

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	
	§	CHAPTER 11
UTSA APARTMENTS 8, LLC, et al	§	
	§	CASE NO. 15-52941
Debtor	§	Jointly Administered
	§	

**DEBTORS’ MOTION FOR ORDER AUTHORIZING AND
APPROVING THE SALE OF DEBTORS’ PROPERTY
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES
OUTSIDE THE ORDINARY COURSE OF BUSINESS**

TO THE HONORABLE RONALD B. KING, UNITED STATES CHIEF BANKRUPTCY JUDGE:

NOW COMES the nineteen (19) Chapter 11 Debtors whose cases are being jointly administered with and under the above-referenced case (collectively, the “Debtors”), and file this “*Motion for Order Authorizing the Sale of Debtor’s Property Free and Clear of All Liens, Claims and Encumbrances Outside the Ordinary Course of Business*” (the “Motion”). In support of the Motion, the Debtor would respectfully represent as follows:

I. JURISDICTION AND VENUE AND BACKGROUND

1. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

II. FACTUAL BACKGROUND

3. Debtors are nineteen Delaware limited liability companies, who are tenants in common (“TICs”) in the ownership of the Reserve, a student housing apartment complex,

located on the northwest corner of Babcock and Hausman Roads in San Antonio, Bexar County, Texas (the “Real Property”).

4. The TICs acquired their interests from UTSA Apartments, LLC (“UTSA Apartments”), a Delaware limited liability company whose sole member is Harold Rosenblum (“Rosenblum”). Mr. Rosenblum is also the sole member of Woodlark UTSA Apartments, LLC (“Woodlark”), who has managed the Reserve since its inception. UTSA Apartments, Rosenblum and Woodlark are collectively referred to herein as “Rosenblum.” The TICs paid \$14.96 million for their interests

5. At the time the TICs purchased their interests, the Real Property secured the payment of a \$30,000,000 Deed of Trust Note (“Note”) dated March 5, 2008. The original holder, John Hancock Life Insurance Company, transferred the Note to FST Reserve, LLC (“FST”), on August 19, 2011.

6. The Debtors filed bankruptcy because Woodlark was (i) demanding cash calls from the TICs, which the TIC’s believed were not warranted, and (ii) demanding that, if the TICs did not pay such cash calls, the TICs convey their ownership interests to UTSA Apartments, Woodlark’s affiliate.

7. Subject to Court approval, Debtors signed a purchase and sale agreement (“PSA”) to sell 100% of the TIC interests to Vesper Acquisition, LLC (“Vesper”) for \$33 million. Except for UTSA Apartments, LLC, which represents 21% of the ownership, all of the TIC owners, representing 79% of the ownership, have joined in the PSA. A true and correct copy of the Agreement of Purchase and Sale (the “Agreement”) is attached hereto as **Exhibit A** and incorporated herein by reference. The Agreement is dated June 12, 2016. As soon as possible before the hearing on this Motion, Debtors shall file the updated Agreement. UTSA Apartments,

LLC, an affiliate of Woodlark and Rosenblum, acquired almost all of its 21% interest when various TIC owners surrendered their interests when faced with the threat of litigation.

8. This Court has approved the entry of a Final Judgment in an adversary, no. 16-5047, providing that the Debtors have satisfied section 363(h) of the Bankruptcy Code and requiring this Motion.

A. The Proposed Sale

9. The Debtors have determined that the sale pursuant to the Agreement will maximize the value of the Debtors' estate. After several months of negotiating, the Debtors have negotiated a sale contract with an unrelated buyer. The Property to be sold is more particularly described in the Agreement.

10. The proposed purchaser is Vesper Acquisition LLC ("Vesper" or "Purchaser"). Vesper is an unrelated party and is a disinterested party as to the Debtors.

11. The Sales Price shall be \$33 million and the parties anticipate a closing date within 75 days of the effective date of the agreement.

12. Vesper shall deposit \$330,000 within two business days after the effective date of the Agreement.

13. There is no broker involved in this sale.

14. The sale proceeds will be distributed according to the priority scheme of the Bankruptcy Code.

15. The Debtors, in consultation with its professionals evaluated the terms and benefits of the proposed transaction, as well as the benefits of other alternatives. The Debtors, in their business judgment, concluded that the proposed sale offers the most advantageous terms and greatest economic benefit to the Debtors' estate and their creditors. Furthermore, the

Debtors do not believe that selling the Property will adversely affect the value of the remaining assets of the estate. Furthermore, the Debtors do not believe that any further marketing of the Property is necessary or warranted since the Debtors believe that the proposed sale to Vesper will generate for the benefit of the bankruptcy estate the most amount of cash in the shortest amount of time.

16. The proposed sale is the result of extensive, arms-length negotiations. The Property is to be sold and transferred pursuant to section 363 of the Bankruptcy Code, free and clear of all liens, claims, and encumbrances, subject to the approval of this Court (the “Sale”).

III. RELIEF REQUESTED

17. The Sale of the Property is outside the scope of the Debtors’ ordinary course of business and must be approved by the Court pursuant to section 363 of the Code. The Debtors request the Court to approve the Sale, subject to any higher and better offerd as required at 363.

18. The proposed Sale is free and clear of any pre- or post-petition liens, with any pre- or post-petition liens or priority claims to attach to the proceeds. The Property is collateral of FST. The proceeds will be paid according to the priority scheme of the Bankruptcy Code.

19. Pursuant to 11 U.S.C. §363, this Sale is appropriate.

IV. LEGAL ARGUMENT AND AUTHORITY

A. *Requirements Under Section 363*

20. Section 363(b)(1) of the Bankruptcy Code provides that, “the Trustee, 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)(1); *see also* FED. R. BANKR. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”). *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986)(for a “trustee to satisfy its fiduciary duty to the debtor,

creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”).

21. Courts have broad discretion to authorize a sale or other disposition of assets under section 363(b) of the Bankruptcy Code. *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386, 388 (6th Cir. 1986) (authorization to sell or dispose of assets reviewed “under an abuse of discretion standard”). Courts in this circuit employ a flexible, case by case approach. *In re Baldwin United Corp.*, 43 B.R. 905 (Bankr. S.D. Ohio 1984). The key consideration is the court’s finding that a “sound business purpose dictates such action.” *Stephens Indus.*, 789 F.2d at 390.

22. Courts have also required a debtor to establish the following additional elements to sell property outside the ordinary course of business: (a) adequate and reasonable notice has been provided to interested parties, 11 U.S.C. § 363(b); (b) the sale price is a fair and reasonable price, *Lounds v. Boyd (In re Lounds)*, 1998 U.S. Dist. LEXIS 10925 (W.D. Mi. 1998); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983); accord *Stephens Indus.*, 789 F.2d at 389-90 (quoting and adopting as persuasive the reasoning of *In re Lionel*); and (c) the sale was negotiated in good faith, *In re Embrace Sys. Corp.*, 178 B.R. 112, 126 (Bankr. W.D. Mi. 1994). See also *240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996) (considering the three factors above and whether a valid business justification exists for the sale).

23. As set forth herein, cause exists with respect to a sale of the Property described in the Sale Motion.

Sound Business Purpose Supports the Sale

24. The Debtors no longer have a need for the Property that they seek to sell. The proposed purchaser has a need and desire to purchase the Property and close the Sale within the time period provided in the contract. The proposed purchase price will net Debtors a sufficient amount of funds with which to pay the FST secured debt and any outstanding ad valorem taxes attributable to the Property. Further, there will be proceeds remaining to pay all administrative claims and unsecured claims. Moreover, there will be proceeds left over to distribute to the TIC Debtors. Under the circumstances, the proposed transaction presents the highest recovery for the assets to be sold.

Adequate and Reasonable Notice Has Been Provided

25. The Debtors marketed the assets from April 2016 until it entered into the contract with Vesper. The Vesper offer of \$33 million was the highest of three offers.

26. The Debtors have discussed the Sale with FST and with Woodlark.

27. Thus, Debtors submit that adequate notice of the Sale has been provided.

The Proposed Sale is for a Fair and Reasonable Price

28. The proposed sale price is the result of extensive arms' length negotiations. The Debtors and proposed purchaser negotiated over price and terms to reach the terms included in the proposed sale contract.

The Proposed Sale was Negotiated in Good Faith

29. The proposed Sale was negotiated and continues to be negotiated in good faith.

Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such

authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

30. Although the Bankruptcy Code does not define “good faith purchaser,” courts construing section 363(m) of the Bankruptcy Code have stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d. Cir. 1986). To constitute lack of good faith, a court must find “fraud or collusion between the purchaser and the seller or the other bidders, or that the purchaser’s actions constituted ‘an attempt to take grossly unfair advantage of other bidders.’” *255 Park Plaza Assocs. Ltd. P’shp. v. Conn. Gen. Life Ins.*, 100 F.3d 1214 (6th Cir. 1996) (citing *In re Onouli-Kona Land Co.*, 846 F.2d 1170, 1173 (9th Cir. 1988)); *see also Miami Ctr. Ltd. P’ship v. Bank of New York*, 838 F.2d 1547 (11th Cir. 1988); *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 56 (7th Cir. 1983); *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *Matter of Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus. Mach.*, 572 F.2d at 1198).

31. As required by section 363(m) of the Bankruptcy Code, the Debtors and purchaser acted in good faith in negotiating the proposed transaction. The proposed sale negotiated between the Debtors and purchaser represents the highest and best offer at this time, subject to any other higher and better offer for the Property at a later date. Accordingly, the

Debtors request that the Court make a finding that proposed purchaser should be entitled to the protections of section 363(m) of the Bankruptcy Code.

32. On September 11, 2016, the Debtors received a LOI from Arris Real Estate Partners, LLC (“Arris”). Arris’s purchase price in the LOI is \$35,000,000.00. Arris’s LOI proposes a 15 day inspection period with 30 days thereafter to close. The Debtors will properly notify Arris of the hearing on this Motion.

Sale of the Assets Free and Clear of Liens, Claims and Encumbrances

33. The Debtors propose to sell the Property pursuant to section 363(b) and (h) of the Bankruptcy Code which, among other things, authorizes a debtor to sell property outside of the ordinary course of business, free and clear of any interest, lien, claim, encumbrance or security interest of any other party, including, but not limited to, any administrative expense or priority claim asserted in this Chapter 11 Case (collectively, “Liens”). .

34. This Court has entered a Final Judgment providing that the Debtors have satisfied the requirements of 363(h).

35. The Debtors have provided notice of the Sale to all parties on the limited service list which includes all pre-petition secured creditors, the 20 largest unsecured creditors, the United States Trustee, and those parties requesting notice and therefore all parties who could potentially assert Liens against the Property.

36. Accordingly, the Debtors submit that the Sale of the Property free and clear of any Liens satisfies the statutory prerequisites of section 363(h) of the Bankruptcy Code.

V. THE COURT SHOULD WAIVE OR REDUCE THE FOURTEEN DAY STAY PERIOD REQUIRED BY RULE 6004(g) THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

37. Pursuant to Bankruptcy Rule 6004(g), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 14 days after entry of the order. The purpose of Bankruptcy Rule 6004(g) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Bankruptcy Rule 6004(g).

38. Although Bankruptcy Rule 6004(g) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, *Collier on Bankruptcy* suggests that the 14 (formerly 10)-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 *Collier on Bankruptcy* ¶ 6004.09 (15th ed. 1999). Furthermore, *Collier on Bankruptcy* provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

39. To preserve the value of the Property and limit the costs of administering and preserving this asset, it is critical that the Debtors close the Sale of the Property as soon as possible. The proposed purchaser has indicated that it wants to close the acquisition of the Property immediately pursuant to the terms of the Agreement. Accordingly, the Debtors hereby request that the Court waive the 14-day stay periods under Bankruptcy Rule 6004(g) or in the alternative, if an objection to the Sale is filed, reduce the stay period to the minimum time needed by the objecting party to file its appeal to allow the Sale to close.

40. Based upon the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of the Debtors and their estate, and should be granted in all respects.

WHEREFORE, PREMISES CONSIDERED, the Debtors request approval to sell the Property outside the ordinary course of business under the foregoing contract terms or under such other terms as may be presented and agreed to by the Parties or any higher and better offer as required in Section 363 and to authorize distribution of certain of the proceeds of the transaction, and for such other relief as is appropriate.

Dated: September 13, 2016.

ERIC TERRY LAW PLLC

/s/ Eric Terry
Eric Terry
State Bar No. 00794729
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ATTORNEY FOR DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of September, 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 and upon the parties listed on the attached Service List via United States First Class Mail, postage prepaid.

*/s/ Eric Terry*_____

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made as of June 12, 2016 (the "Effective Date"), by and among the parties listed on Exhibit B attached hereto and incorporated into this Agreement hereto (each a "Seller", and collectively the "Sellers") and Vesper Acquisition LLC, a Delaware limited liability company (together with its successors and/or assigns, the "Buyer").

RECITALS:

WHEREAS, Sellers are the owners of that certain real property known as The Reserve, located at the intersection of Babcock and Hausman Roads, in San Antonio, Bexar County, Texas, and more particularly described in Exhibit A attached hereto and incorporated into this Agreement by reference, as improved by a student housing community ("Seller's Business") consisting of approximately 753 beds (the "Real Property"); and

WHEREAS, Buyer desires to acquire the Seller's Business and the Real Property, and Sellers desire to sell Seller's Business and the Real Property, together with any land lying in the bed of any existing, dedicated street, road or alley, all strips and gores adjoining thereto and all appurtenances, rights, privileges, licenses (written or oral), easements, rights-of-way, covenants, tenements, hereditaments, land use entitlements, air or water rights, certificates, development rights or other rights or appurtenances incident thereto (collectively, the "Land"), and also including the buildings, utilities, and other improvements situated thereon (collectively, the "Improvements"), and also all the fixtures, furnishings, and equipment, machinery, supplies and other articles of tangible personal property owned by Sellers and located in, attached to or used in connection with the management, operation, repair and/or maintenance of the Real Property (collectively, the "Personal Property"), and also all intangible property now or on the Closing Date owned or held by Sellers or their affiliates or in which Sellers or their affiliates have rights and used in connection with the Land, Improvements and/or Personal Property, including, without limitation, (i) all leases (the "Leases") and tenant security deposits with interest thereon, (ii) all transferable licenses, permits, authorizations, approvals, entitlements, and certificates of occupancy (collectively, the "Permits"), and (iii) all right, title and interest of Sellers in all transferable warranties (if any), telephone numbers, websites, domain names, plans and specifications, trade names, operating materials, service marks, logos, and goodwill owned by Sellers and related to the Property, or any part thereof including, without limitation, the name "The Reserve"; the internet domain name <http://www.thereservesanantonio.com>, any related domain names and all Facebook accounts, Twitter accounts and similar social media with respect to the Property (collectively, with the Leases and Permits, the "Intangible Property"). The Seller's Business, Real Property, Land, Improvements, Personal Property and Intangible Property being hereinafter sometimes referred to collectively as the "Property"); the Property shall include all right, title and interest, if any, of the Seller in and to (a) any real property owned, claimed or fenced by Seller which adjoins the Real Property, (b) any unpaid award made or to be made for the taking by condemnation or otherwise of the Real Property, for public or quasi-public use or purpose of such right, title or interest, (c) any unpaid award for damage to any or all of the Land by reason of change of grade of any such street, road or avenue, and (iv) other intangible rights, titles, interests,

privileges and appurtenances of every kind and description appurtenant to or benefiting the Real Property.

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

1. Purchase and Sale. Buyer agrees to acquire the Property, and Sellers agree to sell the Property, pursuant to the terms and conditions set forth herein.

2. Purchase Price. The purchase price for the Property ("Purchase Price") shall be THIRTY THREE MILLION and No/100 DOLLARS (\$33,000,000.00), to be paid as follows:

2.1 Cash. At Closing (as defined herein), Buyer shall tender the Purchase Price by wire transfer or immediately available funds, subject to such pro rations and adjustments as are set forth hereinafter. At Closing, the Deposit (as defined herein) shall be applied towards the Purchase Price.

2.2 Deposit. Within two (2) Business Days after the Effective Date of this Agreement (the "Deposit Date"), Buyer shall deposit with Fidelity National Title Insurance Company ("Escrow Agent") at 18618 Tuscany Stone, Suite 240, San Antonio, Texas 78258, a deposit in the amount of THREE HUNDRED THIRTY THOUSAND (\$330,000.00) (the "Deposit") in cash. The Deposit shall be invested in an interest-bearing federally insured account with interest accruing to the benefit of Buyer and shall be held by Escrow Agent until disposed of in accordance with the terms of this Agreement. Unless, Buyer timely delivers to Sellers a Termination Notice (as defined in Section 4.1), the Deposit shall be non-refundable to Buyer, subject to Buyer's contingencies contained in Section 6 and except as otherwise provided in this Agreement.

2.3 Beginning as of June 30, 2016, and continuing until the Closing, Buyer hereby authorizes the Escrow Agent to pay to Seller (or such other person or entity designated by Sellers on prior written notice to Buyer) out of the Deposit the amount of any monthly Cash Shortfall arising out of the operation of the Property not to exceed \$80,000 per calendar month for the months of June, July and August 2016, and an additional \$80,000.00 during the calendar month of August, 2016 (the "Additional August Payment", and collectively, "Cash Shortfall Payments"). The Cash Shortfall Payment may be disbursed upon receipt of a notice from Seller, with a true and complete copy to Buyer and its attorneys, of the amount and description of the anticipated Cash Shortfall. For purposes of this Section 2.3, a "Cash Shortfall" will occur when Seller's anticipated operating expenses and debt service incurred in the usual course of Seller's Business at the Property exceeds Seller's cash on hand plus its anticipated income for any ten (10) day period. All Cash Shortfall Payments shall be deemed a part of the Deposit for all purposes hereunder. The foregoing notwithstanding, Buyer has agreed that the Additional August Payment of \$80,000.00 shall not be credited to Buyer at Closing provided that the Additional August Payment has in fact been actually applied and paid for materials, work, labor or services incurred by or on behalf of Sellers in

connection with the preparedness of the Property and Seller's Business in accordance with Sellers' obligations under the Leases.

Any portion of a Cash Shortfall Payment not actually applied and paid by Seller as aforesaid (or within ten (10) days after either (i) the month to which a particular Cash Shortfall Payment was applicable if paid on an accrual basis, or (ii) within ten (10) days after satisfactory completion of the underlying work, labor services or delivery of materials) shall be reimbursed to Buyer by way of adjustment at Closing. To the extent any adjustments or credits under this Section 2.3 cannot be determined at Closing, this provision shall survive Closing and be included in the Final Closing Adjustments as described in Section 12.7 of this Agreement.

3. Representations and Warranties.

3.1 Seller's Representations and Warranties. In order to induce Buyer to enter into this Agreement and to purchase the Property, each Seller, individually, makes the following representations and warranties, each of which being true and correct in all material respects as of the date hereof. As used herein, the terms "to the best of Seller's knowledge," "Seller's knowledge," and other similar phrases shall mean the actual knowledge of the individual Seller making such representation without any duty of inquiry or investigation and does not include constructive knowledge, imputed knowledge, or knowledge such Seller does not have but could have obtained through further investigation or inquiry. For the purposes of the clarity, Buyer acknowledges that the Property is collectively owned by the Sellers as tenants-in-common, and as such, the actual knowledge of each individual Seller is limited by factors outside of each individual Seller's control, including, but not limited to, the availability of information related to the Property, each individual Seller's access to information related to the Property, and the ability of each individual Seller to verify any information it may have been provided with respect to the Property

3.1.1 Authority. Such Seller is a validly existing Delaware limited liability company qualified to transact business in the state in which the Property is located and possesses all requisite power and authority to own and operate the Property and to carry on Sellers' business. Such Seller and the persons executing this Agreement on behalf of such Seller have the full right, power and authority to enter into this Agreement, to sell such Seller's interest in the Property to Buyer and to otherwise perform its obligations hereunder without the consent of any other person, entity, or governmental authority. The execution, delivery and performance of this Agreement, the fulfillment of and compliance with the terms and provisions hereof and the due consummation of the transactions contemplated hereby have been duly and validly authorized by such Seller, and such authorizations remain in full force and effect. To the best of Seller's knowledge, the sale of the Property pursuant to this Agreement does not violate any law, ordinance, judgment, decree or order to which the Property is subject or which affects the Property. Such Seller is not a "foreign person" as that term is defined by Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent that any of the Sellers are not in good standing as of the Effective Date, each such Seller agrees to remedy any such deficiency and to produce certificates of good standing dated no earlier than ten (10) days prior to the Closing Date.

3.1.2 Leases. To the best of Seller's knowledge, there are no leases, tenancies, licenses or other rights of occupancy or for any portion of the Property or, to the knowledge of such Seller, any assignments or sublets thereunder (collectively, the "Leases") in effect on the Effective Date other than those listed on the rent roll to be provided to Buyer pursuant to Section 4.4 ("Rent Roll"). Seller hereby authorizes Buyer to access, review and make copies of each of the Leases, including all amendments and modifications thereto and including new Leases entered into through the Closing. To the best of Seller's knowledge, no tenant under any of the Leases is entitled to any rebate, free rent or other concessions, deduction or offset except as set forth the Rent Roll, and there will be no reduction in monthly rental due under any of the Leases except as set forth therein. To the best of Seller's knowledge, no tenant has paid any rent, additional rent or other charge of any nature for a period of more than one (1) month in advance except as set forth in the Rent Roll or appearing in the financial statements as "prepaid rent." To the best of Seller's knowledge, neither Sellers nor any tenant are in default currently under any of the Leases, except as set forth in the Rent Roll or identified in the financial statements as "resident receivables." To the best of Seller's knowledge the information set forth on the Rent Roll is, and the information on the updated Rent Roll to be delivered at the Closing shall be, accurate in all material respects as of the date set forth thereon. To the best of Seller's knowledge, the rents listed on the Rent Roll are the rents actually collected and, except as set forth on the arrearages report provided to Buyer on the Delivery Date (as the same shall be updated with the Rent Roll) there are no rents thereon which are more than thirty (30) days past due. To the best of Seller's knowledge, except as disclosed by Sellers, there is no outstanding and uncured claim of default made under any of the Leases prior to the date hereof on the part of any party thereto. Unless otherwise specified on the Rent Roll or otherwise disclosed by Sellers: (i) the term of each of the Leases has commenced and each tenant thereunder is occupying the space demised to it and has commenced the payment of rent, (ii) there are no brokerage commissions due in connection with any of the Leases and no brokerage commissions, tenant allowances or abatements will be due after Closing in connection with any of the Leases, (iii) from and after the Closing Date, no tenant, licensee or occupant under any of the Leases is entitled to any concessions, rent-free occupancy, allowances, rebates or refunds, or has prepaid any rents or other charges for more than the current month, (iv) there are no applications, orders, protests or complaints with reference to rents, services or equipment, pending with any rental authority or court, (v) no tenant has been given any concession or consideration for the rental of any space which would be due or otherwise be applicable following the Closing Date (vi) no utilities are included in any rent; (vii) none of the apartments are rented for professional purposes, (viii) each tenant pays for its own gas and electricity. To the best of Seller's knowledge, all work required to be performed by the landlord under the Leases up to the date of Closing has been done or will be performed prior to the Closing.

3.1.3 Compliance. To the best of Seller's knowledge, the Property is in material compliance with all applicable laws, orders, ordinances and regulations. Seller has received no written notice of any violations from any governmental authority. Seller has not received any written notice from any insurance company, Board of Fire Underwriters or similar entity of any violations or requiring or requesting that any work or alterations be made to the Property.

3.1.4 Condemnation. To the best of Seller's knowledge, no taking by power of eminent domain or condemnation proceeding has been instituted or threatened for the permanent or temporary taking or condemnation (or private purchase in lieu thereof) of all or any portion of the Property.

3.1.5 Litigation. To the best of Seller's knowledge, there are no pending or threatened, actions, suits, complaints, protests, judgments, claims, litigation, proceedings or investigations relating to the Property, Sellers' title thereto or Sellers' right to sell the Property, except the proceeding instituted by Sellers in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the "Bankruptcy"). To the best of such Seller's knowledge, there are no legal actions pending between the Sellers, contractors, sub-contractors and/or any of its tenants or occupants pertaining to rents or otherwise relating to the construction, renovation, or repair of the Property and/or relationship of landlord and tenant created by any of the Leases, except for eviction, collections, and other actions with tenants or former tenants or tenant guarantors in the ordinary course of business, unless any such action has been joined with, and will be resolved by, the Bankruptcy.

3.1.6 Environmental Matters. For the purposes hereof, the term "Hazardous Substances" shall mean substances defined as hazardous or toxic substances under Federal, state, or local environmental laws or regulations to which the Property is subject (collectively, "Environmental Laws"). To the best of such Seller's knowledge, there is no asbestos, radon, PCB's, fluorocarbons, or other Hazardous Substances on, in, under or about the Property. To the best of Seller's knowledge, Seller has not used, generated, stored, transported, manufactured, treated, released or disposed of any Hazardous Substances on, in, under, or about the Property. To the best of Seller's knowledge, there are not presently, and to the best of Seller's knowledge, have never been any storage tanks on or under the Property. Seller has no actual knowledge that the Property is in violation, or ever has been in violation, of any Environmental Laws. Seller has not received any notice or other communication, written or oral, from any governmental authority, alleging that the Property is in violation of any Environmental Laws, and to the best of such Seller's knowledge, the Property is not currently under investigation by any such agency. Notwithstanding the foregoing, the preceding language does not apply to the presence, use, storage, manufacture, release or disposal of small quantities of Hazardous Substances that are generally recognized to be appropriate as normal and customary uses related to residential properties in general and the Property in particular and not in excess of any applicable legal limits provided for by the Environmental Laws.

3.1.7 Access. To the best of Seller's knowledge, all means of access to the Property (i) are permanent and no special access or other permits from the applicable governmental authorities are required that have not been obtained, and (ii) are obtained from any public streets, sidewalks, alleys or other public space without the need for easements, rights-of-way, or licenses, or across lands or premises not included within the Property.

3.1.8 Assessments. Seller has received no notice and has no knowledge of any pending improvements, liens or special assessments to be made against the Property by any governmental authority.

3.1.9 No Option to Purchase. Except for rights arising under the Asset Management Agreement, Declaration of Tenants in Common Agreement, Declaration of Call Agreement, Deed of Trust and Deed of Trust Note (collectively, the "Asset Agreements"), to which Seller is a party, no third-party has an option to purchase all or any portion of the Property. By signing this Agreement, and subject to Buyer closing hereunder, each and every Seller hereby irrevocably and unconditionally waives, releases and relinquishes, in full and without any limitation whatsoever, any and all such rights, benefits, or interests, of any kind whatsoever, under the Asset Agreements and deliver written confirmation thereof in form reasonably required by Buyer and the Title Company. As a condition of Buyer's obligation to close hereunder, Seller shall cause any other person or entity with any rights or interests in the Property arising out of or related to the Asset Agreements to consent to this Agreement (the "Third Party Consent Date") and agree to deliver at Closing, for the benefit of Buyer, an original, notarized irrevocable and unconditional waiver and release from said persons or entities in form reasonably required by Buyer and the Title Company, which shall irrevocably and unconditionally waive, release and relinquish in full, and without any limitation whatsoever, any and all such rights, benefits, or interests, of any kind whatsoever, under the Asset Agreements. The foregoing shall not be deemed a waiver of any rights or claims that Seller may have against any other persons or entities solely to the extent of claims for monetary damages and provided that no claims whatsoever shall be made or survive with respect to the ownership or operation of the Property, including, without limitation, the Real Property, Land Improvements, Personal Property or Intangible Property included therein, and other intangible rights, titles, interests, privileges and appurtenances of every kind and description appurtenant to or benefiting the Property. This provision shall survive the Closing.

3.1.10 No Defaults. Neither the execution, delivery or performance by Seller of this Agreement or any other agreement contemplated hereby, the fulfillment of and compliance with the respective terms and provisions hereof or thereof, nor the consummation by such Seller of the transactions contemplated hereby or thereby, will conflict with, or result in a breach of, any of the terms, conditions or provisions of, or constitute any default under any agreement or instrument to which such Seller is a party, except as follows: the Asset Agreements, to which such Seller is a party.

3.1.11 No Notice of Violation. Seller has not received any written notice from any governmental or quasi-governmental authority having jurisdiction over the Property that the Property (or any part thereof) is in violation of or constitutes a nonconforming use under, any law, ordinance, rule, order, regulation or requirement affecting the Property or any part thereof, including, without limitation, those pertaining to zoning, building or environmental matters (collectively, "Violations"). Seller has no knowledge of any pending or threatened proceedings to modify the Property's zoning classifications. Prior to the Closing, Seller, at Seller's expense, shall cure and correct any Violations (including

any Violations which arise after the date hereof but before the Closing) and shall pay all fines and penalties in connection therewith. In the event that any Violations are not cured and corrected with all fines and penalties paid as of the Closing Date, then Seller shall escrow with the Escrow Agent one hundred twenty-five percent (125%) of the cost reasonably estimated by Buyer or its lender to cure, correct and remove such Violations and pay all fines and penalties in connection therewith, and Buyer shall be entitled to draw on such funds after the Closing to cure, correct and remove such Violations and pay all fines and penalties in connection therewith, with any remaining funds being returned to Seller. Nothing in this Section 3.1.11 shall be deemed to release Seller from its responsibilities with respect to Violations which accrue prior to the Closing including, without limitation, that if the escrowed funds are not sufficient for clearing the aforementioned Violations, then Seller shall be responsible for any excess cost. In no event will Sellers' expense in curing Violations of which Sellers' have no actual knowledge exceed the aggregate amount of \$50,000.00.

3.1.12 Personal Property. All fixtures and articles of personal property included in this sale are now and at the closing of title will be owned by the Seller, free and clear of any conditional bills of sale, chattel mortgages, security agreements or financing statements or other security interests of any kind, except for personal property that is leased as listed on Exhibit C (I).

3.1.13 Use and Operation. To the best of Seller's knowledge, all approvals, permits and authorizations from all governmental authorities necessary for the lawful construction, use and operation of the Property have been obtained. To the best of Seller's knowledge, all such approvals, permits and authorizations are in full force and effect.

3.1.15 OFAC/AML. Neither Seller nor any beneficial owner of Seller:

(a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control ("OFAC") and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable legal authority (such lists are collectively referred to as the "Lists");

(b) is an individual, corporation, partnership, limited liability company, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity (individually or collectively as the context requires, a "Person") who has been determined by competent authority to be a Person with whom a U.S. Person is prohibited from transacting business, whether such prohibition arises under U.S. law, regulation, executive orders or any lists published by the United States Department of Commerce, the United States Department of State including any agency or office thereof;

(c) is owned or controlled by, or acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be a Person with whom a U.S. Person is prohibited from transacting business,

whether such prohibition arises under U.S. law, regulation, executive orders or any lists published by the United States Department of Treasury or the United States Department of State including any agency or office thereof; or

(d) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws.

(e) For purposes hereof, "U.S. Person" means any United States citizen, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, with a principal place of business within the United States or any of its territories. For purposes hereof, "Anti-Money Laundering Laws" means those laws, rules, regulations, orders and sanctions, state and federal, criminal and civil, that (i) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (ii) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotic dealers or otherwise engaged in activities contrary to the interests of the United States; or (iii) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions are deemed to include, but not be limited to: the Executive Order Number 13224 on Terrorism Financing (September 23, 2001), the Patriot Act; the Currency and Foreign Transactions Reporting Act (also known as the Bank Secrecy Act, 31), the Trading with the Enemy Act, 50 U.S.C. Appx. Section 1 et seq., the International Emergency Economics Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957, as amended.

3.2 Buyer's Options. Upon Buyer's receipt of written notification of any material fact that would render any of the representations or warranties contained herein as being untrue, incorrect or misleading in any respect, Buyer may, at Buyer's option, in addition to any of Buyer's other rights or remedies, terminate this Agreement without prejudice to any further legal or equitable rights or remedies Buyer may have against Seller or the Property, in which event the Total Deposit (including any portion released to Seller) shall be immediately returned to Buyer without further instruction from Seller. For the purposes of this paragraph, a fact rendering any of the warranties or representations of any Seller contained herein as being untrue, incorrect or misleading will be considered to be "material" if it is reasonably estimated to cost more than \$100,000.00 (in the aggregate) to perform the actions necessary to occasion the representations or warranties in question as being actually as they were so represented or warranted. Any non-material facts that would render any of the representations or warranties contained herein as being untrue, incorrect or misleading in any respect shall only entitle Buyer to a credit toward the Purchase Price in an amount reasonably estimated to occasion the representations or warranties in question as being actually as they were so represented or warranted.

3.3. Buyer's Representations. In order to induce Seller to enter into this Agreement and to purchase the Property, Buyer makes the following representations and warranties, each of which being true and correct in all material respects as of the date hereof:

3.3.1 Authority. Buyer is a validly existing Delaware limited liability company qualified to transact business in the state in which the Property is located and possesses all requisite power and authority to own and operate the Property and to carry on Buyers' business. Buyer and the persons executing this Agreement on behalf of Buyer has the full right, power and authority to enter into this Agreement, to buy the Property from Seller and to otherwise perform its obligations hereunder without the consent of any other person, entity or governmental authority. The execution, delivery and performance of this Agreement, the fulfillment of and compliance with the terms and provisions hereof and the due consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer, and such authorizations remain in full force and effect. Buyer is not a "foreign person" as that term is defined by Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code").

3.3.2 Buyer has been hereby advised in writing that Buyer should have an abstract covering the Land examined by an attorney of Buyer's own selection or that Buyer should be furnished with or obtain a policy of title insurance and that Buyer should obtain its own environmental study of the Property.

3.3.3 "AS IS" Condition. Buyer acknowledges that, except as set forth in this Agreement, Sellers have not made, or authorized anyone to make, any warranty (express or implied) or representation as to the Real Property, Improvements, the Leases, or any of the other Property, any written materials delivered to Buyer, the persons preparing such materials, the truth, accuracy or completeness of such materials, the present or future physical condition, development potential, zoning, building or land use law or compliance therewith, the operation, income generated by, or any other matter or thing affecting or relating to the Property or any matter or thing pertaining to this Agreement or the Property. Buyer expressly acknowledges that no such warranty or representation has been made except for those set forth in this Agreement and that Buyer is not relying on any warranty or representation whatsoever except for those set forth in this Agreement. Notwithstanding anything herein to the contrary, following the Closing, Buyer shall accept the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS" and with any and all latent and patent defects and in its condition existing on the date of Closing subject only to the express provisions of this Agreement, and Buyer hereby acknowledges and agrees that, except as set forth in this Agreement, **SELLERS HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY RELATING TO THE CONDITION OF THE PROPERTY, ITS SUITABILITY FOR BUYER'S PURPOSES OR THE STATUS OF THE PROPERTY'S**

MAINTENANCE OR OPERATION OR OTHERWISE CONCERNING OR RELATING IN ANY WAY TO THE PROPERTY. Without limiting the foregoing, except as set forth in this Agreement, no warranty or representation is being herein made by Sellers as to (a) fitness for any particular purpose, (b) merchantability, (c) design, (d) quality, (e) condition, (f) operation or income, (g) compliance with drawings or specifications, (h) absence of defects, (i) absence of hazardous or toxic substances, (j) absence of faults, (k) flooding, or (l) compliance with laws and regulations including, without limitation, those relating to health, safety, and the environment. Buyer acknowledges that Buyer has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance, and legal condition of the Property and that Buyer is not now relying, and will not later rely, upon any representation or warranty made by Sellers or anyone acting or claiming to act, by, through or under or on Sellers' behalf concerning the Property except as set forth in this Agreement. Following the Closing, Buyer, for itself and its successors and assigns, hereby waives and releases Sellers, its members, manager, affiliates, asset managers, property managers, and agents and their respective affiliates, officers, directors, members, managers, and employees (collectively, the "Released Parties") of and from any and all contractual, statutory, common law, and/or other liabilities, obligations, claims or causes of action, known or unknown, that Buyer or its successors and assigns may be entitled to assert against any of the Released Parties arising in whole or in part of, or relating or connected in any way to, the condition of the Property, including, but not limited to, any such liabilities, obligations, claims or causes of action based in whole or in part upon any applicable federal, state or local environmental law, rule or regulation or the environmental condition of the Property, and any deed delivered to Buyer pursuant to this Agreement shall contain a reference to such release; provided, however, that the foregoing release shall not apply or pertain to any obligations of the Released Parties under this Agreement which survive the Closing including, without limitation, the indemnity obligations of Sellers and the Released Parties under this Agreement.

4. Due Diligence.

4.1 Due Diligence Period; Property Documents. Within five (5) days following the Effective Date, Seller, at Seller's sole cost and expense, shall deliver to Buyer the documents identified in Exhibit C attached hereto and incorporated herein (collectively, the "Property Documents"), to the extent they are in Sellers' or their respective agent or representatives' custody or control, which delivery may be made by providing Buyer with copies or electronic access to the Property Documents. The date upon which the parties confirm in writing when all of the Property Documents have been delivered shall be referred to as the "Delivery Date". To the extent any of the documents identified on Exhibit C are not in Seller's possession or control, Sellers' agree to use best efforts to cause the person or entity in possession or control thereof, to deliver or make available the aforementioned documents to Buyer in a timely manner. Buyer shall have a due diligence period (the "Due Diligence Period") expiring thirty (30) days after the Delivery Date and the Third Party Consent Date described in Section 3.1.9 hereof. During the Due Diligence Period, Buyer shall have the right to make all investigations it deems necessary or appropriate to determine in its sole and absolute discretion the viability of purchasing the Property for Buyer's intended purposes. If during the Due Diligence Period the Buyer determines that the Property does not

meet its expectation for purchase, then Buyer may in its sole and absolute discretion, for any reason or no reason, on or prior to the last day of the Due Diligence Period, deliver to Sellers written notice of Buyer's election to terminate this Agreement (a "Termination Notice"), in which instance, this Agreement shall terminate, the parties shall be relieved of any further obligation and responsibility under this Agreement, and the Deposit shall be promptly returned by the Escrow Agent to Buyer with interest thereon, less \$500.00 that Sellers shall retain as independent consideration for Buyer's unrestricted right to terminate this Agreement under this Section 4.1 (the "Option Fee"). If Buyer fails to deliver a Termination Notice in accordance with this Section 4.1, then the Deposit shall be non-refundable except as otherwise expressly set forth in this Agreement.

4.2 Environmental Inspection. During the Due Diligence Period, Buyer shall have the right to conduct, or cause to be conducted such environmental tests, studies and investigations of the Property as Buyer shall deem appropriate in its sole and absolute discretion, including at Buyer's option, a phase I environmental inspection ("Environmental Assessment"). Buyer shall obtain written consent of Sellers (which Sellers may withhold in their sole discretion) prior to performing a phase II environmental assessment. In the event the transaction contemplated hereunder does not close, Buyer represents and warrants to Sellers that the Environmental Assessment and all other information, materials or documents it receives in connection with the Environmental Assessment or which is discovered during the course of the Environmental Assessment shall be maintained as confidential by Buyer and its legal counsel and shall not be disclosed to any third parties except to the extent that failure to do so would constitute a violation of law or that Buyer is required to disclosure the same in connection with a subpoena or order of court. This covenant shall survive the termination of this Agreement, but shall not survive the Closing.

4.3 Ongoing Access and Physical Inspection. Following the Effective Date of this Agreement, Seller authorizes Buyer to have full reasonable access and the right to enter upon the Property at reasonable times upon reasonable notice to Charles B. Gorham ("Sellers' Agent") and Woodlark UTSA Apartments, LLC ("Property Manager") and to make all reasonable investigations it deems necessary or appropriate in its sole discretion regarding the Property, including, without limitation, physical inspections, interviewing tenants and staff, and performing other evaluations to determine the feasibility of the Property. Before any such entry, Buyer (or its contractor or agent, as the case may be) shall provide Sellers with a certificate of insurance naming Sellers as additional insureds and with an insurer and insurance limits (minimum \$1,000,000) and coverage reasonably satisfactory to Sellers. All of such entries upon the Property shall be at reasonable times during normal business hours and after at least 24 hours prior notice to Seller's Agent, and Sellers' Agent or Property Manager shall have the right to accompany Buyer, or otherwise be present, during any activities performed by Buyer or its agents on the Property. Buyer shall indemnify, defend and hold harmless Sellers against any damage or injury to persons or property caused by the negligence or willful misconduct of Buyer or Buyer's agents during any such entries onto the Property prior to Closing, except to the extent such damage or injury is caused by the grossly negligent acts or omissions of Sellers or any of their agents. Notwithstanding the foregoing, Buyer shall not be liable for any claims or occurrence arising out of any condition which existed at the Property prior to any such inspection or entry, except to the extent Buyer caused or contributed to such condition. Buyer shall use reasonable efforts not to interfere with any tenant on the Real Property and unless Sellers' Agent gives its prior written consent, shall not disclose to

any tenant or employee at the Real Property that the Property is under contract for sale. Buyer and Buyer's agents and representatives shall have full access to any and all information, books, and records in Sellers' (or its agents) possession or control concerning the history, use or operation of the Property (including the right to copy documents at Buyer's expense) during normal business hours throughout the period prior to Closing, and Sellers' Agent shall make available to Buyer during such period all information available to Sellers' Agent concerning the Property which Buyer reasonably requests. Sellers shall cooperate (and shall cause its agents to cooperate) fully with Buyer in connection with Buyer's examination of the Property and the information, books, documents, books and records relating to the Property.

4.4 Service Contracts. On or before the end of the Due Diligence Period, Buyer shall notify Sellers in writing which service and management contracts (which are cancelable and subject to termination without cost or early termination fee) Buyer does not desire to assume on the Closing Date. Buyer may elect to cancel service and management contracts so long as cancellation fees due under the terms of the service and management contracts for early termination, if any, are paid by and the responsibility of the Buyer. All other service contracts that Buyer does not affirmatively decline to assume in its notice shall be assumed by Buyer as of the Closing Date. Prior to Closing, Sellers shall (i) timely notify the vendors of the pending assignment, and of any contracts to be assumed thereby, and (ii) cause all such contracts which will not be assumed by Buyer to be terminated as of the Closing Date. Notwithstanding anything set forth herein to the contrary, all management agreements shall be terminated by Seller at or before Closing at no cost or expense to Buyer. The foregoing termination shall be self-operative and no additional notice shall be required with respect to the foregoing.

5. Title.

5.1 Title. Title to the Real Property shall be marketable and insurable by a reputable title insurance company or title agent selected by Seller ("Title Company") (which shall issue the title insurance policy) and conveyed in fee simple, by special warranty deed, free and clear of any and all liens, mortgages, security interests, leases (other than the Leases), restrictions, easements, options, claims, unrecorded agreements, or other encumbrance of any kind whatsoever, except for those items which shall be deemed "Permitted Exceptions", as defined in paragraph 5.2 below.

5.2 Permitted Exceptions. Seller shall cause a commitment for title insurance (the "Title Commitment") to be issued by Title Company, at Seller's expense. Buyer shall, promptly upon execution of this Agreement, arrange for preparation of a survey (the "Survey"), at Buyer's expense, or may decline to have the Survey. Seller shall cause copies of the Title Commitment, and all underlying documents, to be delivered to Buyer and Buyer's counsel within ten (10) calendar days of the Effective Date. Buyer shall, no later than five (5) Business Days following the last to occur of (a) Buyer's receipt of the Title Commitment and all underlying documents related thereto, (b) Buyer's receipt of the Survey, and (c) the Asset Agreements, to notify Sellers in writing (a "Title Defects Notice") of any title defects or survey matters of which Buyer disapproves. Any title or survey matters identified in the Title Defects Notice pursuant to this Paragraph 5.2, and not subsequently cured by Seller, shall be deemed to be "Permitted Exceptions," subject to the provisions of paragraph 5.3.

5.3 Cure of Title Defects. Sellers agree to notify Buyer, through Sellers' Agent, within five (5) Business Days after receipt of the Title Defects Notice, whether or not Sellers will cure all, or any, of the disapproved title matters specified. If, on or prior to the expiration of such five (5) Business Day period, Sellers (a) fail to notify Buyer, (b) notify Buyer that Sellers will not cure all Title Defects, or (c) notify Buyer that all the Title Defects will be cured prior to Closing, but Sellers are thereafter unable to have all such Title Defects eliminated or cured prior to or at Closing, and provided that Buyer shall not thereafter waive such requirements, then Buyer shall have the right, at its option, to either (y) terminate this Agreement (and receive back the Deposit, together with all interest earned thereon, less the Option Fee), in which case neither party will have any further liability to the other or (z) accept title to the Property in such condition as the Seller is willing or able to convey, as the case may be. If, after delivering a Title Defects Notice, Buyer shall subsequently receive any updates to the Title Commitment, then Buyer shall again have five (5) Business Days within which to deliver a Title Defects Notice with respect to any new exception to title raised by such update and Buyer and Seller shall have the rights and obligations set forth in this Section 5.3 with respect thereto. Notwithstanding anything set forth herein to the contrary, Seller shall remove or cause to be removed of record (by depositing sufficient sums with the Title Company at Closing, or agreeing to provide a credit to Buyer against the Purchase Price) (i) the lien of any mortgage given by Seller against the Property and (ii) judgments, mechanics' liens, tax liens, and any other liens or encumbrances against the Property which were not caused by the acts or omissions of Buyer, its agents, contractors or representatives and which can be cured by the payment of money in liquidated amounts and for taxes which have been determined and are due and payable, and none of the foregoing shall be or may be deemed to be Permitted Encumbrances.

6. Conditions Precedent to Closing. It shall be a condition precedent to Buyer's obligation to close the transaction contemplated hereunder and to make a full settlement hereunder that each and every one of the following conditions shall have been satisfied (or waived in writing by Buyer) on the Closing Date:

6.1 Representations and Warranties. Each Seller's representations and warranties contained herein shall be true and correct in all material respects in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date.

6.2 Title Insurance. The Title Company shall be ready, willing and able to issue to Buyer an owner's policy of title insurance (the "Title Policy") for the Property, on the Texas Land Title Association standard form of owners' policy (current form), without any Schedule B exceptions other than the Permitted Exceptions. The Title Policy shall be issued and effective at the Closing in an amount not less than the total Purchase Price.. Buyer shall be responsible for determining its desired endorsements to the Title Policy, and shall be responsible for any expenses incurred with any such endorsements.

6.3. No Material Change. There shall have been no material adverse change in the condition of the Property between the expiration of the Due Diligence Period and the Closing Date, unless noted as a condition of sale.

6.4 Failure of Condition. In the event of the failure of any condition precedent set forth in Sections 6.1, 6.2 or 6.3 above as of the Closing Date, Buyer's sole and exclusive remedy shall be, at its sole election, to (i) terminate this Agreement, in which event the Deposit, together with interest earned thereon, less the Option Fee, shall be returned to Buyer, and Buyer and Sellers shall be relieved of any further obligation and responsibility under this Agreement, except for any obligation or responsibility that expressly survives the termination of this Agreement or (ii) waive the condition and proceed to Closing. Notwithstanding the foregoing, in the event the failure of any condition precedent is attributable to the refusal of any Seller to convey title to the Real Property or Seller's default under or breach of this Agreement, then Buyer shall, in addition to the return of the Deposit, be entitled to bring suit against such defaulting Seller for specific performance of this Agreement.

7.

7.1 Closing. The purchase and sale contemplated herein shall be consummated at a settlement ("Closing"), which shall take place no later than thirty (30) days following the expiration of the Due Diligence Period (the "Closing Date"), unless extended as described in the Agreement including, without limitation, that Buyer shall have the right to adjourn the Closing Date for up to thirty (30) days by giving written notice thereof to Seller and depositing with Escrow Agent the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the form of cash, cashier's check or federal funds wire transfer as an additional deposit. Such additional deposit shall be deemed a part of the Deposit for all purposes hereunder. The Closing shall be coordinated by the offices of the Escrow Agent or on such other place and time as the parties may agree in writing. Notwithstanding anything set forth to the contrary herein, Buyer shall have the right to accelerate the Closing upon five (5) days written notice to the date set forth in such notice, provided and on condition that such acceleration does not cause Seller to default in its obligations hereunder.

On the Closing Date, upon receipt of Seller's deliveries and Buyer's deliveries (as set forth in Articles 8 and 9 below, respectively), Escrow Agent shall record the Deed, disburse the settlement proceeds as indicated on the settlement sheets, and distribute all Closing documents as directed by counsel for Buyer and Seller.

7.2 Notwithstanding anything set forth herein to the contrary, Escrow Agent shall not disburse ONE HUNDRED THOUSAND and 00/100's DOLLARS (\$100,000.00) of the Purchase Price (the "Holdback Amount") to Seller, but shall instead keep the Holdback Amount in escrow for the Survival Period as security for Seller's obligations which survive the Closing. In the event that Buyer has not filed a claim against Sellers prior to the expiration of the Survival Period (below defined), then Escrow Agent shall disburse the Holdback Amount as directed by Sellers, in Sellers' sole discretion. If Buyer has filed a claim against Sellers prior to the expiration of the Survival Period, Escrow Agent may either continue to hold the Holdback Amount in escrow or deposit the Holdback Amount with the court in which such claim was filed and otherwise in accordance with the terms and conditions of this Agreement applicable to Escrow Agent, all of which shall survive the Closing for such period as shall be necessary to effectuate the foregoing. This Section 7.2 shall survive the Closing.

8. Sellers' Deliveries. Sellers shall execute, as appropriate, and deliver to the Title Company prior to Closing in accordance with Section 9.6 hereof, the following:

8.1 Deed; Bill of Sale. An executed special warranty deed ("Deed") in substantially the form set forth in Exhibit D and Bill of Sale and Assignment in substantially the form set forth in Exhibit E (the "Bill of Sale").

8.2 Sellers' Affidavits. Such affidavits signed and delivered by Sellers as may reasonably be required to induce the Title Company to issue each Title Policy, together with such other items and instruments as the Title Company may reasonably require, and as are customary for transactions in the County and State in which the Property is located including, without limitation, a Gap indemnity.

8.3 FIRPTA Affidavit. An affidavit certifying that such Seller is not a "foreign person" as that term is defined by Section 1445 of the Code, in the form prescribed by the regulations promulgated under the Code.

8.4 Possession. Possession of the Property, subject to all then existing Leases and the Permitted Exceptions.

8.5 Assignment and Assumption. An assignment and assumption (the "Assignment and Assumption") transferring those management agreements and service contracts, if any, which Buyer has agreed to assume pursuant to this Agreement.

8.6 Keys. All keys to the Property and access codes and information for any security or other systems comprising the Property.

8.7 Leases and Other Property Documents. An executed Assignment and Assumption of Leases in substantially the form set forth in Exhibit F (the "Lease Assignment"). An original executed copy of all of the Leases (and any amendments thereto), the Rent Roll certified as accurate within five (5) Business Days prior to the Closing, true and complete originals of all Property Documents, together with such files and other materials necessary to complete continuity of operation of the Property which are in Sellers' possession or within its control.

8.8 Organizational Documents and Sellers' Existence. Each Seller shall provide organizational documents and resolutions of such Seller as reasonably required by Title Company, Buyer or Buyer's Lender to evidence such Seller's ability to transfer good title to the Property.

8.9 Title and Recording. All documents reasonably required by Title Company, Escrow Agent or Buyer with respect to compliance with the Foreign Investment in Real Property Tax Act (Internal Revenue Code §1445, as amended, and the regulations issued thereunder).

8.10 Notice to Tenants. At Closing, Sellers' property management company and Buyer (but at no cost to Buyer), shall execute a joint form letter which Buyer may use to notify the tenants of the change of ownership, which notice shall comply with applicable law.

8.12 All architectural and engineering drawings and specifications, utilities layout plans, topographical plans and the like, but only if in Seller's possession or control and owned by Seller used in the construction, improvement, alteration or repair of the Land or the Improvements.

8.13 A certification by Seller in the form set forth in Exhibit G hereto that certain representations and warranties made by Seller are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate, which representations and warranties shall survive the Closing for twelve (12) months, as set forth in Exhibit G.

8.15 Other Documents. Such other items or documents as are required by this Agreement to be delivered by Sellers at Closing, consistent with the obligations of Sellers hereunder, including an owner's affidavit and settlement sheet signed by each Seller or its authorized agent.

9. Buyer's Deliveries. At Closing, Buyer shall execute, as appropriate, and deliver, or cause the following to be delivered to the Escrow Agent prior to Closing in accordance with Section 9.6 hereof:

9.1 Cash. On the Closing Date, by bank wire transfer to the Escrow Agent, the Purchase Price, of which the Deposit shall be a part, subject to all applicable adjustments and prorations contained herein.

9.2 Assignment and Assumption. An executed counterpart to the Assignment and Assumption.

9.3 Lease Assignment and Assumption. An executed counterpart to the Lease Assignment.

9.4 Bill of Sale. Buyer's acceptance of the Bill of Sale.

9.5 Other Documents. All documents reasonably required by the Title Company to determine that Buyer is authorized to buy the Property and to execute all documents in connection therewith. Such other items or documents required by this Agreement to be delivered by Buyer at Closing consistent with the obligations of Buyer set forth in this Agreement, including a settlement sheet.

9.6 Delivery in Escrow. The delivery to the Title Company of the Purchase Price, the executed Deed and all other documents and instruments required to be delivered by either party to the other by the terms of this Agreement shall be deemed to be a good and sufficient tender of performance of the terms hereof provided and on condition that the parties direct the Title Company to break escrow as and when required to consummate the Closing.

Notwithstanding anything herein to the contrary, Sellers agree to deliver executed counterparts of the Deed, Bill of Sale, Assignment and Assumption, Assignment of Lease and Certificate of Non-Foreign Status to the Title Company no later than five (5) Business Days prior to the Closing Date. Further, Buyer acknowledges and agrees that the Deed, Bill of Sale, Assignment and Assumption, Assignment of Lease, Certificate of non-Foreign Status, or any other closing document, may each be executed in counterpart as the case may be, and may further be executed by (a) each of the Sellers named herein, (b) an Officer or Trustee of the Bankruptcy court, duly authorized and empowered to execute and deliver such documents and on behalf of such Seller, or (c) a combination thereof. provided all such documents, as executed and delivered, shall be duly and validly signed by all parties and comply with the terms of this Agreement, shall be in recordable form, where applicable, as determined by the Title Company, and the form thereof shall be reasonably satisfactory to Buyer, Title Company and the Bankruptcy Court. Sellers agree to reasonably cooperate with the Title Company and Bankruptcy Court and deliver such other documents as may be reasonably required by the Title Company or the Bankruptcy Court in connection therewith.

10. Prorations and Adjustments.

10.1 Closing Charges. Sellers shall be responsible for 50% of the cost of the Title Policy, any Deed preparation fees, , tax certificate, all costs associated with curing and title or survey defects which Seller has agreed to cure (including recording costs), recording fees for any lien releases, and 50% of the Escrow Agent's fee. Buyer shall be responsible for the costs the Survey, 50% of the cost of the Title Policy, the cost of any Title Policy endorsements requested by Buyer, 50% of the Escrow Agent's closing fee, all recording costs not otherwise allocated to Seller, and all fees directly incurred by Buyer in connection with the Closing. Buyer and Seller each shall pay its own legal fees related to the preparation of this Agreement and all documents required to settle the transaction contemplated hereby. Any closing costs not otherwise allocated herein shall be allocated 50% to Seller and 50% to Buyer.

10.2 Prorations. At Closing, Basic Rent, Additional Rent, Operating Expenses, revenues, and all other income (but not Delinquent Rent), if any, shall be adjusted and prorated as of the Closing Date. Delinquent Rent, to the extent collected, shall be applied pursuant to Section 10.3 hereof. For the purposes hereof, (i) Additional Rent shall mean late charges and all other amounts and charges payable by tenants to Sellers, as landlord, under their Leases (other than Basic Rent), but shall not include security deposits under the Leases, (ii) Basic Rent shall mean all base rent or basic rent payable in fixed installments and fixed amounts for stated periods by tenants under their Leases, (iii) Delinquent Rent shall mean rent which is past due and owed by a tenant on or before the Closing Date, and (iv) Operating Expenses shall mean all costs, expenses, charges and fees relating to the ownership, management, operation, maintenance and repair of the Property, including electricity, gas, water and sewer charges, telephone and other public utilities, common area maintenance charges (if any), personal property taxes, and periodic charges payable under service contracts; provided, however, that Operating Expenses shall not include any management fees or charges under the service contracts for the period after the Closing Date to the extent that the same are not expressly assumed by Buyer under this Agreement. It is understood and agreed that Sellers shall be solely responsible for all costs associated with any service contracts which Buyer does not elect to assume under this Agreement. Solely for the purposes of this Section,

Buyer shall be entitled to any revenues and be responsible for any expenses for the entire day upon which the Closing occurs (the "Adjustment Date"). Any apportionments and prorations which are not expressly provided for in this Section 10.2 shall be made in accordance with the customary practice in the metropolitan area where the Property is located. Sellers and Buyer shall cause their accountants to prepare a schedule of all prorations (the "Prorations Statement") at least two (2) Business Days before the Closing Date with final adjustments to be made the day before Closing. Any net adjustment in favor of Buyer shall be credited against the Purchase Price at the Closing. Any net adjustment in favor of Sellers shall be paid in cash at the Closing by Buyer to Sellers. If a contract or agreement provides for one or more payments of an item of income pertaining to a period other than a month or a year, then such income shall be prorated between Sellers and Buyer over the particular period to which such payment or payments pertain.

10.3 Rent. Rent shall be prorated at the Closing in accordance with the following provisions:

(a) Basic Rent. Rent which is not delinquent ("Basic Rent") and has been paid shall be prorated between Sellers and Buyer as of the Closing Date based on the actual number of days in the month during which the Closing Date occurs or such longer period as may be applicable; for example, if a payment for laundry or cable lease or other agreement was made to the Sellers in a lump sum at the time the applicable Lease or agreement was executed, then such sum shall be prorated over the term of the applicable Lease or agreement. Sellers shall be entitled to all Basic Rent which accrues before the Closing Date and Buyer shall be entitled to all Basic Rent which accrues on or after the Closing Date.

(b) Delinquent Rent. Delinquent Rent shall be paid by Buyer to Sellers if, as and when actually collected by Buyer after the Closing, it being understood and agreed that Buyer shall be obligated only to use commercially reasonable efforts to collect Delinquent Rent on behalf of Sellers. Seller hereby agrees that from and after the Closing Date, Sellers or its agents may not attempt to collect Delinquent Rent from any tenant unless such tenant vacated the Property prior to the Closing Date. Rent collected by Buyer after the Closing Date shall be applied first to Delinquent Rent due in the month in which the Closing occurs, then to Rent currently due, and then to any unpaid Delinquent Rent relating to the period prior to the month in which the Closing occurs.

10.4 Taxes and Assessments. (A) Tax payments shall be current on the Closing Date. All taxes that accrue and are determined on or before the Closing date shall be the obligation of the Seller, and all taxes that accrue or are determined after the Closing Date shall be the obligation of the Buyer. Real estate taxes and assessments on the Property and personal property taxes for any personal property located on the Property and to be transferred to Buyer hereunder, for the year of Closing shall be prorated between each respective Seller and Buyer as of the date of Closing based upon the actual current tax bill. Sellers shall be responsible for all real estate and personal property taxes and assessments accrued for the period ending on the day immediately preceding the date of Closing and Buyer shall be responsible for all such taxes and assessments from and after the Closing. If the actual tax or assessments bills for the year of Closing have not been issued by the appropriate taxing authority prior to Closing, such taxes or assessments shall

be prorated based upon the tax or assessment bills issued for the previous year, with known changes. The parties will enter into a tax proration agreement at Closing to reallocate the tax proration in the event the actual tax bills reflect an increase over the prior year.

(B) Seller represent that there is currently pending a tax certiorari or similar proceedings with respect to property taxes imposed or assessed with respect to the Property ("Tax Proceedings").

(i) Pre-Closing. Prior to Closing, (a) with respect to any Tax Proceeding for tax years prior to the tax year in which the Closing occurs, Seller may settle any such Tax Proceedings without the consent of Buyer, and any Refunded Amount (as defined below) with respect to any such tax year shall belong solely to Seller, and (b) with respect to any Tax Proceedings for the tax year in which the Closing occurs or for any subsequent tax year, Seller may not settle any such Tax Proceedings without Buyer's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), and any Refunded Amount with respect to any such tax year shall be apportioned between Seller and Buyer as of the Closing Date based on their respective periods of ownership of such Unit.

(ii) Post-Closing. Upon Closing, Seller shall transfer its rights to prosecute and settle any outstanding Tax Proceedings to Buyer. Following the Closing, (a) Buyer may not settle any Tax Proceedings with respect to tax years prior to the tax year in which the Closing occurs or the tax year in which the Closing occurs, without prior written consent of Sellers' Attorney in Fact, or other person or entity collectively designated or approved by Sellers, (which shall not be unreasonably withheld, conditioned or delayed), and (b) any Refunded Amounts with respect to such tax years and the year in which the Closing occurs, shall be apportioned between Seller and Buyer based on their respective periods of ownership of the Units (and, upon receipt of the funds with respect to any such Refunded Amount, Buyer shall promptly remit to Seller its portion of the Refunded Amount).

(iii) Refunded Amount. A "Refunded Amount" shall mean any refund of real estate taxes with respect to the Property (or any portion thereof) received by Seller with respect to any tax year (and/or any reductions of the amount of property taxes assessed with respect to the Units in connection with any Tax Proceedings, with respect to any tax year), less reasonable attorneys' fees and other reasonable expenses incurred in obtaining such refund.

(iv) Survival. The provisions of this Section 10.4 shall survive the Closing.

10.5 Operating Expenses. All Operating Expenses shall be prorated between Sellers and Buyer as of the Closing Date on an accrual basis, based on (i) the actual number of days in the month during which the Closing Date occurs for monthly expenses, (ii) a 365-day year for annual expenses and (iii) over the particular period to which such payment or payments pertain where a contract or agreement provides for one or more payments that pertain to a period other than a month or a year. Sellers shall be responsible for all Operating Expenses attributable to the period before the Closing Date and Buyer shall be responsible for all Operating Expenses attributable to the period on and after the Closing Date. To the extent commercially reasonable and practicable, Sellers and Buyer shall obtain billings and meter readings as of the Business Day preceding the Closing Date to aid in the proration of charges for gas, electricity and other utility services. If billings or meter readings as of the Business Day preceding the Closing Date are obtained, adjustments of any costs, expenses, charges or fees shown thereon shall be made in accordance with such billings or meter readings. If billings or meter readings as of the Business Day preceding the Closing Date are not available for any utility service, the charges therefor shall be adjusted at the Closing on the basis of the per diem charges for the most recent prior period for which bills were issued and shall be further adjusted at the Final Closing Adjustment (as hereinafter defined) on the basis of the actual bills for the current period. Sellers shall be responsible for all lease commissions due to Seller's employees, any finder's fees, or other incentive fees for Lease executed prior to the Closing Date.

10.6 Utility Deposits. Buyer shall establish utility accounts in its name as of the Closing Date and shall provide any requisite deposits in connection therewith. Sellers shall be responsible for obtaining a refund of any existing utility deposits directly from the applicable utility company. The parties shall cooperate in turnover of the utilities to ensure there is no interruption in utility services to the Property.

10.7 Other Deposits. Buyer shall be credited and Sellers shall be charged with any security deposits, pet deposits, pet fees, cleaning deposits and advanced rentals which have not been applied under the applicable Lease prior to the Closing, all of which shall be itemized on a schedule certified and provided by Sellers. Sellers shall thereafter be relieved of all liability for a return of any deposits due tenants set forth on such schedule and which have been credited to Buyer and Buyer shall indemnify, defend and hold Sellers harmless from and against any and all claims, damages, losses, fines or penalties in any way relating to such scheduled deposits due tenants which have been credited to Buyer to the extent such arises out of the actions of Buyer occurring after the Closing. After the Deposit becomes non-refundable and prior to the Closing, Sellers shall not apply security deposits under Leases where the tenant remains in occupancy at Closing.

10.7 Final Closing Adjustment. No later than ninety (90) days following the Closing Date, Sellers and Buyer shall make a final adjustment to the prorations made pursuant to this Section 10 (the "Final Closing Adjustment"). The Final Closing Adjustment shall be made in the following manner:

- (a) General. All adjustments or prorations which could not be determined at the Closing because of the lack of actual statements, bills or invoices for the current period, or any other reason shall be made as a part of the Final Closing Adjustment. Any net

adjustment in favor of Buyer shall be paid in cash by Sellers to Buyer no later than thirty (30) days after the Final Closing Adjustment. Any net adjustment in favor of Sellers shall be paid in cash by Buyer to Sellers no later than thirty (30) days after the Final Closing Adjustment. The parties shall correct any manifest error in the prorations and adjustments made at the Closing promptly after such error is discovered.

(b) No Further Adjustments. The Final Closing Adjustment shall be conclusive and binding upon Sellers and Buyer, and Sellers and Buyer hereby waive any right to contest after the Final Closing Adjustment any prorations, apportionments or adjustments to be made pursuant to this Section 10.

11. Condemnation, Casualty and Risk of Loss. The risk of condemnation of all or any portion of the Property or loss or damage to the Property by fire or other casualty shall be borne by Sellers until completion of Closing. In the event of (a) the threatened or actual commencement of eminent domain proceedings or actual condemnation or taking of all or any part of the Property (a "Taking"); or (b) damage to the Property by fire or other casualty, act of God or any other event diminishing the value of the Property on or prior to the Closing Date, which would cost in excess of TEN THOUSAND and 00/100's DOLLARS \$10,000.00 to repair or correct, Sellers shall promptly notify Buyer. In the event of a Taking, or if such repair or correction is expected to cost more than ONE HUNDRED FIFTY THOUSAND and 00/100's DOLLARS \$150,000.00 (as reasonably estimated by Sellers' insurance company and reasonably confirmed by Buyer's engineer), then Buyer, at its sole option, exercisable within thirty (30) days following receipt of written notice of the event giving rise to the exercise of such option, shall have the right to terminate this Agreement, in which event the Total Deposit shall be returned to Buyer, and neither party shall have any further obligations or liabilities to the other, other than those which are expressly intended to survive. If the damage to the Property can be repaired for ONE HUNDRED FIFTY THOUSAND and 00/100's DOLLARS \$150,000.00 or less (as reasonably estimated by Sellers' insurance company and reasonably confirmed by Buyer's engineer), Buyer will proceed to Closing provided that Sellers shall assign to Buyer all of Seller's rights to all insurance proceeds and any other claims or rights with respect to such damage which is not corrected or repaired prior to the Closing, credit against the Purchase Price, or pay directly to Buyer, any difference between such proceeds and the estimated cost to complete repair of the damage (as reasonably estimated by Sellers' insurance company and reasonably confirmed by Buyer's engineer), and credit against the Purchase Price at Closing any deductible paid by Buyer, if not previously applied against such repairs. If Buyer has the right to terminate this Agreement pursuant to this Section 11, but does not elect to do so, then the condemnation awards and/or insurance proceeds, including any applicable deductible, as well as any unpaid awards, claims or rights in connection with such condemnation or casualty, shall be assigned from Sellers to Buyer at Closing or, if paid to Sellers prior to Closing, shall be credited to Buyer at Closing against the Purchase Price. Buyer (and its counsel) shall have the right, at its sole cost, to direct the negotiations and settlement of any condemnation or casualty-related claim in the event Buyer elects or is otherwise obligated to proceed with Closing, and, in such event, Sellers shall not adjust or settle any insurance claims or condemnation awards whatsoever without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. If, following a casualty or condemnation, Buyer elects or is otherwise obligated to proceed with Closing, it shall nevertheless

be a condition to Buyer's obligation to proceed with Closing that Seller's insurer deliver written confirmation to Buyer that any insurance proceeds due to Seller in connection with the applicable condemnation or casualty shall be paid over to Buyer following the Closing Date or at Seller's option, that the estimated amount of such insurance proceeds be placed in escrow by Seller at Closing pursuant to an agreement for the release of such funds from escrow in form and substance reasonably acceptable to Buyer.

12. Brokerage Commission. Sellers represent and warrant that they have dealt with no brokers or finders in connection with the negotiation and sale of the Property under this Agreement of Purchase and Sale, except for dealings with CMS Solutions, LLC, Buyer's broker, and that no brokerage fee or real estate commission is or shall be due or owing in connection with this transaction for brokerage services rendered on Sellers' behalf. Sellers hereby indemnify and hold Buyer harmless from any and all loss, costs or damage (including, without limitation, reasonable attorneys' fees and expenses) arising out of any claims of any broker or agent so claiming based on action or alleged action of Sellers, except for brokerage commission incurred by Buyer, with regard to CMS Solutions, LLC. Buyer represents and warrants that it has dealt with a broker or finder in connection with the negotiation and sale of the Property under this Agreement of Purchase and Sale and that it will be solely responsible for the payment of any brokerage fee or real estate commission due or owing in connection the services rendered by its engagement of brokerage services. Buyer hereby indemnifies and holds Sellers harmless from any and all loss, cost or damage (including, without limitation, reasonable attorneys' fees and expenses) arising out of any claims of any broker or agent so claiming based on action or alleged action of Buyer. This Section 12 shall survive Closing.

13. Default Provisions: Remedies.

13.1 Buyer's Default. If Seller shall be ready, willing and able to close, and Buyer shall default in the delivery of the Purchase Price or any other item required to be delivered pursuant to Sections 9.1-9.5 hereof at Closing, then the Deposit shall be delivered to Sellers as full liquidated damages and not as a penalty for such default. Buyer and Sellers acknowledge that Sellers' actual damages in the event of a default by Buyer as aforesaid will be difficult to ascertain, that such liquidated damages represent the Sellers' and Buyer's best estimate of such damages, and that Buyer and Sellers believe such liquidated damages are a reasonable estimate of such damages. Buyer and Sellers expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages in the event of Buyer's default and as compensation for Sellers' taking the Property off the market during the term of this Agreement. Such delivery of the Deposit shall be the sole and exclusive remedy of Sellers by reason of a default by Buyer as aforesaid, and Sellers hereby waive and release any right to sue Buyer, and hereby covenants not to sue Buyer, for specific performance of this Agreement or to prove that Sellers' actual damages exceed the Deposit which is herein provided Sellers as full liquidated damages. The provisions of this paragraph shall not limit Sellers' rights to require indemnification under any indemnity contained in this Agreement.

13.2 Sellers' Default. If Buyer shall be ready, willing and able to close and if the purchase and sale of the Property is not consummated in accordance with the terms and provisions of this Agreement due to a default by a Seller under this Agreement, Buyer shall be

entitled either (i) to terminate this Agreement and receive the return of the Deposit together with all interest earned thereon, less the Option Fee, or (ii) if the default is by reason of a Seller's refusal to convey title to the Property, commence an action for specific performance of this Agreement against the defaulting Seller(s). The foregoing remedies shall be Buyer's sole and exclusive remedies by reason of a default by Sellers under this Agreement, and Buyer hereby waives and releases any right to sue Sellers and hereby covenants not to bring suit at law against any Seller(s) to collect damages in excess of Buyer's actual out-of-pocket costs incurred in connection with the attempted acquisition of the Property. The foregoing waiver shall be applicable solely to the exercise of remedies with respect to Sellers' default hereunder, provided, however, it shall not be applicable to any rights or remedies of Buyer hereunder during the twelve (12) month period following the Closing (such period, the "Survival Period").

14. Covenants of Sellers. Sellers hereby covenant and agree as follows:

14.1 No Removal of Personal Property. Each Seller, individually, agrees not to remove any of the Personal Property from the Property prior to the Closing Date, except for repairs or replacement in the ordinary course of business.

14.2 No New Encumbrances. From and after the Effective Date, each Seller, individually, agrees that it will not mortgage, pledge, encumber, transfer or dispose of, or take any actions which would adversely affect its ability to comply with the provisions of this Agreement, or negotiate with any other party with respect to the sale, exchange or other disposition of the Property or any part thereof. Sellers shall not create or permit to be created any security interests, liens, easements or other adverse conditions affecting any portion of the Property, without the prior written consent of Buyer or shall pay and discharge promptly when due all claims of any kind (including claims for labor, materials, supplies and rent) which, if unpaid, might become a lien upon any or all of the Property. At Closing, Sellers may discharge any lien against the Property from the sales proceeds or contest such claim and lien provided Sellers escrow with the Title Company at Closing the greater of (i) one hundred twenty-five percent (125%) of the cost to cure, pay and remove such liens, and all penalties, fines, costs and fees associated therewith, as reasonably estimated by Buyer; or (ii) the amount required by the Title Company in order to cure, correct and remove any such liens, pay all penalties, fines, costs and fees associated therewith, and provided further that Buyer's Title Company shall omit any such lien, and fines and penalties associated therewith, from Buyer's Title Policy at Closing. Nothing in this Section 14.2 shall be deemed to release Seller from its responsibilities with respect to the first two (2) sentences of this Section 14.2 or any other obligation under this Agreement, including, without limitation, if the escrowed funds are not sufficient. Sellers shall be responsible for any such excess cost.

14.3 Operations of Property in Ordinary Course of Business.

(a) Until the Closing or the earlier termination of this Agreement, Sellers, at their sole cost and expense, will operate, maintain, repair and insure the Property or use its best efforts to cause the same to be operated, maintained, repaired and insured in a commercially reasonable manner in accordance with the prior practices of Sellers at the Property and in accordance with this Agreement. Without limitation of the foregoing, from and after the Deposit becomes nonrefundable and until the Closing, Sellers shall not,

without the prior written consent of Buyer (which consent may be granted or withheld by Buyer in its sole discretion): (i) enter into or be a party to any lease with respect to the Property or any portion thereof, or amend, modify, extend or renew any such lease or any of the Leases; or (ii) enter into any other agreement with respect to the Property or any portion thereof that would bind Buyer or the Property after the Closing; or (iii) make any alterations to any portion of the Property except for routine maintenance and repairs; provided, however, that nothing in this subsection (a) shall preclude Sellers from entering into new residential Leases for a term no longer than one (1) year on Sellers' standard lease form (a copy of which shall be provided to Buyer on the Delivery Date) at then market rates with market-compatible concessions and other economic terms similar to Sellers' past practice, and/or amending or terminating existing residential Leases in the ordinary course of Sellers' business, in accordance with Sellers' current lease practices. If Sellers desire to execute any new Lease or amend, modify or terminate any existing Lease contrary to that permitted by this Section, Sellers shall provide Buyer a true and correct copy of the proposed new lease or modification of the existing Lease or leasing or concession parameters, and Buyer shall three (3) Business Days to review such lease or modification and leasing or concession parameters and notify Sellers of its approval or non-approval of such item, and if Buyer fails to notify Sellers of disapproval of such item during such three (3) Business Day period, such instrument shall be deemed to have been approved by Buyer. A copy of any new Lease or modification of an existing Lease so executed by or on behalf of Sellers shall be transmitted to Buyer promptly following the execution thereof. Seller agrees to provide to Buyer until Closing, monthly updated Rent Rolls and aging statements, which shall reflect Sellers' leasing activities. Sellers shall, in all material respects, keep and perform all of the obligations to be performed by the landlord under any of the Leases, including, without limitation, any maintenance to be performed by the landlord under such Leases prior to the Closing Date. Upon receipt of notice from Buyer that Sellers, or any manager of the Property, is operating the Property in a manner inconsistent with prior operations, the Sellers' obligations under this Agreement, or has failed to give any notice required in this Agreement, Sellers will immediately seek court intervention to correct such conduct.

(b) On or prior to the date which is three (3) days prior to the Closing Date, Seller shall arrange access to the Property for an inspection of each unit with Buyer or Buyer's representative to confirm compliance with the foregoing covenant.

(c) Until the Closing or the earlier termination of this Agreement, and in any individual Sellers' or its agents' or representatives' possession or control, at their sole cost and expense, will provide Buyer with the following: (i) weekly traffic and vacancy report; (ii) monthly income statement; (iii) monthly rent roll, and (iv) an aging report. Without limitation of the foregoing, on the date that is two (2) business days prior to the Closing Date Seller shall provide each of the foregoing dated-down to such date.

(d) Seller shall promptly notify Buyer of (i) the occurrence of any fire or other casualty causing material damage to the Property to which any Seller, or their respective agent or representative is made aware, or (ii) receipt by Seller of notice of eminent domain proceedings or condemnation of or affecting the Property or notice from any governmental

authority relating to the condition, use or occupancy of the Property (including, without limitation, all notices of violation of codes with respect to the Property), or (iii) receipt by Seller of any notice of any actual or threatened litigation against Seller or affecting or relating to the Property other than routine landlord-tenant relations issues.

(e) The undersigned Seller shall not, without the prior written consent of Buyer in each instance, do any of the following:

(i) materially amend or modify any licenses or permits with respect to the Property (except to the extent required by law or to the extent appropriate in order to reflect current information or activities in connection with maintaining or renewing any such licenses or permits) and shall keep in full force and effect and/or renew all such licenses or permits;

(ii) commence, withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Property for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the consent of Buyer;

(f) Seller will use its best efforts, including, without limitation, the payment of all premiums, to ensure that all existing fire, casualty, liability, and extended coverage and other insurance policies which are presently in effect for the Property, are kept in full force and effect. A schedule of the existing insurance policies is annexed hereto as Schedule C.

(g) Subject to the prorations set forth herein, Seller will use its best efforts to pay all trade accounts and costs and Operating Expenses incurred or attributable to the period prior to Closing and shall pay all trade accounts and costs of Operating Expenses incurred or attributable to the period prior to Closing which are included within a Cash Shortfall funded by Buyer pursuant to this Agreement.

(h) Seller will not, without the prior written consent of Buyer, permit any structural modifications or additions to the Property or any part thereof, except as required pursuant to the Leases.

15. Miscellaneous Provisions.

15.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior discussions, understandings or agreements, written or oral, between the parties. This Agreement shall not be modified or amended except by an instrument or writing signed by and on behalf of the parties.

15.2 Additional Documents. Buyer and Sellers agree that they will, at any time within sixty (60) days after the Closing, duly execute and deliver to each other any additional conveyances, assignments, documents and instruments, and shall take or cause to be taken such

further actions (including the making of filings), which are necessary in connection with the consummation of the purchase and sale contemplated herein.

15.3 Severability If fulfillment of any provision of this Agreement, or performance of any transaction related hereto, at the time such fulfillment or performance shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity; and if any clause or provision contained in this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect. The parties desire that any reviewing court of law, administrative body, or arbitrator, instead of canceling or invalidating any provision of this Agreement, will modify the provision(s) by striking any portions it deems to be unreasonable and/or reducing the scope of any provision to set forth the maximum duty, obligation or restriction permitted by applicable law.

15.4 Cumulative Remedies. Except as specifically provided in this Agreement, each and every of the rights, benefits, and remedies provided to Buyer or Sellers by this Agreement, or any instruments or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other rights, remedies and benefits allowed to such party by this Agreement, at law or in equity.

15.5 Construction. Each party hereto hereby acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than against the other.

15.6 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

15.7 Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and permitted assigns. This Agreement may be assigned by Buyer without the prior written consent of Sellers to affiliates under common control with Buyer or controlled by the principals of Buyer. For purposes hereof the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity and the power to make all day to day decisions of any such entity, whether through the ownership of voting interests, by contract or otherwise; provided, however, that the rights of certain direct and indirect investors over customary "major decisions" shall not All other assignments by Buyer shall require written consent of Sellers.

15.8 Waiver; Conflict. Failure by Buyer or Sellers to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof. Notwithstanding anything herein to the contrary, in the event the covenants, terms and conditions contained in this Agreement conflict with the covenants, terms and conditions of the Exhibits hereto or any other agreement between the parties, the terms of this Agreement shall be binding and controlling on the parties.

15.9 Governing Law; Headings; Exhibits. This Agreement shall be governed by and construed under the laws of the state in which the Real Property is located (without reference to the choice of law provisions of said State). The headings are used herein for convenience of reference only, and shall not be deemed to vary the content of this Agreement. All Exhibits attached hereto are incorporated herein and made a part of this Agreement.

15.10 Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of each party or that the signatures of the persons required to bind any party, appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. Counterpart signature pages exchanged by facsimile or via e-mail in .pdf, .jpg, or other readily readable format may be used as if they were original signature pages.

15.11 Confidentiality.

(a) Buyer will have reasonable access to the books, records, and assets of Sellers with respect to the Property. All such information received from Sellers, in addition to the Environmental Assessment and all other information, materials or documents Buyer receives in connection with or discovered during the Environmental Assessment, will be treated in a strictly confidential manner and will not be disclosed to any third party except Buyer's attorneys, accountants, lenders, advisors, prospective investors, investors and other employees or agents or as required by subpoena or other governmental process. In the event the sale is not completed, Buyer shall promptly return to Sellers' Agent all information received by Buyer. Unless the information otherwise becomes public other than by breach of Buyer hereunder, Buyer shall maintain the confidentiality of all such information for a period of five (5) years in the event that the purchase and sale contemplated hereby does not occur. This covenant shall survive the termination of this Agreement.

(b) Seller acknowledges that Buyer will be expending funds and managerial time in connection with the further study of the purchase of the Property. Seller shall not solicit, discuss, advertise or enter into any contract, letter of intent or negotiations therefor regarding the Property with any other party, nor permit any property inspections by prospective purchasers, for a period commencing on the date hereof and continuing until the expiration of the Due Diligence Period; provided, however, that nothing in this paragraph shall prevent Sellers from discussing this Agreement with Seller's property manager or with Sellers' attorneys, accountants, financial and real estate advisors, exchange accommodators, or immediate family.

15.12 Dates. If the final date of any period set forth herein (including, but not limited to, the Closing Date) falls on a Saturday, Sunday or legal holiday under the laws of the state in which the Property is located, the State of New York, or the United States of America, the final date of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. The term "days" as used herein shall mean calendar days, with the exception of "Business

Days,” which term shall mean each day except for any Saturday, Sunday or legal holiday under the laws of the state in which the Property is located, the State of New York, or the United States of America.

15.13 Notice. All notices, requests, consents, and other communications hereunder shall be in writing and shall be personally delivered, sent by facsimile transmission (if a number is provided below) or e-mail or sent by Federal Express or other nationally recognized overnight delivery service to the addresses indicated below effective on the date of delivery except notices sent by facsimile or e-mail shall be effective on the date received only if it is followed by delivery of a hard copy the next Business Day.

Notices under this Agreement shall be addressed and delivered as follows:

If intended for Buyer to: Vesper Acquisition LLC
20 East 46th Street, Suite 1200
New York, New York 10017
Attention: Isaac J. Sitt
Fax: 260-454-4000

with a copy to: Wachtel Missry LLP
885 Second Avenue
New York, New York 10017
Attention: Morris Missry, Esq.
 Avram E. Posner, Esq.
Fax: (212) 909-9464

If intended for Sellers to: Charles B. Gorham, Esq.
Charles B. Gorham, LLP
1027 Austin Highway
Suite 150
San Antonio, Texas 78209
Fax: (210) 822-5775

with a copy to: Josh Layton
Langley & Banack, Inc.
745 E. Mulberry
Suite 900
San Antonio, Texas 78212
Fax: (210) 735-6889

If intended for the Escrow Agent, to: Fidelity National Title Insurance Company
18618 Tuscany Stone, Suite240
San Antonio, Texas 78258
Attn: Joseph P. Gimblet
Fax: 210-490-1312

The addresses and parties set forth above may be changed from time to time by any party by notice to the other. For purposes of this Agreement, notices shall be effective upon receipt or refusal thereof.

15.14 Attorneys' Fees. If either party hereto institutes any proceeding, claim or action, at law or in equity, in connection with or arising out of the terms, conditions, covenants and agreements contained in this Agreement, the non-prevailing party in any such action, claim or proceeding shall reimburse the prevailing party for reasonable attorneys' fees, costs and other expenses incurred in connection with such proceeding or action. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment.

15.15 Section 1031 Exchange. Buyer and Seller may consummate the purchase or sale of the Property as part of a like-kind exchange (an "Exchange") intended to qualify under § 1031 of the Code, provided that the Closing shall not be delayed or affected by reason of any such Exchange. Seller and Buyer shall cooperate and offer friendly assistance to the other in connection with either the Seller's or Buyer's efforts to consummate any Exchange that is intended to comply with the Code, provided that neither the Seller nor the Buyer shall incur any additional costs, expenses, liabilities, obligations or other financial exposure as a result of such cooperation or otherwise in connection with the other party's like kind exchange transaction. The exchanging party shall indemnify and hold the other party harmless from any and all liabilities, claims, losses or actions which the other party incurs or to which the other party may be exposed as a result of the exchanging party's participation in the exchange, including without limitation, attorney's fees, costs and court costs.

15.16 Indemnification.

(a) The Sellers and Buyer shall indemnify, save, defend, keep and hold harmless the Escrow Agent from any and all loss, damage, cost, charge, liability, cost of litigation, or other expense, including without limitation attorney's fees and court costs, arising out of its obligations and duties, including but not limited to (i) disputes arising or concerning amounts of money to be paid, including, but not limited to the Holdback Amount or any part thereof, (ii) funds available for such payments, (iii) persons to whom payments should be made or (iv) any delay in the electronic wire transfer of funds, as Escrow Agent, unless Escrow Agent's actions constitute gross negligence or willful misconduct.

(b) Sellers shall indemnify, defend, protect and hold harmless Buyer and Buyer's successors and assigns from and against any and all loss, cost, damage, liability

and expense (including without limitation attorneys' fees and costs) resulting from or arising with respect to (i) the Property prior to Closing except for any loss, cost, damage, liability and expense (including without limitation, attorneys' fees and costs) resulting from or arising with respect to Buyer or Buyer's representative's entry or activities upon the Property or otherwise related to any issue with the Property caused by an inspection performed by or on behalf of Buyer (as opposed to merely discovered as a result of any such inspection); provided, however, that the foregoing indemnity shall not apply or pertain to any obligations of Buyer under this Agreement which survive the Closing, including without limitation the indemnity obligations of Buyer under this Agreement or any acts or omissions of Buyer after the Closing Date.

(c) Buyer shall indemnify, defend, protect and hold harmless Sellers and Sellers' agents, property managers and their respect successors and assigns from and against any and all loss, cost, damage, liability and expense (including without limitation attorneys' fees and costs) resulting from or arising with respect to the Property after the Closing; provided, however, that the foregoing indemnity shall not apply or pertain to any obligations of the Released Parties under this Agreement or which survive the Closing, including without limitation the indemnity obligations of Sellers and the Released Parties under this Agreement.

16. Escrow Agent

16.1 Release of Deposit. If this Agreement is terminated in accordance with the terms of this Agreement and thereafter either Sellers or Buyer makes a demand on the Escrow Agent to receive the Deposit, the Escrow Agent shall give notice of such demand to the other party. If the Escrow Agent does not receive an objection from the other party to the proposed payment or return of the Deposit within five (5) Business Days after the giving of such notice, the Escrow Agent shall pay the Deposit to the party making the demand. If the Escrow Agent receives an objection from the other party within the five (5) Business-Day period, the Escrow Agent shall continue to hold the Deposit until otherwise directed by instructions agreed to by Sellers' Agent, Charles B. Gorham, and Buyer or until otherwise directed by a court of competent jurisdiction.

16.2 Interpleader. In the event of a dispute concerning the disposition of the Deposit or the Holdback Amount, the Escrow Agent shall have the right at any time to transfer the Deposit to the applicable State Court in County where the Property is located. The Escrow Agent shall give notice of such transfer to Sellers and Buyer. Upon such transfer, the Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

16.3 General Conditions Regarding Escrow Agent. Except as specifically modified by the written settlement instruction executed by all parties and accepted by the Escrow Agent, these the following general conditions of escrow shall apply to this escrow or settlement, and the property received hereunder.

16.4 Deposit of Funds: All checks, money orders or drafts will be processed for collection in the normal course of business. Escrow Agent may commingle funds received by it in escrow with escrow funds of others, and may, without limitation, deposit such funds in its

custodial or escrow accounts with any reputable trust company, bank, savings bank, savings association, or other financial services entity, including any affiliate of Escrow Agent. It is understood that Escrow Agent shall be under no obligation to invest the funds deposited with it on behalf of any depositor, nor shall it be accountable for any earnings or incidental benefit attributable to the funds which may be received by Escrow Agent while it holds such funds. Deposits held by Escrow Agent shall be subject to the provisions of applicable state statutes affecting unclaimed property.

16.5 Limitations of Liability: Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following (Note that this paragraph shall not be construed to limit Escrow Agent's liability for its own gross negligence or willful misconduct):

- a. The effect of the transaction underlying this escrow or of any element of that transaction, including without limitation, any defect in the real estate or other property that is the subject of that transaction, any failure or delay in the surrender of possession of the property, the rights or obligations of any party in possession of the property, the financial status or insolvency of any other party, and any misrepresentations made by any other party.
- b. Any legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by Escrow Agent or exchanged by the parties hereunder, whether or not Escrow Agent prepared such instrument.
- c. The default, error, action or omission of any other party to the escrow.
- d. Any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution.
- e. Any defects or conditions of title to any property that is the subject of this escrow, provided however that this limitation of liability does not limit or affect the liability of Fidelity National Title Insurance Company under any title insurance policy which it has issued or may issue and that no title insurance liability is created by this agreement.
- f. The expiration of any time limit or other consequences of delay, unless a properly executed settlement instruction, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit.
- g. Escrow Agent's compliance with any legal process, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

16.6 Default, Non-Performance and Disputes: In the event any party to the transaction which is the subject matter of this escrow shall tender any performance after the time when such performance was due, Escrow Agent may nevertheless proceed with its function under this escrow,

including without limitation the delivery of documents and the disbursement of funds unless one of the parties to this escrow shall give to the Escrow Agent a written direction to stop the further performance of the Escrow Agent's functions hereunder. Except as otherwise provided herein, the event of written notice of default, non-performance or dispute is given to the Escrow Agent by any party, Escrow Agent will promptly notify all other parties of such notice. Thereafter, Escrow Agent is entitled to decline to disburse funds or to deliver any instrument or otherwise continue to perform its escrow functions, except on receipt of a mutual agreement of the parties in writing or upon an appropriate order of court.

16.7. Indemnification: The Seller and the Buyer shall jointly and severally indemnify, defend (with counsel acceptable to the Escrow Agent) and save harmless the Escrow Agent from and against all loss, cost, claim, liability, damage and expense, including reasonable attorneys' fees and disbursements incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by the Escrow Agent in bad faith, in willful disregard of this Escrow Agreement, or involving gross negligence on the part of the Escrow Agent (the "Indemnified Matters"). As between the Seller and the Buyer, the cost of such Indemnified Matters shall be shared equally, except to the extent that such Indemnified Matters are attributable to the breach by the Seller or the Buyer of the Agreement or this Escrow Agreement, in which event the cost shall be borne by whichever of the Seller or the Buyer is the breaching party.

16.8. Escrow Fees, Charges, Other Expenses and Additional Required Funds: Escrow Agent shall charge for its service hereunder in accordance with its current regular schedule of fees (which includes annual maintenance fees) unless otherwise provided. Unless otherwise directed such fees shall be charged to the buyer and seller equally. All fees, charges and expenses are due and payable on or before the settlement date hereof, and such amounts may be retained by Escrow Agent out of any funds held in escrow due to the party from whom such amounts are due and owing. Additional amounts, which may become due for any reason shall be promptly paid to Escrow Agent by the party owing such amounts. Escrow Agent shall not be required to advance its own funds for any purpose, provided, that any such advance made at its option shall be promptly reimbursed by the party for whom it is advanced, and such optional advance shall not be an admission of liability on the part of Escrow Agent.

16.9. Benefit of Agreement. These conditions of escrow shall apply to and be for the benefit of agents of the Escrow Agent employed by it for services in connection with this escrow.

16.10. Attorney Fees: In the event that litigation is initiated relating to this escrow, the parties hereto agree that Escrow Agent shall be held harmless from any attorney's fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's fault. To that end, the parties hereto agree to indemnify Escrow Agent from all such attorneys' fees, court costs and expenses. To the extent that Escrow Agent holds a fund under the terms of this escrow, the parties agree that the Escrow Agent may charge that fund with any such attorneys' fees, court costs, and expenses as they are incurred by Escrow Agent.

[No Further Text on this Page. Signatures Begin on the Following Page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

BUYER:

VESPER ACQUISITION LLC

a Delaware limited liability company

Date Executed: June 12, 2016

By:  _____

Name Printed: Isaac J. Sitt

Title: CEO

[Signatures Continue on the Following Page]

The undersigned Escrow Agent hereby agrees to the provisions of this Agreement applicable to it.

ESCROW AGENT:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

By: 
Its: Vice-President Commercial Division

[SELLER SIGNATURES BEGIN ON THE FOLLOWING PAGES]

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

The undersigned Tenant in Common hereby agrees to be bound by all of the terms and provisions of the Agreement for Purchase and Sale (the "Agreement"), by and between the tenants in common listed on Exhibit B of the Agreement, collectively as Sellers, and Vesper Acquisition LLC, as Buyer, for the sale of the real property located at Babcock and Hausman Roads, San Antonio, Bexar County, Texas, and commonly known as "The Reserve" (the "Property"). All capitalized terms not defined herein shall have the meaning given to such terms in the Agreement.

The undersigned Tenant in Common hereby appoints CHARLES B. GORHAM, ESQ., as the undersigned tenant in common's true and lawful attorney-in-fact (agent) for such tenant in common to perform the following actions with respect to the sale of the Property under the Agreement: (i) provide written notice to Buyer of any matter for which Seller is required or permitted to provide written notice under the Agreement, (ii) grant extensions of times, dates or deadlines (including the Closing Date) specified in the Agreement for the satisfaction of conditions or the performance of obligations and agree to other modifications and amendments to the Agreement (subject to the terms hereof), (iii) waive any conditions to Seller's obligations under the Agreement (other than Buyer's obligation to pay the Purchase Price at Closing), (iv) execute incidental documents required for Closing including, without limitation, settlement and closing statements, certifications of rent roll, the Tenant Notice, proration statements, title company indemnifications and affidavits, property tax declarations and conveyance tax declarations, but expressly excluding the Deed, Bill of Sale, Assignment and Assumption, Assignment of Leases, and Certificate of Non-Foreign Status, and (v) designate the account or accounts into which the Purchase Price and any Deposit shall be deposited in connection with the sale of the Property, subject to the undersigned tenant in common's right to assign its interest in the Agreement to a qualified intermediary for tax-deferred exchange purposes.

UTSA LLC CO UTSA I LLC
DEL. STATE 2015
DELAWARE LIMITED LIABILITY CO

By: [Signature]
Name: CHARLES R. BETZ
Title: MANAGER

DATE OF EXECUTION: MAY 31, 2016

SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY

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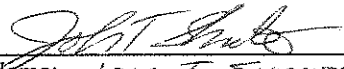
UTSA APARTMENTS 2, LLC
a DEFEWARE LIMITED LIABILITY COMPANY
By: David R. Fandel
Name: DAVID R. FANDEL
Title: MANAGER
DATE OF EXECUTION: 5/31/16

**SELLER SIGNATURE PAGE
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AND LIMITED POWER OF ATTORNEY**

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UTSA APARTMENT 4, LLC
a DELAWARE LIMITED LIABILITY COMPANY

By: 
Name: JOHN T. SHANTRA
Title: MANAGER

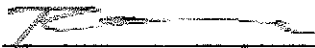
DATE OF EXECUTION: _____

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UTA Apartments 5, LLC
a Delaware Limited Liability Company

By: 
Name: Daniel Booye
Title: manager

DATE OF EXECUTION: 5/31/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 6, LLC
a Delaware Limited Liability Company

By:

Lynette L. Booye
Name: Lynette Booye
Title: manager

DATE OF EXECUTION: 5/31/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Reserve 7, LLC
a _____

By: Stephan Prince, Executor for
Name: Estate of Luenda Saad
Title: Trustee, SAAD TIC Trust

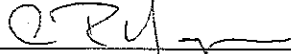
DATE OF EXECUTION: June 3, 2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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LTSA Apartments 8 LLC
a Delaware Limited Liability Company

By: 
Name: C. RICHARD YONGE
Title: MANAGER

DATE OF EXECUTION: 05/31/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 9, LLC
a Delaware Limited Liability Company

By: *Tan H. Linton*
Name: Tan H. Linton
Title: Manager

DATE OF EXECUTION: June 3, 2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA APARTMENTS II, LLC
a DELAWARE LIMITED LIABILITY COMPANY

By: Vincent E. Modzeleski
Name: VINCENT E. MODZELESKI
Title: MANAGER

DATE OF EXECUTION: 6/1/16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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USTA APARTMENTS 12 LLC
a DELAWARE LIMITED LIABILITY COMPANY

By: John H. Coogan
Name: JOHN H. COOGAN
Title: MANAGER

DATE OF EXECUTION: 5.31.16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA APARTMENTS 13 LLC
a Delaware Limited Liability Company

By: Krishna N. Patel
Name: KRISHNA N. PATEL
Title: Manager

DATE OF EXECUTION: 5/31/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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USRA Apartments 14 LLC
a a Delaware limited liability company
By: [Signature]
Name: Dean Del Port
Title: Manager

DATE OF EXECUTION: 5/31/16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA 15, LLC
a DELAWARE LIMITED LIABILITY COMPANY
By: [Signature]
Name: ISAAC KLITGER
Title: MANAGER

DATE OF EXECUTION: MAY 31, 2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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By: LANCE MOORE
Name:
Title: UTSA # 16


DATE OF EXECUTION: 6/1/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 18 LLC
a Delaware Limited Liability Company

By: 
Name: William Lewis
Title: Manager

DATE OF EXECUTION: 5-31-16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 19, LLC
a Delaware Limited Liability Company
By: Leslie Addiego trustee
Name: LESLIE ADDIEGO, trustee
Title: MANAGER

DATE OF EXECUTION: 5/31/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 21, LLC
a _____

By: Stephanie McCollum
Name: Stephanie McCollum
Title: Trustee - Virgil Beard Sr. Trust

DATE OF EXECUTION: 6.12.2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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KISA APARTMENTS 23, LLC
a DELAWARE LIMITED LIABILITY COMPANY
By: John Hoping, LLC
Name: JOHN HOPING, LLC
Title: MANAGER.


DATE OF EXECUTION: 5-31-2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA APARTMENTS 24, LLC
a Delaware Limited Liability Co.

By: 
Name: JOSEPH W. HOWARD
Title: MANAGER

DATE OF EXECUTION: 5-31-16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 24, LLC
a Delaware Limited Liability Co

By: Karung Howard
Name: Karen J. Howard
Title: Manager

DATE OF EXECUTION: June 1, 2014

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 25, LLC

a Sole Member

By: 

Name: Betty P Tana

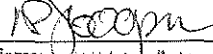
Title: Member

DATE OF EXECUTION: 5/31/2016

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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VTSA Apartments 26, LLC
a Delaware Limited Liability Company
By: 
Name: WILLIAM J. COOPER
Title: MANAGER

DATE OF EXECUTION: 5/31/16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 27, LLC
a *Delaware Limited Liability Company*

By: *Kerry Mistretta*
Name: **KERRY MISTRETTE**
Title: **MANAGER**

DATE OF EXECUTION: *May 31, 2016*

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA APARTMENTS 28
a LIMITED LIABILITY COMPANY

By: [Signature]
Name: JAE E. HADWIN
Title: MEMBER

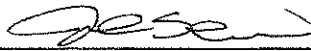
DATE OF EXECUTION: 5/31/16

**SELLER SIGNATURE PAGE
AGREEMENT FOR PURCHASE AND SALE
AND LIMITED POWER OF ATTORNEY**

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UTSA APARTMENTS 29, LLC.
a DELAWARE LIMITED LIABILITY COMPANY

By: 
Name: JOHN SHAW
Title: MANAGER

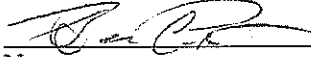
DATE OF EXECUTION: 6-1-16

**SELLER SIGNATURE PAGE
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USA Agreements 30, LLC
a Delaware Limited Liability Company


By: 
Name: BENJAMIN C. POSTON
Title: MANAGER

DATE OF EXECUTION: _____

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AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 31, LLC
a Delaware limited liability company
By: 
James Jeff Shafer
Title: Manager

DATE OF EXECUTION: 6/2/16

**SELLER SIGNATURE PAGE
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AND LIMITED POWER OF ATTORNEY**

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UTSA Apartments 34, LLC
Michael Harlow
a Member
By: Michael Harlow
Name:
Title:

DATE OF EXECUTION: 6-1-16

EXHIBIT A
Legal Description

A 34.92 acre, or 1,520,974 square feet more or less, tract of land being all of Lot 1, Block 12 of the Babcock/Hausman Apartments subdivision recorded in Plat 9567, Page 99 of the Deed and Plat Records of Bexar County, Texas, said Lot 1 conveyed to Royal San Antonio Phase II LLC by Special Warranty Deed recorded in Volume 12137, Pages 2370-2373 of the Official Public Records of Real Property of Bexar County, Texas, in New City Block (N.C.B) 14865 in the City of San Antonio of Bexar County Texas. Said 34.92 acre tract being more fully described as follows, with the bearings being based on the North American Datum of 1983, from Texas State Plane Coordinates System established for the South Central Zone:

BEGINNING: At a set 1/2 inch iron rod with yellow cap marked "Pape-Dawson" at the southeast corner of said Lot 1, being on the north line of a called 7-acre tract recorded in Volume 7011, Pages 1827- 1829 of the Official Public Records of Real Property of Bexar County, Texas, the southwest corner of that 3-foot dedication to right-of-way in said Babcock/Hausman Apartments subdivision, on the west right-of- way line of Babcock Road, a variable width right-of-way-83-feet at this point;

THENCE: S 89°14'58"W, departing from the west right-of-way line of said Babcock Road, along and with the north line of said 7-acre tract, a south line of said Lot 1, a distance of 875.45 feet to a found 1/2" iron rod with yellow cap marked "Pape- Dawson", at an interior corner of the herein described tract, the northwest corner of said 7 acre tract;

THENCE: S 00°39'41"E, along and with the west line of said 7-acre tract, an east line of said Lot 1, a distance of 344.66 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" on the north right of way line of Hausman Road, a variable width right-of-way shown in the Valleyview Acres subdivision recorded in Volume 3975, Pages 122- 124 of the Deed and Plat Records of Bexar County, Texas, at the southwest corner of said 7-acre tract;

THENCE: Along and with the north right-of-way line of said Hausman Road, a south line of said Lot 1, the following calls and distances:

S 89°19'26"W, a distance of 352.49 feet to a found 1/2" iron pipe;

S 00°21 '43"E, a distance of 20.00 feet to a found 1/2" iron pipe;

S 89°03'17"W, a distance of 43.00 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" on the east line of a Drainage Easement in the Cambridge Subdivision recorded in Volume 9567, Pages 24-26 of the Deed and Plat Records of Bexar County, Texas, at the southwest corner of said Lot 1;

THENCE: Departing from the north right-of-way line of said Hausman Road, along and with the east line of said Drainage Easement, the west line of said Lot 1, the following calls and distances:

N 00°04'19"W, at a distance of 268.9 feet passing the northeast corner of said Drainage Easement, the southeast corner of Lot 33 of the North Hills Village, Unit 1 Subdivision recorded in Volume 8800, Pages 168-171 of the Official Public Records of Real Property of Bexar County, Texas and continuing for a total distance of 579.37 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" at an angle point on the east line of Lot 50, Block 10 of said North Hills Village, Unit 1, being an angle point of the herein described tract;

N 00°04'17"E, a distance of 859.77 feet to a set 2" iron rod with yellow cap marked "Pape-Dawson" at the northeast corner of Lot 39 of said North Hills Village, Unit 1, the southeast corner of Lot 52, Block 10 of North Hills Village Unit 1 Resubdivision recorded in Volume 9100, Page 227 of the Deed and Plat Records of Bexar County, Texas, from which a found 1/2" iron rod falls 0.5 feet west of line;

N 00°06'22"E, a distance of 50.00 feet to a found 1/2" Iron rod at the southwest corner of Lot 55, Block 10 of said Resubdivision, the northwest corner of said Lot 1;

THENCE: N 89°S3'43"E, along and with the north line of said Lot 1, at a distance of 121.3 feet passing a found 1/2" iron rod 0.3-feet south of line, at the southeast corner of said Lot 55, and the southwest corner of a drain right-of-way of said North Hills Village, Unit 1, at a distance of 695.1 feet passing a found 1/2" iron rod at the southwest corner of a 3.252 acre tract recorded in Volume 11716 Pages 809-814 of the Official Public Records of Real Property of Bexar County, Texas and continuing for a total distance of 1208.93 feet to a set 1/2" iron rod on the west right-of-way line of the aforementioned Babcock Road, on the south line of said 3.252 acre tract, the northeast corner of said Lot 1, the northwest corner of the aforementioned 3-foot dedication to right-of-way;

THENCE: S 02°57'25"E, along and with the west right-of-way line of said Babcock Road, the east line of said Lot 1 a distance of 1112.19 feet to the POINT OF BEGINNING and containing 34.92 acres in the City of San Antonio, Bexar County, Texas.

SAVING AND EXCEPTING FROM THE FOREGOING:

That 3.132 acres of land more or less as described in Warranty Deed from UTSA Apartments, LLC, et al to County of Bexar, dated December 6, 2011, filed for record on December 19, 2011 and recorded in/under Volume 15272, Page 1153 of the Real Property Records of Bexar County, Texas.

EXHIBIT B**The Sellers**

Name of Seller	Owner of Seller	Owner's Address	TIC %
UTSA Apartments 1, LLC	Charles R. Betz	4334 Mammoth Ave. No. 10 Sherman Oaks, CA 91523	2.18%
UTSA Apartments 2, LLC	David R. Fandel, Trustee	1200 N. Harbor Dr. No. 17B Oceanside, CA	1.79
UTSA Apartments 3, LLC	Curtis C. Jacobson, Trustee Martha L. Jacobson, Trustee	930 Skagen Drive, Solvang, DA 93463	3.58
UTSA Apartments 4, LLC	John T. Shanta, Trustee, Shanta, Janet Marie, Shanta	1853 Lemon Grove Street, Henderson, Nevada 89052	2.47
UTSA Apartments 5, LLC	Daniel C. Booye	1663 Keleka, Koloa, HI 96756	5.01
UTSA Apartments 6, LLC	Lynette L. Booye	1663 Keleka, Koloa, HI 96756	5.01
UTSA Apartments 7, LLC	Stephanie Prince, Estate of Lucinda Saad	10434 Province Drive, Orlando, Florida 32836	2.86
UTSA Apartments 8, LLC	C. Richard Yonge, Vice Pres., Loftwood Village Calusa, Inc.	8515 SE 72ND Ave., Ocala, FL 34472	5.75
UTSA Apartments 9, LLC	Ian H. Linton, Trustee, Jane W. Linton, Linton Revocable Trust	19204 N. Cathedral Point Court, Surprise, AZ 85387	4.44
UTSA Apartments 11, LLC	Vincent E. Modzeleski, Trustee, Modzeleski Trust	1618 James Drive, Carlsbad, CA 92008	2.86
UTSA Apartments 12, LLC	John H. Coogan, Trustee, Joan S. Coogan, Coogan Family Trust	3814 Channel Place, Newport Beach, CA 92663	2.87
UTSA Apartments 13, LLC	Krishna N. Patel, Trustee, 1996 Patel Family Revocable Trust	440 Campana Pl, Arroyo Grande, CA 93420	3.00
UTSA Apartments 14, LLC	Dean del Prete, 114 Parkway Drive Associates	3080 Route 112, Medford, NY 11763	2.34

UTSA Apartments 15, LLC	Isaac Kliger & Judith Kliger	3530 Mystic Point Drive, Aventura, Florida 33180 SUMMER ADDRESS 227 East Emerson Road, Lexington, MA 02420	2.86
UTSA Apartments 16, LLC	Lance Moore	3 Doone Dr., Syosset, NY 11791	2.67
UTSA Apartments 18, LLC	William Dale Lewis, Margaret Lewis	Steet address: 145 Longwoods Rd, Falmouth, ME 04105. Mailing address: 190 US Route 1 #168, Falmouth, Me 04105	2.35
UTSA Apartments 19, LLC	Addiego Living Trust, Leslie Mogensen, Trustee	10109 Janetta Way, Sunland, CA 91040	2.34
UTSA Apartments 21, LLC	Virgil Dale Bland, Sr., Trustee, Bland Trust, c/o Attorney Larry Scaringelli, 15849 N. 71st Street, Suite 100, Scottsdale, Arizona 85254 480-779-8404	2824 North Power Road, Mesa, AZ 85218	2.17
UTSA Apartments 23, LLC	John Hoping Lin, Trustee, Sharon Hsein-Tseng Lin, Lin Family Trust	1602 Peacock Ave, Sunnyvale, CA 94087	4.76
UTSA Apartments 24, LLC	Joseph Howard	343 Paseo Pacifica, Encinitas, CA 92024	2.19
UTSA Apartments 24, LLC	Karen Howard	12640 Torrey Bluff Drive Apt #2, San Diego, CA 92130	2.19
UTSA Apartments 25, LLC	Betty P. Tang	9036 Mustang Road, Rancho Cucamonga, CA 91701	1.50
UTSA Apartments 26, LLC	William J. Cooper	8 Heatherwood Drive, Shrewsbury Maine 01545	1.86
UTSA Apartments 27, LLC	Kerry Mistretta	840 Flora Vista Dr., Santa Barbara, CA 93109	4.41
UTSA Apartments 28, LLC	Jane E. Hagan	315 SE Rogue View Ln Grants Pass OR 97526	2.01

UTSA Apartments 29, LLC	John Shaw	1005 E. Las Tunas Dr. #116, San Gabriel, CA91776	1.34
UTSA Apartments 30, LLC	Benjamin Poston, Trustee Myrhen and Chellie Mae Poston Amended & Restated Revocable Living Trust of December 1, 2008	8521 Hatham Park Avenue Raleigh, N.C. 27616	1.33
UTSA Apartments 31, LLC	Dickson Shafter, Lois M. Shafter, Deceased. Trustee is Jeff Shafter.	232 Evening Canyon Road, Corona Del Mar, CA	3.94
UTSA Apartments 34, LLC	Michael Harder	110 N. Kenosha Dr. Madison, WI 53705	1.34

EXHIBIT C

Materials to be Provided by Sellers, to the Extent in Sellers' Agent's Possession and Control and not Previously Delivered to Buyer

(a) A current certified (signed by Seller) rent roll for the Property showing the tenant, leased premises, unit type (i.e., one bedroom, one bath), the lease commencement and expiration dates, current monthly rent, any security deposit and interest due thereon, the latest monthly collections, vacancy, delinquency and disbursement statements with respect to each rented bed at the Real Property, and including concessions, in place rents and market rents.

(b) All written contracts and agreements relating to the management, operation, servicing, maintenance, repairs, and capital replacements of the Real Property.

(e) Seller's Abstract of Title and the most current owner's title insurance policy for the Real Property together with copies of all reported title exceptions reflected thereon which are in Seller's possession.

(c) All certificates of occupancy, documentation, if applicable, confirming that the Property is a legal non-conforming use (if applicable), use permits, business licenses, and all other licenses and permits issued with respect to the Real Property or any portion thereof.

(d) Any and all written notices from governmental authorities, insurance underwriters or other parties with respect to any unsafe, hazardous and/or illegal conditions of the Real Property, including housing violations, (collectively, "Violation Notices") received during the past twelve (12) months with a statement of the status of any Violation Notices which are currently outstanding and have not been corrected by Seller.

(e) Any existing surveys (including an "as built" survey), plats, building plans, and tests relating to the Real Property and the Land, and all environmental, engineering, architectural, mechanical, electrical, structural, zoning, access, appraisal and similar plans, specifications, studies, reports and documents with respect to the Real Property and the Land (collectively, the "Development Documents") that are in Seller's possession and control, including those relating to the physical conditions and operations of the Real Property and the Land or any recommended improvements, including, but not limited to, termite inspection reports, toxic substance reports (asbestos, lead paint, lead in water, storage tanks, radon tests, mold, etc.).

(f) If available, financial statements, annual income and expense statements (if available), Income and expense statements for years 2013, 2014, 2015 and 2016 to date, to be updated and delivered to Buyer no later than the 5th day of each month following the Delivery Date through Closing, but in the event Closing occurs prior to the 5th of any month or any report for any prior month has not been delivered timely, then in no event later than two (2) days prior to the actual Closing Date. Annual statements of all Capital Improvements, Operating Expenses

(set forth on a monthly basis) and/or Replacement Reserve Expenditures for calendar years 2013, 2014, 2015 and 2016 to date, all subject to the delivery dates described in the preceding sentence.

(g) A list of all of the employment positions of the Seller's Property Manager employed in the operation of the Property, together with wages or salaries agreed to and actually paid to them, and all other compensation, benefits and vacation arrangements.

(h) Copies of the most recent real property tax bill, tax assessments and appeals for the Property and the tax bills, tax assessments and appeals for the previous three (3) real estate tax years.

(i) Insurance loss history/runs from the insurance company for the previous three (3) years, if available and copies of all existing insurance policies covering the Property and reasonable evidence of same including certificates of such insurance;

(j) Copies of information received by Seller from any agency of the State, County, or the City applicable regarding proposed or implemented changes or requirements regarding the codes, regulations, ordinances, or private restriction applicable to the Real Property and the Land including, without limitation, with respect to the use and operation thereof.

(k) Copies of all maintenance and repair records, including records both for maintenance and repairs requested by tenants and maintenance and repairs actually performed.

(l) A list of Personal Property including description, quantity and location.

(m) All utility bills for the last twelve (12) months.

(n) A schedule of all pending judicial or administrative actions, proceedings, or litigation pending with respect to adjacent property owners or other persons other than landlord-tenant relations, collection, or eviction actions involving former tenants or former tenant guarantors in the ordinary course of business, but including all pending judicial or administrative actions, proceedings, or litigation pending with respect to existing tenants or tenant guarantors in the ordinary course of business.

(p) To the extent not set forth above, all lease/traffic tracking reports, environmental audits, engineering inspections, property condition reports, appraisals, vendor/service contracts and invoices, and inventories.

(q) Copies of the Asset Agreements, with all schedules and exhibits attached thereto.

[List to be updated]

**EXHIBIT D
SPECIAL WARRANTY DEED**

EXHIBIT E
Form of Bill of Sale

BILL OF SALE AND ASSIGNMENT

The parties listed on Exhibit A hereto (collectively the "Assignor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Assignor in hand paid by _____, a _____, whose address is _____ (the "Buyer"), the receipt and sufficiency of which consideration are hereby acknowledged, has ASSIGNED, SOLD, CONVEYED, AND DELIVERED, and by these presents does hereby ASSIGN, SELL, CONVEY, AND DELIVER unto Buyer all of Assignor's right, title and interest in and to the following, "AS-IS, WHERE-IS" (collectively called the "Subject Property"):

1. All fixtures, light fixtures, HVAC equipment, furnaces, machinery, mail boxes, piping, connections, conduits, ducts, partitions, equipment, and apparatuses of every kind and description now affixed or attached to the real property described on Exhibit B hereto (the "Real Property"), or the improvements located on the Real Property (the "Improvements"), to the extent owned by Assignor and used in connection with the Real Property or Improvements (collectively, the "Personal Property").

2. Any and all leases by and between Assignor and any tenants (collectively, the "Tenant") covering the Real Property (collectively, the "Tenant Lease"), and all security deposits, if any, held in connection with the Tenant Lease.

3. To the extent assignable, and agreed to be assumed by Buyer, all existing leases, service contracts, contracts, warranties, and guaranties relating to the Real Property, the Improvements, or the Personal Property.

4. The intangible personal property (the "Intangible Personal Property") pertaining to the Real Property, the Improvements, or the Personal Property, including, without limitation, all transferable utility contracts, building permits, zoning classifications, site plans, surveys, minor subdivision plats, architectural renderings, plans and specifications, floor plans, landscape plans, and other plans, diagrams, or studies of any kind, if any, in Assignor's possession, that relate to the same or any part of same;

5. Any and all keys to the Improvements;

6. All claims and causes of action of Assignor against anyone with respect to the Real Property, the Improvements, or the Personal Property, including without limitation, all proceeds or rights to proceeds in any threatened or pending condemnation, or proceedings in lieu thereof, relating to the same or any part of same, except for any claims or causes of action related to any former tenant or delinquent tenant of the Property or under any agreements which are not assumed by Assignee as of the date hereof;

7. All other rights, privileges and appurtenances owned by Assignor and related to the Subject Property.

As of the date hereof, Assignor hereby represents and warrants that it has good, marketable title to the Subject Property, free and clear of liens and encumbrances.

By Buyer's acceptance hereof, Buyer hereby ASSUMES, PURCHASES, AND RECEIVES all of Seller's rights, title and interests in and to the Subject Property and agrees to be bound by all of the obligations of Assignor under the Tenant Lease relating to periods from and after the date of this Agreement.

A. Indemnification.

1. Buyer hereby agrees to indemnify and hold Assignor harmless from any and all costs, liabilities, damages, or expenses, including without limitation, reasonable attorneys' fees and costs, originating from and related to any actions or inaction of Buyer, its officers, employees, or agents, arising or occurring after the date of this Bill of Sale and Assignment.

2. Assignor hereby agrees to indemnify and hold Buyer harmless from any and all costs, liabilities, damages, or expenses, including without limitation, reasonable attorneys' fees and costs, originating from and related to any actions or inaction of Assignor, its officers, employees or agents, arising or occurring prior and up to the date of this Bill of Sale and Assignment.

EXHIBIT F
Form of Assignment and Assumption

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES ("Assignment") is made as of _____, 2016 (the "Effective Date"), by the parties on Exhibit A hereto (collectively, the "Assignor"), to _____, a _____ ("Assignee").

1. Recitals.

1.1 Assignor is the owner of certain real property and improvements (the "**Property**"), commonly known as _____, and more particularly described on Exhibit B attached hereto and incorporated herein by this reference.

1.2 Concurrently with the execution of this Assignment, Assignor is conveying the Property to Assignee pursuant to the terms of that certain Agreement of Purchase and Sale dated as of _____, 2016 (the "Purchase Agreement"), by and between Assignor and Assignee.

1.3 The Property is subject to the leases described on Exhibit C attached hereto and incorporated herein by this referenced (collectively, the "Leases").

1.4 The Purchase Agreement contemplates that Assignor will assign to Assignee all of Assignor's right, title and interest in and to the Leases, security and other deposits (the "Tenant Deposits") and that Assignee will assume all of Assignor's obligations, if any, in connection with the Leases and the Tenant Deposits arising after the Closing (as defined in the Purchase Agreement); provided however, Assignor reserves the right to pursue any delinquent rental payments due and owing to Assignor, but may not commence litigation to collect such Delinquent Rent against a tenant until said tenant is no longer a tenant on the Property.

1.5 Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows.

2. Assignment of Leases and Tenant Deposits. Assignor hereby assigns and transfers to Assignee, effective as of the Effective Date, all of Assignor's right, title and interest in and to the Leases and the Tenant Deposits. Each Assignor, individually, represents and warrants that to the best of its knowledge and belief, there are no Tenant Deposits except as set forth on Schedule "2" attached hereto. Assignee hereby acknowledges, however, its receipt this day of a credit under the Purchase Agreement in satisfaction of Assignor's obligation to assign and transfer the Tenant Deposits under this Assignment.

3. Assumption. Assignee hereby accepts the foregoing assignment, and hereby agrees to perform all obligations of the landlord under the Leases arising after the Effective Date, including, without limitation, all Tenant Deposits which are transferred to Assignee upon the Closing.

4. **Indemnity.**

4.1 Assignee shall indemnify, defend, protect and hold harmless Assignor from and against any and all loss, cost, damage, liability and expense (including without limitation reasonable attorneys' fees and costs) in connection with or relating to the Leases and the Tenant Deposits which are transferred to Assignee upon the Closing (and not caused by the negligence or willful misconduct of Assignor) which relate to acts, omissions or events occurring after the Effective Date.

4.2 Assignor shall indemnify, defend, protect and hold harmless Assignee from and against any loss, cost, damage, liability and expense (including without limitation reasonable attorneys' fees and costs) in connection with or relating to the Leases and Tenant Deposits (and not caused by the negligence or willful misconduct of Assignee) which relate to acts, omissions or events occurring prior to and including the Effective Date.

4.3 In the event either party ("Indemnitor") shall become obligated to the other ("Indemnitee") pursuant to this Section 4, the Indemnitor shall undertake to defend, contest or otherwise protect against any such claim, demand, action, suit or proceeding at its sole cost and expense. In the event the Indemnitor fails after twenty (20) days' notice to timely defend, contest or otherwise protect against such claim, demand, action, suit or proceeding, the Indemnitee shall have the right to do so, including the right to make any reasonable compromise or settlement thereof, and to recover from the Indemnitor the amount of any such settlement along with reasonable attorneys' fees, disbursements and other amounts paid as a result of such claim, demand, suit, action or proceeding.

5. **General Provisions.**

5.1 **Notices.** Any notice, demand, document or other communication which any party is required or may desire to give, deliver or make to any other party shall be in writing, and may be personally delivered or given or made by United States registered or certified mail, return receipt requested, by overnight delivery service (e.g., Federal Express or other similar service), or by fax transmission with printed confirmation of receipt, addressed as follows:

If to Assignor: _____

Attn: _____
Fax No.: () ____ - ____

With a copy to: _____

Attn: _____
Fax No.: () ____ - ____

If to Assignee: _____

Attn: _____
Fax No.: () ____ - ____

With a copy to: _____

Attn: _____
Fax No.: () ____ - ____

Any party may designate a different address for itself by notice similarly given. Any notice, demand or document so given, delivered or made shall be deemed to be given, delivered or made upon actual receipt, or refusal to accept delivery, of the same by the party to whom the same is to be given or delivered.

5.2 Interpretation; Severability. The unenforceability or invalidity of any provision of this Assignment shall not be deemed to affect the enforceability or validity of any provision of this Assignment. It is hereby acknowledged that each party hereto has contributed materially to the preparation of this Assignment; accordingly, this Assignment shall not be construed more strictly against one party merely by virtue of the fact that counsel for such party may have prepared this Assignment.

5.3 Binding Effect and Authority. The signatory to this Assignment on behalf of each party hereby each represents and warrants that he has full right and authority to bind the respective parties hereto. This Assignment is binding on the parties hereto and their respective successors and permitted assigns.

5.4 Governing Law. This Assignment shall be construed and enforced in accordance with the laws of the State of _____ and each party hereto by execution of this Assignment consents to the exercise of jurisdiction over any matter arising in connection with this Assignment in a court of competent jurisdiction covering _____ County, _____.

5.5 Attorneys' Fees. In the event of any action, suit or proceeding between the parties with respect to this Assignment or the performance of any obligations under this Assignment, the prevailing party shall be entitled to receive from the non-prevailing party all costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorneys' fees.

5.6 Further Assurances. Each party will, whenever and as often as it shall be reasonably requested so to do by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be necessary, expedient or property to complete the assignment and assumption herein provided.

5.7 No Third Party Beneficiaries. This Assignment is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Assignment.

5.8 Capitalized or Quoted Terms. Unless otherwise defined, all capitalized or quoted terms used herein shall have the meanings set forth for such capitalized or quoted terms in the Purchase Agreement.

5.9 Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of each party or that the signatures of the persons required to bind any party, appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. Counterpart signature pages exchanged by facsimile or via e-mail in .pdf, .jpg, or other readily readable format may be used as if they were original signature pages.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

EXHIBIT G

Seller's Certificate

In consideration of purchase by VESPER ACQUISITION LLC ("Buyer") of that certain real property known as The Reserve and the Property as defined in the Purchase and Sale Agreement between Buyer and Seller dated _____, 2016, of which the undersigned is an owner, the undersigned individually, makes the following representations and warranties, each of which being true and correct in all material respects as of the date hereof. The undersigned and all other owners of the Property are collectively referred to as "Sellers."

The terms "to the best of Seller's knowledge," "Seller's knowledge," and other similar phrases shall mean the actual knowledge of the undersigned Seller without any duty of inquiry or investigation and does not include constructive knowledge, imputed knowledge, or knowledge such Seller does not have but could have obtained through further investigation or inquiry. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Purchase and Sale Agreement dated on or about _____, 2016 by and between the Seller and Vesper Acquisition LLC, a Delaware limited liability company.

1. The undersigned Seller is a validly existing _____ limited liability company qualified to transact business in the state in which the Property is located and possesses all requisite power and authority to own and operate the Property and to carry on Sellers' business. The undersigned Seller and the persons executing this Agreement and the Deed and other closing documents on behalf of such Seller have the full right, power and authority to execute such documents, to sell and convey the Property to Buyer and to otherwise perform its obligations hereunder without the consent of any other person, entity, or governmental authority. The execution and delivery of the Deed and the other documents delivered by the undersigned Seller at Closing have been duly and validly authorized by such Seller, and such authorizations remain in full force and effect. To the best of the undersigned Seller's knowledge, the sale of the Property and delivery of the Deed and other documents delivered by such Seller at Closing does not violate any law, ordinance, judgment, decree or order to which the Property is subject or which affects the Property.

2. To the best of the undersigned Seller's knowledge, There are no leases, tenancies, licenses or other rights of occupancy or for any portion of the Property or, to the knowledge of Sellers, any assignments or sublets thereunder (collectively, the "Leases") in effect on the Effective Date other than those listed on the rent roll to be provided to Buyer pursuant to Section 4.4 ("Rent Roll"). To the best of Seller's knowledge, no tenant under any of the Leases is entitled to any rebate, free rent or other concessions, deduction or offset except as set forth the Rent Roll, and there will be no reduction in monthly rental due under any of the Leases except as set forth therein. To the best of Seller's knowledge, no tenant has paid any rent, additional rent or other charge of any nature for a period of more than one (1) month in advance except as set forth in the Rent Roll. To the best of Seller's knowledge, neither Sellers nor any tenant are in default currently under any of the Leases, except as set forth in the Rent Roll. To the best of Seller's knowledge, the information set

forth on the Rent Roll is, and the information on the updated Rent Roll to be delivered at the Closing shall be, accurate in all material respects as of the date set forth thereon. To the best of Seller's knowledge, the rents listed on the Rent Roll are the rents actually collected and, except as set forth on the arrearages report provided to Buyer on the Delivery Date (as the same shall be updated with the Rent Roll) there are no rents thereon which are more than thirty (30) days past due. To the best of Seller's knowledge, except as disclosed by Sellers, there is no outstanding and uncured claim of default made under any of the Leases prior to the date hereof on the part of any party thereto. To the best of Seller's knowledge, unless otherwise specified on the Rent Roll or otherwise disclosed by Sellers: (i) the term of each of the Leases has commenced and each tenant thereunder is occupying the space demised to it and has commenced the payment of rent, (ii) there are no brokerage commissions due in connection with any of the Leases and no brokerage commissions, tenant allowances or abatements will be due after Closing in connection with any of the Leases, (iii) from and after the Closing Date, no tenant, licensee or occupant under any of the Leases is entitled to any concessions, rent-free occupancy, allowances, rebates or refunds, or has prepaid any rents or other charges for more than the current month, (iv) there are no applications, orders, protests or complaints with reference to rents, services or equipment, pending with any rental authority or court, (v) no tenant has been given any concession or consideration for the rental of any space, which would be due from and after the Closing Date (vi) no utilities are included in any rent; (vii) none of the apartments are rented for professional purposes, (viii) each tenant pays for its own gas and electricity. All work required to be performed by the landlord under the Leases up to the date of Closing has been done or will be performed prior to the Closing.

3. To the best of the undersigned Seller's knowledge, the Property is in material compliance with all applicable laws, orders, ordinances and regulations. The undersigned Seller has received no written notice of any violations from any governmental authority. The undersigned Seller has not received any written notice from any insurance company, Board of Fire Underwriters or similar entity of any violations or requiring or requesting that any work or alterations be made to the Property.

4. To the best of the undersigned Seller's knowledge, no taking by power of eminent domain or condemnation proceeding has been instituted or threatened for the permanent or temporary taking or condemnation (or private purchase in lieu thereof) of all or any portion of the Property.

5. To the best of the undersigned Seller's knowledge, there are no pending or threatened, actions, suits, complaints, protests, judgments, claims, litigation, proceedings or investigations relating to the Property, Sellers' title thereto or Sellers' right to sell the Property, except for the Bankruptcy (as the term is defined in the Agreement). To the best of the undersigned Seller's knowledge, there are no legal actions pending between the Sellers, contractors, sub-contractors and/or any of its tenants or occupants pertaining to rents or otherwise relating to the construction, renovation, or repair of the Property and/or relationship of landlord and tenant created by any of the Leases, except for eviction, collections, and other actions with tenants or former tenants or tenant guarantors in the

ordinary course of business, unless any such action has been joined with, and will be resolved by, the Bankruptcy.

6. For the purposes hereof, the term "Hazardous Substances" shall mean substances defined as hazardous or toxic substances under Federal, state, or local environmental laws or regulations to which the Property is subject (collectively, "Environmental Laws"). To the best of the undersigned Seller's knowledge, there is no asbestos, radon, PCB's, fluorocarbons, or other Hazardous Substances on, in, under or about the Property. To the best of the undersigned Seller's knowledge, Seller has not used, generated, stored, transported, manufactured, treated, released or disposed of any Hazardous Substances on, in, under, or about the Property. To the best of the undersigned Seller's knowledge, there are not presently, and to the best of the undersigned Seller's knowledge, have never been any storage tanks on or under the Property. The undersigned Seller has no actual knowledge that the Property is in violation, or ever has been in violation, of any Environmental Laws. The undersigned Seller has not received any notice or other communication, written or oral, from any governmental authority, alleging that the Property is in violation of any Environmental Laws, and to the best of such Seller's knowledge, the Property is not currently under investigation by any such agency. Notwithstanding the foregoing, the preceding language does not apply to the presence, use, storage, manufacture, release or disposal of small quantities of Hazardous Substances that are generally recognized to be appropriate as normal and customary uses related to residential properties in general and the Property in particular and not in excess of any applicable legal limits provided for by the Environmental Laws.

7. To the undersigned Seller's knowledge, all means of access to the Property (i) to the best of the undersigned Seller's knowledge, are permanent and no special access or other permits from the applicable governmental authorities are required that have not been obtained, and (ii) are obtained from any public streets, sidewalks, alleys or other public space without the need for easements, rights-of-way, or licenses, or across lands or premises not included within the Property.

8. Except as disclosed to Buyer, the undersigned Seller has received no notice and has no knowledge of any pending improvements, liens or special assessments to be made against the Property by any governmental authority.

9. To the best of Seller's knowledge, no third party has an option to purchase all or any portion of the Property other than the Asset Agreements.

10. To the best of the undersigned Seller's knowledge, the undersigned Seller has not received any written notice from any governmental or quasi-governmental authority having jurisdiction over the Property that the Property (or any part thereof) is in violation of or constitutes a nonconforming use under, any law, ordinance, rule, order, regulation or requirement affecting the Property or any part thereof, including, without limitation, those pertaining to zoning, building or environmental matters (collectively, "Violations"). The undersigned Seller has no knowledge of any pending or threatened proceedings to modify the Property's zoning classifications. Prior to the Closing, Seller,

at Seller's expense, shall cure and correct any Violations (including any Violations which arise after the date hereof but before the Closing) and shall pay all fines and penalties in connection therewith.

11. To the best of the undersigned Seller's knowledge, all fixtures and articles of personal property included in this sale are now and at the closing of title were, partially owned by the Seller, free and clear of any conditional bills of sale, chattel mortgages, security agreements or financing statements or other security interests of any kind.

12. To the best of the undersigned Seller's knowledge, the undersigned Seller has obtained all approvals, permits and authorizations from all governmental authorities necessary for the lawful construction, use and operation of the Property; all such approvals, permits and authorizations are in full force and effect.

The parties agree that the foregoing representations shall survive the Closing for only twelve (12) months (the "Survival Period). During the Survival Period, Buyer shall have the right to recover from Seller any third-party costs or fees actually incurred as a consequence of any material misrepresentation in this Certification.

a

By: _____

Name:

Title:

EXHIBIT H

Sellers' Work

Description of Work	Estimated Cost
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$
6.	\$