

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

The Honorable Judge Elizabeth E. Brown

IN RE:) Chapter 11
) Case No. 18-18636 EEB
WPB HOSPITALITY, LLC)
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**DEBTOR-IN-POSSESSION'S MOTION TO APPROVE SALE OF
PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES
PURSUANT TO 11 U.S.C. § 363(b) & (f)
(FRISCO ACQUISITION, LLC)**

Comes now, the Debtor, WPB Hospitality, LLC ("WPB") by and through its attorney, Arthur Lindquist-Kleissler, Esq. of the law firm Lindquist-Kleissler & Company, LLC, and files its Motion to Approve Sale of Property Free and Clear of Liens, Claims, and Encumbrances to Frisco Acquisition, LLC ("Frisco") pursuant to 11 U.S.C. § 363(b) and (f) and F.R.Bankr.P. Rules 2002(a)(2) and 6004 and 9014 and L.B.R. 6004-1 ("Motion"). In support of this Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Colorado has jurisdiction over this matter and over property of the Debtor and its bankruptcy estate pursuant to 28 U.S.C. §§ 157(a) and 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (N) and (O).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

4. WPB Hospitality, LLC ("WPB") filed the within Chapter 11 bankruptcy on October 3, 2018.
5. The Debtors 341 Meeting of Creditors was held on Wednesday, November 7, 2018 at 1:30 p.m.

6. The Court conducted a Status Conference in this case which was held on Wednesday, November 7, 2018 at 3:00 p.m.
7. The Debtors are Debtors-In-Possession pursuant to 11 U.S.C. § 1107.
8. WPB owns a four (4) acre parcel of land located at 16161 E. 40th Avenue, Denver, Colorado in the Gateway Park business district near Denver International Airport upon which is a partially constructed hotel.
9. Construction of the hotel was temporarily stopped due to problems with the contractor, architect and the construction management company.
10. American Lending Center, LLC ("ALC") is a California limited liability company whose business address is 1 World Trade Center, Ste. 1180, Long Beach, CA 90831.
11. ALC is a secured creditor of WPB.
12. On or about November 1, 2018, WPB made its first (1st) post-petition interest payment to ALC pursuant to 11 U.S.C. §362(d)(3) in the amount of \$35,581.94.
13. On December 3, 2018, WPB made its second (2nd) monthly post-petition interest payment to ALC pursuant to 11 U.S.C. §362(d)(3) in the amount of \$35,685.21.
14. Undersigned counsel has been advised that on January 2, 2019 WPB made its third (3rd) monthly post-petition interest payment to ALC pursuant to 11 U.S.C. §362(d)(3) in the amount of \$35,828.49.
15. Undersigned counsel has been advised by ALC's counsel that the fourth (4th) monthly post-petition interest payment to ALC pursuant to 11 U.S.C. §362(d)(3) will be in the amount of \$36,571.25 and due February 1, 2019.
16. Undersigned counsel has been advised that on March 1, 2019 the Debtor made its fifth (5th) monthly post-petition interest payment to ALC pursuant to 11 U.S.C. §362(d)(3) in the amount of \$36,544.51.
17. The sixth (6th) monthly post-petition interest payment to ALC pursuant to 11 U.S.C. §362(d)(3) will be made on or before April 1, 2019.
18. **By the date of the April 1, 2019 post-petition interest payment, ALC will have received in excess of \$210,000.00 in post-petition interest.**
19. ALC had filed a Motion for Relief from the Automatic Stay (Doc#33) on October 18, 2018 asserting the within Single Asset Real Estate reorganization was a bad faith filing and that relief from the automatic stay should be granted.

20. The Debtor responded to ALC's Motion for Relief from Stay and asserted that the case was not a bad faith filing and that cause did not exist for granting relief from stay including but not limited due to the fact that the subject property is worth approximately \$4,000,000.00 **more** than ALC's alleged debt; that WPB has been making monthly interest payments to ALC and that the Debtor had additional secured or unsecured creditors that would be foreclosed out if ALC were granted relief from the automatic stay.
21. A preliminary hearing was held on ALC's Motion for Relief from Stay on December 13, 2018.
22. By Minute Order dated December 13, 2018 this Court determined that there were evidentiary issues which required setting a final hearing on ALC's Motion for Relief from Stay.
23. The final hearing on ALC's Motion for Relief from Stay was scheduled for Wednesday, February 6, 2019 at 9:30 a.m.
24. On February 6, 2019 the Court held an evidentiary hearing on the ALC Motion for Relief from Stay.
25. On February 7, 2019 the Court issued its Oral Ruling and Judgment in favor of ALC but conditioned continuation of the automatic stay for ninety (90) days conditioned upon certain actions by the Debtor.
26. The Order and Judgment (Doc#'s 153 and 154) requires, inter alia, payment of ALC's debt (liquidation of the property) on or before **May 8, 2019**.

MARKETING THE PROPERTY

27. Post-petition the Debtor employed CBRE, Inc. to market the property. The Application for Employment of CBRE, Inc. was filed on November 2, 2018 (Doc#44) and the Court entered the Order approving the application on November 14, 2018 (Doc#81).
28. CBRE did not actively market the property until the Order for their employment was approved.
29. Since that date CBRE has obtained two (2) purchase offers for the property.
30. The first offer was from Rite-A-Way, LLC for \$9,000,000.00 and a Motion to Approve the Sale to Right A Way, LLC was filed on January 3, 2019 (Doc#123).
31. Right-A-Way, LLC assigned its rights under the Contract to Denver East Hospitality, LLC.

32. On January 15, 2019, Denver East Hospitality, LLC as the assignee of Right-A-Way, LLC elected to terminate the Contract.
33. Denver East Hospitality, LLC exercised its option to terminate the Contract pursuant to subsection 10.6.2.1 of the Contract.
34. Accordingly, the Debtor has filed a Withdrawal of its Motion to Approve the Sale of the Property to Right-A-Way, LLC/Denver East Hospitality, LLC (Doc#134).
35. The second offer was from Brinkman for a gross amount of \$9,425,000.00.
36. The Brinkman Contract was dated December 11, 2018.
37. The Brinkman Contract was accepted by the Debtor and Brinkman on January 15, 2019 upon receipt of termination by Right-A-Way, LLC/Denver East Hospitality, LLC.
38. Additionally, an agreement to extend the Contract with the Broker was signed by the Debtor on January 16, 2019.
39. Brinkman was uniquely suited to buy the subject property because it would be utilizing its own construction company to complete the project.
40. Brinkman elected to terminate this Contract on February 5, 2019.
41. On February 4, 2019 the Debtor had received a third (3rd) offer to purchase the subject property from SAT Broadway, LLC (a division of Baywood Hotels) ("SAT").
42. The third offer was from SAT Broadway, LLC for a gross amount of \$7,000,000.00.
43. The SAT Broadway Contract was dated February 4, 2019.
44. The Debtor negotiated changes to the SAT Broadway, LLC Contract which changes are memorialized in a First Amendment to Contract which is attached to the original February 4, 2019 Contract.
45. The First Amendment of Contract was finalized and signed on February 27, 2019.
46. The Debtor filed a Motion to Approve the Sale of the Property to SAT Broadway on March 1, 2019 (Doc#169).
47. The SAT Broadway Contract was accepted by the Debtor and SAT Broadway on February 6, 2019 upon receipt of termination by Brinkman.
48. SAT formally terminated its Contract on March 14, 2019.

49. There were three (3) Objections to the Debtor's Motion to Approve the SAT Contract including by ALC, the United States Trustee, and the Joint Objection by Abbas Consulting, Inc. and Frisco Acquisition, LLC.
50. On March 15, 2019, the Debtor received a new Contract from Frisco Acquisitions LLC ("Frisco" or "Frisco Acquisition") which was dated February 27, 2019.
51. A copy of the Frisco Acquisitions, LLC Contract is attached hereto as **Exhibit "A"** and is incorporated herein by this reference as though fully set forth.
52. The Frisco Acquisitions, LLC Contract provides for a purchase price of \$6,068,132.97.
53. The Frisco Acquisitions, LLC Contract provides for a \$100,000.00 earnest money deposit and the assumption of the ALC loan in the approximate balance of \$5,310,330.26.
54. The Frisco Acquisitions, LLC Contract provides for approximately \$657,802.71 cash at closing (in addition to the \$100,000.00 earnest money deposit).
55. Attached to the Contract is an original **Addendum** to Contract to Buy and Sell Real Estate (Commercial) ("Addendum").
56. The Addendum provides specific obligations constituting part of the purchase price totaling \$507,802.71. Paragraph 30.3 - Purchase Price of the Addendum specifically sets forth the obligations constituting part of the purchase price. They are as follows:

Storm Drain Lien	City & County of Denver	\$ 134.81
Real Property Taxes	City & County of Denver	\$ 101,340.66
Mechanic lien	Rio Grande Co.	\$ 53,830.49
Mechanic lien	O'Brien Concrete	\$ 13,887.26
Mechanic lien	United Rentals	\$ 64,466.79
Mechanic lien	Redd Iron, Inc.	\$ 53,220.40
Mechanic lien	Metro Building Products	\$ 4,650.48
Mechanic lien	Summit Services Group	\$ 3,520.00
Mechanic lien	HD Supply Construction	\$ 3,556.12
Mechanic lien	Waste Connections	\$ 5,335.41
<u>Use Taxes</u>	<u>City and County of Denver</u>	<u>\$ 158,842.52</u>
TOTALS		\$ 507,802.71

57. The Addendum also provides for a **Reserve Fund** in the amount of \$250,000.00 for payment of administrative expenses, trustee fees, and attorneys fees in the Chapter 11 bankruptcy.

58. The Contract does not provide for the 2018 real estate property taxes which are due on the property and which have not been paid.
59. Additionally, the Contract does not provide for the pro-rated 2019 real estate property taxes or other transactional costs associated with the closing including title insurance, etc.
60. The Addendum sets the closing date twenty-nine (29) days from the date the Bankruptcy Court authorizes the specific sale to Frisco Acquisitions, LLC but at least forty-five (45) days after mutual execution of the Contract. Closing shall occur no later than seventy-five (75) days after mutual execution of the Contract or Bankruptcy Court approval whichever occurs later.
61. The original Addendum provides that the closing date may be extended for an additional thirty (30) days by making an additional \$125,000.00 deposit to earnest money.
62. **Paragraph 30.3 (sic ¶30.5) of the original Addendum describes that as part of the sale of the WPB property to Frisco Acquisition, LLC, Frisco Acquisition, LLC has contemporaneously entered into an agreement for the purchase and sale of LLC's interest with Wanda Bertoia, owner of WPB Hospitality, LLC and Alpine Hospitality, Inc. Through these separate agreements Abbas Consulting, Inc. will acquire all of Wanda Bertoia's right, title and interest in WPB Hospitality, LLC in exchange for the payment of \$2,500,000.00.**
63. The actual agreement for the purchase and sale of LLC interest is between Wanda Bertoia, owner of WPB Hospitality, LLC and Frisco Acquisition, LLC, a Texas limited liability company. It is not between Bertoia and Abbas Consulting, Inc.
64. **Paragraph 30.3 (sic ¶30.5) of the original Addendum also states that as further consideration, Wanda Bertoia and Alpine Hospitality, Inc. have agreed to release their claims against WPB Hospitality, LLC. It also provides that Buyer and Seller agree that contemporaneously execution of the LLC Agreement is important to the overall consideration for closing of the transaction.**
65. As further consideration, Wanda Bertoia and Alpine Hospitality, Inc. have agreed to release their claims against WPB Hospitality, LLC.
66. Attached hereto as **Exhibit "B"** is a copy of the **Agreement** for Purchase and Sale of LLC Interest between Wanda Bertoia, owner of WPB Hospitality, LLC and Frisco Acquisition, LLC, a Texas limited liability company ("Agreement").
67. This Agreement for Purchase and Sale of LLC Interest (**Exhibit "B"**), provides that Wanda Bertoia is selling all of her right, title and interest in WPB Hospitality, LLC for the sum of \$2,500,000.00 to Frisco Acquisition, LLC.

68. Payment of the \$2,500,000.00 is by virtue of a \$250,000.00 cash down payment at closing plus the execution of a Promissory Note for \$2,250,000.00.
69. The Agreement is also signed by Alpine Hospitality, Inc., a Colorado corporation owned by Wanda Bertoia.
70. The Agreement was signed March 14, 2019 by all Parties.
71. A copy of the \$2,250,000.00 **Promissory Note** made payable to Wanda Bertoia by Frisco Acquisitions, LLC is attached hereto as **Exhibit "C"**.
72. The Promissory Note (**Exhibit "C"**) provides for the payment of \$2,250,000.00 with interest on the unpaid balance from March 1, 2019 until paid at six percent (6%) per annum in monthly payments of \$43,500.00 for sixty (60) months or until paid in full.
73. **The Agreement for Purchase and Sale of LLC Interest provides that Wanda Bertoia and Alpine Hospitality, Inc. agree to release all claims that they may have against WPB in exchange for receiving all claims and interest in Denver County District Court Case Number 2018CV32991 (the Kumar lawsuit) styled as WPB Hospitality, LLC v. Kumar Construction Management, et al.**
74. The Kumar lawsuit is currently property of the Bankruptcy Estate pursuant to 11 U.S.C. §541.
75. The Debtor requests that the assignment of the Kumar lawsuit be approved as part of the closing of the Frisco Contract.
76. The Plaintiff in the Kumar litigation is WPB Hospitality, LLC. The Defendant's in the Kumar litigation are Kumar Construction Management, Inc., Neil Kumar, Associated Architects, LTD, Tetra Tech, Inc., Aileron Investment Management, LLC, American Lending Center, LLC, and Case Inspection Services, Inc.
77. On September 21, 2018 ALC also filed a lawsuit in District Court, Arapahoe County, Colorado bearing case number 2018CV32245 ("ALC's Arapahoe lawsuit").
78. ALC's Arapahoe lawsuit was filed against Alpine Hospitality, Inc. and Wanda S. Bertoia.
79. Alpine Hospitality, Inc. and Wanda S. Bertoia filed an Answer and Counterclaims in the ALC Arapahoe lawsuit.
80. Alpine Hospitality, Inc. and Wanda S. Bertoia as part of their Counterclaims in the ALC Arapahoe lawsuit incorporated many of WPB's claims set forth in the Kumar lawsuit.

FACTUAL BACKGROUND

81. Late in the afternoon of Tuesday, October 2, 2018 undersigned Counsel and his Firm were retained to file a "rush emergency Chapter 11 bankruptcy" for the Debtor WPB Hospitality, LLC.
82. The Debtor, WPB Hospitality, LLC ("Debtor" or "WPB") owns an incomplete hotel under construction on a four (4) acre parcel located at 16161 E. 40th Avenue, Denver, Colorado in the Gateway Park business district near Denver International Airport.
83. The hotel is intended to fly the Sheraton 4 Points flag. WPB is owned 100% by Wanda Bertoia ("Bertoia") who is also the managing member of WPB.
84. Ms. Bertoia owns another entity known as Alpine Hospitality, Inc. ("Alpine"). Alpine owns a Ramada Inn located at 6210 Tower Road, Denver, Colorado. Therefore, Ms. Bertoia is experienced in the management and operations of hotels.
85. A Public Trustee's Foreclosure sale was scheduled on WPB's property for Thursday, October 4, 2018 at 10:00 a.m. with the Denver Public Trustee.
86. WPB Hospitality, LLC ("WPB") is a Colorado limited liability company. WPB is a single member LLC whose only member is Wanda Bertoia ("Bertoia"), a resident of Colorado.
87. In 2008 Wanda Bertoia purchased the four (4) acre parcel of land located at 16161 E 40th Avenue, Denver, CO 80239.
88. Bertoia had paid approximately \$2,400,000.00 for the four (4) acres in 2008.

HOTEL CONSTRUCTION

89. Kumar Construction Management, Inc. ("Kumar") is an Illinois Corporation with a last known address identified as 2863 W. 95th Street, Naperville, Illinois 60564.
90. Upon information and belief, Kumar Construction Management, Inc. is in the business of construction and construction management.
91. Associated Architects, Ltd. is a Colorado corporation with a reported principal office address of P.O. Box 33034, Denver, Colorado 80233 ("Associated" or "the Architect").
92. Tetra Tech, Inc. is a Delaware corporation ("Tetra Tech") registered as a foreign corporation with the Colorado Secretary of State, with a principal office address of 3475 E. Foothill Boulevard, Pasadena, California 91107.

93. Upon information and belief, Tetra Tech is, among other things, in the business of monitoring and managing draw disbursements for construction projects and construction loans.
94. Aileron Investment Management, LLC (“Aileron”) is a Florida limited liability company with a principal office address of 3401 W. Cypress Street, Suite 101, Tampa, Florida 33607.
95. Upon information and belief, Aileron is a real estate development lender.
96. American Lending Center, LLC (“ALC” or “EB-5 Lender”) is a California limited liability company with a principal office address of 1 World Trade Center, Suite 1130, Long Beach, California 90831.
97. Upon information and belief, ALC is an EB-5 lender providing loans for real estate development and construction.
98. On or about June 6, 2008, WPB engaged Associated Architects, Ltd. (the “Architect”) to prepare floor plans and construction documents for the construction of a new hotel to be located at 16161 E 40th Avenue, Denver, Colorado (the “Property”).
99. After obtaining franchise agreements with Best Western, WPB began searching for borrowing opportunities to perform the construction pursuant to the Architect’s plans for a Best Western flagged hotel.
100. WPB identified Aileron as an acceptable lender that offered to fund construction through a mixture of financing that included EB-5 financing through ALC.
101. During the process of setting the loan agreements, WPB hired Kumar as WPB’s general contractor for the build project.
102. Aileron elected to engage a construction draw manager to oversee Kumar in the construction process and provide oversight to the draw process.
103. Aileron selected and retained Tetra Tech, Inc. (“Tetra Tech”) to step into the role of managing and tracking the draw requests from the contractor and providing appropriate payments to the contractor, as a measure of protection for WPB.
104. According to the draw documents, Tetra Tech assigned the draw management to a disbursement agent in Bellevue, Washington.

THE CONSTRUCTION LOANS

105. On or about December 31, 2015, WPB executed two promissory notes, one in the principal amount of \$5,700,000 (“Note A”) and the second in the principal amount of \$4,500,000 (“Note B”).

106. Note A and Note B were provided by WPB for the purposes of providing financing for the construction of a new hotel.
107. Note A identifies the lender as Aileron Investment Management, LLC, in Florida (“Aileron”).
108. Note B identifies the lender as American Lending Center, LLC, in California (“ALC”).
109. Both Note A and Note B are five-year, interest-only notes.
110. At some point, one or both of the lenders deposited \$230,000 +/- in loan proceeds with Northeast Bank in Maine.
111. As of the last time WPB inquired with Northeast Bank, there remains \$216,095.77 in the account at Northeast Bank.

CONTRACTOR DRAWS

112. Beginning on or about April 14, 2016, Kumar submitted a draw request to Tetra Tech for \$119,970.00 for the purposes of beginning construction (“Draw 1”).
113. Draw 10 was the final draw request and payment of which WPB is aware.
114. Each of the Draws 1-10 contained information and details regarding the various subcontractors and vendors to which Kumar indicated he was making payment, including various purported lien releases.

CONSTRUCTION PROGRESSION AND FAILURES

115. As the General Contractor, Kumar undertook to obtain the necessary permits and approvals from the City and County of Denver Planning Department for the development of the Property.
116. In June or July, 2017, the Architect submitted Mechanical and Plumbing (“M&P”) permit requests to the City and County of Denver Planning Department (“Planning”).
117. On July 6, 2017, the M&P request came back from Planning indicating that the “Project is Held Pending Resolution and Correction of nine correction comments on the plumbing plan and 16 correction comments on the Mechanical plan.”
118. Documentation from the City and County of Denver makes clear that Kumar and the Architect failed to provide timely responses to Planning that were satisfactory.

119. On August 14, 2017, Planning sent a second Architectural & Structural Plan Review Notice (“2nd Notice”).
120. Almost immediately, Planning advised Kumar and the Architect that 34 architectural and structural comments remained open, 15 of which advised that Planning was concerned that the project plan review was not being addressed and that Planning was considering issuing a notice to stop all work. Planning set a deadline of two weeks (August 28, 2017) for responses.
121. Through December, 2017, Planning continued to advise Kumar and the Architect of a growing number of comments that had not been addressed by either Kumar or the Architect.
122. At no time did Kumar or the Architect actually correct any of the comments from Planning.
123. Eventually, Debtor was forced to retain a new architect; by December 27, 2017, the new architect was able to address the open comments by Planning.
124. However, by the time the new architect obtained approvals from Planning in 2017, Kumar and the Architect had abandoned the project.
125. Since Kumar abandoned the project, WPB has been notified of \$269,282.06 in liens on the Property as a result of subcontractors, vendors and suppliers going unpaid.

THE FORECLOSURE

126. On or about April 5, 2018, the Denver Public Trustee provided a Combined Notice of Sale and Notice of Rights to Cure or Redeem indicating that ALC was proceeding with foreclosure on a loan with an original principal balance of \$10,200,000 and an outstanding balance of \$5,000,615.02.
127. On or about April 5, 2018, American Lending Center, LLC (“ALC”) recorded a revised Notice of Election and Demand for Sale (“Amended NED”) in which ALC indicated that it alone was the holder of the debt evidenced by Note A and Note B.
128. The Amended NED indicated that the outstanding principal balance of Note A was \$500,615.02 and that the outstanding principal balance of Note B was \$4,500,000.
129. On June 6, 2018, WPB provided the Public Trustee with an Intent to Cure notice.

130. On June 26, 2018, WPB received a Cure Statement, ostensibly completed by ALC, indicating that the payments due under Note A were \$44,440.96 and the payments due under Note B were \$1,119,602.33. The Cure Statement adds in all statutorily allowed costs of carrying and attorney fees and provides a final total cure figure of \$1,230,218.56.
131. Despite having just received a Cure Statement requiring \$1,230,218.56 on June 30, 2018, WPB received an invoice from Aileron Capital Management dated June 27, 2018, indicating total interest due on both notes to be \$425,315.11.
132. On July 13, 2018, WPB was provided with a “Corrected Cure Statement,” ostensibly completed by ALC, indicating that the payments due under Note A were \$48,225.97 and the payments due under Note B were \$433,456.87. The Corrected Cure Statement adds in all statutorily allowed costs of carrying and attorney fees and provides a final total cure figure of \$556,099.98.
133. On July 27, 2018, an evidentiary hearing was conducted in the Denver District Court for the purpose of determining if default had occurred under the terms of the loan.
134. During the July 27, 2018, hearing, Debtor provided a cure payment of \$556,099.98 to the Denver City and County Public Trustee, pursuant to the Corrected Cure Statement (the “Cure Payment”).
135. Following confirmation of the Cure Payment, the Court proceeded to take testimony and evidence from ALC on “non-monetary defaults.” Prior to Debtor putting on evidence, Debtor and ALC reached a tentative agreement that would forestall the foreclosure and allow Debtor to obtain new financing within a matter of weeks.
136. As a part of the tentative agreement made at the hearing and placed on the record, Debtor would be allowed to pay for either a subordination fee of \$1,500,000 or a “break-up fee” of \$1,500,000 at Debtor’s choice.
137. The purpose behind the break-up fee was to ostensibly allow Debtor to obtain new financing and pay off the entire balances of Note A and Note B.
138. ALC further stated at that time that ALC would also need to review certain loan package documents and that those details would later be provided in a formal stipulation.
139. WPB cured any financial delinquency to ALC by paying \$556,099.98 pursuant to a cure statement on July 26, 2018.
140. The Denver District Court, however, determined that notwithstanding curing the alleged financial default, WPB had a non monetary default due to the fact that construction of the hotel had not been completed by a date certain.

141. On September 21, 2018 the District Court, Denver County, Colorado issued an Order Authorizing the Public Trustee's sale of the property.

142. The Public Trustee sale of WPB's property located at 16161 E 40th Avenue, Denver, CO 80239 was scheduled for Thursday, October 4, 2018 at 10:00 a.m.

MONITORING FAILURES

143. Tetra Tech was retained by the lenders for the purpose of monitoring and authorizing, or otherwise approving, draw requests made by Kumar as construction proceeded.

144. Tetra Tech's failures in assuring that payments were made to subcontractors and in securing lien releases have caused Debtor damages related to liens recorded against the Property, but which are not less than \$250,000.

145. Case Inspections did not accurately or completely conduct the review of the construction progress and, as set forth in the construction draw reports discussed above, Case Inspections overstated the amount of work that had been completed by Kumar.

146. Case Inspections failed to accurately report that construction progress did not exceed 20-22% of the project.

147. Tetra Tech, having received Case Inspection's misstated reports, inaccurately reported to the lender and to Debtor the amount of work completed by Kumar.

KUMAR'S LIABILITY

148. In each of the draw requests submitted by Kumar, as identified in paragraphs above, Kumar made false representations of material fact relating to the amount of work completed on the project, the amount of money owed by Debtor, and Kumar's representations that subcontractors were being paid.

THE ARCHITECT

149. The Architect received no fewer than six requests from Planning to address open plan review conditions that would allow construction to proceed.

150. The Architect failed to provide any response to Planning and therefore construction permits were not issued and construction ceased.

151. As a result of the Architect's failure to respond to Planning, Debtor retained a separate architect to respond to Planning and thereby allow permits to issue.

152. On or about August 13, 2018 WPB filed a lawsuit against Kumar Construction Management, Inc.; Neil Kumar; Associated Architects, Ltd., Tetra Tech, Inc., Aileron Investment Management, LLC; American Lending Center, LLC and Case Inspection Services, Inc.
153. This lawsuit was filed in the District Court, Denver County, Colorado bearing case number 2018 CV 32991 ("Kumar lawsuit").
154. The Kumar lawsuit asserts all of the allegations above and is further evidence that the Debtor believes it has a good faith defense to claims raised by ALC and related parties.
155. On or about October 12, 2018 ALC filed a lawsuit against Alpine and Bertoia in the District Court, Arapahoe County, Colorado bearing case number 2018 CV 32245 ("ALC Guarantor suit").
156. The ALC Guarantor suit was filed against Alpine and Bertoia due to the fact that they are guarantors on the ALC loan.

THE TERMS OF THE SALE

157. The Debtor has a contract to sell the property on which is located the incomplete hotel under construction on a four (4) acre parcel located at 16161 E. 40th Avenue, Denver, Colorado in the Gateway Park business district near Denver International Airport (the "Property").
158. It is anticipated that non-substantive amendments or modifications may be made to the Contract to accommodate scheduling and/or to address other minor issues. All references herein to the "Contract" are intended to mean the Contract, as so amended or modified.
159. The Contract is dated February 27, 2019. A copy of which is attached hereto as **Exhibit "A."**
160. The Contract was signed by Wanda Bertoia on February 28, 2019 on behalf of WPB Hospitality, LLC.
161. The Debtor negotiated changes to the Frisco Acquisition, LLC Contract which changes are memorialized in a original Addendum to Contract to Buy and Sell Real Estate (Commercial) which is attached to **Exhibit "A"**.
162. Attached hereto as **Exhibit "B"** is a copy of the Agreement for Purchase and Sale of LLC Interest between Wanda Bertoia, owner of WPB Hospitality, LLC and Frisco Acquisition, LLC, a Texas limited liability company ("the Agreement").

163. This Agreement for Purchase and Sale of LLC Interest (**Exhibit "B"**), provides that Wanda Bertoia is selling all of her right, title and interest in WPB Hospitality, LLC for the sum of \$2,500,000.00.
164. Payment of the \$2,500,000.00 is by virtue of a \$250,000.00 cash down payment at closing plus the execution of a Promissory Note for \$2,250,000.00.
165. A copy of the \$2,250,000.00 Promissory Note made payable by Frisco Acquisition, LLC is attached hereto as **Exhibit "C"**.
166. The Promissory Note (**Exhibit "C"**) provides for the payment of \$2,250,000.00 with interest on the unpaid balance from March 1, 2019 until paid at six percent (6%) per annum in monthly payments of \$43,500.00 for sixty (60) months or until paid in full.
167. **The Agreement for Purchase and Sale of LLC Interest provides that Wanda Bertoia and Alpine Hospitality, Inc. agree to release all claims that they may have against WPB in exchange for receiving all claims and interest in Denver County District Court Case Number 2018CV32991 (the Kumar lawsuit) styled as WPB Hospitality, LLC v. Kumar Construction Management, et al.**
168. The Plaintiff in the Kumar litigation is WPB Hospitality, LLC. The Defendant's in the Kumar litigation are Kumar Construction Management, Inc., Neil Kumar, Associated Architects, LTD, Tetra Tech, Inc., Aileron Investment Management, LLC, American Lending Center, LLC, and Case Inspection Services, Inc.
169. The legal description for the property being sold is attached to the Contract to Buy and Sale Real Estate (Commercial) (**Exhibit "A"**) and/or the title reports **Exhibits "D"** and **"E"**. The property is also known as Part of Block 1, Lot 1, Gateway Park IV, Denver, Colorado 80239.
170. The Contract provides, *inter alia*, for the following:
- a) The Frisco Acquisition, LLC Contract provides for a purchase price of \$6,068,132.97.
 - b) The Frisco Acquisition, LLC Contract provides for a \$100,000.00 earnest money deposit and the assumption of the ALC loan in the approximate balance of \$5,310,330.26.
 - c) The Frisco Acquisition, LLC Contract provides for approximately \$657,802.71 cash at closing.
 - d) Attached to the Contract is an original Addendum to Contract to Buy and Sell Real Estate (Commercial) ("Addendum").

- e) The Addendum provides specific obligations to be paid constituting part of the purchase price totaling \$507,802.71.
- f) The Addendum also provides for a Reserve Fund in the amount of \$250,000.00 for payment of administrative expenses, trustee fees, and attorneys fees in the Chapter 11 bankruptcy.
- g) The Addendum sets the closing date twenty-nine (29) days from the date the Bankruptcy Court authorizes the specific sale to Frisco Acquisitions, LLC but at least forty-five (45) days after mutual execution of the Contract.
- h) Closing shall occur no later than seventy-five (75) days after mutual execution of the Contract or Bankruptcy Court approval whichever occurs later.
- i) The original Addendum provides that the closing date may be extended for an additional thirty (30) days by making an additional \$125,000.00 deposit to earnest money.
- j) **Paragraph 30.3 (sic ¶30.5) of the original Addendum describes that as part of the sale of the WPB property to Frisco Acquisitions, LLC that Abbas Consulting, Inc., a Texas corporation has contemporaneously entered into an agreement for the purchase and sale of LLC's interest with Wanda Bertoia, owner of WPB Hospitality, LLC and Alpine Hospitality, Inc. Through these separate agreements Abbas Consulting, Inc. will acquire all of Wanda Bertoia's right, title and interest in WPB Hospitality, LLC in exchange for the payment of \$2,500,000.00.**
- k) The actual agreement for the purchase and sale of LLC interest is between Wanda Bertoia, owner of WPB Hospitality, LLC and Frisco Acquisition, LLC, a Texas limited liability company. It is not between Bertoia and Abbas Consulting, Inc
- l) **Paragraph 30.3 (sic ¶30.5) of the original Addendum also states that as further consideration, Wanda Bertoia and Alpine Hospitality, Inc. have agreed to release their claims against WPB Hospitality, LLC. It also provides that Buyer and Seller agree that contemporaneously execution of the LLC Agreement is important to the overall consideration for closing of the transaction.**
- m) **As further consideration, Wanda Bertoia and Alpine Hospitality, Inc. have agreed to release their claims against WPB Hospitality, LLC.**
- n) The Property is being sold on as "as is" basis without warranties or representations.
- o) The Contract provides that it is specifically contingent upon Bankruptcy Court approval.

p) Any sale of the Property is subject to bankruptcy court approval pursuant to paragraph 30 of the contract.

171. The Frisco Acquisition, LLC Contract provides for approximately \$657,802.71 cash at closing (in addition to the \$100,000.00 earnest money deposit).

172. Attached to the Contract is an original **Addendum** to Contract to Buy and Sell Real Estate (Commercial) ("Addendum").

173. The Addendum provides specific obligations to be paid constituting part of the purchase price totaling \$507,802.71. Paragraph 30.3 - Purchase Price of the Addendum specifically sets forth obligations constituting part of the purchase price. They are as follows:

Storm Drain Lien	City & County of Denver	\$ 134.81
Real Property Taxes	City & County of Denver	\$ 101,340.66
Mechanic lien	Rio Grande Co.	\$ 53,830.49
Mechanic lien	O'Brien Concrete	\$ 13,887.26
Mechanic lien	United Rentals	\$ 64,466.79
Mechanic lien	Redd Iron, Inc.	\$ 53,220.40
Mechanic lien	Metro Building Products	\$ 4,650.48
Mechanic lien	Summit Services Group	\$ 3,520.00
Mechanic lien	HD Supply Construction	\$ 3,556.12
Mechanic lien	Waste Connections	\$ 5,335.41
Use Taxes	City and County of Denver	\$ 158,842.52
TOTALS		\$ 507,802.71

174. The Addendum also provides for a **Reserve Fund** in the amount of \$250,000.00 for payment of administrative expenses, trustee fees, and attorneys fees in the Chapter 11 bankruptcy.

175. ALC has represented that upon payment of its loan balance that it would release any claim to the funds currently held by Northeast Bank which are approximately \$216,000.00.

SALE ALTERNATIVES

176. The Debtor has explored alternatives to selling the property.

177. The Debtor's true desire was to develop the property into a full fledged operating hotel.

178. The Debtor hoped to create a significant number of jobs through an operating hotel.

179. The Debtor made significant progress towards refinancing the project which would have facilitated completion of the construction.
180. The Debtor believes that constraints exists with the existing financing; the relatively short time frame for refinancing; and the construction mismanagement among other factors have mitigated in favor of the Debtor simply selling the property.

MARKETING OF THE PROPERTY

181. The Debtor hired CBRE, Inc. to market the subject property.
182. CBRE, Inc. had previously been involved with the Debtor and had experience in marketing the property.
183. CBRE, Inc. has a number of realtors that specialize in the purchase and sales of hotels and hospitality properties.
184. CBRE, Inc. has extensive contacts in the hotel and hospitality industry.
185. Utilizing this extensive contact list, the CBRE Realtors emailed and spoke directly to prospective purchasers of hotel and hospitality properties. The realtors put together a marketing summary dated November 27, 2018 attached hereto as **Exhibit "H."**
186. The marketing summary indicated that the total number of executed CA's was fifty (50).
187. As of the date of this Motion total executed CA's were seventy-three (73).
188. CBRE maintains a list of active investors in the hotel and hospitality market and this project was marketed to them.
189. Additionally the realtors completed five (5) tours of the subject property to prospective purchasers and the entities are identified in the marketing summary. An additional fifty (50) interested entities are identified in the marketing summary.
190. Besides direct email and telephone calls the property was publicly marketed on the CBRE Deal Flow website.
191. A marketing brochure was utilized for the property.
192. The property was marketed from August 2018 through as recently as this week.
193. As a result of these marketing efforts two (2) purchase offers were procured as identified above.

AUTHORITY FOR SALE

11 U.S.C. §363(b)

194. 11 U.S.C. § 363(b) provides that "The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate...".
195. Pursuant to 11 U.S.C. §1107(a) a Debtor-in-Possession subject to certain limitations has all of the powers and shall perform all of the functions and duties of a trustee serving in a Chapter 11 case.
196. Further, section 105(a) of the Bankruptcy Code allows the Court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).
197. The Bankruptcy Court's power to authorize a sale under section 363(b) is to be exercised at the Court's discretion. *In re WPRV-TV, Inc.* 983 F.2d 336, 340, (1st Cir. 1993); *New Haven Radio, Inc. v. Meister (In re Martin-Trigona)*, 760 F.2d 1334, 1346 (2nd Cir. 1985); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1073, 1069 (2d Cir. 1983).
198. Courts have authorized a sale of a Debtor's assets pursuant to section 363(b) of the Bankruptcy Code or in the absence of a reorganization plan where there is a "sound business purpose." *In re Delaware & Hudson Ry.Co.*, 124 B.R. 169 (D.Del.1991); *Titusville Country Club v. Penn Bank (In re Titusville Country Club)*, 128 B.R. 396 (Bankr.W.D.Pa. 1991); *In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15 (Bankr.E.D.Pa. 1987). See also, *Stephen Indus., Inc. v. McClune*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp*, 722 F.2d at 1071 (setting forth the "sound business purpose" test in the context of a sale of assets under section 363(b) of the Bankruptcy Code).
199. The Debtor-In-Possession acts as the Trustee in the within case and is imbued with all of the rights and authorities of the Trustee.

11 U.S.C. §363(f)

200. 11 U.S.C. § 363(f) provides as follows: "The Trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--
- 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
 - 2) such entity consents;

- 3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- 4) such interest is in bona fide dispute; or
- 5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest

201. The Debtor believes that certain of the above subsections of 11 U.S.C. §363(f) apply in the within case.

202. The price at which the property is being sold is significantly greater than the aggregate value of all liens on the subject property.

203. Additionally, there are genuine issues regarding the validity of the various liens including but not limited to the amount of the liens and/or whether the liens are simply unsecured debts.

204. The Debtor believes that all of the creditors (including the lien claimants) could be compelled in an legal or equitable proceeding to accept a money satisfaction of their interest in the subject property.

205. The Contract provides that Frisco will assume ALC's Note and Deed of Trust against the subject property as part of the purchase of the property.

206. Upon information and belief Frisco Acquisition, LLC has been in contact and in negotiations with ALC regarding this transaction.

207. The Addendum provides specific obligations constituting part of the purchase price totaling \$507,802.71. Paragraph 30.3 - Purchase Price of the Addendum specifically sets forth obligations constituting part of the purchase price. They are as follows:

Storm Drain Lien	City & County of Denver	\$ 134.81
Real Property Taxes	City & County of Denver	\$ 101,340.66
Mechanic lien	Rio Grande Co.	\$ 53,830.49
Mechanic lien	O'Brien Concrete	\$ 13,887.26
Mechanic lien	United Rentals	\$ 64,466.79
Mechanic lien	Redd Iron, Inc.	\$ 53,220.40
Mechanic lien	Metro Building Products	\$ 4,650.48
Mechanic lien	Summit Services Group	\$ 3,520.00
Mechanic lien	HD Supply Construction	\$ 3,556.12
Mechanic lien	Waste Connections	\$ 5,335.41
<u>Use Taxes</u>	<u>City and County of Denver</u>	<u>\$ 158,842.52</u>
TOTALS		\$ 507,802.71

208. **Although the Debtor has requested that the sale be free and clear of liens and interest, the Contract actually provides for the payment of all of the outstanding debts of the Debtor including alleged Mechanic Lien Claims and Proof of Claims.**

209. The Addendum also provides for a **Reserve Fund** in the amount of \$250,000.00 for payment of administrative expenses, trustee fees, and attorneys fees in the Chapter 11 bankruptcy.

210. In response to the Debtor's demands for more information the Proof of Claim creditors for claims number 2, 3, and 4 filed Amended Proofs of Claim attaching support documents for their claims.

211. The Debtor has examined the Amended Proofs of Claim number 2, 3, and 4 and the additional support documents and believes that these claims are valid Mechanic Lien claims which should be paid at the time of closing.

212. The amounts and original creditors for Proofs of Claim number 2, 3 and 4 are as follows:

- 1) Claim number one (1) was filed on November 6, 2018 by City and County of Denver in the amount of \$240,733.56 with \$101,340.06 being secured for services rendered.
- 2) Claim number two (2) was originally filed on November 20, 2018 by Rio Grande Co. in the amount of \$53,830.49 for building materials and supplies.
- 3) Claim number three (3) was originally filed on November 26, 2018 by O'Brien Concrete Pumping - Colorado, Inc. n/k/a OBC in the amount of \$13,887.26 for building materials and supplies.
- 4) Claim number four (4) was originally filed on December 6, 2018 by HD Supply Construction Supply, LTD d/b/a HD Supply Construction & Industrial - White Cap in the amount of \$4,445.38 for building materials and supplies.

213. As part of the consideration for Frisco's purchase of the property, Frisco and Abbas Consulting, Inc. will waive payment of their claims and release the claims acquired by them.

214. The Debtor believes that the remaining Mechanic Lien Claimants, especially those that did not file Proofs of Claim, and other claims are in bona fide dispute.

215. The Debtor believes that the remaining Mechanic Lien claims are in dispute based upon the fact that virtually none of the liens filed had supporting documents attached to them such as invoices, delivery orders, lists of materials, or goods.

216. Virtually none of the Mechanic Lien claims had supporting documents from which it could be determined the actual dates that services were supplied or that materials were delivered.
217. Undersigned counsel has written letters to each of the alleged creditors demanding supporting documents and proof of the dates services were supplied and/or materials were delivered.
218. Although some of the additional creditors are responding to these requests, neither counsel for the Debtor or the Debtor has had sufficient time to review the materials and determine the propriety of the alleged claim.
219. It must be remembered that original invoices and claims were submitted to the Debtor's contractor, Kumar Construction and that contractor abandon the project and has fled the State and/or Country.
220. Further, other than Proofs of Claim number 2, 3, and 4 none of the other Mechanic Lien Claimants filed a Proof of Claim by the Bar Date, January 14, 2019.
221. **Nevertheless the current Contract provides for the payment of all of the disputed Mechanic Lien Claims and/or Proofs of Claim.**
222. **The Contract also provides for the assumption of ALC's Note and Deed of Trust in full.**
223. Accordingly all creditors in the within case are protected.

11 U.S.C. §363(m)

224. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or a lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

225. Any sale is one done in "good faith" and "for value."
226. Any such sale does **not** involve any insiders.
227. Frisco Acquisition, LLC is purchasing the subject property in good faith.
228. The Debtor is selling the property in good faith.
229. Frisco Acquisition, LLC is paying fair market value for the subject property.

230. Neither the Debtor, Alpine, or Bertoia have any interest in Frisco Acquisition, LLC.

231. Accordingly the within sale does not involve any "insiders."

232. **As part of the consideration for the within Contract, however, it is disclosed that Wanda Bertoia is selling her ownership interest in WPB to Frisco Acquisition, LLC.**

233. **In exchange for this transfer and Assignment, Wanda Bertoia will receive a payment of \$2,500,000.00 as described above.**

The Bankruptcy Rules

234. F.R.Bankr.P. 2002(a) provides that a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, shall provide a minimum of twenty-one (21) days notice unless the court for cause shown shortens the time or directs another method of giving notice.

235. F.R.Bankr.P. 6004(c) provides that "A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold."

236. F.R.Bankr.P. 6004(c) also provides that the notice required by subdivision (a) of the rule shall include the date of the hearing on motion and the time within which objections may be filed and served on the Debtor-In-Possession or Trustee.

237. L.B.R. 6004-1(a) provides that a motion to sell free and clear of liens under 11 U.S.C. § 363(f) must identify by name the lien holders whose property rights are affected by the motion.

238. The affected lien holders must be served with a complete set of moving papers pursuant to F.R.Bankr.P. 7004(b).

239. L.B.R. 6004-1(a) also provides that the motion must allege the factual basis demonstrating that the motion comes within one or more subsections of 11 U.S.C. § 363(f)(1)-(5).

240. L.B.R. 6004-1(c) provides that the proposed form of order granting a motion to sell free and clear of liens must specify each lienholder whose interest is to be affected by the order and whether such liens will attach to the proceeds of the sale.

241. Fed.R.Bankr.P. 6004(h) specifically provides that an Order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after the entry of the Order, unless the Court Orders otherwise.

242. The Debtor intends and does by this Motion request that the fourteen (14) day stay provided by Fed.R.Bankr.P. 6004(h) be waived in order to facilitate an immediate closing of the property.

THE SALE

243. Pursuant to the Sale Agreement, the Debtors-In-Possession seeks to sell the estate's interest in the Property to Frisco Acquisition, LLC outside the ordinary course of business pursuant to Bankruptcy Code § 363(b).

244. When determining whether to grant an application to use, sell or lease property of the estate other than in the ordinary course of business pursuant to Bankruptcy Code § 363(b), the Court must expressly find from the evidence presented before it at hearing a good business reason to grant such an application. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983). *See also, In re Shipper*, 933 F.2d 513, 515 (7th Cir. 1991).

245. The Debtors-In-Possession believe that there are good business reasons underlying the Sale Agreement and that the sale of the Property pursuant to the Sale Agreement is in the best interest of the Estate.

246. ALC filed a Motion for Relief From Stay (Doc#33).

247. Although the Court declined to grant relief from the automatic stay, the Court did schedule a final hearing on the issue for Wednesday, February 6, 2019 at 9:30 a.m.

248. The Debtor believes that the sale of the subject property allows for the orderly disposition of the property in lieu of ALC's foreclosure.

249. There is approximately \$1,000,000.00 of equity above ALC's first lien on the property.

250. This equity is available to pay the other secured or unsecured creditors who would otherwise be foreclosed out if ALC were granted relief from the automatic stay.

251. Additionally, in addition to the fact that there is almost \$1,000,000.00 of equity in subject property, ALC has been receiving monthly interest payments pursuant to 11 U.S.C. §362(d)(3).

252. By the time of the hearing on the Motion for Relief from Stay on Wednesday, February 6, 2019 at 9:30 a.m., ALC had received four (4) monthly interest payments pursuant to 11 U.S.C. §362(d)(3) totaling in excess of \$120,000.00.

253. At the preliminary hearing on ALC's Motion for Relief from Stay the Court pretty bluntly indicated that in order to avoid relief from stay the Debtor had better have filed a

Motion to Approve one (1) of the two (2) pending purchase offers or the Debtor was capable of producing a loan commitment for the refinancing of the property.

254. Given the short time frame, the Debtor elected to accept the Frisco Acquisition, LLC offer to purchase the property.
255. In light of the Court's Order and Judgment granting ALC relief from stay (Doc#153 and 154) the sale is in the best interest of the Debtor.

LIENS AND ENCUMBRANCES

256. The Debtors have obtained an Owners and Encumbrances Report from Land Title Guaranty Company on the subject real property. A copy of the O&E Report is attached hereto as **Exhibit "D"** and is incorporated herein by this reference as though fully set forth.
257. The O&E is dated November 14, 2018.
258. An updated title report was obtained on the property on December 11, 2018 from Fidelity National Title Company and a copy is attached hereto as **Exhibit "E."**
259. The subject real property is encumbered by the following liens and interests in order of priority.
260. On December 31, 2015 WPB executed an Assignment of Rents in favor of Aileron Investment Management, LLC ("Aileron") which was recorder January 8, 2016 with the Clerk and Recorder for the City and County of Denver at Reception Number 2016002631.
261. On December 31, 2015 WPB executed a Construction Deed of Trust in favor of Aileron which was recorded January 8, 2016 with the Clerk and Recorder for the City and County of Denver at Reception Number 2016002630.
262. The Aileron Assignment of Rents and Deed of Trust was to secure a Promissory Note dated December 31, 2015 in the original principal amount of \$4,875,000.00 from WPB in favor of Aileron.
263. On December 31, 2015 WPB executed an Assignment of Rents in favor of American Lending Center, LLC ("ALC") which was recorded January 8, 2016 with the Clerk and Recorder for the City and County of Denver at Reception Number 2016002426.
264. On December 31, 2015 WPB executed a Construction Deed of Trust in favor of American Lending Center, LLC which was recorded January 8, 2016 with the Clerk and Recorder for the City and County of Denver at Reception Number 2016002425.

265. The Assignment of Rents and the Construction Deed of Trust from WPB in favor of ALC was to guarantee repayment or to secure repayment on both the \$5,700,000.00 Note (Promissory Note A) given to Aileron and a \$4,500,000.00 Note given to American Lending Center, LLC (Promissory Note B).
266. Upon information and belief ALC has represented that it has acquired Aileron's interest in Promissory Note A and in the above referenced Assignment of Rents and Deeds of Trust.
267. ALC has represented that it is now the sole and singular secured creditor on the property by virtue of the Notes and Deeds of Trust.
268. On January 8, 2016 Aileron also recorded a UCC Financing Statement with the Clerk and Recorder, City and County of Denver at Reception Number 2016002632.
269. On January 8, 2016 ALC recorded a UCC Financing Statement with the Clerk and Recorder, City and County of Denver at Reception Number 2016002427.
270. On April 5, 2018 ALC filed a Notice of Election and Demand for Sale by the Public Trustee of City and County of Denver, State of Colorado in Public Trustee sale number 2018-000146 at Reception Number 2018039950.
271. ALC represented in the Notice of Election and Demand that notwithstanding the face amount of the two (2) Promissory Notes (Note A and Note B) that the outstanding principal balance as of the date of the Notice was \$500,615.02 on Promissory Note A and \$4,500,000.00 on Promissory Note B for a total outstanding principal balance of \$5,000,615.02.
272. In its Motion for Relief from Stay (Doc#33) filed on October 18, 2018, ALC asserted that as of the Petition date (October 3, 2018) the principal amount on Note A was \$500,615.02, interest in the amount of \$11,659.32 and late charges in the amount of \$582.97.
273. In its Motion for Relief from Stay (Doc#33) filed on October 18, 2018, ALC also represented that as of the Petition date \$4,500,000.00 plus interest in the amount of \$104,802.12 and late charges in the amount of \$5,240.10 was due on Note B.
274. Therefore, as of the Petition date ALC represented that the total amounts due on both Notes A and B was **\$5,122,899.50**.
275. ALC has represented that it has acquired Note A and Aileron's interest in the combined loans and that it is now the sole secured lender.
276. In anticipation of a sale of the property WPB requested that ALC provide a payoff statement for the loan as of the end of 2018.

277. On December 20, 2018 ALC's counsel sent a payoff figure which first represented that ALC now holds both subject Promissory Notes. A copy of the December 20, 2018 payoff figure is attached hereto as **Exhibit "F."**
278. The payoff letter and statement attached to the letter provided a payoff figure in the amount of **\$5,310,330.26** through December 28, 2018.
279. Counsel for ALC did note that certain figures needed to be updated including that legal fees and costs were only calculated through November 2018 and that legal fees and costs through December 2018 needed to be updated.
280. It must be remembered that ALC has a security interest in the Northeast Bank - Management Control Account which has a minimum of \$216,095.77 as is indicated by **Exhibit "G"** attached hereto.
281. **ALC has represented that upon payment of the balance due on both Notes that it will release the \$216,095.77 held in the Northeast Bank account.**
282. At the time of closing Frisco intends on assuming ALC's outstanding Note and Deed of Trust on the subject property as part of the purchase of the subject property.
283. On January 11, 2019 ALC filed a Proof of Claim (Claim#6) claiming a total secured debt in the amount of \$5,329,779.28.
284. The ALC Proof of Claim represents the \$5,329,779.28 balance to be as of January 14, 2019.
285. The Debtor reserves the right to challenge the alleged balance due and owing.

THE PREPAYMENT PENALTY

286. Although no-prepayment penalty is specified in the loan documents, ALC had asserted that the loans could not be pre-paid for five (5) years. The loan documents including Exhibit "A" - Job Creation & EB5 Addendum to Loan Agreement specifically provided the following language:
- "Borrower further acknowledges that the "lock-out" provision contained in the Loan Documents which prohibits Borrower from repaying any portion of the Loan for the first 5 years (until all I-829 petitions of the Investors have been approved) constitutes an integral and primary requirement of the Loan. Borrower understands that the purpose of the lock-out provision is to satisfy the "at-risk" requirement of the EB-5 Program which requires that Investors' investments remain outstanding and at risk until the I-829 approval.

Borrower agrees not to attempt to repay the portion of the Loan during the lock-out period or seek to invalidate the lock out provision on any equitable or statutory grounds in any Court of law.

287. The Promissory Notes themselves contained a paragraph titled Note Prepayment which includes the following:

"NOTE PREPAYMENT. Subject to the terms of the Loan Agreement, during the Interest Only Period, the outstanding principal balance of this Note may not be prepaid in whole or in part for any reason. Thereafter, the outstanding principal balance of this Note may be prepaid in whole or in part at any time without penalty upon not less than ten (10) days' written notice to Lender."

288. **Despite saying that the Notes could not be prepaid there is, however, no prepayment penalty is specified as a result of prepayment.**

289. The Debtor does **not** believe that any prepayment penalty is applicable in this case, especially a monetary prepayment penalty.

290. The Debtor further asserts that ALC has not claimed a prepayment penalty in its Proof of Claim and therefore no prepayment penalty is due.

291. The Debtor has not had a full opportunity to review ALC's purchase of Aileron's interest in Promissory Note A.

292. The remainder, if any, of ALC's claim, if any, will attach to the remaining sale proceeds as is further described below.

EB-5 ASPECTS OF THE LOAN

293. In an addendum to the Loan Agreement (the "EB-5 Addendum"), Debtor acknowledged that the B Note was funded using proceeds contributed by certain non-U.S. citizen immigrant investors ("Investors") through the U.S. Customs and Immigration Service's EB-5 Program for the purpose of obtaining permanent citizenship in the United States. In the EB-5 Addendum, Debtor further acknowledged and agreed:

- * A primary purpose of the EB-5 Program is the creation of jobs;
- * A primary purpose of making the loan was the job creation conditions set forth in the EB-5 Addendum;
- * That Debtor has an obligation to create jobs and to evidence creation of those jobs;
- * That Debtor has an obligation to create jobs and to evidence creation of those jobs;

* That the purpose of the Lock-Out Provision "is to satisfy the 'at-risk' requirement of the EB-5 Program which requires that the Investors' investments remain outstanding and at risk until I-829 approval"; and

* That Debtor shall not attempt to repay the B Note during the Lock-Out provision.

294. The prospective purchaser of the property has indicated its desire to work with ALC to assume the EB-5 loans and incorporate them into the development of the project.

295. If ALC really desires to keep the EB-5 investors in the country, it will allow the assumption of the loan by the purchaser.

OTHER LIENS AND ENCUMBRANCES

296. The financing statement recorded by Aileron Investment Management, LLC on January 8, 2016 against WPB was recorded at Reception Number 2016002632.

297. A Notice of Mechanic's or Materialman's lien was recorded by Rio Grande Co. on November 6, 2017 against WPB at Reception Number 2017145592. Rio Grande Co. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$45,353.70. This Creditor also filed a Proof of Claim (Claim Number 2) and in the Proof of Claim asserts a secured claim for \$53,830.49.

298. A Notice of Mechanic's or Materialman's lien was recorded by O'Brien Concrete Pumping - Colorado, Inc. on November 13, 2017 against WPB at Reception Number 2017147829. O'Brien Concrete Pumping - Colorado, Inc. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$10,997.94. This Creditor also filed a Proof of Claim (Claim Number 3) and in the Proof of Claim asserts a secured claim for \$13,887.26.

299. A Notice of Mechanic's or Materialman's lien was recorded United Rentals (North America), Inc. on November 27, 2017 against WPB at Reception Number 2017154289. United Rentals (North America), Inc. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$64,466.79.

300. A Notice of Mechanic's or Materialman's lien was recorded by Redd Iron, Inc. on November 29, 2017 against WPB at Reception Number 2017155624. Redd Iron, Inc. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$53,220.40.

301. A Notice of Mechanic's or Materialman's lien was recorded by Metro Building Products, Inc. on December 6, 2017 against WPB at Reception Number 2017159172. Metro Building Products, Inc. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$4,650.48.

302. The financing statement recorded by Summit Services Group, LLC on December 11, 2017 against WPB was recorded at Reception Number 2017161020. Summit Services Group, LLC filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$3,520.00.
303. A Notice Extending Time to File Lien statement was recorded by Kumar Construction Management, Inc. on January 4, 2018 against WPB at Reception Number 2018001302.
304. A Notice of Mechanic's or Materialman's lien was recorded by HD Supply Construction Supply, LTD d/b/a HD Supply Construction & Industrial - White Cap on January 16, 2018 against WPB at Reception Number 2018005377. HD Supply Construction Supply, LTD et al. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$3,556.12. This creditor also filed a Proof of Claim (Claim Number 4) and in the Proof of Claim asserts a secured claim for \$4,445.38.
305. A Notice of Mechanic's or Materialman's lien was recorded by Waste Connections of Colorado, Inc. on February 6, 2018 against WPB at Reception Number 2018014331. Waste Connections of Colorado, Inc. filed its Statement of Lien as a supplier. The Mechanic's lien was filed in the amount of \$5,335.41.

BONA FIDE DISPUTES

306. The Debtor asserts that there are issues with the alleged mechanic lien claims.
307. C.R.S. §38-22-101 addresses who and how an entity may assert mechanic liens against real estate.
308. The Debtor has not had an opportunity to review the liens to determine whether or not the amount of the liens are representative of the services or materials provided.
309. As indicated above the General Contractor and third parties controlled the payment of claims and were supposed to monitor the percentage completion performance on the project.
310. Colorado Law, specifically C.R.S. §38-22-109(4) requires that lien statements must be filed within four (4) months of the day the last worked was performed or materials were supplied by the lien claimant.
311. Pursuant to C.R.S. §38-22-109(5) except as provided in sections 10 and 11 of this section, the lien statements of all other lien claimants must be filed for record at any time before the expiration of four (4) months after the day on which the last labor is performed or the last laborers or materials are furnished by such lien claimant.

312. Pursuant to C.R.S. §38-22-109(7) for the purposes of this section, abandonment of all labor, work, services, and furnishing of laborers or materials under any unfinished contract or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof. For the purposes of this section, "abandonment" means discontinuance of all labor, work, services, and furnishing of laborers or materials for a three-month period.
313. Furthermore pursuant to Colorado Law, C.R.S. §38-22-109(10) a Notice of Intent to File a Lien automatically terminates six (6) months after filing. Exceptions exist if improvements are not yet complete.
314. Pursuant to C.R.S. §38-22-109(8), regardless of when a lien statement is filed, however, no lien statement shall remain effective longer than one (1) year from filing unless within thirty (30) days of the one (1) year anniversary of the filing the claimant files with the County Recorder an affidavit stating that improvements on the property have not been completed. See C.R.S. §38-22-109(9).
315. There are additional unknown facts and issues with respect to the Mechanic Lien Claimants.
316. As an example, one (1) of the Mechanic Lien Claimants charged the Debtor for metal staircases for the subject property which were not delivered to the property and to which the creditor has maintained possession and control of.
317. The new purchaser of the property may elect to buy these staircases from the Mechanic Lien Claimant which in essence would make the Mechanic Lien Claimant whole.
318. Of the Mechanic Lien claims recorded with the Clerk and Recorder only three (3) of them actually filed Proofs of Claim by the Bar Date.
319. Those creditors are as follows:
- 1) Claim number two (2) was originally filed on November 20, 2018 by Rio Grande Co. and **subsequently transferred to Abbas Consulting** in the amount of \$53,830.49 for building materials and supplies.
 - 2) Claim number two (2) filed an Amended Proof of Claim on January 14, 2019 for the same dollar amount \$53,830.49.
 - 3) Claim number three (3) was originally filed on November 26, 2018 by O'Brien Concrete Pumping - Colorado, Inc. n/k/a OBC and **subsequently transferred to Frisco Acquisition, LLC** in the amount of \$13,887.26 for building materials and supplies.

- 4) Claim number three (3) filed an Amended Proof of Claim on January 14, 2019 claiming the same amount of \$13,887.26.
 - 5) Claim number four (4) was originally filed on December 6, 2018 by HD Supply Construction Supply, LTD d/b/a HD Supply Construction & Industrial - White Cap and **subsequently transferred to Frisco Acquisition, LLC** in the amount of \$4,445.38 for building materials and supplies.
 - 6) Claim number four (4) filed an Amended Proof of Claim on January 14, 2019 claiming the same monetary amount of \$4,445.38.
320. These three (3) creditors additionally filed Amended Proofs of Claim supplementing the documentation attached to the Proof of Claim to include invoices, and other documents showing the dates of the delivery of materials, supplies, or services to the project.
321. As indicated above Abbas Consulting, Inc. and Frisco Acquisition, LLC intend on waiving their claims against the Debtor as part of the purchase of the subject property.
322. On February 4, 2019 (after the bar date of January 14, 2019) one of the mechanic lien claimants, Summit Services Group, LLC filed a late Proof of Claim (Claim Number 7). The Summit Services Group, LLC claim (Claim Number 7) asserts a claim for \$3,520.00 for alleged storm water compliance services.
323. With respect to all of the other Mechanic Lien Claimants, the Debtors have either not received actual support documents for the materials, services or supplies provided and/or has not had sufficient opportunity to review said documents at the time of the filing of this Motion.

THE DEVELOPMENT FEE PROGRAM

324. The subject property is part of a Development Fee Program referenced in a resolution recorded February 28, 2007 at Reception Number 2007034333.
325. The title company has requested that proof be provided that any fees due and owing for the Development Fee Program have been paid.
326. The subject hotel property is located in the Gateway Park development near Denver International Airport.
327. The City and County of Denver established a Development Fee Program to help build infrastructure, planning and programming.
328. Gateway Impact fee Ordinance 863, Series 2000 (October 2000), provides for the collection of impact fees to finance Regional Infrastructure within the 4500 acre Gateway Park area. The impact fees are designed to collect sufficient revenues to pay (or the

Gateway's proportional share or capital costs associated with specific facilities, such as major arterial roads, fire stations, regional parks and trails facilities and regional drainage improvements. The improvements to be financed with impact fees are for the benefit of more than one property.

329. The impact fees do not finance capital costs which might be associated with other general government functions and services, such as general administration, the courts, hospitals or enterprise functions, such as water or sewer. They also exclude all non-capital costs, such as ongoing operation and maintenance or government facilities.
330. Denver intends to continue use of its project-specific development review process to secure land for neighborhood scale parks and some road improvements, to require the construction of some road improvements and to require on-site drainage improvements, consistent with the master plans for each drainage basin. The impact fees cover improvements not currently covered by the City's existing development review process or infrastructure policies.
331. Section 50-60 (4) of the Revised Municipal Code provides for the annual adjustment of the costs and associated impact fees for the regional infrastructure based on the Colorado Department of Transportation Composite Construction Index for roads and the Engineering News-Record Inflation Construction Index for all other capital improvements.
332. Section 50-59 (2) of the Revised Municipal Code provides for relevant special improvement districts or other governmental or quasi-governmental authority to provide or finance the applicable regional infrastructure and to receive credit for this subject to an intergovernmental agreement with the City. The Gateway Regional Metropolitan District has chosen to provide for its regional infrastructure through the collection of System Development fees.
333. Additionally, the Sandcreek Metropolitan District was formed which is a quasi-municipal corporation and subdivision of the State of Colorado ("District") which was organized to provide services and construct roads, parks, drainage facilities and other amenities in and around the Gateway Business Park.
334. C.R.S. §32-1-1001(1)(j), authorizes the Board to fix and from time to time increase or decrease fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the District.
335. The Board has in addition found and hereby declares that, in order to recoup the Costs, the District desires to fix a Development Fee against the Property (the "Fee"), to be payable in the amounts determined.
336. At this time the Debtor is unaware of any fees that might be due and owing as a result of the Development Fee Program.

337. **Research by the title company has also disclosed that the Development Fee for this portion of the property effected has been satisfied and that a partial release has been recorded.**

338. Accordingly, the title company is removing this requirement from the title policy and any exceptions related thereto.

339. Accordingly, no payments are anticipated for the Development Fee Program.

CITY AND COUNTY OF DENVER

340. The title company has requested a release of the lien filed by the City and County of Denver in the amount of \$121.38 plus penalties and interest based upon the lien recorded by the City on October 8, 2018 at Reception Number 2018127811.

341. The Debtor believes that this lien is the same as the attachment to the City and County of Denver's Proof of Claim number 1 in the amount of \$134.81 for the Storm Drain lien.

342. As indicated below, the City and County of Denver also filed Proof of Claim number 1 asserting a total claim in the amount of \$240,733.56.

343. The City asserted that \$101,340.06 of this claim is secured.

344. The City asserted that of the claim amount \$139,393.50 was unsecured.

345. The attachment to the Proof of Claim indicates that \$139,393.50 is for Use Tax from the period January 1, 2015 through June 30, 2018.

346. The attachment to the Proof of Claim also indicated that \$101,205.25 was delinquent Real Estate Taxes from January 1, 2017 through December 31, 2017.

347. The attachment to the Proof of Claim also indicated that \$134.81 is for a Storm Drain lien effective January 1, 2018.

348. The Debtor proposes to pay the secured portion of the City's Proof of Claim in the amount of \$101,340.06 for real estate property taxes from January 1, 2017 through December 31, 2017.

349. The Debtor also intends on paying the \$134.81 for the Storm Drain lien at the time of closing.

350. Although the City and County of Denver's Proof of Claim (Claim Number 1) includes a 2017 real property taxes for the property, the Debtor has not paid the 2018 real

property taxes and there will be pro-rated real property taxes owed to the City and County of Denver for 2019.

351. The Debtor believes that the 2018 real property taxes owed are approximately \$100,000.00.

PROOFS OF CLAIM

352. The Bar Date in the within case was January 14, 2019. (see Doc#42)
353. The Notice of Bar Date was mailed and served upon all parties in the within case as is evidenced by the Certificate of Mailing (Doc#43-1).
354. As of the date of the filing of the within Motion only seven (7) Proofs of Claim have been filed.
355. The order of filing of the Proofs of Claim are as follows:
- 1) Claim number one (1) was filed on November 6, 2018 by City and County of Denver in the amount of \$240,733.56 with \$101,340.06 being secured for services rendered.
 - 2) Claim number two (2) was originally filed on November 20, 2018 by Rio Grande Co. and **subsequently transferred to Abbas Consulting** in the amount of \$53,830.49 for building materials and supplies.
 - 3) Claim number two (2) filed an Amended Proof of Claim on January 14, 2019 for the same dollar amount \$53,830.49.
 - 4) Claim number three (3) was originally filed on November 26, 2018 by O'Brien Concrete Pumping - Colorado, Inc. n/k/a OBC and **subsequently transferred to Frisco Acquisition, LLC** in the amount of \$13,887.26 for building materials and supplies.
 - 5) Claim number three (3) filed an Amended Proof of Claim on January 14, 2019 claiming the same amount of \$13,887.26.
 - 6) Claim number four (4) was originally filed on December 6, 2018 by HD Supply Construction Supply, LTD d/b/a HD Supply Construction & Industrial - White Cap and **subsequently transferred to Frisco Acquisition, LLC** in the amount of \$4,445.38 for building materials and supplies.
 - 7) Claim number four (4) filed an Amended Proof of Claim on January 14, 2019 claiming the same monetary amount of \$4,445.38.

8) Claim number five (5) filed on January 11, 2019 by Alpine Hospitality, LLC in the amount of \$5,784,158.63.

9) Claim number five (5) was filed as an unsecured claim for an insider.

10) Claim number six (6) filed on January 11, 2019 by American Lending Center in the secured amount of \$5,329,779.28.

11) Claim number seven (7) filed after the proof of claim bar date on February 4, 2019 by Summit Services Group in the amount of \$3,520.00.

356. As indicated above, claim number 7 filed by Summit Services Group was filed late and more than two (2) weeks after the bar date of January 14, 2019.

357. Claim number two (2) originally filed on November 20, 2018 by Rio Grande Co. was assigned to Abbas Consulting, Inc. on December 20, 2018.

358. Claim number three (3) originally filed on November 26, 2018 by O'Brien Concrete Pumping - Colorado, Inc. n/k/a OBC was assigned to Frisco Acquisition, LLC on December 20, 2018.

359. Claim number four (4) originally filed on December 6, 2018 by HD Supply Construction Supply, LTD et al was assigned to Frisco Acquisition, LLC on December 20, 2018.

360. Undersigned counsel had reviewed the prior Proofs of Claim in this case and determined that Proofs of Claim Number 2, 3, and 4 had not attached actual work invoices, material invoices, or other adequate supporting documents.

361. Accordingly, undersigned counsel sent a demand letter to the holders of Proof of Claim Numbers 2, 3 and 4 demanding supporting documents.

362. The additional supporting documents are attached to the Amended Proof of Claims for claims number 2, 3 and 4.

363. The Debtor does intend on paying the secured claim for the City and County of Denver at the time of the closing of the sale of the subject property.

364. **As stated above Frisco shall pay the additional obligations outlined in paragraph 30.3 of the original Addendum to Contract to Buy and Sell Real Estate (Commercial).**

365. The Proof of Claim filed by Alpine Hospitality, LLC was filed as an unsecured claim for \$5,784,158.63.

366. At this time Alpine has agreed to waive and release its unsecured claim (claim number 5) in the amount of \$5,784,158.53 against WPB.

367. This information is needed in order to analyze the propriety of the alleged Mechanic Lien claims.

ALPINE HOSPITALITY, INC. AND WANDA BERTOIA

368. Alpine Hospitality, Inc. and Wanda Bertoia are insiders of the Debtor.

369. These parties have asserted a claim for pre-petition monies loaned or invested in the Debtor. Claim number five (5) was filed on January 11, 2019 by Alpine Hospitality, LLC in the amount of \$5,784,158.63.

370. At this time Alpine has agreed to waive and release its unsecured claim (claim number 5) in the amount of \$5,784,158.53 against WPB.

371. Additionally these parties have paid monthly interest payments to ALC pursuant to 11 U.S.C. §362(d)(3) in order to prevent ALC from obtaining relief from the automatic stay.

SUMMARY OF ALLEGED LIENS AND ENCUMBRANCES

Note A & B, DOT	ALC	\$5,329,779.28
Storm Drain Lien	City & County of Denver	\$ 134.81
Real Property Taxes	City & County of Denver	\$ 101,340.66
Mechanic lien	Rio Grande Co.	\$ 53,830.49
Mechanic lien	O'Brien Concrete	\$ 13,887.26
Mechanic lien	United Rentals	\$ 64,466.79
Mechanic lien	Redd Iron, Inc.	\$ 53,220.40
Mechanic lien	Metro Building Products	\$ 4,650.48
Mechanic lien	Summit Services Group	\$ 3,520.00
Mechanic lien	HD Supply Construction	\$ 3,556.12
Mechanic lien	Waste Connections	\$ 5,335.41
Use Taxes	City and County of Denver	\$ 158,842.52
TOTALS		\$5,837,581.99

372. Accordingly, the Debtor believes that the order of priority would be as follows:

Note A & B, DOT	ALC	\$5,329,779.28
Storm Drain Lien	City & County of Denver	\$ 134.81
Real Property Taxes	City & County of Denver	\$ 101,340.66
Mechanic lien	Rio Grande Co.	\$ 53,830.49
Mechanic lien	O'Brien Concrete	\$ 13,887.26
Mechanic lien	United Rentals	\$ 64,466.79
Mechanic lien	Redd Iron, Inc.	\$ 53,220.40

Mechanic lien	Metro Building Products	\$	4,650.48
Mechanic lien	Summit Services Group	\$	3,520.00
Mechanic lien	HD Supply Construction	\$	3,556.12
Mechanic lien	Waste Connections	\$	5,335.41
Use Taxes	City and County of Denver	\$	139,393.50
TOTALS			\$5,837,581.99

LIENS TO BE PAID AT CLOSING

373. The Debtor intends to pay the following liens and encumbrances at the time of closing in the approximate amounts indicated below:

Storm Drain Lien	City & County of Denver	\$	134.81
Real Property Taxes	City & County of Denver	\$	101,340.66
Mechanic lien	Rio Grande Co.	\$	53,830.49
Mechanic lien	O'Brien Concrete	\$	13,887.26
Mechanic lien	United Rentals	\$	64,466.79
Mechanic lien	Redd Iron, Inc.	\$	53,220.40
Mechanic lien	Metro Building Products	\$	4,650.48
Mechanic lien	Summit Services Group	\$	3,520.00
Mechanic lien	HD Supply Construction	\$	3,556.12
Mechanic lien	Waste Connections	\$	5,335.41
Use Taxes	City and County of Denver	\$	158,842.52
TOTALS			\$ 507,802.71

374. **The Addendum also provides for a Reserve Fund in the amount of \$250,000.00 for payment of administrative expenses, trustee fee's, and attorneys' fees in Case No. 18-18636 EEB.**

375. As indicated above Proof of Claim number two (2) originally filed on November 20, 2018 by Rio Grande Co. was assigned to Abbas Consulting, Inc. on December 20, 2018.

376. Similarly, Claim number three (3) originally filed on November 26, 2018 by O'Brien Concrete Pumping - Colorado, Inc. n/k/a OBC was assigned to Frisco Acquisition, LLC on December 20, 2018. Claim number four (4) originally filed on December 6, 2018 by HD Supply Construction Supply, LTD et al was assigned to Frisco Acquisition, LLC on December 20, 2018.

377. The Debtor has identified the original creditor filing the lien, claim, or proof of claim notwithstanding the transfer of the claim.

378. Both Abbas Consulting, Inc. and Frisco Acquisition, LLC have also received Notice in the within case of the Motion as well as the original creditors.

379. As indicated above, creditors filing Proofs of Claim number 2, 3 and 4 have filed Amended Proofs of Claim.

THE UNITED STATES TRUSTEE

380. Debtor's in Chapter 11 cases must pay a quarterly fee under 28 U.S.C. §1930(a)(6) to the United States Trustee's program for each calendar quarter or portion thereof.

381. The quarterly fee is calculated by totaling the Debtor's reported disbursements for the three (3) months calendar quarter or portion thereof.

382. The United States Trustee's office has taken the position that sale of the subject property requires the payment of United States Trustee's quarterly fees which are estimated to be one percent (1%) of the quarterly disbursements.

383. The Debtor takes the position that pursuant to this Contract Frisco's assumption of the ALC loan does not constitute a "disbursement" and accordingly the Debtor takes the position that no U.S. Trustee Fee is due on the assumption of ALC's debt.

384. The Debtor believes that at most the United States Trustee's Fee is based upon the liens or debts actually paid at closing or disbursed thereafter which are estimated to be less than \$750,000.00 total.

385. The United States Trustee's Fees at one percent (1%) based upon approximately \$750,000.00 would be approximately \$7,500.00.

386. The Debtor believes that a quarterly fee of one percent (1%) based upon the sales price of the subject property is excessive and the Debtor is researching whether the Debtor has any flexibility with respect to the amount of the quarterly fees.

387. The Debtor takes the position that any monies paid to Wanda Bertoia for the sale of her interest in WPB is not subject to the United States Trustee's quarterly fees.

388. The Debtors intend on paying the United States Trustee's quarterly fees associated with the sale of the subject property out of any proceeds to the Debtor-In-Possession.

THE NON-CONSENSUAL LIENS AND ENCUMBRANCES

389. The non-consensual liens and encumbrances are described above including with respect to existing Proofs of Claim.

390. The Debtor anticipates that additional Proofs of Claim will be filed although the amount should be nominal.

11 U.S.C. § 363(f)(1)-(5)

391. The Debtors believe that each of the above listed non-consensual liens or encumbrances comes within one or more of the subsections of 11 U.S.C. § 363(f)(1)-(5).
392. The Debtor believes that certain subsections of 11 U.S.C. §363(f) apply in the within case.
393. The price at which the property is being sold is significantly greater than the aggregate value of all liens on the subject property.
394. Additionally, there are genuine issues regarding the validity of the various liens including but not limited to the amount of the liens and/or whether the liens are simply unsecured debts.
395. The Debtor believes that all of the creditors (including the lien claimants) could be compelled in an legal or equitable proceeding to accept a money satisfaction of their interest in the subject property.
396. The Debtor believes that the remaining mechanic lien claimants and other claims are in bona fide dispute.
397. **However, as indicated above the \$507,802.71 of claims will be paid or released at the time of the closing.**
398. Accordingly all creditors in the within case are protected.
399. Accordingly, pursuant to 11 U.S.C. § 363(f)(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest.

COMPENSATION OF DEBTOR'S REALTOR

400. The Frisco Acquisitions, LLC Contract was not brought to the Debtor by the estate realtors.
401. Said brokers were retained as a professional on behalf of the bankruptcy estate and accordingly an application for employment was filed on November 2, 2018 (Doc#44).
402. On November 14, 2018, Mark Darrington and Larry Kaplan of CBRE, Inc. were approved to be the estate's broker (Doc#81).
403. Since the realtors did not bring the Frisco Contract to the Debtor, no real estate commission will be paid.

PROCEEDS ANALYSIS

404. Pursuant to the Contract the claims of Rio Grande which was assigned to Abbas; O'Brien Concrete which was assigned to Frisco and HD Supply which was also assigned to Frisco will not be paid.

405. Assuming the completion of the Contract for the purchase price of \$6,068,132.97 and the claims and other costs and expenses in this case, the sale would produce the following result:

ALC	Note & DOT	\$5,310,330.26
Reserve Fund	Reserve Fund	\$ 250,000.00
Storm Drain Lien	City & County of Denver	\$ 134.81
Real Property Taxes	City & County of Denver	\$ 101,340.66
Mechanic lien	Rio Grande Co.	\$ 53,830.49
Mechanic lien	O'Brien Concrete	\$ 13,887.26
Mechanic lien	United Rentals	\$ 64,466.79
Mechanic lien	Redd Iron, Inc.	\$ 53,220.40
Mechanic lien	Metro Building Products	\$ 4,650.48
Mechanic lien	Summit Services Group	\$ 3,520.00
Mechanic lien	HD Supply Construction	\$ 3,556.12
Mechanic lien	Waste Connections	\$ 5,335.41
Use Taxes	City and County of Denver	\$ 158,842.52
TOTALS		\$6,068,132.97

406. Alpine Hospitality, Inc. and Wanda Bertoia are insiders of the Debtor.

407. These parties have asserted a claim for pre-petition monies loaned or invested in the Debtor. Claim number five (5) was filed on January 11, 2019 by Alpine Hospitality, LLC in the amount of \$5,784,158.63.

408. **At this time Alpine has agreed to waive and release its unsecured claim (claim number 5) in the amount of \$5,784,158.53 against WPB.**

409. **Based upon the side agreement with Wanda Bertoia and Alpine Hospitality, Inc. the Alpine Hospitality, Inc. Proof of Claim will be withdrawn as part of the Contract.**

L.B.R. 6004-1
SALE OF PROPERTY

410. L.B.R. 6004-1 Sale of Property requires that certain provisions in a sale motion must highlight material terms as indicated below:

(A) Agreements with Management. If a proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the Sale Motion must disclose (i) the material terms of any such

agreements, and (ii) what measures have been taken to ensure the fairness of the sale and the proposed transaction in the light of any such agreements.

Answer: **Frisco Acquisitions, LLC reached an agreement with manager and owner of WPB Hospitality, LLC (Wanda Bertoia) to buy her interest in WPB Hospitality, LLC in exchange for the payment of \$2,500,000.00.**

(B) Releases. The Sale Motion must highlight any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied.

Answer: **As part of Wanda Bertoia's sale of her interest in WPB she and Alpine Hospitality, Inc. have agreed to release any claims that they have against WPB. As part of the transaction, Frisco Acquisition, LLC and Abbas Consulting, Inc. will be releasing the Amended Proof of Claims number 2, 3 and 4.**

(C) Private Sale/No Competitive Bidding. The Sale Motion must disclose whether an auction is contemplated, and highlight any provision in which the debtor has agreed not to solicit competing offers for the property subject to the Sale Motion or to otherwise limit shopping of the property.

Answer: No auction is contemplated but the Debtor has solicited competing offers. The Debtor has not agreed to otherwise limit shopping the property.

(D) Closing and Other Deadlines. The Sale Motion must highlight any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction.

Answer: The deadlines for the proposed sale are highlighted above.

(E) Good Faith Deposit. The Sale Motion must highlight whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited.

Answer: The terms for the good faith deposit are highlighted above.

(F) Interim Arrangements with Proposed Buyer. The Sale Motion must highlight any provision pursuant to which a debtor is entering into any interim agreements or arrangements with the proposed purchaser, such as interim management arrangements (which, if out of the ordinary course, also must be subject to notice and a hearing under 11 U.S.C. § 363(b)) and the terms of such agreements.

Answer: There are no interim arrangements with the proposed Buyer.

(G) Use of Proceeds. The Sale Motion must highlight any provision pursuant to which a debtor proposes to release sale proceeds on or after the closing without further Court order, or to provide for a definitive allocation of sale proceeds between or among various sellers or collateral.

Answer: The use of proceeds are outlined above.

(H) Tax Exemption. The Sale Motion must highlight any provision seeking to have the sale declared exempt from taxes under 11 U.S.C. § 1146(a), the type of tax (e.g., recording tax, stamp tax, use tax, capital gains tax) for which the exemption is sought. It is not sufficient to refer simply to “transfer” taxes and the state or states in which the affected property is located.

Answer: There are no tax exemptions.

(I) Record Retention. If the debtor proposes to sell substantially all of its assets, the Sale Motion must highlight whether the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case.

Answer: The within sale pertains only to the real property and improvements. It does not include the Debtor's books and records.

(J) Sale of Avoidance Actions. The Sale Motion must highlight any provision pursuant to which the debtor seeks to sell or otherwise limit its rights to pursue avoidance claims under chapter 5 of the Bankruptcy Code.

Answer: None

(K) Requested Findings as to Successor Liability. The Sale Motion should highlight any provision limiting the proposed purchaser’s successor liability.

Answer: None

(L) Sale Free and Clear of Unexpired Leases. The Sale Motion must highlight any provision by which the debtor seeks to sell property free and clear of a possessory leasehold interest, license, or other right.

Answer: The provisions for a sale free and clear of liens and interest are outlined above.

(M)Credit Bid. The Sale Motion must highlight any provision by which the debtor seeks to allow, disallow or affect in any manner, credit bidding pursuant to 11 U.S.C. § 363(k).

Answer: The within sale does not contemplate credit bidding.

(N) Relief from Fed. R. Bankr. P. 6004(h). The Sale Motion must highlight any provision whereby the debtor seeks relief from the fourteen-day stay imposed by Fed. R. Bankr. P. 6004(h).

Answer: The Debtor requests that the fourteen (14) day stay imposed by Fed.R.Bankr.P. 6004(h) be eliminated.

CONCLUSION

411. Frisco Acquisition, LLC is ready, willing and able to purchase the property pursuant to the terms of the Contract.
412. For the above and foregoing reasons, the Debtor believes the sale of the subject property to Frisco Acquisition, LLC on the terms of the Contract should be approved.
413. Frisco Acquisition, LLC intends to assume ALC's debt as part of the transaction.
414. The Debtor additionally believes that it is appropriate to pay the debts identified above including the real property taxes associated with the subject property at the time of closing.
415. The Debtor believes it is appropriate to pay the various Mechanic Lien Claimants and Proofs of Claim.
416. The Debtor believes that selling the property free and clear of any other liens and claims is in the best interest of the estate and the creditors since there is sufficient equity above and beyond all of the liens and claims.
417. The Debtor requests authorization the sale of the property pursuant to the terms of the Contract described in the Motion.
418. The Debtor requests authorization that such sale to be free and clear of all liens, claims, interests, and encumbrances not specifically identified to be paid herein.
419. The Debtor requests authorization that the payment of all traditional and reasonable closing costs including prorated real property taxes, etc.

420. The Debtor requests authorization that the payment of the net sale proceeds into escrow with Fidelity National Title Company to be held pending further Order of the Court or alternatively authorizing the payment of the net sale proceeds into the Debtor-In-Possession's "DIP" account at Wells Fargo Bank.
421. The Debtor requests authorization that any liens or encumbrances actually secured by the subject Property and which are not paid at closing, if any, shall also be secured and attached to the net sale proceeds pending further Order of the Court.
422. The Debtor requests authorization that the payment of any quarterly fees due and owing to the United States Trustee's office resulting from the sale of the subject property.
423. The Debtor intends on filing a separate Motion to Shorten Notice Period from twenty-one (21) days to fourteen (14) days and the Debtor requests that this Motion be granted.
424. Additionally, the Debtor requests that the fourteen (14) day stay provided for by Fed.R.Bankr.P. 6004(h) be waived in order to allow the Debtor immediately close the sale of the subject property without further delay.
425. **The Debtor is pursuing simultaneous Motions to Approve more than one (1) Contract for the sale of the Debtor's property. The Debtor requests that it is authorized using the Debtor's business judgment to close whichever of these transactions the Debtor deems the most appropriate and beneficial so long as the subject Contract being closed pays the Debtor's secured and unsecured creditors in full (with the exception of the Insiders, Alpine Hospitality, Inc. and Wanda Bertoia) without further Order of Court.**
426. **So long as a previously approved sale by this Court pays the secured and unsecured creditors in full (with the exception of the Insiders, Alpine Hospitality, Inc. and Wanda Bertoia) the Debtor request that it is permitted to elect in its sole and absolute discretion which of the approved Contracts to close.**

WHEREFORE, WPB Hospitality, LLC respectfully pray this Honorable Court approve the sale of the subject real property free and clear of the non-consensual liens, claims and encumbrances identified above and for authority to pay the consensual liens and encumbrances set forth herein as well as to pay the realtor commissions, closing costs and transactional fees and for other and further relief that this Court deems just and proper.

Dated this 20th day of March 2019

Respectfully submitted:
LINDQUIST-KLEISSLER & COMPANY, LLC

/s/ Arthur Lindquist-Kleissler
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G:\FIRM\CLIENTS\WPB HOSPITALITY, LLC\MOTION TO APPROVE SALE OF PROPERTY\190320 Motion to approve sale of property free and clear (Final)

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS3-6-18) (Mandatory 1-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE
(COMMERCIAL)
 Property with No Residences
 Property with Residences-Residential Addendum Attached**

Date: February 27, 2019

AGREEMENT

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Frisco Acquisition, LLC (Buyer) will take title to the Property described below as Joint Tenants Tenants In Common Other _____.

2.2. No Assignability. This Contract IS NOT assignable by Buyer unless otherwise specified in **Additional Provisions**.

2.3. Seller. WPB Hospitality, LLC, a Colorado Limited Liability Company (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Denver, Colorado: as fully defined in Exhibit A attached hereto, and incorporated by reference as if set forth in full,

known as No. 16161 E. 40th Avenue Denver Colorado 80329,
Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Inclusions - Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions**: lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers (including _____ remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under **Due Diligence Documents**): None Solar Panels Water Softeners Security Systems Satellite Systems (including satellite dishes). If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Inclusions – Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

2.5.3. Personal Property - Conveyance. Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except _____. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.5.4. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price:

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54 **2.5.5. Parking and Storage Facilities.** The use or ownership of the following parking facilities:
 55 _____; and the use or ownership of the following storage facilities: _____.

56 Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

57 **2.5.6. Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows:
 58
 59
 60

61 The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal
 62 property taxes for the year of Closing), liens and encumbrances, except _____. Conveyance
 63 will be by bill of sale or other applicable legal instrument.

64 **2.6. Exclusions.** The following items are excluded (Exclusions):
 65
 66
 67

68 **2.7. Water Rights/Well Rights.**

69 ~~**2.7.1. Deeded Water Rights.** The following legally described water rights:~~
 70
 71
 72

73 ~~Any deeded water rights will be conveyed by a good and sufficient _____ deed at Closing.~~

74 ~~**2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1, 2.7.3 and
 75 2.7.4, will be transferred to Buyer at Closing:~~
 76
 77

78 ~~**2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that
 79 if the well to be transferred is a “Small Capacity Well” or a “Domestic Exempt Water Well” used for ordinary household purposes,
 80 Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered
 81 with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a
 82 registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in
 83 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is
 84 _____.~~

85 ~~**2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:~~
 86
 87
 88

89 ~~**2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water),
 90 § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the
 91 applicable legal instrument at Closing.~~

92 **3. DATES, DEADLINES AND APPLICABILITY.**

93 **3.1. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	MEC + 5 Days
		Title	
2	§ 8.1, 8.4	Record Title Deadline	MEC + 3 Days
3	§ 8.2, 8.4	Record Title Objection Deadline	MEC + 10 Days
4	§ 8.3	Off-Record Title Deadline	MEC + 3 Days
5	§ 8.3	Off-Record Title Objection Deadline	MEC + 10 Days
6	§ 8.5	Title Resolution Deadline	MEC + 20 Days
7	§ 8.6	Right of First Refusal Deadline	N/A
		Owners' Association	
8	§ 7.2	Association Documents Deadline	MEC + 5 Days
9	§ 7.4	Association Documents Termination Deadline	MEC + 10 Days
		Seller's Disclosures	
10	§ 10.1	Seller's Property Disclosure Deadline	MEC + 5 Days
11	§ 10.10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	N/A

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Loan and Credit			
12	§ 5.1	New Loan Application Deadline	N/A
13	§ 5.2	New Loan Termination Deadline	N/A
14	§ 5.3	Buyer’s Credit Information Deadline	N/A
15	§ 5.3	Disapproval of Buyer’s Credit Information Deadline	N/A
16	§ 5.4	Existing Loan Deadline	MEC + 5 Days
17	§ 5.4	Existing Loan Termination Deadline	MEC + 10 Days
18	§ 5.4	Loan Transfer Approval Deadline	MEC + 30 Days
19	§ 4.7	Seller or Private Financing Deadline	N/A
Appraisal			
20	§ 6.2	Appraisal Deadline	N/A
21	§ 6.2	Appraisal Objection Deadline	N/A
22	§ 6.2	Appraisal Resolution Deadline	N/A
Survey			
23	§ 9.1	New ILC or New Survey Deadline	N/A
24	§ 9.3	New ILC or New Survey Objection Deadline	N/A
25	§ 9.3	New ILC or New Survey Resolution Deadline	N/A
Inspection and Due Diligence			
26	§ 10.3	Inspection Objection Deadline	MEC + 21 days
27	§ 10.3	Inspection Termination Deadline	MEC + 28 days
28	§ 10.3	Inspection Resolution Deadline	MEC + 28 days
29	§ 10.5	Property Insurance Termination Deadline	MEC + 28 days
30	§ 10.6	Due Diligence Documents Delivery Deadline	MEC + 5 days
31	§ 10.6	Due Diligence Documents Objection Deadline	MEC + 21 days
32	§ 10.6	Due Diligence Documents Resolution Deadline	MEC + 28 days
33	§ 10.6	Environmental Inspection Termination Deadline	MEC + 28 days
34	§ 10.6	ADA Evaluation Termination Deadline	N/A
35	§ 10.7	Conditional Sale Deadline	N/A
36	§ 10.10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)	N/A
37	§ 11.1, 11.2	Estoppel Statements Deadline	N/A
38	§ 11.3	Estoppel Statements Termination Deadline	N/A
Closing and Possession			
39	§ 12.3	Closing Date	See § 30 and Original Addendum
40	§ 17	Possession Date	Day of Closing
41	§ 17	Possession Time	At Closing
42	§ 28	Acceptance Deadline Date	
43	§ 28	Acceptance Deadline Time	

94 **3.2. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. If any
 95 deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation “N/A”, or the word “Deleted,” such
 96 deadline is not applicable and the corresponding provision containing the deadline is deleted. If no box is checked in a provision
 97 that contains a selection of “None”, such provision means that “None” applies.

98 The abbreviation “MEC” (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

99 **4. PURCHASE PRICE AND TERMS.**

100 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$ 6,068,132.97	
2	§ 4.3	Earnest Money		\$ 100,000.00
3	§ 4.5	New Loan		\$
4	§ 4.6	Assumption Balance		\$ 5,310,330.26
5	§ 4.7	Private Financing		\$
6	§ 4.7	Seller Financing		\$

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7				
8				
9	§ 4.4	Cash at Closing		\$ 657,802.71
10		TOTAL	\$ 6,068,132.97	\$ 6,068,132.97

101 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ NONE (Seller Concession). The Seller
 102 Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender
 103 and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the
 104 Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items
 105 and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or
 106 credit Buyer elsewhere in this Contract.

107 **4.3. Earnest Money.** The Earnest Money set forth in this Section, in the form of a cash, eft, or cashier's check, will be
 108 payable to and held by First American Title (Earnest Money Holder), in its trust account, on behalf of
 109 both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually
 110 agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to
 111 the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has
 112 agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing
 113 to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the
 114 Earnest Money Holder in this transaction will be transferred to such fund.

115 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the
 116 time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

117 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to
 118 the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided
 119 in § 24 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate,
 120 Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money
 121 Release form), within three days of Seller's receipt of such form.

122 **4.4. Form of Funds; Time of Payment; Available Funds.**

123 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing
 124 and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified
 125 check, savings and loan teller's check and cashier's check (Good Funds).

126 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be
 127 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at
 128 Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT**. Buyer represents that Buyer, as of the date of this
 129 Contract, Does Does Not have funds that are immediately verifiable and available in an amount not less than the amount
 130 stated as Cash at Closing in § 4.1.

131 **4.5. New Loan.**

132 ~~132 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as otherwise permitted in § 4.2 (Seller Concession), if applicable,
 133 must timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees as required by lender.~~

134 ~~134 **4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to
 135 Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 (Loan Limitations) or § 30 (Additional
 136 Provisions).~~

137 ~~137 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of loans:
 138 Conventional Other _____.~~

139 ~~139 **4.6. Assumption.** Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption
 140 Balance set forth in § 4.1 (Price and Terms), presently payable at \$ _____ per _____ including principal
 141 and interest presently at the rate of _____ % per annum and also including escrow for the following as indicated: Real
 142 Estate Taxes Property Insurance Premium and _____.~~

143 ~~143 Buyer agrees to pay a loan transfer fee not to exceed \$ _____. At the time of assumption, the new interest rate will
 144 not exceed _____ % per annum and the new payment will not exceed \$ _____ per _____ principal and
 145 interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance,
 146 which causes the amount of cash required from Buyer at Closing to be increased by more than \$ _____, or if any other
 147 terms or provisions of the loan change, Buyer has the Right to Terminate under § 25.1 on or before **Closing Date**.~~

148 ~~148 Seller Will Will Not be released from liability on said loan. If applicable, compliance with the requirements for
 149 release from liability will be evidenced by delivery on or before **Loan Transfer Approval Deadline** at **Closing** of an
 150 appropriate letter of commitment from lender. Any cost payable for release of liability will be paid by _____ in an amount
 151 not to exceed \$ _____.~~

152 ~~152 **4.7. Seller or Private Financing.**~~

153 ~~153 **WARNING:** Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on
 154 sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a~~

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155 licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics
156 of financing, including whether or not a party is exempt from the law.

157 ~~4.7.1. Seller Financing. If Buyer is to pay all or any portion of the Purchase Price with Seller financing,~~
158 Buyer Seller will deliver the proposed Seller financing documents to the other party on or before _____ days before
159 ~~Seller or Private Financing Deadline.~~

160 ~~4.7.1.1. Seller May Terminate. If Seller is to provide Seller financing, this Contract is conditional upon~~
161 ~~Seller determining whether such financing is satisfactory to Seller, including its payments, interest rate, terms, conditions, cost and~~
162 ~~compliance with the law. Seller has the Right to Terminate under § 25.1, on or before Seller or Private Financing Deadline, if~~
163 ~~such Seller financing is not satisfactory to Seller, in Seller's sole subjective discretion.~~

164 ~~4.7.2. Buyer May Terminate. If Buyer is to pay all or any portion of the Purchase Price with Seller or private~~
165 ~~financing, this Contract is conditional upon Buyer determining whether such financing is satisfactory to Buyer, including its~~
166 ~~availability, payments, interest rate, terms, conditions and cost. Buyer has the Right to Terminate under § 25.1, on or before Seller~~
167 ~~or Private Financing Deadline, if such Seller or private financing is not satisfactory to Buyer, in Buyer's sole subjective~~
168 ~~discretion.~~

169

TRANSACTION PROVISIONS

170 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

171 **5.1. New Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans
172 (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an application
173 verifiable by such lender, on or before **New Loan Application Deadline** and exercise reasonable efforts to obtain such loan or
174 approval.

175 **5.2. New Loan Review.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional
176 upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its
177 availability, payments, interest rate, terms, conditions and cost of such New Loan. This condition is for the sole benefit of Buyer.
178 Buyer has the Right to Terminate under § 25.1, on or before **New Loan Termination Deadline**, if the New Loan is not satisfactory
179 to Buyer, in Buyer's sole subjective discretion. Buyer does not have a Right to Terminate based on the New Loan if the objection is
180 based on the Appraised Value (defined below) or the Lender Requirements (defined below). **IF SELLER IS NOT IN DEFAULT**
181 **AND DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY**
182 **WILL BE NONREFUNDABLE**, except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

183 **5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional (for the sole
184 benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be in Seller's sole
185 subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's Credit Information Deadline**, at Buyer's
186 expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit
187 condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information
188 and documents received by Seller must be held by Seller in confidence and not released to others except to protect Seller's interest
189 in this transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under
190 § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective
191 discretion, Seller has the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline**.

192 **5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver copies of the loan
193 documents (including note, deed of trust and any modifications) to Buyer by **Existing Loan Deadline**. For the sole benefit of
194 Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer has the
195 Right to Terminate under § 25.1, on or before **Existing Loan Termination Deadline**, based on any unsatisfactory provision of
196 such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this
197 Contract is conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in § 4.6.
198 If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on such deadline. Seller
199 has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from
200 liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

201 **6. APPRAISAL PROVISIONS.**

202 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged
203 on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set
204 forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property
205 to be valued at the Appraised Value.

206 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective loan type set forth
207 in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

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208 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the
209 Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal**
210 **Objection Deadline**, notwithstanding § 8.3 or § 13:

211 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated;
212 or

213 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the
214 Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

215 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal**
216 **Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution**
217 **Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer’s written withdrawal
218 of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

219 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements, removals or repairs,
220 including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond
221 those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller’s
222 receipt of the Lender Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy
223 the Lender Requirements; (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is
224 waived in writing by Buyer.

225 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by
226 Buyer Seller. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company,
227 lender’s agent or all three.

228 **7. OWNERS’ ASSOCIATION.** This Section is applicable if the Property is located within a Common Interest Community
229 and subject to the declaration (Association).

230 **7.1. Common Interest Community Disclosure.** **THE PROPERTY IS LOCATED WITHIN A COMMON**
231 **INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF**
232 **THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS’ ASSOCIATION FOR THE**
233 **COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE**
234 **ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL**
235 **OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY**
236 **ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE**
237 **ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE**
238 **DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE**
239 **OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE**
240 **ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.**
241 **PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE**
242 **FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY**
243 **READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF**
244 **THE ASSOCIATION.**

245 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association Documents (defined
246 below), at Seller’s expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the
247 Association Documents to Buyer, at Seller’s expense. Seller’s obligation to provide the Association Documents is fulfilled upon
248 Buyer’s receipt of the Association Documents, regardless of who provides such documents.

249 **7.3. Association Documents.** Association documents (Association Documents) consist of the following:

250 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization, operating
251 agreements, rules and regulations, party wall agreements and the Association’s responsible governance policies adopted under
252 § 38-33.3-209.5, C.R.S.;

253 **7.3.2.** Minutes of: (1) the annual owners’ or members’ meeting and (2) any executive boards’ or managers’
254 meetings; such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S.
255 (Annual Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the
256 preceding minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

257 **7.3.3.** List of all Association insurance policies as provided in the Association’s last Annual Disclosure, including,
258 but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list
259 must include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies
260 listed (Association Insurance Documents);

261 **7.3.4.** A list by unit type of the Association’s assessments, including both regular and special assessments as
262 disclosed in the Association’s last Annual Disclosure;

263 **7.3.5.** The Association’s most recent financial documents which consist of: (1) the Association’s operating budget
264 for the current fiscal year, (2) the Association’s most recent annual financial statements, including any amounts held in reserve for
265 the fiscal year immediately preceding the Association’s last Annual Disclosure, (3) the results of the Association’s most recent

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266 available financial audit or review, (4) list of the fees and charges (regardless of name of title of such fees or charges) that the
 267 Association's community association manager or Association will charge in connection with the Closing including, but not limited
 268 to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for
 269 the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list
 270 of all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4
 271 and 7.3.5, collectively, Financial Documents);

272 **7.3.6.** Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5,
 273 C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction
 274 Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under §
 275 10.2 (Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition) including any problems or defects in the
 276 common elements or limited common elements of the Association property.

277 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer has the Right to
 278 Terminate under § 25.1, on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in
 279 any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after
 280 **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to
 281 Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive
 282 the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing**
 283 **Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to
 284 Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any
 285 Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

286 8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

287 8.1. Evidence of Record Title.

288 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance
 289 company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish
 290 to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase
 291 Price, or if this box is checked, an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be
 292 issued and delivered to Buyer as soon as practicable at or after Closing.

293 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance
 294 company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to
 295 Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.
 296 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

297 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment Will **Will Not** contain Owner's
 298 Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard
 299 exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics'
 300 liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6)
 301 unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC
 302 will be paid by Buyer Seller **One-Half by Buyer and One-Half by Seller** **Other** _____.
 303 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over
 304 any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined
 305 below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to
 306 object under § 8.5 (Right to Object to Title, Resolution).

307 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations,
 308 covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of
 309 such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title
 310 Documents).

311 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**, copies of all Title
 312 Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county
 313 where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the
 314 party or parties obligated to pay for the owner's title insurance policy.

315 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any
 316 portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

317 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the
 318 Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**.
 319 Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding
 320 § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or
 321 Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title
 322 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be
 323 delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object

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324 to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or
 325 Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of
 326 Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5
 327 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents
 328 required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection
 329 by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title
 330 Commitment and Title Documents as satisfactory.

331 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing
 332 surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without
 333 limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights
 334 of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section
 335 excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property
 336 to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary
 337 line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition
 338 (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 (Record Title) and § 13 (Transfer of Title)), in
 339 Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-
 340 Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after
 341 receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title
 342 Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5
 343 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the
 344 applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not
 345 shown by public records of which Buyer has actual knowledge.

346 **8.4. Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION
 347 INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE
 348 PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK
 349 FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE
 350 CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH
 351 INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE
 352 SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY
 353 TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING
 354 FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND
 355 RECORDER, OR THE COUNTY ASSESSOR.

356 A tax certificate from the respective county treasurer listing any special taxing districts that effect the Property (Tax
 357 Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is located within a special taxing
 358 district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may object, on or before **Record**
 359 **Title Objection Deadline**. If the Tax Certificate shows that the Property is included in a special taxing district and is received by
 360 Buyer after the **Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and
 361 object to the Property's inclusion in a special taxing district as unsatisfactory to Buyer.

362 **8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective discretion, to any title
 363 matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), § 8.4 (Special Taxing District) and § 13
 364 (Transfer of Title). If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

365 **8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice
 366 of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on
 367 or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller
 368 receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such
 369 items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the
 370 Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3 (Off-Record
 371 Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically extended to the earlier of
 372 Closing or fifteen days after Buyer's receipt of the applicable documents; or

373 **8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on or
 374 before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

375 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a right to approve
 376 this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the
 377 right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate.
 378 If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and
 379 effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval
 380 of this Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

381 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed
 382 carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property,

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383 including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations,
384 unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property and
385 various laws and governmental regulations concerning land use, development and environmental matters.

386 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**
387 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER**
388 **OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR**
389 **WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS,**
390 **GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS**
391 **MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE**
392 **MINERAL ESTATE, OIL, GAS OR WATER.**

393 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO**
394 **ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A**
395 **MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND**
396 **RECORDER.**

397 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT**
398 **TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION**
399 **OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING**
400 **OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.**

401 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**
402 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING**
403 **DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL**
404 **AND GAS CONSERVATION COMMISSION.**

405 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be excepted, excluded from,
406 or not covered by the owner’s title insurance policy.

407 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such matters as there are
408 strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and **Off-Record Title Objection Deadline**).

409 **9. NEW ILC, NEW SURVEY.**

410 **9.1. New ILC or New Survey.** If the box is checked, a: 1) **New Improvement Location Certificate (New ILC);** or,
411 2) **New Survey** in the form of _____; is required and the following will apply:

412 **9.1.1. Ordering of New ILC or New Survey.** **Seller** **Buyer** will order the New ILC or New Survey. The
413 New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a
414 date after the date of this Contract.

415 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on or
416 before Closing, by: **Seller** **Buyer** or:

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420 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or the provider
421 of the opinion of title if an Abstract of Title) and _____ will receive a New ILC or New Survey on or before
422 **New ILC or New Survey Deadline.**

423 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by the surveyor
424 to all those who are to receive the New ILC or New Survey.

425 **9.2. Buyer’s Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a New ILC or New
426 Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New**
427 **Survey Objection Deadline.** Buyer may, in Buyer’s sole subjective discretion, waive a New ILC or New Survey if done prior to
428 Seller incurring any cost for the same.

429 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the New ILC or New Survey. If
430 the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer’s sole subjective discretion,
431 Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:

432 **9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

433 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that was to be
434 shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

435 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by Seller, on
436 or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof
437 on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New**
438 **Survey Resolution Deadline**, unless Seller receives Buyer’s written withdrawal of the New ILC or New Survey Objection before
439 such termination, i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**.

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DISCLOSURE, INSPECTION AND DUE DILIGENCE

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10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY AND DUE DILIGENCE.

10.1. Seller’s Property Disclosure. On or before Seller’s Property Disclosure Deadline, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission’s Seller’s Property Disclosure form completed by Seller to Seller’s actual knowledge and current as of the date of this Contract.

10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller’s new disclosure on the earlier of Closing or five days after Buyer’s receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an “As Is” condition, “Where Is” and “With All Faults.”

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer’s expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer’s sole subjective discretion, Buyer may:

10.3.1. Inspection Objection. On or before the Inspection Objection Deadline, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

10.3.2. Terminate. On or before the Inspection Termination Deadline, notify Seller in writing, pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. Inspection Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in § 3.1 for Inspection Termination Deadline.

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before Inspection Objection Deadline and if Buyer and Seller have not agreed in writing to a settlement thereof on or before Inspection Resolution Deadline, this Contract will terminate on Inspection Resolution Deadline unless Seller receives Buyer’s written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of Inspection Resolution Deadline.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer’s request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller’s right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller’s reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before Property Insurance Termination Deadline, based on any unsatisfactory provision of the Property Insurance, in Buyer’s sole subjective discretion.

10.6. Due Diligence.

10.6.1. Due Diligence Documents. If the respective box is checked, Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before Due Diligence Documents Delivery Deadline:

- 10.6.1.1. All contracts relating to the operation, maintenance and management of the Property;
- 10.6.1.2. Property tax bills for the last _____ years;
- 10.6.1.3. As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;
- 10.6.1.4. A list of all Inclusions to be conveyed to Buyer;
- 10.6.1.5. Operating statements for the past _____ years;
- 10.6.1.6. A rent roll accurate and correct to the date of this Contract;
- 10.6.1.7. All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):

496 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet
497 completed and capital improvement work either scheduled or in process on the date of this Contract;

498 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made
499 for the past four years;

500 **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered
501 earlier under § 8.3);

502 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental reports,
503 letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or
504 other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no reports are in Seller's
505 possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

506 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the
507 Property with said Act;

508 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any governmental
509 authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations,
510 if any; and

511 **10.6.1.14.** Other documents and information:
512 all surveys and site plans of the Property, all construction plans, all permits, per contracts and subcontracts for the partially completed construction at the Property, documents
513 regarding any land use and zoning restrictions for the Property, any third party reports regarding the Property, all information on Property's inclusion in Gateway Dist., Sand
514 Creek Metropolitan District and any other special district, including taxes and/or fees, and all documents related to construction of the contemplated Four Points by Sheraton

514 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object to Due
515 Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective
516 discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

517 **10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is
518 terminated; or

519 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any
520 unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

521 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received by
522 Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a
523 settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence**
524 **Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection
525 before such termination, i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**.

526 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection**
527 **Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over
528 the Property, in Buyer's sole subjective discretion.

529 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental inspections of the
530 Property including Phase I and Phase II Environmental Site Assessments, as applicable. Seller Buyer will order or provide
531 **Phase I Environmental Site Assessment**, **Phase II Environmental Site Assessment** (compliant with most current version
532 of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or _____,
533 at the expense of Seller Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an
534 evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and
535 evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's
536 tenants' business uses of the Property, if any.

537 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the
538 **Environmental Inspection Termination Deadline** will be extended by _____ days (Extended Environmental Inspection
539 Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the
540 **Closing Date** will be extended a like period of time. In such event, Seller Buyer must pay the cost for such Phase II
541 Environmental Site Assessment.

542 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4, Buyer has the
543 Right to Terminate under § 25.1, on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended
544 Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole
545 subjective discretion.

546 Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Termination Deadline**, based on any
547 unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

548 ~~**10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain property
549 owned by Buyer and commonly known as _____, Buyer has the Right to Terminate
550 under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such
551 property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's
552 Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this provision.~~

553 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** [Intentionally Deleted]

554 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be assigned
555 to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the
556 Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller
557 enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably
558 withheld or delayed.

559 **11. ESTOPPEL STATEMENTS.**

560 **11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller must
561 request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**,
562 statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel
563 Statement) attached to a copy of the Lease stating:

- 564 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;
- 565 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or
566 amendments;
- 567 **11.1.3.** The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;
- 568 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;
- 569 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and
- 570 **11.1.6.** That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease
571 demising the premises it describes.

572 **11.2. Seller Estoppel Statement.** In the event Seller does not receive from all tenants of the Property a completed signed
573 Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents
574 required §11.1 above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

575 **11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 25.1, on or before **Estoppel**
576 **Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer’s sole subjective discretion, or if
577 Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to
578 waive any unsatisfactory Estoppel Statement.

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CLOSING PROVISIONS

580 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

581 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to
582 enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If
583 Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer’s lender is required to provide the Closing
584 Company, in a timely manner, all required loan documents and financial information concerning Buyer’s loan. Buyer and Seller
585 will furnish any additional information and documents required by Closing Company that will be necessary to complete this
586 transaction. Buyer and Seller will sign and complete all customary or reasonably-required documents at or before Closing.

587 **12.2. Closing Instructions.** Colorado Real Estate Commission’s Closing Instructions Are Are Not executed with
588 this Contract.

589 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as
590 the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by
591 mutual agreement of Buyer and Seller _____.

592 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of service vary
593 between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

594 **13. TRANSFER OF TITLE.** Subject to Buyer’s compliance with the terms and provisions of this Contract, including the
595 tender of any payment due at Closing, Seller, provided another deed is not selected, must execute and deliver a good and sufficient
596 special warranty deed to Buyer, at Closing. However, if the box is checked, the parties agree to use the corresponding deed
597 instead:

598 general warranty deed bargain and sale deed quit claim deed personal representative’s deed special warranty deed.

599 **13.1. Special Warranty Deed and General Warranty Deed Exceptions.** If title will be conveyed using a special
600 warranty deed or a general warranty deed, title will be conveyed subject to:

- 601 **13.1.1.** General taxes for the year of Closing,
- 602 **13.1.2.** Distribution utility easements (including cable TV),
- 603 **13.1.3.** Those specifically described rights of third parties not shown by the public records of which Buyer has
604 actual knowledge and which were accepted by Buyer in accordance with § 8.3 (Off-Record Title) and § 9 (New ILC or New
605 Survey),
- 606 **13.1.4.** Inclusion of the Property within any special taxing district,

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607 13.1.5. Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon,
608 whether assessed prior to or after Closing and

609 13.1.6. Other _____.

610 13.2. Special Warranty Deed. In addition to the requirements of § 13.1, if title will be conveyed by a special warranty
611 deed, Seller will warrant title against all persons claiming by, through or under Seller subject to those specific recorded exceptions,
612 if any, created during Seller's ownership of the Property and described by reference to recorded documents shown as Exceptions in
613 the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to
614 the specific recording information for each recorded document.

615 13.3. General Warranty Deed. In addition to the requirements of § 13.1, if title will be conveyed by a general warranty
616 deed, Seller will warrant the title subject to those specific recorded exceptions described by reference to recorded documents
617 shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in
618 the deed by reference to the specific recording information for each recorded document.

619 14. PAYMENT OF LIENS AND ENCUMBRANCES. Unless agreed to by Buyer in writing, any amounts owed on any liens
620 or encumbrances securing a monetary sum, including, but not limited to, any governmental liens for special improvements
621 installed as of the date of Buyer's signature hereon, whether assessed or not and previous years' taxes, will be paid at or before
622 Closing by Seller from the proceeds of this transaction or from any other source.

623 15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

624 15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required
625 to be paid at Closing, except as otherwise provided herein.

626 15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing by Buyer Seller
627 One-Half by Buyer and One-Half by Seller Other _____.

628 15.3. Status Letter and Record Change Fees. At least fourteen days prior to Closing Date, Seller agrees to promptly
629 request the Association to deliver to Buyer a current Status Letter. Any fees incident to the issuance of Association's Status Letter
630 must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller. Any Record Change Fee must
631 be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller.

632 15.4. Local Transfer Tax. The Local Transfer Tax of _____% of the Purchase Price must be paid at Closing by
633 None Buyer Seller One-Half by Buyer and One-Half by Seller.

634 15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such
635 as community association fees, developer fees and foundation fees, must be paid at Closing by None Buyer Seller
636 One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following
637 association(s): _____ in the total amount of _____% of the Purchase Price or \$_____.

638 15.6. Water Transfer Fees. The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed
639 \$_____ for:

640 Water Stock/Certificates Water District
641 Augmentation Membership Small Domestic Water Company _____
642 and must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller

643 15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by
644 None Buyer Seller One-Half by Buyer and One-Half by Seller.

645 15.8. FIRPTA and Colorado Withholding.

646 15.8.1. FIRPTA. The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be
647 withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for
648 the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller IS a
649 foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a
650 foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any
651 reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing
652 Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if
653 withholding applies or if an exemption exists.

654 15.8.2. Colorado Withholding. The Colorado Department of Revenue may require a portion of the Seller's
655 proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller
656 agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If
657 withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should
658 inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

659 16. PRORATIONS AND ASSOCIATION ASSESSMENTS. The following will be prorated to the Closing Date, except as
660 otherwise provided:

661 16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the
662 year of Closing, based on Taxes for the Calendar Annually Preceding Closing Most Recent Mill Levy and

663 **Most Recent Assessed Valuation**, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled
664 veteran exemption or **Other** _____.

665 **16.2. Rents.** Rents based on **Rents Actually Received** **Accrued**. At Closing, Seller will transfer or credit to
666 Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions and notify all tenants in writing of
667 such transfer and of the transferee’s name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must
668 assume Seller’s obligations under such Leases.

669 **16.3. Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in
670 advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred
671 maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents.
672 Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital.
673 Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of **Buyer** **Seller**. Except
674 however, any special assessment by the Association for improvements that have been installed as of the date of Buyer’s signature
675 hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents there are no unpaid regular or
676 special assessments against the Property except the current regular assessments and _____.
677 Association Assessments are subject to change as provided in the Governing Documents.

678 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan and _____.

679 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

680 **17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to
681 the Leases as set forth in § 10.6.1.7.

682 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable
683 to Buyer for payment of \$_____ per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and
684 **Possession Time** until possession is delivered.

685

GENERAL PROVISIONS

686 **18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

687 **18.1. Day.** As used in this Contract, the term “day” means the entire day ending at 11:59 p.m., United States Mountain
688 Time (Standard or Daylight Savings as applicable).

689 **18.2. Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after MEC), when the
690 ending date is not specified, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or
691 federal or Colorado state holiday (Holiday), such deadline **Will** **Will Not** be extended to the next day that is not a
692 Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

693 **19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND**
694 **WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the
695 condition existing as of the date of this Contract, ordinary wear and tear excepted.

696 **19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of
697 loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of
698 the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance
699 proceeds, will use Seller’s reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under
700 § 25.1, on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should
701 Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance
702 proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus
703 the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event
704 Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the
705 Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if
706 acceptable to Seller’s insurance company and Buyer’s lender; or (2) the parties may enter into a written agreement prepared by the
707 parties or their attorney requiring the Seller to escrow at Closing from Seller’s sale proceeds the amount Seller has received and
708 will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the
709 insurance claim.

710 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication
711 services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged
712 between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement
713 of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the
714 maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance
715 proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or
716 replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before

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717 **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or
718 Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the
719 Association, if any, will survive Closing.

720 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may
721 result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation
722 action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's
723 sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and
724 Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value
725 of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

726 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the
727 Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

728 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge
729 that the respective broker has advised that this Contract has important legal consequences and has recommended the examination
730 of title and consultation with legal and tax or other counsel before signing this Contract.

731 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines in this
732 Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not
733 paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-
734 defaulting party has the following remedies:

735 **21.1. If Buyer is in Default:**

736 **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid
737 by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty and the Parties agree the
738 amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to
739 treat this Contract as being in full force and effect and Seller has the right to specific performance, or damages, or both.

740 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1. is checked.** Seller
741 may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is
742 agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree
743 is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY
744 REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific
745 performance and additional damages.

746 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received
747 hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to
748 treat this Contract as being in full force and effect and Buyer has the right to specific performance, or damages, or both.

749 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration
750 or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all
751 reasonable costs and expenses, including attorney fees, legal fees and expenses.

752 **23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties
753 must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps
754 to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is
755 binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator
756 and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire
757 dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at
758 that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from
759 filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation.
760 This Section will not alter any date in this Contract, unless otherwise agreed.

761 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must release the Earnest
762 Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding
763 the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole
764 subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and
765 deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and
766 reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money
767 Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the
768 lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is
769 authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has
770 not interpleaded the monies at the time of any Order, **Exhibit A-10015** must disburse the Earnest Money pursuant to the Order

771 of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this
772 Contract.

773 **25. TERMINATION.**

774 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the
775 termination is effective upon the other party’s receipt of a written notice to terminate (Notice to Terminate), provided such written
776 notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or
777 before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as
778 satisfactory and waives the Right to Terminate under such provision.

779 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will be
780 returned to Buyer and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

781 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and specified
782 addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining
783 thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the
784 terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right
785 or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the
786 same. Any successor to a party receives the predecessor’s benefits and obligations of this Contract.

787 **27. NOTICE, DELIVERY AND CHOICE OF LAW.**

788 **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing, except as provided in
789 § 27.2 and is effective when physically received by such party, any individual named in this Contract to receive documents or
790 notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing
791 must be received by the party, not Broker or Brokerage Firm).

792 **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer
793 or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of
794 Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or
795 Brokerage Firm) at the electronic address of the recipient by facsimile, email or _____.

796 **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email
797 address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to
798 access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

799 **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with
800 the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property
801 located in Colorado.

802 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and
803 Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 27 on or
804 before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between
805 Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy
806 thereof, such copies taken together are deemed to be a full and complete contract between the parties.

807 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not
808 limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations; Title**
809 **Insurance, Record Title and Off-Record Title; New ILC, New Survey; and Property Disclosure, Inspection, Indemnity,**
810 **Insurability and Due Diligence.**

811 **ADDITIONAL PROVISIONS AND ATTACHMENTS**

812 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate
813 Commission.)

814 Additional Provisions are included as the Original Addendum attached and made a part of hereto.
815
816
817
818
819
820
821

Exhibit A - 0016

822 31. OTHER DOCUMENTS.

823 31.1. The following documents are a part of this Contract:

824 Exhibit A

825
826
827 31.2. The following documents have been provided but are not a part of this Contract:

828
829
830

831 **SIGNATURES**

832 Buyer's Name: Frisco Acquisition, LLC

Buyer's Name: _____

Parmjit Kaur 02.28.2019
Buyer's Signature Date

Wanda Batara
Buyer's Signature Date

Address: 8762 Preston Trace Blvd.
Frisco, Texas 75033
Phone No.: 972-668-0327
Fax No.: n/a
Email Address: paramjitkaur251@yahoo.com

Address: _____
Phone No.: _____
Fax No.: _____
Email Address: _____

833 [NOTE: If this offer is being countered or rejected, do not sign this document.]

Seller's Name: _____

Seller's Name: _____

Seller's Signature Date

Seller's Signature Date

Address: _____
Phone No.: _____
Fax No.: _____
Email Address: _____

Address: _____
Phone No.: _____
Fax No.: _____
Email Address: _____

834

835

END OF CONTRACT TO BUY AND SELL REAL ESTATE

32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Buyer as a Buyer's Agent Transaction-Broker in this transaction. This is a Change of Status.

Customer. Broker has no brokerage relationship with Buyer. See § 33 for Broker’s brokerage relationship with Seller.

Brokerage Firm’s compensation or commission is to be paid by **Listing Brokerage Firm** **Buyer** **Other** _____.

Brokerage Firm’s Name: _____
Brokerage Firm’s License #: _____
Broker’s Name: _____
Broker’s License #: _____

Broker’s Signature Date

Address: _____

Phone No.: _____
Fax No.: _____
Email Address: _____

33. BROKER’S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker **Does** **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder’s receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Seller as a **Seller’s Agent** **Transaction-Broker** in this transaction. This is a **Change of Status**.

Customer. Broker has no brokerage relationship with Seller. See § 32 for Broker’s brokerage relationship with Buyer.

Brokerage Firm’s compensation or commission is to be paid by **Seller** **Buyer** **Other** _____.

Brokerage Firm’s Name: _____
Brokerage Firm’s License #: _____
Broker’s Name: _____
Broker’s License #: _____

Broker’s Signature Date

Address: _____

Phone No.: _____
Fax No.: _____
Email Address: _____

836

**ORIGINAL ADDENDUM
to
CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)**

16161 E. 40th Avenue, Denver, Colorado 80329

30.1. MEC. Mutual Execution of the Contract (“MEC”) shall be construed for the purposes of this Contract and its deadlines as the date of last execution by Buyer or Seller, whichever occurs later.

30.2. BANKRUPTCY. Seller is debtor in a pending voluntary bankruptcy proceeding before the United States Bankruptcy Court for the District of Colorado, Denver Division, Case No. 18-18636-EEB. This Contract must be approved by the Bankruptcy Court and will be deemed null and void if not approved within 30 Days of MEC.

30.3. PURCHASE PRICE. The Purchase Price, as recited in § 4, shall specifically constitute, in addition to the Assumption Balance, payment of only (i) the following listed obligations of the Seller; and (ii) a reserve fund as stated. Should the actual cost to satisfy these obligations or said reserve’s intent be less, the Purchase Price shall be reduced in kind. It is the intent that no cash be paid to Seller at Closing of this transaction.

<u>Obligations Constituting Part of the Purchase Price</u>		
Storm Drain Lien	City & County of Denver	\$134.81
Real Property Taxes	City & County of Denver	\$101,340.66
Mechanic Lien	Rio Grande Co.	\$53,830.49
Mechanic Lien	O’Brien Construction	\$13,887.26
Mechanic Lien	United Rentals	\$64,466.79
Mechanic Lien	Redd Iron, Inc.	\$53,220.40
Mechanic Lien	Metro Building Products	\$4,650.48
Mechanic Lien	Summit Services Group	\$3,520.00
Mechanic Lien	HD Supply Construction	\$3,556.12
Mechanic Lien	Waste Connections	\$5,335.41
Use Taxes	City & County of Denver	\$139,393.50
TOTAL		\$507,802.71

Reserve Fund Constituting Part of the Purchase Price
Reserve Amount of \$250,000.00 for payment of administrative expenses, trustee fee’s, and attorneys’ fees in Case No. 18-18636-EEB.

30.4. CLOSING DATE. The Closing Date will be 29 days from the date the Bankruptcy Court authorizes the specific sale contemplated by this Contract, but at least 45 days after MEC. Closing shall occur no later than 75 days after MEC or bankruptcy court approval, whichever occurs later.

30.4.1. Extension of Closing. Buyer shall have the right to extend the Closing Date, as determined by the terms herein, for an additional 30 days by making an additional \$125,000.00 deposit to Earnest Money.

30.3. OTHER AGREEMENTS. As a part of this transaction, Abbas Consulting, Inc., a Texas Corporation contemporaneously enters into a certain Agreement for Purchase and Sale of LLC Interest with Wanda Bertoia, owner of WPB Hospitality, LLC and Alpine Hospitality, Inc. (“LLC Agreement”). Therein, Frisco Acquisition, LLC shall acquire all of Wanda Bertoia’s right, title and interest in WPB in exchange for payment of \$2,500,000.00. As further consideration, Wanda Bertoia and Alpine Hospitality, Inc. have agreed to release their claims against WPB Hospitality, LLC. Buyer and Seller agree that contemporaneous execution of the LLC Agreement is an integral to the overall consideration for Closing of this transaction.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A parcel of land being a portion of Plot 1, Block 1, Gateway Park IV – Denver Filing No. 7, being more particularly described as follows:

COMMENCING at the northwest corner of said Plot 1;

THENCE North 89 degrees 52 minutes 06 seconds East, along the North line of said Plot 1, a distance of 295.63 feet to the true point of beginning;

THENCE North 89 degrees 52 minutes 06 seconds East, along the North line of said Plot 1, a distance of 396.64 feet to the northeast corner of said Plot 1;

THENCE the following three (3) course along the East line of said Plot 1:

1. THENCE South 10 degrees 26 minutes 16 seconds West, a distance of 95.82 feet to a point of curve;
2. THENCE along the arc of a curve to the left, having a central angle of 10 degrees 34 minutes 10 seconds, a radius of 315.00 feet and an arc length of 58.11 feet;
3. THENCE South 00 degrees 07 minutes 54 seconds East, a distance of 307.25 feet to the southeast corner of said Plot 1;

THENCE the following four (4) courses along the South line of said Plot 1:

1. THENCE South 89 degrees 52 minutes 06 seconds West, a distance of 100.00 feet;
2. THENCE South 00 degrees 07 minutes 54 seconds East, a distance of 5.00 feet to a point on the North right-of-way line of 40th Avenue, as dedicated by 40th Avenue, Chamber Road – Pena Boulevard Subdivision, recorded May 6, 1997, at Reception Number 9700057406, said City and County of Denver Records;
3. THENCE South 89 degrees 52 minutes 06 seconds West, along the North right-of-way line of said 40th Avenue, a distance of 250.09 feet;
4. THENCE South 89 degrees 52 minutes 04 seconds West, along the North right-of-way line of said 40th Avenue, a distance of 23.63 feet;

THENCE North 00 degrees 07 minutes 54 seconds West, a distance of 464.23 feet to the true point of beginning, City and County of Denver, State of Colorado.

BJP

**AGREEMENT FOR PURCHASE AND SALE
OF LLC INTEREST**

This Agreement for Purchase and Sale of LLC Interest (this "Agreement") is made as of the _____ day of _____, 2019, by and between Wanda Bertoia, owner of WPB Hospitality, LLC, a Colorado limited liability company, ("Seller") and Frisco Acquisition, LLC, a Texas limited liability company, ("Purchaser") and Alpine Hospitality, Inc., a Colorado corporation ("Alpine")

Background of the Agreement

The following background statements are made to aid in the understanding and interpretation of this Agreement:

- A. Seller is the sole owner and member of WPB Hospitality, LLC ("WPB").
- B. WPB has been in process on the construction of a Sheraton Four Points branded hotel located at 16161 E. 40th Ave, Denver, CO 80239 (the "Property").
- C. WPB was constructing a hotel on the Property using a loan through the federal EB-5 program, funded through a lender named American Lender Center, LLC ("ALC").
- D. The total aggregate face amount of the loan from ALC to WPB was \$10,200,000. Which amount was split between two promissory notes.
- E. WPB proceeded with construction until such time as WPB's General Contractor abandoned the Property and failed to remit payments to subcontractors.
- F. At the time the General Contractor abandoned the Property, construction had proceeded to between 20% and 30% complete. The Property remains in the same condition as it was in at the time the General Contractor abandoned the Property.
- G. On October 3, 2018, WPB filed Chapter 11 bankruptcy, United States Bankruptcy Court Case Number 18-18636-EEB (the "Bankruptcy Case").
- H. Purchaser is a hotelier familiar with the Denver hotel market. Purchaser and Abbas Consulting, Inc. ("Abbas"), an affiliated creditor, have collectively purchased three proofs of claim in the Bankruptcy Case totaling \$80,000.
- I. ALC filed a proof of claim in the Bankruptcy Case for \$5,329,779.28.
- J. Seller's separate entity Alpine Hospitality, Inc. filed a proof of claim in the Bankruptcy Case totaling \$5,784,158.53.
- K. Purchaser has submitted a contract for the purchase of the Property from WPB for \$ 6,068,132.97 and is proposing, through that contract, to assume the ALC debt, and pay those lien holders that have filed proofs of claim in the Bankruptcy Case, as Purchaser deems necessary and appropriate.

- L. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser on the terms and subject to conditions of this Agreement, Seller's membership interests in WPB, presently owned by Seller.

Agreement

Now, therefore, in consideration of the premises, their mutual covenants and promises, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Incorporation of Background Statements.** The foregoing background statements are incorporated herein as if fully set forth. All such statements are material terms of this Agreement and not merely recitals.
2. **Sale of Membership Interest.** Subject to the terms and conditions set forth in this Agreement and subject to Bankruptcy Court approval, unless otherwise agreed, Seller agrees to sell, assign, transfer and deliver to Purchaser, and Purchaser agrees to purchase and accept from Seller, all of Seller's rights, title and interest in WPB.
3. **Withdrawal of Claims.** Purchaser and Seller acknowledge that this Agreement contemplates resolution of the claims of Wanda Bertoia against WPB. Seller shall release upon Closing any and all of her claims, known or unknown, against WPB. Seller, acting in her official capacity on behalf of Alpine shall release upon Closing any and all of Alpine's claims, known or unknown, against WPB
4. **Consideration.** The full purchase price is Two Million, Five Hundred Thousand Dollars and 00/100 (\$2,500,000.00) (the "Purchase Price"). At Closing, Purchaser shall pay to Seller the Purchase Price in the form of Two Hundred Fifty Thousand and 00/100 (\$250,000) and the execution and delivery to Seller of a promissory note in the form and with the terms as provided for in Exhibit A for the balance of the Purchase Price.
5. **Assignment of Lawsuit Claims.** In further consideration of consummation of this Agreement, Purchaser shall assign to Seller all claims and interests in Denver County District Court Case No. 2018CV32991 styled as WPB Hospitality, LLC v. Kumar Construction Management Inc. et. al.
6. **Taxes.** Each party will be responsible for its own income taxes and tax reporting resulting from this sale.
7. **Seller Representation.** Seller represents that she is the sole owner of WPB and has not sold, hypothecated or transferred any of her ownership in WPB to third parties.
8. **Seller Makes No Warranties.** Seller makes no express or implied warranty in regards to this Agreement or the business assets. Seller further makes no representation or warranty as to the profitability or income expected from the Property now or in the future. Buyer hereby expressly disclaims any representations and warranties and acknowledges and agrees it is purchasing WPB as-is without warranty of any kind whatsoever.

9. Purchaser Warranty. Purchaser represents and warrants to Seller it is a corporation duly organized, validly existing and in good standing under the State of Texas, with full power and authority to conduct its business as it is now conducted; that this Agreement and all ancillary documents to this transaction constitute legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with the terms of this Agreement and the ancillary documents; and that Purchaser has power and authority to execute and deliver this Agreement and ancillary documents and perform the obligations thereunder and has been duly authorized to do so by all necessary corporate action.

10. Closing. Consummation of the sale of WPB shall constitute the "Closing." Unless otherwise agreed between the parties, the Closing shall be remote, conducted through the parties representative counsel, and subject to approval by the bankruptcy court.

11. Transaction. At the Closing, the following documents shall be exchanged:

a. Seller shall execute and deliver to Purchaser a bill of sale and an assignment.

b. Purchaser shall execute and deliver a Promissory Note in the same form and with the same terms as **Exhibit A**.

Each party, at any time before or after the Closing date, shall execute, acknowledge, and deliver any further deeds, assignments, conveyances, and other assurances, documents, and instruments of transfer, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by Purchaser for the purpose of transferring to Purchaser, or reducing to possession the business and its assets.

12. Purchaser's Indemnification. Purchaser shall indemnify, defend, and hold Seller, its members and employees harmless against all claims, losses, expenses, and damages, including interest, penalties, and reasonable attorneys' fees through all appeals, that Seller shall incur, which are caused by Purchaser's operation or ownership of its business or its use of the business assets after Closing or by any breach of or failure by Purchaser to perform, or the untruth of any of Purchaser's representations, warranties, or agreements in this Agreement or in any certificate, exhibit, or other instrument furnished or to be furnished by Purchaser under this Agreement.

13. Miscellaneous.

a. Headings. The subject headings for the sections and subsections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

b. Modification and Waiver. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision,

whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

c. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

d. Assignment. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, and successors. Any assignment without the written consent of all parties shall be void.

e. Governing Law. This Agreement is made under, and is to be construed and enforced in accordance with the laws of the State of Colorado.

f. Time of the Essence. Time is of the essence, and if any payment or any other material condition is not made, tendered, or performed as provided, there shall be the following remedies:

g. Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

h. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter hereof.

i. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

j. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

k. Survival. All the terms of this Agreement either specifically identified as surviving or which create or affect rights or obligations in the future shall survive and remain in effect after termination of this Agreement.

[Signature Page Follows]

In witness whereof, the parties have executed this Agreement the day and year first above written.

PURCHASER:
Frisco Acquisition, LLC
a Texas limited liability company

By: Parmjit Kaur
Its: Managing Member

Date: 03.14.2019

SELLER:
Wanda Bertoia,
In her individual capacity as the Sole
Member of WPB Hospitality, LLC

By: Wanda Bertoia

Date: 3-14-2019

Alpine Hospitality, Inc.
a Colorado corporation

By: Wanda Bertoia
Its: OWNER

Date: 3-14-2019

[Signature Page]