

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

In re:	)	
	)	Case No. 16-14761-MER
Y&K SUN, INC.,	)	
	)	Chapter 11
Debtor.	)	

---

**MOTION FOR ENTRY OF ORDERS: (1) AUTHORIZING SALE OF Y&K SUN, INC.’S INTEREST IN PROPERTY LOCATED AT 6451-6579 W. COLFAX AVENUE, LAKEWOOD, COLORADO FREE AND CLEAR OF DESIGNATED LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES; (2) APPROVING AUCTION PROCEDURES; AND (3) APPROVING STALKING HORSE BID, INCLUDING 3.0% BREAK-UP FEE OF \$132,000**

---

Y&K Sun, Inc. (“Y&K”), through undersigned counsel, files this motion and states as follows:

**I. SUMMARY OF PROPOSED SALE**

1. Y&K entered an agreement to sell Y&K’s interest in the JCRS Property (defined below) to CK Acquisitions, LLC (the “Buyer”) on the following material terms:

- a. Sale price of \$4,400,000 for the JCRS Property, as-is<sup>1</sup>;
- b. The Buyer will pay \$50,000 as earnest money, with \$50,000 more to be paid upon expiration of due diligence period and court approval of the agreement;
- c. Due diligence period of sixty (60) days for Buyer;
- d. Sale subject to qualified overbids due by November 4, 2016;
- e. Auction among qualified bidders to occur no later than November 21, 2016;
- f. Buyer will receive a break-up fee of \$132,000, which equals 3.0% of the proposed purchase price, if it is not the winning bidder; and
- g. Sale closes by November 30, 2016.

---

<sup>1</sup> Since no broker is involved, the Buyer’s bid will not be reduced by broker fees, but is subject to the usual credits and prorations and is subject to a credit of up to \$100,000 repairs that may be necessary to HVAC, the roof, or windows, to the extent Y&K is obligated for such repairs under existing leases or the repairs are for portions of the property not subject to leases. The Buyer may assume the existing loan secured by the property and would receive credit towards the purchase price for the assumption.

The proposed sale agreement (the “Agreement”) is attached as **Exhibit 1**. The auction and bidding procedures (“Auction and Bidding Procedures”) are attached as **Exhibit 2**. A proposed form of order approving the Agreement and Auction and Bidding Procedures is submitted with this motion.

## **II. JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1334(b).
3. This is a core matter pursuant to 28 U.S.C. §157(b)(2)(N).
4. Venue is proper in this Court under 28 U.S.C. § 1409(a).

## **III. BACKGROUND**

5. Y&K filed this case May 12, 2016.
6. Y&K filed a motion to appoint a chapter 11 trustee on May 13, 2016. On May 25, 2016, Wonjoong and Yoonee Kim (the “Kims”) filed a motion to dismiss this case. The Court has not ruled on either motion. Y&K believes the proposed sale process is in the best interests of all parties.

## **IV. THE JCRS PROPERTY**

7. In 2006, Y&K purchased a portion of the JCRS shopping center on West Colfax Avenue in Lakewood, Colorado (the “JCRS Property”). The Casa Bonita restaurant is located on the portion that Y&K did not purchase. The purchase was financed in part with a \$3,000,000 loan from First National Bank (“FNB”). The portion of the JCRS Property owned by Y&K consists of approximately 42,000 square feet of retail space divided into 15 units, 12 of which (comprising approximately 29,000 square feet) are occupied by tenants. The JCRS Property is Y&K’s sole material asset.

8. As of July 2015, the JCRS Property had an appraised value of \$4,630,000, and

with certain repairs, changes to the existing leases and leasing vacant space, it was estimated by an appraiser to be worth \$6,200,000. Y&K receives approximately \$43,000 per month in rent.

9. The JCRS Property is subject to a Deed of Trust for the benefit of FNB (the “FNB DOT”), which secures a promissory note in the original amount of \$3,000,000, as amended by Change in Terms Agreements (the “FNB Note”). The FNB Note is also secured by an Assignment of Rents against the JCRS Property (the “FNB Assignment”).<sup>2</sup> The FNB DOT was recorded on July 13, 2006, and the FNB Assignment was recorded on July 10, 2009, in the real property records of the Clerk Recorder of Jefferson County, Colorado. A copy of the FNB Note is attached as **Exhibit 3**. A copy of the FNB DOT is attached as **Exhibit 4**. A copy of the FNB Assignment is attached as **Exhibit 5**.

10. The current amount Y&K owes on the FNB Note is approximately \$2,507,000. Y&K is current on its payments to FNB, which includes an escrow for real estate taxes and insurance.<sup>3</sup> The Loan from FNB to Y&K matures April 3, 2017.

11. In addition to the lien created by the FNB DOT, Y&K’s interest in the JCRS Property is subject to the liens, encumbrances, and interests identified on **Exhibit 6**. Y&K seeks to sell its interest in the JCRS Property free and clear of the lien created by the FNB DOT except to the extent the loan from FNB is assumed with FNB’s consent, any lien, encumbrance, or interest not identified on the title commitment, any interest that might be created by the lis

---

<sup>2</sup> The FNB Note is also secured by a deed of trust encumbering property located at 400 East Santa Clara Street, San Jose, California, which is owned by Yeonam and Hyungkeun Sun. The San Jose property is encumbered by a prior deed of trust that secures an obligation of approximately \$140,000. Y&K believes that San Jose property is currently unsaleable because of environmental contamination and that the value of the San Jose property is lower than the amount owed on the \$140,000 deed of trust.

<sup>3</sup> The Court approved Y&K’s request to make adequate protection payments to FNB through July 31, 2016. [Docket No. 55]. A second motion to approve adequate protection payments through October 31, 2016 is pending. [Docket No. 75]. No objections were filed to the second motion to pay adequate protection. The adequate protection payments to FNB are the required monthly payments and the required monthly escrow payment for real estate taxes and insurance.

pendens recorded by the Kims on November 13, 2015 at reception no. 2015121476, which together are the “Designated Liens, Encumbrances, and Interests.”

**V. RELIEF REQUESTED**

12. Y&K requests that the Court approve the Agreement attached to this Motion as **Exhibit 1**, including the break-up fee of \$132,000.

13. Y&K requests that the Court approve the auction and bidding procedures attached to this Motion as **Exhibit 2**.

14. Y&K requests that the Court approve a sale of Y&K’s interest in the JCRS Property on the terms provided in the Agreement and free and clear of the Designated Liens, Interests, and Encumbrances.

15. Y&K requests that the Court schedule a sale hearing to occur between November 9 and November 22, 2016.

**VI. AUTHORITY FOR RELIEF REQUESTED**

16. Sections 363(b) and 1107 of the Bankruptcy Code permit a debtor-in-possession to sell property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b). 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).

17. A debtor in possession has “ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” *In re Psychometric Sys, Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (Brown, J.) quoting *In re Bakilis*, 220 B.R. 525, 532 (E.D.N.Y. 1998). The authority to sell assets conferred upon a debtor by section 363(b) “include[s] a sale of substantially all the assets of an estate.” *Otto Preminger Films, Ltd, v.*

*Qintex Entertainment, Inc. (In re Qintex Entertainment, Inc.)*, 950 F.2d 1492, 1495 (9th Cir. 1991).

18. Bankruptcy courts are given a great deal of discretion when deciding whether to authorize a sale of a debtor's assets outside of the ordinary course of business. See *In re Chateaugay Corp.*, 973 F.2d 141, 144 (2d Cir. 1992). A sale should be authorized if the debtor-in-possession demonstrates the proposed sale reflects sound business judgment. See *In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004); *Committee of Equity Security Holders v. Lionel Corporation (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); see also, *In re Thomson McKinnon Secs., Inc.*, 120 B.R. 301, 307 (Bankr. S.D.N.Y. 1990); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986).

19. Courts consider the following factors in determining whether the debtor-in-possession has exercised proper business judgment: (1) any improper or bad motive; (2) whether the price is fair and the negotiations or bidding occurred at arm's length; and (3) the adequacy of the sale procedures. *In re Castre, Inc.*, 312 B.R. at 428. As demonstrated below, Y&K has properly exercised its business judgment for the sale proposed in the Agreement.

A. MOTIVE FOR THE PROPOSED SALE

20. A sale of the JCRS Property is in the best interest of the estate and all creditors. Y&K's motive in selling its interest in the JCRS Property is to pay creditors. The anticipated sale proceeds under the Agreement would be sufficient to pay Y&K's scheduled claims in full. Y&K's unsecured claims total<sup>4</sup> approximately \$2,500,000, the bulk of which is a single claim asserted by the Kims for \$2,414,284.20. Y&K has asserted that the Kims' claim cannot be allowed in the amount asserted. See Docket No. 54. It is possible, though unlikely, that an auction of Y&K's interest in the JCRS Property would result in sufficient proceeds to pay

---

<sup>4</sup> Y&K has not yet filed a motion to set a bar date for filing claims, but will do shortly.

unsecured creditors in full even if the Kims' claim is allowed in the amount they have asserted. However, it is more likely that this Court will need to resolve the dispute on the allowable amount of the Kims' claim.

21. No matter the allowed amount of the Kims' claim, a sale of Y&K's interest in the JCRS Property is in the best interests of all creditors for the following reasons:

- a. Y&K believes the current market is optimal for a sale of this property, either to an income buyer or a party desiring to redevelop it.<sup>5</sup>
- b. The proposed sale procedure avoids the payment of any broker's fee, which for a transaction of this size, would be approximately \$260,000 for a purchase price of \$4,400,000.
- c. Notwithstanding that no broker is involved, Y&K proposes to alert as many potentially interested parties as possible, both directly and through the media. Recent experience in the *Morreale Hotels, Inc.*, bankruptcy case indicates that such a sale procedure can be very effective.
- d. Y&K is current on payments to FNB and FNB has so far permitted Y&K to continue to make the regular monthly loan payments in exchange for keeping the interest rate on the loan at the non-default rate of 5.0%. However, the FNB Note matures April 3, 2017, and FNB has indicated a preference to be paid by the maturity date unless the loan is assumed by a qualified buyer. The default interest rate on the FNB Note is currently 9.25%. Thus, a sale prior to the maturity date not only preserves Y&K's substantial equity in the JCRS Property and keeps

---

<sup>5</sup> Y&K filed an application to employ a leasing agent. [Docket No. 61]. The Kims objected, but the Court has not yet ruled. The proposed leasing agent brought a tenant to Y&K for which Y&K requested permission to pay a commission to the leasing agent. The leasing agent has been and continues to negotiate with a potential tenant for 9,175 square feet in the JCRS Property. Any new lease or amendment to an existing lease requires Buyer's written consent under the Agreement.

default interest from reducing the equity, it resolves the problem faced by Y&K and its creditors, including the Kims, about refinancing the loan under any other scenario.

B. FAIR PRICE AS THE RESULT OF ARM'S LENGTH NEGOTIATIONS

22. The purchase price in the Agreement is \$230,000 lower than the 2015 appraised value of Y&K's interest in the JCRS Property. However, not having broker fees to reduce the amount payable to Y&K results in a net sale price higher than the 2015 appraised value. Y&K does not believe that hiring a broker and conducting traditional marketing of the JCRS Property will be in the best interest of creditors.

23. Neither Y&K nor its owners has any connections to the Buyer other than the Agreement, and based on information it has received, neither Y&K nor its owners has any connection to the principals of the Buyer. The Agreement was the result of several rounds of negotiation between Y&K and the Buyer lasting several weeks. The negotiation was conducted at arm's length.

C. FAIRNESS OF THE SALE PROCEDURES

24. The purchase price of \$4,400,000 is subject to higher offers. The West Colfax corridor in which the JCRS Property is located is experiencing substantial interest and redevelopment. The JCRS Property is two blocks from a station on the new light rail line and the owner of the neighboring portion of the JCRS Property has recently undertaken substantial renovations to its portion of the JCRS Property. In the last year, Y&K has negotiated with three potential purchasers besides the Buyer. Though Y&K has not actively marketed the JCRS Property for sale, Y&K anticipates there will be at least some interest by other parties at an auction of Y&K's interest in the JCRS Property.

25. The proposed break-up fee is reasonable: (a) in light of the risk and expense Buyer will undertake and (b) compared to the purchase price. The Buyer is likely to undertake substantial due diligence to determine if the JCRS Property is suitable for Buyer's purposes, including obtaining surveys, incurring attorneys' fees and costs to review encumbrances and covenants, environmental investigation of the JCRS Property, and investigation of the JCRS Property for redevelopment, among others. The proposed break-up fee is 3.0% of the proposed purchase price. The break-up fee is also necessary to preserve the estate's asset in the context of the maturity of the FNB Note, the fairness of the purchase price, and the avoidance of broker fees. As a result, the break-up fee is reasonable. *See, e.g., In re Integrated Res.*, 147 B.R. 650 (S.D.N.Y. 1992).

D. SALE FREE AND CLEAR OF DESIGNATED LIENS, ENCUMBRANCES, AND INTERESTS

26. Section 363(f) of the Bankruptcy Code permits Y&K to sell its interest in the JCRS Property free and clear of liens, encumbrances, and interests if: the lien will be paid in full or if a lien, encumbrance, or interest is subject to a bona fide dispute. 11 U.S.C. § 363(f)(3) and (4). FNB's Note and the FNB DOT will be paid in full at closing from the proposed sale or the FNB Note will be assumed by the Buyer and the FNB DOT will remain a lien on the JCRS Property. Any lien, encumbrance, or interest not appearing of record would be subject to a bona fide dispute, as is any interest in the property claimed by the Kims pursuant to the lis pendens they filed.<sup>6</sup> As a result, Y&K can sell its interest in the JCRS Property free and clear of the Designated Liens, Encumbrances, and Interests.

---

<sup>6</sup> A lis pendens does not create an interest in property, but only gives notice of pending litigation in which such an interest is claimed. *UTE Mesa Lot 1, LLC v. First-Citizens Bank & Tr. Co. (In re UTE Mesa Lot 1, LLC)*, 736 F.3d 947, 951 (10th Cir. 2013) ("Colorado law delineates that a lis pendens serves the limited purpose of providing potential purchasers "notice" of a possible judgment, and it creates 'no new interest' for the filer.") Y&K believes it is readily apparent the Kims have not claimed any right, title or interest in Y&K's property in any litigation except as may derive from their claim to be an unsecured creditor of Y&K, and cannot colorably claim any interest in the property otherwise.



WHEREFORE, Y&K requests that the Court:

1. Enter an order approving the Agreement attached as **Exhibit 1** and authorizing **Y&K to consummate the sale of the JCRS Property to Buyer on the terms contained in the Agreement, subject only to higher Qualified Bids (as that term is defined in the Auction and Bidding Procedures), and, if necessary, to pay the secured claim of FNB from the sale proceeds at closing;**
2. Enter an order approving the Auction and Bidding Procedures attached as **Exhibit 2;**
3. Set a sale hearing to occur between November 9 and November 22, 2016; and
4. Grant such additional relief as the Court deems proper.

Dated: August 25, 2016

Respectfully submitted,

**ONSAGER | GUYERSON | FLETCHER | JOHNSON**

s/ Andrew D. Johnson

Andrew D. Johnson, #36879

Christian C. Onsager, #6889

1801 Broadway, Suite 900

Denver, Colorado 80202

Ph: (303) 512-1123

Fax: (303) 512-1129

ajohnson@ogfj-law.com

consager@ogfj-law.com

*Attorneys for Y&K Sun, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 25, 2016, a true and correct copy of the above and foregoing and proposed order were placed in the United States Mail, postage prepaid and correctly addressed to:

US Trustee  
Byron G. Rogers Federal  
Building  
1961 Stout St.  
Ste. 12-200  
Denver, CO 80294

James N. Thomaidis  
GERSH & THOMAIDIS, LLC  
1860 Blake Street, Suite 400  
Denver, Colorado 80202

D. Elizabeth Wills  
WILLS LAW FIRM, LLC  
20 South Cherry Street  
Denver, Colorado 80246

Benjamin Swartzendruber  
Assistant County Attorney  
Arapahoe County, Colorado  
5334 S. Prince St.  
Littleton, CO 80120

Michael J. Davis  
6795 E. Tennessee Ave.  
Ste. 330  
Denver, CO 80224

Alison Goldenberg, Esq  
Byron G. Rogers Federal  
Building  
1961 Stout St.  
Ste. 12-200  
Denver, CO 80294

Patrick D. Dowdle  
2325 W 72<sup>nd</sup> Ave.  
Denver, CO 80221-3101

And sent by email to:

Michael J. Davis, [mdavis@bknmurray.com](mailto:mdavis@bknmurray.com)  
James N. Thomaidis, [jt@gtattorneys.com](mailto:jt@gtattorneys.com)  
D. Elizabeth Wills, [betsywills@comcast.net](mailto:betsywills@comcast.net)  
Patrick D. Dowdle, [pddowdle@gmail.com](mailto:pddowdle@gmail.com)  
Alison Goldenberg, [Alison.Goldenberg@usdoj.gov](mailto:Alison.Goldenberg@usdoj.gov)  
Tom Quinn, [tquinn@tfqlaw.com](mailto:tquinn@tfqlaw.com)

/s/Tiffany J. Cadwell

## EXHIBIT 1

### REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made by and between Y & K Sun, Inc., a Colorado corporation (“Seller”) and CK Acquisitions, LLC, a Colorado limited liability company (“Buyer”).

#### RECITALS

WHEREAS, Seller owns real estate and improvements located at located at 6451- 6579 West Colfax Avenue, Lakewood, CO 80214 (the “Facilities”), all as hereinafter more particularly described below;

WHEREAS, on May 26, 2016, Seller filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) and currently is debtor and debtor-in-possession in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”) filed under docket #16-14761 MER (the “Bankruptcy Case”);

WHEREAS, subject to the terms and conditions set forth in the auction and bidding procedures annexed hereto, and the approval of the Bankruptcy Court, which is a condition to the sale of the property pursuant to Section 363 of the Bankruptcy Code, Seller proposes to sell substantially all of the real estate and real estate related assets of its business (“the Business”) to Buyer and Buyer proposes to purchase such assets from Seller, all for the purchase price and upon the terms and conditions hereinafter set forth.

#### COVENANTS

NOW, THEREFORE, the parties hereby agree as follows:

#### SECTION 1 THE PROPERTY

1.1 Property. Seller shall sell to Buyer, and Buyer shall purchase from Seller, upon and subject to the terms and provisions hereof, the JCRS Property, as hereafter defined, and all and singular the rights, privileges, advantages, and appurtenances belonging or in any way appertaining to the JCRS Property, including all right, title, and interest of Seller, reversionary or otherwise to all easements upon the JCRS Property and all buildings, leasehold rights, roads, alleys, waters, wastewater capacity or reservations, mineral, oil and gas rights (if any), streets, or rights-of-way bounding the JCRS Property (to the centerline thereof), and rights of ingress and egress thereto, and all other interests in strips and gores owned by Seller, if any, on or immediately abutting the JCRS Property. A nonexclusive listing of such JCRS Property includes the following:

A. Land. Those certain tracts or parcels of land commonly known as 6451- 6579 West Colfax Avenue, Lakewood, CO 80214 and more particularly described as follows:

Parcel 1

Lots 2, 4 and 8, Major Error Correction Plat of JCRS Commercial Plaza, also known by street and number as 6451-6579 West Colfax Avenue, Lakewood, CO 80214  
County of Jefferson, State of Colorado.

Parcel 2:

Easement rights created in instruments recorded February 10, 1984 under Reception No. 84013261 and under Reception No. 84013262 and under Reception No. 84013263 and Amendment recorded June 06, 1984 under Reception No. 84052222 and Amendment recorded October 17, 1984 under Reception No. 84097687,  
also known by street and number as 6481 West Colfax Avenue, Lakewood, CO 80214  
County of Jefferson, State of Colorado.

together with all appurtenant easements, rights, and privileges including the Seller's interest in all leases of premises within such improvements (such real property and associated easements, rights and privileges are herein collectively referred to as the "Land");

B. Improvements. All improvements located on the Land, together with all fixtures, heating and air conditioning systems, equipment, appurtenances and other property affixed to, located upon, and used primarily in connection with the Land, all of which improvements shall be referred to herein as the "Improvements";

C. Personal Property. Any and all personal property of Seller currently located at the Improvements, including but not limited to all existing books and records relating to the construction and maintenance of the Improvements, appliances, tools, maintenance equipment, manufacturers' warranties (including, without limitation, roof warranties), and other personal property situated upon or used in the operation of the Land and Improvements, and intangible personal property relating to the Land and Improvements (the "Personal Property");

D. Tenant Leases. Seller's interest in leases of any interest in all or any part of the Land and Improvements (the "Tenant Leases") and in all security, advance rental, or other deposits actually received by or due to Seller under the Tenant Leases;

E. Plans and Studies. To the extent in Seller's possession, a copy of all site plans, surveys, soil and substrata studies, engineering plans and studies, environmental studies, floor plans, landscape plans, and other plans, diagrams or studies of any kind, if any, now in Seller's possession which relate to the Land, the Improvements or the Personal Property (the "Plans and Studies").

The Land, Improvements, Personal Property, Tenant Leases, and Plans and Studies, and other

property described above shall be referred to collectively as the "JCRS Property."

## SECTION 2 PURCHASE PRICE

2.1 Buyer agrees to pay Seller, as the purchase price for the JCRS Property, the sum of Four Million Four Hundred Thousand and 00/100 Dollars (\$4,400,000.00) ("Purchase Price"). The Purchase Price shall be paid as follows:

(a) Within two (2) business days after the Effective Date of this Agreement, Buyer shall deposit Fifty Thousand and 00/100 Dollars (\$50,000.00) with the Title Company (as hereinafter defined) in escrow as an earnest money deposit ("Earnest Deposit"), which shall be non-refundable, except as otherwise expressly provided herein. Provided Buyer has not terminated this Agreement in compliance with the terms hereof prior to the expiration of the Due Diligence Period, Buyer shall deposit within two (2) business days following receipt of notice of entry of the Sale Order an additional \$50,000 in escrow with the Title Company, which increased deposit shall become part of the Earnest Money hereunder. In the event Buyer fails to timely deposit any portion of the Earnest Deposit, then such failure shall constitute an immediate failure of a condition precedent to Seller's obligations hereunder (and, in the case of the additional \$50,000, a breach of this Agreement by Buyer) and Seller shall be entitled to terminate this Agreement upon written notice to Buyer;

(b) At Closing, Buyer shall (i) assume and agree to pay the balance (hereinafter, the "First National Bank Note Balance") as of the Closing Date (hereinafter, the "First National Bank Note Balance") of the claim of First National Bank evidenced by a Promissory Note dated July 6, 2006, in the original principal amount of \$3,000,000 secured by a Deed of Trust to the Public Trustee of Jefferson County, Colorado, encumbering the JCRS Property, and recorded July 13, 2006, at Reception No. 2006085618 in the records of the Clerk and Recorder of Jefferson County, Colorado (the "FNB Deed of Trust"), and Buyer shall deliver the Purchase Price, less the Earnest Deposit and the First National Bank Note Balance, and the credits authorized to Buyer, in immediately available funds, in escrow with the Title Company at or prior to Closing.

D. Closing. The date that this Agreement is fully executed by Seller and Buyer shall constitute the "Effective Date" of this Agreement. Subject to the satisfaction of the conditions set forth in this Agreement, the closing of the transaction contemplated by this Agreement (the "Closing") shall take place at 10:00 a.m. on the later of (i) November 30, 2016; (ii) ten (10) days after expiration of the Due Diligence Period; or (iii) such other date mutually agreeable to Seller and Buyer, in the offices of the Title Company or at such other location mutually agreeable to Seller and Buyer.

2.2 Excluded Liabilities. Except with regard to the Assumed Obligations (as defined below), Buyer will not assume, pay, discharge or otherwise be liable for any liabilities, claims, debts, damages, indebtedness, expenses and obligations, or portions thereof relating to the JCRS Property as exist on the Closing Date or arise out of or relate to the ownership, operation or use of the JCRS Property prior to Closing, whether known or unknown, contingent, absolute, liquidated or unliquidated, disputed and undisputed or otherwise, including without limitation any of the

following liabilities or obligations (herein referred to as "Excluded Liabilities"):

A. Any of Seller's liabilities or obligations under this Agreement.

B. Any of Seller's liabilities or obligations for expenses or fees incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement or the consummation (or preparation for the consummation) of the transactions contemplated hereby, including without limitation attorneys' and accountants' fees.

C. Except with respect to prorated taxes as set forth in Section 5.10, all obligations, claims, or liabilities of Seller or any predecessor(s) or affiliate(s) of Seller or for which Seller or any predecessor(s) or affiliate(s) of Seller could be liable relating to federal, state or local taxes of any type, including, without limitation, any taxes that will arise as a result of the sale of the JCRS Property or the assumption of the Assumed Obligations pursuant to this Agreement and any deferred taxes of any nature.

D. Any environmental liabilities (including without limitation personal injury, property damages and liabilities relating to cleanup, investigation, correction, remediation or activities required by governmental regulators) related to the ownership or operation of the JCRS Property on or before the Closing Date (including without limitation any arising from the on-site or off-site release, threatened release, treatment, storage, disposal, or arrangement for disposal of hazardous substances).

E. Any liabilities or obligations arising under any Excluded Contracts or otherwise relating to any Excluded Assets.

F. Any cure obligations (pursuant to the Bankruptcy Code or any other applicable law) with respect to any Assumed Contract.

G. All obligations and liabilities of Seller or any predecessor(s) or affiliate(s) of Seller resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of the Business or ownership or lease of any properties or assets or any properties or assets previously used by Seller, or other actions, omissions, including, without limitation, any amounts due or which may become due or owing under the Assumed Contracts with respect to the period prior to Closing, whether known or unknown on the date hereof.

H. All obligations and liabilities of Seller or any predecessor(s) or affiliate(s) of Seller resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of the Business anywhere or ownership or lease of any properties or assets or any properties or assets previously used by Seller at any time, or other actions, omissions or events occurring prior to the Closing and which (A) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any law, rule, regulation, treaty or other similar authority or (B) relate to any and all claims, disputes, demands, actions, liabilities, damages, suits in equity or at law, administrative, regulatory, arbitral or quasi-judicial proceedings, accounts, costs, expenses, setoffs, contributions, attorneys' fees and/or causes of action of whatever kind or character against Seller or

any predecessor(s) or affiliate(s) of Seller whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened; and

2.3 Assumed Obligations. Subject to the terms and conditions set forth in this Agreement, Buyer shall assume from Seller and thereafter be responsible for the payment, performance or discharge of only the liabilities and obligations of Seller (all such liabilities and obligations herein called the "Assumed Obligations") under the Assumed Contracts first accruing or arising after the Closing.

2.4 Excluded Assets. Notwithstanding the provisions of Section 1.1 above, the parties agree that the following are expressly excluded from this purchase and sale and are not included in the JCRS Property (the "Excluded Assets"):

- A. Seller's rights under or pursuant to this Agreement;
- B. Seller's cash and cash equivalents;
- C. All contracts of Seller not identified as an Assumed Contract; and
- D. Any insurance policies and any claims Seller may have under any insurance policy or any claims against third parties relating to any Excluded Liabilities.

### ARTICLE III TITLE, SURVEY AND INSPECTIONS

#### 3.1 Title and Survey Matters.

A. Title. Within three (3) days from the Effective Date of this Agreement, Seller shall furnish Buyer, at Seller's sole cost and expense, with a Commitment from the Title Company, for an Owner's Title Insurance Policy for the JCRS Property (the "Commitment"), with the Commitment to be in the full amount of the Purchase Price, together with legible copies of all instruments mentioned therein as exceptions to good and indefeasible title.

B. Survey. Concurrent with the Effective Date, Seller at Seller's cost shall deliver to Buyer any survey of the JCRS Property currently under Seller's control (the "Existing Survey"). Buyer, at its cost, shall have the right, and Seller will cooperate to cause the issuance of an update to the Existing Survey to be issued to the benefit of Buyer (or its assigns), Title Company, Seller and any applicable lender (the "Updated Survey"). Buyer, if Buyer elects in its sole discretion, may obtain a new ALTA survey of the JCRS Property. For purposes of this Agreement the Updated Survey or new survey obtained by Buyer shall be herein referred to as the "Survey".

C. Objections. Buyer shall, prior to the thirtieth day from the delivery of the Commitment and Existing Survey (if any) are furnished to Buyer (the Title Due Diligence Period), notify Seller in writing of any matters, conditions or exceptions to the title or appearing on the Existing Survey or in the Commitment and documents of record which are unacceptable to Buyer in Buyer's sole

discretion (the "Objection Notice"). Seller shall have ten (10) days from receipt of such Objection Notice within which to exercise reasonable efforts to so correct the objected matters. If Seller is unable after reasonable efforts to so correct such matter(s) within such time period, Buyer may terminate this Agreement by written notice to Seller and the parties shall be released from all further obligations under this Agreement except for those obligations expressly stated to survive termination of this Agreement, and the Earnest Money shall be returned to Buyer in full. Notwithstanding the generality of the foregoing, Buyer and Seller agree that any liens or encumbrances upon the JCRS Property may (unless otherwise paid or discharged prior to Closing) be satisfied by payment out of the proceeds of Closing payable by Seller to Buyer at Closing.

D. Permitted Exceptions. If Buyer fails to notify Seller in writing of any conditions, matters or exceptions, whether from the Commitment, the Existing Survey or any other survey of the Land obtained by Buyer, which are unacceptable to Buyer by the expiration of the Title Due Diligence Period, such conditions, together with the FNB Deed of Trust, shall be deemed accepted by Buyer and shall constitute permitted exceptions (the "Permitted Exceptions"), and Buyer's right to request Seller to cure such conditions, matters or exceptions shall be deemed waived by Buyer.

### 3.2 Buyer Inspection.

A. Inspection Rights and Duties. Pending Closing, Buyer, its employees, agents, attorneys, accountants, appraisers, architects, real estate advisors and engineers, may inspect the JCRS Property during normal business hours (upon reasonable prior notification to permit Seller to coordinate access with Seller's tenants, if any) and conduct studies and tests thereon. Buyer agrees to indemnify, defend and hold Seller harmless from and against any claims or liabilities arising out of the exercise of such inspection rights by Buyer or the failure of Buyer to perform any such studies and tests. Subject to the foregoing, Seller shall provide to Buyer, and its agents and representatives, immediate access to the JCRS Property, and shall instruct its personnel to fully cooperate with Buyer.

B. Due Diligence Period. Buyer shall have a period of sixty (60) days following the Effective Date hereof (ending at 5 p.m., Mountain time on the 60th day) (the "Due Diligence Period") to conduct any inspections, tests, or investigations, including, but not limited to operating expense and maintenance evaluations, feasibility studies, construction and engineering studies, soil and hazardous materials and hazardous substances tests, water and sewer capacity evaluations, tax statements, supplier and service contracts and conduct any other study, test, investigation, or inspection which Buyer deems necessary, of or upon the JCRS Property.

Seller acknowledges that Buyer may require, as a condition to consummation of the purchase and sale of the JCRS Property, that the holder of the First National Bank Note shall agree to extend the maturity of that Note upon terms satisfactory to Buyer in its sole and absolute discretion, conditioned upon purchase of the JCRS Property by Buyer, provided however, that such terms shall include a release of Seller and any guarantor from any obligation to the holder of the First National Bank Note, and a release of the deed of trust in favor of First National Bank



encumbering certain real property in San Jose, California. Seller consents to Buyer contacting the First National Bank for the purpose of negotiating terms for such extension, or in the alternative, purchase or payment of the First National Bank Note. The foregoing condition shall be deemed satisfied if Buyer does not provide written notice to Seller terminating this Agreement prior to the expiration of the Due Diligence Period.

In the event that Buyer provides written notice to Seller prior to the end of the Due Diligence Period of Buyer's election to terminate this Agreement and the transaction hereunder, this Agreement shall terminate, in which event, (i) Buyer shall be entitled to the return of the Earnest Money, (ii) all information provided by Seller to Buyer shall be returned to Seller, and (iii) each party shall thereafter be relieved of further liability to the other, except for obligations that survive the termination of this Agreement.

C. Seller Furnished Information. To the extent not previously provided by Seller to Buyer, upon the execution hereof, Seller, within five (5) days of the Effective Date, shall deliver to Buyer copies of the following materials to the extent such information and material is in the custody or control of Seller:

- (i) Copies of all Tenant Leases then in effect, with the original Tenant Leases available for inspection by Buyer at any time during the Due Diligence Period;
- (ii) All of Seller's cost and expense documentation relating to the operations of the JCRS Property for the preceding three (3) full calendar years and the most recent cost and expense documentation for the current year;
- (iii) All of Seller's or Seller's management historical records for work orders, maintenance, bids, work performed, warranties or any other records on hand or reasonably requested by Buyer pertaining to the grounds or physical improvements or equipment of the JCRS Property obtained or performed within the past three (3) years;
- (iv) All of Seller's contracts relating to the maintenance and operation of the JCRS Property;
- (v) Except as otherwise received by Buyer with the Commitment, copies of any documents regarding easements, restrictions, covenants, conditions, side letters or other documents encumbering the JCRS Property currently, or which to Seller's knowledge shall encumber the JCRS Property in the future;
- (vi) All studies and reports relating to hazardous or toxic substances or otherwise; and to water, sewage and drainage relating to the JCRS Property; or which may affect the operation, use or ownership of the JCRS Property;
- (vii) All information relating to ad valorem taxes on the JCRS Property for any time period after 2008 including specifically but without limitation any assessments, notices of change in valuation, bills, invoices, SID information, administrative hearings, or litigation;
- (viii) As-built plans and specifications, soil reports, and any and all previous appraisals of the

JCRS Property;

(ix) Any and all permits and/or certificates of occupancy currently required by local or state jurisdictions to be in force at the JCRS Property, or for operations thereof, which shall be current and issued to Seller;

(x) Copies of any governmental licenses and permits, special use, nonconforming use and zoning variances and waivers, and any certificates of occupancy related to the JCRS Property;

(xi) Any and all correspondence, notices, reports, or other documents or information related to any code violations at the property received within the past three (3) years. Code violations include but are not limited to those received from the governing bodies of the controlling City, County, State, ADA, OSHA, Fire Department, Police Department, Civil, Planning and Zoning, Traffic, EPA, or Corp of Engineers;

(xii) Any other reports reasonably requested by Buyer related to the tenants, employees, vendors, contractors, or operations of the JCRS Property (with Buyer or its management company having the right to conduct a complete lease and file audit during the Due Diligence Period);

(xiii) A current insurance certificate for the JCRS Property along with a 5-year loss history report;

(xiv) A detailed inventory listing of the Personal Property, including without limitation office furniture, office equipment and maintenance equipment; and

(xv) Any other records or documents that Seller may have related to the JCRS Property or its ownership, operation, or history that Buyer may reasonably require.

#### **ARTICLE IV REPRESENTATIONS**

4.1 Seller's Representations. Seller hereby represents and warrants to Buyer, its successors and assigns, that:

A. No Violations. Subject to Bankruptcy Court approval, the execution, delivery and performance of this Agreement and the other agreements contemplated hereby by Seller and the consummation of the transactions contemplated hereby and thereby do not and will not (i) conflict with or result in any breach of any of (either with notice or lapse of time or otherwise), (ii) constitute a default under, (iii) result in a violation of, (iv) result in the creation of any lien, security interest, charge or encumbrance upon the JCRS Property, (v) give any third party the right to modify, terminate or accelerate any obligations under, or (vi) require any authorization, consent, approval, exemption or other action by any court, other governmental body, or other third party under the provisions of, the charter or by-laws of Seller or any indenture, mortgage, lease, loan agreement or other agreement or instrument by which Seller is bound or to which any of the JCRS Property is subject, or any law, statute, rule, regulation, order, judgment or decree to which Seller is subject.

B. Compliance with Law. Seller, to its knowledge, is not in violation of and has not violated, and is not under investigation or inquiry with respect to and has not been threatened to be charged with or given notice of any violation of, any law, rule, regulation, judgment, injunction, order or decree applicable to the JCRS Property, except for violations that have not had and could not reasonably be expected to be material to the JCRS Property or the Assumed Liabilities. Seller has been issued and holds in its possession all necessary permits and certificates of occupancy, which are now and as of the Closing shall be current.

C. Environmental Matters. Seller, to its knowledge, is not aware of any release, generation, discharge, manufacture, treatment, transportation, or disposal on or in connection with the JCRS Property of any hazardous, dangerous or toxic materials, substances or wastes (collectively, "Hazardous Materials"), as any of such terms are defined by the Comprehensive Environmental Response Compensation and Liability Act, or the Resource Conservation Recovery Act or any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing standards of conduct concerning any Hazardous Materials (collectively, "Environmental Law") in violation of any Environmental Laws. Additionally, Seller, to its knowledge, represents and warrants that there are no underground storage tanks buried on the JCRS Property.

D. Special Assessments. There are no special or other assessments for public improvements or otherwise currently affecting the Land or Improvements nor has Seller received any notice that there are any pending or threatened special assessments or contemplated improvements which would result in a special assessment affecting the JCRS Property.

E. Ad Valorem Tax. During the last five (5) years, the JCRS Property has not been subject to the benefit of any law reducing the ad valorem tax rate based upon any open space or any other special valuation use.

F. Litigation. Except with respect to the Bankruptcy proceedings, there are no legal proceedings of any type or nature (including condemnation) pending or to Seller's knowledge which (i) would adversely affect any portion of the JCRS Property, (ii) would adversely affect the ability of Seller to perform its obligations, or (iii) relate to or arise out of the ownership or operation of the JCRS Property which are not fully and adequately defended and covered by insurance, except the case of *Kim v. Y&K Sun, Inc. et al*, Case no. 2010CV665 in the District Court for the District of Douglas County, Colorado (the "State Court Action"). Seller shall be responsible to provide reasonable assurance to Buyer, at or prior to the entry of the Sale Order, that the State Court Action shall not constitute a lien upon or defect of merchantable title to the JCRS Property as of the Closing.

G. Adverse Parties. There are no adverse parties in possession of any part of the JCRS Property, other than the Tenants under the Tenant Leases.

H. Foreign Person. Seller is not prohibited from consummating the transactions contemplated hereby and is not a "foreign person" as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

I. Title. Seller now has and will have as of Closing good and indefeasible title, right and interest in fee simple in and to all the Land and Improvements constituting the JCRS Property and will at Closing have such interests free and clear of all liens, mortgages, easements, leases, tenancies, encumbrances and defects other than the Permitted Exceptions, liens for taxes that are not delinquent and the Tenant Leases.

J. Right and Power. Subject to the necessary authorization from the Bankruptcy Court, Seller has full right, capacity, power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. Seller has taken all action required by law (including Seller's organizational documents) to be taken to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The performance of this Agreement and the other agreements contemplated hereby constitutes a valid and binding obligation of Seller enforceable in accordance with their terms. Seller is validly existing and in good standing under the laws of the jurisdiction of its organization.

K. Service Contracts, Licenses and Leases. All management, service, supply or maintenance agreements or other licenses or leases with respect to the JCRS Property shall be listed on Schedule 4.1 (K) within ten (10) days after the Effective Date of this Agreement. Except for the Tenant Leases, there are no management, service, supply or maintenance agreements or other licenses or leases with respect to the JCRS Property, or any portion thereof, that (i) cannot be cancelled without liability upon thirty (30) days' notice, without cause, or (ii) upon cancellation, would create, give rise to, or form the basis of, a premium, penalty or charge, or (iii) upon cancellation would create or give rise to a lien or other encumbrance on the JCRS Property. Seller warrants and represents that it has fully complied with and performed its obligations under all such service agreements, leases and other agreements which relate to the JCRS Property.

L. Personal Property. Except for security interests to be satisfied by Seller as of the Closing, all the Personal Property located at the JCRS Property and included in this sale is owned by Seller and is free and clear of all liens and encumbrances, and title to such Personal Property shall be transferred at Closing to Buyer by acceptable Bill of Sale.

M. Access. To Seller's knowledge, after reasonable inquiry and investigation, there is no fact or condition existing which could result in the termination of the current access from any portion of the JCRS Property to all presently existing roads or thoroughfares adjoining or situated on the JCRS Property.

N. Tenant Leases. The rent roll information attached hereto as Schedule 4.2 (N) (to be completed within ten (10) days after the Effective Date of this Agreement) is true, correct and complete and accurately lists all of the Tenant Leases currently affecting the JCRS Property. The Tenant Leases have not been amended, modified or supplemented. Except as set forth on Schedule 4.2 (N), the Tenant Leases are not in default, nor has any event occurred that with the passage of time will constitute a default; the Tenants have not paid any rent for more than one (1) month in advance; the Tenant Leases are in full force and effect, and the term of the same and the obligation to pay rent thereunder has commenced and the Tenants are in full possession and actual occupancy of the leased premises described therein; all tenant improvements or other work to be done,

furnished or paid for by Seller in connection with the Tenant Leases have been completed and paid for; no Tenant is asserting any claim, defense, offset or lien against the Seller or the JCRS Property; no Tenant is entitled to a refund or credit of any tax or other payment by reason of tax reduction proceedings affecting the current or prior years; and there is no obligation for brokerage commissions arising out of the Tenant Leases or any renewals, extensions, expansions or options.

O. Absence of Other Interests. Except for the Tenant Leases, there are no outstanding written or oral leases in any way affecting the JCRS Property, and after entry of the Sale Order, no person or entity has any right with respect to all or any portion of the JCRS Property (whether by option to purchase, right of first refusal, contract, or otherwise) that would prevent or interfere with Buyer taking title to, and possession of, all of the JCRS Property on the Closing Date or that would adversely affect title to the JCRS Property.

4.2 Buyer's Representations. Buyer hereby represents and warrants to Seller as follows:

A. Right and Power. Buyer is a limited liability company duly organized and validly existing under the laws of the State of its formation. Buyer has full right, power, and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties (or if any such consents, approvals, or other actions are required, the same will be accomplished prior to the Closing), and

B. Enforceable Agreement. This Agreement when executed and delivered by Seller and Buyer, will constitute the valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject only to entry of the Sale Order. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to execute and deliver such documents and instruments.

## ARTICLE V PRECLOSING AND CLOSING

5.1 Operation of JCRS Property.

A. From the Effective Date through Closing, Seller, at no cost or expense to Buyer, will operate and maintain the JCRS Property or cause the same to be operated and maintained free from waste and neglect, normal wear and tear excepted, in substantial compliance with applicable law and in substantially the same manner the JCRS Property has been operated and maintained historically. During the Due Diligence Period, Buyer and Seller shall each work in good faith to determine whether the HVAC, electrical, plumbing and foundation located in or as a part of the Improvements are in good working order and without material or latent defects in such items. In the event Buyer's inspections of the JCRS Property reasonably cite any maintenance, repair or replacement issues that need to be addressed with the HVAC, electrical, plumbing or foundation, Buyer shall receive a discount on the Purchase Price in the amount of such repairs or replacements to the extent such repairs or replacements are not the obligation of a Tenant under the terms of a Lease; provided, however, (i) Buyer and Seller shall determine any estimated costs for such repairs or replacements in accordance with the provisions set forth in Section 5.2 and

(ii) in no event shall the amount of such discount, when added to any Purchase Price discount determined in accordance with Section 5.2, exceed \$100,000.

B. From the Effective Date through Closing, without the prior written consent of Buyer (which shall not be unreasonably withheld), Seller will not further encumber nor permit any further encumbrances to the JCRS Property, including, but not limited to service agreements, and during such period, Seller further agrees not to modify, extend, renew or change any existing encumbrance against the JCRS Property prior to the earlier of Closing or the expiration or termination of this Agreement.

C. From the Effective Date through Closing, Seller shall not, without the prior written consent of Buyer (which consent shall not be unreasonably withheld) (i) amend or modify any Tenant Lease, or (ii) enter into any new lease for the JCRS Property or any portion thereof.

5.2 Roof and Window Analysis. During the Due Diligence Period, Buyer and Seller shall each work in good faith to determine the condition of the roof and windows located in and on the Improvements. Based upon each of Buyer's and Seller's inspections, each party shall provide the other party with an estimate of the costs to repair or replace (as applicable) any and all components of the roof or windows necessary to ensure the Improvements won't leak after Closing. In the event that Buyer and Seller do not agree upon a reasonable amount that would be necessary to such repairs or replacements, each party shall appoint an inspection representative, whereupon each party's inspection representative shall then mutually agree upon a third party to analyze and determine the repairs and replacement necessary to reasonably ensure that the roof and windows won't leak. After the third party representative has determined its estimate of such repair and replacement costs, such third party's determination shall (i) be binding if the amount is between the prior two amounts provided by each party, or (ii) rejected if it is higher than either party's prior estimate or lower than either party's prior estimate, in which case the party with the estimate closest to the third party's estimate shall be binding. Based upon the final estimate of repairs or replacement as determined in accordance with this Section 5.2, Buyer shall have the choice to either (i) receive a discount on the Purchase Price of such amount, or (ii) receive an assignment of Seller's insurance claim. In the event that Buyer chooses to obtain a discount on the Purchase Price for such repairs, then Seller shall retain all rights to any insurance claims related to the roof and/or windows. Notwithstanding the foregoing provisions of this Section 5.2, in no event shall the amount of any Purchase Price discount for the roof and windows, when added to any Purchase Price discount determined in accordance with Section 5.1(A), exceed \$100,000

5.3 Risk of Loss. The risk of loss in the event of casualty shall rest exclusively with the Seller until the Closing has occurred. Thereafter, Buyer will assume the full risk of loss. In the event prior to Closing a portion of the JCRS Property is damaged or destroyed beyond the current condition of the JCRS Property as of the Effective Date, Buyer may, within fifteen (15) days after receipt of written notice of such damage from Seller, elect to: (i) close the transaction without any reduction in the Purchase Price except for the amount of the casualty insurance deductible (if any), in which event Buyer shall be entitled to the insurance proceeds; or (ii) terminate the Agreement, in which event Buyer shall be entitled to return of the Earnest Money.

5.4 Condemnation. If at any time prior to the Closing, any material portion of the Land or Improvements is threatened with condemnation or legal proceedings commenced under the power of eminent domain, Seller shall promptly give Buyer written notice of such fact, and shall furnish to Buyer copies of all notices received by Seller pertaining thereto. Buyer shall have the right, within ten (10) business days after the receipt of such notice, to terminate this Agreement by written notice to Seller, in which event Buyer shall be entitled to the return of the Earnest Money and neither Seller nor Buyer shall have any further obligations hereunder (except obligations which are expressly stated to survive termination of this Agreement). If this Agreement is not so terminated, Buyer shall be obligated (subject to satisfaction of all other Closing conditions) to proceed with the Closing hereunder and the damages attributable to the JCRS Property awarded by the Court in connection with such proceedings shall belong to the Buyer. The Purchase Price will not be abated or reduced on account of any such proceedings.

5.5 Seller's Closing Obligations. At Closing, Seller shall execute and deliver or tender the following items:

A. A Special Warranty Deed conveying to Buyer fee simple title to the Land and Improvements, free and clear of all liens and encumbrances, other than the Permitted Exceptions;

B. Seller's Closing Statement and any other statements or documents reasonably requested by Title Company;

C. Bill of Sale, assigning and conveying to Buyer title to all the Personal Property, free and clear of all liens and encumbrances, in a form to be agreed upon by the Parties within ten (10) days of entering into this Agreement;

D. Estoppel Certificates dated no earlier than ten (10) days prior to Closing, executed by each of the tenants under any of the Tenant Leases confirming the terms of each respective Tenant Lease as described in Section 4.1 K, above;

E. Assignment and Assumption of Leases. An agreement executed by each of the tenants under any of the Tenant Leases, acknowledging the assignment of the Tenant Leases to Buyer and attorning to same;

F. Assignment of Service Contracts (if any, as selected by Buyer), Warranties (including roof warranties), Governmental Approvals and the Tenant Leases, in the form to be agreed upon by the Parties not less than ten (10) days prior to Closing;

G. Copies of records and files relating to the operation, maintenance and tenants of the JCRS Property which have not previously been delivered to Buyer;

H. A Non-Foreign Affidavit for Entity Transfer in the form of Schedule 5.4F (attached hereto);

I. Keys to all locks;

J. Security, advance rental and other deposits actually held by Seller relating to the JCRS Property;

K. Copies of all third party and governmental consents (or other evidence satisfactory to Buyer) that Seller is required to obtain in order to effect the transactions contemplated by this Agreement, if any; and

L. Such other documents and agreements as may be necessary to effect the Closing hereunder.

5.6 Buyer's Closing Obligations. At Closing the Buyer shall execute and deliver or tender the following items:

A. The balance of the Purchase Price payable in cash at Closing in immediately available funds plus all charges to be paid by Buyer at Closing less all credits available to Buyer at Closing;

B. Any statements or documents required from Buyer by the Title Company;

C. Assumption of the Seller's rights and obligations in the Service Contracts and Tenant Leases, in the form to be agreed upon by the Parties within ten (10) days of entering into this Agreement;

D. Assumption of Seller's obligations with respect to the claim of First National Bank, in form and content acceptable to Buyer and First National Bank; and

E. Such other documents and agreements as may be necessary to effect the Closing hereunder.

5.7 Conditions to Closing.

A. Buyer's Conditions. All of the obligations of Buyer under this Agreement are in all events further subject to and conditioned upon the fulfillment (unless waived in writing by Buyer or otherwise deemed waived in accordance with this Agreement) of the following conditions precedent:

(i) On or before the expiration of the Due Diligence Period, Buyer and Seller shall agree upon the final inventory list of all Personal Property;

(ii) On or before the expiration of the Due Diligence Period, Buyer shall be satisfied in its sole and absolute discretion with the suitability and feasibility of the JCRS Property following its due diligence review and have reached an agreement with the holder of the FNB Deed of Trust satisfactory to Buyer in form and content;

(iii) On or before the expiration of the Due Diligence Period, Buyer and Seller shall have



agreed upon the amount of any repair or replacement costs as set forth in Section 5.1(A) and 5.2 above;

(iv) Seller's representations contained in this Agreement, in schedules and in all certificates and other documents, both individually and considered as a whole, shall have been true and correct in all material respects as of the date hereof and such representations and warranties shall be true and correct in all material respects at and as of the Closing Date;

(v) Seller shall have duly performed all of the obligations, conditions, covenants and agreements to be performed by it under this Agreement and shall have delivered the documents, instruments and other items required to be delivered under this Agreement;

(vii) The JCRS Property shall be conveyed as of the Closing, free and clear of any and all liens and encumbrances, subject to the Permitted Exceptions, liens for taxes that are not delinquent, and the Tenant Leases;

(viii) A sale order providing Buyer the usual and customary protections under 11 U.S.C. § 363(m) (the "Sale Order") of the Bankruptcy Court shall have been entered on the docket by the Clerk of the Bankruptcy Court and shall have entered no later than November 23, 2016. The Sale Order shall be effective, and not subject to any stay, as of the Closing. The Sale Order shall approve and authorize:

- (1) the sale, transfer, assignment and conveyance of the JCRS Property to Buyer free and clear of all liens (including liens for federal, state or local taxes), encumbrances (including, without limitation, any leasehold interests, licenses or other rights, in favor of any person, to use any portion of the JCRS Property), claims, security interests, of whatever kind or nature, mortgages, pledges, restrictions, charges, instruments, licenses, encroachments, options, rights of recovery, judgments, orders and decrees of any court or foreign or domestic governmental authority; in each case of any kind or nature, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown, and including all claims based on any theory that Buyer is a successor, transferee or continuation of Seller or the Business, in each case, other than the Assumed Obligations expressly assumed herein, whether arising prior to or subsequent to the date of the filing of the Chapter 11 petition of Seller, and in accordance with the terms of the Sale Order and Sections 363(f) and 365 of the Bankruptcy Code;
- (2) the assumption and assignment of the Assumed Contracts, which shall be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Buyer, among other things, defaults, breaches or claims of pecuniary losses existing as of the Closing or by reason of the Closing; and
- (3) that Buyer is assuming only the Assumed Obligations and that Buyer shall have no duty, liability or obligation whatsoever (whenever arising) arising from or relating to the Excluded Liabilities.

The Sale Order shall also contain a finding that the Buyer has contracted to purchase the JCRS Property in good faith, and is entitled to the protections of 11 U.S.C. § 363(m).

B. Seller's Conditions. All of the obligations of Seller under 11 U.S.C. § 363(m) his Agreement are further subject to and conditioned upon the fulfillment (unless waived in writing by Seller or otherwise deemed waived in accordance with this Agreement) of the following conditions precedent:

(i) Buyer's representations contained in this Agreement, in schedules and in all certificates and other documents, both individually and considered as a whole, shall have been true and correct in all material respects as of the date hereof and such representations and warranties shall be true and correct in all material respects at and as of the Closing Date.

(ii) Buyer shall have duly performed all of the obligations, conditions, covenants and agreements to be performed by it under this Agreement and shall have delivered the Purchase Price and all of the documents, instruments and other items required to be delivered by it under this Agreement.

(iii) Except for the pending Bankruptcy Case and the Kim case, no action, proceeding or investigation by or before any court or governmental or administrative body will have been initiated, be pending, or threatened which could prevent any of the transactions contemplated by this Agreement or cause such transactions to be declared unlawful or rescinded.

(iv) The Bankruptcy Court shall have entered the Sale Order approving this Agreement and the consummation by Seller of the transactions contemplated herein, and the parties will have used reasonable efforts to cause the order not to be subject to Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy Procedure. The Sale Order shall be not subject to any stay.

5.8 Additional Instruments. In addition to the instruments and actions enumerated above, both Seller and Buyer shall additionally furnish or provide to each other and to the Title Company any other instruments mentioned in this Agreement, and any other ancillary instruments which are reasonably required by the Title Company to properly consummate the transaction or which are customarily executed in the county where the JCRS Property is situated to effectuate the conveyance of property similar to the JCRS Property.

5.9 Escrow Closing. The parties agree that the Title Company shall serve as escrow agent for the Closing, which shall be implemented as an insured Closing. At the Closing, Seller shall deliver to the Title Company all documents of conveyance executed by Seller hereunder, a settlement statement signed by Seller setting forth an accounting of funds to be received and disbursed by the Title Company, and all other documents signed by Seller contemplated herein. At the Closing, Buyer shall deliver to the Escrow Agent the Purchase Price, a settlement statement signed by Buyer, and all other documents signed by Buyer contemplated herein. The parties shall then proceed to consummate the Closing through the Title Company upon the satisfaction or waiver of all conditions hereunder.

5.10 Taxes. As to taxes for the calendar year in which the sale contemplated hereby is closed, the parties agree as follows:

A. To the extent any special assessments levied in relation to the JCRS Property as of the date of Closing (including any installments thereon not yet due), such special assessments amounts (including future installment amounts) shall be deducted from the Purchase Price cash proceeds due Seller and paid to the Title Company to be held in escrow and paid to the appropriate taxing authority when and as due.

B. Other real estate and personal property taxes, becoming or which became, if not paid, delinquent in the year of Closing related to the JCRS Property shall be prorated as of the date of Closing in the customary manner in Jefferson County, Colorado, taking into account any escrow paid by Seller for the benefit of First National Bank that accrues to Buyer upon assumption of the First National Bank Note. Such proration shall be final and the parties shall not make any post-closing adjustment with regard to such tax obligations.

5.11 Income and Expense Proration. At Closing, all rents (except for the Tenant Leases), and prepaid expenses, utility charges, accounts payable, and other income or expense items relating to the JCRS Property shall be prorated as of the date of Closing. Only prepaid expenses which are reasonable, of value to Buyer, and pertinent to services rendered at the JCRS Property, will be prorated. Prepaid expenses shall not include on site inventory of supplies, equipment, furniture, licenses or permits or other Personal Property transferred with the JCRS Property. If final readings and billings cannot be obtained as of the date of Closing, the final bills when received shall be prorated based upon the number of days Seller owned the JCRS Property in such final billing period. In the event Buyer shall receive any rents or other charges due from tenants following Closing which relate to periods prior to the Closing, Buyer shall forward the same to Seller within five (5) days of Buyer's receipt. Notwithstanding the foregoing, unless designated by the tenant as applicable to pre-Closing periods, rents received post-Closing shall be applied first to post-Closing periods, with excess delivered to Seller for application to pre-Closing deficiencies.

5.12 Closing Costs. All costs relating to the Closing of this transaction (the "Closing Costs") shall be borne by the parties as follows:

A. Seller. One-half (1/2) of all premiums for a standard owner's ALTA Title Policy, all documentary stamp fees if any, one-half (1/2) of all recording fees, all costs of Seller's inspections under Sections 5.1(A) and 5.2 and one-half (1/2) of any costs for the third-party inspections (if any), Seller's attorneys' fees and one-half (1/2) of any escrow fees and such other expenses customarily borne by a seller of commercial real property in Jefferson County, Colorado.

B. Buyer. One-half (1/2) of all premiums for a standard ALTA owner's Title Policy, plus all costs attributable to an extended owner's title policy, including all costs for endorsements to the Title Policy as Buyer may deem appropriate, all cost of updating the Existing Survey or obtaining a new Survey, one-half (1/2) of all recording fees, all costs of Buyer's due diligence investigation and all costs of Buyer's inspections under Sections 5.1(A) and 5.2 and one-half (1/2) of any costs for the

third-party inspections (if any), Buyer's attorneys' fees and one half (1/2) of any escrow fees, and such other expenses customarily borne by a buyer in Jefferson County, Colorado.

5.13 Assumption of Operating Agreements. At Closing, Buyer shall assume the service, supply and maintenance agreements relating to the JCRS Property and designated by Buyer to Seller in a written document furnished during the Due Diligence Period, and the Tenant Leases (collectively, the "Assumed Contracts"). Seller shall remain responsible for, and shall indemnify, defend and hold harmless Buyer from and against any liability, loss, damage or expense relating to or arising out of action or inaction by Seller prior to Closing under any of the Assumed Contracts. Buyer shall have no obligation with regard to any service, supply or maintenance agreements and the Tenant Leases relating to the JCRS Property which are not designated by Buyer to be assumed at Closing (the "Excluded Contracts").

5.14 As Is, Where Is Condition. **Except as otherwise provided in this Agreement, Seller hereby specifically disclaims any warranty or representation concerning the condition of the JCRS Property, including without limitation, the Improvements thereat. The sale of the JCRS Property as provided for herein is made, except as otherwise expressly provided in this Agreement, on an "As Is, Where Is" basis.**

5.15 Bankruptcy Actions. With respect to the bankruptcy proceedings:

A. Seller shall use all reasonable efforts to obtain prompt entry of the Sale Order and approval of the transactions contemplated hereby in an expedited process, including this Agreement, Seller's performance under this Agreement and the assumption and the assignment of the Assumed Contracts, and an order authorizing the Assumption and Assignment pursuant to Section 365 of the Bankruptcy Code of the Assumed Contracts.

B. Seller will use reasonable efforts to provide Buyer with a reasonable opportunity to review and comment upon all motions, applications and supporting papers prepared by the Seller relating to this Agreement (including forms of Orders and notices to interested parties) prior to the filing thereof in the Chapter 11 Case.

5.16 Stalking Horse Protection. It is expressly acknowledged and agreed that Seller and the bankruptcy estate of Seller are directly benefited by Buyer's submission of and agreement to the terms of this Agreement, by serving as a catalyst to potentially attract more favorable bids for the JCRS Property. As a protection to Buyer in connection with the costs, time and effort expended, the parties have agreed that it is reasonable to award Buyer a break-up fee in the event that any party other than Buyer becomes lawfully entitled to purchase the JCRS Property as a result of, or in connection with, competitive bidding allowed by the Bankruptcy Court. In such event, Buyer shall be entitled to receive (in addition to the return of the Earnest Money) a break-up fee, to be paid in cash at the closing of sale of the JCRS Property in an amount of \$132,000.00 (the "Break-Up Fee"). In the event that any party wishes to submit a competing bid for the purchase of the JCRS Property, such bids shall be done in compliance with the terms set forth on Schedule 5.16 attached hereto.

## ARTICLE VI TERMINATION

6.1 Termination. This Agreement and the transactions contemplated herein may be terminated at any time prior to the Closing:

A. By mutual written agreement of Buyer and Seller;

B. By written notice from Buyer to Seller given pursuant to Section 3.2;

C. By either Buyer or Seller (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of the other party, which breach is not cured within ten days following written notice to the party committing such breach or which breach, by its nature, cannot be cured prior to the Closing;

D. By the Buyer or Seller if (i) the Bankruptcy Court enters an order approving a sale of any portion of the JCRS Property to a party other than Buyer, (ii) any party other than Buyer becomes lawfully entitled to purchase the JCRS Property as a result of competitive bidding allowed by the Bankruptcy Court, or (iii) the Bankruptcy Court enters an order prohibiting or preventing the sale of the JCRS Property under this Agreement (in which events Buyer may be entitled to the Break-Up Fee pursuant to Section 5.16).

6.2 Effect of Termination or Breach. If this Agreement is terminated prior to the Closing, this Agreement shall become null and void and of no further force and effect, except (i) for this Section 6.2, and (ii) that the termination of this Agreement for any cause shall not relieve any party hereto from any liability which at the time of termination had already accrued to any other party hereto or which thereafter may accrue in respect of any act or omission of such party prior to such termination. If this Agreement is terminated prior to the Closing as a result of a breach of the provisions of this Agreement by Seller or if there is a failure to close this transaction for any reason other than the material default of Buyer, the Earnest Money shall be returned to Buyer in full, and the Buyer's sole remedy shall be limited to initiate an administrative claim with the Bankruptcy Court for possible recovery of the Break-Up Fee in connection with this Agreement, and the Buyer shall not have (and does hereby waive) any claim for incidental or consequential damages, specific performance or any other injunctive or equitable relief. In the event the Closing is not consummated as a result of a material breach of the provisions of this Agreement by Buyer resulting in the termination of this Agreement by Seller, Seller's sole remedy shall be retention of the full amount of the Earnest Money.

## ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 Assignment. The rights and interest of Buyer under this Agreement may be assigned by Buyer with or without the consent of Seller, provided that (a) Buyer's assignee assumes all of the

obligations of Buyer under this Agreement and (b) the assignment to the assignee is approved by First National Bank. Upon any such assignment by Buyer, Buyer shall not be relieved of any of its obligations or liabilities hereunder.

7.2 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provisions will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.3 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Colorado.

7.4 SUBMISSION TO JURISDICTION. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE U.S. BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT.

**7.5 WAIVER OF JURY TRIAL.**

**EACH OF THE PARTIES TO THIS AGREEMENT WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION UNDER THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY ACTION ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, REGARDLESS OF WHICH PARTY INITIATES SUCH ACTION OR ACTIONS.**

7.6 Parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement, including any subsequent trustee of Seller in the Bankruptcy Case.

7.7 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to this matter. Each party acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding upon the parties.

7.8 Time. Time is of the essence of this Agreement.

7.9 Brokers. Seller and Buyer each acknowledge and represent to each other that no broker or other similar agent was utilized in connection with this transaction. Seller hereby agrees to

defend, indemnify and hold harmless Buyer from and against any claims by any real estate broker whom Seller engaged regarding this transaction, for brokerage commissions, finders' or other fees relative to this Agreement or the sale of the JCRS Property and any court costs, attorneys' fees or other costs or expenses arising therefrom and alleged to be due by authorization of Seller; and Buyer hereby agrees to defend, indemnify and hold harmless Seller from and against any claims by any other real estate broker whom Buyer engaged regarding this transaction, for brokerage commissions, finders' or other fees relative to this Agreement or the sale of the JCRS Property and any court costs, attorneys' fees or other costs or expenses arising therefrom and alleged to be due by authorization of Buyer.

7.10 No Merger. The provisions of this Agreement containing agreements between the parties relating to actions occurring after Closing shall not be merged into the instruments of Closing but shall expressly survive and be enforceable according to their terms.

7.11 Notices. Except as otherwise expressly set forth in this Agreement, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given and to have been received when delivered (i) personally, or (ii) by documented overnight delivery service, or (iii) sent by telecopy, telefax, or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by first class mail, return receipt requested, addressed to the parties at the respective addresses set forth below or at such other addresses as may be later specified by written notice delivered in accordance herewith.

SELLER:

Andrew D. Johnson  
Y & K Inc.  
c/o Onsager | Guyerson | Fletcher | Johnson 1801 Broadway  
Suite 900  
Denver, CO 80202

with a copy to:

Christian C. Onsager  
Y & K Inc.  
c/o Onsager | Guyerson | Fletcher | Johnson 1801 Broadway  
Suite 900  
Denver, CO 80202

BUYER:

CK Acquisitions, LLC  
c/o Colorado Corporate Agents, LLC  
303 East 17<sup>th</sup> Avenue, Suite 800  
Denver, CO 80203

with a copy to

Thomas F. Quinn, P.C.  
303 East 17<sup>th</sup> Avenue, Suite 800  
Denver, CO 80203

7.12 Holidays. If any date for the performance of any matter set forth in this Agreement falls on a Saturday, Sunday or legal holiday, then that date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

7.13 Section Headings. The headings assigned to various portions of this Agreement are for convenience only and shall not alter the substance of this Agreement.

7.14 Counterparts. This Agreement may be executed in counterparts and each shall be deemed to constitute an original for all purposes.

7.15 Interpretation. Buyer and Seller hereby acknowledge that each has been represented by legal counsel in the negotiation, execution and implementation hereof; and accordingly the terms or provisions hereof shall be interpreted and construed in a commercially reasonable manner and not against the interests of the drafter of this Agreement.

7.16 Facsimile Signatures and Initials. Facsimile or other electronic signatures and initials on this Agreement and Schedules shall be binding and enforceable.

7.17 Amendment. This Agreement may be amended or modified only by written document executed by Buyer (or its permitted assignee) and Seller.

*The remainder of this page is intentionally left blank. Signature page(s) follow.*



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

SELLER:

Y & K, Inc.

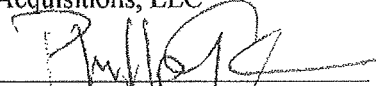
By 

Name: YEDRAAH. K. SUN.

Its: ~~President~~ VICE PRESIDENT/SECRETARY

BUYER:

CK Acquisitions, LLC

By: 

Name: Phillip Caplan

Its: Manager

## JCRS List of Schedule Attachments to Purchase Agreement

Schedule	Description
Schedule 4.1(K)	All management, service, supply or maintenance agreements or other licenses or leases with respect to the JCRS Property shall be listed on Schedule 4.1 (K) within ten (10) days after the Effective Date of this Agreement.
Schedule 4.2(N)	The rent roll information attached hereto as Schedule 4.2 (N) to be completed within ten (10) days after the Effective Date is true, correct and complete and accurately lists all of the leases currently affecting the Property
Schedule E ("Rent Schedule")	The information concerning written leases (which together with all amendments and modifications thereof are collectively referred to as "Leases") and any tenancies in the Premises not arising out of the Leases (collectively "Tenancies") set forth in Schedule E attached hereto ("Rent Schedule")
Schedule 5.3F	A Non-Foreign Affidavit for Entity Transfer in the form of Schedule 5.4F (attached hereto);
Schedules 5.16 (Bidding Procedure)	In the event that any party wishes to submit a competing bid for the purchase of the JCRS Property, such bids shall be done in compliance with the terms set forth on Schedule 5.16 attached hereto

Schedule 5.16

BIDDING PROCEDURE

All parties wishing to submit a competing bid for the purchase of the JCRS Property are to be governed by the following procedures (the "Auction and Bidding Procedures"):

- A. Bid Deadlines. All competing bids for the JCRS Property must be made in writing and submitted so as to be received no later than November 4, 2016 at 4:00 p.m. Mountain Time (the "Bid Deadline") to counsel for the Seller, Onsager | Guyerson | Fletcher | Johnson and counsel for the Buyer, Thomas F. Quinn, P.C. ("Notice Parties").
- B. Qualified Bids. Only Qualified Bids are eligible for consideration at the Auction. A "Qualified Bid" is a bid that:
  - 1. States that the bidder offers to purchase the JCRS Property on substantially the same terms and conditions set forth in the Agreement (together with all schedules and exhibits thereto) and otherwise marked to show the Bidder's proposed amendments and modifications to the Agreement;
  - 2. Is for cash (except to the extent the bid provides for assumption of the First National Bank Note and provides evidence that First National Bank has approved such assumption) and provides for the immediate payment of the Break-Up Fee in cash in full to Buyer at Closing;
  - 3. Is submitted with reasonably satisfactory evidence that the bidder has access to committed funds and is capable of closing on the purchase pursuant the bid;
  - 4. Has a value greater than or equal to the sum of (i) the value of Buyer's offer, (ii) the amount of the Break-Up Fee, plus (iii) \$25,000;
  - 5. Is not subject to any material contingencies, including but not limited to any due diligence requirements or any financing contingency, and is irrevocable until the Closing of a purchase of the JCRS Property, either to Buyer or Bidder; and
  - 6. Is accompanied by a deposit in good funds equal to or greater than \$100,000 . Such deposit either is to be returned to the bidder within five (5) business days of the Closing of the sale of the JCRS Property to any other bidder.

Any person submitting a bid which satisfies the above requirements shall be deemed a "Qualified Bidder".

- C. Auction. The Agreement executed by Buyer constitutes a Qualified Bid for all purposes. If the Seller does not receive any competing Qualified Bids, no auction need be conducted, and the Seller shall report that fact to the Court and proceed with a sale of the JCRS Property to Buyer in accordance with the terms of the Agreement. If Seller does receive a competing Qualified Bid, Seller must conduct an auction ("Auction") at the offices of

Onsager | Guyerson | Fletcher | Johnson, on the date that is one (1) business day before the date of the Sale Hearing, beginning at 10:00 a.m. Mountain Time. In any such Auction:

1. Only Buyer, Seller, their respective professionals, representatives of and counsel for the Committee, and a representative from the Office of the U.S. Trustee and any Qualified Bidders (and their professionals) are entitled to attend the Auction, and only Buyer and the Qualified Bidders are entitled to make any subsequent Qualified Bids at the Auction.
2. The opening bid, which does not need to be re-submitted at the Auction, is the highest competing Qualified Bid submitted before the Auction by a Qualified Bidder (the "Opening Bid"). Bidding at the Auction will continue with each bid exceeding the previous bid by no less than \$25,000, until Seller determines the highest and best Qualified Bid.
3. Any bid by Buyer over the Opening Bid must be in an amount no less than the last bid plus the required overbid (giving Buyer credit for the Break-Up Fee). For the duration of the Auction, all bids by Buyer include a credit bid amount for the Break-Up Fee and all bids by any other Qualified Bidder must include a cash component for the Break-Up Fee. If Buyer is the successful bidder at the close of the Auction (but only if there are bids from a Qualified Bidder in compliance with the requirements hereof at the Auction), the Purchase Price shall be an amount equal to the Buyer's winning bid as reduced by the credit for the Break-Up-Fee.
4. Seller may announce at or before the Auction additional procedural rules that are reasonable under the circumstances (e.g. the amount of time allotted to make subsequent bids) for conducting the Auction so long as such rules are not inconsistent with the Auction and Bidding Procedures.
5. At least one (1) business day before the Auction, Seller shall give Buyer and all other Qualified Bidders a copy of the highest and best Qualified Bid received and copies of all other Qualified Bids.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

In re:	)	
	)	Case No. 16-14761-MER
Y&K SUN, INC.,	)	
	)	Chapter 11
Debtor.	)	
	)	

---

**ORDER APPROVING AUCTION PROCEDURES AND STALKING HORSE BID, INCLUDING 3.0% BREAK-UP FEE OF \$132,000, RELATED TO THE PROPOSED SALE OF Y&K SUN, INC.’S INTEREST IN PROPERTY LOCATED AT 6451 -6579 W. COLFAX AVENUE, LAKEWOOD, COLORADO AND SETTING SALE HEARING**

---

This matter comes before the Court on the Motion for Entry of Orders: (1) Authorizing Sale of Y&K Sun, Inc.’s interest in Property Located at 6451-6579 W. Colfax Avenue, Lakewood, Colorado, Free and Clear of Designated Liens, Claims, Interests, and Encumbrances; (2) Approving Auction Procedures; and (3) Approving Stalking Horse Bid, Including \$132,000 Break-Up Fee (the “Motion”) filed by Y&K Sun, Inc. (“Y&K”). The Court having reviewed the Motion and any objections to the Motion and being advised in the premises and all timely objections to the Motion having withdrawn, resolved, or overruled,

HEREBY FINDS that Y&K owns real property located at 6451-6579 W. Colfax Avenue, Lakewood, Colorado (the “JCRS Property”). Y&K and CK Acquisition, LLC (the “Stalking Horse Bidder”) entered into an agreement for Y&K to sell and the Stalking Horse Bidder to purchase all of Y&K’s interest in the JCRS Property for \$4,400,000 (the “Agreement”), subject to the terms, proration, credits, and contingencies described in the Agreement; and

THE COURT APPROVES the Agreement between Y&K and Stalking Horse Bidder, which is attached to the Motion as **Exhibit 1**, including the break-up fee of \$132,000 payable to the Stalking Horse Bidder in the event it is not the winning bidder at auction. In the event no higher Qualified Bids are received, Y&K is authorized to consummate the sale of the JCRS Property to the Stalking Horse Bidder on the terms provided in the Agreement and authorized to pay, if necessary, First National Bank the amount of its secured claim at the closing;

THE COURT APPROVES the following auction and bid procedures:

A. **Auction and Bidding Procedures**. All parties wishing to submit a competing bid for the purchase of the JCRS Property are to be governed by the following procedures (the “Auction and Bidding Procedures”).

B. **Bid Deadlines**. All competing bids for the JCRS Property must be made in writing and submitted so as to be received no later than **November 4, 2016 at 4:00 p.m. Mountain Time** (the “Bid Deadline”) to counsel for Y&K, Onsager | Guyerson | Fletcher | Johnson, and counsel for the Buyer, Thomas F. Quinn, P.C. (“Notice Parties”) as follows:

1. Counsel to Y&K  
Andrew D. Johnson  
ONSAGER | GUYERSON | FLETCHER | JOHNSON LLC  
1801 Broadway, Suite 900  
Denver, Colorado 80202  
[ajohnson@OGFJ-law.com](mailto:ajohnson@OGFJ-law.com)
2. Counsel to Stalking Horse Bidder  
Thomas F. Quinn, P.C.  
303 East 17th Avenue, Suite 800  
Denver, CO 80203  
[tquinn@tfqlaw.com](mailto:tquinn@tfqlaw.com)

C. **Qualified Bids.** Only Qualified Bids are eligible for consideration at the Auction. A "**Qualified Bid**" is a bid that:

1. States that the bidder offers to purchase the JCRS Property on substantially the same terms and conditions set forth in the Agreement (together with all schedules and exhibits thereto) and otherwise marked to show the bidder's proposed amendments and modifications to the Agreement;
2. Is for cash (except to the extent the bid provides for assumption of the First National Bank Note and provides evidence that First National Bank has approved such assumption) and provides for the immediate payment of the Break-Up Fee in cash in full to Y&K at Closing;
3. Is submitted with reasonably satisfactory evidence that the bidder has access to committed funds and is capable of closing on the purchase pursuant the bid;
4. Has a value greater than or equal to the sum of (i) the value of the Stalking Horse Bidder's offer, (ii) the amount of the Break-Up Fee, and (iii) \$25,000;
5. Is not subject to any material contingencies, including but not limited to any due diligence requirements or any financing contingency, and is irrevocable until the Closing of a purchase of the JCRS Property, either to Y&K or a bidder;
6. Is accompanied by a deposit in good funds equal to or greater than \$100,000. Such deposit either is to be returned to the bidder within five (5) business days of the Closing of the sale of the JCRS Property to any other bidder; and

7. Is received by the Notice Parties on or before the Bid Deadline.

Any person submitting a bid which satisfies the above requirements shall be deemed a “Qualified Bidder.”

D. **Auction**. The Agreement executed by the Stalking Horse Bidder constitutes a Qualified Bid for all purposes. If the Y&K does not receive any competing Qualified Bids, no auction need be conducted, and Y&K shall report that fact to the Court and proceed with a sale of the JCRS Property to the Stalking Horse Bidder in accordance with the terms of the Agreement. If Y&K does receive a competing Qualified Bid, Y&K must conduct an auction (“Auction”) at the offices of ONSAGER | GUYERSON | FLETCHER | JOHNSON LLC on the date that is one (1) business day before the date of the Sale Hearing, beginning at 10:00 a.m. Mountain Time. In any such Auction:

1. Only the Stalking Horse Bidder, Y&K, their respective professionals, and a representative from the Office of the U.S. Trustee and any Qualified Bidders (and their professionals) are entitled to attend the Auction, and only the Stalking Horse Bidder and the Qualified Bidders are entitled to make any subsequent Qualified Bids at the Auction.
2. The opening bid, which does not need to be re-submitted at the Auction, is the highest competing Qualified Bid (the “Opening Bid”). Bidding at the Auction will continue with each bid exceeding the previous bid by no less than \$25,000, until Seller determines the highest and best Qualified Bid.
3. Any bid by the Stalking Horse Bidder over the Opening Bid must be in an amount no less than the last bid plus the required overbid (giving the Stalking Horse Bidder credit for the Break-Up Fee). For the duration of the Auction, all bids by the Stalking Horse Bidder include a credit bid amount for the Break-Up Fee and all bids by any other Qualified Bidder must include a cash component for the Break-Up Fee. If the Stalking Horse Bidder is the successful bidder at the close of the Auction (but only if there are bids from a Qualified Bidder in compliance with the requirements hereof at the Auction), the Purchase Price shall be an amount equal to the Stalking Horse Bidder’s winning bid as reduced by the credit for the Break-Up-Fee.
4. Y&K may announce at or before the Auction additional procedural rules that are reasonable under the circumstances (e.g. the amount of time allotted to make subsequent bids) for conducting the Auction so long as such rules are not inconsistent with the Auction and Bidding Procedures.
5. At least one (1) business day before the Auction, Seller shall give Buyer and all other Qualified Bidders a copy of the highest and best Qualified Bid received and copies of all other Qualified Bids.

A hearing to confirm the sale of the JCRS Property is set for November \_\_, 2016, at \_\_: \_\_ .m. in 721 19<sup>th</sup> Street, Courtroom C, Denver, Colorado, 80202 (the “Sale Hearing”). At the Sale

Hearing, Y&K will request that the Bankruptcy Court enter an order (a) if no Qualified Bids have been received other than the bid in the Agreement, approving the form of sale order (the Agreement having already been approved in this order); or (b) if other Qualified Bids have been received and an Auction held, approving (i) the highest Qualified Bid, (ii) the agreement between Y&K and the highest Qualified Bidder, if the highest Qualified Bid is not the bid in the Agreement, (iii) authorizing Y&K to consummate the sale of the JCRS Property, (iv) authorizing Y&K to pay the Break-Up Fee to the Stalking Horse Bidder, if necessary; and (v) authorizing Y&K to pay the secured claim of First National Bank, if necessary.

Y&K shall submit a proposed form of order approving the sale of the JCRS Property no later than five (5) days prior to the Sale Hearing. Any objections to the form of order must be filed with the Bankruptcy Court and served on counsel for Y&K and the Stalking Horse Bidder no later than three (3) business days prior to Sale Hearing.

Dated September \_\_, 2016

BY THE COURT

---

Honorable Michael E. Romero  
U.S. Bankruptcy Court Judge



EXHIBIT 6

COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B  
PART II

File No.: 01330-62919

**Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:**

1. Rights or claims of parties in possession, not shown by the public records.
2. ~~Easements, or claims of easements, not shown by the public records.~~
3. ~~Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land and not shown by the public records.~~
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. ~~Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.~~
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Minerals of whatsoever kind, subsurface and surface substances, in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records or listed in Schedule B.
7. ~~Water rights, claims or title to water.~~
8. All taxes and assessment now a lien or payable.
9. Reservation of minerals in Patent from the State of Colorado, recorded July 7, 1954 in [Book 864 at Page 191](#).
10. Easement Indenture recorded January 20, 1978 at [Reception No. 78005667](#).
11. Resolution #83-379 recorded January 23, 1984 at [Reception No. 84007060](#).
12. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of JCRS Commercial Plaza recorded January 23, 1984 at [Reception No. 84007062](#) and Ratifications recorded October 20, 1989 at Reception [Nos. 89091126](#) and [89091127](#) and Major Error Correction Plat of JCRS Commercial Plaza recorded October 10, 1984 at [Reception No. 84095584](#).
13. Right of Way agreement recorded January 23, 1984 at [Reception No. 84007063](#).
14. Declaration of Covenants and Restrictions and Reciprocal Easements recorded February 10, 1984 at [Reception No. 84013261](#).
15. Common Area Maintenance Agreement recorded February 10, 1984 at [Reception No. 84013262](#).
16. Declaration of Restrictions and Grant of Easements recorded February 10, 1984 at [Reception No. 84013263](#) and Amendment recorded June 6, 1984 at [Reception No. 84052222](#).
17. Resolution Notice recorded October 10, 1984 at [Reception No. 84095583](#).
18. East Jefferson County Sanitation District recorded document July 19, 1985 at [Reception No. 85067674](#).



COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B  
PART II

19. Party Wall Declaration recorded October 8, 2002 at [Reception No. F1582081](#).

20. Existing leases and tenancies.

NOTE: Upon receipt by the Company of the Commercial Lien Affidavit, this exception may be modified or deleted.

OWNER & LENDER

NOTE: Exceptions 1 and 4 may be deleted from the policies, provided the seller and buyer execute the Company's affidavits, as required herein, and the Company approves such deletions. Exceptions 2 and 3 may be deleted from the policies, provided the Company receives and approves the survey or survey affidavit required herein. Exception 5 will not appear on the policies, provided the Company, or its authorized agent, conducts the closing of the proposed transaction and is responsible for the recordation of the documents.

OWNER

NOTE: Exceptions 1 and 4 may be deleted from the Owner's Title Policy, provided the seller and buyer execute the Company's affidavits, as required herein, and the Company approves such deletions. Exceptions 2 and 3 may be deleted from the Owner's Title Policy, provided the Company receives and approves the survey or survey affidavit required herein. Exception 5 will not appear on the Owner's Title Policy, provided the Company, or its authorized agent, conducts the closing of the proposed transaction and is responsible for the recordation of the documents.

LENDER

NOTE: Exceptions 1 and 4 may be deleted from the Loan Title Policy, provided the owner/borrower executes the Company's affidavits, as required herein, and the Company approves such deletions. Exceptions 2 and 3 may be deleted from the Loan Title Policy, provided the Company receives and approves the survey or survey affidavit required herein. Exception 5 will not appear on the Loan Title Policy, provided the Company, or its authorized agent, conducts the closing of the proposed transaction and is responsible for the recordation of the documents.