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7 UNITED STATES BANKRUPTCY COURT
 8 EASTERN DISTRICT OF CALIFORNIA

12 In re
 13 UNITED CHARTER, LLC
 14 Debtor

CHAPTER 11
 Case No. 17-22347
 DC No. JJG-2

**MOTION OF DEBTOR IN POSSESSION
 FOR ORDER APPROVING
 EMPLOYMENT OF AUCTIONEER AND
 SALE OF REAL PROPERTY BY
 AUCTION**

DATE: August 31, 2017
 TIME: 10:30 a.m.
 COURTROOM: 33
 Honorable Ronald H. Sargis
 501 "I" Street, Sixth Floor
 Sacramento, CA

23 United Charter LLC, debtor and debtor in possession herein ("Debtor"), by and through its
 24 counsel of record, moves pursuant to 11 U.S.C. §363(b), (c) and (f) to sell all of its interest in real
 25 property by auction free and clear of liens on condition that all of the claims secured by such liens
 26 are paid in full from net sale proceeds ("Motion"). In addition, the Motion seeks approval of the
 27 employment of Ten-X LLC ("Ten-X") as auctioneer and of the sale procedures that Ten-X proposes
 28

1 to use in said auction. A separate application for approval of a Listing Broker, Mark Bello, will be
2 submitted ex parte prior to the hearing on this Motion.

3 In support of its Motion, the Debtor represents and alleges:

4 1. On April 7, 2017, Debtor filed a petition with this court for relief under the
5 Bankruptcy Code. Since the Petition Date, pursuant to Sections 1107 and 1108 of the Bankruptcy
6 Code, Debtor has retained possession of its assets and continued to operate and manage its business
7 as Debtor.

8 2. Among the assets of this estate is a fee simple interest in a 177,692 sq. ft. industrial
9 complex consisting of eighteen (18) contiguous parcels totaling 15.34 acres, located in Stockton,
10 California, and more particularly described as follows: 1904, 1908, 1912, 1916, 1920, 1928, and
11 1936 Weber Avenue; 1881 E. Market Street; 1617, 1555, 1531, and 1523 E. Main Street
12 (collectively, the "Subject Property").

13 3. The Debtor has scheduled the value of the Subject Property as approximately \$7.855
14 million. The Debtor's schedules identify total secured and unsecured claims against the estate of
15 less than \$5 million. As of August 3, 2017, the last day for filing proofs of claim in this case, the
16 total amount of all claims scheduled by the Debtor, including the higher amounts of all timely filed
17 proofs of claim, was less than \$5.3 million.

18 4. The Debtor desires to sell the Subject Property using an auction process. The Debtor
19 has solicited auction proposals from a number of real estate brokers and companies and believes that
20 Ten-X LLC is well qualified to market the Subject Property and conduct such an auction. As set
21 forth in the accompanying Declaration of Jimmie Russell, Based on information and belief, Ten-X
22 holds real estate brokerage licenses nationwide and operates and manages one of the leading online
23 real estate auction platforms in the country. Ten-X has over 1,000 employees and is headquartered in
24 Irvine, California, with offices in San Mateo, California, Austin and Plano, Texas, Miami, New
25 York, Atlanta, and Colorado. Ten-X combines innovative technology together with deep real estate
26 expertise to create a proven platform which allows parties to confidently buy and sell real estate
27 completely online. The Ten-X platform attracts buyers from around the world, and during 2016
28 yielded 21.3 million visitors and 141 million page views across more than one 137,000 listed

1 properties. During 2016 alone, the number of Ten-X accounts held by investors, consumers and
2 industry professionals grew by approximately 670,000. Declaration of Jimmie Russell in Support of
3 Motion for Order Approving Employment of Auctioneer and Sale of Real Property By Auction
4 (“Russell Dec”), ¶6.

5 5. The Debtor is informed and believes, and based thereon alleges, that Ten-X has been
6 approved as an auctioneer of real property in a number of Bankruptcy Courts around the country,
7 including the Middle District of Florida (In re Tracy, Case No. 6:15-bk-03736 (Doc. No. 27)); In re
8 Anderson, Case No. 8:14-bk-07378 (Doc. No. 29)); the Western District of North Carolina (In re
9 Badiak, Case No. 14-31252 (Doc. No. 18)); Middle District of Pennsylvania (In re Statuti, Case No.
10 15-00946) (Doc. No. 53))¹; Eastern District of Tennessee (In re D&E General Partnership, Case No.
11 3:16-bk-31625 (Doc. No. 111)); Northern District of Illinois (In Re: Pittsfield Development, LLC,
12 Case No. 19-9513 (Doc. No. 85)); Southern District of Florida (In re The Inverrary Resort Hotel
13 Condominium Association, Inc. et al.; Case No. 16-17792-JKO (Doc No. 296))²; and the (Wisconsin
14 state court) Fond du Lac County Circuit County Court (First-Citizens Bank & Trust v. North Main
15 Hospitality, et al.). Moreover, at least one federal district court has approved the retention of Ten-X
16 in a federal receivership case, Pennant Management, Inc. v. First Farmers Financial, LLC., Case No.
17 14-cv-7581 (E. D. Ill.) (Doc. Nos. 166 and 456). Russell Dec, ¶8.

18 6. Ten-X has reviewed the Debtor's list of creditors and conducted a conflicts check
19 through an examination of its business records. Id., ¶3. To the best of its knowledge, information
20 and belief, no one at the firm has any connections with, or any interest adverse to, this bankruptcy
21 estate, the debtor, its counsel, creditors, any other party in interest, their respective attorneys and
22 accountants, the United States Trustee or any person employed in the Office of the United States
23 Trustee. Id. Other than five potential connections the details of which are disclosed in the Russell
24 Declaration, Ten-X is unaware of any such relationship or connection with this bankruptcy estate,
25 the debtor, its counsel, creditors, any other party in interest, their respective attorneys or accounts,
26

27 _____
28 ¹ Each of the preceding bankruptcy cases are Chapter 7 cases.

² Each of the preceding bankruptcy cases are Chapter 11 cases.

1 the United States Trustee, or any person employed in the Office of the United States Trustee. Ten-X
2 represents that it believes it can represent the estate as auctioneer without conflict. *Id.* At ¶4.

3 7. Attached hereto as Exhibit “A” is a true and correct copy of the engagement
4 agreement between United Charter, LLC, debtor in possession, and Ten-X which is the subject of the
5 within Motion. *Id.*, at ¶9. Included in Exhibit “A” is a Disclosure Regarding Real Estate Agency
6 Relationship signed by one of Ten-X’s brokers, Vibhav Kapila. *Id.* As disclosed therein, Ten-X has
7 agreed to represent only the debtor in possession, United Charter LLC, as its broker in any sale
8 arising from the proposed auction. Also included in Exhibit “A” is a true and correct copy of the
9 auction Participation Terms which apply to all Ten-X conducted auctions, including any auction of
10 the assets of United Charter, LLC’s bankruptcy estate.

11 8. The substantive terms of the Ten-X Marketing Agreement, including the Participation
12 Terms (“Agreement”), are as follows:

13 a. Although the Agreement contemplates up to a 150 day marketing period followed by
14 a “live bid” auction using the Ten-X auction platform, based upon the interest in the Subject
15 Property received to date, the auction is presently scheduled to commence on September 11 and run
16 through September 13, 2017. The actual date will depend upon circumstances and the advice of the
17 Debtor’s counsel and broker.

18 b. The Starting Bid is presently \$2,500,000. This is not a Reserve Price. The Debtor is
19 only obligated to accept the highest bid once a bid meets or exceeds the stated “Minimum Price” of
20 \$7,800,000. The Debtor may, in its sole and absolute discretion, accept a lower price, subject to
21 approval of the Bankruptcy Court, so long as that price is sufficient to pay the monetary demands of
22 all creditors in full, including all costs of sale and administrative claims against the estate.

23 c. Any successful bidder will be required to submit its offer on Ten-X’s standard
24 Purchase and Sale Agreement (“PSA”), a copy of which is attached hereto as Exhibit “B”.

25 d. Escrow shall close within 30 days of execution of the PSA (or 60 days if buyer
26 finances the purchase).

1 e. Ten-X to receive a Transaction Fee at closing in the amount of 5% of the successful
2 bidder's offer if the offer was facilitated by Ten-X, with such Transaction Fee obligation continuing
3 for 150 days following the end of the Marketing Period.

4 f. Buyer's broker to receive 1% of the buyer's offer price (exclusive of any Transaction
5 Fee) from the Listing Broker, Mark Bello ("Bello"). Debtor is negotiating the terms of Bello's
6 employment and anticipates that prior to the hearing on the Motion, the Debtor will be submitting a
7 separate Application to employ Bello as the Listing Broker, subject to the terms of the Ten-X
8 agreements submitted herewith.

9 g. Ten-X is obligated to pay a buyer's broker commission of 1% to any broker
10 representing a successful bidder.

11 9. The Debtor requests that the Court approve the employment of Ten-X LLC on the
12 terms and conditions set forth in Exhibit "A" hereto for an online live auction process and that the
13 Court approve the terms of sale described in Exhibit "B" hereto to any successful bidder whose offer
14 matches or exceeds the Minimum Price of \$7,800,000. In the event that the Debtor lowers its
15 reserve price during the auction and accepts a bid lower than the Minimum Price, the Debtor
16 requests that the Court schedule a prompt hearing to approve such a sale on shortened time following
17 acceptance of such a bid. As part of its request, the Debtor asks that the Court waive the fourteen
18 (14) day stay requirement of Fed. Rule of Bankr. Proc. 6004(h) so that any such sale may proceed
19 without delay.

20 DATED: August 17, 2017

GOODRICH & ASSOCIATES

21 /s/Jeffrey Goodrich
22 Jeffrey Goodrich
23 Attorneys for United Charter LLC
24 Debtor in Possession
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EXHIBIT A

TEN-X MARKETING AGREEMENT



This Ten-X Marketing Agreement ("Agreement") is between Seller and Ten-X, together with its subsidiaries ("Ten-X"), and is effective as of _____ ("Effective Date"). Seller is engaging Ten-X to advertise, market and promote the sale of the Property and Ten-X will include the Property in one or more marketing events (each, an "Event") through Ten-X's website during the Marketing Period. This Agreement is subject to the Ten-X Marketing Agreement Standard Terms located at <http://www.ten-x.com/company/legal/bxmast02102017/> ("Standard Terms").

SELLER AND PROPERTY INFORMATION	
Seller (legal entity or individual, as applicable)	United Charter, LLC
Site Contact	Name: Raymond Zhang or Mark Bello Phone: (415) 269-6033 & (408) 455-3274 Email: raymond03032014@gmail.com
Property	Address: 1881 E Market St, Stockton, CA, 95205
Marketing Period	The 150 day period beginning on the Effective Date
Tail Period	The 150 day period beginning the day after the last day of the Marketing Period
Minimum Price	\$7,800,000 (Seller's obligation to accept the highest offer at or above the Minimum Price applies to Live Bid and Managed Bid Events only)

FEES	
Transaction Fee	5% of the buyer's offer price paid at closing, but in no event less than \$40,000.00 (For any sale facilitated by Ten-X, the Transaction Fee will be added to the buyer's offer price to establish the total purchase price payable by the buyer)
Withdrawal Fee	5% of the Minimum Price, but in no event less than \$40,000.00
Buyer Broker Commission	1.0% of the buyer's offer price (exclusive of any Transaction Fee), paid at closing by: Listing Broker

TRANSACTION DETAILS	
Event Format	<input type="checkbox"/> Offer Select <input checked="" type="checkbox"/> Live Bid (to be held on date(s) mutually acceptable to Seller and Ten-X) <input type="checkbox"/> Managed Bid (to be held on date(s) mutually acceptable to Seller and Ten-X)
Listing Broker	The listing broker for the Property will be: Brokerage: Alliance Bay Realty Name: Mark Bello Phone: (408) 455-3274 Email: bello.mark@ymail.com
Escrow/Closing Agent	The escrow/closing agent for the Property will be: Company: Novare NSS, a division of Fidelity National Title Phone: (714) 352-4088 Email: novareescrow@novarens.com
Purchase Agreement	The purchase agreement to be used in the marketing of the Property through Ten-X's website will be: <input type="checkbox"/> Ten-X's Form PSA (Ten-X's standard form purchase agreement, available at http://mlhdocs.com/legal/CommercialPSA02102017.1.pdf , with Ten-X's applicable state-specific rider and other Ten-X standard form addenda selected by Seller) <input checked="" type="checkbox"/> Ten-X's Form PSA, together with Seller's addendum (must provide within 5 days after the start of the Property's Marketing Period) <input type="checkbox"/> Seller's own form purchase agreement (must provide within 5 days after the start of the Property's Marketing Period) For Offer Select Events Only: Ten-X's form Offer Select Addendum, available at http://mlhdocs.com/legal/OfferSelectAddendum.pdf , will be used in the marketing of the Property through Ten-X's Website. For Live Bid and Managed Bid Events Only: The following additional addendum will be included as part of the purchase agreement for buyers obtaining financing for the Property through Ten-X Finance: <input type="checkbox"/> Eligible Lender Financing Contingency Addendum (applicable only to lenders sourced by Ten-X Finance), available at http://mlhdocs.com/legal/EligibleLenderFinancingContingencyAddendum01252017.1.pdf <input checked="" type="checkbox"/> None

DUE DILIGENCE MATERIALS PROVIDED BY THIRD PARTIES	
Title Report	<input type="checkbox"/> Ten-X will order title report (or property report or abstract of title) from Novare NSS, a division of Fidelity National Title; Seller must reimburse Ten-X or the issuer of the report for the cost thereof only if Ten-X earns a Transaction Fee or Withdrawal Fee, or if Seller later selects a different title company for the transaction <input checked="" type="checkbox"/> Seller will provide title report at Seller's own cost (must not be more than 90 days old as of the start of the Marketing Period)
Phase I Environmental Site Assessment ("Phase I")	<input checked="" type="checkbox"/> Ten-X will order Phase I (or limited Phase I); Seller must reimburse Ten-X or issuer of the Phase I for the cost thereof only if Ten-X earns a Transaction Fee or Withdrawal Fee <input type="checkbox"/> Seller will provide Phase I at Seller's own cost (must be not more than 90 days old as of the start of the Marketing Period) <input type="checkbox"/> None
Property Condition Assessment ("PCA")	<input checked="" type="checkbox"/> Ten-X will order PCA; Seller must reimburse Ten-X or issuer of the PCA for the cost thereof only if Ten-X earns a Transaction Fee or Withdrawal Fee <input type="checkbox"/> Seller will provide PCA at Seller's own cost (must be not more than 90 days old as of the start of the Marketing Period) <input type="checkbox"/> None
Agency Disclosures	Seller acknowledges receipt of the agency disclosure located at http://mlhdocs.com/legal/agencydisclosures/Ten-X/California.pdf

ADDITIONAL TERMS	
Notwithstanding anything to the contrary in this Agreement:	
(A)	In addition to any Buyer's Broker Commission to be paid by Listing Broker, Ten-X shall additionally pay at closing and solely be responsible for a Buyer's Broker Commission equal to 1% of the buyer's offer price (exclusive of any Transaction Fee payable by the buyer). For the avoidance of any doubt, Seller authorizes Ten-X to advertise a total Buyer Broker Commission equal to 2.0% of the buyer's offer price (exclusive of the Transaction Fee);
(B)	Each Event shall be conducted pursuant to the Participation Terms, available at: https://www.ten-x.com/company/legal/participation-terms/ , and attached hereto as "Exhibit A" (the "Participation Terms");
(C)	Both this Agreement and any sale of the Property shall be subject to the approval of the applicable bankruptcy court (the "Court"), and Participants (as defined in the Participation Terms) shall be notified that any sale of the Property is subject to approval of the Court; and



(D) The Participation Deposit (as defined in the Participation Terms) for the Property shall be an amount equal to \$100,000, and shall be only payable by Participants via wire transfer or cashier check.
For the avoidance of any doubt, Ten-X shall act as the exclusive online marketplace provider for the Property.

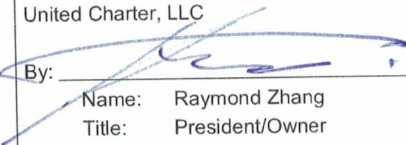
SELLER	TEN-X
<p>United Charter, LLC</p> <p>By:  7/11/2017</p> <p>Name: Raymond Zhang Title: President/Owner</p> <p>Address: 598 London Street, San Francisco, CA, 94112.</p> <p>Email: raymond03032014@gmail.com</p> <p>Telephone: (415) 269-6033</p>	<p>By: _____</p> <p>Name: Vibhav Kapila Title: Supervising Broker</p> <p>One Mauchly, Irvine, CA 92618 Attention: Chief Legal Officer legal-notice@ten-x.com (800) 793-6107</p>

EXHIBIT A "PARTICIPATION TERMS"

Participation Terms

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

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

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

1. ACCOUNT CREATION AND REGISTRATION PROCESS

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

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

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

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

2. DUE DILIGENCE

Purchase Documents. Prior to submitting an Offer, Participants must review the purchase and sale agreement, any applicable addenda, Seller's disclosure documentation, and all other transaction documents (collectively, "Purchase Documents"), which can be accessed on the Property Page. All Offers must be based on the posted Purchase Documents. For auction Events, the Purchase Documents are non-negotiable. For non-auction Events, all negotiable terms agreed to by both Seller and Winning Buyer shall be incorporated into the final Purchase Documents using the applicable blanks and checkboxes in the pre-printed provisions in the Purchase Documents.

Due Diligence. It is each Participant's responsibility to conduct its own due diligence and investigate all matters relating to each Property that Participant is interested in purchasing, including, without

limitation, legal matters, physical condition and attributes, environmental matters, economic matters, encumbrances, and all other aspects. Participant must coordinate any such inspection with Seller. In some circumstances Seller may be unable to provide physical access for inspections, and Participants must submit Offers accordingly at their own risk. All Offers should be based solely on Participant's independent due diligence and any information contained in the Purchase Documents.

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

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

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

3. BUYING

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

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

Payment of Earnest Money Deposit. The Purchase Documents for each Property require Winning Buyer to pay a deposit to the escrow/closing agent ("Earnest Money Deposit"). The amount of the Earnest Money Deposit is specified in the Purchase Documents or the Property Page for each Property. Unless otherwise specified in the Purchase Documents, the Earnest Money Deposit must be received no later than 5:00 PM in the time zone where the Property is located on the first business day after Winning Buyer is notified that Seller has countersigned the Purchase Documents, time being of the essence. If the Earnest Money Deposit is not timely received, Ten-X or Seller may declare Winning Buyer to be in default of these Terms and Seller may reject Winning Buyer's Offer.

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

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

Buyer's Fee. If the Property Page for a Property states that a buyer's premium or transaction fee ("Buyer's Fee") applies to the sale, then Winning Buyer will be required to pay the Buyer's Fee in addition to Winning Buyer's Offer amount at closing. Unless otherwise specified for a particular Property, the Buyer's Fee will be added to Winning Buyer's Offer amount to establish the total purchase price payable by Winning Buyer. If the Property is anything other than a one to four unit residential

property and Participant purchases it from the Seller outside of Ten-X's platform within 180 days after the date Participant acknowledges these Terms, Participant agrees to be responsible to Ten-X for full payment of the Buyer's Fee that would have been payable if Participant had purchased the Property through Ten-X's platform.

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

4. AUCTION EVENTS

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

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

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

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

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

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

5. BROKER/AGENT PARTICIPATION

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

For certain Events, a registered broker/agent may submit Offers on behalf of a buyer identified to Ten-X prior to Offer submission. By submitting an Offer on behalf of a buyer, the broker/agent (i) represents and warrants that the broker/agent has received all buyer authorizations and satisfied all legal requirements necessary to submit Offers on the buyer's behalf, (ii) acknowledges and agrees that any

Offer submitted will be binding upon the broker/agent and the buyer identified at registration to the same extent as if the buyer had submitted the Offer, and (iii) agrees to indemnify and hold harmless Ten-X from any breach of these representations or warranties.

6. GENERAL INFORMATION

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

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

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

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

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

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

7. DISCLAIMERS; PARTICIPANT REPRESENTATIONS; CANCELLATION; LIQUIDATED DAMAGES

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

*Ten-X and Auction.com may operate under different trade names in some states. See www.ten-x.com/licensing.

These Participation Terms were last updated March 20, 2017.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

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

SELLER'S AGENT

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

To the Seller:

- (a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

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

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

BUYER'S AGENT

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

To the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

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

AGENT REPRESENTING BOTH SELLER AND BUYER

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

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


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

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a causal relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth below. Read it carefully.


 Ten. _____ en-X
 CA Real Estate Broker License No. 01994943

 Seller (Signature) (date)

 Seller (Signature) (date)

In the contract to purchase or sell or in a separate writing signed by the agent(s) and principals to the transaction, the agent(s) must confirm as follows the agency relationship intended:

Vibhav Kapila _____ (CA Real Estate Broker License

No. **01797368** _____) is the agent of (check one):

- THE SELLER EXCLUSIVELY; OR**
- BOTH THE BUYER AND SELLER.**

_____ (selling agent if not the same as the listing agent) is the agent of (check one):

- THE SELLER EXCLUSIVELY; OR**
- THE BUYER EXCLUSIVELY; OR**
- BOTH THE BUYER AND SELLER;**

The law requires that "When you [the principal] enter into a discussion with a real estate agent regarding a real estate transaction, you [the principal] should from the outset understand what type of agency relationship representation you [the principal] wish to have with the agent in the transaction." Accordingly, the disclosure form must be provided in a timely fashion as follows:

"(a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.

(b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision(a).

(c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required.

(d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer."

Should either the buyer or seller refuse to sign the required acknowledgement of receipt of the disclosure form, the broker/agent representing that principal must prepare, sign, and date a written declaration of the facts surrounding the refusal.

Neither the payment of compensation nor the obligation of the buyer or seller to compensate the broker(s)/agent(s) will determine a particular agency relationship. Agency relationship(s) are factual and arise out of the conduct of the parties. However, the disclosure of and consent to the described agency relationship(s) establishes a rebuttable presumption of the agency relationship(s) which are intended by the parties.

A dual agent (where the same broker/agent represents both the seller and the buyer) is expressly prohibited from discussing without the prior written consent of the appropriate principal any asking or offering price (e.g., that the seller would take less or the buyer would pay more than that which has been set forth in the written listing agreement or the written offer to purchase). The parties may agree in writing to change the agency relationship(s) prior to the commencement of the real estate transaction.

EXHIBIT B

ITEM NO. _____

PURCHASE AND SALE AGREEMENT WITH JOINT CLOSING INSTRUCTIONS

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

1. KEY TERMS.

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

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

3. CLOSING. The transactions contemplated by this Agreement shall be consummated ("Close" or "Closing") on or before the Closing Date.

4. CLOSING DELIVERIES.

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

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

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

5. CONDITIONS PRECEDENT TO CLOSING.

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

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

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

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

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

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

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

7. COSTS AND PRORATIONS.

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

(B) **Prorations.** Closing Agent shall prorate as of the date of Closing (i) all real property taxes, assessments, utilities and other operating expenses customarily apportioned in similar situations ("**Property Expenses**"), and (ii) all rents and other income actually received and customarily apportioned in similar situations ("**Property Income**"), in each case

based on the number of calendar days in the applicable period and in accordance with local customs. Despite anything to the contrary in this Agreement, insurance premiums will not be prorated, and Seller may cancel any existing insurance on the Property after Closing. If either party receives Property Income or a refund of Property Expenses attributable, in whole or in part, to the other party's period of ownership, the party that received such Property Income or refund shall immediately submit to the other party the portion attributable to such other party's period of ownership. Except as set forth in this Agreement, Seller shall not be responsible for any Property Expenses accruing after Closing. This paragraph shall survive Closing indefinitely.

- (C) **Closing Costs.** Seller and Buyer shall pay closing costs as described in the Closing Cost Allocations (and Closing Agent is authorized to (i) pay Seller's costs from Seller's proceeds, and (ii) pay Buyer's costs from funds deposited into Escrow by Buyer).
- (D) **Settlement Statement.** On or before the third business day prior to Closing, Closing Agent shall prepare and deliver to Seller and Buyer a settlement statement setting forth the prorations and cost allocations set forth in this Agreement ("Settlement Statement").

8. TERMINATION AND CANCELLATION OF ESCROW.

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

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

SELLER'S INITIALS _____/_____

BUYER'S INITIALS _____/_____

- (B) **Termination Not Resulting from Breach.** If Closing does not or cannot occur on or before the Closing Date for reasons beyond the reasonable control of Buyer and Seller, and not resulting from a breach of this Agreement by Buyer or Seller, then either party may terminate this Agreement and cancel the Escrow by giving written notice to the other party and Closing Agent. Upon such termination and cancellation, Closing Agent shall return the Earnest Money Deposit to Buyer, and Buyer and Seller shall each bear 50% of all cancellation fees of Closing Agent and Title Insurance Company.
- (C) **Costs Upon Termination and Cancellation of Escrow.** Except as otherwise set forth in this Section, upon termination of this Agreement and cancellation of Escrow pursuant to this Section, all costs incurred in connection with the transactions contemplated by this Agreement (including, without limitation, payments for loan applications, inspections, appraisals, and other reports) shall be the sole responsibility of the party incurring such costs.
- (D) **Closing Agent Authorization.** If Closing Agent receives a written notice from a party to cancel the Escrow in accordance with this Section 8, and Closing Agent can confirm that the other party also received the notice, Closing Agent is authorized to comply with the notice if Closing Agent does not receive a written objection within 10 calendar days after such other party received the notice.

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

- (A) **Authority.** Buyer has the necessary authority to enter into and perform its obligations under this Agreement. If Buyer is an entity, the natural person signing this Agreement on behalf of Buyer represents and warrants that (i) Buyer is duly formed and in good standing and (ii) the natural person signing on behalf of Buyer has the necessary authority to bind Buyer to this Agreement.
- (B) **Property Condition and Attributes.** Prior to entering into this Agreement, Buyer had the opportunity to conduct Buyer's own due diligence and investigations. Except as expressly set forth in this Agreement, Buyer's obligations under this Agreement are not contingent on any further due diligence and/or investigation. Buyer acknowledges that the square footage of the Property (including the square footage of the lot and any improvements thereon) is deemed

approximate and not guaranteed. Except as otherwise expressly set forth in this Agreement or in written disclosures to Buyer signed by Seller, (i) Seller does not make, and expressly disclaims, any representation or warranty, express or implied, regarding the Property, and (ii) Buyer acknowledges and agrees that Seller is selling the Property "As Is, Where Is, With All Faults and Limitations" and Seller shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property.

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

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

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

11. SELLER'S COVENANTS.

- (A) **Possession.** At Closing, Seller shall relinquish possession of the Property to Buyer and promptly provide Buyer with all keys, codes and other means of Property access in Seller's possession.
- (B) **Utilities.** Seller shall reasonably cooperate with Buyer prior to Closing to allow Buyer to obtain responsibility for and maintain access to applicable utilities following Closing.
- (C) **Operation and Maintenance of Property.** Prior to Closing, Seller shall operate and maintain the Property consistent with past practice.
- (D) **Leases and Contracts.** Prior to Closing, Seller shall not enter into, terminate or amend any Lease or other material agreement with respect to the Property which would encumber or be binding upon the Property from and after Closing, without Buyer's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed.

- (E) **No Violations.** Prior to Closing, Seller shall comply in all material respects with the terms of the Leases and any other material document or agreement affecting the Property consistent with past practice.
- (F) **Notice of Material Changes or Untrue Representations.** Prior to Closing, Seller shall promptly notify Buyer if Seller learns of any material change in any condition of the Property or any event or circumstance which makes any representation or warranty of Seller under this Agreement untrue or misleading.

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

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

SELLER'S INITIALS _____/_____

BUYER'S INITIALS _____/_____

13. MISCELLANEOUS.

- (A) **Survival of Representations and Warranties.** Except as otherwise set forth in this Agreement, (i) all representations and warranties of Seller and Buyer in this Agreement shall continue through and be deemed remade as of Closing and shall survive Closing for a period of one year, and (ii) no claim for breach of any representation or warranty in this Agreement may be made more than one year after Closing.
- (B) **No Assignment or Recording.** Buyer may not assign or record all or any part of this Agreement without the express prior written consent of Seller. Despite the foregoing, Buyer may assign this Agreement to any entity wholly owned, directly or indirectly, by Buyer; provided, however, that, in such event, the undersigned Buyer shall remain liable for the obligations of Buyer under this Agreement.
- (C) **Casualty and Condemnation.** If any material portion of the Property is damaged or taken by eminent domain (or is the subject of a pending taking) prior to Closing, Seller shall notify Buyer promptly after Seller obtains knowledge thereof. Within 10 business days after Buyer receives such written notice (if necessary, the Closing Date shall be extended until one business day after the expiration of such period), Buyer may, at its option, either (i) terminate this Agreement, or (ii) proceed to Closing in accordance with this Agreement. Buyer shall be deemed to have waived its right to terminate this Agreement if Buyer does not notify Seller in writing of its election to terminate this Agreement within such period. Buyer shall not be entitled to any insurance proceeds or obtain any rights with respect to any claims Seller may have with regard to insurance maintained by Seller with respect to the Property. In the event of a taking by eminent domain, Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to all awards, if any, for such taking.
- (D) **Common Interest Development.** If the Property is in a common interest development, unless otherwise required by law, Buyer acknowledges that Buyer was provided for review (or, to the extent not provided, Buyer waives any right to review) the declaration of covenants, conditions, restrictions and/or bylaws and other documentation regarding such common interest development and Buyer acknowledges that Buyer has reviewed such documentation to the fullest extent Buyer deems necessary and, by signing this Agreement, Buyer accepts the declaration of covenants, conditions, restrictions and/or bylaws of the common interest community.
- (E) **Local Requirements.** Some counties, cities, municipalities and other state subdivisions may require a certificate of occupancy, certificate of use or code compliance certificate and/or inspection ("**Local Requirement**") may be required in order to transfer and/or occupy the Property. If a Local Requirement is required for the Property to be transferred to or occupied by Buyer, Buyer waives such Local Requirements to the extent waivable. To the extent any such Local Requirement is not waivable by Buyer, Buyer shall comply with the Local Requirement at Buyer's sole cost, including, without limitation, the correction of any violations or performance of other work which may be required in connection therewith. Seller makes no representation as to whether a Local Requirement applies. Buyer shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to any Local Requirements. This paragraph shall survive Closing indefinitely.

Despite the foregoing, (i) Seller shall reasonably cooperate with Buyer in Buyer's efforts to comply with any applicable Local Requirement, but in no event shall Seller be required to expend any money in connection therewith, and (ii) if there is a Local Requirement discovered by Buyer after the Effective Date but before Closing (and unknown to Buyer prior to the Effective Date) that is not waivable by Buyer and would require Buyer to make improvements to the Property, or expend money, in either case in excess of 5% of the Purchase Price for the Property, Buyer may terminate this Agreement under Section 8(B) hereof.

- (F) **Counterparts, Electronic Signatures, and Complete Agreement.** This Agreement and any addenda or other document necessary for Closing of the transactions contemplated by this Agreement may be signed in two or more counterparts,

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

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

14. CLOSING COST ALLOCATIONS.

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

SELLER'S INITIALS ____/____

BUYER'S INITIALS ____/____

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

(Remainder of Page Intentionally Blank)

SELLER:

BUYER:

_____ (and its permitted assigns under Section 13(B))

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Dated: _____

Dated: _____

LISTING BROKER (if any):

BUYER'S BROKER (if any):

Broker Printed Name: _____
Brokerage Printed Name: _____
Brokerage License Number: _____ State: _____

Broker Printed Name: _____
Brokerage Printed Name: _____
Brokerage License Number: _____ State: _____

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

DISCLOSURE AND CONFIRMATION OF AGENCY RELATIONSHIP

Buyer and Seller acknowledge that, unless Ten-X is listed as Listing Broker above, Ten-X is not acting as Seller's real estate agent or Buyer's real estate agent, and Ten-X is acting as a marketing firm and marketplace provider only.

SELLER'S INITIALS _____/_____

BUYER'S INITIALS _____/_____

CLOSING AGENT ACKNOWLEDGEMENT

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

By: _____

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS

ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS

Seller: _____

Buyer: _____

Property (Address): _____

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

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

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

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

SELLER:

BUYER:

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Dated: _____

Dated: _____

Schedule 1 to Assignment and Assumption of Leases and Contracts

Leases

FORM OF ASSIGNMENT

EXHIBIT C

LEASES

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

ITEM NO. _____

THIRD PARTY INTEREST ADDENDUM

Seller: _____

Buyer: _____

Property Address: _____

This Third Party Interest Addendum ("Addendum"), dated effective as of _____, amends and supplements that certain purchase and sale agreement ("Agreement") between Buyer and Seller for the purchase and sale of the real property identified above. If there is a conflict between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall control. Any capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

1. THIRD PARTY INTEREST. The transaction contemplated by the Agreement is subject to, and contingent upon, waiver or termination of the applicable third party interest checked below ("Third Party Interest") on or before the Closing Date:

- Right of First Refusal:** A right of first refusal held by _____ to purchase the Property pursuant to the terms of an agreement with Seller entered into prior to the Agreement effective date.
- Court Approval:** A court approving the sale of the Property pursuant to the Agreement.
- Lender Approval:** Seller's lender approving the sale of the Property pursuant to the Agreement.
- Other:** _____

In the event the holder of a Third Party Interest exercises its right to purchase or reject the sale of the Property, Seller shall immediately notify Buyer in writing, and the Agreement shall automatically terminate. Upon such termination, closing agent shall return the earnest money deposit to Buyer, and Seller shall be solely responsible for all cancellation fees of closing agent and title insurance company.

SELLER:

BUYER:

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Printed Name: _____
Title (if applicable): _____

Dated: _____

Dated: _____