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21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**DECLARATION OF KRISTA L.
FREITAG IN SUPPORT OF
RECEIVER'S MOTION FOR
(A) APPROVAL OF SALE OF REAL
PROPERTY LOCATED AT
132 KELLER STREET FREE AND
CLEAR OF MECHANIC'S LIEN;
AND (B) AUTHORITY TO PAY
BROKER'S COMMISSION**

Date: December 9, 2019
Time: 11:15 a.m.
Courtroom: 14A (14th Flr)
Judge: Hon. Larry Alan Burns

1 I, Krista L. Freitag, declare:

2 1. I am the Court-appointed permanent receiver for Defendant ANI
3 Development, LLC, Relief Defendant American National Investments, Inc., and their
4 subsidiaries and affiliates ("Receivership Entities"). I make this declaration in
5 support of my Motion for (A) Approval of Sale of Real Property Located at
6 132 Keller Street Free and Clear of Mechanic's Lien; and (B) Authority To Pay
7 Broker's Commission ("Motion"). I have personal knowledge of the facts stated
8 herein, and if called upon to do so, I could and would personally and competently
9 testify to them.

10 2. As reflected on Exhibit A to my Verified Initial Report (Dkt. 76-1,
11 Exhibit A), the receivership estate includes numerous residential and commercial real
12 properties. The commercial properties include a non-operating restaurant located at
13 132 Keller Street, Petaluma, California ("Keller Street Property"). The Keller Street
14 Property is approximately 5,481 square feet of restaurant space. The Keller Street
15 Property, along with the neighboring property (140 Keller Street) was purchased by
16 one of the Receivership Entities, 132 & 140 Keller Street, LLC, for \$2,900,000 on
17 November 2, 2015.

18 3. After the 132 and 140 Keller Street property was purchased, the lot,
19 which had two buildings on it – a restaurant located at 132 Keller Street and a co-
20 working office space located at 140 Keller Street – was split into two lots. The
21 restaurant closed, but the co-working office space continued to operate (and now
22 operates under my supervision).

23 4. Prior to my appointment, in September 2018, the Keller Street Property
24 (132 Keller Street only) was listed for lease on the Multiple Listing Service (MLS)
25 with a licensed broker, Keegan & Coppin Co., Inc. ("Broker"). In February 2019, the
26 Keller Street Property (including the restaurant equipment contained therein) was
27 listed on the MLS for sale with a list price of \$2,000,000. Broker reportedly toured
28 the property with prospective tenants and purchasers a total of 23 times. An offer of

1 \$1,750,000 was received in March 2019. A counter-offer in the amount of
 2 \$1,800,000 was made and accepted. It is important to note that the sale of the liquor
 3 license associated with the Keller Street Property is not a part of this transaction. A
 4 Standard Commercial/Investment Purchase Agreement (the "Purchase Agreement")
 5 was signed and the property went into escrow on April 6, 2019. The buyer is
 6 Petaluma Restaurant Services Holdings, LLC ("Buyer").¹

7 5. At the same time the Purchase Agreement was signed, the parties
 8 entered into a lease allowing Buyer to store equipment and non-alcohol inventory at
 9 the space rent-free pending sale closing. The lease commenced upon approval of the
 10 lot split, which occurred on August 12, 2019. In June 2019, Defendant Champion-
 11 Cain, on behalf of the Seller, and Buyer executed a First Amendment, which allowed
 12 Buyer to conduct a Phase 2 environmental test at the property. In September 2019,
 13 Buyer received the Phase 2 results and approved them.

14 6. Upon my appointment and after learning of the pending sale, my team
 15 and I performed our own analysis of the value of the Keller Street Property,
 16 including review of the appraisal procured by Buyer (with an appraised value of
 17 \$1,750,000 for the property and \$50,000 for the restaurant equipment contained
 18 therein) and determined that the proposed purchase price is fair and reasonable. The
 19 Buyer and I then executed a Second Amendment to Standard
 20 Commercial/Investment Purchase Agreement ("Second Amendment") which makes
 21 Court approval of the sale a condition to closing and provides for the overbid and
 22 auction process. The Second Amendment was signed on October 11, 2019. A true
 23 and correct copy of the Purchase Agreement, including the First and Second
 24 Amendments, is attached hereto as Exhibit A.

25 7. Assuming the subject transaction closes in December 2019, the net
 26 proceeds from the sale of the Keller Street Property will be used to pay down the
 27

28 ¹ The buyer under the Purchase Agreement was initially "David Ducommun or his
 assignee" and was subsequently assigned to Buyer.

1 mortgage such that approximately \$1.1 million will be owed on the mortgage after
2 the sale closes.

3 8. The approval of the subject transaction is important given the projected
4 net sale proceeds (estimated to be in the high six figures or low seven figures with a
5 late first quarter 2020 closing) from a sale of the 140 Keller Street Property
6 (factoring in the mortgage pay down from this sale). As previously mentioned, the
7 140 Keller Street property is an operating co-working business. In anticipation of
8 listing the 140 Keller Street property for sale, my staff has met with Broker. Because
9 Petaluma is a small market (population is approximately 60,000), Broker has
10 comprehensive knowledge of the overall asset pre and post lot split, Broker has thus
11 far performed a market transaction of the sister property, and Broker has been
12 integral through the receivership transition process, I am negotiating a new listing
13 agreement and intend to proceed with marketing 140 Keller Street with Broker at
14 \$2,500,000 (subject to overbid and Court approval of the sale). This anticipated list
15 price does not include the value of the co-working business, which is currently being
16 assessed.

17 9. Finally, prior to my appointment, a contractor, Adam Lewis
18 Construction ("ALC"), performed work on the Keller Street Property and the
19 neighboring property (140 Keller Street). Then, after my appointment and after
20 being made aware of the receivership, ALC recorded a mechanic's lien on 132-
21 140 Keller Street, Petaluma, California 94952 in violation of Section XIII of the
22 Appointment Order. Through my counsel, I notified ALC that its recording of the
23 mechanic's lien violated the Appointment Order. Thus far, however, ALC has
24 refused to release the mechanic's lien.

25 10. I believe the proposed sale to Buyer pursuant to the Purchase
26 Agreement is in the best interests of the estate. The Keller Street Property was listed
27 with a licensed broker and shown to all interested parties. Offers were received,
28 terms negotiated, and the Purchase Agreement signed. I found no evidence that the

1 proposed sale is anything other than an ordinary arm's length transaction. The
2 purchase price is fair and reasonable and is supported by an appraisal that estimates
3 the value of the Keller Street Property and the personal property located therein to be
4 \$1,800,000.

5 11. With respect to Broker's commission, Broker appears to have broadly
6 marketed the Keller Street Property for sale, to include its posting on the MLS and its
7 own website. The listing agreement was entered into prior to my appointment but is
8 within industry standards for commissions paid to brokers for sales of commercial
9 properties. Accordingly, I request authorization to pay Broker the commission
10 amount in accordance with the listing agreement.

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct.

13 Executed this 30th day of October 2019, at San Diego, California.

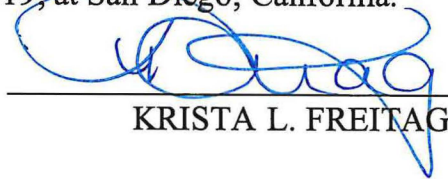
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15 KRISTA L. FREITAG
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EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
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EXHIBIT A

EXHIBIT A

STANDARD COMMERCIAL/INVESTMENT
PURCHASE AGREEMENT
(Non-Residential Or More Than Four Residential Units)

THIS FORM FOR USE
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DEFINITIONS

BROKER includes cooperating broker and all sales persons. **DAYS** means calendar days, midnight to midnight, unless otherwise specified. **BUSINESS DAY** excludes Saturdays, Sundays and legal holidays. **DATE OF ACCEPTANCE** means the date Seller accepts the offer or the Buyer accepts the counter offer, and the written acceptance is put in the course of transmission to the other party. This rule also applies to the removal of contingencies. **DELIVERED** means personally delivered, transmitted electronically in accordance with applicable laws, by a nationally recognized overnight courier, or by first class mail, postage prepaid. In the event of mailing, the document will be deemed delivered three (3) business days after deposit; in the event of overnight courier, one (1) business day after deposit; and if electronically at the time of transmission provided that a transmission report is generated and retained by the sender reflecting the accurate transmission of the document. Unless otherwise provided in this Agreement or by law, delivery to the agent will constitute delivery to the principal. **DATE OF CLOSING** means the date title is transferred. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to Buyer. **PROPERTY** means the real property and any personal property included in the sale.

AGENCY RELATIONSHIP CONFIRMATION. The following agency relationship is hereby confirmed for this transaction and supersedes any prior agency election:

LISTING AGENT: Keegan & Coppin Company, Inc. is the agent of (check one):
(Print Firm Name)

☐ the Seller exclusively; or ☒ both the Buyer and the Seller.

SELLING AGENT: Keegan & Coppin Company, Inc. (if not the same as the Listing Agent) is
the agent of (check one): (Print Firm Name)

☐ the Buyer exclusively; or ☐ the Seller exclusively; or ☒ both the Buyer and the Seller.

Note: This confirmation DOES NOT take the place of the AGENCY DISCLOSURE form (P.P. Form 110.42 CAL).

David Ducommun and/or Assignee* hereinafter designated as BUYER, offers to purchase
the real property commonly known as 132 Keller Street
Petaluma, CA 94952 006-363-024
(Street Address) (City/State/Zip) (Parcel #)
FOR THE PURCHASE PRICE OF \$ 1,750,000.00 (One Million Seven Hundred Fifty Thousand and no/100
dollars) on the following terms and conditions:

1. **FINANCING TERMS AND LOAN PROVISIONS.** (Buyer represents that the funds required for the initial deposit, additional deposit, cash balance, and closing costs are readily available.)

A. \$ 25,000.00 **DEPOSIT** evidenced by ☒ check, or ☐ other: _____
held uncashed until acceptance and not later than three (3) business days thereafter deposited towards
the purchase price with: Fidelity National Title Company - Courtney Triola

B. \$ 25,000.00 **ADDITIONAL CASH DEPOSIT** to be placed in escrow ☐ within _____ days after acceptance,
☐ upon receipt of Loan Commitment per Item 2, ☒ Other: Upon Removal of all Conditions

C. \$ 125,000.00 **BALANCE OF CASH PAYMENT** needed to close, not including closing costs.

D. \$ 1,575,000.00 **NEW FIRST LOAN:**
☐ **FIXED RATE:** For _____ years, interest not to exceed _____%, payable at approximately
\$ _____ per month (principal and interest only), with the balance due in not less than _____ years.
☐ **ARM:** For _____ years, initial interest rate not to exceed _____%, with initial monthly
payments of \$ _____ and maximum lifetime rate not to exceed _____%.
☐ Buyer will pay loan fee or points not to exceed _____.
☐ Lender to appraise property at no less than purchase price prior to loan contingency removal.
☒ **OTHER TERMS:** At Terms and Conditions Acceptable to Buyer

E. \$ _____ **EXISTING FINANCING:** ☐ **ASSUMPTION OF**, ☐ **SUBJECT TO** existing loan of record described as
follows: _____

F. \$ _____ **SELLER FINANCING:** ☐ **FIRST LOAN**, ☐ **SECOND LOAN**, ☐ **THIRD LOAN**, secured by the property.
☐ Seller Financing Addendum, P.P. Form 131.1-3 CAL, is attached and made a part of this Agreement.

G. \$ _____ **OTHER FINANCING TERMS:** _____

H. \$ 1,750,000.00 **TOTAL PURCHASE PRICE** (not including closing costs).

Buyer [Signature] and Seller [Signature] have read this page.

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*Buyer may assign contact to any entity that Buyer is a part of.

EXHIBIT A
PAGE 8

Property Address 132 Keller Street Petaluma, CA 94952**2. LOAN APPROVAL.** (Please check one of the following):A. ☐ **CONTRACT IS NOT CONTINGENT** upon Buyer obtaining a loan.B. ☒ **CONTRACT IS CONTINGENT** upon Buyer's ability to obtain a commitment for new financing, as set forth above, from a lender or mortgage broker of Buyer's choice, and/or consent to assumption of existing financing provided for in this Agreement, within 60 days after acceptance. Buyer will in good faith use his or her best efforts to qualify for and obtain the financing and will complete and submit a loan application within five (5) days after acceptance. Buyer ☐ will, ☒ will not provide a ☐ prequalification letter, or ☐ preapproval letter from lender or mortgage broker based on Buyer's application and credit report within _____ days after acceptance. In the event a loan commitment or consent is obtained but not timely honored without fault of Buyer, Buyer may terminate this Agreement.3. **BONDS AND ASSESSMENTS.** All bonds and assessments which are part of or paid with the property tax bill will be assumed by the Buyer. In the event there are other bonds or assessments which have an outstanding principal balance and are a lien upon the property, the current installment will be prorated between Buyer and Seller as of the date of closing. Future installments will be assumed by Buyer WITHOUT CREDIT toward the purchase price, EXCEPT AS FOLLOWS: _____This Agreement is conditioned upon both parties verifying and approving in writing the amount of any bond or assessment to be assumed or paid within ten (10) days after receipt of the preliminary title report or property tax bill whichever is later. In the event of disapproval, the disapproving party may terminate this Agreement.4. **PROPERTY TAX.** Within three (3) days after acceptance, Seller will deliver to Buyer for his or her approval a copy of the latest property tax bill. Buyer is advised that: (a) the property will be reassessed upon change of ownership which may result in a tax increase; and (b) the tax bill may not include certain exempt items such as school taxes on property owned by seniors. Buyer should make further inquiry at the assessor's office. Within forty five (45) days of acceptance of the tax bill, Buyer will in writing approve or disapprove the tax bill. In the event of disapproval, Buyer may terminate this Agreement.~~5. **EXISTING LOANS.** Seller will, within three (3) days after acceptance, provide Buyer with copies of all notes and deeds of trust to be assumed or taken subject to. Within five (5) days after receipt Buyer will notify Seller in writing of his or her approval or disapproval of the terms of the documents. Approval will not be unreasonably withheld. Within three (3) days after acceptance, Seller will submit a written request for a current Statement of Condition on the above loan(s). Seller warrants that all loans will be current at close of escrow. Seller will pay any prepayment charge imposed on any existing loan paid off at close of escrow. Buyer will pay the prepayment charge on any loan which is to remain a lien upon the property after close of escrow. The parties are encouraged to consult his or her lender regarding prepayment provisions and any due on sale clauses.~~6. **DESTRUCTION OF IMPROVEMENTS.** If the improvements of the property are destroyed, materially damaged, or found to be materially defective as a result of such damage prior to close of escrow, Buyer may terminate this Agreement by written notice delivered to Seller or his or her Broker, and all unused deposits will be returned. In the event Buyer does not elect to terminate this Agreement, Buyer will be entitled to receive, in addition to the property, any insurance proceeds payable on account of the damage or destruction.7. **EXAMINATION OF TITLE.** In addition to any encumbrances assumed or taken "subject to," Seller will convey title to the property subject only to: [1] real estate taxes not yet due; and [2] covenants, conditions, restrictions, rights of way and easements of record, if any.Within three (3) days after acceptance, Buyer will order a Preliminary Title Report and copies of CC&Rs and other documents of record if applicable. Within forty five (45) days of acceptance, Buyer will report to Seller in writing any valid objections to title contained in such report (other than monetary liens to be paid upon close of escrow). If Buyer objects to any exceptions to the title, Seller will use due diligence to remove such exceptions at his or her own expense before close of escrow. If such exceptions cannot be removed before close of escrow, this Agreement will terminate, unless Buyer elects to purchase the property subject to such exceptions. If Seller concludes he or she is in good faith unable to remove such objections, Seller will so notify Buyer within ten (10) days after receipt of said objections. In that event Buyer may terminate this Agreement.8. **EVIDENCE OF TITLE** will be in the form of a policy of title insurance, issued by Fidelity National Title Company, paid by ☒ Buyer, ☐ Seller, ☐ Other _____. **NOTE:** Buyer should discuss the type of policy with the title company of his or her choice at the time escrow is opened. In the event a lender requires an ALTA lender's policy of title insurance, ☐ Buyer, ☐ Seller will pay the premium.9. **PRORATIONS.** Rents, real estate taxes, interest, payments on bonds and assessments assumed by Buyer, and homeowners association fees will be prorated as of the date of recordation of the deed. Security deposits, advance rentals, or considerations involving future lease credits will be credited to Buyer.10. **CLOSING.** Full purchase price to be paid and deed to be recorded ☐ on or before _____, OR ☒ within 70 days after acceptance. If the closing date falls on a Saturday, Sunday or holiday, the close of escrow will be on the next business day. Both parties will deposit with an authorized escrow holder, to be selected by Buyer, all funds and instruments necessary to complete the sale in accordance with the terms of this Agreement. ☐ Where customary, signed escrow instructions will be delivered to escrow holder within _____ days after acceptance. Escrow fee to be paid by _____. County/City transfer tax(es), if any, to be paid by _____. Unless the transaction is exempt, the escrow holder is instructed to remit the required tax withholding amount to the Franchise Tax Board from the proceeds of sale.**THIS PURCHASE AGREEMENT TOGETHER WITH ANY ADDENDA WILL CONSTITUTE JOINT ESCROW INSTRUCTIONS TO THE ESCROW HOLDER.**Buyer [Signature] and Seller [Signature] have read this page.**CAUTION:** The copyright laws of the United States forbid the unauthorized reproduction of this form by any means including scanning or computerized formats.

Property Address 132 Keller Street Petaluma, CA 94952

- 11. PHYSICAL POSSESSION.** Physical possession of the property, with keys to all property locks, alarms, and garage door openers, will be delivered to Buyer (*check one*):
☐ On the date of recordation of the deed, not later than _____ ☐ a.m., ☐ p.m.;
☐ On the _____ day after recordation, not later than _____ ☐ a.m., ☐ p.m.
- 12. FIXTURES.** All items permanently attached to the property, including light fixtures and bulbs, attached floor coverings, all attached window coverings, including window hardware, window and door screens, storm sash, combination doors, awnings, TV antennas, burglar, fire, smoke and security alarms (unless leased), pool and spa equipment, solar systems, attached fireplace screens, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), are included in the purchase price free of liens, EXCLUDING: _____. If checked ☐ trade fixtures are not included in the sale, but Seller will pay for all costs necessary to repair any damage to the premises caused by the removal.
- 13. INSPECTIONS OF PROPERTY.** Buyer will have the right to retain, at his or her expense, licensed experts including but not limited to engineers, geologists, architects, contractors, surveyors, arborists, and structural pest control operators to inspect the property for any structural and nonstructural conditions, including matters concerning roofing, electrical, plumbing, heating, cooling, appliances, well, septic system, pool, boundaries, geological and environmental hazards, toxic substances including asbestos, mold, formaldehyde, radon gas, and lead-based paint. Buyer, if requested by Seller in writing, will promptly furnish, at no cost to Seller, copies of all written inspection reports obtained. Buyer will approve or disapprove in writing all inspection reports **obtained within fifteen (15) (or 45) days after acceptance**. In the event of Buyer's disapproval of inspection reports, or discovery of other material facts affecting the value or desirability of the property, Buyer may, within the time stated or mutually agreed upon extension, elect to terminate this Agreement, or invite Seller to negotiate repairs. (See P.P. Form 101-M, Addendum Regarding Removal of Inspection Contingencies.)
- 14. ACCESS TO PROPERTY.** Seller agrees to provide reasonable access to the property to Buyer and inspectors, appraisers, and all other professionals representing Buyer.
- 15. NOTICE OF VIOLATIONS.** By acceptance, Seller warrants that he or she has no written notice of violations relating to the property from City, County, State, Federal or any other governmental agencies.
- 16. DISABILITY ACCESS REQUIREMENTS.** The buyer is alerted to the existence of Federal and state requirements under the Americans with Disabilities Act, which may require costly structural modifications to the property. CA Civil Code Section 55.53 describes inspection by a Certified Access Specialist (CASP) to determine whether the property does or does not meet all applicable construction-related accessibility standards. Such an inspection may limit the extent of and statutory damages from ADA claims pursuant to SB 1186.
- 17. INCOME AND EXPENSE STATEMENT.** Within seven (7) days of acceptance, Seller will deliver to Buyer, for his or her approval, a true and complete statement of rental income and expenses. Within forty five (45) days of acceptance, Buyer will notify Seller in writing of his or her approval or disapproval. In case of disapproval, Buyer may terminate this Agreement.
- 18. SERVICE CONTRACTS.** Within seven (7) days of acceptance, Seller will furnish Buyer, for his or her approval copies of any service and/or equipment rental contracts with respect to the property which run beyond close of escrow. Within forty five (45) days acceptance, Buyer will notify Seller in writing of his or her approval or disapproval. In case of disapproval, Buyer may terminate this Agreement.
- 19. EXISTING LEASES.** This Agreement is subject to existing leases, and rental agreements. Within seven (7) days of acceptance, Seller will deliver to Buyer, for his or her approval, true copies of all existing leases and rental agreements, copies of all outstanding notices sent to tenants, and a written statement of any oral agreements with tenants. Seller will also deliver to Buyer, within seven (7) days of acceptance, a statement of any uncured defaults, claims made by or to tenants, and a statement of all tenants' deposits held by Seller. Seller warrants all information to be true and complete. Buyer's obligations are conditioned upon approval of existing leases and rental agreements. Within forty five (45) days of acceptance, Buyer will notify Seller in writing of his or her approval or disapproval. In case of disapproval, Buyer may terminate this Agreement. Buyer's obligations under this Agreement are further conditioned upon receipt on or before date of closing of Estoppel Certificates executed by each tenant acknowledging that a lease or rental agreement is in effect, that no lessor default exists, and stating the amount of any prepaid rent or security deposit.
- 20. CHANGES DURING TRANSACTION.** During the pendency of this transaction, Seller agrees that no changes in the existing leases or rental agreements will be made, nor new leases or rental agreements entered into, nor will any substantial alterations or repairs be made or undertaken to the property without the written consent of the Buyer.
- 21. MAINTENANCE.** Seller will maintain the property until the closing in its present condition, ordinary wear and tear excepted. The heating, ventilating, air conditioning, plumbing, elevators, loading doors, and electrical systems will be in good operating order and condition as of the time of closing.
- 22. WALK-THROUGH INSPECTION.** Buyer will have the right to conduct a walk-through inspection of the property within 10 days prior to close of escrow, to verify Seller's compliance with the provisions under Item 12, FIXTURES, and Item 20, MAINTENANCE. This right is not a condition of this Agreement, and Buyer's sole remedy for an alleged breach of these items is a claim for damages. Utilities are to remain turned on until transfer of possession.

Buyer [Signature] and Seller [Signature] have read this page.

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Property Address 132 Keller Street Petaluma, CA 94952

- 23. COMPLIANCE WITH LOCAL LAWS.** Seller will comply with any local laws applicable to the sale or transfer of the property, including but not limited to: Providing inspections and/or reports for compliance with local building and permit regulations, including septic system inspection reports; compliance with minimum energy conservation standards; and compliance with water conservation measures. All required inspections and reports will be ordered **within three (3) days after acceptance** and will be paid by ☒ Seller, ☐ Buyer. If Seller does not agree **within five (5) days after receipt of a report** to pay the cost of any repair or improvement required to comply with such laws, Buyer may terminate this Agreement. It is understood that if Seller has given notice that necessary permits or final approvals were not obtained for some improvements, Seller will not be responsible for bringing the improvements into compliance unless otherwise agreed.
- 24. OPTIONAL PROVISIONS.** The provisions in this Item 24, if initialed by Buyer are included in this Agreement.
- 24-A. [] [] MAINTENANCE RESERVE.** Seller agrees to leave in escrow a maintenance reserve in the amount of \$ _____. If, in the reasonable opinion of a qualified technician, any of the equipment listed under Item 20, MAINTENANCE, is not in working order, Buyer will furnish Seller a copy of the technician's inspection report and/or submit written notice to Seller of non-compliance of any of the terms under Item 20, MAINTENANCE, **within five (5) days after occupancy is delivered.**
In the event Seller fails to make the repairs and/or corrections **within five (5) days after receipt of said report or notice**, Seller authorizes the escrow holder to disburse to Buyer against bills for such repairs or corrections the sum of such bills, not to exceed the amount reserved. Said reserve will be disbursed to Buyer or returned to Seller **not later than fifteen (15) days after date occupancy is delivered.**
- 24-B. [] [] FLOOD HAZARD ZONE.** Buyer has been advised that the property is located in a special flood hazard area designated by the Federal Emergency Management Agency (FEMA). It will be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information consult your lender or insurance carrier.
- 24-C. [] [] EARTHQUAKE FAULT OR SEISMIC HAZARD ZONE DISCLOSURES.** The property is situated in a Earthquake Fault Zone or Seismic Hazard Zone as designated under §§2621-2625 and §§2690-2699.6 of the California Public Resources Code. Construction or development of any structure for human occupancy may be restricted. No representations on the subject are made by Seller or Broker. Buyer may make further independent inquiries at appropriate governmental agencies concerning the use of the property under the terms of the above statutes. **Within seven (7) days after acceptance**, Buyer will notify Seller in writing of satisfaction or dissatisfaction of said inquiries. In case of dissatisfaction Buyer may terminate this Agreement.
- 24-D. [] [] PROBATE/CONSERVATORSHIP SALE.** Pursuant to the California Probate Code, this sale is subject to court approval at which time the court may allow open competitive bidding. An "AS IS" Addendum (P.P. Form 101-AI) ☐ is, ☐ is not attached and made a part of this Agreement.
- 24-E. [] [] RENT CONTROL ORDINANCE.** Buyer is aware that a local ordinance is in effect which regulates the rights and obligations of property owners. It may also affect the manner in which future rents can be adjusted.
- 24-F. [] [] TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY).** In the event that Seller wishes to enter into a tax deferred exchange for the property, or Buyer wishes to enter into a tax deferred exchange with respect to property owned by him or her in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to complete the exchange; provided that: (a) the other party will not be obligated to delay the closing; (b) all additional costs in connection with the exchange will be borne by the party requesting the exchange; (c) the other party will not be obligated to execute any note, contract, deed or other document providing for any personal liability which would survive the exchange; and (d) the other party will not take title to any property other than the property described in this Agreement. It is understood that a party's rights and obligations under this Agreement may be assigned to a third party intermediary to facilitate the exchange. The other party will be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the exchange.
- 24-G. [] [] PERSONAL PROPERTY.** The purchase price includes all furniture and furnishings and any other personal property owned by Seller and used in the operation of the property per attached signed inventory, receipt of which is hereby acknowledged. This inventory is incorporated by reference. The personal property will be transferred to Buyer by a Warranty Bill of Sale **delivered at closing.**
- 25. DEFAULT.** In the event Buyer defaults in the performance of this Agreement (unless Buyer and Seller have agreed to liquidated damages), Seller may, subject to any rights of Broker, retain Buyer's deposit to the extent of damages sustained and may take such actions as he or she deems appropriate to collect such additional damages as may have been actually sustained. Buyer will have the right to take such action as he or she deems appropriate to recover such portion of the deposit as may be allowed by law. In the event that Buyer defaults (unless Buyer and Seller have agreed to liquidated damages) Buyer agrees to pay the Broker(s) any commission that would be payable by Seller in the absence of such default.

Buyer [Signature] and Seller [Signature] have read this page.

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Page 4 of 7
FORM 101-C.4 CAL (03-2016) COPYRIGHT BY PROFESSIONAL PUBLISHING LLC, NOVATO, CA

Form generated by: TrueForms™ 800-499-9612



Property Address 132 Keller Street Petaluma, CA 94952

26. **ATTORNEY FEES.** In any action arbitration, or other proceeding involving a dispute between Buyer and Seller arising out of the execution of this Agreement or the sale, whether for tort or for breach of contract, and whether or not brought to trial or final judgment, the prevailing party will be entitled to receive from the other party a reasonable attorney fee, expert witness fees, and costs to be determined by the court or arbitrator(s).
27. **EXPIRATION OF OFFER.** This Offer will expire unless acceptance is delivered to Buyer or to Keegan & Coppin Company, Inc. - Brian Keegan (Buyer's Broker) on or before (date) March 22, 2019 (time) 5:00 ☐ a.m. ☒ p.m.
28. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original.
29. **CONDITIONS SATISFIED/WAIVED IN WRITING.** Each condition or contingency, covenant, approval or disapproval will be satisfied according to its terms or waived by written notice delivered to the other party or his or her Broker.
30. **TIME.** Time is of the essence of this Agreement; ~~provided, however, that if either party fails to comply with any contingency in this Agreement within the time limit specified, this Agreement will not terminate until the other party delivers written notice to the defaulting party requiring compliance within 24 hours after receipt of notice. If the party receiving the notice fails to comply within the 24 hours, the non-defaulting party may terminate this Agreement without further notice.~~

31. **LIQUIDATED DAMAGES.** By initialing in the spaces below,

DS W P Buyer agrees ☐ ☐ Buyer does not agree
GL ☐ Seller agrees ☐ ☐ Seller does not agree

that in the event Buyer defaults in the performance of this Agreement, Seller will retain as liquidated damages the deposit set forth in Items 1-A and 1-B, and that said liquidated damages are reasonable in view of all the circumstances existing on the date of this Agreement. In the event of additional deposit(s) required under Item 1-B, the parties will execute a similar liquidated damages provision as required by law. In the event that Buyer defaults and has not made the deposit required under Item 1-B or refuses to execute the liquidated damages provision with respect to such additional deposit, then Seller will have the option of retaining the initial deposit or terminating the obligations of the parties under this Item 30 and recovering such damages from Buyer as may be allowed by law. The parties understand that in case of dispute mutual cancellation instructions are necessary to release funds from escrow or trust accounts.

32. **MEDIATION OF DISPUTES.** If a dispute arises out of or relates to this Agreement or its breach, by initialing in the "agree" spaces below the parties agree to first try in good faith to settle the dispute by voluntary mediation before resorting to court action or arbitration, unless the dispute is a matter excluded under Item 33 - ARBITRATION. The fees of the mediator will be shared equally between all parties to the dispute. If a party initials the "agree" space and later refuses mediation, that party will not be entitled to recover prevailing party attorney fees in any subsequent action.

DS W P Buyer agrees ☐ ☐ Buyer does not agree
GL ☐ Seller agrees ☐ ☐ Seller does not agree

33. **ARBITRATION OF DISPUTES.** Any dispute or claim in law or equity arising between the Buyer and Seller out of this Agreement will be decided by neutral binding arbitration in accordance with the California Arbitration Act (C.C.P. §1280 et seq.), and not by court action except as provided by California law for judicial review of arbitration proceedings. If the parties cannot agree upon an arbitrator, a party may petition the Superior Court of the county in which the property is located for an order compelling arbitration and appointing an arbitrator. Service of the petition may be made by first class mail, postage prepaid, to the last known address of the party served. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The parties will have the right to discovery in accordance with Code of Civil Procedure §1283.05.

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is concluded within one (1) day, the Tentative Award may be made orally at the hearing in the presence of the parties. Within 15 days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are filed, the Tentative Award will become final without further action by the parties or arbitrator. Within thirty (30) days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

Buyer DS W P and Seller GL ☐ have read this page.

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Property Address

132 Keller Street

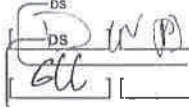
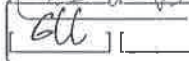
Petaluma, CA 94952

The provisions of the Code of Civil Procedure authorizing the imposition of sanctions as a result of bad faith actions or tactics will apply to the arbitration proceedings, provided, however, that the arbitrator shall not have the power to commit errors of law, errors of legal reasoning, or rely upon unsupported findings of fact in imposing sanctions for any reason against a party or a party's attorney. In the event such error is claimed, the applicable sanctions may be vacated or corrected on appeal to a court of competent jurisdiction for any such error. A prevailing party will also be entitled to an action for malicious prosecution if the elements of such cause of action are met.

The following matters are excluded from arbitration: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or real property sales contract as defined in Civil Code §2985; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court, bankruptcy court, or small claims court; or (e) an action for bodily injury or wrongful death. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, will not constitute a waiver of the right to arbitrate under this provision.

NOTICE: By initialing in the ["agree"] space below you are agreeing to have any dispute arising out of the matters included in the "Arbitration of Disputes" provision decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the ["agree"] space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in the "Arbitration of Disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "Arbitration of Disputes" provision to neutral arbitration.


 Buyer agrees ☐ Buyer does not agree ☐
 Seller agrees ☐ Seller does not agree ☐

34. **SURVIVAL.** The omission from escrow instructions of any provision in this Agreement will not waive the right of any party. All representations or warranties will survive the close of escrow.
35. **ENTIRE AGREEMENT/ASSIGNMENT PROHIBITED.** This document contains the entire agreement of the parties and supersedes all prior agreements with respect to the property which are not expressly set forth. This Agreement may be modified only in writing signed and dated by both parties. Buyer may not assign any right under this agreement without the prior written consent of Seller. Any such assignment will be void and unenforceable.
36. **ADDENDA.** The following addenda are attached and made a part of this Agreement:
- ☒ Addendum ~~No.~~ Standard Commercial Building Purchase Conditions Addendum; Standard Sale Disclosure Addendum;
- ☒ Addendum ~~No.~~ Sale Disclosure and Confirmation Regarding Real Estate Agency Relationship

NOTICE: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at <http://www.meganslaw.ca.gov>. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

LIMITATION OF AGENCY: A real estate broker or agent is qualified to advise on real estate. If you have any questions concerning the legal sufficiency, legal effect, insurance, or tax consequences of this document or the related transactions, consult with your attorney, accountant or insurance advisor.

The undersigned Buyer acknowledges that he or she has thoroughly read and approved each of the provisions of this Offer and agrees to purchase the property for the price and on the terms and conditions specified.

DocuSigned by:
 Buyer  Date 3/19/2019 | 2:13 PM PDT Time _____
 B1D1191659A045D...

Buyer _____ Date _____ Time _____

Address _____

Buyer  and Seller  have read this page.

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Property Address 132 Keller Street Petaluma, CA 94952**ACCEPTANCE****Seller accepts the foregoing Offer and agrees to sell the property for the price and on the terms and conditions specified.****NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between the Seller and Broker.****37. COMMISSION.** Seller agrees to pay in cash the following real estate commission for services rendered, which commission Seller hereby irrevocably assigns to Broker(s) from escrow:3% of the accepted price, or \$, to the listing broker: Keegan & Coppin Company, Inc.,and 3% of the accepted price, or \$, to the selling broker: Keegan & Coppin Company, Inc.

without regard to the agency relationship. Escrow instructions with respect to commissions may not be amended or revoked without the written consent of the Broker(s).

If Seller receives liquidated or other damages upon default by Buyer, Seller agrees to pay Broker(s) the lesser of the amount provided for above or one half of the damages after deducting any costs of collection, including reasonable attorney fees without prejudice to Broker's rights to recover the balance of the commission from Buyer. Commission will also be payable upon any default by Seller, or the mutual rescission by Buyer and Seller without the written consent of the Broker(s), which prevents completion of the purchase. This Agreement will not limit the rights of Broker and Seller provided for in any existing listing agreement.

In any action for commission the prevailing party will be entitled to reasonable attorney fees, whether or not the action is brought to trial or final judgment.

38. PROVISIONS TO BE INITIALED. The following items must be "agreed to" by both parties to be binding on either party. In the event of disagreement, Seller should make a counter offer.**Item 31. LIQUIDATED DAMAGES Item 32. MEDIATION OF DISPUTES Item 33. ARBITRATION OF DISPUTES****Seller acknowledges receipt of a copy of this Agreement. Authorization is given to the Broker(s) in this transaction to deliver a signed copy to Buyer. Members ☐ may ☐ may not disclose the terms of purchase to members of a Multiple Listing Service, Board or Association of REALTORS® at close of escrow.****39. IF CHECKED ☒ ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER DATED 3/25/2019**DocuSigned by:
Seller Gina Champion-Cain
738521BF7E074C7... (Signature)
Gina Champion-Cain
(Please Print Name)Seller _____
(Signature)

(Please Print Name)Date 3/25/2019 Time _____
Address 3515 Hancock Street, Suite 200
San Diego, CA 92110Date _____ Time _____

_____**Information Regarding Real Estate Licensees Acting As Agents In This Transaction:**Selling Broker Keegan & Coppin Company, Inc. BRE License # 00531022By _____ License # 01809537 Date _____
(Real Estate Agent for Buyer) Brian KeeganAddress 1355 North Dutton Avenue #100 City/State/Zip Santa Rosa, CA 95401Telephone 707-528-1400 Fax 707-524-1419 E-Mail BKeegan@KeeganCoppin.comListing Broker Keegan & Coppin Company, Inc. BRE License # 00531022DocuSigned by:
By Sara Wann License # 01437146 Date 3/25/2019
(Real Estate Agent for Seller) Sara WannAddress 1201 N. McDowell Blvd. City/State/Zip Petaluma, CA 94954Telephone 707-664-1400 Fax 707-792-7336 E-Mail SWann@KeeganCoppin.com**Note that neither the Real Estate Brokers nor the Real Estate Agents are parties to the Purchase Agreement between the Buyer and Seller.**

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STANDARD COMMERCIAL BUILDING PURCHASE CONDITIONS ADDENDUM
To Purchase Agreement by and between
Buyer David Ducommun and/or Assignee and Seller 132 & 140 Keller Street LLC
For Property located at 132 Keller Street, Petaluma, CA 94952

Buyer shall conduct a complete feasibility and investigation of the subject property to determine if property is suitable for Buyer's intent, as a property to occupy or as an investment, including but not limited to the following:

Buyer to diligently proceed to satisfy conditions, however, final approval or disapproval is to buyer's discretion. This shall include existing information provided by seller and other reports prepared by buyer's experts.

1. This offer is subject to the following conditions precedent:
 - A. **Physical Condition:** Buyer and/or his contractor to inspect and approve the subject property with respect to all mechanical and electrical systems – HVAC, plumbing, power, telecom, lighting, cable – and roof, walls, structural integrity, foundation, drainage, site improvements, utility services to building, seismic bracing, termites, hazardous waste, mold, moisture or leaks which could lead to mold, soils and general physical integrity within forty five (45) days of acceptance hereof.
 - B. **Zoning:** Buyer to verify to his satisfaction, zoning, General Plan consistency, obtain a use permit if required, and zoning compliance within forty five (45) days of acceptance hereof. Buyer to approve AIR Natural Hazards Statement or a professional Natural Hazards Report within forty five (45) days of acceptance hereof.
 - C. **Size of Property and Building:** Buyer to verify to his satisfaction the Property boundaries, Building floor area (square feet), and land area (acres or square feet) within forty five (45) days of acceptance hereof.
 - D. **Title Report:** Buyer to review and approve title report including all exceptions, easements, right-of-ways, assessments and liens within forty five (45) days of acceptance hereof. Seller shall remove any exceptions which are not acceptable to the Buyer prior to close of escrow. If exception is unable to be removed at a reasonable cost and time by Seller, then Seller or Buyer may cancel contract if Buyer does not accept subject exception.
 - E. **Environmental and Biological Issues:** Buyer and Seller acknowledge attached “**Disclosure Regarding Hazardous Waste**”. Buyer shall obtain and approve reports from experts in connection with any disclosure or evidence of such hazardous material within forty five (45) days of acceptance hereof. If Buyer and Seller do not elect to share or separately pay for removal or cleanup, then this offer shall terminate.
Buyer to review and approve issues concerning endangered species, wetlands, CTS, special status of plant species and Hydrologic conditions, if applicable within forty five (45) days of acceptance hereof.
 - F. **Pest Control:** Buyer to obtain a pest control inspection report for any perimeter foundation or wood frame buildings or at Buyer's option for others. Buyer to review and approve said report within forty five (45) days of acceptance hereof, including infestation and preconditions.
 - G. **Income and Expenses:** Buyer to review and approve operating profit/loss statements, financials, tax returns and all income and expenses, including taxes, insurance, utilities, maintenance, repairs, tenant reimbursement, capital outlays for the subject property for the last three (3) years within forty five (45) days of acceptance hereof.

Buyer's Initials DS DWB Seller's Initials DS GLL

- H. **CC&R's:** Buyer to review and approve the CC&R's, bylaws, articles of incorporation and current budget for any homeowners association within forty five (45) days of acceptance hereof.
- I. **Standard Sale Disclosure:** Buyer and Seller acknowledge attached "**Standard Sale Disclosure Addendum**". Buyer shall obtain and approve reports from experts in connection with any disclosure or evidence of such hazardous material or mold or any indication of mold infestation within forty five (45) days of acceptance hereof. If Buyer and Seller do not elect to share or separately pay for removal or cleanup, then this offer shall terminate.
- J. **Statement of Property Conditions:** Buyer to review and approve all of the items of the attached "**Statement of Property Condition**" within forty five (45) days of acceptance hereof.
- K. **Loan Commitment:** Buyer to obtain a written loan commitment and funding on terms and conditions acceptable to Buyer within sixty (60) days of acceptance hereof subject to the loan clause in the body of this agreement.
- L. **Property and Liability Insurance:** Buyer to be able to obtain property and liability insurance for the subject property at a rate deemed to be reasonable by Buyer. Buyer to obtain a written commitment for property and liability insurance for the subject property at rates acceptable to Buyer within forty five (45) days of acceptance hereof.
- M. **Liquor License:** Buyer and Seller shall negotiate the purchase of Seller's type 47 liquor license as a separate transaction from the purchase of the property within forty five (45) days of acceptance hereof.

If any of the above conditions are not satisfied and approved in writing or waived by the Buyer in writing in the times stipulated above, then either Buyer or Seller may terminate this Agreement and the initial deposit shall be returned to Buyer with no further liability to either party hereunder. If Professional Publishing form is used, strike Paragraph 30 in its entirety except "Time is of the essence of this Agreement." Paragraphs 4, 5, 7, 17, 18 and 19 shall all be changed to provide info within seven (7) days of acceptance and approve/disapprove within forty five (45) days of acceptance or be consistent with time frame herein. Paragraph 13 of PP form to have same time frame as paragraph 1A herein. This Addendum is precedent for time periods and conditions over the Professional Publishing printed form.

- 2. Seller to deliver to Buyer the following existing reports and information within the times stipulated below in order to facilitate Buyer's due diligence:
 - A. **Statement of Property Condition** completed and signed by Seller and agents and **Commercial Property Owner's Guide to Earthquake Safety** within ten (10) days of acceptance hereof.
 - B. A.I.R. Seller's Mandatory Disclosure (Natural Hazards) Statement or a Natural Hazards Report within fifteen (15) days of acceptance hereof.
 - C. All studies, approvals or reports previously obtained by Seller or in the possession of Seller including environmental studies, pest control investigations, well reports, code violations-orders, building reports, survey of property, appraisals plans, specifications, soils reports, title reports, CC&R's, Association budget, archaeological, wetlands, biotic, structural or seismic reports, entitlements, approvals, building permits or any hazardous waste reports or agreements, design review or use permits within seven (7) days of acceptance hereof.
 - D. Operating profit and loss statements and tax returns and support information for the last three years

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including capital outlays, maintenance, utilities, repairs, income, taxes and insurance itemized within seven (7) days of acceptance hereof.

- E. Seller to provide copies of all agreements, operating leases, rental agreements, corresponding addendums, contracts, vendor agreements, lease notices, lease modifications within seven (7) days of acceptance hereof.
 - F. Seller to provide Buyer with copies of all loan documents, encumbrances, trust deeds, beneficiary statement if loan is being assumed, and any other information pertaining to the existing financing of the subject project within seven (7) days of acceptance hereof.
3. Seller shall permit Buyer and Buyer's agents, employers, contractors with reasonable notice to enter into and upon the property to inspect property and to conduct, at Buyer's sole expense, surveys, soils, structural, environmental, building, seismic, wetlands, biotic and other investigations at Buyer's discretion to complete Buyer's due diligence.

Buyer agrees to keep property free of liens and claims arising out of said investigations and to defend, indemnify and hold harmless Seller from any claims or actions arising out of Buyer's inspection, conduct of investigations or testing of Seller's property. Buyer agrees to repair and replace and bring back to original condition and pay for any damage arising out of said inspections and expert investigations and give a copy of the reports, studies, inspection reports so obtained during the investigation to the Seller. Buyer's obligation under this paragraph shall survive any termination of this Agreement.

4. **BUYER'S REPRESENTATIONS:** The party executing this agreement on behalf of Buyer has full power to execute, deliver and carry out terms and provisions of this agreement and any of the other agreements, instruments and documents herein required to be made or delivered by Buyer pursuant hereto.

Buyer has not made a general assignment for benefit of creditors, filed a voluntary petition of bankruptcy, suffered the filing of creditors, a receiver, attachment or other judicial service of assets and has a sound financial standing in order to make the proposed acquisition.

5. **SELLER'S REPRESENTATIONS:** Seller has received no notice of and, except as disclosed in writing, to the best of Seller's knowledge, there is no violation of any local, state or federal government agency, including environmental, zoning, handicap, fire hazard, ordinance, code, regulations, rule or order. Seller has no knowledge of threatened, pending or proposed condemnation, taking proceedings or governmental actions to modify the zoning or condition, or purchase in lieu, for all or any part of property.

To the best of Seller's knowledge, there has been no release, storage or disposal of hazardous materials on the property during the pendance of Seller's ownership of the subject property except as disclosed in writing herein.

Buyer is advised by Seller to undertake a full due diligence study of the property including test, investigations, and expert reports to determine the suitability of the property for Buyer's use and determine the actual economic, physical and entitlements aspect of the property.

Seller has no knowledge of pending or threatened litigation or governmental proceedings, except as disclosed in writing herein, affecting Seller or the property that relates to the enforcement of this

Buyer's Initials DS DW Seller's Initials DS GU

agreement. The consummation of this contract shall not constitute a violation or breach by Seller of any contract or instrument or will result in the violation of any law, order or regulation of any governmental authority affecting the Seller.

Seller is the owner in fee simple of property and the party signing hereto has the full right, power and authority to enter into this agreement and to execute all documents required hereto.

Seller is not a foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1954 (IRC), i.e. The Seller is not a non-resident, alien, foreign corporation, foreign partnership, foreign trust or foreign state as those terms are defined in the IRC and income tax representation.

6. Seller to assign and Buyer to accept all the Seller's deposits, right, title, interest, liabilities and obligations in all of the leases pertaining to the subject property prior to the close of escrow.
7. Seller shall convey to Buyer at close of escrow fee simple title to the property by grant deed subject to the exceptions set forth in the approval of the title report. Title shall be insured by a CLTA or at Buyer's option, an ALTA title insurance policy, either at Buyer's expense.

The terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors, assigns, heirs and legal representatives.

All of the terms and provisions of this Agreement shall survive the close of escrow and not merge with the execution and delivery of the grant deed.

Buyer and Seller are advised to have their respective attorneys review and approve this agreement prior to signing.

AGREED BY:

Buyer:  DocuSigned by: _____ Date: 3/19/2019 | 2:13 PM PDT
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AGREED BY:

Seller:  DocuSigned by: _____ Date: 3/25/2019
738521BF7E074C7...

STANDARD SALE DISCLOSURE ADDENDUM

Certified Access Specialist Disclosure

Pursuant to California Civil Code Section 1938 the subject property has ____ has not X been inspected by a "Certified Access Specialist". If subject property has been inspected, the property ____ has ____ has not been determined to meet all applicable construction related accessibility standards pursuant to California Civil Code Section 55.53.

Notice to Owners, Buyers and Tenants Regarding Hazardous Wastes or Substances and Underground Storage Tanks

Comprehensive federal and state laws and regulations have been enacted in the last few years in an effort to develop controls over the use, storage, handling, cleanup, removal and disposal of hazardous wastes or substances. Some of these laws and regulations, such as, for example, the so-called "Super Fund Act", provide for broad liability schemes wherein an owner, tenant or other user of the property may be liable for cleanup costs and damages regardless of fault. Other laws and regulations set standards for the handling of asbestos or establish requirements for the use, modification, abandonment, or closing of underground storage tanks.

It is not practical or possible to list all such laws and regulations in this Notice. Therefore, Seller and Buyer; are urged to consult legal counsel to determine their respective rights and liabilities with respect to the issues described in this Notice as well as other aspects of the proposed transaction. If various materials that have been or may be in the future determined to be toxic, hazardous or undesirable, or are going to be used, stored, handled or disposed of on the property, or if the property has or may have underground storage tanks for storage of such hazardous materials, or that such materials may be in the equipment, improvements or soil, it is essential that legal and technical advice be obtained to determine, among other things, what permits and approvals have been or may be required, if any, the estimated costs and expenses associated with the use, storage, handling, cleanup, removal or disposal of the hazardous wastes or substances and what contractual provisions and protection are necessary or desirable. It may also be important to obtain expert assistance for site investigations and building inspections. The past uses of the property may provide valuable information as to the likelihood of hazardous wastes or substances, or underground storage tanks being on the property.

The term "hazardous wastes or substances" is used in this Notice in its very broadest sense and includes, but is not limited to, all those listed under Proposition 65, petroleum base products, paints and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property. This Notice is, therefore, meant to apply to any transaction involving any type of real property, whether improved or unimproved.

You should contact a professional, such as a civil engineer, geologist, industrial hygienist or other persons with experience in these matters to advise you concerning the property.

Americans with Disabilities Act (ADA)

On July 26, 1990, the federal legislation known as the Americans with Disabilities Act (ADA) was signed into law by President Bush. The purpose of the ADA is to integrate persons with disabilities into the economic and social mainstream of American life. Title III of the ADA applies to Buyers and Sellers of "places of public accommodation" and "commercial facilities", and requires that places of public accommodation undertake "readily achievable" removal of communication and access barriers to the disabled. This requirement of Title III of the ADA is effective January 26, 1992.

It is important that building owners identify and undertake "readily achievable" removal of any such barriers in the common areas, sidewalks, parking lots and other areas of the building under their control.

The Seller and Buyer are responsible for compliance with ADA relating to removal of barriers within the workplace i.e., arrangement of interior furnishings and access within the premises, and any improvements installed by lessor and lessee.

Keegan & Coppin Company, Inc. recommends that both parties seek expert advice regarding the implications of the Act as it affects this agreement.

Natural Hazards Disclosure Act:

"The property which is the subject of this contract may be situated in a Special Study Zone as designated under the Natural Hazards Disclosure Act, inclusive, of the California Public Resources Code; and, as such, the construction or development on this property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered in the State of California, unless such report is waived by the City or County under the terms of that act. No representations on the subject are made by the Seller or Agent, and the Buyer should make his own inquiry or investigation".

Flood Hazard Area Disclosure:

The subject property may be situated in a "Special Flood Hazard Area" as set forth on a Federal Emergency Management Agency (FEMA) "Flood Insurance Rate Map" (FIRM) or "Flood Hazard Boundary Map" (FHBM). The law provides that, as a condition of obtaining financing on most structures located in a "Special Floods Hazard Area", lender requires flood insurance where the property or its attachments are security for a loan. Buyer should consult with experts concerning the possible risk of flooding.

Toxic Mold Disclosure (Pursuant to the Toxic Mold Protection Act of 2001)

The Toxic Mold Protection Act of 2001 requires any person who sells, transfers or rents residential, commercial or industrial property to disclose if they have ACTUAL KNOWLEDGE of a mold condition on the property. The law also requires the California Department of Health Services to identify tolerable exposure limits and develop guidelines for toxic mold identification and remediation. Property owners will be required to provide a more detailed disclosure on toxic mold once the Department of Health Services develops and adopts standards for identifying, measuring and remediating toxic mold.

The Toxic Mold Protection Act of 2001 does NOT require that a property owner have their property tested for toxic mold. It also does NOT require that an agent investigate a property for toxic mold. Property owners only need to disclose any ACTUAL KNOWLEDGE of a mold condition on their property until the above mentioned guidelines are developed and approved. Buyers are advised to obtain a professional assessment of the mold condition of the subject property prior to the close of escrow.

Disclosure

Keegan & Coppin Co., Inc. has made no independent investigation regarding the present or future use or zoning of the Property: ADA-related issues, matters relating to Hazardous Materials, or the compliance of the Property with the Occupational Safety and Health Act or any other federal, state, county or municipal Law. Broker has not investigated, and is not qualified to provide any opinion about the structural, mechanical, or soils conditions of the Property. Broker has not independently verified the size, measurements, or boundaries of the Property, and any representation thereof is made solely based upon information provided to Broker, which Broker deems reliable but does not warrant to be accurate. You should consult your advisors on these matters. Buyer agrees to make its own investigation and determination regarding all matters affecting the value, condition, utility, size, compliance with Laws, and all aspects of the Property's suitability for Buyer's intended use.

ACKNOWLEDGED AND AGREED BY:

Buyer: 
B1D1191659A045D...

Date: 3/19/2019 | 2:13 PM PDT

Seller: 
73B521BF7E074C7

Date: 3/25/2019

SALE DISCLOSURE AND CONFIRMATION REGARDING REAL ESTATE AGENCY RELATIONSHIP

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction. With each specific transaction, you should read the Agency Disclosure and consider how you are being represented.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller. A Seller's agent or a subagent of that agent has the following affirmative obligations:

- To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.
To Buyer and Seller: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

BUYER'S AGENT

An agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

- To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.
To Buyer and Seller: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honest and loyalty in the dealings with either Seller or Buyer.
(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listed price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive of the Civil Code set forth on the reverse hereof. Read it carefully.

We acknowledge receipt of a copy of this disclosure:

Seller Gina Champion-Lain Date 3/25/2019
738521BF7E074C7...
Seller DocuSigned by: Date
Agent Sara Wann Date 3/25/2019
E2CBBBA2F5244CD...

Buyer DocuSigned by: Date 3/19/2019 | 2:13 PM PDT
B1D1191859A045D...
Buyer _____ Date _____
Agent _____ Date _____

CONFIRMATION OF AGENCY

We authorize the following agency:

Keegan & Coppin Company, Inc. is the agent of: (Check one)
(Name of Seller's Agent)
____ The Seller exclusively; or
☒ Both the Buyer and Seller

Keegan & Coppin Company, Inc. is the agent of: (Check one)
(Name of Buyer's Agent if not the same as Seller's Agent)
____ The Buyer exclusively; or
____ The Seller exclusively; or
☒ Both the Buyer and Seller

CONFIRMED AND AUTHORIZED:

Seller Gina Champion-Lain Date 3/25/2019
738521BF7E074C7...
Seller DocuSigned by: Date
Agent for Seller Sara Wann
Lic. # 01437146 E2CBBBA2F5244CD...

CONFIRMED AND AUTHORIZED:

Buyer DocuSigned by: Date 3/19/2019 | 2:13 PM
B1D1191859A045D...
Buyer _____ Date _____
Agent for Buyer Brian Keegan
Lic. # 01809537

PROPERTY ADDRESS: 132 Keller Street, Petaluma, CA 94952

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

- (a) "Agent" means a person acting under provisions of Title 9 (commencing with section 2295) in a real property transaction, and includes a person who is licensed as a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions code, and under whose license a listing is executed or an offer to purchase is obtained.
- (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee.
- The agent in the real property transaction bears responsibility for his or her associate licensee who perform as agents of the agent. When as associate licensee owes a duty to any principal, or to transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.
- (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee.
- (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29.
- (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction.
- (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer.
- (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation.
- (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent.
- (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.
- (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller.
- (k) "real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business of Professions Code.
- (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.
- (m) "Sell," "sale" or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of leasehold exceeding one year's duration.
- (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property or which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor.
- (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller.
- (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5(commencing with Section 2349) of Chapter 1 of title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in real property transaction.

2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure from specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows:

- (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.
- (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a).
- (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller as his or her last known address, in which case no signed acknowledgement of this receipt is required.
- (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement or receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for the agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

- 2079.17. (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively.
- (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.
- (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

_____ is the agent of	_____ is the agent of
(Name of Listing Agent)	(Name of Selling Agent if not the same as the Listing Agent)
(Check one)	(Check one)
<input type="checkbox"/> the seller exclusively; or	<input type="checkbox"/> the buyer exclusively; or
<input type="checkbox"/> both the buyer and seller.	<input type="checkbox"/> the seller exclusively; or
	<input type="checkbox"/> both the buyer and seller

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20. Nothing in this article prevents and agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21. A dual agent shall not disclose to buyer that the seller is willing to sell the property as a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer.

This section does not alter in any way the duty of responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.


- 2079.23. (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.
- (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

ADDENDUM

1) Additional Information (continued)

6. The timelines as noted in 3, 4 and 5 above replace any language, in the Purchase Agreement and the Standard Commercial Building Purchase Conditions Addendum, relating to inspections, removal of conditions and Close of Escrow.
7. Item 2b: Buyer to provide either a prequalification letter from Buyer's lender or financial statements showing sufficient amounts to purchase the building within five (5) days after acceptance.
8. Item 1A & Item 8: Title company to be Chicago Title Company - Della DuCharme (Escrow) 701 B Street Ste 1120 San Diego, CA 92101 & Tom Schweibert (Title) 2365 Northside Dr #600 San Diego, CA 92108
9. Item 8: In the event the lender requires an ALTA policy of title insurance, Buyer will pay the premium.
10. Item 10: Escrow fee to be paid by Buyer. County/City transfer tax(es), if any, to be paid by Seller.
11. Item 11: Physical possession to be delivered to Buyer on the date of recordation of the deed, not later than 5pm.
12. Item 24-G: The purchase price will include the existing furniture, fixtures and equipment. Seller to provide Buyer a list of included items within 7 days after acceptance.
13. Item 1M of the Standard Commercial Building Purchase Conditions Addendum: Item 1M is stricken in its entirety.

Buyer Initials: 
Seller Initials: 

COUNTER OFFER Number 1

In response to the Offer concerning the property located at 132 Keller Street
Petaluma, CA 94952 APN# 006-363-024 made by, David Ducommun and/or Assignee, Buyer,
dated March 19, 2019 **the following Counter Offer is submitted:**

1. Purchase Price to be \$1,800,000.00
 2. Subject Property is currently a part of Parcel #006-363-024 which is shared with 140 Keller Street. Seller is in the process of performing a lot split which is estimated to be completed by August 1, 2019.
 3. Buyer to perform all inspections and remove all conditions (with the exception of Title, Loan Contingency and Lot Split Completion) within three (3) days after the City of Petaluma signs off on the building permit, recognizing completion of the physical construction necessary for the lot split, estimated to be June 1, 2019.
 4. Buyer to remove the Title review Contingency, the Loan Commitment Contingency and the Legal Lot Split Completion Contingency within fourteen (14) days after the completion of the legal lot split and assignment of an APN to 132 Keller St. Legal lot split is estimated to be completed by August 1, 2019.
 5. Buyer to Close Escrow within thirty (30) days after the completion of the legal lot split and assignment of an APN to 132 Keller St.
- See addendum 1 - Additional Information (continued)

OTHER TERMS: All other terms to remain the same.

RIGHT TO ACCEPT OTHER OFFERS: Seller reserves the right to accept any other offer prior to Buyer's written acceptance of this Counter Offer. Acceptance shall not be effective until a copy of this Counter Offer, dated and signed by Buyer, is received by Seller or Sara Wann Lic #01437146, the Agent of the Seller.

EXPIRATION: This Counter Offer shall expire unless written acceptance is delivered to Seller or his or her Agent on or before 5:00 ☐ a.m., ☒ p.m., on (date) March 27, 2019.

DocuSigned by:
Seller Gina Champion-Cain Date 3/25/2019 Time _____
132 & 140 Keller Street, LLC Gina Champion-Cain
738521BF7E074C7...

Seller _____ Date _____ Time _____

ACCEPTANCE

The undersigned Buyer accepts the above Counter Offer (if checked ☒, subject to the attached Counter to Counter Offer Number 2).

DocuSigned by:
Buyer David Ducommun Date 3/25/2019 | 4:21 PM Time _____
B1D1191659A045D...

Buyer _____ Date _____ Time _____

Receipt of acceptance is acknowledged.

Seller _____ Seller _____
132 & 140 Keller Street, LLC Gina Champion-Cain

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Date _____

PROFESSIONAL PUBLISHING LLC

COUNTER TO COUNTER OFFER Number 2

In response to the Counter Offer concerning the property located at 132 Keller Street
Petaluma, CA 94952; APN 006-363-024 made by, 132 & 140 Keller Street, LLC - Gina Champion-Cain, Seller,
dated March 19, 2019, the following counter to counter offer is submitted:

As a condition of the purchase of the property, the Buyer and Seller shall negotiate a short term lease prior to the Removal of Conditions outlined in paragraph 3 of Counter Offer Number 1, within three (3) days after the City of Petaluma signs off on the building permit estimated to be June 1, 2019. The Lease shall be rent free and shall commence upon removal of said conditions outlined in paragraph 3 of Counter Offer Number 1, within three (3) days after the City of Petaluma signs off on the building permit estimated to be June 1, 2019. Tenant/Buyer shall be required to have general liability insurance naming Landlord/Seller as additional insured to the policy. During the Lease period the Tenant/Buyer shall be permitted to use the space for planning and storage of non alcoholic inventory, but in no event shall they make any structural or significant physical changes to the premises. During the Lease Period, Tenant/Buyer shall be permitted to apply for and purchase a liquor license per a separate transaction and at Buyer's sole cost and expense. Landlord/Seller shall cooperate with the Tenant in purchasing the liquor license by providing any required approvals and documentation, not to be unreasonably withheld.

OTHER TERMS: All other terms to remain the same.

EXPIRATION: This counter to counter offer shall expire unless a copy with Seller's written acceptance is delivered to Buyer or his or her Agent on or before March 27, 2019 o'clock ☐ a.m., ☒ p.m., on (date) 5:00.

DocuSigned by:
Buyer [Signature] Date 3/25/2019 | 4:21 PM PDT
B1D1191459X0450 David Ducommon and/or Assignee

Buyer _____ Date _____ Time _____

ACCEPTANCE

The undersigned Seller accepts the above counter to counter offer (if checked ☒, subject to the attached Counter to Counter Offer Number 3).

DocuSigned by:
Seller Gina Champion-Cain Date 4/8/2019 Time _____
738521BF7E674C1 132 & 140 Keller Street, LLC - Gina Champion-Cai

Seller _____ Date _____ Time _____

Receipt of acceptance is hereby acknowledged.

Buyer _____ Date _____ Time _____
David Ducommon and/or Assignee

Buyer _____ Date _____ Time _____

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Rev. by _____
Date _____

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COUNTER TO COUNTER OFFER Number 3

In response to the Counter Offer concerning the property located at 132 Keller Street
Petaluma, CA 94952; APN 006-363-024 made by, David Ducommun and/or Assignee, Buyer, dated
March 19, 2019, the following counter to counter offer is submitted:

1. Buyer and Seller have negotiated a short-term lease, as a condition of the Purchase Agreement, which is attached
hereto as Exhibit A.
2. Buyer to remove the Title review Contingency, the Loan Commitment Contingency and the Legal Lot Split Completion
Contingency within fourteen (14) days after the recordation of the final map and completion of the legal lot split. Legal lot
split is estimated to be completed in July 2019.
3. Buyer to close Escrow within thirty (30) days after the recordation of the final map and completion of the legal lot split.
Assignment of a new APN to 132 Keller is not a condition of closing.

OTHER TERMS: All other terms to remain the same.

EXPIRATION: This counter to counter offer shall expire unless a copy with Buyer's written acceptance is delivered to
Buyer or his or her Agent on or before 5:00 o'clock ☐ a.m., ☒ p.m., on (date) April 9, 2019.

DocuSigned by:
Seller Gina Champion-Cain Date 4/8/2019 Time _____
738521BF7E074C7... Gina Champion-Cain

Seller _____ Date _____ Time _____

ACCEPTANCE

The undersigned Seller accepts the above counter to counter offer (if checked ☐, subject to the attached Counter to
Counter Offer Number _____).

DocuSigned by:
Buyer David Ducommun Date 4/9/2019 Time _____
D6A5BC5CAE7549F... David Ducommun

Buyer _____ Date _____ Time _____

Receipt of acceptance is hereby acknowledged.

DocuSigned by:
Seller Gina Champion-Cain Date 4/9/2019 Time _____
738521BF7E074C7... Gina Champion-Cain

Seller _____ Date _____ Time _____

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**PROFESSIONAL
PUBLISHING LLC**



**STANDARD INDUSTRIAL/COMMERCIAL
MULTI-TENANT MONTH TO MONTH LEASE - GROSS
SHORT FORM**

(Only to be used for transitory tenancies)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only March 29, 2019, is made by and between 132 & 146 Keller Street, LLC ("Lessor") and David Ducommun and/or Assignee so long as Assignee is an entity wholly owned by David Ducommun. ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state): 132 Keller St. Petaluma, CA 94952 ("Premises"). The Premises are located in the County of Sonoma, and are generally described as (describe briefly the nature of the Premises): Approximately 5,481 sq ft Restaurant Space. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** N/A unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** Month-to-month commencing See Addendum A (948) ("Commencement Date") and ending 30 days after written notice by either Party to the other.

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$0.00 per month ("Base Rent"), payable on the N/A day of each month commencing N/A. (See also Paragraph 4)

1.6 **Base Rent and Other Monies Paid Upon Execution:**

- (a) **Base Rent:** N/A for the period N/A.
- (b) **Security Deposit:** _____ ("Security Deposit"). (See also Paragraph 5)
- (c) **Other:** _____ for _____.
- (d) **Total Due Upon Execution of this Lease:** _____.

1.7 **Agreed Use:** See Addendum A (950). (See also Paragraph 5)

1.8 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.9 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Keegan & Coppin Co Inc License No. 01437146 Is the broker of (check one): ☐ the Lessor; or ☒ both the Lessee and Lessor (dual agent).

Lessor's Agent Sara Wann License No. 01437146 Is (check one): ☐ the Lessor's Agent (salesperson or broker associate); or ☒ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Keegan & Coppin Co Inc License No. 01809537 Is the broker of (check one): ☐ the Lessee; or ☒ both the Lessee and Lessor (dual agent).

Lessee's Agent Brian Keegan License No. 01809537 Is (check one): ☐ the Lessee's Agent (salesperson or broker associate); or ☒ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement or the sum of N/A.

1.10 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 46 through 54; Addendum A
- ☒ a site plan depicting the Premises; Exhibit A
- ☐ a site plan depicting the Project;
- ☐ a current set of the Rules and Regulations for the Project;
- ☒ other (specify): Standard Lease Disclosure Addendum; Disclosure Regarding Real Estate Agency Relationship; Exhibit B - Purchase Agreement.

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, set forth herein. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

DS
[Signature]
INITIALS

DS
[Signature]
INITIALS

2.2 Condition. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within 30 days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems; and (ii) 30 days as to the remaining systems and other elements. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premises; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past use of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or Building ("Capital Expenditure") and, if such Capital Expenditures are triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure; (ii) complete such additions and/or alterations at its own expense; or (iii) provide 30 day notice to Lessor to terminate the Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises; (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use; (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor; (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities;
- (b) Lessee shall not service or store any vehicles in the Common Areas;
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are designated for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others' use, the Common Areas, subject to any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, to remove the property and charge the cost to Lessee.

2.9 Common Areas - Rules and Regulations. Lessor shall have the exclusive control and management of the Common Areas and shall have the right to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management of the Common Areas. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion:

- (a) To make changes to the Common Areas;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To use the Common Areas while engaged in making repairs or alterations to the Project; and
- (d) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas as Lessor may deem to be appropriate.

3. Term.
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3.1 **Term.** This is a month-to-month Lease. The Commencement Date is specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to provide insurance and to maintain the Premises shall be in effect during such period.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance.

4. Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles.

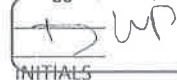
6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.


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(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

6.3 **Lessee's Compliance with Applicable Requirements.** Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, and (ii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility**

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Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Any Alterations or Utility Installations that Lessee shall desire to make shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance, in addition to, and not in lieu of, the insurance required to be maintained by Lessee, Lessee shall not be named as an additional insured therein.

8.2 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

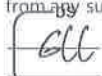
(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

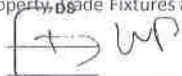
(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.3 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.


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(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.4 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.5 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.6 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.7 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, from any cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project; or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.8 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.** If the premises are materially damaged or destroyed either party may terminate this Lease by giving at least 30 days prior written notice of such termination to the other Party.

10. **Real Property Taxes.** Lessor shall pay any Real Property Taxes.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

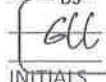
12. **Assignment and Subletting.** Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

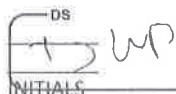
13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential

vandalism.


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(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any

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requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** Lessor agrees that: (a) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, or (b) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, then Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published BY AIR CRE.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

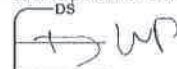
17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers


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or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to

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be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" and/or "For Lease" signs at any time. Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor.

37. Guarantor. The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE.

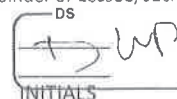
38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

40. Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems

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necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

41. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

42. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

43. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

44. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification.

45. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☒ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

3515 Hancock Street, San Diego

Executed at: 4/9/2019
On: _____

By LESSOR:

132 & 146 Keller Street, LLC

DocuSigned by:

By: Gina Champion-Cain

Name Printed: Gina Champion-Cain

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1701 Village center circle 89134

Executed at: 4/9/2019
On: _____

By LESSEE:

David Ducommun and/or Assignee so long as
Assignee is an entity wholly owned by David
Ducommun.

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Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER

Keegan & Coppin Co Inc

Attn: Sara Wann
Title: Senior Real Estate Advisor

Address: 1201 N. McDowell Blvd.
Petaluma, CA 95954
Phone: 707-644-1400
Fax: 707-792-7336
Email: SWann@keegancoppin.com
Federal ID No.: 00531022
Broker/AGENT DRE License #: 01437146

DocuSigned by:
By: _____
Name Printed: David Ducommun
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER

Keegan & Coppin Co Inc

Attn: Brian Keegan
Title: Senior Real Estate Advisor

Address: 1355 North Dutton Ave.
Santa Rosa, CA 95401
Phone: 707-528-1400
Fax: 707-542-1419
Email: BKeegan@keegancoppin.com
Federal ID No.: 00531022
Broker/AGENT DRE License #: 01809537

AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email contracts@aircre.com
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**ADDENDUM A
LEASE CONDITIONS**

To Lease dated March 29, 2019 by and between Lessor 132 & 140 Keller Street, LLC and Lessee David Ducommun and/or Assignee so long as Assignee is an entity wholly owned by David Ducommun.

In the event of any conflict between the provisions of this Addendum A and the printed provisions of the Lease, this Addendum A shall control.

46. Lessee as Buyer:

The Parties acknowledge that David Ducommun (Lessee) is currently under contract to purchase the Premises under the terms and conditions of that certain Standard Commercial/Investment Purchase Agreement, as amended (the "Purchase Agreement"), a copy of which is attached hereto as Exhibit B). Seller/Lessor is in the process of completing a physical and legal lot split in order to sell the Premises, which process is estimated to be completed in September of 2019. Buyer/Lessee wishes to enter into a short-term lease under the conditions of this Lease until the sale of the Premises has closed.

47. Contingency:

The following conditions must be satisfied before this Lease will become effective:

- (a) Seller/Lessor to have finished the physical work required to complete the lot split and the City of Petaluma has signed off on the building permit, recognizing completion of the physical construction necessary for the lot split.
- (b) Buyer/Lessee to have removed or waived all conditions (with the exception of Title, Loan Contingency and Lot Split Completion conditions) within the timelines prescribed in the Purchase Agreement.

48. Lease Commencement:

Lease to Commence upon satisfaction of the items listed above in Paragraph 47. Notwithstanding any provision of the Lease or this Addendum A to the contrary, Buyer/Lessee may not assign this Lease or sublease the Premises without Seller/Lessor's prior written consent which Seller/Lessor may withhold in its sole discretion.

49. Lease Termination:

In addition to the Lease termination rights incorporated in the Lease, the Lease shall be terminated without notice upon the earliest of the following to occur:

- (a) The Close of Escrow for the purchase of the Premises as provided for in the Purchase Agreement.
- (b) Buyer/Lessee fails to remove conditions within the time period(s) set forth in the Purchase Agreement.
- (c) Seller/Lessor terminates the Purchase Agreement for any reason.
- (d) Buyer/Lessee terminates the Purchase Agreement for any reason.

50. Agreed Use:

During the Lease term, the Premises shall be used only for the Buyer/Lessee planning purposes, compliance with liquor license application and posting requirements and minor storage of items

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related to Buyer/Lessee's restaurant business (but excluding storage of any alcoholic beverages, the sale of which is regulated by the California Department of Alcohol Beverage Control), and no other use whatsoever.

Buyer/Lessee is not to make any modifications to the Premises or its improvements during the Lease term or to remove, alter, or damage any of Seller/Lessor's FF&E.

51. Access:

The Parties agree that Seller/Lessor will have unrestricted access to the Premises during the Lease Term and Buyer/Lessee will not do anything or store anything that would impede Seller/Lessor's ability to access all parts of the Premises.

52. Insurance:

Buyer/Lessee to provide to Seller/Lessor, prior to occupancy, a certificate of insurance, in accordance with paragraph 8, naming "132 & 140 Keller Street, LLC" as additional insured as follows:

Certificate Holder

132 & 140 Keller Street, LLC
3515 Hancock Street
San Diego, CA 92110

Additional Insured

132 & 140 Keller Street, LLC

53. As-Is Delivery Condition:

Seller/Lessor will deliver the space in its As-Is Condition with no warranties or guaranties.

54. Hazardous Waste:

"If Lessee uses, stores, or becomes aware of any hazardous waste or substances as listed by Proposition 65, he will advise Lessor within three (3) days of such existence and either obtain approval from Lessor and the appropriate governing agencies within thirty (30) days from notice or remove and clean up said hazardous waste to standards required by the Lessor and the appropriate governing agencies within sixty (60) days from notice."

"If Lessee, his invitees, employees, agents or associates cause or allow a spill, or contamination of the premises, common area, soil or surrounding area, then it will be the responsibility of Lessee to clean up said hazard to the degree required and within the time frame set by any public entity which has jurisdiction and particularly in response to the Super Fund Act and Proposition 65."

Agreed by:	Lessee:	 DocuSigned by: D6A5BC5CAE7549F...	Date: 4/9/2019
Agreed by:	Lessor:	 DocuSigned by: 738521BF7E074C7...	Date: 4/9/2019

LEASING DISCLOSURE AND CONFIRMATION REGARDING REAL ESTATE AGENCY RELATIONSHIP

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction. With each specific transaction, you should read the Agency Disclosure and consider how you are being represented.

LESSOR'S AGENT

A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor. A Lessor's agent or a subagent of that agent has the following affirmative obligations:

- To the Lessor: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Lessor.
- To Lessee and Lessor: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

LESSEE'S AGENT

An agent can, with a Lessee's consent, agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations:

- To the Lessee: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Lessee.
- To Lessee and Lessor: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH LESSOR AND LESSEE

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee.

In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee:

- (a) A fiduciary duty of utmost care, integrity, honest and loyalty in the dealings with either Lessor or Lessee.
(b) Other duties to the Lessor and the Lessee as stated above in their respective sections.

In representing both Lessor and Lessee, the agent may not, without the express permission of the respective party, disclose to the other party that the Lessor will accept a rent less than the listed rent or that the Lessee will pay a rent greater than the rent offered.

The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise someone about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive of the Civil Code set forth on the reverse hereof. Read it carefully.

We acknowledge receipt of a copy of this disclosure:

Lessor Gina Champion-Cain Date 4/9/2019
132 & 140 Keller St, Petaluma, CA 94952
Lessor Sara Wann Date 4/9/2019
Agent Sara Wann Date 4/9/2019
Sara Wann Lic #01437146
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DocuSigned by: David Ducommun Date 4/9/2019
Lessee David Ducommun Date 4/9/2019
Lessee Brian Keegan Date 4/9/2019
Agent Brian Keegan Date 4/9/2019
Brian Keegan Lic# 01809537
4CF1FA1D8C404C1...

CONFIRMATION OF AGENCY

We authorize the following agency:

Keegan & Coppin Co, Inc. is the agent of: (Check one)
(Name of Lessor's Agent)
☐ The Lessor exclusively; or
☒ Both the Lessee and Lessor

Keegan & Coppin Co, Inc. is the agent of: (Check one)
(Name of Lessee's Agent if not the same as Lessor's Agent)
☐ The Lessee exclusively; or
☐ The Lessor exclusively; or
☒ Both the Lessee and Lessor

CONFIRMED AND AUTHORIZED:

Lessor Gina Champion-Cain Date 4/9/2019
132 & 140 Keller St, Petaluma, CA 94952
Lessor Sara Wann Date 4/9/2019
Agent for Lessor Sara Wann Date 4/9/2019
Sara Wann Lic #01437146
E2CBB8A2F5244CD...

CONFIRMED AND AUTHORIZED:

DocuSigned by: David Ducommun Date 4/9/2019
Lessee David Ducommun Date 4/9/2019
Lessee Brian Keegan Date 4/9/2019
Agent for Lessee Brian Keegan Date 4/9/2019
Brian Keegan Lic# 01809537
4CF1FA1D8C404C1...

PROPERTY ADDRESS: 132 Keller Street, Petaluma, CA 94952

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

- (a) "Agent" means a person acting under provisions of Title 9 (commencing with section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions code, and under whose license a listing is executed or an offer to purchase is obtained.
- (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee.
- The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to a transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.
- (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee.
- (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29.
- (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction.
- (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer.
- (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation.
- (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent.
- (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.
- (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller.
- (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.
- (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.
- (m) "Sell," "sale" or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of leasehold exceeding one year's duration.
- (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property or which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor.
- (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller.
- (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in real property transaction.

2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure from specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows:

- (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.
- (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a).
- (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of this receipt is required.
- (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement or receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for the agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

- 2079.17. (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively.
- (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.
- (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

<p>_____ is the agent of (Name of Listing Agent) (Check one) <input type="checkbox"/> the seller exclusively; or <input type="checkbox"/> both the buyer and seller.</p>	<p>_____ is the agent of (Name of Selling Agent if not the same as the Listing Agent) (Check one) <input type="checkbox"/> the buyer exclusively; or <input type="checkbox"/> the seller exclusively; or <input type="checkbox"/> both the buyer and seller</p>
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(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21. A dual agent shall not disclose to buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty of responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23. (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.
(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

First Amendment


To Agreement dated March 19, 2019, between David Ducommun and/or Assignee (Buyer) and *Petaluma Restaurant Services Holding, LLC*
132 & 149 Keller Street, LLC (Seller) concerning the property located at
132 Keller St. Petaluma, CA 94952 APN 006-363-024

The Parties hereby agree as follows:


Seller will agree to allow Buyer to proceed with the Phase 2 proposal, as prepared by ODIC Environmental dated May 31, 2019, subject to each of the following conditions.

1. All Phase 2 investigative costs are to be born by the Buyer.
2. Buyer will return the building to its original existing condition and will repair any and all damages caused by the investigation, including finishes (tile, hardwood, etc), at Buyer's sole cost.
3. Buyer will be responsible, at Buyer's sole cost, for all items noted in ODIC's Exclusions, Assumptions and Limitations section of the proposal. This includes but is not limited to, any damages to underground utilities and removal of investigatively derived waste.
4. The completed Phase 2 report shall be delivered directly to the Seller to give Seller time to have it independently reviewed, prior to submission to the Lender or any City, County or other Governmental agency.
5. All drilling work to take place on a Saturday or Sunday.

Other than as set forth above, the Purchase and Sales Agreement shall remain in full force and effect.
ACCEPTED AND AGREED TO BY:

By: 
SELLER:
132 & 149 Keller Street, LLC
By: _____
Gina Champion-Cain

Dated: _____
6/27/19

BUYER:
David Ducommun and/or Assignee
By: 
David Ducommun, Managing Member
Petaluma Restaurant Services Holding, LLC

Dated: _____
6/26/19

SECOND AMENDMENT TO STANDARD COMMERCIAL/INVESTMENT PURCHASE AGREEMENT

This SECOND AMENDMENT TO STANDARD COMMERCIAL/INVESTMENT PURCHASE AGREEMENT ("**Second Amendment**") is made as of October 11, 2019, by and between DAVID DUCOMMUN, an individual ("**Buyer**") and 132 & 140 KELLER STREET, LLC, a California limited liability company ("**Seller**"), by and through Krista L. Freitag, solely in her capacity as "**Receiver**" in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California (the "**Court**"), Case No. 3:19-CV-01628-H-BLM (the "**Action**").

RECITALS

A. Buyer and Seller entered into that certain Standard Commercial/Investment Purchase Agreement dated March 19, 2019 (the "**Original Agreement**"), as modified by (i) that certain Counter Offer Number 1 dated March 25, 2019 (the "**First Counter Offer**"), (ii) that certain Counter to Counter Offer Number 2 dated April 8, 2019 (the "**Second Counter Offer**"), (iii) that certain Counter to Counter Offer Number 3 dated April 9, 2019 (the "**Third Counter Offer**"), (iv) that certain First Amendment to Agreement dated June 27, 2019 (the "**First Amendment**"), and (v) that certain Addendum dated September 30, 2019 (the "**9-30-19 Addendum**") (collectively, the "**Agreement**") for the sale of certain property located at 132 Keller Street, Petaluma, California 94952 (the "**Property**"), as more particularly described in the Agreement.

B. Seller is included as one of the entities in the receivership as ordered by the Court in the Action, and is therefore under the Receiver's exclusive management and control.

C. Seller previously elected to utilize Chicago Title Company ("**Chicago Title**") to obtain the owner's title insurance policy for the Property (the "**Owner's Title Policy**"), as provided in Section 7 of the Original Agreement, and to provide escrow services under the Agreement. However, in connection with the Action, Receiver requires that the parties instead use Lawyers Title Company ("**Lawyers Title**") to obtain such title insurance policy and provide escrow services under the Agreement.

D. Seller and Buyer desire to amend the Agreement to (i) agree upon Lawyers Title as the title insurance company and escrow holder for the Agreement (the "**Escrow Holder**"), (ii) provide for certain terms and conditions related to the receivership, and (iii) otherwise modify the Agreement as provided herein.

E. All capitalized terms not otherwise defined in this Second Amendment shall have the same meanings as set forth in the Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby amend the Agreement in the following respects:

1. Title Company; New Title Report and Title Exceptions. Notwithstanding anything to the contrary contained in the Agreement, Buyer and Seller hereby agree that Lawyers Title shall be the title company utilized by the parties to provide the Preliminary Title Report (the "**New Title Report**") and the Owner's Title Policy provided by the Agreement, and to otherwise provide title services under the Agreement. Further notwithstanding anything to the contrary contained in the Agreement, Buyer shall not have any right to terminate the Agreement with respect to any title exceptions disclosed by the Preliminary Title Report previously provided to Buyer by Chicago Title pursuant to Section 7 of the Original Agreement, as amended (the "**Original Title Report**"). If any new exceptions are disclosed in the New Title Report that were not previously disclosed in the Original Title Report (the "**New Title Exceptions**"), Buyer shall have ~~five (5)~~ ^{ten (10)} days after receipt of the New Title Report to either: (x) accept such New Title Exceptions; or (y) terminate the Agreement by written notice to Seller, in which event neither party shall have any further rights, duties or obligations hereunder, except for provisions of the Agreement which expressly survive termination of the Agreement. Buyer's failure to object to any New Title Exceptions within such ~~five (5)~~ ^{ten (10)} day period shall be deemed Buyer's approval of the New Title Exceptions and waiver of any right to terminate the Agreement pursuant to title matters.

2. Escrow Holder. Notwithstanding anything to the contrary contained in the Agreement, Buyer and Seller hereby agree that Lawyers Title shall be the company utilized by the parties to serve as Escrow Holder and to otherwise provide escrow services under the Agreement. Pursuant to the foregoing, within three (3) days after the date of this Second Amendment, Chicago Title shall transfer the following to Lawyers Title: (i) the Deposit; (ii) any other amounts currently being held by Chicago Title in connection with the Agreement; and (iii) any documents currently being held by Chicago Title in connection with the Agreement. Such amounts and other items shall be transferred to Lawyers Title at the following address: 1025 Prospect Street, #220, La Jolla, California 92037, Attn: Karen Hagen (KHagen@ltic.com) and (858) 650 - 3959).

3. Court Approval; Closing. Notwithstanding anything to the contrary contained in the Agreement, the Court's approval of the terms and conditions of the Agreement and the sale ("**Court Approval**") shall be a condition precedent to the closing of the Agreement (the "**Closing**"). Pursuant to the foregoing, the Closing is hereby amended to occur on or before seven (7) days after the date upon which Receiver obtains the Court Approval. Receiver shall take appropriate steps to seek such Court Approval.

4. Auction. In connection with the receivership process, Receiver may be required to sell the Property pursuant to an overbid and auction process ("**Auction**"). Any such Auction shall be conducted by Receiver in accordance with the following sale procedures:

4.1 Overbids and Bid Increments. The minimum overbid shall be no less than Fifty Thousand Dollars (\$50,000.00) in excess of Buyer's current Purchase Price for the Property, as set forth in Section 1 of the First Counter Offer. Only Qualified Bidders (as defined below) may make bids at the Auction. All bids are subject to overbids in increments of Ten Thousand Dollars (\$10,000.00). The Court may reject any and all bids following conclusion of the Auction.

*excludes due diligence
reports filed for by
Super (Ducan)*

4.2 Due Diligence Information. All prospective bidders ("Prospective Bidders") shall have had the opportunity to inspect the Property and any documentation relating thereto prior to the Auction. Prospective Bidders may also request access to information about the Property ("**Due Diligence Information**") and obtain a form purchase and sale agreement. *10/22/19*

4.3 No Representations and Warranties for Due Diligence Information. Any Due Diligence Information provided to Prospective Bidders is for informational purposes only and provided without any warranty, guaranty or representation by Receiver. All Prospective Bidders shall conduct their own independent investigation and analysis regarding the condition of the Property and its suitability for Prospective Bidders' intended use. Neither the Receiver, nor the Receiver's Broker has made any representations, express or implied, regarding the completeness or accuracy of the Due Diligence Information.

4.4 Qualified Bidders. To be determined a qualified bidder (the "**Qualified Bidder**"), one must: (i) provide a fully executed purchase and sale agreement for the Property in form substantially similar to the Agreement ("**Qualified Bid PSA**"), acceptable to the Receiver; (ii) provide an earnest money deposit (the "**Bid Deposit**") by wire transfer or cashier's check in the amount of Fifty-Five Thousand Dollars (\$55,000.00) payable to the Receiver, which amount shall be non-refundable to the Qualified Bidder with the highest bid at the Auction (the "**High Bidder**") if for any reason (a) the High Bidder fails to finally close the purchase and sale such that title transfers by no later than the Closing or (b) the High Bidder fails to provide the balance of the purchase price to the Receiver one day prior to the Closing Date; and (iii) provide proof of funds in such form as shall be required by Receiver. Each Qualified Bidder must provide the Qualified Bid PSA and Bid Deposit to the Receiver no later than five (5) business days prior to the Auction. The Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative. If there are multiple Qualified Bidders at the Auction, the Receiver shall obtain the Court's approval of the High Bidder and also the Qualified Bidder with the next highest bid at the Auction (the "**Backup Bidder**"). The Receiver shall retain the Backup Bidder's Bid Deposit until (x) the closing for the High Bidder occurs, in which event the Backup Bidder's Bid Deposit shall immediately be returned to the Backup Bidder, or (y) the closing for the High Bidder fails to occur, in which event the Backup Bidder's Bid Deposit shall be applied to the purchase price for the Backup Bidder's closing as set forth hereinbelow. If the High Bidder fails to close the purchase and sale of the Property, the Backup Bidder shall be deemed to be the High Bidder and the Receiver shall provide written notice thereof to the Backup Bidder. Within ten (10) days after the Backup Bidder's receipt of such notice from the Receiver, the closing for the Backup Bidder's purchase of the Property shall occur. Pursuant to the foregoing, if the initial High Bidder fails to close the purchase and sale of the Property and the Court has approved a Backup Bidder, the Receiver shall proceed to close with the Backup Bidder without any obligation to conduct another auction as a condition precedent to such closing. The High Bidder's Bid Deposit shall be applied to the purchase price at closing, if the sale is approved by the Court and the High Bidder closes the purchase and sale of the Property.

4.5 Consent to Court Jurisdiction and Waiver of Jury Trial. All Qualified Bidders appearing at the Auction shall have deemed to have consented to the Court's jurisdiction and waived any right to jury trial in connection with any disputes related to the Auction, or the closing of the sale. The Court shall be the exclusive forum for any such disputes.

4.6 Receiver's Right to Determine Conduct of Auction. The Receiver reserves the right to deny any person admittance to the Auction, to postpone or cancel the Auction, to withdraw the Property from the Auction, and to change any terms or procedures of the Auction or the particular conditions of sale, as necessary, upon notice to Buyer, and any Qualified Bidders, prior to or at the Auction, without further Court order.

4.7 No Contingencies for Qualified Bidder. The sale to any Qualified Bidder of the Property shall not be contingent upon the validity, effectiveness, and or binding nature of the Qualified Bidder's offer, including without limitation, contingencies for financing, due diligence or inspection.

4.8 No Conditions Precedent for Qualified Bidder. The sale to any Qualified Bidder of the Property shall not be subject to any conditions precedent to the Qualified Bidder's obligation to timely consummate the sale transaction, and to pay the remainder of the purchase price.

4.9 Auction Confirmation Order. The only authorized condition subsequent to the Auction for the Qualified Bidder is entry of a Court order confirming the sale to the Qualified Bidder (the "**Auction Confirmation Order**").

4.10 Conditions to Consummation of Sale Transaction Prior to and Following Auction. The closing of any sale to a Qualified Bidder shall be subject to the following conditions: (i) Receiver's review and acceptance of the highest bid received from a Qualified Bidder, (ii) entry of the Auction Confirmation Order, (iii) receipt of full payment on or before the date which is three (3) business days after the date upon which the Court enters the Auction Confirmation Order such that the Property transfer can occur promptly thereafter, and (iv) prior to Auction, waiver and release of all claims against the Receiver. If any of these foregoing conditions are not satisfied, (a) the sale to the Qualified Bidder shall not be consummated, and (b) any obligations of the Receiver shall also be terminated, including any obligations under the Qualified Bid PSA.

4.11 Transfer of Title to Property Following Auction. Following the Auction, title to the Property shall be transferred by grant deed, "AS-IS", WITHOUT REPRESENTATIONS AND WARRANTIES, to the High Bidder.

4.12 Court Approval if No Qualified Bids are Received. In the event no Qualified Bids are provided to the Receiver, the Receiver will notify the Court that no Auction will take place and ask the Court to approve the sale to Buyer pursuant to the Agreement.

4.13 Termination of this Agreement. If Buyer is not the High Bidder at the Auction, the Deposit and the Additional Cash Deposit shall be returned to Buyer and the Lease for Buyer's possession of the Property (as set forth in the Third Counter Offer) shall be immediately terminated, but Buyer shall not be entitled to specifically enforce Seller's obligation to convey the Property, or recover any out of pocket costs, professional fees and costs, or other amounts.

5. Dispute Resolution. Sections 32 and 33 of the Original Agreement are hereby deleted in their entirety and replaced with the following:

"32. **INTENTIONALLY DELETED.**

33. **DISPUTE RESOLUTION.**

- A. Each party to this Agreement hereby expressly waives any right to trial by jury with respect to any claim, demand, action or cause of action (a) arising under this Agreement, including, without limitation, any present or future modification thereof, or (b) in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to this Agreement (as now or hereafter modified) 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 claim, demand, action or cause of action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of any right they might otherwise have to trial by jury. The parties shall be entitled to recover only their actual damages, and no party shall be entitled to recover any consequential damages, punitive damages, or any other damages that are not actual damages.
- B. Any action shall be commenced and maintained in the Court. The parties irrevocably consent to jurisdiction and venue in such Court and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 33."

6. **NO LIABILITY TO RECEIVER.** BUYER HEREBY ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

6.1 BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THE AGREEMENT SOLELY IN CONNECTION WITH HER DUTIES AS RECEIVER. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER IN CONNECTION WITH THE MATTERS SET FORTH IN THE AGREEMENT.

6.2 NO PROVISION OF THE AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE

COMMITTED ON THE PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

7. Assignment. Notwithstanding anything to the contrary set forth in the Agreement (with specific reference to Section 35 of the Original Agreement), Seller's consent to an assignment by Buyer of its interest in the Agreement shall be deemed granted if such assignment is to an Affiliate (as defined below) of Buyer, provided that Buyer notifies Seller in writing of such assignment and delivers to Seller the proposed written assignment agreement pursuant to which such Affiliate assignee will assume all of Buyer's obligations under the Agreement and such other information with respect to such Affiliate reasonably requested by Seller, at least five (5) business days in advance of such assignment. "Affiliate" shall mean an entity which is controlled by, controls, or is under common control with, Buyer or Buyer's principal, David Ducommun. "Control," as used in this Section 7, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity. Any permitted assignee shall succeed to all of Buyer's rights and remedies hereunder, provided that no such assignment shall relieve Buyer from its liability under the Agreement. Pursuant to the foregoing, the asterisked provision on page 1 of the Original Agreement shall be null and void and is hereby deleted in its entirety.

8. Conflict. In the event of a conflict between the terms and conditions of this Second Amendment and the terms and conditions of the Agreement, the terms and conditions of this Second Amendment shall control.

9. No Further Modifications. Except as set forth in this Second Amendment, all other terms and provisions of the Agreement shall be and remain unmodified and in full force and effect. Effective as of the date hereof, all references in the Agreement to the "Agreement" will refer to the Agreement as amended by this Second Amendment.

10. Counterparts and Fax/Email Signatures. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Second Amendment may be executed by a party's signature transmitted by facsimile ("fax") or email and copies of this Second Amendment executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or emailed signatures as if such signatures were originals. Any party executing and delivering this Second Amendment by fax or email shall promptly thereafter deliver a counterpart signature page of this Second Amendment containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Second Amendment as if it were an original signature page.

11. Severability. If any term, provision, covenant or condition of this Second Amendment is found by a court of competent jurisdiction to be invalid, void, or unenforceable,

the remainder of the Second Amendment shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

IN WITNESS WHEREOF, Buyer and Seller have executed this Second Amendment as of the date set forth above.

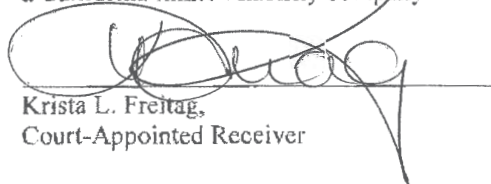
BUYER:



David Ducommun, an individual

SELLER:

132 & 140 KELLER STREET, LLC,
a California limited liability company



Krista L. Freitag,
Court-Appointed Receiver

ESCROW HOLDER SIGNATURE PAGE

The undersigned Escrow Holder hereby agrees to the terms and conditions of the foregoing Second Amendment, and to be bound by the Agreement, as amended by such Second Amendment, in the performance of its duties as Escrow Holder.

Dated: _____

LAWYERS TITLE COMPANY

By: _____
Authorized Representative

CHICAGO TITLE SIGNATURE PAGE

The undersigned hereby agrees to the terms and conditions of the foregoing Second Amendment, and to be bound by such Second Amendment.

Dated: _____

CHICAGO TITLE COMPANY

By: _____
Authorized Representative

ASSIGNMENT OF STANDARD COMMERCIAL/INVESTMENT PURCHASE AGREEMENT

This ASSIGNMENT OF STANDARD COMMERCIAL/INVESTMENT PURCHASE AGREEMENT ("**Assignment**") is made as of the 30th day of October, 2019, by and between DAVID DUCOMMUN, an individual (the "**Assignor**"), and PETALUMA RESTAURANT SERVICES HOLDINGS, LLC, a California limited liability company ("**Assignee**").

R E C I T A L S :

A. Assignor, as "Buyer," and 132 & 140 Keller Street, LLC, a California limited liability company, as "Seller," by and through Krista L. Freitag solely in her capacity as "**Receiver**" in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California (the "**Court**"), Case No. 3:19-CV-01628-H-BLM (the "**Action**"), are parties to that certain Standard Commercial/Investment Purchase Agreement dated as of March 19, 2019, as modified by (i) that certain Counter Offer Number 1 dated March 25, 2019, (ii) that certain Counter to Counter Offer Number 2 dated April 8, 2019, (iii) that certain Counter to Counter Offer Number 3 dated April 9, 2019, (iv) that certain First Amendment to Agreement dated June 27, 2019, (v) that certain Addendum dated September 30, 2019, and (vi) that certain Second Amendment to Standard Commercial/Investment Purchase Agreement (the "**Second Amendment**") (collectively, the "**Agreement**"), respecting the sale of certain property located at 132 Keller Street, Petaluma, California 94952, as more particularly described in the Agreement.

B. Seller is included as one of the entities in the receivership as ordered by the Court in the Action, and is therefore under the Receiver's exclusive management and control.

C. Assignee is an "Affiliate" of Assignor pursuant to the requirements for an approved assignment set forth in Section 7 of the Second Amendment.

D. Assignor desires to assign all rights and obligations of Assignor under the Agreement to Assignee, and Assignee desires to assume said rights and obligations.

E. All capitalized terms not otherwise defined in this Assignment shall have the same meanings as set forth in the Agreement.

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title, interest and obligations in and to or under the Agreement and Assignee hereby accepts such assignment.

2. Assignee hereby assumes all obligations of Assignor and agrees to execute all documents and perform all obligations imposed upon Assignor under the Agreement as if Assignee were the original Buyer under the Agreement; provided that nothing in this Agreement shall release Assignor from any of its obligations or liabilities under the Agreement.

3. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legacies of all the respective parties hereto.

4. This Assignment shall be governed by, interpreted under and construed and enforceable in accordance with, the laws of the State of California.


5. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.


ASSIGNOR:

ASSIGNEE:

PETALUMA RESTAURANT SERVICES
HOLDINGS, LLC,
a California limited liability company



David Ducommun, an individual

By: 
Name: David Ducommun
Its: Managing Member