will reserve the full amount set forth in the claim until such time as the Court enters an order allowing a claim in favor of VHS San Antonio Partners, LLC.