

## AGREEMENT OF SALE AND PURCHASE

(1628 WEBSTER STREET)

**THIS AGREEMENT OF SALE AND PURCHASE** (this “**Agreement**”), dated effective for all purposes as of [June \_\_\_\_, 2022] (the “**Effective Date**”), is between ALAMEDA HOSPITALITY LLC, a [California limited liability company] (“**Seller**”), and HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a California body corporate and politic (together with its permitted successors and assigns, “**Buyer**”).

### ARTICLE I

#### CERTAIN DEFINITIONS

**Section 1.1 Definitions.** The parties hereby agree that the following terms shall have the meanings hereinafter set forth, such definitions to be applicable equally to the singular and plural forms, and to the masculine and feminine forms, of such terms:

“**Affiliate**” shall mean any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Buyer or Seller, as the case may be. For the purposes of this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the day-to-day management of a person, whether through the ownership of voting securities, by contract, by serving in the capacity of general partner or managing member or otherwise, and the terms “controlling” and “controlled” have the meanings correlative to the foregoing.

“**Agreement**” shall mean this Agreement of Sale and Purchase, as the same may be amended, modified, or supplemented from time to time in writing by the parties hereto.

“**Ancillary Agreements**” shall mean each of the documents, instruments or agreements executed and delivered pursuant to the terms of this Agreement.

“**Approval Notice**” shall have the meaning ascribed in Section 3.5.

“**Assignment and Assumption of Contracts**” shall have the meaning ascribed in Section 9.3(a)(iii).

“**Assumed Contracts**” means collectively (i) those Contracts designated by Buyer during the Due Diligence Period to be assumed by Buyer, and (ii) those contracts entered into by Seller after the Effective Date and prior to the Closing Date in accordance with Section 8.3.

“**Bill of Sale**” shall have the meaning ascribed in Section 9.3(a)(ii).

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in Alameda, California are not open for business.

“**Buyer Diligence Materials**” shall mean copies of all reports, assessments, and studies regarding the Property prepared in connection with Buyer’s Due Diligence.

“**City**” shall mean the City of Alameda.

“**Closing**” shall have the meaning ascribed in Section 9.2.

“**Closing Date**” shall mean, the date on which the Closing shall occur, but in no event later than the date set forth in Section 9.2.

“**Closing Statement**” shall have the meaning ascribed in Section 9.5(a).

“**Consenting Parties/Party**” shall have the meanings ascribed in Section 3.6.

“**Contracts**” shall mean (i) the service contracts and other agreements made available to Buyer as part of the Due Diligence Items, and (ii) all other service contracts entered into by Seller after the Effective Date with respect to the Property in accordance with Section 8.3.

“**Deposit**” shall have the meaning ascribed in Section 2.3.

“**Document Delivery Date**” shall mean the earlier of (a) five (5) days following the Effective Date or (b) the date on which Seller has made available to Buyer the Due Diligence Items.

“**Due Diligence**” shall mean the review contemplated by Section 3.1 and related provisions of this Agreement.

“**Due Diligence Items**” shall mean those items, documents and deliveries contemplated in Section 3.2(a).

“**Due Diligence Period**” shall mean the time period contemplated by Section 3.1 of this Agreement.

“**Environmental Laws**” means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any Governmental Entity and in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, or Buyer, and as the same have been amended, modified or supplemented from time to time prior to the date of this Agreement, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of

1986 (42 U.S.C. § 9601 et seq.), comparable state and local laws, and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the aforementioned laws.

“**Escrow Agent**” shall mean Fidelity National Title Company, in its capacity as escrow agent hereunder.

“**Excluded Information**” shall mean any documents, materials or information (A) which are subject to attorney/client, work product or similar privilege, (B) which is confidential or proprietary to Seller, and (C) which are appraisals, valuations, Seller’s internal work product or internal correspondence.

“**Express Seller Representations**” shall have the meaning ascribed in Section 7.2(g).

“**Fixtures**” shall mean the fixtures which are located at and affixed to any of the Improvements as of the Closing Date so as to become real property, but specifically excluding fixtures owned by the Tenants under the applicable Leases, if any.

“**Governmental Entity**” means the various governmental and quasi- governmental bodies or agencies having jurisdiction over Seller, the Property or any portion thereof.

“**Grant Deed**” shall have the meaning ascribed in Section 9.3(a)(i).

“**Hazardous Materials**” means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, mold, chlorinated solvents, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls (“**PCBs**”), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any Environmental Laws (excluding the following which are used in the ordinary operation and maintenance of the Property: (i) ordinary and customary cleaning supplies and other materials in reasonable quantities, to the extent in closed containers, and (ii) petroleum, gasoline and other fuel and lubricants in reasonable quantities and used in the operation of equipment, machinery and vehicles).

“**Improvements**” shall mean and include certain buildings and other improvements which comprise an extended stay hotel and related retail facilities located at 1628 Webster Street, Alameda, CA 94501.

“**Independent Consideration**” shall have the meaning ascribed in Section 2.4.

“**Land**” shall mean the land described on **Exhibit A**, including but not limited to all of the appurtenant easements, licenses, navigation and water use rights, permits, development rights, easements, regulatory approvals, riparian rights, rights under restrictive covenants and any other rights and interests appurtenant thereto.

“**Leases**” shall mean all unexpired leases, subleases, occupancy agreements, and any other agreements (together with any amendments, supplements and modifications thereto) for the use, possession, or occupancy of any portions of the Real Property as of the Closing Date, which leases include residential leases and any tenant deposits, delivered in connection with the foregoing.

**“Licensee Parties”** shall mean Buyer and its lenders and investors and the authorized agents, contractors, consultants, accountants, advisors, attorneys and representatives of Buyer and its lenders and investors who shall inspect, investigate, test or evaluate the Property on behalf of Buyer in accordance with this Agreement.

**“Licenses and Permits”** shall mean, collectively, to the extent assignable, all licenses, permits, approvals, development agreements, disposition and development agreements, certificates of occupancy, dedications, subdivision maps and entitlements now or hereafter issued, approved or granted by any Governmental Entity in connection with the Property, together with all renewals and modifications thereof.

**“Mandatory Cure Items”** shall mean, collectively, (A) any delinquent ad valorem real property taxes and real property assessments, and (B) any monetary liens created by Seller.

**“New Leases”** or **“New Lease”** shall mean, collectively, or singularly, any Lease entered into between the Effective Date and the Closing Date in accordance with Section 8.1.

**“OFAC”** means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

**“OFAC List”** is any list of prohibited countries, individuals, organizations and entities that is administered or maintained by OFAC, including: (i) Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), any related enabling legislation or any other similar executive orders, (ii) the List of Specially Designated Nationals and Blocked Persons maintained by OFAC, and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, or (iii) a “Designated National” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

**“Permitted Exceptions”** shall mean and include all of the following: (a) all matters listed in the Title Commitment and Survey (other than (i) the Mandatory Cure Items, and (ii) those matters to which Buyer timely objects in accordance with the terms of this Agreement, provided they do not thereafter constitute Permitted Exceptions under Section 4.2 hereof), (b) the lien of taxes and assessments not yet due and payable (provided that the tax liens and special assessment liens shall be prorated as of the Closing Date and Seller shall be responsible for the portion attributable to the period prior to the Closing Date), (c) any exceptions caused by, through or at the direction of Buyer, its Affiliates, agents, representatives or employees, and (d) the rights of those Tenants under the Leases described in the Rent Schedule approved by Buyer prior to the expiration of the Due Diligence Period and any New Leases.

**“Person”** means any individual, partnership, corporation, limited liability company, limited liability partnership, Governmental Entity, trust or other entity.

**“Personal Property”** shall mean all of the right, title, and interest of Seller in and to the tangible personal property, which is located at and used primarily in connection with any of the Property, to the extent transferable without the requirement of consent of any third party.

**“Pre-Effective Date Leases”** or **“Pre-Effective Date Lease”** shall mean, collectively, or singularly, any Lease in effect as of the Effective Date.

**“Property”** shall mean the Land, the Improvements, together with the Personal Property and all of Seller’s right, title, and interest in and to the Leases and the Assumed Contracts.

**“Purchase Price”** shall have the meaning ascribed in Section 2.2.

**“Real Property”** shall mean the Land, the Improvements, and the Fixtures.

**“Rent Schedule”** shall have the meaning given to such term on **Exhibit B**.

**“Rents”** shall mean and include fixed monthly rentals, additional rentals, utility charges storage rentals, locker rentals, and other sums and charges payable by Tenants under the Leases or from other occupants or users of the Property.

**“Seller Related Party”** shall mean, collectively, Seller and its Affiliates, officers, directors, shareholders, beneficiaries, members, partners, agents and employees, and each of their respective heirs, successors, personal representatives and assigns, as applicable.

**“Tax Affidavits”** shall have the meaning ascribed in Section 9.3(a)(vii).

**“Tenant”** or **“Tenants”** shall mean, individually, or collectively, any Person occupying or entitled to possession of any portion of the Real Property pursuant to the Leases.

**“Tenant Deposits”** means all Rents paid more than one month in advance, and security deposits (whether cash or non-cash) paid or deposited by the Tenants pursuant to the Leases (together with any accrued interest).

**“Tenant Notice Letter”** shall have the meaning ascribed in Section 9.3(a)(viii).

**“Title Commitment”** shall have the meaning ascribed in Section 4.1.

**“Title Company”** shall mean Fidelity National Title Company, in its capacity as issuer of the Title Policy.

**“Title Matters”** shall have the meaning ascribed in Section 4.2.

**“Title Objections”** shall have the meaning ascribed in Section 4.2.

**“Title Policy”** shall have the meaning ascribed in Section 4.3.

**Section 1.2 Rules of Construction.** Article and section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. All references to “Article” or “Sections” without reference to a document other than this Agreement, are intended to designate articles and sections of this Agreement, and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to any particular article or section, unless specifically designated otherwise. The use of the term “including” shall mean in all cases “including but not limited to,” unless specifically designated

otherwise. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

## ARTICLE II

### AGREEMENT OF SALE AND PURCHASE; PURCHASE PRICE

**Section 2.1 Agreement of Sale and Purchase.** Subject to the terms and conditions contained herein, Seller agrees to sell, transfer, assign and convey to Buyer, and Buyer agrees to purchase, accept and assume the Property.

**Section 2.2 Purchase Price.** Subject to the terms and conditions contained herein, upon Closing, the purchase price for the Property shall be Seventeen Million and No/100 Dollars (\$17,000,000.00) (the “**Purchase Price**”) payable by Federal Reserve wire transfer of immediately available funds. The Purchase Price and such other funds as may be necessary to pay Buyer’s expenses hereunder, subject to closing adjustments, shall be deposited with the Escrow Agent on or before the Closing Date in accordance with this Agreement and paid to Seller at Closing.

**Section 2.3 Deposit.** Within three (3) Business Days of the Effective Date, Buyer shall deposit by Federal Reserve wire transfer of immediately available funds the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) as an initial deposit (the “**Initial Deposit**”) with Escrow Agent whose address is as indicated in Section 11.3. Additionally, if Buyer has not terminated this Agreement and has delivered the Approval Notice in accordance with the terms of this Agreement, the Buyer shall deposit by Federal Reserve wire transfer of immediately available funds the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) on or before March 1, 2023 (the “**Second Deposit**” and collectively with the Initial Deposit and the Extension Deposit (if made), the “**Deposit**”) with Escrow Agent. The Initial Deposit shall be nonrefundable to Buyer upon Buyer’s delivery of the Approval Notice. The Second Deposit shall be nonrefundable when made by Buyer, subject to the terms and conditions of this Agreement. The Deposit shall be held and delivered by Escrow Agent in accordance with the provisions of Article 5. Interest earned on the Deposit while held by the Escrow Agent shall be considered part of the Deposit and shall be deemed to have been earned by and constitute income of Buyer. If the Closing occurs, the Deposit, including all interest, shall be applied against the Purchase Price on the Closing Date.

**Section 2.4 Independent Consideration.** Contemporaneously with the execution and delivery of this Agreement, Buyer has paid to Seller as further consideration for this Agreement, in cash, the sum of One Hundred and No/100 Dollars (\$100.00) (the “**Independent Consideration**”), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is nonrefundable under any circumstances.

## ARTICLE III

### BUYER’S DUE DILIGENCE/CONDITION OF THE PROPERTY/CONSENTS

**Section 3.1 Buyer's Inspections and Due Diligence.** The due diligence period will expire at 5:00 p.m. Pacific Time on the date that is one hundred eighty (180) days following the Effective Date (the period expiring on such date, the "**Due Diligence Period**"); provided, however, Buyer shall have the option to extend the Due Diligence Period two (2) times, in increments of thirty (30) days each, up to a total of sixty (60) days, if (i) Buyer delivers an extension notice three (3) days prior to the scheduled expiration of the Due Diligence Period and (ii) deposits into Escrow an extension deposit in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) for each such extension (each, an "**Extension Deposit**"), which Extension Deposit shall be credited toward the Purchase Price except as otherwise provided in this Agreement. From and after the Effective Date, Buyer and the Licensee Parties may conduct examinations, inspections, testing, studies and investigations (collectively, the "**Due Diligence**") of the Property, information regarding the Property and such documents applicable to the Property. Except for any limitations as may be imposed by this Article III, Buyer may conduct such due diligence activities, inspections, and studies of the Property as it deems necessary or appropriate, and examine and investigate to its full satisfaction all facts, circumstances, and matters relating to the Property (including the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws, environmental conditions, engineering and structural matters), title and survey matters, and any other matters it deems necessary or appropriate for purposes of consummating this transaction. The examinations, inspections, testing, studies and investigations conducted by Buyer shall be at Buyer's sole cost and expense.

**Section 3.2 Delivery Period.**

(a) No later than three (3) days following the Effective Date, Seller shall deliver to Buyer or make available to Buyer for inspection at the Property, or on an electronic due diligence data site, (i) those items listed on **Exhibit B** hereto, and (ii) copies of any other documents and information related to the Property which Buyer or the Licensee Parties may reasonably request (the "**Due Diligence Items**"). Seller shall also instruct Escrow Agent to cause to be prepared and delivered to Buyer all natural hazard disclosures regarding the Property required by law within the time periods so required, and all natural hazard disclosure reports delivered to Buyer shall be deemed to be included within the Due Diligence Items.

(b) All documents, materials, and information are furnished to or made available to Buyer pursuant to this Section 3.2 for information purposes only and without any representation or warranty by Seller with respect thereto, express or implied, except as may otherwise be expressly set forth in Section 6.1 below and as limited by Section 6.2 below. All documents, materials, and information furnished to or made available to Buyer pursuant to this Section 3.2 are expressly understood by Buyer to be subject to the confidentiality provisions of Section 11.11 below.

**Section 3.3 Site Visits.** Buyer and its Licensee Parties shall have reasonable access to the Property at agreed upon times between 9:00 a.m. and 5:00 p.m. Pacific Time on any Business Day, on not less than twenty-four (24) hours' prior notice to Seller, which notice may be provided telephonically or via electronic mail. Seller shall in all events have the right to have a representative present during any visits to or inspections of the Property by Buyer or any Licensee Parties. Buyer will conduct its Due Diligence in a manner which (a) is not unreasonably disruptive to Tenants or the normal operation of the Property, and (b) is in compliance with the Leases. Buyer

shall not contact any Tenants. In the event Buyer desires to conduct any physically intrusive Due Diligence prior to the Closing, such as sampling of soils, other media, building materials, or the like, Buyer will identify in writing what procedures Buyer desires to perform and request Seller's express written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Upon receipt of Seller's written consent, Buyer and all Licensee Parties shall, in performing such Due Diligence, comply with the agreed upon procedures and with any and all laws, ordinances, rules, and regulations applicable to the Property and will not engage in any activities which would violate any permit, license, or Environmental Law. As a condition precedent to gaining access to the Property as set forth in this Section 3.3, Buyer or Buyer's Licensee Parties will maintain comprehensive general liability (occurrence) insurance covering any and all liability of Buyer and its agents, employees or representatives with respect to and arising out of Buyer's inspection of the Property in full force and effect, in an amount no less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policy(s) to be provided from an insurer reasonably acceptable to Seller, naming each Seller Related Party as an additional insured party. Buyer shall (x) provide evidence to Seller so that Seller may verify such coverage prior to entry upon the Land or Improvements; (y) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Property; and (z) restore the Land and Improvements substantially to the condition in which the same were found before any such entry upon the Property and inspection or examination was undertaken; provided Buyer shall have no obligation to remediate any pre-existing physical or environmental conditions.

**Section 3.4 Buyer's Due Diligence Indemnity.** Buyer shall defend, indemnify, and hold harmless each Seller Related Party from and against all losses, costs, damages, claims, and liabilities (whether arising out of injury or death to persons or damage to the Property or otherwise) including, but not limited to, costs of remediation, restoration and other similar activities, mechanic's and materialmen's liens and attorneys' fees, arising out of or in connection with Buyer's breach of its obligations under Section 3.3 or Buyer's or any Licensee Parties' entry upon the Property prior to the Closing; provided, however, that Buyer shall not have (a) any obligations under this Section 3.4 with respect to the mere discovery of adverse conditions relating to the Property or preexisting conditions of the Property discovered by Buyer or any Licensee Party in the course of any investigations permitted by this, or (b) any liability to a Seller Related Party under this Section 3.4 for damage or injury that is caused by the gross negligence or willful misconduct of such Seller Related Party.

**Section 3.5 Due Diligence Period.** Buyer may, as determined in its sole and absolute discretion for any reason or no reason whatsoever, terminate its obligations hereunder without further liability except for those obligations that survive termination as provided in Sections 9.6, and 11.11 by giving Seller and Escrow Agent written notice on or before the end of the Due Diligence Period. If Buyer determines to proceed with the purchase of the Property, then Buyer shall, before the end of the Due Diligence Period, notify Seller and Escrow Agent in writing that Buyer has approved all of the matters described in Sections 3.1 and 3.2 (the "**Approval Notice**"). If before the end of the Due Diligence Period, Buyer fails to give Seller such written notice of its approval of the matters described in Sections 3.1 and 3.2, then Buyer shall be deemed to have terminated this Agreement without further liability except for those obligations that survive termination as provided in Sections 9.6, and 11.11. If Buyer terminates (or is deemed to have terminated) this Agreement under this Section 3.5, the Deposit shall be immediately returned to



Buyer, and Buyer shall promptly return the Due Diligence Items to Seller or destroy the same. If Buyer approves the matters described in Sections 3.1 and 3.2 prior to the end of the Due Diligence Period, Buyer and the Licensee Parties may, after the expiration of the Due Diligence Period conduct such examinations, inspections, testing, studies or investigations regarding the Property (and Seller shall cooperate with Buyer and the Licensee Parties by promptly providing such information reasonably requested by any of them and access to the Property); provided, however, that the same shall (a) be subject to the terms and conditions of this Article III and (b) in no event give rise to any right in favor of Buyer to terminate the Agreement.

In the event of termination of this Agreement and within a reasonable period of time after Seller requests such information, Buyer shall deliver to Seller copies of all third-party reports, plans, studies, applications or any other matters obtained by or prepared for Buyer in connection with Buyer's review of the Property and which relate to the physical condition of the Property, including, without limitation, any engineering and environmental reports completed and/or obtained by Buyer in connection with Buyer's review of the Property; provided, however, Buyer shall have no obligation to deliver any documents or information that Buyer deems to be confidential or proprietary, which shall include financial information, market studies, and appraisals. Seller acknowledges and agrees that Buyer makes no representations or warranties, and Buyer shall have no liability, in any respect with any such third-party reports or information provided by Buyer to Seller pursuant to this paragraph.

## ARTICLE IV

### TITLE AND SURVEY

**Section 4.1 Title to Real Property.** Seller shall order from the Title Company, for receipt no later than three (3) Business Days following the Effective Date, (a) a preliminary title report with respect to the Real Property issued by the Title Company (the "**Title Commitment**"), and (b) complete and legible copies of all recorded documents referred to on Schedule B of the Title Commitment as exceptions to coverage.

**Section 4.2 Certain Exceptions to Title.** With respect to any title matters (herein collectively called "**Title Matters**") that are shown as exceptions in the Title Commitment or reflected in the Survey, Buyer shall have the right, in its sole and absolute discretion, to object in writing to such Title Matters at any time on or prior to the expiration of the Due Diligence Period. With respect to any new Title Matters (i.e., Title Matters not shown in the Title Commitment) shown in any updated title report or survey delivered after the expiration of the Due Diligence Period, Buyer shall have the right to object in writing to such new Title Matters at any time on or prior to the earlier of (i) five (5) Business Days after receipt by Buyer of an updated title report or survey, in writing, disclosing such new Title Matters, or (ii) two (2) Business Days prior to the Closing Date; provided, however, that Buyer shall have not less than two (2) Business Days from the date of receipt of such updated title report or survey, in writing, disclosing such Title Matters to object to such notice, and if necessary, the Closing Date shall be postponed to afford the Buyer such time to object. If Buyer fails to object in a timely manner to the new Title Matters within such time period, such new Title Matters shall be deemed Permitted Exceptions. Any Title Matters which are objected to by Buyer in a timely manner, shall be herein collectively called the "**Title Objections**." Seller may elect (but shall not be obligated) to remove or cause to be removed, at

its expense, such Title Objection, and shall be entitled to a reasonable adjournment of the Closing (not to exceed fifteen (15) days) for the purpose of such removal, which removal will be deemed effected when such Title Matter no longer encumbers the Real Property of record; provided, however, that any such Title Matters shall be considered removed following written notice thereof to Buyer and on the date the Title Company irrevocably commits to issue the Title Policy without reference to the Title Matter that is the subject of such Title Objection. Seller shall notify Buyer in writing no later than three (3) days following receipt of Buyer's notice of any Title Objections whether Seller elects to remove the Title Objections set forth in each such notice (and if necessary, the Closing Date shall be postponed to allow Seller such time to so notify Buyer). Except as provided below with respect to Mandatory Cure Items, if Seller is unable to remove any Title Objections prior to the Closing, or if Seller elects not to remove one or more Title Objections, Buyer may elect by written notice to Seller and Escrow Agent no later than two (2) days after the date on which Buyer is notified in writing that Seller is unable or unwilling to so remove such Title Objections (and if necessary, the Closing Date shall be postponed to afford Buyer such time to elect either of the following remedies), as its sole and exclusive remedy therefor, to either (a) terminate this Agreement by giving written notice to Seller and Escrow Agent, in which event the Deposit shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement as set forth in Sections 9.6 and 11.11, or (b) waive such Title Objections, in which event the Title Matters that are the subject of such Title Objections shall be deemed additional Permitted Exceptions and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price. If Buyer fails to give Seller and Escrow Agent such written notice as and when required hereunder, then Buyer shall be deemed to have elected to waive such Title Objections pursuant to subsection (b) of the preceding sentence and its right to terminate this Agreement with respect to such Title Objection pursuant to subsection (a) of the preceding sentence. Notwithstanding the foregoing, (i) in the event Seller agrees but subsequently fails to remove one or more Title Objections prior to the Closing, Buyer may elect by written notice to Seller and Escrow Agent no later than five (5) days after the date on which Buyer is notified in writing that Seller is no longer able or willing to so remove such Title Objections (and if necessary, the Closing Date shall be postponed to afford Buyer such time to elect either of the following remedies), as its sole and exclusive remedy therefor, to either (a) terminate this Agreement by giving written notice to Seller and Escrow Agent, in which event the Deposit shall be returned to Buyer, Buyer shall be entitled to a reimbursement by Seller of out of pocket expenses in an amount not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement as set forth in Sections 9.6 and 11.11, or (b) waive such Title Objections, in which event the Title Matters that are the subject of such Title Objections shall be deemed additional Permitted Exceptions and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price; and (ii) Seller shall be obligated at or prior to Closing to cause the Mandatory Cure Items to be paid, satisfied and released (as applicable).

**Section 4.3 Title Insurance.** At Closing, the Title Company shall issue to Buyer or be irrevocably committed to issue to Buyer (subject only to the payment of the premium therefor), at the expense of Seller, an ALTA owner's standard coverage policy, in the amount of the Purchase Price, insuring that title to the Real Property is vested in Buyer subject only to the Permitted Exceptions. Prior to Closing, Buyer may, at its option and additional expense, require that Buyer's

Title Policy be a 2006 ALTA extended coverage policy together with such endorsements as Buyer may reasonably require (the "**Title Policy**").

## ARTICLE V

### REMEDIES AND DEPOSIT INSTRUCTIONS

**Section 5.1 Seller Default.** If Seller defaults under the terms of this Agreement prior to the Closing, Buyer shall be entitled, as its sole and exclusive remedies, either (a) to terminate this Agreement, receive the return of the Deposit and a reimbursement of Buyer's out of pocket expenses in an amount not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), or (b) to enforce specific performance of this Agreement. Buyer expressly waives its rights to seek any damages (including without limitation, compensatory, punitive, consequential or special damages) in the event of Seller's default hereunder. Buyer shall be deemed to have elected to terminate this Agreement and receive a refund of the Deposit and reimbursement of out of pocket expenses if Buyer fails to file suit for specific performance against Seller in a court of competent jurisdiction on or before sixty (60) days following the date upon which Closing was scheduled to have occurred as provided herein.

### **Section 5.2 FAILURE TO CONSUMMATE TRANSACTION; LIQUIDATED DAMAGES.**

(a) **FROM AND AFTER BUYER'S WRITTEN ELECTION TO PROCEED WITH THE PURCHASE OF THE PROPERTY PURSUANT TO SECTION 3.5 HEREOF, IF THE SALE OF THE PROPERTY AS CONTEMPLATED HEREUNDER IS NOT CONSUMMATED DUE TO A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, THEN SELLER SHALL RETAIN, AS ITS SOLE AND EXCLUSIVE REMEDY, THE DEPOSIT AS LIQUIDATED DAMAGES, WHICH RETENTION SHALL OPERATE TO TERMINATE THIS AGREEMENT AND RELEASE BUYER FROM ANY AND ALL LIABILITY HEREUNDER, EXCEPT FOR BUYER'S SURVIVING OBLIGATIONS AS PROVIDED IN SECTIONS 9.6 AND 11.11. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT IS NOT CONSUMMATED DUE TO A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER 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 AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER SECTIONS 3.4, 9.6 AND 11.11.**

Initials:          Seller \_\_\_\_\_                  Buyer \_\_\_\_\_

**Section 5.3 Deposit Instructions.** The Escrow Agent joins herein below to evidence its agreement to hold such funds in accordance with the terms and conditions of this Agreement. Further, the following provisions shall control with respect to the rights, duties and liabilities of the Escrow Agent.

(a) The Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the (i) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by the Escrow Agent, or (ii) identity or authority of any person executing such instruction notice or evidence.

(b) The Escrow Agent shall have no responsibility hereunder except for the performance by it in good faith of the acts to be performed by it hereunder, and the Escrow Agent shall have no liability except for its own willful misconduct or negligence.

(c) The Escrow Agent shall be reimbursed on an equal basis by Buyer and Seller for any reasonable expenses incurred by the Escrow Agent arising from a dispute with respect to the amount held in escrow, including the cost of any legal expenses and court costs incurred by the Escrow Agent, should the Escrow Agent deem it necessary to retain an attorney with respect to the disposition of the amount held in escrow.

(d) In the event of a dispute between the parties hereto with respect to the disposition of the amount held in escrow, the Escrow Agent shall be entitled, at its own discretion, to deliver such amount to an appropriate court of law pending resolution of the dispute.

(e) The Escrow Agent shall invest the amount in escrow in accounts which are federally insured or which invest solely in government securities and shall be applied in accordance with the terms of this Agreement. Interest earned thereon shall be added to the funds deposited by Buyer.

(f) For purposes of clarification, the Escrow Agent shall be differentiated from the Title Company. The provisions of this Section 5.3 shall not limit the Title Company's obligations under the Title Policy (including, without limitation, the assurances given by the Title Company that the Ancillary Agreements conveying title to Buyer were duly authorized, executed and delivered).

**Section 5.4 Designation of Reporting Person.** In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (for purposes of this Section 5.4, the "**Code**"), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) Provided the Escrow Agent shall execute a statement in writing (in form and substance reasonably acceptable to the parties hereunder) pursuant to which it agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, Seller and Buyer shall designate the Escrow Agent as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "**Reporting Person**"). If the Escrow Agent refuses to execute a statement pursuant to which it agrees to be the Reporting Person, Seller and Buyer shall agree to appoint another third party as the Reporting Person.

(b) Seller and Buyer hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such party, as reasonably requested by the Reporting Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(ii) to provide to the Reporting Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Reporting Person is correct.

Each party hereto agrees to retain this Agreement for not less than four years from the end of the calendar year in which the Closing occurred, and to produce it to the Internal Revenue Service upon a valid request therefor. The provisions of this Section 5.4 shall survive the Closing.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF SELLER

**Section 6.1 Representations and Warranties of Seller.** Subject to the provisions of Section 6.2, Seller makes the following representations and as of the Effective Date and as of the date on which the Closing occurs:

(a) **Authority.** The execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been or will be duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller, subject to equitable principles and principles governing creditors' rights generally.

(b) **Bankruptcy.** Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(c) **Compliance.** Seller has not received any written notice of any uncured material violation of the laws, rules or ordinances applicable to the Property. Except as set forth in the Due Diligence Items, to Seller's knowledge, Seller has not received any written notification from any governmental or public authority that the Property is in violation of any applicable fire, health, building, use, occupancy or zoning laws where such violation remains outstanding. Seller has not received any violation of any private declaration, covenant or restriction affecting the Property.

(d) **Condemnation.** Seller has not received any written condemnation notice from a Governmental Entity with respect to all or part of the Property and, to Seller's knowledge, no such action or similar proceeding is threatened in writing.

(e) **Consents.** No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of the transactions contemplated hereby.

(f) **Employees.** Seller has not received any written notification from, or on behalf of, any employee that the Seller is in violation of any applicable employment laws where such violation remains outstanding, and no such claims exist or are pending against Seller.

(g) **Leases; Rent Schedule.** The Rent Schedule (as defined in **Exhibit B**) contains a list of all executed Leases relating to the Property as of the Effective Date and all amendments and modifications to such Leases. All Tenant Deposits are accurately identified in the Rent Schedule and are held by Seller in cash, and no Tenant or any other party has any claim (other than for customary refund at the expiration of a Lease) to all or any part of any Tenant Deposit resulting from actions which occur prior to the Closing Date. All material obligations of the lessor under the Leases required to be performed by the lessor on or before the date hereof have been performed and, no material event of default on the part of the lessor exists under any Lease. There are no oral promises, understandings, agreements, or commitments between Seller and any tenant or other party for the use, occupancy, or possession of the Property;

(h) **Non-Contravention.** The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity by which Seller is bound or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture or, any other material agreement or instrument to which Seller is a party or by which Seller may be bound.

(i) **Non-Foreign Entity.** Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(j) **OFAC.** Neither: (i) Seller, any Affiliate of Seller nor any Person controlled by Seller; nor (ii), to Seller's knowledge, any Person who owns a controlling interest in or otherwise controls Seller; nor (iii) to Seller's knowledge, any Person otherwise having a direct or indirect beneficial interest (other than with respect to an interest in a publicly traded entity) in Seller; nor (iv) any Person for whom Seller is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

(k) **Status.** Seller is a limited liability company duly organized or formed, validly existing and in good standing under the laws of the State of [California].

(l) **Litigation.** There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of Seller, threatened by or before any court or governmental authority (a) against or affecting the Property or Seller or arising out of the development, construction, financing, operation, maintenance or management of the Property or (b) that would prevent or hinder the performance by Seller of its obligations under this Agreement or the completion of the Transaction as contemplated by this Agreement;

(m) **Options.** Seller has not granted any option or right of first refusal to any party to acquire any interest in the Property that remains outstanding.

(n) **No Liens.** There will be no outstanding written or oral contracts made by Seller to construct any improvements to the Property.

(o) **No Defaults.** Seller has not received any written notice of any material default by Seller under any of the Assumed Contracts that will not be terminated on the Closing Date.

(p) **No Hazardous Materials.** To the best of Seller's actual knowledge: (a) there are no underground storage tanks on the Property; (b) no underground storage tanks have been placed on or removed from the Property during Seller's ownership of the Property; (c) the Property is free of asbestos and asbestos-containing materials; (d) Seller has not caused or permitted to be stored, disposed of, transferred, produced, or processed on the Property any Hazardous Substances, except in compliance with all applicable federal, state, and local laws or regulations; (e) no release of any Hazardous Substances on or off-site of the Property which might affect the Property or for which Buyer may be liable has occurred prior to the Closing Date hereof; (f) Seller is not aware of any enforcement, cleanup, removal or other governmental or regulatory actions being instituted, contemplated or threatened against it or the Property, or any neighboring property; (g) no claims have been made by any third party or other person with respect the Property relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from Hazardous Substances; and (h) there are no substances or conditions on the Property which would support a claim or cause of action under any Environmental Law. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("**RCRA**") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials; chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal (excluding the following which are used in the ordinary operation and maintenance of the Property: (i) ordinary and customary cleaning supplies and other materials in reasonable quantities, to the extent in closed containers, and (ii) petroleum, gasoline and other fuel and lubricants in reasonable quantities and used in the operation of equipment, machinery and vehicles).

(q) **Due Diligence Items.** Seller has no actual knowledge of any material inaccuracy or incompleteness with respect to all leases, lease correspondence, rent rolls, reports,

surveys, studies, and books and records made available to Buyer as part of the Due Diligence Items pursuant to this Agreement, and Seller represents that all such materials have been assembled in the form maintained by Seller or its property manager in the ordinary course of its business.

(r) **10 Year Hold.** There has been at least ten (10) years between the date of this Agreement and the last time the building(s) in the Project was placed in service or the date of the most recent substantial rehabilitation within Section 42(d)(2) of the Internal Revenue Code of 1986, as amended. There will not be any change to the ownership of the Project prior to the Closing.

**Section 6.2 Limited Liability.** The representations and warranties of Seller set forth in this Agreement, together with Seller's liability for any breach of any of Seller's covenants under this Agreement that survive Closing, will survive the Closing for a period of twelve (12) months (the "**Survival Period**"). Following the Closing, to preserve its claim under this Agreement with respect to a specific alleged breach of a representation and warranty (each, an "**Alleged Breach**"), Buyer shall give written notice to Seller of such Alleged Breach prior to the expiration of the Survival Period. Seller shall have no liability after the Closing with respect to any of Seller's representations, warranties and covenants herein if, prior to the Closing, Buyer had actual knowledge of such breach of representation, warranty or covenant of Seller herein (from whatever source, including, without limitation, any knowledge obtained as a result of Buyer's Due Diligence or written disclosure by Seller or Seller's agents and employees), and Buyer nevertheless consummates the transaction contemplated by this Agreement without exercising its rights and remedies against Seller prior to Closing.

**Section 6.3 Seller's Knowledge.** For purposes of this Agreement and any document delivered at Closing, whenever the phrase "to Seller's knowledge," or the "knowledge" of Seller or words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of [Seller to provide] and the property manager for the Property (the "**Knowledgeable Person**"), without duty of investigation or inquiry whatsoever. Buyer acknowledges that the individuals named in this Section 6.3 are named solely for the purpose of defining and narrowing the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to Buyer.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF BUYER

**Section 7.1 Buyer's Representations and Warranties.** Buyer represents and warrants to Seller the following as of the Effective Date and as of the date on which the Closing occurs:

(a) **Authority.** The execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been or will be duly authorized by all necessary action on the part of Buyer and this Agreement constitutes the legal, valid and binding obligation of Buyer, subject to equitable principles and principles governing creditors' rights generally.



(b) **Bankruptcy.** Buyer has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(c) **Buyer's Participation in Governmental Programs.** Buyer has not been denied participation in any governmental grant or program.

(d) **Consents.** No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of the transactions contemplated hereby.

(e) **Non-Contravention.** The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity by which Buyer is bound or (ii) to Buyer's knowledge conflict with, result in a breach of, or constitute a default under the organizational documents of Buyer, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any other material agreement or instrument to which Buyer is a party or by which it is bound.

(f) **OFAC.** Neither: (i) Buyer, any Affiliate of Buyer nor any Person controlled by Buyer; nor (ii) to the actual knowledge of Buyer, any Person who owns a controlling interest in or otherwise controls Buyer; nor (iii) to the knowledge of Buyer, if Buyer is a privately held entity, any Person otherwise having a direct or indirect beneficial interest (other than with respect to an interest in a publicly traded entity) in Buyer; nor (iv) any Person for whom Buyer is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

**Section 7.2 Buyer's Independent Investigation.** Buyer has been given, or will have before the end of the Due Diligence Period, a full opportunity to inspect and investigate each and every aspect of the Property Buyer deems necessary and proper to evaluate the transactions contemplated herein, either independently or through agents of Buyer's choosing, including, without limitation:

(a) All matters relating to title and the Property, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, and building codes;

(b) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the improvements on the Real Property and within each tenant space therein, the structure, the paving, the utilities, and all other

physical and functional aspects of the Property, including, without limitation, an examination for the presence or absence of Hazardous Materials, which shall be performed or arranged by Buyer at Buyer's sole expense;

(c) Any easements and/or access rights affecting the Property;

(d) The Leases and all matters in connection therewith, including, without limitation, the ability of the Tenants to pay Rent;

(e) The Contracts, the Licenses and Permits, and any other material documents or agreements affecting the Property; and

(f) All other matters of material significance affecting the Property or delivered or made available to Buyer by Seller in accordance with Article 3 of this Agreement.

(g) **THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND BUYER, THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND BUYER, AND BUYER HAS CONDUCTED OR WILL CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 6.1 AND SECTION 9.6 OF THIS AGREEMENT AND IN THE ANCILLARY AGREEMENTS (THE "EXPRESS SELLER REPRESENTATIONS"), BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AGENTS OR REPRESENTATIVES, AND BUYER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE OTHER THAN THE EXPRESS SELLER REPRESENTATIONS, SELLER SPECIFICALLY DISCLAIMS, AND NEITHER IT NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION OR WARRANTY WHATSOEVER TO BUYER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (D) ANY RIGHTS OF BUYER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (E) ANY CLAIM BY BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, NOW OR HEREAFTER EXISTING, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (F) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (G) THE COMPLIANCE OR LACK THEREOF OF THE PROPERTY OR ANY PORTION THEREOF WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND**

**STATE OF REPAIR, “AS IS” AND “WHERE IS”, WITH ALL FAULTS. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, BUYER IS NOT ASSUMING AND SELLER SHALL REMAIN LIABLE FOR ANY AND ALL PROBLEMS, CONDITIONS, LOSSES, COSTS, DAMAGES, CLAIMS, LIABILITIES, EXPENSES, DEMANDS OR OBLIGATIONS OF ANY KIND OR NATURE WHATSOEVER (A) ARISING OUT OF OR IN CONNECTION WITH ANY CLAIMS RESULTING FROM ANY DAMAGES THAT OCCURRED DURING THE TIME THAT SELLER OWNED FEE TITLE TO THE PROPERTY, OR (B) ACCRUED DURING THE TIME THAT SELLER OWNED FEE TITLE TO THE PROPERTY FOR WHICH SELLER REMAINS LIABLE POST-CLOSING UNDER APPLICABLE LAW.**

## **ARTICLE VIII**

### **LEASES; MAINTENANCE OF PROPERTY; CERTAIN OTHER COVENANTS OF SELLER**

From the date hereof until the Closing, and except as otherwise consented to or approved by Buyer, Seller covenants and agrees with Buyer as follows:

**Section 8.1 New Leases.** Prior to the Closing Date, Seller shall be permitted to enter into New Leases not exceeding Twenty-Eight (28) days for residential units in the ordinary course of business using Seller’s standard lease form reviewed and approved by Buyer during the Due Diligence Period consistent with Seller’s past and current practices, and modify Pre-Effective Date Leases, in the ordinary course of business, with Buyer’s prior written consent. Prior to the Closing Date, Seller shall not enter into any commercial lease which is not terminable upon thirty (30) day notice without Buyer’s prior written approval.

**Section 8.2 Lease Enforcement.** Prior to the Closing Date, Seller shall have the right, but not the obligation, to enforce the rights and remedies of the landlord under any Lease, by summary proceedings or otherwise (including, without limitation, the right to remove any Tenant), and to apply, in the ordinary course of business and in accordance with Seller’s past and current practices and in the ordinary course of business, all or any portion of any Tenant Deposits then held by Seller toward any loss or damage incurred by Seller by reason of any defaults by Tenants, and the exercise of any such rights or remedies shall not affect the obligations of Buyer under this Agreement in any manner or entitle Buyer to a reduction in, or credit or allowance against, the Purchase Price or give rise to any other claim on the part of Buyer. Seller shall provide Buyer with written notice of any such actions.

**Section 8.3 Certain Interim Operating Covenants.** Seller covenants to Buyer that it will, (a) from the Effective Date until Closing: (A) continue to operate, manage and maintain the Improvements in the ordinary course of its business and substantially in accordance with present practice, subject to ordinary wear and tear; and (B) maintain insurance on the Property (including, without limitation, fire and extended coverage insurance) which is at least equivalent in all material respects to the insurance policies covering the Land and the Improvements as of the Effective Date; (b) from the expiration of the Due Diligence Period until Closing: (A) without Buyer’s

written consent, which consent shall not be unreasonably withheld, not enter into any new contract with respect to the Property or renew, extend, modify or replace any of the Contracts unless such contract will be terminated prior to the Closing at no expense to Buyer; (B) without Buyer's written consent, which consent shall not be unreasonably withheld, cancel or amend any Assumed Contract except for a cancellation in the event of a default by a service provider; and (C) not (I) sell, mortgage, pledge or otherwise transfer or dispose of all or any part of the Property or any interest therein (other than in connection with routine replacement of personal property in the ordinary course of business with personal property of substantially the same or greater value), or (II) enter into any agreement with any or market to a third party to sell all or any portion of the Property. In addition, Seller shall terminate any management agreement with the existing property manager and other Contracts which are not Assumed Contracts effective as of the Closing Date.

**Section 8.4 Property to be Delivered Vacant.** As of the Closing Date, except for the two (2) retail leases reviewed and approved by Buyer prior to the end of the Due Diligence Period, the Property will be vacant and none of the Property, including any land or buildings, will be occupied by any person or entity, or encumbered by any lease or rental agreement.

## ARTICLE IX

### CLOSING AND CONDITIONS

**Section 9.1 Escrow Instructions.** Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Agent, and this Agreement shall serve as escrow instructions to the Escrow Agent. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

**Section 9.2 Closing.** The consummation of the purchase and sale of the Property hereunder ("**Closing**") shall take place on any date on or between June 19, 2023 and July 1, 2023, as mutually determined by Buyer and Seller. The Closing shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made through escrow at Escrow Agent's office. So long as the conditions precedent to the Closing as set forth herein have been satisfied or waived and Escrow Agent holds the instruments and funds accruing to Buyer and Seller as set forth herein, on the Closing Date, Escrow Agent shall be instructed (A) to record the Grant Deed with the Alameda County Recorder's Office, (B) to pay to Seller or to those parties approved by Seller, by Federal Reserve wire transfer of immediately available funds to an account designated by Seller, the Purchase Price (subject to adjustments described in this Agreement), less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, (C) to pay all appropriate payees the other costs and amounts to be paid by Buyer and Seller at Closing pursuant to the terms of this Agreement, (D) to deliver an original Title Policy to Buyer, and (E) to deliver to Seller and Buyer, a fully-executed original of each Ancillary Agreement. Buyer shall be entitled to possession of the Property on the Closing Date, subject to the rights of the Tenants identified in the Rent Schedule in possession under written Leases.

**Section 9.3 Seller's Closing Documents and Closing Conditions.**

(a) At least one (1) Business Day prior to Closing, Seller shall deposit into escrow with Escrow Agent (or otherwise deliver as expressly provided herein below) the following items:

(i) One (1) duly executed and acknowledged original Grant Deed (the “**Grant Deed**”), substantially in the form attached hereto as **Exhibit C**;

(ii) One (1) duly executed original of a Bill of Sale for the Property (the “**Bill of Sale**”), substantially in the form attached hereto as **Exhibit D**;

(iii) Two (2) duly executed counterparts of an Assignment and Assumption of Contracts, Warranties, Guaranties and Other Intangible Property (the “**Assignment and Assumption of Contracts**”) for the Property, substantially in the form attached hereto as **Exhibit E**;

(iv) [reserved];

(v) An affidavit, substantially in the form attached hereto as **Exhibit F**, pursuant to Section 1445(b)(2) of the Code, and on which Buyer is entitled to rely, that each Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code and any similar certificates required by the State of California in respect of such matters (such as the Form 593 C)(together with the document in subsection (xi) below, collectively, the “**Tax Affidavits**”);

(vi) A form notice to Tenants of the Property, substantially in the form attached hereto as **Exhibit G**, that shall disclose that the Property has been sold to Buyer, that Buyer has received any Tenant Deposit and assumed liability therefor, and that, after the Closing, all Rents should be paid to Buyer or Buyer’s designee (the “**Tenant Notice Letter**”);

(vii) All documents, property files and keys in Seller’s possession or control and relating to the Property (other than Excluded Information), it being understood that location of any of the items referred to in this subsection (vii) at the Property or with the Property Manager on the Closing Date shall be deemed to be delivery to Buyer;

(viii) An owner’s affidavit in customary form to the Title Company;

(ix) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the purchase of the Property as contemplated by this Agreement;

(x) The duly executed Closing Statement; and

(xi) Documentation to establish to Escrow Agent’s reasonable satisfaction the due authority of Seller’s sale of the Property and Seller’s delivery of the documents required to be delivered by Seller pursuant to this Agreement.

(b) The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(i) Escrow Agent shall have received (x) the Deposit, (y) the balance of the Purchase Price (i.e., the Purchase Price less the Deposit), as adjusted pursuant to, and payable in the manner provided for in, this Agreement, and (z) Buyer shall have provided written authority to Escrow Agent to release such amount to Seller in accordance with the Closing Statement when Escrow Agent is committed to satisfy its other obligations to Buyer.

(ii) Buyer shall have delivered to Escrow Agent all of the items required of Buyer pursuant to Section 9.4, and shall have performed all its other obligations under this Agreement in all material respects.

(iii) Each of the representations and warranties set forth in Section 7.1 shall be accurate in all material respects at and as of the Closing.

(iv) [Reserved.]

#### **Section 9.4 Buyer's Closing Documents and Closing Conditions.**

(a) At least one (1) Business Day prior to Closing, Buyer shall deposit into escrow with Escrow Agent the following items:

(i) The balance of the Purchase Price (i.e., the Purchase Price less the Deposit), as adjusted pursuant to this Agreement, and such additional funds as are necessary to close this transaction;

(ii) Two (2) duly executed counterparts of the Assignment and Assumption of Contracts;

(iii) A copy of the duly executed counterpart of the Tenant Notice Letter;

(iv) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the purchase of the Property as contemplated by this Agreement;

(v) Documentation to establish to Escrow Agent's reasonable satisfaction the due authority of Buyer's acquisition of the Property and Buyer's delivery of the documents required to be delivered by Buyer pursuant to this Agreement (including the organizational documents of Buyer, as they may have been amended from time to time, resolutions of Buyer and incumbency certificates of Buyer); and

(vi) The duly executed Closing Statement.

(b) The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Buyer in its sole discretion:

(i) Seller shall have delivered to Escrow Agent all of the items required of Seller pursuant to Section 9.3, and shall have performed all Seller's other obligations under this Agreement in all material respects.

(ii) Each of the representations and warranties set forth in Section 6.1 shall be accurate in all material respects at and as of the Closing.

(iii) The Title Company shall be irrevocably committed (subject only to the payment of the premium therefor) to issue the Title Policy.

(iv) Buyer's actual receipt of the proceeds of an award of State of California affordable housing funds, as set forth in Section 10.

(c) **Consequences of Failure of Condition.** If any condition set forth in Section 9.3(b) or Section 9.4(b) is not satisfied or waived on or prior to the Closing Date, then the party to this Agreement whose obligations are conditioned upon the satisfaction of such condition, may (a) if such failure of condition constitutes a default under this Agreement, pursue its remedies under Section 5.1 or 5.2 of this Agreement, or (b) if such failure of condition does not constitute a default under this Agreement, terminate this Agreement by written notice delivered at or prior to the scheduled Closing Date. In the event of termination of this Agreement pursuant to clause (b) of this paragraph: (x) the Deposit shall be promptly returned to Buyer, and (y) except with respect to the obligations and indemnities set forth in this Agreement that survive termination, neither party shall have any further liability or obligation to the other under this Agreement.

#### **Section 9.5 Prorations and Closing Costs.**

(a) Seller and Buyer agree to adjust, as of 11:59 p.m. Pacific Time on the day prior to the Closing Date, the following (collectively, the "**Proration Items**"): real estate and personal property taxes and assessments (subject to the terms of Section 9.5(c) below), utility bills (except as hereinafter provided), and collected Rents and other income from the Property (subject to the terms of Section 9.5(b) below). Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and through the day prior to the Closing Date, and Buyer will be charged and credited for all of the Proration Items relating to the period from and after the Closing Date. Such preliminary estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Buyer for Buyer's approval prior to the Closing Date (the "**Closing Statement**"). The Closing Statement, once agreed upon, shall be signed by Buyer and Seller and delivered to the Escrow Agent for purposes of making the preliminary proration adjustment at Closing subject to the final cash settlement provided for below. The preliminary proration shall be paid at Closing by Buyer to Seller (if the preliminary prorations result in a net credit to Seller) or by Seller to Buyer (if the preliminary prorations result in a net credit to Buyer) by increasing or reducing the cash to be delivered by Buyer in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received (not to exceed one hundred eighty (180) days after Closing), re-prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Buyer. No prorations will be made in relation to insurance premiums, and Seller's insurance policies will not be assigned to Buyer. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration will be made at Closing with respect to utility bills (and Seller shall be responsible for billings prior to Closing and Buyer shall be responsible for billings on and after Closing). Seller will be entitled to all deposits presently in effect with the utility providers (and

shall not receive a credit at Closing for such deposits), and Buyer will be obligated to make its own arrangements for deposits with the utility providers. The provisions of this Section 9.5 will survive the Closing for twelve (12) months.

(b) Buyer will receive a credit on the Closing Statement for the prorated amount (as of 11:59 p.m. Pacific Time on the day prior to the Closing Date) of all Rent previously paid to or collected by Seller and attributable to any period following Closing. Rents are “**Delinquent**” when they were due prior to the Closing Date, and payment thereof has not been made on or before the Closing Date. Delinquent Rents will not be prorated. All Rents collected by Seller after the Closing Date will be promptly delivered to Buyer. All Rents collected by Buyer from and after Closing from each Tenant will be applied, first to current amounts owed by such Tenant to Buyer, then to any Delinquent Rents owed by such Tenant to Seller. Any sums due Seller will be promptly remitted to Seller by Buyer. Buyer shall bill Tenants who owe Delinquent Rents for periods prior to the Closing Date on a monthly basis for three (3) consecutive months following the Closing Date but shall have no obligation to enforce collection of any such Delinquent Rents from or against any Tenant. Seller shall have the right to sue to collect Delinquent Rents but may not seek to evict any Tenant or terminate any Lease. If Seller pursues such action, Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, losses, expenses, costs and (including, without limitation, reasonable attorneys’ fees and court costs) arising out of or related to such action.

(c) All ad valorem real estate and personal property taxes and assessments with respect to the Property shall be prorated as of 11:59 p.m. Pacific Time on the day prior to the Closing Date on the basis of the most recent tax rate, assessed value and tax bill and re-prorated when actual figures are received (not to exceed one hundred eighty (180) days after Closing).

(d) Buyer shall receive a credit against Purchase Price at Closing for all Tenant Deposits held by Seller (or for the benefit of Seller), and Seller shall retain the same.

(e) Buyer shall receive a credit against the Purchase Price at Closing for all payments due or owing under any Assumed Contracts for periods prior to the Closing Date, which amounts shall be prorated as of 11:59 p.m. Pacific Time on the day prior to the Closing Date. If Seller has paid any amounts under any Assumed Contracts for periods on and after the Closing Date, Buyer shall pay such amounts to Seller at Closing in addition to the Purchase Price.

(f) Seller shall pay (A) one half of the Escrow Agent’s fees, (B) the premium for the ALTA standard coverage portion of the Title Policy, (C) all recording fees in connection with any reconveyance requested hereby, (D) all of the county and one-half of any city documentary transfer taxes in connection with the transfer of the Property to Buyer pursuant to this Agreement, (C) any costs associated with any Mandatory Cure Items, and (D) any additional costs and charges customarily charged to sellers in accordance with common escrow practices in the county in which the Property is located, other than those costs and charges specifically required to be paid by Buyer hereunder. Buyer shall pay (A) one half of the Escrow Agent’s fees, (B) the premium for the ALTA extended coverage policy, (C) the cost of all endorsements to the Title Policy, (D) one-half of any city documentary transfer taxes in connection with the transfer of the Property to Buyer pursuant to this Agreement, and (E) any additional costs and charges customarily charged to buyers in accordance with common escrow practices in the county in which



the Property is located, other than those costs and charges specifically required to be paid by Seller hereunder. In addition to the foregoing, Buyer shall be responsible for any costs of obtaining an ALTA survey of the Property or otherwise conforming the survey to the requirements for issuance of such Title Policy or for any new survey that may be required for issuance of such Title Policy.

(g) Any initial revenues (or upfront payments, bonuses or initiation fees) received by Seller made in conjunction with entering into any laundry lease, cable agreement or telecommunication agreement that is an Assumed Contract shall be prorated as of the Closing Date based on the term of such agreement and the portion of time that has elapsed thereunder.

(h) All replacement reserves, operating reserves, principal reserve funds or any other reserves or prepayments (other than Tenant Deposits) relating to the Property shall not be prorated and shall remain with Buyer.

**Section 9.6 Brokers.** Buyer and Seller each hereby represents and warrants to the other that it did not employ or use any broker or finder to arrange or bring about this transaction except for [Seller to identify Broker] (“**Broker**”), who will be paid solely by Seller pursuant to a separate agreement. If any person brings a claim for a commission or finder’s fee based upon any contact, dealings, or communication with Buyer or its Affiliates, excluding Broker, in connection with the transactions contemplated by this Agreement, then Buyer shall defend the Seller Related Parties from such claim, and shall indemnify the Seller Related Parties and hold the Seller Related Parties harmless from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by the Seller Related Parties with respect to the claim. If any person brings a claim for a commission or finder’s fee based upon any contact, dealings, or communication with Seller or its Affiliates, including Broker, in connection with the transactions contemplated by this Agreement, then Seller shall defend Buyer from such claim, and shall indemnify Buyer and hold Buyer harmless from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by Buyer with respect to the claim. The provisions of this Section 9.6 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

## ARTICLE X

### FINANCING

**Section 10.1 State Funding Contingency.** Notwithstanding anything to the contrary contained in this Agreement, Seller and Buyer acknowledge that Buyer’s purchase of the Property as set forth in this Agreement is specifically conditioned upon Buyer’s receipt from the State of California an award of affordable housing funds in an amount not less than Twelve Million Dollars (\$12,000,000), which proceeds or other evidence of such State funding must be available to Buyer at least ten (10) Business Days prior to the Closing Date.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1 Amendment and Modification.** Subject to applicable law, this Agreement may be amended, modified, or supplemented only by a written agreement signed by Buyer and Seller.

**Section 11.2 Loss by Fire, Other Casualty or Condemnation.** In the event that prior to the Closing Date, the Property, or any part thereof, is destroyed or damaged by fire or other casualty, which, according to Seller's good faith estimate as reasonably agreed to by Buyer (the "**Estimate**"), would cost, with respect to the Property, more than Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "**Threshold Amount**") to repair, or any condemnation proceedings are commenced or overtly threatened which would involve the taking of any portion of the Property valued at more than the Threshold Amount, then Buyer shall have the right, exercisable by giving notice to Seller within fifteen (15) days after receiving written notice of such damage or destruction or taking either (a) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder and any money (including, without limitation, the Deposit but exclusive of the Independent Consideration) or documents in Escrow shall be returned to the party depositing the same, except that Buyer and Seller shall each be responsible for one-half of any title or Escrow cancellation fee, or (b) to accept the Property in its then condition and proceed to close this transaction with an abatement or reduction in the Purchase Price in the amount of the deductible for the applicable insurance coverage, if any, and to receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction or condemnation awards payable by reason of such taking. If Buyer elects to proceed under clause (b) above, Seller shall continue to maintain all insurance policies and not compromise, settle or adjust any claims to such proceeds or awards without Buyer's prior written consent. Seller agrees to give Buyer prompt notice of any taking, damage or destruction of the Property. Buyer's failure to deliver notice within the time period specified shall be deemed to constitute Buyer's election to proceed under clause (b). In the event the Estimate of the cost of repair or the amount of the taking, with respect to the Property, is less than or equal to the Threshold Amount, then Buyer (w) shall not have the option to terminate this Agreement, (x) shall accept the Property in its then condition (y) shall proceed to close this transaction with an abatement or reduction in the Purchase Price in the amount of the deductible for the applicable insurance coverage, if any, and (z) shall receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction or condemnation awards payable by reason of such taking, provided that Seller shall continue to maintain all insurance policies.

**Section 11.3 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address (including copies as follows):

If to Buyer: Alameda Affordable Housing Corporation  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Vanessa Cooper, President  
Email: [vcooper@alamedahsg.org](mailto:vcooper@alamedahsg.org)

With copies to: Downs Pham & Kuei LLP  
235 Montgomery Street, 30<sup>th</sup> Floor  
San Francisco, CA 94104

Attn: Tuan A. Pham  
Email: [tpham@downspham.com](mailto:tpham@downspham.com)

If to Seller: Alameda Hospitality LLC  
1628 Webster Street  
Alameda, CA 94501  
Attn: **CONFIRM:** Sandip Jariwala  
Email: [\_\_\_\_\_]

With Copies to: [**Seller to provide**\_\_\_\_\_]  
[\_\_\_\_\_]  
[\_\_\_\_\_]  
Attn: [\_\_\_\_\_]  
Email: [\_\_\_\_\_]

If to Escrow Agent: [**Buyer to provide**\_\_\_\_\_]  
[\_\_\_\_\_]  
[\_\_\_\_\_]  
Attn: [\_\_\_\_\_]  
Email: [\_\_\_\_\_]

Any such notices may be sent by (a) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) Business Day after deposit with such courier, (b) facsimile transmission, or (c) electronic mail (email) transmission, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed. The above addresses, facsimile numbers and email addresses may be changed by written notice to the other party; provided that no notice of a change of address, facsimile number shall be effective until actual receipt of such notice.

**Section 11.4 Assignment.** Buyer and Seller shall not have the right to assign this Agreement, without the prior written consent of the other party. Notwithstanding the foregoing, Buyer may assign its interests, in whole or in part, to one or more Affiliates of Buyer (including, but not limited to, ICD Webster LLC, a California limited liability company) upon written notice to Seller, provided that no such assignment shall relieve Buyer of its obligations hereunder. This Agreement will be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Agreement to Seller or Buyer, such reference will include the successors and permitted assigns of such party under this Agreement.

**Section 11.5 Governing Law and Consent to Jurisdiction.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS. ANY ACTION ARISING OUT OF THIS AGREEMENT MUST BE COMMENCED BY BUYER OR SELLER IN THE SUPERIOR

COURT OF CALIFORNIA COUNTY OF ALAMEDA IN THE STATE OF CALIFORNIA OR IN THE UNITED STATES FEDERAL COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION AND EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF THE ABOVE COURTS IN ANY SUCH ACTION AND TO THE LAYING OF VENUE IN THE STATE OF CALIFORNIA. ANY PROCESS IN ANY SUCH ACTION SHALL BE DULY SERVED IF MAILED BY REGISTERED MAIL, POSTAGE PREPAID, TO THE PARTIES AT THEIR RESPECTIVE ADDRESS DESCRIBED IN SECTION 11.3 HEREOF.

**Section 11.6 Counterparts.** This Agreement may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

**Section 11.7 Entire Agreement.** This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.

**Section 11.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

**Section 11.9 Attorney Fees.** If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, the prevailing party will be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom.

**Section 11.10 Payment of Fees and Expenses.** Each party to this Agreement will be responsible for, and will pay, all of its own fees and expenses, including those of its counsel and accountants, incurred in the negotiation, preparation, and consummation of this Agreement and the transaction contemplated hereunder.

**Section 11.11 Confidential Information.** The parties acknowledge that the transaction described herein is of a confidential nature and shall not be disclosed except to Licensee Parties or as required by law. No party shall make any disclosure of this Agreement or the specific terms of this Agreement, except as required by law. In connection with the negotiation of this Agreement and the preparation for the consummation of the transactions contemplated hereby, each party acknowledges that it will have access to confidential information relating to the other party. Each party shall treat such information as confidential, preserve the confidentiality thereof, and not duplicate or use such information, except to Licensee Parties in connection with the transactions contemplated hereby. In the event of the termination of this Agreement for any reason whatsoever, upon Seller's written request, Buyer shall return to Seller, all Due Diligence Items (including all copies thereof obtained from Seller in connection with the transactions contemplated hereby), or,

at its election, destroy the same and confirm to Seller in writing that it has done so, and each party shall use its best efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information. Nothing in this Section 11.11 or elsewhere in this Agreement or the Ancillary Agreements, however, shall prohibit (a) the parties from making disclosures to their respective legal counsel, certified public accountants, professional advisors, current and prospective lenders and financial partners and investors such inspection reports or analyses, (b) the parties from making disclosures that are otherwise required as a matter of law, (c) the parties from making disclosures if, at the time of disclosure or thereafter, such information is or becomes available to and known by the public other than as a result of a disclosure by such party in breach of this Agreement, or (d) the parties from making disclosures in connection with asserting or defending any action relating to the Property or this Agreement. In addition, the parties to this Agreement (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transaction contemplated in this Agreement, provided, however, that no party (and no employee, representative or other agent thereof) shall disclose any other information that is not relevant to understanding the tax treatment and tax structure of the transaction (including the identity of the other party and any information that could lead another to determine the identity of the other party). Neither party shall issue or cause to be issued a press release in connection with the transactions contemplated hereby without the approval of the other party, not to be unreasonably withheld, conditioned or delayed. The provisions of this Section 11.11 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

**Section 11.12 No Joint Venture.** Nothing set forth in this Agreement shall be construed to create a joint venture between Buyer and Seller.

**Section 11.13 Judicial Reference; Waiver of Jury Trial.** BUYER AND SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ANY ACTION TO RESOLVE ANY DISPUTE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (EACH, AN “**ACTION**”) (A) ARISING OUT OF THIS AGREEMENT, INCLUDING ANY PRESENT OR FUTURE AMENDMENT THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT (AS HEREAFTER AMENDED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND REGARDLESS OF WHICH PARTY ASSERTS SUCH ACTION SHALL BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO SECTION 638, ET SEQ., OF THE CALIFORNIA CODE OF CIVIL PROCEDURE AND BUYER AND SELLER SHALL ATTEMPT TO SELECT AND PROPOSE JOINTLY TO THE COURT A MUTUALLY AGREEABLE RETIRED JUDGE AS A REFEREE AND, FAILING THAT, EACH OF BUYER AND SELLER SHALL RECOMMEND TO THE COURT A LIST OF RETIRED JUDGES WHO MAY SERVE AS THE REFEREE. TO THE EXTENT PERMITTED BY LAW, BUYER AND SELLER KNOWINGLY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION TO RESOLVE ANY DISPUTE RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY PART THEREOF; AND IN CONNECTION

WITH THIS AGREEMENT, EACH OF BUYER AND SELLER REPRESENTS THAT IT HAS DISCUSSED SUCH WAIVER WITH ITS OWN INDEPENDENT COUNSEL AND HAS RELIED ON ADVICE OF ITS COUNSEL AND MAKES SUCH WAIVER KNOWINGLY AND VOLUNTARILY. THE FOLLOWING MATTERS ARE EXCLUDED FROM JUDICIAL REFERENCE: ANY MATTER THAT IS WITHIN THE JURISDICTION OF A PROBATE, SMALL CLAIMS OR BANKRUPTCY COURT. IN ADDITION, THE FILING OF A COURT ACTION TO ENABLE THE RECORDING OF A NOTICE OF PENDING ACTION, FOR ORDER OF ATTACHMENT, RECEIVERSHIP, INJUNCTION, OR OTHER PROVISIONAL REMEDIES, SHALL BE PERMITTED NOTWITHSTANDING THE PARTIES AGREEMENT TO PURSUE JUDICIAL REFERENCE.

**Section 11.14 Further Assurances.** Each party will execute such other and further documents and instruments as may be reasonably necessary or proper in order to consummate the transactions contemplated by this Agreement. Seller shall, upon written request therefor, execute and deliver to Buyer, its successors or assigns, any reasonable new or confirmatory instruments and do and perform any other reasonable acts (at no out of pocket cost to Seller) which Buyer or its successors or assigns, may reasonably request in order to fully transfer possession and control of the Property intended to be transferred and assigned hereby, provided the same shall not affect Seller's rights or obligations hereunder or under the Ancillary Agreements. This Section 11.14 shall survive the Closing.

**Section 11.15 Time of Essence.** Time is of the essence of this Agreement.

**Section 11.16 No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the party making the waiver.

**Section 11.17 Not an Offer.** The preparation or distribution of drafts hereof by one party to the other shall not be deemed to constitute an offer and this Agreement shall only become binding and enforceable upon execution hereof by both parties.

**Section 11.18 No Third Party Beneficiaries.** Nothing in this Agreement is intended to benefit any third party, or create any third party beneficiary.

**Section 11.19 No Recording.** No party shall record this Agreement or any copy hereof in any public records.

**Section 11.20 Exchange.** If requested by either party hereto, the other party shall cooperate with the requesting party in reasonable ways to effect an exchange of the Property that qualifies for nonrecognition treatment pursuant to Section 1031 of the Code. Any such exchange shall not delay or postpone the Closing Date; the cooperating party shall have no liability to the requesting party if the exchange fails to qualify for such nonrecognition treatment; the requesting party shall not be released from its obligations under this Agreement if the exchange fails for any reason; the exchange shall be at no expense to the cooperating party; the cooperating party shall not be required to acquire title to any proposed exchange properties to accommodate the requesting

party's exchange; and the cooperating party shall not be required to assume any additional obligations or liabilities in connection with the exchange or attempted exchange. The requesting party shall indemnify and defend the cooperating party against and hold the cooperating party harmless from all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs and other litigation expenses) arising from or related to any participation in the exchange or attempted exchange.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**SELLER:**

ALAMEDA HOSPITALITY LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

HOUSING AUTHORITY OF THE CITY OF ALAMEDA,  
a California body corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_



**ESCROW AGENT:**

The Escrow Agent is executing this Agreement to evidence its agreement to hold the Deposit and act as escrow agent in accordance with the terms and conditions of this Agreement.

[\_\_\_\_\_]:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **LIST OF EXHIBITS**

- EXHIBIT A:** Legal Description of Land
- EXHIBIT B:** Documents required during Diligence Period
- EXHIBIT C:** Form of Grant Deed
- EXHIBIT D:** Form of Bill of Sale
- EXHIBIT E:** Form of Assignment and Assumption of Contracts, Warranties, Guaranties and Other Intangible Property
- EXHIBIT F:** Form of Seller's Non-Foreign Affidavit
- EXHIBIT G:** Form of Tenant Notice Letter

**EXHIBIT A**

**Legal Description of Land**

## **EXHIBIT B**

### **Documents Required During Diligence Period**

1. As-built plans/specs (electrical, mechanical structural). Concept designs for additional improvements
2. Existing inspection reports (roofing, HVAC, seismic, soils)
3. Prior Property condition assessments, including as needed, structural, mechanical, code compliance and ADA compliance.
4. Existing or former environmental reports and studies
5. Building permit, licenses, certificates of occupancy or conditional use permits
6. 12 months utility (gas, electrical, water) bills
7. Building warranties/guarantees
8. List of personal property
9. Site plans, brochures, maps and photographs
10. Copies of existing leases, service contracts; retail leases
11. Three years operating costs/financials
12. Description of repairs done in last three years

**EXHIBIT C**

**Form of Grant Deed**

WHEN RECORDED MAIL TO:     )  
  )  
  )  
  )  
  )  
  )  
MAIL TAX STATEMENTS TO:    )  
  )  
  )  
  )  
  )

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(Space above for Recorder's Use Only)

**GRANT DEED**

**FOR VALUE RECEIVED**, the receipt and sufficiency of which are hereby acknowledged, ALAMEDA HOSPITALITY LLC, a California limited liability company, hereby grants to ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation, all of that certain real property more particularly described in **Schedule 1** attached hereto and incorporated herein by this reference, subject to (a) all non-delinquent real property taxes, (b) all non-delinquent special assessments, if any.

**Dated:** \_\_\_\_\_, 2022

SCHEDULE 1

[add signature block & notary form]

**EXHIBIT D**

**BILL OF SALE**

For good and valuable consideration, the receipt of which is hereby acknowledged, ALAMEDA HOSPITALITY LLC, a California limited liability company ("**Seller**"), does hereby sell, transfer, and convey to ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation ("**Buyer**") any and all personal property (the "**Personal Property**") owned by Seller and used in connection with the operation of that certain real property more particularly described in on **Schedule 1** attached hereto.

The Personal Property transferred hereby is transferred "AS IS", "WHERE IS" and "WITH ALL FAULTS", and without any representation or warranty whatsoever.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

SCHEDULE 1

LEGAL DESCRIPTION



## EXHIBIT E

### **Form of Assignment and Assumption of Leases, Contracts, Warranties, Guaranties and Other Intangible Property**

THIS ASSIGNMENT AND ASSUMPTION (the “**Assignment**”) dated as of \_\_\_\_\_ 2022, is between ALAMEDA HOSPITALITY LLC, a California limited liability company (“**Assignor**”), and ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation (“**Assignee**”).

1. Pursuant to that certain Agreement of Sale and Purchase dated as of [\_\_\_\_\_, 2022] (the “**Purchase Agreement**”) Assignor has conveyed to Assignee that certain real property legally described on **Schedule 1** attached hereto and incorporated herein by this reference (the “**Property**”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns and transfers to Assignee as of the date title to the Property is transferred to Assignee (the “**Transfer Date**”), all of the following relating to the Property, to the extent assignable, and without representation or warranty of any kind whatsoever, express or implied:

(a) any and all of Assignor’s right, title and interest, as lessor, in, to and under those certain leases, licenses and occupancy agreements affecting the Property more particularly described on **Schedule 2** attached hereto and incorporated herein by this reference (the “**Leases**”);

(b) any and all of Assignor’s right, title and interest in, to and under those certain assignable contracts and agreements relating to the leasing, operation, maintenance and repair of Property more particularly described on **Schedule 3** attached hereto and incorporated herein by this reference (the “**Service Agreements**”);

(c) any and all assignable governmental licenses, permits, certificates (including certificates of completion and certificates of occupancy), authorizations and approvals held by Assignor in connection with the current occupancy, use and operation of, and construction upon, the Property (collectively, the “**Permits**”); and

(d) any and all assignable warranties and guaranties including, without limitation, contractor’s, architect’s and manufacturer’s warranties and guaranties held by Assignor and given by third parties with respect to the Property (collectively, the “**Warranties**”).

2. Assignee accepts this Assignment and hereby assumes and agrees to perform all of the covenants, agreements and obligations of the lessor under the Leases accruing with respect to the period from and after the Transfer Date and all of Assignor’s covenants, agreements and obligations under the Service Agreements, Permits and Warranties accruing with respect to the period from and after the Transfer Date.

3. If legal action is commenced to enforce or to declare the effect of any provision of this Assignment, or any document executed in connection with this Assignment, the prevailing party shall be entitled to recover from the non-prevailing party attorneys' fees and other litigation costs. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit on this Assignment or any document executed in connection with this Assignment shall be entitled to its attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Assignment or any document executed in connection with this Assignment into any judgment on this Assignment or any document executed in connection with this Assignment.

4. This Assignment shall be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors in interest and assigns.

5. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

6. Nothing contained herein shall be deemed or construed as modifying the respective rights, obligations and liabilities of Assignor and Assignee and/or limitations thereon, under the Purchase Agreement.

[Signatures Appear On The Following Page.]

IN WITNESS WHEREOF, this Assignment and Assumption is made as of the day and year first above written.

Assignor and Assignee have executed this Agreement the day and year first above written.

**ASSIGNOR:**

ALAMEDA HOSPITALITY LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

HOUSING AUTHORITY OF THE CITY OF ALAMEDA,  
a California body corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SCHEDULE 1

LEGAL DESCRIPTION

SCHEDULE 2

LEASES

SCHEDULE 3

SERVICE AGREEMENTS

## EXHIBIT F

### Form of Seller's Non-Foreign Affidavit

Under Section 1445 of the Internal Revenue Code of 1986, as amended (the "**US Code**"), and Sections 18805 and 26131 of the California Revenue and taxation Code, a transferee of California real property interest must withhold tax if the transferor is a foreign person or a non-resident of California. To inform ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation (the "**Transferee**"), that withholding of tax will not be required upon the transfer to Transferee by ALAMEDA HOSPITALITY LLC, a California limited liability company (the "**Transferor**"), of that certain real property located in the State of California and more particularly described in **Exhibit 1** attached hereto (the "**Property**"), 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 US Code and the Income Tax Regulations promulgated thereunder;
2. Transferor's U.S. employer identification number is [\_\_\_\_\_]; and
3. Transferor has a permanent place of business in [\_\_\_\_\_], California. The office address of Transferor's permanent place of business in California is [\_\_\_\_\_, \_\_\_\_\_, CA \_\_\_\_].
4. Transferor is not a disregarded entity as defined in §1.1445.2(b)(2)(iii).

Transferor understands that this Certification may be disclosed to the Internal Revenue Service and/or the California Franchise Tax board and that any false statement contained herein could be punished by fine, imprisonment, or both.

Transferor understands that Transferee is relying on this Certificate in determining whether withholding is or will be required in connection with the transfer of the Property by Transferor to Transferee, and that Transferee may face liabilities if any statement contained in this certificate is false.

Transferor hereby indemnifies Transferee, and agrees to hold Transferee harmless, from any liability or cost which such Transferee may incur as a result of: (i) the Transferor's failure to pay any U.S. Federal Income tax which Transferor is required to pay under applicable federal law, (ii) the Transferor's failure to pay California State Income Tax which Transferor is required to pay under applicable California law, or (iii) any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge declare that I have authority to sign this document on behalf of Transferor.

EXHIBIT 1

LEGAL DESCRIPTION



**EXHIBIT G**

**TENANT NOTICE LETTER**

**STATEMENT TO TENANT RE: TRANSFER AND SECURITY DEPOSIT**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name of Tenant

\_\_\_\_\_  
Address

Dear Tenant:

On \_\_\_\_\_, 20\_\_, the property commonly known as [Adaptive Reuse Project], located at 1628 Webster Street, Alameda, CA 94501 (the "**Property**") in which you are a tenant, was sold to \_\_\_\_\_ ("**Buyer**") whose address is: \_\_\_\_\_. You are provided with the following information relating to the transfer of your security deposit from us to Buyer:

Name of Tenant: \_\_\_\_\_

Suite or Unit Number: \_\_\_\_\_

Amount of your original deposit: \$ \_\_\_\_\_

Nature of our claims made against your deposit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Amount of our claims made against your deposit: \$ \_\_\_\_\_

Balance of deposit transferred to Buyer: \$ \_\_\_\_\_

Buyer's name and address:

\_\_\_\_\_  
\_\_\_\_\_

Effective with the transfer of the Property to Buyer, Buyer has assumed all obligations of the landlord under your lease of the Property. Please direct all future rent payments and/or inquiries with respect to the Property or your lease to Buyer at the above address.

Very truly yours,

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_