

# **EXHIBIT A**

**PURCHASE AND SALE AGREEMENT**

**BAL HARBOUR REGENT  
BAL HARBOUR FLORIDA**

**SELLER:**

**WCI COMMUNITIES, INC.**

**PURCHASER:**

**ELEVATION COMMUNITIES, LLC**

**MAY 12, 2009**

## TABLE OF CONTENTS

	<u>PAGE(S)</u>
1. Definitions .....	2
1.1 Definitions.....	2
1.2 Definitions Generally .....	9
2. Agreement to Sell and Purchase.....	9
2.1 Sale and Purchase .....	9
2.2 Assignment and Assumption of Contracts.....	10
3. Purchase Price, Deposit and Escrow. ....	10
3.1 Purchase Price.....	10
3.2 Payment.....	10
3.3 Terminations .....	11
3.4 Interpleader .....	11
3.5 Designation Agreement .....	11
3.6 Liability of Escrow Agent.....	12
4. Default. ....	12
4.1 Purchaser's Default. ....	12
4.2 Seller's Default.....	13
5. Closing and Transfer of Title.....	13
5.1 Closing.....	13
5.2 Conditions to the Parties' Obligations to Close .....	13
5.3 Breakup Fee & Stalking Horse 363 Auction .....	15
5.4 Seller's Deliveries .....	16
5.5 Purchaser's Performance .....	19
5.6 Evidence of Authority; Miscellaneous.....	19
5.7 Possession .....	19
5.8 Liquor Licenses.....	19
6. Prorations of Taxes and Other Expenses.....	19
6.1 Closing Statements.....	19
6.2 Prorations .....	20
7. Loss Due to Condemnation or Casualty.....	24
7.1 Loss Due to Condemnation.....	24
7.2 Casualty Risk of Loss .....	24
8. Seller's Covenants.....	24
8.1 Safety Deposit Boxes.....	24
8.2 Manager's Cooperation .....	25
9. Broker .....	27

10.	Representations and Warranties. ....	28
10.1	Representations and Warranties of Seller .....	28
10.2	Representations and Warranties of Purchaser.....	30
10.3	NO IMPLIED REPRESENTATIONS .....	31
10.4	“AS-IS” PURCHASE .....	31
10.5	No Independent Investigation .....	31
10.6	Seller's Warranties Deemed Modified .....	32
10.7	Survival of Seller's Warranties, etc.....	32
10.8	Surviving Covenants.....	32
11.	Purchaser’s Indemnification .....	32
11.1	Surviving Covenants.....	33
11.2	No Limitations .....	33
12.	Estoppel Information.....	33
13.	Title Matters. ....	33
13.1	Title Review and Cure. ....	33
14.	Assignment .....	35
15.	Notice.....	35
16.	Expenses.....	36
16.1	Seller's Expenses .....	36
16.2	Purchaser's Expenses .....	36
17.	Property Data.....	37
18.	Underground Stormwater Drainage Wells #1 and #3 .....	37
19.	Utility and Bill of Sale.....	37
20.	Miscellaneous.....	37
20.1	Successors and Assigns.....	38
20.2	Gender.....	38
20.3	Captions .....	38
20.4	Construction.....	38
20.5	Entire Agreement .....	38
20.6	Original Document.....	38
20.7	Governing Law .....	38
20.8	No Third Party Beneficiary.....	38
20.9	No Recording; Confidentiality; Press Release.....	38
20.10	Waiver of Trial by Jury.....	39
20.11	Legal Relationships.....	39
20.12	Further Assurances.....	39
20.13	Time of the Essence .....	39
20.14	Fees and Expenses .....	39

20.15	Invalidity and Waiver .....	39
20.16	Radon Gas Notice .....	40
20.17	Receipt of Condominium Documents.....	40
20.18	Parking Easement.....	40
20.19	Work .....	40

## **LIST OF EXHIBITS**

EXHIBIT A	LEGAL DESCRIPTION OF THE FOR SALE LOTS
EXHIBIT B	THE OTHER PURCHASE AGREEMENT
EXHIBIT C	BID PROCEDURES
EXHIBIT D	LICENSE AGREEMENT
EXHIBIT E	MANAGEMENT AGREEMENT
EXHIBIT F	LIST OF OTHER AGREEMENTS TO WHICH THE PROPERTY IS SUBJECT
EXHIBIT G	LIST OF PERSONAL PROPERTY
EXHIBIT H	FORM RENTAL MANAGEMENT AGREEMENT
EXHIBIT I	FORM SPECIAL WARRANTY DEED
EXHIBIT J	FORM BILL OF SALE
EXHIBIT K	FORM ASSIGNMENT AND ASSUMPTION OF ASSUMED CONTRACTS
EXHIBIT L	FORM ASSIGNMENT AND ASSUMPTION OF RENTAL MANAGEMENT AGREEMENTS
EXHIBIT M	FORM GENERAL ASSIGNMENT
EXHIBIT N	FORM FIRPTA AFFIDAVIT
EXHIBIT O	SCHEDULE OF RENTAL MANAGEMENT AGREEMENTS
EXHIBIT P	CLAIMS FOR DEATH, PERSONAL INJURY, PROPERTY DAMAGE OR WORKER'S COMPENSATION
EXHIBIT Q	OTHER LITIGATION
EXHIBIT R	SCHEDULE OF LEASES
EXHIBIT S	PERMITTED EXCEPTIONS
EXHIBIT T	OPERATING PLAN
EXHIBIT U	FORM ASSIGNMENT AND ASSUMPTION OF LEASES

EXHIBIT V	FORM ASSIGNMENT AND ASSUMPTION OF SELLER'S RIGHTS AND OBLIGATIONS UNDER THE CONDOMINIUM DECLARATION
EXHIBIT W	DEP SETTLEMENT
EXHIBIT X	UTILITY LINE EASEMENT (PROPOSED) AND LOCATION SKETCH
EXHIBIT Y	DELIBERATELY DELETED
EXHIBIT Z	LIST OF CONTRACTS
EXHIBIT AA	COPY OF LIQUOR LICENSE
EXHIBIT BB	LIST OF DELINQUENT ASSESSMENTS

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made as of the \_\_\_\_ day of May, 2009 (the "**Effective Date**") by and between **WCI Communities, Inc.**, a Delaware corporation ("**Seller**"), and **Elevation Communities, LLC**, a Florida limited liability company ("**Purchaser**").

### **RECITALS:**

A. Seller previously acquired the land located at 10295 Collins Avenue in Miami-Dade County, Florida (the "**Land**").

B. Seller has constructed a building upon the Land, for multiple uses, including a hotel, a hotel condominium, a residential condominium, and retail and restaurant uses (the "**Building**").

C. Pursuant to Seller's development of the Land and the Building, Seller has filed the "**Tower Declaration**" (as such term is subsequently defined).

D. The Tower Declaration provides, among other things, that the Building is divided into Lots (as such term is subsequently defined). The Hotel Lot (as such term is defined in the Tower Declaration) includes all of the Land and all of the Building, less that portion of the Building included within the "**Other Lots**" (as such term is subsequently defined). The Hotel Lot does not include any of the hotel rooms contained within the Hotel Condominium Lot as defined in the Tower Declaration.

E. Seller desires to sell the "**For Sale Lots**" (as such term is subsequently defined), the legal description of which is described on **Exhibit A** to this Agreement.

F. Purchaser desires to acquire the For Sale Lots.

Pursuant to the terms of a 10295 Collins Avenue, Hotel Condominium Purchase Contract of even date with this Agreement (a copy of which is attached to this Agreement as **Exhibit B**, and hereinafter referred to as the "**Other Purchase Agreement**"), Seller has agreed to sell and Purchaser has agreed to purchase, fifty-one (51) hotel condominium units consisting of forty-two (42) standard hotel condominium units, seven (7) ADA hotel condominium units, one (1) Presidential Suite, and one (1) connecting studio unit.

G. The closing of this Agreement is contingent on the closing of the Other Purchase Agreement.

### **T E R M S**

NOW, THEREFORE, in consideration of the premises and the mutual undertakings in this Agreement, the parties hereto agree as follows:



1. Definitions.

1.1 Definitions. Wherever used in this Agreement, the following terms shall have the meanings set forth in this Section 1:

**"Accounts Receivable"** **"Accounts Receivable"** means all accounts receivable with regard to the Hotel which exist at the Adjustment Point, including, without limitation, any and all rents, deposits and other sums and charges (including receivables of Hotel Inventory) owing to Seller or Manager that are in any way attributable to the operation of the business at the Property, including, without limitation: (a) amounts receivable in connection with the letting of rooms, use of room services, banquet services and facilities, use of conference facilities or meeting rooms, use of computer and telecommunications or other electronics, internet or other similar services or the provision of any other service by or on behalf of Seller or Manager on the Real Property; (b) credit card charges, whether or not they have been submitted to the applicable credit card company; and (c) rents and/or license fees due from tenants under Leases.

**"Adjustment Point"** has the meaning set forth in Section 6.2.

**"Administrative Fee"** shall be defined to be the product of (i) Thirty Three and no/100ths Dollars (\$33.00) and (ii) the number of guest rooms occupied on the evening immediately preceding the Closing Date.

**"Affiliate"** of any specified person means any other person controlling, controlled by or under common control with such specified person, and all their respective officers, directors, members, managers, beneficiaries, employees and agents and all their heirs, legal representatives, successors and assigns. **"Control"** when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms **"controls," "controlling"** and **"controlled"** have the meanings correlative to the foregoing. Seller represents and warrants to Purchaser that neither Manager nor any of its Affiliates is an Affiliate of Seller.

**"Alterations"** shall mean any material alterations, additions or improvements to the Real Property, but shall exclude repairs and maintenance thereof and the Work.

**"Approval Deadline"** means the date describe in Section 5.2.4.4.

**"Assignment and Assumption of Declarant's Rights and Obligations"** means the agreement described in Section 5.4.10.

**"Assignment and Assumption of Leases"** means the agreement described in Section 5.4.8.

**"Assignment and Assumption of Assumed Contracts"** means the agreement described in Section 5.4.3.

**"Assignment and Assumption of Rental Management Agreements"** means the agreement described in Section 5.4.5.

**"Assumed Contracts"** means those Contracts the obligations of which Purchaser has agreed from and after the Closing Date to assume. Purchaser shall notify Seller within five (5) \_ days after the Effective Date of those Contracts which Purchaser will assume and all other Contracts shall be terminated or rejected by Seller at or prior to Closing.

**"Attorney Fees"** has the meaning set forth in Section 20.14.

**"Bankruptcy Case"** means the Chapter 11 case in which the Seller is debtor-in-possession, pending before the Bankruptcy Court and styled In re WCI Communities, Inc., Case No. 08-11643.

**"Bankruptcy Code"** means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

**"Bankruptcy Court"** means the United States Bankruptcy Court for the District of Delaware.

**"Bankruptcy Court Approval"** means the Bankruptcy Court shall have entered (i) the Sale Order in a form reasonably acceptable to both Seller and Purchaser, which order shall not have been stayed prior to the Closing, approving the transactions contemplated hereby and the terms and conditions of this Agreement, and providing or including the following: (a) finding that notice of the hearing concerning approval of the transactions contemplated by this Agreement was given in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the orders of the Bankruptcy Court and constitutes such notice as is appropriate under the particular circumstances; (b) finding Purchaser to be a good faith purchaser entitled to the protections of section 363(m); (c) finding that Purchaser did not engage in any action or conduct that would tend to control the purchase price or is otherwise collusive; and (d) providing for the sale of the Property free and clear of all Claims and Liens pursuant to section 363(f) of the Bankruptcy Code; and (ii) a separate order authorizing the assumption and assignment of the Assumed Contracts that constitute an executory contract or unexpired lease under §365 of the Bankruptcy Code.

**"Bid Procedures"** has the meaning ascribed to such term in Exhibit "C" attached hereto.

**"Bill of Sale"** has the meaning ascribed to such term in Section 5.4.2.

**"Books and Records"** means all of the books, records, financial statements and information, correspondence and other files and information (whether stored in paper form, on computer hard drive or disk, CD Rom or DVD, or in any other storage medium) relating to the construction, development, renovation, occupancy, operation, leasing, maintenance, repair, marketing or promotion of the For Sale Lots, including but not limited to employee files and records, guest history information for all individual and group accounts and records regarding technological systems related to or serving the For Sale Lots, to the extent not privileged or proprietary to Seller.

**"Building"** has the meaning ascribed to such term in the recitals.

**"Business Day"** means any day other than a Saturday, a Sunday or a day on which either the New York Stock Exchange or national banking institutions in New York or Florida are open for business.

**“Closing”** means the closing of the sale of the Property by Seller to Purchaser provided for in Section 5.

**“Claim”** means a claim against Seller or its property, as such term is defined in section 101(5) of the Bankruptcy Code.

**“Closing Date”** means the date of the Closing described in Section 5.1.

**“CMP”** has the meaning ascribed to such term in Section 6.2.10.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Condition to Closing”** has the meaning ascribed to it in Section 5.2 of this Agreement.

**“Condominium Declaration”** means that certain Declaration of Condominium for 10295 Collins Avenue, Hotel Condominium recorded in the public Records of Miami-Dade County, Florida in Official Records Book 26093, Page 3225 – 3330, as same may be amended from time to time.

**“Contract”** means the Guest Bookings, the Occupancy Agreements, the Short Term Hotel Agreements, the Rental management Agreements and Other Agreements, but does not include the Tower Declaration, the NT/ST Declaration.

**“Cure Costs”** has the meaning ascribed to such term in Section 2.2

**“Deposit”** has the meaning ascribed to such term in Section 3.2.1.

**“Effective Date”** means the date set forth on the Preamble to this Agreement.

**“Escrow Agent”** means First American Title Insurance Company, Inc., with an address of 2750 Chancellorsville Drive, Tallahassee, Florida 32312 (phone) (800) 327-1018 and (Fax) (877) 532-7058.

**“Estoppel”** has the meaning ascribed to such term in Section 12.

**“Excepted Items”** means: (i) all items of personal property owned by Condominium Hotel Lot unit owners, Residential Condominium Lot unit owners, ST Owner (as defined in the ST/NT Declaration) and their tenants, subtenants, independent contractors (including Manager), business invitees and utilities; (ii) all cash security deposits held by any utility with respect to the Real Property (plus the interest accrued thereon, if any), (iii) unless otherwise expressly provided in Section 6, reserve deposits or payments made by the Seller under the Management Agreement or Other Agreements; all other bank accounts of Seller; (iv) unless otherwise expressly provided in Section 6, all cash on hand, checks, money orders, prepaid postage in postage meters, and claims of Seller arising prior to the Adjustment Date; (v) cash advances, deposits or other sums of money paid or deposited by Seller and not earned in connection with the operation of the Hotel Lot; (vi) any confidential or privileged information and/or files of Manager; (vii) all items of personal property of the Manager, (viii) all items of personal property of the tenants, subtenants, independent contractors, business invitees and utilities with respect to any of the For Sale Lots; (ix) all gift

certificates, complimentary room nights and “**trade-outs**” sold or donated prior to the date hereof which by their terms have terminated or expired; and (x) the Liquor Licenses and any other licenses, governmental permits or approvals which are not transferable.

“**Final Closing Statement**” has the meaning given in Section 6.1.

“**For Sale Lots**” means the Hotel Lot, the Restaurant Lot and the Spa Lot, as such terms are defined in the Tower Declaration.

“**General Assignment**” means the agreement described in Section 5.4.4.

“**Governmental Authority**” means any national, federal, state, provincial, public authority, local or foreign government, or any subdivision, agency, bureau, department, official instrumentality, authority, department, commission, board or bureau thereof, or any federal, state, provincial, local or foreign court, tribunal, or arbitrator, including the Bankruptcy Court, having jurisdiction over the Property or any part thereof.

“**Guest Bookings**” means guest room bookings in the Hotel by transient guests.

“**Hotel**” means the hotel located at the 10295 Collins Avenue Hotel Condominium and operated by the Manager.

“**Hotel Agreements**” means the (a) Management Agreement contract between Seller and Regent Bal Harbour Management, LLC, a copy of which is attached to this Agreement as Exhibit E, and (b) License Agreement between Seller and Regent Hotels Worldwide, Inc., a copy of which is attached as Exhibit D to this Agreement. Purchaser acknowledges that the Hotel Agreements will be terminated at or prior to Closing by Seller and Seller shall enter into extensions of the Hotel Agreement or other agreements for the continued operation and management of the Hotel for a period of not more than ninety (90) days with flexibility to provide, at Seller's option (or Purchaser's option in the event Closing occurs under this Agreement), for at least six (6) additional ninety (90) day periods and provide that Seller or Purchaser after Closing may terminate such agreements without penalty on no more than thirty (30) days prior notice (collectively “Short-Term Hotel Agreements”); provided, however, that prior to terminating the Short-Term Hotel Agreements, Seller will provide Purchaser with the opportunity to assume the Short-Term Hotel Agreements; provided further, however, that Purchaser's assumption of such agreements shall be subject to acceptance by the relevant third parties of such assumption and Seller being provided with a full and absolute release of all of its obligations under the Short-Term Hotel Agreements. In the event the Short-Term Hotel Agreements are not assumed by Purchaser, they will be terminated by Seller at Closing and without penalty or payment by Purchaser.

“**Hotel Inventory**” means the merchandise, goods and materials held for sale by Seller in connection with the business of the Hotel (or ordered for future use at the Hotel), including food in unbroken packages, raw and uncooked food, beverages and other saleable merchandise (other than such items as are then in production), mini-bar contents, gift shop inventory and consumable supplies, and gifts.

“**Hotel Lot**” has the meaning ascribed to it in the Tower Declaration.

**“Leases”** means all leases, subleases, licenses, concessions and other forms of agreement, written or oral, however denominated, wherein the Seller (as a party named therein or as the successor thereto) grants to any party or parties the right of use or occupancy of any portion of the Real Property and all renewals, modifications, amendments and guaranties affecting the same, but expressly excluding Occupancy Agreements, Guest Bookings, and Other Agreements. A list of all Leases is set forth on **Exhibit R** attached hereto.

**“Legal Requirements”** means all statutes, laws, ordinances, rules, regulations, executive orders and requirements of all Governmental Authorities which are applicable to the Property or any part thereof, the owner of the Property, the owner's use or manner of use thereof or the business activities within the Property by Manager.

**“Licenses and Permits”** means any and all licenses (excluding the Liquor Licenses), permits, certificates of occupancy and approvals granted with respect to the Property and relating to the use, occupancy or operation of the Property, or the services rendered in connection therewith, or to the zoning, land use, development, construction, renovation or maintenance of the Property, to the extent such permits, licenses, certificates and approvals are assignable and transferable.

**“Lien”** means any (i) security interest, lien, mortgage, pledge, hypothecation, encumbrance, Claim, easement, charge, restriction on transfer or otherwise, or interest of another Person of any kind or nature, including any conditional sale or other title retention contract or lease in the nature thereof; (ii) any filing or agreement to file a financing statement as debtor under the applicable Uniform Commercial Code or any similar statute; and (iii) any subordination arrangement in favor of another Person.

**“Liquor Licenses”** means the licenses and permits held by Manager or Seller which are required for the service of alcoholic beverages at the Hotel.

**“Litigation”** means those items, if any, referred to in **Exhibits P and Q**.

**“Losses”** means all claims, demands, causes of action, costs, losses, damages, penalties, fines, liabilities and expenses, including, without limitation, Attorney Fees (but excluding punitive damages, lost profits, business interruption, speculative, consequential or other such damages) (collectively, **“Losses”**) asserted against, imposed upon or incurred by a party to this Agreement.

**“Lots”** means the lots created by the Tower Declaration, which are the Hotel Lot, the Hotel Condominium Lot, the Residential Condominium Lot, the Spa Lot and the Restaurant Lot.

**“Manager”** means Regent Bal Harbour Management, LLC as the manager under the Management Agreement.

**“Mandatory Cure Defects”** has the meaning given such term in Section 13.1.1.

**“Non-Terminating Party”** has the meaning given in Section 3.3.

**“NT/ST Declaration”** means that certain Declaration of Restrictions, Covenants, Easements and Operating Agreements between Smith Property Holdings House LLC (“ST Owner”) and WCI Communities, Inc. (“NT Owner”) recorded in the public Records Miami-Dade

County, Florida in Official Records Book 21982, Pages 4126-4274, as same may be amended from time to time. The NT/ST Declaration provides for certain easement rights and covenants, restrictions and obligations with respect to the ownership, development and operation of the properties referred to as the NT Site and the ST Site in and as described in the NT/ST Declaration.

**"Occupancy Agreements"** means all written agreements for groups of ten (10) or more guest rooms, written convention or event reservation agreements and other similar written agreements (including **"trade-out"** agreements, but excluding Guest Bookings), providing for the use or occupancy of the Property by third parties other than Manager, together with any guarantees related thereto.

**"Operating Plan"** means the budgets attached as **Exhibit T** to this Agreement.

**"Other Agreements"** means all service contracts, supply contracts, equipment leases and all other agreements relating to the Property that are identified in **Exhibit F** to this Agreement.

**"Other Bidders"** has the meaning ascribed to it in Section 5.2.4.4 of this Agreement.

**"Other Lots"** means the Residential Condominium Lot and the Hotel Condominium Lot.

**"Other Purchase Agreement"** has the meaning ascribed to such term in the recitals to this Agreement.

**"Order"** means any writ, judgment, decree, injunction or similar order, writ, ruling directive or other requirement of any Governmental Authority (in each such case whether preliminary or final).

**"Permitted Exceptions"** has the meaning set forth in Section 13.1.1.

**"Person"** means any individual, company, corporation, association, partnership, limited liability company, firm, joint venture, trust or Governmental Authority.

**"Personal Property"** means collectively (i) the items of personal property listed in **Exhibit G** hereto, (ii) all other apparatus, machinery, devices, appurtenances, equipment, furniture, furnishings, tools, appliances, art work, china, glassware, silverware, linens, Hotel Inventory, Supplies, cars, vans, trucks and other items of personal property (other than the Excepted Items) owned by the Seller and located at and used (or held for future use) in connection with the ownership, operation or maintenance of the Property; and (iii) all of Seller's rights and interests, if any, to the extent assignable (without obtaining consent unless consent is obtained), in and to all of the following intangible property owned by Seller with respect to the Real Property (other than the Excepted Items): (1) the Licenses and Permits, (2) all contract rights under the Occupancy Agreements and the Assumed Contracts and all rights to and under Guest Bookings, (3) all site plans, surveys and floor plans relating to the Property, (4) all architectural plans and specifications and engineering plans (whether **"as built"** or design) relating to the Property, (5) all Books and Records, (6) all business goodwill of Seller arising from the operation of the Property, (7) any telephone exchange numbers used exclusively for the management office for the Property, and (8) the Accounts Receivable, (if any, applicable to Purchaser); provided, however, none of the Excepted Items shall be included within the term "Personal Property."

**"Preliminary Closing Statement"** has the meaning given in Section 6.1.

**"Property"** means, collectively, (i) the Real Property and (ii) the Personal Property.

**"Prorations"** has the meaning given in Section 6.2.

**"Purchase Price"** has the meaning given in Section 3.1.

**"Purchaser's Designated Representative"** means Jorge Arevalo.

**"Purchaser's Title Objections"** has the meaning given in Section 13.1.1.

**"Real Property"** means the For Sale Lots, together with all rights, benefits, privileges, easements, tenements, hereditaments and appurtenances thereunto belonging or pertaining thereto.

**"Rental Management Agreements"** means those Rental Management Agreements previously, now or hereafter entered into by the Seller with certain purchasers of the condominium units located within the Hotel Condominium Lot substantially in the form set forth in Exhibit H as same may be terminated, replaced, amended or modified, or added to, from time to time. The schedule of Rental Management Agreements are identified on Exhibit O attached hereto. **"Sale Order"** means an order of the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code approving the transactions contemplated by this Agreement.

**"Seller's Designated Representative"** means collectively, Jonathan Pertchik, Michael Patrizio and James Schumacher. Seller hereby represents and warrants to Purchaser that such individuals are responsible, and have been responsible for the preceding one (1) year, for overseeing Seller's ownership and operation of the Property, which oversight includes, but is not limited to, making recommendations (subject to appropriate ownership approval) with respect to construction and capital improvements at the Property and reviewing and/or preparing the Operating Plan on behalf of Seller and are the people most likely to have knowledge of the matters referred to in this Agreement.

**"Seller's Knowledge"** means only the actual knowledge of, or written notice received by, Seller's Designated Representative and shall not be construed to impose or have imposed upon Seller's Designated Representative any duty to investigate the matters to which such knowledge, or the absence thereof, pertains, including, but not limited to, the contents of the files, documents and materials made available to or disclosed to Purchaser or the contents of files maintained by Seller's Designated Representative.

**"Seller's Warranties"** means Seller's representations and warranties set forth in Section 10.1 herein, as the same may be deemed modified or waived by Purchaser pursuant to the terms of this Agreement.

**"Special Warranty Deed"** means the deed described in Section 5.4.1.

**"Supplies"** means all china, glassware and silverware, linens, uniforms, engineering, maintenance, cleaning and housekeeping supplies, matches and ashtrays, soap and other toiletries,

stationery, menus, directories and other printed materials, and all other similar supplies and materials, which are located at the Hotel or ordered for future use at the Hotel as of the Closing.

**"Surviving Covenants"** means any covenant contained in this Agreement that by its terms specifically survives the Closing or sooner termination of this Agreement.

**"Terminating Party"** has the meaning given in Section 3.3.

**"Title Commitment"** has the meaning given in Section 13.1. 1

**"Title Cure Period"** has the meaning give in Section 13.1.1.

**"Title Company"** has the meaning given in Section 13.1.1.

**"Title Policy"** means the owner's policy of title insurance to be issued by the Title Company to Purchaser at Closing, at Purchaser's expense, dated the date of Closing, in the amount of the Purchase Price, with such endorsements to an owner's policy of title insurance available under applicable title insurance regulations as Purchaser shall require in its sole discretion, and insuring in Purchaser good and indefeasible fee simple title with respect to the Real Property, subject only to the Permitted Exceptions.

**"Tower Declaration"** means that certain Declaration of Covenants Restrictions and Easements for 10295 Collins Avenue Tower recorded in the Public Records Miami-Dade County, in Official Records Book 25985, Pages 4506-4659, and any modifications and amendments thereto.

**"Trade Payables"** has the meaning given in Section 6.2.13.

**"Updated Commitment"** has the meaning given in Section 13.1.2.1.

**"Work"** has the meaning given in Section 20.19.

1.2 Definitions Generally. Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words **"include"** and **"including"** shall be deemed to be followed by the phrase **"without limitation"** when such phrase does not otherwise appear. The terms **"herein"**, **"hereof"** and **"hereunder"** and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. The article and section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All article, section, paragraph, clause, exhibit or schedule references not attributed to a particular document shall be references to such parts of this Agreement.

## 2. Agreement to Sell and Purchase.

2.1 Sale and Purchase. Upon and subject to the terms and conditions of this Agreement, Seller agrees to sell and convey all of the Property to Purchaser, and Purchaser agrees to purchase all of the Property from Seller. Seller shall convey, and Purchaser shall accept, fee simple title to the Real Property in accordance with the terms of this Agreement, subject to the Permitted Exceptions. Seller shall convey, and Purchaser shall accept, the Personal Property. Notwithstanding the foregoing, the parties acknowledge that this Agreement (except for the



Surviving Covenants) will be null and void and of no effect, unless the parties simultaneously enter into and deliver the Other Purchase Agreement.

2.2 Assignment and Assumption of Contracts. Subject to the Order of the Bankruptcy Court approving the assumption and assignment of executory Contracts pursuant to Section 365 of the Bankruptcy Code, the Assumed Contracts will be assumed by Seller and assigned to Purchaser or Purchaser's designee on the Closing Date under Section 365 of the Bankruptcy Code. Seller shall, consistent with the Bankruptcy Court Approval and/or Sale Order, promptly comply with and perform any obligations under the Assumed Contracts arising from and after the date hereof and through the Closing Date and shall pay the Cure Costs at or prior to the Closing Date. The Seller will seek authority to assume and assign the Assumed Contracts to Purchaser (or Purchaser's designee) in accordance with Section 365 of the Bankruptcy Code. All Assumed Contracts shall be assigned to and assumed by Purchaser (or Purchaser's designee) at Closing. To the extent any amount is required to be paid to cure any defaults which exist as of the Closing Date with respect to any of the Assumed Contracts, Seller shall cure such defaults at or prior to the Closing to the extent such cure is required by Section 365 of the Bankruptcy Code (any such amounts paid to cure any such defaults being referred to the "**Cure Costs**").

3. Purchase Price, Deposit and Escrow.

3.1 Purchase Price. The purchase price which the Purchaser agrees to pay and Seller agrees to accept for the Property shall be the sum of Twelve Million and 00/100 Dollars (\$12,000,000.00) U.S. (hereinafter referred to as the "**Purchase Price**").

3.2 Payment. Payment of the Purchase Price shall be made as follows:

3.2.1 Within two (2) Business Days after the Effective Date of this Agreement, Purchaser shall deposit in immediately available funds with Escrow Agent an earnest money deposit of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) (the "**Deposit**").

3.2.2 The Deposit shall be held in escrow by Escrow Agent in accordance with the terms and conditions of this Agreement. Escrow Agent shall hold and retain the Deposit in an interest bearing escrow account until Closing, at which time the Deposit and all interest earned thereon, shall be directly applied toward payment of the Purchase Price. Notwithstanding anything herein to the contrary, Escrow Agent shall not be obligated to place the Deposit in an interest bearing account until Purchaser provides Escrow Agent with the Form W-9 referenced herein below.

3.2.2.1 At the time of execution and delivery of this Agreement by Purchaser, Purchaser shall execute and deliver to Escrow Agent a Form W-9 and such other documents as may be required under the Patriot Act and other applicable federal laws to enable Escrow Agent to open the interest-bearing account into which the Deposit shall be placed. In the event a person or entity other than Purchaser receives any part of the return earned on the Deposit, that person or entity shall cooperate in the filing of all reasonably necessary documents including, but not limited to, Forms W-9 and/or 1099 to the extent applicable to insure proper reporting of such return for federal income tax purposes.

3.2.2.2 All interest earned on the Deposit shall belong to Purchaser, unless Purchaser defaults or terminates this Agreement for any reason other than Seller's default under this Agreement, in which event any interest earned shall be paid to Seller.

3.2.3 At Closing, Purchaser shall pay (through the Escrow Agent) to Seller the Purchase Price, inclusive of the Deposit and subject to the adjustment and prorations as provided herein.

3.3 Terminations. Upon a termination of this Agreement pursuant to a provision of this Agreement, either party to this Agreement (the "**Terminating Party**") will give written notice to the Escrow Agent and the other party (the "**Non-Terminating Party**") of such termination and the reason for such termination. Such notice shall also constitute a request for the release of the Deposit to the party entitled to receive the Deposit. This Agreement shall automatically terminate if Purchaser timely and properly exercises its right to rescind the Other Purchase Agreement (pursuant to the terms of the Other Purchase Agreement), in which case the Deposit shall be disbursed to Purchaser and shall be retained by Purchaser and the obligations of the parties under this Agreement shall be terminated, except for the Surviving Covenants.

3.4 Interpleader. In the event of doubt as to Escrow Agent's duties or liabilities under the provisions of this Agreement, Escrow Agent may, in Escrow Agent's sole discretion, continue to hold the deposit until (a) the parties mutually agree to the disbursement thereof, or (b) a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or (c) Escrow Agent may deposit same with the Clerk of the Circuit Court of Miami-Dade County, Florida, interplead the parties, and upon notifying all parties concerned of such action, all liability on the part of Escrow Agent shall fully terminate, except to the extent of accounting for any money delivered out of escrow. If required by Escrow Agent for any undisputed disbursement of the Deposit pursuant to the terms hereof, Purchaser and Seller each agree to deliver written instructions to Escrow Agent directing Escrow Agent to disburse the Deposit as provided herein.

3.5 Designation Agreement. Section 6045(e) of the Code and the regulations promulgated thereunder (herein collectively called the "**Reporting Requirements**") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the transactions contemplated herein. Escrow Agent shall be the "**Reporting Person**" as hereinafter provided; Escrow Agent is either (i) the person responsible for closing the transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the transaction (as described in the Reporting Requirements). Accordingly:

3.5.1 Escrow Agent is hereby designated as the "**Reporting Person**" (as defined in the Reporting Requirements) for the transaction. Escrow Agent shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the transaction.

3.5.2 Seller and Purchaser shall furnish to Escrow Agent, in a timely manner, any information requested by Escrow Agent and necessary for Escrow Agent to perform its duties as Reporting Person for the transaction.

3.5.3 Escrow Agent hereby requests Seller to furnish to Escrow Agent Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Escrow Agent with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby certifies to Escrow Agent, under penalties of perjury, that Seller's correct taxpayer identification number is 59-3658689.

3.5.4 Each of the parties hereto shall retain a copy of this Agreement for a period of four (4) years following the Closing Date.

3.6 Liability of Escrow Agent. The parties acknowledge that (i) Escrow Agent is acting solely as a stakeholder at their request and for their convenience, (ii) Escrow Agent shall not be deemed to be the agent of either of the parties and (iii) Escrow Agent shall have no liability to any party on account of its failure to disburse the Deposit (beyond disbursing the Deposit, including any earnings thereon, in accordance with the terms of this Agreement, as directed by the parties hereto or as directed by a court of competent jurisdiction). As between Escrow Agent on the one hand, and Seller and Purchaser on the other hand, Seller and Purchaser shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including Attorney Fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or permitted by Escrow Agent in disregard of this Agreement or involving bad faith or negligence on the part of the Escrow Agent. As between Seller and Purchaser, the prevailing party in any dispute concerning the Deposit shall be indemnified and held harmless by the other from payments due to the Escrow Agent under the preceding sentence.

4. Default.

4.1 Purchaser's Default.

4.1.1 If Purchaser is in default of any of its obligations under this Agreement, which failure continues for five (5) Business Days, after written notice thereof (provided that no notice or cure period shall apply in the case of Purchaser's failure to close in accordance with the terms of this Agreement), or if Purchaser is in default of any of its obligations under the Other Purchase Agreement, after expiration of any applicable grace period, then Seller, as its sole and exclusive remedy, may terminate this Agreement and retain the Deposit as liquidated damages; and after such payment neither party shall have any further rights or obligations with respect to the other under this Agreement, except for the Surviving Covenants. The parties agree that Seller's actual damages, in the event of a default by Purchaser are difficult to determine and that the foregoing liquidated damages are reasonable.

4.1.2 In the event that, after the Closing, Purchaser is in default in the payment of any monetary obligation hereunder which survives Closing and which continues for more than five (5) Business Days after receipt of written notice thereof, then, Seller may seek damages (but excluding consequential, punitive and exemplary damages, which are hereby waived) from Purchaser.

#### 4.2 Seller's Default.

4.2.1 In the event that this transaction fails to close as a result of Seller's default, then Purchaser may, as its sole and exclusive remedy, seek one of the following: (i) obtain specific performance of this Agreement and Seller's obligations hereunder, including the obligation to convey the Property to Purchaser; (ii) waive the default and proceed to Closing, without any credit or reduction in the Purchase Price; or (iii) terminate this Agreement and receive a refund of the Deposit in which case all obligations under this Agreement shall terminate except for the Surviving Covenants.

4.2.2 In the event that, after the Closing, Seller is in default in the payment of any monetary obligation hereunder which survives Closing and which continues for more than five (5) Business Days after receipt of written notice thereof, then Purchaser may seek damages (but excluding consequential, punitive and exemplary damages, which are hereby waived) from Seller.

#### 5. Closing and Transfer of Title.

5.1 Closing. Unless otherwise agreed by the Seller and the Purchaser or unless the Bankruptcy Court Approval Order is stayed, the Closing shall be held on the first Business Day that is eleven (11) days after receipt of the approvals described in Section 5.2.4 below (the "Closing" or the "Closing Date") at the offices of Seller in Bonita Springs or the offices of Escrow Agent in Miami, Florida or via overnight delivery. The time of Closing on the Closing Date shall be at 12:00 P.M. or a time mutually agreeable to both parties. Possession of the Property shall be delivered to Purchaser at the Closing. Closing shall occur through an escrow with Escrow Agent.

5.2 Conditions to the Parties' Obligations to Close. In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transaction contemplated hereunder shall be contingent upon the following (each a "Condition to Closing"):

5.2.1 The other party's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and the Closing Date;

5.2.2 As of the Closing Date, the other party shall have performed its covenants and obligations hereunder and shall have tendered all deliveries to be made by such party at Closing; and

5.2.3 The Title Company's commitment to issue to Purchaser on the Closing Date, its 1992 ALTA (with Florida modifications) Owner's Policy of Title Insurance ("**Owner's Policy**") in the face amount of the Purchase Price, showing title to the Real Property vested of record in Purchaser, subject only to the Permitted Exceptions and otherwise in the form provided in Section 13, together with the following endorsements, if required by Purchaser and to the extent applicable and to the extent the Title Company determines such endorsements are permitted to be issued: (i) ALTA Form 9.2; (ii) navigational servitude; (iii) survey; (iv) contiguity; (v) ALTA 8.1; (vi) ALTA 5.1 and (vii) ALTA 4.1.

#### 5.2.4 Approvals.

5.2.4.1. No later than six (6) months from the Effective Date, the Official Committee of the Unsecured Creditors (the "Creditors Committee") approval of this transaction and the transaction set forth in the Other Purchase Agreement, or the Creditors Committee non-objection to this transaction and the transaction set forth in the Other Purchase Agreement, or the resolution of a Creditors Committee objection to this transaction and the transaction set forth in the Other Purchase Agreement shall be a Condition to Closing. Seller's letter addressed to the Title Company and or Purchaser, as applicable, confirming either (i) the Creditors Committee approval of this transaction or (ii) the Creditors Committee non-objection to this transaction and the transaction set forth in the Other Purchase Agreement or (iii) the resolution to a Creditors Committee objection to this transaction and the transaction set forth in the Other Purchase Agreement shall be considered and deemed conclusive evidence that this Condition to Closing has been satisfied without the need or requirement of any further documentation.

5.2.4.2. No later than six (6) months from the Effective Date, the pre-petition lenders and Debtor-in-Possession lenders ("Lenders") approval of this transaction and the transaction set forth in the Other Purchase Agreement, or the non-objection to this transaction and the transaction set forth in the Other Purchase Agreement, or the resolution of a Lenders objection to this transaction and the transaction set forth in the Other Purchase Agreement shall be a Condition to Closing. Seller's letter addressed to the Title Company and or Purchaser, as applicable, confirming either (i) the Lenders approval of this transaction or (ii) the Lenders non-objection to this transaction and the transaction set forth in the Other Purchase Agreement or (iii) the resolution to a Lenders objection to this transaction and the transaction set forth in the Other Purchase Agreement shall be considered and deemed conclusive evidence that this Condition to Closing has been satisfied without the need or requirement of any further documentation.

5.2.4.3. Bankruptcy Court Approval shall have been obtained for the transactions set forth in this Agreement and the Other Purchase Agreement. Purchaser recognizes and acknowledges that Seller has the obligation to maximize the value of the bankruptcy estate and obtain the best possible price for, and terms of sale of, the Property. The obligations of Seller include, but are not limited to, obligations to identify other bidders for the Property ("**Other Bidders**"); market the Property and solicit inquiries, proposals, offers or bids from Other Bidders; provide Other Bidders with notice of this Agreement and the transactions contemplated hereby; provide information to Other Bidders regarding the Property; afford Other Bidders a reasonable opportunity to make competing offers for the Property; accept one or more higher and better offers to purchase the Property; and to take any other affirmative action in connection with the foregoing (including, but not limited to, entering into any definitive agreement or letter of intent with respect thereto, issuing press releases, placing advertisements or making other releases or disclosures in connection therewith, and seeking Bankruptcy Court approval of any sale or sales to one or more Other Bidders), and nothing in this Agreement will, or is intended to, in any way be deemed to prevent such actions or efforts.

Seller shall carry out its obligations to solicit further and additional bids in accordance with the terms of the Bid Procedures, which Bid Procedures shall be in form and substance attached hereto as Exhibit C, or such other form as is reasonably acceptable to Purchaser. Seller shall file a motion seeking approval of the Bid Procedures as well as seeking Bankruptcy Court Approval through taking such action as is necessary to obtain entry of an order approving the Bid Procedures no later than the May 27, 2009 omnibus hearing date scheduled in the Bankruptcy Case. If the Seller fails to obtain entry of a final order approving the Bid Procedures within such time, this Agreement shall terminate, the Deposit together with any accrued interest, if any, shall be returned to Purchaser, and each party shall be released of any and all obligations under this Agreement, provided, however, that Purchaser may, at its sole option and in its sole discretion, extend the time within which all such actions may occur.

If the Bankruptcy Court Approval is not obtained, this Agreement shall terminate, the Deposit together with any accrued interest, if any, shall be returned to Purchaser, and each party shall be released of any and all obligations under the Agreement except for any rights or obligations which specifically survive termination of this Agreement. If the foregoing Condition to Closing is not satisfied on or before the June 18, 2009 omnibus hearing date scheduled in the Bankruptcy Case ("the **Approval Deadline**"), this Agreement shall terminate, the Deposit together with any accrued interest, if any, shall be returned to Purchaser, and each party shall be released of any and all obligations under this Agreement, provided, however, that Purchaser may, at its sole option and in its sole discretion, extend the time within which all such actions may occur.

5.2.5 Simultaneous Closings. The simultaneous Closings of the For Sale Lots under this Agreement and the Hotel Condominium Units under the Other Purchase Agreement.

5.2.6 Village Approvals. Confirmation by the Village of Bal Harbour Village Attorney of the approval required by paragraph 10 of the Development Agreement (as such term is defined in Section 20.17) and the Village of Bal Harbour's approval of the Development Agreement.

If any of the conditions precedent set forth in this Section 5.2 are not satisfied as of the date specified for satisfaction, the party whose obligation to close is conditioned thereon may, in its sole and complete discretion, either (i) waive satisfaction of such condition(s) and proceed to Closing (other than the conditions in Sections 5.2.4 and 5.2.5) or (ii) declare the failure of such condition (other than the conditions in Section 5.2.4) a default by the other party, and proceed in accordance with Section 4. In the event Purchaser or Seller elects to terminate this Agreement due to the failure to satisfy a Condition to Closing, Purchaser shall receive a refund of the Deposit, together with any and all interest earned thereon.

The parties hereto agree that the Closing of this Agreement shall evidence the satisfaction of each of the foregoing Conditions to Closing.

5.3 Breakup Fee & Stalking Horse 363 Auction. Seller represents and Purchaser acknowledges that Seller is in Chapter 11 of the Bankruptcy Code. The parties further acknowledge that a 363 stalking horse bankruptcy auction process shall be required. Purchaser and Seller agree and acknowledge that Purchaser has been selected as a stalking horse for purposes of a

363 auction process. Seller shall undertake the solicitation of bids from Other Bidders and to resolve competing bids, if any, through the Bid Procedures set forth in Exhibit "C" hereto or such other bid procedures as are reasonably acceptable to Purchaser. Purchaser's obligations under this agreement are conditioned upon approval of the Bid Procedures, or such other bid procedures as are reasonably acceptable to Purchaser, including, but not limited to, approval of the Breakup Fee. In the event of a sale of the Property or the Personal Property to a party other than Purchaser, no commissions shall be due and payable to any realtor or broker in this transaction. In addition, if Purchaser is not the successful bidder, in addition to the Break Up Fee, Purchaser shall be entitled to a return of its entire Deposit, together with all interest earned thereon.

5.4 Seller's Deliveries. Seller shall execute and deliver, or, except in the case of documents to be executed by Seller, cause to be delivered, to Purchaser on or before the Closing the documents specified below:

5.4.1 Deed. A Special Warranty Deed executed by Seller, in the form attached hereto as Exhibit I, subject only to the Permitted Exceptions.

5.4.2 Bill of Sale. A Bill of Sale executed by Seller in the form attached hereto as Exhibit J, dated as of the Closing Date.

5.4.3 Assignment and Assumption of Assumed Contracts. An Assignment and Assumption of Assumed Contracts executed by Seller in the form attached hereto as Exhibit K, dated the Closing Date, assigning to Purchaser all of Seller's right, title and interest in, to and under the Assumed Contracts.

5.4.4 General Assignment. A General Assignment executed by Seller in the form attached to this Agreement as Exhibit M dated the Closing Date, assigning to Purchaser all of Seller's rights and interests, if any, to the extent assignable (without obtaining consent), in and to the Personal Property, except to the extent conveyed by Bill of Sale.

5.4.5 Assignment and Assumption of Rental Management Agreements. An Assignment and Assumption of the Rental Management Agreements executed by Seller in the form attached hereto as Exhibit L dated as of the Closing Date, assigning to Purchaser all of Seller's right, title and interest in, to and under the Rental Management Agreements.

5.4.6 FIRPTA Affidavit. An affidavit executed by Seller that Seller is not a "foreign person" in the form attached to this Agreement as Exhibit N.

5.4.7 Preliminary Closing Statement. An executed original of the Preliminary Closing Statement in form and substance mutually agreeable to Seller and Purchaser.

5.4.8 Assignment and Assumption of Leases. An Assignment and Assumption of Leases executed by Seller, if any, in the form attached to this Agreement as Exhibit U, dated as of the Closing Date, assigning to Purchaser all of Seller's right, title and interest in, to and under the Leases. The lease of the Spa Premises dated as of August 30, 2005

by and between Seller, as Landlord, and Spa Chakra LLC, as Tenant, as the operator of the spa (the "**Spa Chakra Lease**") will be terminated or rejected at or prior to the Closing and Seller shall enter into a short term lease with Spa Chakra, LLC for the continued operation of the Spa Premises for a period of not more than ninety (90) days with flexibility to provide, at Seller's option (or Purchaser's option in the event Closing occurs under this Agreement), for at least six (6) additional ninety (90) day periods and provide that Seller or Purchaser after Closing may terminate such lease upon thirty (30) days notice without payment or penalty (the "**Short Term Spa Lease**"). Purchaser acknowledges that the Spa Chakra lease is approximately \$300,000.00 in arrears and that the recapture or recoupment of any or all of said amount, including any required Deposit, shall not be a condition to Closing.

5.4.9      **Sell-Out Date Certificate.** A Certificate, as required by Tower Declaration in recordable form setting forth that the "Sell Out Date," as defined in the Tower Declaration, is the date of Closing.

5.4.10      **Assignment and Assumption of Seller's Rights and Obligations Under The Condominium Declaration.** An Assignment and Assumption of Seller's Rights and Obligations in the form attached to this Agreement as **Exhibit V**, dated as of the Closing Date, assigning to Purchaser certain Seller's rights and obligations under the Condominium Declaration.

5.4.11      **Resignation of Seller Officers and Directors.** A resignation of Seller officers and directors of the 10295 Collins Avenue, Hotel Condominium Association appointed by Seller in conjunction with the closing of the Other Purchase Agreement.

5.4.12      **Originals or copies if originals are not available of the Other Agreements.**

5.4.13      **Copies of licenses and permits.** The original of any permit or license in the possession of Seller to the extent required by law for the transfer of such permits or licenses to Purchaser. In the event delivery of an original described herein is impossible because such original is required to be posted on the Property or is held by the applicable agency or authority, or is lost or misplaced, delivery of a duplicate or other evidence of such permits or licenses.

5.4.14      **Title Affidavit.** An affidavit or such other documentation in form, scope and substance acceptable to Title Company to (a) delete the standard exceptions relating to mechanics liens; (b) confirm that there are no unrecorded easements and that Seller has exclusive possession of the Property, except for the rights of tenants shown on Exhibit R or hereafter approved in writing by Purchaser; (c) stating that Seller has done nothing to change the state of facts shown on the Survey; or (d) delete the "gap" from Purchaser's title commitment and policy.

5.4.15      **Management Documents.**

5.4.15.1 If applicable, an Assignment of the Management Agreement.