

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving the sale of real property known as the Summit Marketplace

located at 385 Crossing Drive, Lafayette, CO 80026 (the “Property”) to JoMar Properties, LLC (“Buyer”) for approximately \$4.9 million pursuant to the Contract submitted as **Exhibit 1** with this motion (the “Summit Contract”).

I. The Receivership Order authorizes the Receiver to sell the Property.

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, their respective properties and assets, interests and management rights in related affiliated and subsidiary businesses, and any assets of any kind or of any nature related in any manner, or directly or indirectly derived from investor funds from the solicitation or sale of securities as described in the Commissioner’s complaint in this case (the “Receivership Estate” or the “Estate”). Receivership Order at 3, ¶ 9.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)).

5. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on interested parties as authorized by this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure. Upon acceptance, this Motion will also be posted on the Receiver's website, <http://dragulreceivership.com>.

II. Summit Marketplace: ownership, management, and debt

6. The Summit Marketplace is a retail shopping mall located at 385 Crossing Drive, Lafayette, CO 80026. It has 7 separate units and approximately 14,000 s.f. of gross leasable space. The Property is 90% leased and is adjacent to a King Soopers.

7. Summit 06 A, LLC ("Summit 06") purchased Summit Marketplace on January 10, 2006, for \$4,700,000. Summit 06 is a single purpose entity ("SPE") whose members are Dragul (13.38%) and 36 other individual investors. These include a number of insiders such as Dragul's parents, GDA employees and former employees, and a promoter. The Receiver has not as yet determined what these purported

members contributed to Summit 06 or verified their purported membership interests. Summit 06 is managed by GDA Real Estate Management, Inc., whose president and sole shareholder is Dragul.

8. The Property was purchased in part with funds from a \$3,500,000.00 loan made by Countrywide Commercial Real Estate Finance, Inc. to Summit 06 that was secured by a deed of trust, and in part with funds Dragul solicited from individual investors. On November 6, 2016, Dragul refinanced the Property and obtained a loan from Rialto Mortgage Finance (“Rialto”) for \$3,600,000.00, which he personally guaranteed (the “Rialto Loan”). The Property is property of the Estate the Receiver is authorized to sell.

III. Sale of the Property is in the best interests of the Estate and its creditors.

9. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver’s proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a “sound business reason.” *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). “In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

10. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”).

11. In the Receiver’s Judgment the proposed sale of the Property is in the best interest of the Estate and its creditors. The Receiver has hired the nationally-recognized firm of Marcus & Millichap to market the Property and has negotiated with the Buyer and believes the proposed sales price is fair and reasonable.

12. Closing under Summit Contract is scheduled to occur by April 15, 2019. Rialto has declared its Loan in default due to non-payment, among other things, and

the loan has been accruing interest at the default rate since August 30, 2018. Rialto has recently indicated it intends to begin sweeping the rental income from the Property to service its loan and has tendered a proposed forbearance agreement to the Receiver that would require the Estate to pay substantial up-front fees to have Rialto forbear from foreclosing on the Property. The Estate lacks funds to pay the forbearance fee.

13. Buyer has agreed to purchase the Property for \$4.4 million and to pay the exit fees on the Rialto Loan, which as of February 1, 2019, totaled \$495,791.98. The exit fees are likely to be reduced marginally at closing due to additional interest payments that may be made on the Rialto Loan pending closing. Under the Summit Contract, the Receiver may entertain and accept any competing offer he deems to be a higher and better offer until this Motion is granted.

14. There will be a broker's commission of 3% (\$132,000) payable at closing. As of February 1, 2019, the payoff for the Rialto Loan minus the exit fees Buyer has agreed to pay was \$3,680,122.60. There will be prorations to pay at closing and additional fees, but the Receiver estimates the Estate will receive over \$500,000 at closing.

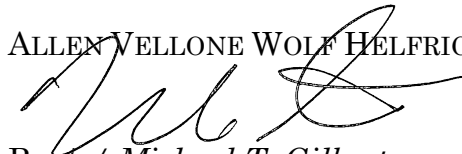
15. Given the uncertainty concerning the ownership interests in Summit 06 and the extensive co-mingling of funds among Estate entities, the Receiver has not yet determined whether the Summit 06 operating agreement is valid and enforceable, or whether equity is best be served by disregarding the agreement and distributing

the net sales proceeds to all creditors pursuant to this Court's priority distribution scheme. Receivership Order ¶ 22. Regardless of how the net proceeds from the proposed sale are distributed, the sale is in the best interest of the Estate because absent a timely sale, the Property is at risk of being lost to foreclosure with no return to the Estate.

WHEREFORE, the Receiver asks the Court to grant this Motion and approve the proposed sale of the Property in accordance with the terms of the Summit Contract.

Dated: March 1, 2019

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: */s/ Michael T. Gilbert*

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on March 1, 2019, I served a true and correct copy of the foregoing **MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE** via CCE to the following:

Robert W. Finke
Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
Ralph L. Carr Judicial Building
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Denver, Colorado 80203

***Counsel for Chris Myklebust, Colorado
Securities Commissioner***

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Agent for JoMar Properties, LLC

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Counsel for Rialto Capital Advisers, LLC

A copy of the foregoing is also being served by electronic mail in accordance with the Court's February 1, 2019, Order Clarifying Notice Procedure and will be posted to the Receiver's website, <http://dragulreceivership.com/>

By: /s/ Victoria Ray
Allen Vellone Wolf Helfrich & Factor P.C.

Banyan Real Estate, LLC
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John Sanderson john@banyanrealestate.com
Ph: 303-328-5576

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

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

**CONTRACT TO BUY AND SELL REAL ESTATE
(COMMERCIAL)**

Property with No Residences)
 Property with Residences-Residential Addendum Attached)

Date: 2/24/2019

AGREEMENT

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

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, *JoMar Properties, LLC* (Buyer) will take title to the Property described below as **Joint Tenants** **Tenants In Common** **Other n/a.**

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

2.3. Seller. *Harvey Sender, in his capacity as Receiver of the Gary Dragul Receivership Estate* (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of n/a, Colorado:

LOT 2 SUMMIT MARKETPLACE

known as No. **385 Crossing Drive, Lafayette, CO 80026,**

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

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

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

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

2.5.3. Personal Property - Conveyance. Any personal property must be conveyed at Closing by

71 Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and
72 encumbrances, except n/a.

73
74 Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

75 **2.5.4. Other Inclusions.** The following items, whether fixtures or personal property, are also
76 included in the Purchase Price: n/a

77
78 **2.5.5. Parking and Storage Facilities.** The use or ownership of the following parking facilities:
79 n/a; and the use or ownership of the following storage facilities:
80 n/a.

81
82 Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should
83 investigate.

84 **2.5.6. Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows: n/a.

85 The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes
86 (except personal property taxes for the year of Closing), liens and encumbrances, except n/a. Conveyance will
87 be by bill of sale or other applicable legal instrument.

88
89 **2.6. Exclusions.** The following items are excluded (Exclusions): n/a

90
91
92 **2.7. Water Rights/Well Rights.**

93
94 **2.7.1. Deeded Water Rights.** The following legally described water rights:
95 n/a

96 Any deeded water rights will be conveyed by a good and sufficient n/a deed at Closing.

97
98 **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in
99 §§ 2.7.1, 2.7.3, and 2.7.4, will be transferred to Buyer at Closing: n/a

100
101 **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well.
102 Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water
103 Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in
104 Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water
105 Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing
106 well form for the well and pay the cost of registration. If no person will be providing a closing service in
107 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The
108 Well Permit # is n/a.

109
110 **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are
111 as follows: n/a

112
113 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other
114 Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey
115 such rights to Buyer by executing the applicable legal instrument at Closing.
116
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118

119 3. DATES, DEADLINES AND APPLICABILITY.

120 3.1 Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	5 days after MEC
		Title	
2	§ 8.1, § 8.4	Record Title Deadline	7 days after MEC
3	§ 8.2, § 8.4	Record Title Objection Deadline	9 days after MEC
4	§ 8.3	Off-Record Title Deadline	9 days after MEC
5	§ 8.3	Off-Record Title Objection Deadline	15 days after MEC
6	§ 8.5	Title Resolution Deadline	21 days after MEC
7	§ 8.6	Right of First Refusal Deadline	n/a
		Owners' Association	
8	§ 7.2	Association Documents Deadline	14 days after MEC

141	9	§ 7.4	Association Documents Termination Deadline	21 days after MEC	
142			Seller's Disclosures		
143					
144	10	§ 10.1	Seller's Property Disclosure Deadline	NA	
145	11	§ 10.10	Lead-Based Paint Disclosure Deadline	n/a	
146			Loan and Credit		
147					
148	12	§ 5.1	New Loan Application Deadline	n/a	
149	13	§ 5.2	New Loan Termination Deadline	n/a	
150	14	§ 5.3	Buyer's Credit Information Deadline	n/a	
151					
152	15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a	
153					
154	16	§ 5.4	Existing Loan Deadline	n/a	
155	17	§ 5.4	Existing Loan Termination Deadline	n/a	
156	18	§ 5.4	Loan Transfer Approval Deadline	n/a	
157	19	§ 4.7	Seller or Private Financing Deadline	n/a	
158			Appraisal		
159					
160	20	§ 6.2	Appraisal Deadline	34 days after MEC	
161	21	§ 6.2	Appraisal Objection Deadline	38 days after MEC	
162	22	§ 6.2	Appraisal Resolution Deadline	38 days after MEC	
163			Survey		
164					
165	23	§ 9.1	New ILC or New Survey Deadline	34 days after MEC	
166	24	§ 9.3	New ILC or New Survey Objection Deadline	38 days after MEC	
167	25	§ 9.3	New ILC or New Survey Resolution Deadline	38 days after MEC	
168			Inspection and Due Diligence		
169					
170	26	§ 10.3	Inspection Objection Deadline	34 days after MEC	
171	27	§ 10.3	Inspection Termination Deadline	38 days after MEC	
172	28	§ 10.3	Inspection Resolution Deadline	38 days after MEC	
173	29	§ 10.5	Property Insurance Termination Deadline	38 days after MEC	
174	30	§ 10.6	Due Diligence Documents Delivery Deadline	7 days after MEC	
175	31	§ 10.6	Due Diligence Documents Objection Deadline	NA	
176	32	§ 10.6	Due Diligence Documents Resolution Deadline	NA	
177	33	§ 10.6	Environmental Inspection Termination Deadline	38 days after MEC	
178	34	§ 10.6	ADA Evaluation Termination Deadline	38 days after MEC	
179	35	§ 10.7	Conditional Sale Deadline	n/a	
180	36	§ 10.10	Lead-Based Paint Termination Deadline	n/a	
181	37	§ 11.1, 11.2	Estoppel Statements Deadline	28 days after MEC	
182	38	§ 11.3	Estoppel Statements Termination Deadline	31 days after MEC	
183			Closing and Possession		
184					
185	39	§ 12.3	Closing Date	4/15/2019	Monday
186	40	§ 17	Possession Date	4/15/2019	Monday
187	41	§ 17	Possession Time	at DOD	
188	39	§ 28	Acceptance Deadline Date	2/25/2019	Monday
189	42	§ 28	Acceptance Deadline Time	6:00PM MST	
190	43	n/a	n/a		
191	44	n/a	n/a		
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211 **3.2. Applicability of Terms.** Any box checked in this Contract means the corresponding provision
 212 applies. If any deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation
 213 "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the
 214 deadline is deleted. If no box is checked in a provision that contains a selection of "None", such provision
 215 means that "None" applies.
 216

217
 218
 219 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have
 220 signed this Contract.
 221

222 **4. PURCHASE PRICE AND TERMS.**

223 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as
 224 follows:
 225

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$4,400,000.00	
2	§ 4.3	Earnest Money		\$100,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7	4.8	Yield Maintenance Fee (estimated)	\$429,000.00	
8	n/a	n/a		
9	§ 4.4	Cash at Closing		\$4,300,000.00
10		TOTAL	\$4,829,000.00	\$4,829,000.00

246
 247
 248 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ **n/a** (Seller Concession). The
 249 Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is
 250 allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing.
 251 Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's
 252 closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge,
 253 expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer
 254 elsewhere in this Contract.
 255

256 **4.3. Earnest Money.** The Earnest Money set forth in this Section, in the form of a **Wire**
 257 **Transfer or Certified Check**, will be payable to and held by **TBD at Seller's Choice** (Earnest Money
 258 Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered,
 259 by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for
 260 its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the
 261 Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to
 262 have interest on Earnest Money deposits transferred to a fund established for the purpose of providing
 263 affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing
 264 on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such
 265 fund.
 266

267
 268 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest
 269 Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money**
 270 **Deadline.**
 271

272
 273 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely
 274 terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is
 275 terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money
 276 has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to
 277 Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within
 278
 279
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281 three days of Seller's receipt of such form.

282 **4.4. Form of Funds; Time of Payment; Available Funds.**

283 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
284 proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws,
285 including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good
286 Funds).
287

288 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be
289 paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow
290 disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer
291 represents that Buyer, as of the date of this Contract, **Does** **Does Not** have funds that are immediately
292 verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.
293

294 **4.5. New Loan.** (Omitted as inapplicable)
295

296 **4.6. Assumption.** (Omitted as inapplicable)
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298 **4.7. Seller or Private Financing.** (Omitted as inapplicable)
299

300 **TRANSACTION PROVISIONS**
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302 **5. FINANCING CONDITIONS AND OBLIGATIONS.** (Omitted as inapplicable)
303

304 **5.3. Credit Information and Buyer's New Senior Loan.** (Omitted as inapplicable)
305

306 **5.4. Existing Loan Review.** (Omitted as inapplicable)
307

308 **6. APPRAISAL PROVISIONS.**

309 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified
310 appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised
311 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs
312 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.
313

314 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective
315 loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.
316

317 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value
318 is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**
319 Buyer may, on or before **Appraisal Objection Deadline**:
320

321 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this
322 Contract is terminated; or
323

324 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by
325 either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the
326 Purchase Price (Lender Verification).
327

328 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or
329 before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement
330 thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution**
331 **Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination,
332 i.e., on or before expiration of **Appraisal Resolution Deadline**.
333

334 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements,
335 removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property
336 (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract
337 terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless
338 prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the
339 Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in
340 writing by Buyer.
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351 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be
352 timely paid by Buyer Seller. The cost of the Appraisal may include any and all fees paid to the appraiser,
353 appraisal management company, lender's agent or all three.
354
355

356 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common
357 Interest Community and subject to the declaration (Association).
358

359 **7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A**
360 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.**
361 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**
362 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**
363 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS**
364 **WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN**
365 **OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE**
366 **ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL**
367 **IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE**
368 **COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN**
369 **ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND**
370 **THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON**
371 **INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE**
372 **ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY**
373 **AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**
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378 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association
379 Documents (defined below), at Seller's expense, on or before **Association Documents Deadline.** Seller
380 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's
381 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents,
382 regardless of who provides such documents.
383
384

385 **7.3. Association Documents.** Association documents (Association Documents) consist of the
386 following:
387

388 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of
389 organization, operating agreements, rules and regulations, party wall agreements and the Association's
390 responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

391 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive
392 boards' or managers' meetings; such minutes include those provided under the most current annual disclosure
393 required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the
394 minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent
395 minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and
396
397

398 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual
399 Disclosure, including, but not limited to, property, general liability, association director and officer professional
400 liability and fidelity policies. The list must include the company names, policy limits, policy deductibles,
401 additional named insureds and expiration dates of the policies listed (Association Insurance Documents);
402

403 **7.3.4.** A list by unit type of the Association's assessments, including both regular and
404 special assessments as disclosed in the Association's last Annual Disclosure;
405

406 **7.3.5.** The Association's most recent financial documents which consist of: (1) the
407 Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial
408 statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's
409 last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list
410 of the fees and charges (regardless of name of title of such fees or charges) that the Association's community
411 association manager or Association will charge in connection with the Closing including, but not limited to, any
412 fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update
413 fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change
414 Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working
415 capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, Financial Documents);
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419 **7.3.6.** Any written notice from the Association to Seller of a "construction defect action"
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under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

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

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

8.1. Evidence of Record Title.

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

8.1.2. Buyer Selects Title Insurance Company. If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

8.1.3. Owner's Extended Coverage (OEC). The Title Commitment **Will** **Will Not** contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller** **Other** n/a.

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title, Resolution).

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

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

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

491 **Deadline.**

492 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title
 493 Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or
 494 before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or
 495 content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title
 496 condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are
 497 not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title
 498 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title
 499 Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such
 500 documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2)
 501 any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title
 502 Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2
 503 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to
 504 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required
 505 by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title
 506 Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the
 507 Abstract of Title, Title Commitment and Title Documents as satisfactory.

508 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true
 509 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all
 510 easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or
 511 other title matters (including, without limitation, rights of first refusal and options) not shown by public records,
 512 of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New**
 513 **Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate
 514 if any third party has any right in the Property not shown by public records (e.g., unrecorded easement,
 515 boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any
 516 unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2
 517 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on
 518 or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the
 519 **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review
 520 and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection
 521 pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in §
 522 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title
 523 Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters
 524 and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

525 **8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
 526 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**
 527 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**
 528 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**
 529 **SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO**
 530 **DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**
 531 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY**
 532 **CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**
 533 **PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**
 534 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

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

542 **8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective
 543 discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), §
 544

561 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the
562 applicable deadline, Buyer has the following options:

563 **8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any
564 title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not
565 agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on
566 the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's
567 Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to
568 Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title
569 Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3
570 (Off-Record Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically
571 extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or
572

573 **8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under
574 § 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole
575 subjective discretion.
576

577 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property
578 or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and
579 conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to
580 approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or
581 expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly
582 notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this
583 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.
584

585 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and
586 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the
587 title, ownership and use of the Property, including, without limitation, boundary lines and encroachments,
588 set-back requirements, area, zoning, building code violations, unrecorded easements and claims of
589 easements, leases and other unrecorded agreements, water on or under the Property, and various laws and
590 governmental regulations concerning land use, development and environmental matters.
591

592 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**
593 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND**
594 **TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE**
595 **MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS,**
596 **OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE**
597 **PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE**
598 **PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**
599

600 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE**
601 **PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE**
602 **AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE**
603 **COUNTY CLERK AND RECORDER.**
604

605 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR**
606 **ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,**
607 **WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,**
608 **PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING**
609 **FACILITIES.**
610

611 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**
612 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY,**
613 **INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE**
614 **COLORADO OIL AND GAS CONSERVATION COMMISSION.**
615

616 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be
617 excepted, excluded from, or not covered by the owner's title insurance policy.
618

619 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such
620 matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and
621 **Off-Record Title Objection Deadline**).
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9. NEW ILC, NEW SURVEY.

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

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

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: Seller Buyer or: n/a

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and Buyer's Agent & Buyer's Attorney will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

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

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

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

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

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

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

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND SOURCE OF WATER.

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

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

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of

701 the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and
 702 communication services), systems and components of the Property (e.g., heating and plumbing), (4) any
 703 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise
 704 (whether on or off the Property) and its effect or expected effect on the Property or its occupants is
 705 unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

706
 707 **10.3.1. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to
 708 Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

709 **10.3.2. Terminate.** On or before the **Inspection Termination Deadline**, notify Seller in writing,
 710 pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection**
 711 **Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in §**
 712 **3.1 for Inspection Termination Deadline.**

713
 714 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before
 715 **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
 716 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**
 717 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or
 718 before expiration of **Inspection Resolution Deadline**.

719
 720 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other
 721 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,
 722 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that
 723 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any
 724 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold
 725 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any
 726 such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by
 727 Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including
 728 Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the
 729 termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection
 730 Resolution.

731
 732 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of
 733 and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or
 734 before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property
 735 Insurance, in Buyer's sole subjective discretion.

736
 737 **10.6. Due Diligence.**

738
 739 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver
 740 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to
 741 Buyer on or before **Due Diligence Documents Delivery Deadline**:

742 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the
 743 Property;

744 **10.6.1.2.** Property tax bills for the last 3 years;

745 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,
 746 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent
 747 Certificates of Occupancy, to the extent now available;

748 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;

749 **10.6.1.5.** Operating statements for the past 3 years;

750 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;

751 **10.6.1.7.** All current leases, including any amendments or other occupancy
 752 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the
 753 Property that survive Closing are as follows (Leases): All Leases

754 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete
 755 but has not yet been completed and capital improvement work either scheduled or in process on the date of
 756 this Contract;

757 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims
 758 which have been made for the past 3 years;

759 **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the
 760

- 771 Property (if not delivered earlier under § 8.3);
- 772 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II
- 773 environmental reports, letters, test results, advisories and similar documents respective to the existence or
- 774 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or
- 775 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller
- 776 warrants that no such reports are in Seller's possession or known to Seller;
- 777
- 778 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning
- 779 the compliance of the Property with said Act;
- 780
- 781 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any
- 782 governmental authority with jurisdiction over the Property and written notice of any violation of any such
- 783 permits, licenses or use authorizations, if any; and
- 784
- 785 **10.6.1.14.** Other documents and information:
- 786
- 787 NA
- 788

789 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
 790 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are
 791 unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents**
 792 **Objection Deadline:**

793 **10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this
 794 Contract is terminated; or

795 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description
 796 of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

797 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents
 798 Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and
 799 Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution**
 800 **Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller
 801 receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on
 802 or before expiration of **Due Diligence Documents Resolution Deadline**.

803 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence**
 804 **Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any
 805 governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

806 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental
 807 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.
 808 **Seller** **Buyer** will order or provide **Phase I Environmental Site Assessment**, **Phase II**
 809 **Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527
 810 standard practices for Environmental Site Assessments) and/or n/a, at the expense of **Seller** **Buyer**
 811 (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether
 812 the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and
 813 evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's
 814 and any Seller's tenants' business uses of the Property, if any.

815 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
 816 Assessment, the **Environmental Inspection Termination Deadline** will be extended by 0 days (Extended
 817 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection
 818 Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such
 819 event, **Seller** **Buyer** must pay the cost for such Phase II Environmental Site Assessment.

820 ~~Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this §~~
 821 ~~10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination**~~
 822 ~~**Deadline**, or if applicable, the **Extended Environmental Inspection Objection Deadline**, based on any~~
 823 ~~unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.~~

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

826 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of
 827 that certain property owned by Buyer and commonly known as n/a. Buyer has the Right to Terminate under §
 828

841 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if
842 such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller
843 does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right
844 to Terminate under this provision.
845

846 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).**
847 **[Intentionally Deleted]**

848
849 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** ~~Seller states that none of~~
850 ~~the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or~~
851 ~~rent abatements except as disclosed in the Lease or other writing received by Buyer.~~ Seller will not amend,
852 alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property
853 without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.
854
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857 **11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel
858 Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on
859 or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to
860 Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease
861 stating:
862

- 863 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;
- 864 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent
865 modifications or amendments;
- 866 **11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits paid to
867 Seller;
- 868 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;
- 869 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and
- 870 **11.1.6.** That the Lease to which the Estoppel Statement is attached is a true, correct and
871 complete copy of the Lease demising the premises it describes.
872

873 **11.2. Seller Estoppel Statements.** In the event Seller does not receive from all tenants of the
874 Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel
875 Statement setting forth the information and documents required §11.1 above and deliver the same to Buyer on
876 or before **Estoppel Statements Deadline**.
877

878 **11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 25.1, on or
879 before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in
880 Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel**
881 **Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.
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886 **CLOSING PROVISIONS**
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889 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

890 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing
891 Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and
892 Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's
893 lender is required to provide the Closing Company, in a timely manner, all required loan documents and
894 financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and
895 documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller
896 will sign and complete all customary or reasonably-required documents at or before Closing.
897

898 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Are
899 **Not** executed with this Contract.
900

901 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the
902 date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing
903 will be as designated by Buyer & Seller.
904

905 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of
906 service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title
907 companies).
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13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing. However, if the box is checked, the parties agree to use the corresponding deed instead:

- general warranty deed
- bargain and sale deed
- quit claim deed
- personal representative's deed
- n/a deed.

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

13.1.1. General taxes for the year of Closing,

13.1.2. Distribution utility easements (including cable TV),

13.1.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with with § 8.3 (Off-Record Title) and § 9 (New ILC or New Survey),

13.1.4. Inclusion of the Property within any special taxing district,

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

13.1.6. Other n/a.

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

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

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

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

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

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

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

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

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller. The Private Transfer

981 fee, whether one or more, is for the following association(s): n/a in the total amount of % of the Purchase Price
982 or \$.

983 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of
984 this Contract, do not exceed \$n/a for:

- 986 Water Stock/Certificates Water District
- 987 Augmentation Membership Small Domestic Water Company n/a and must be paid at Closing by
- 988 None Buyer Seller One-Half by Buyer and One-Half by Seller

991 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction
992 must be paid when due by None Buyer Seller One-Half by Buyer and One-Half by Seller.

993 **15.8. FIRPTA and Colorado Withholding.**

994 **15.8.1. FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of
995 the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not
996 occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this
997 Section is checked, Seller represents that Seller IS a foreign person for purposes of U.S. income taxation. If
998 the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S.
1000 income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably
1001 requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes
1002 Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax
1003 advisor to determine if withholding applies or if an exemption exists.

1004 **15.8.2. Colorado Withholding.** The Colorado Department of Revenue may require a
1005 portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after
1006 Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any
1007 reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing
1008 Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to
1009 determine if withholding applies or if an exemption exists.

1010 **16. PRORATIONS AND ASSOCIATION ASSESSMENT.** The following will be prorated to the **Closing**
1011 **Date**, except as otherwise provided:

1012 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any and
1013 general real estate taxes for the year of Closing, based on Taxes for the Calendar Year Immediately
1014 **Preceding Closing** **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any
1015 applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or Other n/a.

1016 **16.2. Rents.** Rents based on **Rents Actually Received** **Accrued**. At Closing, Seller will
1017 transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful
1018 deductions and notify all tenants in writing of such transfer and of the transferee's name and address. Seller
1019 must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such
1020 Leases.

1021 **16.3. Association Assessments.** Current regular Association assessments and dues
1022 (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the
1023 regular Association Assessments for deferred maintenance by the Association will not be credited to Seller
1024 except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be
1025 obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special
1026 assessment assessed prior to **Closing Date** by the Association will be the obligation of Buyer Seller.
1027 Except however, any special assessment by the Association for improvements that have been installed as of
1028 the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller.
1029 Seller represents there are no unpaid regular or special assessments against the Property except the current
1030 regular assessments and n/a. Association Assessments are subject to change as provided in the Governing
1031 Documents.

1032 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan and n/a.

1033 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

1034 **17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at
1035 **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

1051
1052 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and
1053 will be additionally liable to Buyer for payment of \$ n/a per day (or any part of a day notwithstanding § 18.1)
1054 from **Possession Date** and **Possession Time** until possession is delivered.
1055
1056

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1058 **GENERAL PROVISIONS**
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1060 **18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

1061 **18.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United
1062 States Mountain Time (Standard or Daylight Savings, as applicable).
1063

1064 **18.2. Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after
1065 MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any
1066 deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline **Will**
1067 **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be
1068 checked, the deadline will not be extended.
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1070
1071

1072 **19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION;
1073 AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be
1074 delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.
1075

1076 **19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other
1077 perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the
1078 total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be
1079 paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to
1080 repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing**
1081 **Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer
1082 elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all
1083 insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the
1084 Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may
1085 not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing,
1086 the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the
1087 option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's
1088 insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the
1089 parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller
1090 has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of
1091 any deductible that applies to the insurance claim.
1092

1093 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and
1094 communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or
1095 plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is
1096 earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size,
1097 age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such
1098 Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by
1099 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or
1100 replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under §
1101 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair
1102 or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives
1103 such a credit, Seller's right for any claim against the Association, if any, will survive Closing.
1104

1105 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending
1106 condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly
1107 notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or
1108 before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer
1109 elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is
1110 entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of
1111 the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the
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1121 Purchase Price.

1122 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to
1123 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions
1124 complies with this Contract.
1125
1126

1127 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
1128 acknowledge that the respective broker has advised that this Contract has important legal consequences and
1129 has recommended the examination of title and consultation with legal and tax or other counsel before signing
1130 this Contract.
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1134 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines
1135 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including
1136 Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as
1137 provided in this Contract or waived, the non-defaulting party has the following remedies:
1138

1139 **21.1. If Buyer is in Default:**

1140 **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest
1141 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest
1142 Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such
1143 additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force
1144 and effect and Seller has the right to specific performance or damages, or both.
1145
1146

1147 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1.**
1148 **is checked.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to
1149 Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES
1150 and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4,
1151 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform
1152 the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional
1153 damages.
1154
1155

1156 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all
1157 Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be
1158 proper. ~~Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the~~
1159 ~~right to specific performance or damages, or both.~~
1160
1161

1162 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event
1163 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must
1164 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and
1165 expenses.
1166
1167

1168 ~~**23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not
1169 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties
1170 meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot
1171 impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to
1172 the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the
1173 cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute
1174 is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the
1175 other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section
1176 prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the
1177 date of written notice requesting mediation. This Section will not alter any date in this Contract, unless
1178 otherwise agreed.~~
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1184 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must
1185 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In
1186 the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the
1187 Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any
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1189

proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

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

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

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

27. NOTICE, DELIVERY AND CHOICE OF LAW.

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

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

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

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

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

together are deemed to be a full and complete contract between the parties.

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

ADDITIONAL PROVISIONS AND ATTACHMENTS

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

Buyer will deposit an additional \$150,000 (One Hundred Fifty Thousand Dollars) earnest money upon successful resolution of all contingencies set forth herein.

31. ATTACHMENTS.

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

ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL) DATED FEBRUARY 22th, 2019 BETWEEN HARVEY SENDER, IN HIS CAPACITY AS RECEIVER, OF THE GARY DRAGUL RECEIVERSHIP ESTATE ("SELLER") AND JOMAR PROPERTIES, LLC, A COLORADO LIMITED LIABILITY COMPANY ("BUYER"), AND CONCERNING 385 CROSSING DRIVE, LAFAYETTE, COLORADO 80026

31.2. The following documents have been provided but are **attached** but are **not** a part of this Contract:

n/a

SIGNATURES

DocuSigned by:
Joseph Calabria
CD23AEFDE6A745F...

Date: 2/25/2019 | 15:16:30 PST

Buyer: **JoMar Properties, LLC**
By: Joseph Calabria, Manager

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

DocuSigned by:
Harvey Sender
2494E37B34E843C...

Date: 2/25/2019 | 13:31:27 PST

Seller: **Harvey Sender, in his capacity as Receiver of the Gary Dragul Receivership Estate**
By: Harvey Sender, Receiver

END OF CONTRACT TO BUY AND SELL REAL ESTATE

32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

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

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

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

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

Brokerage Firm's compensation or commission is to be paid by **Listing Brokerage** **Buyer** **Other**
50% of the listing fee.

Brokerage Firm's Name: **Banyan Real Estate, LLC**

Brokerage Firm's License #: **EL100029409**



Date: **2/24/2019**

Broker's Name: **John Sanderson**

Broker's License #: **FA.100076170**

Address: **387 Corona St, Suite 501 Denver, CO 80218**

Ph: **303-328-5576** Fax: Email Address: **john@banyanrealestate.com**

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

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

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

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

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

Brokerage Firm's compensation or commission is to be paid by **Seller** **Buyer** **Other n/a.**

Brokerage Firm's Name: **Marcus & Millichap**

Brokerage Firm's License #: **02824618626A400**

DocuSigned by:
Cory Gross

DocuSigned by:
Jake Shirek

2/25/2019 | 13:19:52 PST

2/25/2019 | 13:24:41 PST

Date: _____

Broker's Name: **Cory Gross**

Jake shirek

Broker's License #: **FA100038277**

FA100071139

Address: **1225 17th St, STE 1800 Denver, CO 80202**

Ph: **303-328-2019** Fax: n/a Email Address: Cory.Gross@marcusmillichap.com

CBS3-6-18. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

CTM eContracts - ©2016 CTM Software Corp.

**ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE
(COMMERCIAL) DATED FEBRUARY 22, 2019 BETWEEN HARVEY
SENDER, IN HIS CAPACITY AS RECEIVER, OF THE GARY DRAGUL
RECEIVERSHIP ESTATE (“SELLER”)**

**AND JOMAR PROPERTIES, LLC, A COLORADO LIMITED LIABILITY
 (“BUYER”),**

**AND CONCERNING 385 CROSSING DRIVE, LAFAYETTE,
COLORADO 80026**

34. Recital. Gary Dragul owned and managed various companies (collectively “Dragul”) for which he solicited investors to acquire residential and commercial real estate. Gary Dragul was indicted for securities fraud by the Attorney General for the State of Colorado. Harvey Sender, the Seller, was appointed Receiver by a Court Order dated August 30, 2018 entered in Rome v. Dragul, et al., Case Number 2018 CV 33011, District Court, Denver, Colorado (the “Receivership Court” and the “Receivership Order”) to take control of all Dragul assets (referred to as “Receivership Property” or “Receivership Estate”). See Receivership Order attached as **Exhibit A**. The Receivership Property includes all the assets of GDA Real Estate Services, LLC (“GDA RES”), a Colorado limited liability company; GDA Real Estate Management, LLC (“GDA REM”), a Colorado limited liability company; and Summit 06A, LLC, a Colorado limited liability company. The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval.

35. Conflicts. This Addendum (“Addendum”) is attached to and forms an integral part of that certain Contract to Buy and Sale Real Estate (Commercial) dated of even date herewith (the “Printed Form;” the Printed Form and this Addendum, collectively, hereinafter, the “Contract”). In the event of any conflict between the terms and provisions of the Printed Form and those of this Addendum, the terms and provisions of this Addendum shall govern and control.

36. Court Approval. Within three (3) business days of the Effective Date, Seller shall file a motion seeking approval of this Contract. The Receiver will use his reasonable efforts to obtain approval of and will support this Contract over the objection of any creditors or other interested parties; provided, however, that the Receiver, consistent with his fiduciary duties in the Receivership Case, shall, until the Receivership Court enters an order approving this Contract, be free to entertain and to accept any competing offer that he deems in his sole and absolute discretion to be a higher or better offer. If the Receiver accepts and obtains Receivership Court approval of a higher and better offer, Buyer may seek reimbursement of its reasonable expenses incurred pursuant to this Contract through the date Buyer is notified that the Receiver has accepted another offer. The Receiver’s foregoing right to entertain and/or accept competing offers shall immediately and automatically terminate upon the Receivership Court’s entry of an order approving this Contract.

37. Exclusive Jurisdiction. This Contract shall be null and void if it is not approved by an order of the Receivership Court on or before March 15, 2019. The Parties agree that the Receivership Court shall have exclusive jurisdiction to hear and determine all disputes, claims, or other actions arising from or relating to the Contract. Each Party consents to the Court entering final orders, judgements and/or decrees.

38. Payment of Loan Fees/Costs. Buyer shall pay the yield maintenance fee on the existing loan securing the Property, which fee is estimated to be \$429,000.000. Seller shall pay all fees, costs and amounts owed associated with any loan delinquency.

39. Due Diligence. Buyer and Buyer's agents, employees and permittees may enter upon the Property for the purpose of inspecting, making surveys, soils tests, water availability tests, environmental audits, obtaining topographical information, conducting traffic studies, making demographic reports, and for other similar preliminary development work. As a condition of such right of entry, Buyer and its employees, agents, contractors and invitees shall (a) insure that all such inspection are non-invasive; (b) respect the rights of the existing tenants of the Property, and shall conduct the inspections in a manner that will not unreasonably disturb such tenants' utilization or enjoyment of the Property, (c) obtain Seller's prior written consent, not to be unreasonably withheld, conditioned or delayed, prior to making any test borings or installing or testing any wells on the Property, (d) obtain Seller's prior written consent, not be unreasonably withheld, conditioned or delayed, prior to interviewing or otherwise communicating to Property tenants, and (e) provide Seller with a reasonably satisfactory certificate of insurance evidencing that Buyer has commercial general liability insurance and automobile liability insurance, on an occurrence basis, with limits of at least \$2,000,000 and \$1,000,000, respectively, each issued by an insurance company licensed to do business in the State of Colorado and with an A. M. Best Company rating of at least A-/IX and a reasonably satisfactory form of endorsement evidencing the fact that Seller and Seller's property management company, are named as additional insureds under Buyer's liability insurance policies. Buyer's insurance policies must be primary with respect to any liability insurance carried by Seller. Buyer will leave the Property in substantially the same condition as existed at the time of entry upon the Property by Buyer or its agents or permittees and will indemnify and hold Seller harmless from any claims, causes of action, or other assertions arising out of the entry upon the Property by Buyer or its agents, employees or permittees and the activities of such persons upon the Property, including, but not limited to, reasonable attorneys' fees incurred by Seller in connection therewith, unless such damages are caused by the negligence or willful misconduct of Seller or its agents or employees. This indemnity shall survive expiration or termination of this Contract.

40. Due Diligence Documents. Seller shall be required to deliver to Buyer only those Off-Record Title Documents, Association Documents, Due Diligence Documents or other documents, pursuant to the Printed Form Contract, in Seller's actual possession. Buyer acknowledges and agrees that all documents in connection with the transaction contemplated by this Contract are provided to Buyer as a convenience only and that any reliance on or use of such documents by Buyer shall be at the sole risk and expense of Buyer. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that any environmental or other report included in the Due Diligence Documents, or

otherwise, shall be for general information purposes only, and there shall be no liability to Seller for any inaccuracy in or omission from any report. In the event this Contract is canceled or fails to close for any reason other than Seller's default, Buyer shall promptly return to Seller any Due Diligence Documents or other documents, information, reports, surveys or other property data delivered to Buyer by or on behalf of Seller and Buyer shall deliver to Seller all copies of any studies, reports or test results obtained by Buyer in connection with its inspection of the Property.

41. Form of Special Warranty Deed. The Special Warranty Deed provided for in paragraph 13 of the Printed Form shall be in the form attached hereto as **Exhibit B** and incorporate herein by reference.

42. Form of Bill of Sale. Seller shall execute and deliver to Buyer at Closing a Bill of Sale in the form attached hereto as **Exhibit C** and incorporated herein by reference.

43. Form of General Assignment. Seller shall execute and deliver to Buyer at Closing a General Assignment in the form attached hereto as **Exhibit D** and incorporated herein by reference.

44. Form of Certification of Non-Foreign Status. Seller shall execute and deliver to Buyer at Closing a Certification of Non-Foreign Status in the form attached hereto as **Exhibit E** and incorporated herein by reference.

45. Superseding Contract. Upon execution of this Contract by the Buyer and Seller, this contract shall supersede all previous contracts and agreements by and between the parties hereto relating to the Property.

46. Seller a Foreign Person. If Seller is a foreign person as defined by the Internal Revenue Code of 1986, as amended, the Buyer will deduct and withhold a tax equal to ten percent (10%) of the total consideration paid or payable to the Seller as a result of the sale transaction contemplated by this contract. If the Seller is not a foreign person, the Seller shall, at the time of the closing, deliver an affidavit to the Buyer signed by the Seller, under penalty of perjury, setting forth the Seller's United States taxpayer identification number and stating that the Seller is not a foreign person as defined by the Internal Revenue Code of 1986, as amended. The Seller and the Buyer acknowledge the importance of legal counsel to advise them in connection with the tax liabilities arising as a result of the sale of United States real property interests.

47. AS-IS. Except as expressly set forth herein or in any Closing document, Seller makes no representations or warranties of any kind to Buyer. Seller and Buyer acknowledge and agree:

a) That all Property, real and personal, is to be conveyed by Seller "AS IS, WHERE IS" and in its present condition; and

b) That Seller has not made, does not hereby make and shall not make, and specifically disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express

or implied, oral or written, past or present, of, as to, concerning or with respect to the Property (except as set forth in this Contract and the warranty of title set forth in the deed with respect to the real property) including but not limited to the following and without limiting the generality of the foregoing:

- i) the nature, quality or condition;
- ii) the income to be derived therefrom;
- iii) suitability for any and all activities and uses which Buyer may conduct thereon;
- iv) compliance with any laws, rules, ordinances or regulations;
- v) habitability merchantability or fitness for a particular purpose;
- vi) good and workmanlike construction;
- vii) design;
- viii) the nature or quality of the construction, structural design and/or engineering thereof;
- ix) the quality thereof and the composition of the materials included therein; or
- x) any other matter with respect thereto.

Except as set forth in this Contract and any Closing document, it is the intention of the Seller expressly to negate and exclude all warranties, including without limitation, the implied warranties of merchantability and fitness for any particular purpose from and after the Closing Date. Buyer shall assume all risks relating in any manner to any defects, if any, in the Property (or any part thereof) of any type or nature whatsoever and shall be solely and completely responsible for the repair and/or removal of all such defects and the payment of all costs and expenses related thereto. It is expressly agreed that Buyer is being provided the opportunity to investigate and inspect the Property.

48. RECEIVER (SELLER) DISCLAIMER. NOTWITHSTANDING ANY LANGUAGE IN THIS CONTRACT TO THE CONTRARY, THE SELLER MAKES NO REPRESENTATION OR WARRANTY TO THE BUYER CONCERNING THE PROPERTY, EXPRESS OR IMPLIED, AND ANY SUCH OTHER OR ADDITIONAL REPRESENTATIONS OR WARRANTIES ARE HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, THE RECEIVER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY RELATED OR WITH RESPECT TO THE VALUE OF THE PROPERTY.

49. DEFAULT BY BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER'S SOLE REMEDY SHALL BE THE RIGHT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS CONTRACT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. THE FOREGOING IN NO WAY LIMITS SELLER FROM SEEKING INDEMNIFICATION FROM BUYER UNDER THE TERMS OF THE CONTRACT.

50. DEFAULT BY SELLER. IN THE EVENT THAT SELLER DEFAULTS OR FAILS TO CONSUMMATE THIS CONTRACT FOR ANY REASON, BUYER'S SOLE REMEDY SHALL BE THE RIGHT TO THE RETURN OF THE DEPOSIT, WHICH RETURN SHALL OPERATE TO TERMINATE THIS CONTRACT.

51. Captions. The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.

52. Validity. If any provision of this Contract shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Contract.

53. Interpretation. Whenever the context so requires, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders.

54. Broker. Seller has engaged Marcus & Millichap as the Brokerage Firm of Seller under a separate Exclusive Right-To-Sell Listing Contract. Cory Gross and Jake Shirek are the individual brokers designated by Seller's Brokerage Firm to perform services for Seller pursuant to Seller's Listing Contract. Seller has agreed to pay Seller's Brokerage Firm 3.0% of the gross purchase price ("Sale Commission") as compensation for its services. Buyer has engaged Banyan Real Estate, LLC as the Brokerage Firm of Buyer under a separate Exclusive Right-To-Buy Listing Contract. John Sanderson is the individual broker designated by Buyer's Brokerage Firm to perform services for Buyer pursuant to Buyer's Listing Contract. Seller's Brokerage Firm agrees to pay 50.0% of the Sale Commission it receives from Seller to Buyer's Brokerage Firm as compensation as the cooperative broker. Seller agrees to indemnify, defend and hold Buyer harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees) resulting from any claims that may be made against Buyer by any other party claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Seller. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees) resulting from

any claims that may be made against Seller by any other party claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Buyer. The terms and provisions of this Paragraph 53 shall survive the Closing Date or the earlier termination of this Contract.

[Signature Page to follow]

Signature page:

**Addendum to Contract to Buy and Sell Real Estate (Commercial)
re: 385 Crossing Drive, Lafayette, Colorado 80026**

SELLER:

HARVEY SENDER, IN HIS CAPACITY
AS RECEIVER, OF THE GARY
DRAGUL RECEIVERSHIP ESTATE

DocuSigned by:
Harvey Sender
2494E37B34E843C...

Harvey Sender, as Receiver

BUYER:

JOMAR PROPERTIES, LLC, a _____
limited liability company

DocuSigned by:
Joseph Calabria
CD23AEFDE6A745F...

Joseph Calabria, Manager

LIST OF EXHIBITS

- Exhibit A - Receivership Order
- Exhibit B - Special Warranty Deed
- Exhibit C - Bill of Sale
- Exhibit D - General Assignment
- Exhibit E - Certification of Non-Foreign Status

EXHIBIT A

Receivership Order

(see attachment)

EXHIBIT B

Special Warranty Deed

(see attachment)

SPECIAL WARRANTY DEED

This Special Warranty Deed is made and entered into this _____ day of _____
_____, 2019, by and between Harvey Sender, in his capacity as Receiver,
of the Gary Dragul Receivership Estate (“Grantor”), and JoMar Capital, LLC, a _____
limited liability company (“Grantee”), whose legal address is _____
_____.

For and in consideration of Ten Dollars and other good and valuable consideration,
the receipt and sufficiency of which are hereby acknowledged, Grantor has granted,
bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey
and confirm unto Grantee, its successors and assigns forever, that certain real property
located in Boulder County, Colorado described on **Exhibit 1** hereto (the “Property”);

Together with all improvements, buildings, structures and fixtures located thereon
and all of Grantor’s right, title and interest in and to all rights, appurtenances and privileges
belonging to the Property and any easements benefiting the Property;

TO HAVE AND TO HOLD the Property above bargained and described, with the
appurtenances, unto Grantee, its successors and assigns forever. Grantor does
covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above
bargained Property in the quiet and peaceable possession of Grantee, its successors and
assigns, against all and every person or persons claiming against the Property under the
Grantor, subject only to the matters described in **Exhibit 2** attached hereto and
incorporated by this reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by
and through its duly authorized officer the day and year first above written.

GRANTOR:

**Harvey Sender, in his capacity as
Receiver, of the Gary Dragul
Receivership Estate**

Harvey Sender, as Receiver

STATE OF COLORADO)
) **ss.**
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _ day of _____
_____, 2019, by Harvey Sender, in his capacity as Receiver, of the Gary Dragul
Receivership Estate.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT C

Bill of Sale

(see attachment)

BILL OF SALE

This Bill of Sale is made as of _____, 2019, by Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate (“Transferor”), pursuant to that certain Contract to Buy and Sell Real Estate (the “Contract”) dated February ____, 2019 between Transferor as Seller and JoMar Properties, LLC, a _____ limited _____ liability company, as Buyer (“Transferee”), pertaining to the purchase and sale of certain real property located in Arapahoe County, Colorado, as more particularly described in the Contract (the “Property”).

FOR VALUABLE CONSIDERATION, Transferor hereby sells, transfers, assigns and delivers to (“Transferee”), all of Transferor’s right, title and interest in all personal property, machinery, equipment, and supplies owned by Transferor and located on the Property, or within any improvements on the Property, or used in connection with the operation of the Property or such improvements, free and clear of all liens and encumbrances arising by, through or under Transferor.

Executed by Transferor as of the date first above written.

TRANSFEROR:

Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate

Harvey Sender, as Receiver

STATE OF COLORADO)
) **ss.**
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _ day of _____, 2019, by Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT D

General Assignment

(see attachment)

GENERAL ASSIGNMENT

This General Assignment is made as of this _____ day of _____, 2019 by Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate (“Transferor”), pursuant to that certain Contract to Buy and Sell Real Estate (the “Contract”) dated February _____, 2019, among Transferor as Seller and JoMar Properties, LLC, a _____ limited liability company as Buyer (“Transferee”) pertaining to the purchase and sale of certain real property located in Boulder County, Colorado, as more particularly described in the Contract (the “Property”).

FOR VALUABLE CONSIDERATION, Transferor hereby sells, transfers, assigns and delivers to Transferee, all of Transferor’s right, title and interest in the following:

1. All contracts or agreements pertaining in any manner to the Property, including, without limitation, construction, architectural, engineering, service and management agreements and equipment leases.
2. All consents, approvals, registrations and authorizations pertaining to the Property, whether from governmental authorities or private individuals or entities.
3. All licenses, permits, plats, site plans, certificates of occupancy, plans, specifications, drawings, designs, renderings, construction agreements or surveys relating in any manner to the Property or to any improvements constructed or to be constructed thereon.
4. All trade names, trademarks, and logos relating to or useful in connection with the ownership or development of the Property.
5. All, records and data pertaining in any manner to the Property.
6. All development rights or agreements, entitlements, rights of way, easements, covenants, conditions and restrictions pertaining in any manner to the Property.
7. Any interest of Transferor, whether as declarant or otherwise, under any owners or similar associations pertaining to the Property.
8. All representations, warranties, guarantees, indemnities and insurance claims with respect to the Property.
9. All insurance claims, reimbursement rights, improvement, metropolitan or special districts pertaining in any manner to the Property or any improvements constructed or to be constructed thereon.
10. All other rights and appurtenances to the Property or any improvements thereon, or otherwise associated with or used or useful in connection with the Property or such improvements or the ownership and development thereof.

IN WITNESS WHEREOF, Transferor has caused this instrument to be executed by and through its duly authorized officer the day and year first above written.

TRANSFEROR:

Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate

Harvey Sender, as Receiver

STATE OF COLORADO)
) **ss.**
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _ day of _____, 2019, by Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT D

Certification of Non-Foreign Status

(see attachment)

CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

- 1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
- 2. Transferor's U.S. employer identification number is _____;
- 3. Transferor's office address is _____; and
- 4. Transferor is not a disregarded entity as defined in Treasury Regulation Section 1.1445-2(b)(2)(iii).

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Transferor understands that transferee is relying on this Certification of Non-Foreign Status in determining whether withholding is required upon said transfer.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

TRANSFEROR:

Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate

Harvey Sender, as Receiver

STATE OF COLORADO)
) **ss.**
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _ day of _____, 2019, by Harvey Sender, in his capacity as Receiver, of the Gary Dragul Receivership Estate.

Witness my hand and official seal.

My commission expires: _____

Notary Public

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado v. Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	
	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2018CV33011 Division/Courtroom: 424
ORDER GRANTING RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE	

THIS MATTER is before the Court on the Receiver's Motion for Order Authorizing Sale of Summit Marketplace (the "Motion") filed by Harvey Sender, the duly appointed Receiver in this case (the "Receiver"). The Court has reviewed the Motion and the file and is otherwise advised.

THE COURT HEREBY FINDS THAT: On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the "Receivership Order") appointing Harvey Sender of Sender & Smiley, LLC as receiver for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities, their respective properties and assets, interests and management rights in related affiliated and subsidiary businesses, and any assets of any kind or of any nature related in any manner, or directly or indirectly derived from investor funds from the solicitation or sale of securities as described in the Commissioner's complaint in this case (the "Receivership Estate" or the "Estate"). The owner of the Summit Marketplace (the "Property") that is the subject of the Motion is Summit 06 A, LLC,

which is managed by GDA Real Estate Management, Inc., whose president and sole owner is Dragul, and which was financed in part with investor funds. The Property is therefore property of the Estate the Receiver is authorized to sell under the Receivership Order.

THE COURT FURTHER FINDS THAT sale of the Property is in the best interest of the Estate and its creditors, and accordingly the

COURT HEREBY ORDERS that the Motion is GRANTED. Harvey Sender, as Receiver for Summit 06 A, LLC, pursuant to the Receivership Order, is hereby authorized to sell the Property to the Purchaser under the Summit Contract (as defined in the Motion) on the terms and conditions set forth in the Motion and its Exhibit, and to take any and all further actions necessary to consummate the sale including, but not limited to, executing the deed conveying title and taking all actions necessary to remove all monetary liens and encumbrances from the Property pursuant to the Motion. With respect to the Property, this Order supersedes any restriction, limitation, or injunction imposed by this Court's August 15, 2018, Temporary Restraining Order, Order Freezing Assets, Order of Non-Destruction of Records.

Dated: _____, 2019.

BY THE COURT:

Hon. District Court Judge