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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  
APPROVAL OF SALE OF THE  
SWELL COFFEE RESTAURANT  
PROPERTY AND ASSOCIATED  
PERSONAL PROPERTY**

Date: April 27, 2020

Time: 2:00 p.m.

Courtroom: 3B

Mag. Judge: Hon. Allison H. Goddard

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 Approval of Sale of The Swell Coffee Restaurant Property  
6 and Associated Personal Property ("Motion"). I have personal knowledge of the  
7 facts stated herein, and if called upon to do so, I could and would personally and  
8 competently testify to them.

9 2. One of the assets included in the receivership estate is a 1,225 square  
10 foot property with a 600 square foot building (with personal property contents)  
11 located at 3833 Mission Blvd., San Diego, California ("Property"). The Property was  
12 purchased on February 5, 2015 for \$615,000 and title was taken in the name of one  
13 of the affiliated Receivership Entities, The Swell Coffee Roasting Company, LLC,  
14 and was transferred on April 22, 2015 to another affiliated Receivership Entity,  
15 3833 Mission Blvd., LLC. At the time of my appointment, the coffee shop known as  
16 Swell Coffee was being operated at the Property.

17 3. As reflected on the financials available to me at appointment, this  
18 operation was not profitable (even after adding back intercompany rent to the year-  
19 to-date 2019 net loss). Thus, I determined that the best course of action was to close  
20 the coffee shop and prepare the Property for sale in the short-term, along with other  
21 restaurant properties included in the receivership estate.

22 4. For all of the restaurant-related properties included in the receivership  
23 estate, my staff and I interviewed three licensed brokers with experience selling  
24 restaurants in San Diego. After considering their experience and qualifications, I  
25 decided to use two brokers – Colliers International ("Broker") for stand-alone  
26 concept restaurant-related properties owned (a leased parking lot was also included  
27 in this grouping) by the Receivership Entities (including the Property) and Next  
28

1 Wave for the Surf Rider Pizza and Bao Beach restaurant concepts operated at leased  
2 and owned property locations.

3 5. Broker publicized and advertised the restaurant properties owned by the  
4 Receivership Entities, including the Property, on LoopNet and CoStar (two widely  
5 used online databases for commercial property listings) and CREXi (Collier's  
6 International proprietary online database). Broker also caused a press release to be  
7 issued, which was published in the San Diego Union-Tribune. Further, Broker sent a  
8 series of direct emails about the restaurant-related properties to over 5,000 potential  
9 buyers and investors. This activity generated 228 visitors to the CREXi webpage for  
10 the portfolio of restaurants, which led to 142 signed confidentiality agreements and a  
11 total of 28 offers for all of the properties marketed by Broker.

12 6. In preparation for the sales, and as requested by the Broker, I ordered  
13 various reports and provided relevant internal documents to create a typical due  
14 diligence package specific to each asset. I also set a "Call for Offers" deadline of  
15 February 3, 2020. The Broker used the CREXi website to host the due diligence  
16 materials for the properties, an offering memorandum summarizing various  
17 marketing points about the properties and detailing the Court sale process, and a  
18 form of Purchase and Sale Agreement and Joint Escrow Instructions ("Form PSA") I  
19 prepared in advance, with assistance from my counsel. The Form PSA has all  
20 contingencies removed and provides for the overbid, public auction, and Court  
21 approval process. Prospective purchasers were instructed to complete their due  
22 diligence and submit their executed Form PSA by the Call for Offers deadline.

23 7. For the Property, a total of five executed Form PSA's were received.  
24 The highest and best was from Jane Cohen and Mordechai Ami Cohen ("Buyer") in  
25 the amount of \$825,000. With assistance from my counsel, I finalized a Form PSA  
26 with the buyers and then countersigned Buyer's PSA.

27 8. The Property is encumbered by a deed of trust securing a Small  
28 Business Association ("SBA") loan issued by First Choice Bank. As of March 1,

2020, the balance due on the loan, including principal and unpaid interest, is approximately \$598,000. There is also a separate SBA loan secured by the personal property located at the Property (which is included in the proposed sale), the balance of which, including principal and unpaid interest, is approximately \$62,000. Depending on when the sale closes, I estimate that property tax credit received at closing will likely be in the range of approximately \$1,400 to \$1,700 (the second installment of property taxes for 2019-2020 is expected to be paid prior to a closing, so the receivership estate will actually receive a credit at closing for the pro-rated portion of the taxes paid for the period from the date of closing through June 30, 2020). Because Broker also represents Buyer, Broker's commission pursuant to the listing agreement is 2.5% of the sale price, or \$20,625. The costs of sale, including escrow, title and recording fees are estimated to be approximately \$4,000. While exact amounts will be determined at closing, after all of the aforementioned amounts are paid out of escrow, the net sale proceeds for the receivership estate are estimated to be in the range of approximately \$130,000 to \$140,000.

9. I believe the proposed sale to Buyer pursuant to the Agreement is in the best interests of the receivership estate. The Property was broadly advertised and marketed to prospective purchasers by Broker, five offers were received, the highest and best selected, and the Agreement signed. The purchase price therefore reflects the market value for the Property and is more than \$200,000 greater than the purchase price from when it was acquired in 2015.

10. With respect to Broker's commission, Broker has broadly marketed and advertised the Property for sale and diligently responded to inquiries from interested parties. The listing agreement is consistent with the lower range of industry standards for commissions paid to brokers for sales of commercial properties. Accordingly, I request authorization to pay Broker the commission amount in accordance with the listing agreement.

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

3 Executed this 12<sup>th</sup> day of March 2020, at San Diego, California.

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6 KRISTA L. FREITAG  
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# EXHIBIT A

# EXHIBIT A

## **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "**Agreement**") is entered into as of March 4, 2020 (the "**Effective Date**") by and between JANE COHEN, an individual, and MORDECHAI AMI COHEN, an individual (collectively, the "**Buyer**"), and 3833 MISSION BLVD, LLC, a California limited liability company (the "**Real Property Seller**"), and THE SWELL COFFEE ROASTING COMPANY, LP, a California limited partnership (the "**Business Seller**" and together with the Real Property Seller, collectively, the "**Sellers**"), by and through Krista L. Freitag, solely in her capacity as Receiver ("**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, Case No. 3:19-CV-01628-LAB-AHG (the "**Receivership Action**").

### **ARTICLE 1 PURCHASE AND SALE**

**1.1 Agreement of Purchase and Sale.** Pursuant to that certain Order Granting The Parties' Joint Motion and Stipulated Request by All Parties for a Preliminary Junction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver (the "**Order**") entered on September 3, 2019 by the Court with respect to the Receivership Action, Receiver was appointed permanent receiver for each of the Real Property Seller and the Business Seller and certain other entities, as "**Defendants**," and their subsidiaries and affiliates as "Relief Defendants" (collectively, the "**Receivership Entities**"). Each of Real Property Seller and Business Seller, as Receivership Entities, agree to sell the Purchased Assets (as defined below) comprising the Business (as defined below) to Buyer, and Buyer agrees to purchase the Purchased Assets comprising the Business from Real Property Seller and Business Seller, as applicable, subject to the terms and conditions set forth in this Agreement.

**1.2 The Business.** Business Seller previously leased the Real Property (as defined in Section 1.3(iii) below) from Real Property Seller and conducted the business of owning and/or operating a restaurant, commonly known as "Swell Coffee Co." (the "**Business**") located and addressed at 3833 Mission Blvd, San Diego, California 92109, and pursuant to the terms and conditions of this Agreement, Business Seller desires to sell the Business, including all assets, tangible and intangible, used in connection with the operation of the Business. Business Seller and Real Property Seller have previously terminated Business Seller's lease of the Real Property.

**1.3 The Purchased Assets.** For purposes of this Agreement, the "**Purchased Assets**" shall mean and include in its present "AS-IS", "WHERE IS" condition, all of Real Property Seller's and Business Seller's (as applicable) right, title and interest in and to the following:

- (i) that certain land and related amenities located and addressed at 3833 Mission Blvd, San Diego, California 92109, and situated on the land more particularly



described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Land**");

(ii) any and all rights, privileges and easements appurtenant to the Land and owned by Real Property Seller, including, without limitation, development rights, air rights, water, water rights, riparian rights and water stock relating to the Land and rights-of-way or other appurtenances used exclusively in connection with the beneficial use and enjoyment of the Land (collectively, the "**Appurtenances**");

(iii) all improvements and fixtures located on the Land (collectively, the "**Improvements**" and together with the Land and the Appurtenances, the "**Real Property**");

(iv) any and all apparatus, equipment, furniture, appliances, food, beverage items or other inventory or tangible items of personal property owned by each Seller and located on the Real Property, as such items are described on Exhibit "B" attached hereto and incorporated herein by this reference (the "**Tangible Assets**");

(v) all goodwill relating to the Business;

(vi) all accounts receivables which become due and payable after the Closing (defined below) (the "**Post-Closing Receivables**");

(vii) all rights of each Seller under equipment leases, service contracts, utility contracts, water agreements, equipment leases, purchase orders, maintenance, service and similar contracts, which relate to the ownership, management, maintenance, construction or repair and/or operation of the Real Property and any of the other Purchased Assets and other similar agreements affecting the use and operation of the Business in effect as of the Effective Date that relate in any way to Business Seller's operation of the Business at the Real Property, which contracts are listed on Exhibit "C" attached hereto and incorporated herein by this reference (the "**Contracts**");

(viii) all permits, licenses, registrations, certificates, variances, consents, authorizations, governmental approvals and other entitlements necessary for the ownership, use, operation or maintenance of the Real Property or otherwise relating in any way to the Real Property (collectively, the "**Permits**"), provided that such Permits shall only be included with the Purchased Assets and transferred to Buyer to the extent such Permits are transferrable under applicable law;

(ix) any warranty or guaranty rights of each Seller relating to the Real Property or the Tangible Assets and assignable by each such Seller (the "**Warranties**"); and

(x) any intangible personal property owned by each Seller and/or used in or related to the ownership, use, operating or maintenance of the Real Property (the "**Intangible Assets**"); provided, however, that in no event shall such Intangible Assets include either Seller's trademark or trade name rights, rights to the name "Swell Coffee Co.," or any other names used, or any title or interest in or to any intellectual property which relates to the Business or the Purchased Assets. As used herein, "Purchased Assets"

does not include any of Real Property Seller's and/or Business Seller's liabilities of any kind whatsoever (other than those which are otherwise specifically listed in this Agreement) including but not limited to: either Seller's liabilities and obligations arising out of or resulting from the ownership of any of the Business or the Purchased Assets before the Closing, including without limitation, all trade accounts payable incurred in the course of such Seller's business prior to the Closing; either Seller's liabilities and obligations for prorated taxes for the period prior to the Closing; either Seller's liabilities and obligations arising out of or resulting from any failure by such Seller to comply with any applicable law, judgment, or order; either Seller's liabilities and obligations arising out of or resulting from any legal proceeding; either Seller's liabilities and obligations to any of such Seller's employees or consultants through the close of business on the Closing Date, whether or not the employee or consultants are hired by Buyer; either Seller's liabilities and obligations to any current or former partner or officer of such Seller or of any affiliate of such Seller; either Seller's liabilities and obligations under this Agreement; and either Seller's liabilities and obligations arising out of or resulting from any act or omission of such Seller after the Closing.

**1.4 Opening of Escrow.** Buyer and Sellers shall open escrow with Heritage Escrow, Attention: \_\_\_\_\_ (the "**Escrow Holder**") under Escrow No. \_\_\_\_\_ ("**Escrow**"). Escrow Holder shall execute the Escrow Holder Signature Pages attached hereto and return one fully executed original of this Agreement and the Escrow Holder Signature Page and the Broker Signature Page to each of the Sellers and Buyer. The purchase and sale of the Purchased Assets shall be consummated through the Escrow in accordance with the instructions contained in this Agreement.

**1.5 Closing Date.** The closing of the purchase and sale of the Purchased Assets (the "**Closing**" or "**Close of Escrow**") shall occur on or before the date which is five (5) business days following the Court Approval Date (as defined below) (the "**Closing Date**"). On the Closing Date, TIME SHALL BE DEEMED OF THE ESSENCE with respect to Buyer's obligation to close. For purposes hereof, the "**Court Approval Date**" shall be the date the Court enters an order approving this Agreement with respect to all of the Purchased Assets, or, in the event an auction occurs, the date the Court enters the Auction Confirmation Order, as described in Section 15, below.

## ARTICLE 2 PURCHASE PRICE

**2.1 Purchase Price.** The purchase price for the Purchased Assets shall be Eight Hundred Twenty-Five Thousand and No/100 Dollars (\$825,000.00) (the "**Purchase Price**"), which shall be subject to overbids (as defined below) pursuant to Section 15 hereof.

**2.2 Payment of the Purchase Price.** Buyer shall pay the Purchase Price to Sellers as follows:

(a) No later than three (3) days after the Effective Date, Buyer shall deposit with Escrow Holder, in cash, certified or bank cashier's check made payable to Escrow Holder, or by a confirmed Federal Reserve wire transfer of funds (hereinafter referred to as "**Immediately Available Funds**"), the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) into

Escrow (with all interest earned thereon, the "**Earnest Money Deposit**"). The Earnest Money Deposit shall be nonrefundable to Buyer except in the event: (i) of either Seller's default under this Agreement, as set forth below; (ii) Buyer is not the High Bidder (as defined in below); or (iii) the Court otherwise fails to approve the sale of the Purchased Assets to Buyer. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account pursuant to the provisions set forth below.

(b) In the event the Closing under this Agreement occurs, then the Earnest Money Deposit shall be credited against the Purchase Price at the Closing. In the event the Closing under this Agreement shall fail to occur, then the Earnest Money Deposit shall be nonrefundable except as expressly set forth in Section 2.2(a) above.

(c) At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder, in Immediately Available Funds, the balance of the Purchase Price and all other amounts payable by Buyer pursuant to this Agreement into Escrow.

### **2.3 Escrow Provisions Regarding Earnest Money Deposit.**

(a) Escrow Holder shall hold the Earnest Money Deposit and make delivery of the Earnest Money Deposit to the party entitled thereto under the terms of this Agreement. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account maintained at a federally insured bank or savings and loan association as approved by the Sellers and Buyer, and all interest and income thereon shall become part of the Earnest Money Deposit and shall be remitted to the party entitled to the Earnest Money Deposit pursuant to this Agreement.

(b) Escrow Holder shall hold the Earnest Money Deposit until the earlier occurrence of (i) the Closing Date, at which time the Earnest Money Deposit shall be applied against the Purchase Price, (ii) Buyer's failure to close the transaction contemplated hereby or breach of its obligations hereunder, in which event the Sellers may terminate this Agreement and Escrow Holder shall disburse the Earnest Money Deposit to the Sellers, plus accrued interest thereon, upon Escrow Holder's receipt of written notice from either Seller confirming such failure to close or breach by Buyer, (iii) in the event Buyer is not the High Bidder; or (iv) the Court otherwise fails to approve the sale of the Purchased Assets to Buyer. The tax identification numbers of the parties shall be furnished to Escrow Holder upon request.

(c) The parties acknowledge that Escrow Holder is acting solely as a stakeholder at their request and for their convenience, and that Escrow Holder shall not be deemed to be the agent of any of the parties for any act or omission on its part unless taken or suffered in bad faith in willful disregard of this Agreement or involving gross negligence. Each of the Sellers and Buyer jointly and severally release Escrow Holder from any and all liability for costs, claims and expenses, including reasonable attorney's fees, incurred in connection with the performance of Escrow Holder's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Holder in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Holder.

(d) The parties shall deliver to Escrow Holder an executed copy of this Agreement, which shall constitute the sole instructions to Escrow Holder. Escrow Holder shall

execute the signature page for Escrow Holder attached hereto with respect to the provisions of this section; provided, however, that (i) Escrow Holder's signature hereon shall not be a prerequisite to the binding nature of this Agreement on Buyer and Sellers, and the same shall become fully effective upon execution by Buyer and Sellers, and (ii) the signature of Escrow Holder will not be necessary to amend any provision of this Agreement other than this section.

(e) Escrow Holder, as the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall file all necessary information, reports, returns, and statements regarding the transaction required by the Code including, but not limited to, the tax reports required pursuant to Section 6045 of the Code. Further, Escrow Holder agrees to indemnify and hold Buyer, each Seller, and their respective attorneys and brokers and Broker (as defined below) harmless from and against any losses resulting from Escrow Holder's failure to file the reports Escrow Holder is required to file pursuant to this section.

(f) The provisions of this section shall survive the termination of this Agreement, and if not so terminated, the Closing and delivery of the grant deed to Buyer.

### **ARTICLE 3 CONDITION OF TITLE**

**3.1 Approval of Title.** Buyer hereby acknowledges that, with respect to the Real Property, Buyer has received the Title Documents (as hereinafter defined) prior to the Effective Date and approves of all matters contained therein. As used herein, "**Title Documents**" shall mean collectively that certain preliminary title report for the Land dated as of November 25, 2019 and bearing Title No. 3193306911 (the "**Title Report**") prepared by Lawyers Title Company (the "**Title Company**") and certain hyperlinked copies of exception documents referred to in Schedule B of the Title Report.

**3.2 Title Policy.** Either a CLTA or ALTA Owner's Title Insurance Policy (the "**Title Policy**") shall be issued by the Title Company as of the Closing Date. The Title Policy shall be a CLTA Owner's Title Insurance Policy unless Buyer elects, by appropriate escrow instructions to the Title Company, to cause the Title Company to issue an ALTA Owner's Title Insurance Policy in place of the CLTA Title Policy. If Buyer elects to have an ALTA policy issued, Buyer shall pay the premium for said ALTA Policy in excess of the costs and premium that would have been incurred for a CLTA Policy, and such election shall in no event extend the Closing Date. In addition, Buyer shall obtain at its sole cost any survey required in connection with the ALTA Policy and any endorsements requested by Buyer, and Buyer shall be solely responsible for the Title Company's acceptance of such survey. The Title Policy shall be in the amount of the Purchase Price and shall insure fee title to the Land in Buyer.

**3.3 Disclaimer of Title, Warranty.** Nothing in this Agreement shall be construed as a warranty or representation by either Seller, either express or implied, concerning either Seller's title to the Land, and each Seller makes no such warranty or representation (and Buyer acknowledges that the Sellers are only in possession of the Land and do not and have not at any time owned title to the Land). Buyer is relying solely upon the Title Report, the Title Policy and

the grant deed from the Real Property Seller to Buyer recorded at the Closing and Buyer's own Inspections (as defined in below) respecting title to the Land.

## ARTICLE 4 BUYER'S DUE DILIGENCE

### 4.1 Due Diligence Investigations.

(a) **Contingency Date.** Buyer's obligations under this Agreement are subject to Buyer's approval or disapproval provided to the Sellers by written notice on or before February 3, 2020, and in no event later than 8:00 PM Pacific on February 3, 2020 (the "**Contingency Date**") of the condition of the Purchased Assets. In connection with Buyer's approval or disapproval of the condition of the Purchased Assets, Buyer and Buyer's agents, contractors, engineers, surveyors, attorneys, and employees or any other party in connection with any inspections conducted by or for Buyer ("**Consultants**") shall have the opportunity, at their sole cost and risk, to inspect the Purchased Assets (including the environmental and other aspects of the physical condition of the Land) and investigate and study the operations of the Purchased Assets and the feasibility of acquiring and developing the Real Property (such investigations collectively hereinafter referred to as "**Inspections**") prior to the Contingency Date. Buyer acknowledges that to facilitate Buyer's Inspections, the Sellers have, for informational purposes only and without any representation or warranty of any kind, provided Buyer with certain studies, reports and information related to the Real Property (collectively, the "**Materials**"). Buyer's approval or disapproval pursuant to this Section 4.1(a) may be made at Buyer's sole and absolute discretion. In the event of Buyer's disapproval under this section, this Agreement shall be and be deemed terminated and, other than those matters which expressly survive the termination hereof, neither party shall have any further rights or obligations hereunder. Buyer's failure to provide written notice to the Sellers prior to the Contingency Date regarding Buyer's approval or disapproval of the Purchased Assets shall be deemed Buyer's approval of the Purchased Assets.

(b) **Mechanic's Liens.** Buyer shall not permit any mechanic's or materialmen's liens or any other liens to attach to the Purchased Assets by reason of the performance of any work or the purchase of any materials by Buyer and its Consultants. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated, shall survive the closing of the Agreement and delivery of grant deed for the Real Property.

(c) **Contracts.** Within three (3) days after the Effective Date, Buyer may deliver written notice to the Sellers (the "**Contracts Notice**") specifying any of the Contracts which Buyer desires to continue at the Closing (the "**Assigned Contracts**"), to the extent any such Contracts are assignable to Buyer. If Buyer fails to deliver the Contracts Notice in accordance with the terms herein, there shall be no Assigned Contracts and each Seller shall use reasonable efforts to terminate all Contracts at the Closing. To the extent that any Contract being assumed by Buyer is assignable but requires the applicable vendor to consent to the assignment or assumption of the Contract by the applicable Seller to Buyer, then, prior to the Closing, Buyer shall be responsible for obtaining from each applicable vendor a consent (each a "**Required Assignment Consent**") to the assignment of the Contract by such Seller to Buyer (and the assumption by Buyer of all obligations under such Contract). In the event Buyer fails to obtain any Required Assignment Consent, Buyer shall indemnify, hold harmless and, if requested by the affected Seller (in such



Seller's sole discretion), defend (with counsel approved by such Seller) such Seller from and against any and all losses arising from or related to Buyer's failure to obtain such Required Assignment Consent.

#### **4.2 Right of Entry.**

(a) **Buyer's Right of Access.** Until the Closing Date or, if sooner, the date this Agreement is terminated, Buyer shall have a limited, non-exclusive license to enter upon the Land, at Buyer's sole cost and expense, in order to conduct such Inspections of the Purchased Assets as Buyer deems necessary or desirable; provided, however, that Buyer shall restore any damage done to the Purchased Assets in connection with any such Inspections performed by or on behalf of Buyer. Buyer's right of entry shall be subject to the Sellers' prior written approval, following the Sellers' receipt of written notice from Buyer by e-mail or fax (at the e-mail address or facsimile numbers listed below) of any such request giving the proposed time of entry, its approximate duration and a description of the specific nature of the entry, test, investigation or other matter, together with the parties that will be present. The Sellers' written approval may be evidenced by an e-mail or fax back to Buyer (at the e-mail address or facsimile number listed below) approving the request. Buyer shall permit the Sellers to have a representative present during all Inspections conducted with respect to the Purchased Assets. Buyer shall use best efforts to minimize disruption to any person or entity entitled to occupy any portion of the Land and Improvements in connection with Buyer's or its Consultant's activities pursuant to this Agreement. No consent by either Seller to any such activity shall be deemed to constitute a waiver by such Seller or assumption of liability or risk by such Seller. Buyer hereby agrees to restore, at Buyer's sole cost and expense, the Purchased Assets to the same condition existing immediately prior to Buyer's exercise of its rights pursuant to this section. Buyer shall comply with all applicable laws and governmental regulations applicable to the Purchased Assets and shall indemnify, defend, protect and hold harmless each Seller and the Purchased Assets from any and all claims (known or unknown), liabilities, damages and costs, including, without limitation, attorneys' fees and costs, arising out of any entry onto the Land for purposes contemplated herein by Buyer or its representatives, employees, Consultants or designees; provided, however, that Buyer shall not pursuant to this section be obligated to indemnify, defend, protect or hold harmless either of the Sellers or the Purchased Assets from claims, liabilities, damages or costs arising out of any: (i) acts or omissions of the Seller to be indemnified or its respective agents or representatives; (ii) latent defects in the Land or Improvements; or (iii) hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws not brought onto the Land by Buyer or its agents or representatives, except if and to the extent Buyer exacerbates or worsens the condition.

(b) **Insurance Requirements.** As a prior condition to any entry onto the Land (and for purposes hereof, any environmental inspections or soils tests shall not be considered routine inspections), Buyer shall maintain and cause its agents and Consultants to maintain and keep in effect (a) commercial general liability insurance naming each Seller as an additional insured, with limits of not less than \$2,000,000 property damage, bodily injury or death and (b) worker's compensation insurance for all of its employees in accordance with the law of the State of California. Prior to Buyer's or its Consultants' entry onto the Land, Buyer shall deliver to the Sellers certificates of insurance evidencing such coverage and further evidencing that such coverage may only be terminated or modified upon not less than thirty (30) days prior written notice to the Sellers. The provisions of this paragraph shall survive the termination of this

Agreement, and if not so terminated, shall survive the closing of this Agreement and delivery of grant deed for the Land.

**4.3 Documents.** In the event this Agreement is terminated for any reason (including due to either party's default), Buyer shall deliver to the Sellers, upon either Seller's request and at no cost to either Seller, the originals (or copies if the originals are not available) of all studies, tests, surveys, applications, maps, agreements, plans and other documents related to the Land in Buyer's possession or control, whether previously delivered to Buyer by either Seller as a part of the Materials or reports and information and Materials provided to Buyer and any reports, studies or other information prepared or compiled for Buyer by any Consultant or other third-party in connection with Buyer's investigation of the Land ("**Third-Party Reports**") obtained by Buyer in connection with its investigation and analysis of the Real Property, and, upon written request of either Seller, Buyer shall assign to such Seller, AS-IS and without representation or warranty as to accuracy or completeness, and subject to the proprietary rights of any third party consultants and any limitations imposed by them, all right, title and interest of Buyer in and to all or any portion of such documents as specified by such Seller; provided, however, that this section shall not apply to: (a) confidential or proprietary information; (b) any information subject to a legal privilege (including, without limitation, legal memoranda); or (c) accounting and financial information (including, without limitation, financial models regarding the Land). The provisions of this section shall survive any termination of this Agreement.

**4.4 Escrow Cancellation Charges.** In the event the Escrow shall fail to close by reason of a party's default, the defaulting party shall be liable for all Escrow cancellation charges, including but not limited to the costs of the title examination, Title Commitment and escrow fee. In the event the Escrow shall fail to close due to the failure of a Closing condition set forth below that is not caused by a default of one of the parties, each party shall pay one-half (1/2) of any Escrow cancellation charges.

## **ARTICLE 5 BUSINESS SELLER'S OBLIGATIONS**

**5.1 General Operation of the Business.** If the Business is currently open and operating as of the Effective Date, Business Seller shall operate the Business or cause the Business to be operated after the Effective Date in the reasonable discretion of the Receiver, solely in her capacity as Receiver.

## **ARTICLE 6 CLOSING**

**6.1 Escrow.** The Closing of the purchase and sale of the Purchased Assets shall be consummated through Escrow in accordance with the provisions of this ARTICLE 6.

**6.2 Escrow Instructions for Closing.** This Agreement shall constitute joint instructions to Escrow Holder. The parties agree to execute and deliver to the Escrow Holder reasonable and customary additional escrow instructions in the usual form of Escrow Holder for the purpose of consummating the purchase and sale contemplated by this Agreement; provided, however, that standard extension provisions in such escrow instructions shall not apply; and

provided, further, that in the event of any conflict between this Agreement and any escrow instructions, the provisions of this Agreement shall control. Escrow Holder shall perform all customary functions of an escrow holder to consummate this transaction, including among other duties the calculation of the prorations and Closing Costs (as defined in Section 6.7 below) required by this Agreement, as well as serving as depository for all funds, instruments, and documents needed for the Close of Escrow. Upon the Closing, Escrow Holder is hereby instructed to remit all sales proceeds from the sale of the Purchased Assets to an interest-bearing account maintained at a federally insured bank or savings and loan association established by the Sellers, which sales proceeds shall be held and distributed in the manner set forth in the "Order Approving the Sale". For the sake of clarity, Escrow Holder's remittance of all sales proceeds from the sale of the Purchased Assets pursuant to the manner set forth in the foregoing sentence shall mean that such sales proceeds shall be remitted to Receiver.

### **6.3 Closing Conditions.**

(a) Buyer's obligation to close is subject to satisfaction of the following conditions, which are for the benefit of Buyer and may be waived by Buyer in its sole discretion:

(i) Buyer shall have completed its due diligence investigation of the Purchased Assets and approved of the Purchased Assets, or be deemed to have approved of the Purchased Assets, on or prior to the Contingency Date; and

(ii) Sellers shall not, as of the Closing Date, be in material default in the performance of its obligations under this Agreement.

(b) The Sellers' obligation to close is subject to satisfaction of the following conditions, which are for the benefit of the Sellers and may be waived by the Sellers in their sole discretion:

(i) All representations and warranties made by Buyer in this Agreement shall be true when made and shall be true as of the Closing Date, without any material adverse change, except for any material adverse change of which Buyer has notified the Sellers and which the Sellers have accepted;

(ii) All of the documents and funds required to be delivered by Buyer to the Sellers or Escrow Holder (as the case may be) at the Closing pursuant to the terms and conditions hereof shall have been delivered;

(iii) Each Seller shall have received all consents, documentation and approvals necessary to consummate and facilitate the transactions contemplated hereby, including, without limitation, approval of the sale of the Purchased Assets to Buyer from the Court and as may be required by law; and

(iv) Buyer shall not, as of the Closing Date, be in default in the performance of its obligations under this Agreement.

(c) In addition to the foregoing, Buyer's and each Seller's respective obligations to Close are subject to the approval of the transaction contemplated herein by the Court, which



approval shall be a condition for the benefit of each of the Buyer and the Sellers and may not be unilaterally waived by any party.

(d) If the purchase and sale fails to close by the Closing Date due to a failure of a condition, the party for whose benefit the condition is set forth may terminate this Agreement at any time thereafter until the Closing occurs, so long as the failure of condition is not caused by such party's breach of its obligations under this Agreement. If Buyer so terminates in connection with the condition set forth in Section 6.3(a)(ii), above (only), then Buyer shall be entitled as its sole and exclusive remedy to the return of the Earnest Money Deposit. If the Sellers so terminate, the Sellers shall be entitled to retain the Earnest Money Deposit.

**6.4 Buyer's Deliveries.** No later than one (1) business day prior to the Closing Date, Buyer shall deliver to Escrow Holder:

(a) The difference between the Purchase Price and the Earnest Money Deposit, and all costs and fees required to be paid by Buyer pursuant to Sections 6.6 and 6.7 below, all in Immediately Available Funds;

(b) A title affidavit (or at Buyer's option an indemnity) pertaining to Buyer's activity on the Real Property prior to Closing, in the customary form reasonably acceptable to Buyer, to enable Title Company to delete the standard exceptions to the title insurance policy set forth in this Agreement to be issued pursuant to the Title Report;

(c) Any declaration or other statement which may be required to be submitted to the local assessor with respect to the terms of the sale of the Real Property;

(d) A closing statement executed by Buyer;

(e) A countersigned counterpart of the Bill of Sale in the form attached as Exhibit "D" (the "**Bill of Sale**");

(f) A countersigned counterpart of a General Assignment in the form attached as Exhibit "E" (the "**General Assignment**");

(g) Copies of letters from the relevant vendors evidencing Buyer's assumption of the Assigned Contracts;

(h) Resolutions, certificates of good standing, and such other organizational documents, in form acceptable to the Title Company, authorizing the execution, delivery and performance by Buyer of this Agreement and designating one or more members to execute documents on Buyer's behalf in connection with this transaction; and

(i) Such other documents and instruments as may be reasonably requested by either Seller or by the Escrow Holder in order to consummate this transaction.

**6.5 Sellers' Deliveries.** No later than one (1) business day prior to the Closing Date, the Sellers, as applicable, shall deliver to Escrow Holder:

- (a) A fully executed and acknowledged grant deed in the form attached as Exhibit "F" conveying the Land to Buyer;
- (b) A closing statement executed by the Sellers;
- (c) A countersigned counterpart of the Bill of Sale;
- (d) A countersigned counterpart of the General Assignment;
- (e) Such other documents and instruments as may be required herein or reasonably requested by the Escrow Holder in order to consummate this transaction.

## 6.6 Prorations.

(a) **General.** All normal and customarily prorable items, including, without limitation, collected rents, operating expenses, all current installments of real estate taxes, assessments, bonds and personal property or use taxes, if any, shall be prorated as of the Closing Date. If, however, subsequent to the Close of Escrow, by reason of any change in assessment or change in rate or any other reason, the real estate taxes for the fiscal year covered by such apportionment should be determined to vary from those apportioned, the amount of any refund received by, or payment due from, Buyer shall be apportioned between the Sellers and Buyer as of the Closing Date at the request of either party. Escrow Agent shall prepare and deliver to the Sellers and Buyer a proration schedule (the "**Proration Schedule**") of the adjustments described in this Section 6.6 no later than two (2) days prior to Closing. Such adjustments shall be paid by Buyer to the Sellers (if the prorations result in a net credit to the Sellers) or by the Sellers to Buyer (if the prorations result in a net credit to Buyer), by increasing or reducing the cash to be paid by Buyer at the Closing. Any apportionments and prorations which are not expressly provided for below shall be made in accordance with customary practice in San Diego County, California.

(b) **Operating Expenses.** All of the operating, maintenance, taxes (other than real estate taxes, such as rental taxes), and other expenses incurred in operating the Business that each Seller customarily pays, and any other costs incurred in the ordinary course of business for the management and operation of the Business, shall be prorated on an accrual basis. The Sellers, as applicable, shall pay all such expenses that accrue prior to Closing and Buyer shall pay all such expenses that accrue from and after the Closing Date.

(c) **Utilities.** The final readings and final billings for utilities will be made if possible as of the Closing Date, in which case the Sellers, as applicable, shall pay all such bills as of the Closing Date and no proration shall be made at the Closing with respect to utility bills. Otherwise, a proration shall be made based upon the parties' reasonable good faith estimate and a readjustment made within thirty (30) days after the Closing, if necessary. Each Seller shall be entitled to the return of any deposit(s) posted by it with any utility company, and the Sellers shall notify each utility company serving the Business and/or the Real Property to terminate the applicable Seller's account, effective as of noon on the Closing Date.

(d) **Real Estate Taxes.** Any real estate ad valorem or similar taxes for the Real Property, or any installment of assessments payable in installments which installment is payable in the calendar year of Closing, shall be prorated to the date of Closing, based upon actual days

involved. The proration of real property taxes or installments of assessments shall be based upon the assessed valuation and tax rate figures (assuming payment at the earliest time to allow for the maximum possible discount) for the year in which the Closing occurs to the extent the same are available; provided, however, that in the event that actual figures (whether for the assessed value of the Real Property or for the tax rate) for the year of Closing are not available at the Closing Date, the proration shall be made using figures from the preceding year (assuming payment at the earliest time to allow for the maximum possible discount). The proration of real property taxes or installments of assessments shall be final and not subject to re-adjustment after Closing.

(e) **Insurance Premiums.** No proration shall be made in relation to insurance premiums and insurance policies will not be assigned to Buyer.

(f) **No Post-Closing Adjustments.** Buyer and each Seller hereby acknowledge and agree that neither Buyer nor either Seller shall have any right to re-adjust any item on the Proration Schedule (or any item omitted therefrom) after the Closing. The provisions of this section shall survive the Closing and delivery of the grant deed to Buyer.

**6.7 Closing Costs.** The Sellers shall pay: (a) the premium for a standard CLTA Owner's Policy of Title Insurance; (b) all County documentary transfer taxes; and (c) one-half (1/2) of all Closing Costs. Buyer shall pay: (i) any additional premium for an ALTA Policy of Title Insurance, if Buyer elects to receive same and the cost of any survey and/or title endorsements desired by Buyer; and (ii) one-half (1/2) of Closing Costs. Any other costs or expenses of the Escrow shall be borne by the parties in accordance with customary practice in San Diego County, California. For purposes of this Agreement, "**Closing Costs**" shall mean escrow fees, city documentary transfer taxes, document preparation charges and acknowledgment and recording costs, but shall not include any attorneys' fees or other such costs and expenses incurred separately by Buyer or either Seller.

**6.8 Possession Upon Close of Escrow.** The Sellers shall deliver possession of the Purchased Assets to Buyer (subject to the Assigned Contracts identified by Buyer pursuant to the terms above) upon the Close of Escrow.

**6.9 Termination of this Agreement.** In the event this Agreement is terminated in accordance with the provisions of Sections 6.3(d), 12.1(a), 12.2(a), 14.5 or 15, (i) any documents deposited with Escrow Holder shall be returned to the party depositing the same; (ii) Buyer shall return to each Seller all documents delivered by such Seller to Buyer pursuant to this Agreement and any Third-Party Reports; and (iii) unless otherwise specifically provided elsewhere, the Buyer shall pay all Escrow, title, and other costs, if any, incurred in connection with cancellation of the Escrow. If this Agreement is not so terminated, Buyer shall go forward with the acquisition of the Purchased Assets as provided in this Agreement and the Earnest Money Deposit shall be non-refundable, except in the event of either Seller's default prior to the Close of Escrow.

**6.10 Waiver of "Bulk Sale" Provisions.** Buyer and each Seller hereby acknowledge and agree that the sale of the Purchased Assets shall not be made as a "bulk sale" under Sections 6101 *et seq.* of the California Commercial Code, that there shall be no separate escrow or sub-escrow for the sale of any portion of the Purchased Assets, and that no "bulk sale" notice pursuant to Section 6105 of the California Commercial Code shall be given by Escrow Holder or

the parties in connection with the transfer of any portion of the Purchased Assets. Each Seller represents and warrants to Buyer that such Seller's principal business is not the sale of inventory from stock or that of a restaurant owner.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF BUYER**

**7.1 Representations and Warranties of Buyer.** Buyer represents and warrants as follows:

(a) **Authority.** The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized and approved by all requisite action of Buyer, and no other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order to enable Buyer to enter into or to comply with the terms of this Agreement.

(b) **Binding Effect of Documents.** This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer, and will constitute legal, valid and binding obligations of Buyer. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Buyer is a party or by which it is bound.

(c) **Representation Regarding Broker.** The Broker and its affiliates do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to Section 14.4, acquires the Purchased Assets at the Closing), nor has Buyer or any affiliate of Buyer granted (as of the Effective Date or the Closing Date) the Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

(d) **No Pending or Threatened Litigation.** No pending or threatened litigation exists which if determined adversely would restrain the consummation of the transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Buyer's obligations or covenants to the Sellers.

(e) **Survival of Buyer's Representations and Warranties.** All warranties and representations of Buyer set forth in this Agreement shall survive for a period of six (6) months following the Closing Date and any claim with respect to a breach of any representation or warranty made or given by Buyer shall be initiated in accordance with the provisions of ARTICLE 10 within six (6) months of the Closing Date or such claim shall be forever barred.

## **ARTICLE 8 "AS IS" SALE**

**8.1 Independent Investigation.** Buyer shall have independently investigated, analyzed and appraised the value, profitability and condition of the Purchased Assets, including, without limitation, the geological and soil condition of the Purchased Assets, the validity of any Intangible Assets, the fitness or suitability of the Purchased Assets for Buyer's intended use of the

Purchased Assets and all environmental matters relating to the Purchased Assets (including, but not limited to, the presence or absence of hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws), without relying on any representations of any kind (whether oral or written, express or implied) made by either Seller to Buyer. Buyer is purchasing the Purchased Assets in its "AS IS, WHERE IS" condition as of the Effective Date solely in reliance upon Buyer's own investigations and evaluation thereof and without any representation or warranty by either Seller as to the condition of the Purchased Assets.

**8.2 AS-IS Purchase; No Side Agreements Or Representations.** Buyer acknowledges and agrees that Buyer has independently and personally inspected the Purchased Assets, and the improvements, entitlements, plans and specifications related to the Purchased Assets, Buyer has elected to go forward with the purchase of the Purchased Assets on the basis of such personal examinations and inspections as Buyer has deemed appropriate to make. Buyer agrees that **AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE SELLERS, BUYER IS PURCHASING THE PURCHASED ASSETS IN AN "AS IS" AND "WHERE IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR, WITH ALL FAULTS.** No person acting on behalf of either Seller is authorized to make, and by execution hereof Buyer acknowledges and agrees that, except as specifically provided in this agreement, each Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of and to, concerning or with respect to:

- (i) the value of the Purchased Assets;
- (ii) the income to be derived from the Purchased Assets;
- (iii) the suitability of the Purchased Assets for any and all activities and uses which Buyer may conduct thereon, including without limitation any development of any or all of the Purchased Assets;
- (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Purchased Assets;
- (v) the manner, quality, state of repair, or lack of repair, of the Purchased Assets;
- (vi) the nature quality or condition of the Land or any of the other Purchased Assets, as applicable, including without limitation, the water, soil and geology;
- (vii) the compliance of or by the Purchased Assets or the operation of the Purchased Assets with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;
- (viii) the manner, condition, or quality of the construction or materials, if any, incorporated into the Purchased Assets;

(ix) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, the Endangered Species Act, Title III of the Americans With Disabilities Act of 1990, and any other law, rule or regulation governing access by disabled persons;

(x) the presence or absence of hazardous or toxic substances at, on, under, or adjacent to the Land;

(xi) the content, completeness or accuracy of the due diligence materials, including any informational package, document list or other materials prepared by either Seller;

(xii) the conformity of the improvements to any plans or specifications for the Real Property, including any plans and specifications that may have been or may be provided to Buyer;

(xiii) the conformity of the Real Property to past, current or future applicable zoning or building requirements;

(xiv) deficiency of any undershoring;

(xv) deficiency of any drainage;

(xvi) the fact that all or a portion of the Purchased Assets may be located on or near an earthquake fault line or located in an Alquist-Priolo Special Study Zone;

(xvii) the existence of land use zoning or building entitlements affecting the Real Property;

(xviii) deficiency of any access to the Land and/or Improvements;

(xix) the Intangible Assets; and

(xx) with respect to any other matter concerning the Purchased Assets, except as may be otherwise expressly stated herein, including any and all such matters referenced discussed or disclosed in any documents delivered by either Seller to Buyer, in any public records of any governmental agency, entity or utility company, or in any other documents available to Buyer.

Buyer acknowledges and agrees that the opportunity to inspect the Purchased Assets and review information and documentation respecting the Purchased Assets (including that disclosed in the Acknowledgment) as provided in this Agreement is sufficient to allow the Buyer to make an adequate investigation of the Purchased Assets and that Buyer is relying solely on its own investigation of the Purchased Assets and review of such information and documentation, and not, on any information provided or to be provided by either Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of either Seller with respect to the Purchased Assets was obtained from a variety of sources and that neither Seller has made any independent investigation or verification of such information and each Seller makes no representations as to the accuracy or completeness of such information except



as may otherwise be provided herein. Buyer agrees to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are the Real Property Seller and/or the Business Seller, or their respective employees, members, officers directors, representatives, agents, servants, attorneys, affiliates, parent companies, subsidiaries, successors or assigns, from any and all claims that it may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Neither Seller is liable or bound in any manner by any oral or written statements, representations or information pertaining to the Purchased Assets or the operation thereof furnished by any of the foregoing entities and individuals or any other individual or entity. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Purchased Assets as provided for herein is made on an "AS-IS" condition and basis, with all faults, and that neither Seller has any obligation to make repairs, replacements or improvements.

**8.3 NO LIABILITY TO RECEIVER.** WITHOUT LIMITATION OF THE FOREGOING, AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO ENTER INTO THIS AGREEMENT, AND AS PART OF THE DETERMINATION OF THE CONSIDERATION GIVEN HEREUNDER, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

(a) BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HIS OR HER DUTIES AS RECEIVER PURSUANT TO THE ORDERS. 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 PURSUANT TO THE ORDERS.

(B) NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PURCHASED ASSETS UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE REAL PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PURCHASED ASSETS OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PURCHASED ASSETS RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

**8.4 Survival.** The provisions of this ARTICLE 8 shall survive the Close of Escrow indefinitely or until the maximum extent allowed under applicable laws.

## **ARTICLE 9 RELEASE AND INDEMNITY**

**9.1 Release.** To the maximum extent permitted by law, Buyer, on behalf of itself and its past, present and future agents, representatives, partners, shareholders, principals, attorneys,

affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs and executors and assigns (collectively, "**Buyer's Parties**"), hereby releases and forever discharges the Sellers, and each of their respective past, present and future agents (including Receiver and Broker (as defined herein), representatives, partners, attorneys', shareholders, principals, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs, executors and assigns (collectively, "**Indemnitees**"), from and against all claims, rights, remedies, recourse or other basis for recovery, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) ("**Claims**"), whether direct or indirect, known or unknown, foreseen, whether before or after the Closing Date, including without limitation any loss, damage, injury, illness, death or other claim attributable to: (a) the use of the Purchased Assets or any part thereof; (b) a defect in the design or construction of any improvements on or about the Purchased Assets or the physical condition of the Purchased Assets, including without limitation the grading of the Land or land adjacent to the Land, whether or not performed by an Indemnatee, and any surface and subsurface conditions; (c) the presence on the Land of any threatened or endangered species, or any archaeological sites, artifacts or other matters of archaeological significance, or any hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws including, without limitation, all claims in tort or contract and any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters; (d) any act, omission or representation of Buyer or any of Buyer's Parties; (e) any accident or casualty on the Real Property caused by or attributable to the acts or omissions of any Indemnitees, Buyer or Buyer's Parties on or about the Real Property; (f) a violation or alleged violation by any Indemnatee, Buyer, or Buyer's Parties of any law now or hereinafter enacted, including, without limitation, any requirements of the City; (g) a slope failure or surface or subsurface geologic or groundwater condition caused by or attributable to any Indemnatee, Buyer or Buyer's Parties; (h) the design, construction, engineering or other, work with respect to the Real Property provided or performed by or caused by or attributable to any Indemnatee, Buyer or Buyer's Parties, whether before or after the Closing Date; (i) any other cause whatsoever in connection with Buyer's use of the Purchased Assets or Buyer's performance under the Agreement or any of the instruments executed and delivered at the Closing in connection herewith; (j) any breach by Buyer in the performance of its obligations under this Agreement or the other instruments executed and delivered at the Closing in connection herewith; or (k) the application of the principles of strict liability in connection with the Purchased Assets (collectively, the "**Released Claims**"). Notwithstanding the foregoing, the Buyer shall not be required to or be deemed to have waived any Claims against any particular Indemnatee from an event which arises from a pre-existing relationship or claim between the Buyer and such Indemnatee.

With respect to this release and discharge, Buyer, on behalf of itself and all of Buyer's Parties, hereby acknowledges that the Released Claims may include Claims of which Buyer is presently unaware, or which Buyer does not presently suspect to exist, or which may not yet have accrued or become manifest, and which, if known by Buyer on the Effective Date or the Closing Date would materially affect Buyer's release and discharge of the Sellers and the other Indemnitees, and Buyer, on behalf of itself and all of Buyer's Parties, hereby waives application of the California Civil Code Section 1542 which provides as follows:



A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Buyer understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that, even if Buyer or any of Buyer's Parties suffer future damages arising out of or resulting from any Released Claims, neither Buyer nor any of Buyer's Parties will be able to make any claim for those damages against either Seller or any other Indemnitee. Furthermore, Buyer acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which Buyer does not know exist, and which, if known, would materially affect Buyer's decision to execute this Agreement, regardless of whether Buyer's lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.

  
**Buyer's initials**

**9.2 Survival.** The provisions of this ARTICLE 9 shall survive the Close of Escrow indefinitely or until the maximum extent allowed under applicable laws.

## **ARTICLE 10 DISPUTE RESOLUTION**

**10.1 Court Trial.** 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.

**10.2 Venue.** 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 article.

## ARTICLE 11 NATURAL HAZARD DISCLOSURE STATEMENT

**11.1 Buyer's Acknowledgment.** Buyer acknowledges that: (a) it is a sophisticated and experienced purchaser of real property; (b) Buyer and the Sellers are parties of equal bargaining strength; (c) this Agreement is not a contract of adhesion but has been expressly negotiated between the parties; and (d) this Agreement concerns a transaction that is private in nature. Buyer further acknowledges that it has the opportunity to make, has made or will make its own independent investigations, as provided in this Agreement, and that the opportunity for investigation provided herein allows the Buyer to determine, among other issues, whether the Land is located in any natural hazard areas.

**11.2 Waiver of Natural Hazard Disclosure Statement.** Notwithstanding anything to the contrary below, Buyer hereby knowingly, voluntarily and intentionally waives its right to disclosure of natural hazards found in the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4, and 51183.5, California Public Resources Code Sections 2621.9, 2694, and 4136, and California Civil Code Section 1103, and any successor statutes or laws (the "Act"). This waiver is a material inducement to each Seller's decision to enter into this Agreement and the calculation of the Purchase Price, and Buyer acknowledges that the Sellers would not have entered into this Agreement but for this waiver.

**11.3 Natural Hazard Disclosure Statement.** Buyer acknowledges that, prior to the Effective Date, Buyer has received and executed the Natural Hazard Disclosure Statement ("**Disclosure Statement**"). Buyer acknowledges that the Disclosure Statement is being delivered pursuant to the Act. Buyer acknowledges and agrees that nothing contained in the Disclosure Statement shall release Buyer from its obligation to fully investigate the condition of the Real Property, including without limitation whether the Real Property is located, in any natural hazard areas, and that Buyer has the expertise to perform such investigations. Buyer further acknowledges and agrees that the matters set forth in the Disclosure Statement may change on or prior to the Close of Escrow and that the Sellers have no obligation to update, modify or supplement the Disclosure Statement. Buyer shall be solely responsible for preparing and delivering its own Natural Hazard Disclosure Statement to any subsequent prospective purchasers of the Real Property.

## ARTICLE 12 CONDEMNATION AND DESTRUCTION

**12.1 Eminent Domain or Taking.** If proceedings under a power of eminent domain relating to the Land or any part thereof are commenced prior to Close of Escrow, the Sellers shall promptly notify Buyer in writing and the following terms shall apply:

(a) If such proceedings involve the taking of title to all or a Material (as defined below) portion of the Land, Buyer may elect to terminate this Agreement by written notice given within ten (10) days of the Sellers' written notice to Buyer advising of such proceedings, in which case neither party shall have any further rights or obligations hereunder, except for those which are expressly stated to survive termination of this Agreement or which are contained in Section 6.9.

(b) If the proceedings do not involve the taking of title to all or a Material portion of the Land, or if Buyer does not elect to terminate this Agreement, this transaction shall be consummated as described herein and any award or settlement payable with respect to such proceeding shall be paid or assigned to Buyer upon Close of Escrow.

(c) If the purchase and sale of the Purchased Assets is not consummated for any reason, any condemnation award or settlement shall belong solely to the Sellers.

**12.2 Damage or Destruction.** Except as provided in this section, prior to the Close of Escrow, the entire risk of loss of damage by earthquake, landslide, fire or other casualty shall be borne and assumed solely by the Sellers. If, prior to the Close of Escrow any part of the Land or improvements thereon is damaged or destroyed by earthquake, landslide, fire or other casualty, the Sellers shall promptly inform Buyer of such fact in writing and advise Buyer as to the extent of the damage and whether it is, in the Sellers' reasonable opinion, "Material" or "not Material." The following terms shall apply:

(a) If such damage or destruction is "Material," Buyer shall have the option to terminate this Agreement upon written notice to the Sellers given not later than ten (10) days after receipt of the Sellers' written notice to Buyer advising of such damage or destruction.

(b) If Buyer does not elect to terminate this Agreement, or if the damage or destruction is not "Material," the Sellers shall reduce the Purchase Price by the value reasonably estimated by the Sellers to repair or restore the damaged portion of such Land or improvements, less any sums expended by either Seller to make emergency repairs to such Land or improvements or to otherwise protect the physical condition of such Land or improvements, and this transaction shall close pursuant to the terms of this Agreement.



(c) If the damage is not "Material," the Sellers' notice to Buyer of the damage or destruction shall also set forth the Sellers' reduced Purchase Price and the Sellers' allocation of value to the damaged portion of such improvements. If Buyer does not accept the Sellers' reduced Purchase Price, the Sellers may elect to repair or restore the damaged portion of such improvements. If the Sellers elect to repair or restore the damage, then Buyer shall proceed to the Closing. If the Sellers do not elect to repair or restore the damage, and Buyer does not accept the Sellers' reduced Purchase Price, Buyer's sole remedy shall be to terminate this Agreement. If Buyer elects to terminate the Agreement pursuant to this Section 12.2(c), the provisions of Section 6.9 shall apply.

(d) Whether or not the sale of the Purchased Assets is consummated hereunder, all rights to insurance claims or proceeds with respect to any damage to or destruction of any improvements occurring prior to the Close of Escrow shall belong to the Sellers.

**12.3 Definition of Material.** As used in this ARTICLE 12, "**Material**" shall mean any taking, condemnation, damage or destruction to or of the Land, as applicable, which causes the temporary closing of the Land for a period of five (5) days or more and costs more than One Hundred Thousand and No/100 Dollars (\$100,000.00) to repair.

**ARTICLE 13**  
**DEFAULT BY BUYER**

**13.1 DEFAULT BY BUYER. UPON DEFAULT BY BUYER, THE SELLERS SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND THE ESCROW HOLDER. IN SUCH EVENT, ESCROW HOLDER SHALL RELEASE THE EARNEST MONEY DEPOSIT TO THE SELLERS, AND THE SELLERS SHALL BE ENTITLED TO RECEIVE AND RETAIN THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND, EXCEPT FOR BUYER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY EITHER SELLER, NO PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER. IN THE EVENT THE CLOSING DOES NOT OCCUR BECAUSE OF BUYER'S DEFAULT, BUYER AND EACH SELLER AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY THE SELLERS AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PURCHASED ASSETS PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH THE SELLERS WILL INCUR AS A RESULT OF SUCH DEFAULT; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT: (A) LIMIT EITHER SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES; (B) WAIVE OR AFFECT BUYER'S INDEMNITY OBLIGATIONS AND EACH SELLER'S RIGHTS TO SUCH INDEMNITY; OR (C) WAIVE OR AFFECT BUYER'S OBLIGATIONS TO RETURN OR PROVIDE TO EITHER SELLER DOCUMENTS, REPORTS OR OTHER INFORMATION PROVIDED TO OR PREPARED BY OR FOR BUYER PURSUANT TO APPLICABLE PROVISIONS OF THIS AGREEMENT. THEREFORE, BUYER AND EACH SELLER DO HEREBY AGREE THAT AS OF THE EFFECTIVE DATE, A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT THE SELLERS WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PURCHASED ASSETS IS AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON). SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE SELLERS PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. EACH SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.**

  
**Buyer's initials**



  
**Real Property Seller's initials**

  
**Business Seller's initials**

**13.2 Default by the Sellers; Unsuccessful Bidder.** Subject to Section 8.3, if the sale of the Purchased Assets is not consummated because of a material default by either Seller under this Agreement or because Buyer is not the High Bidder, Buyer's sole remedy shall be to terminate this Agreement and recover the Earnest Money Deposit and interest accrued thereon.

#### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**14.1 Brokerage Commissions.** Each Seller represents and warrants to Buyer that neither Seller has engaged any broker or finder in connection with the transaction contemplated by this Agreement other than Colliers International ("**Broker**"), whose commission (if the Closing occurs) shall be paid pursuant to a separate agreement entered into by the Sellers and Broker. Buyer represents and warrants to each Seller that Buyer has not engaged any broker or finder in connection with the transaction contemplated by this Agreement. Buyer shall indemnify, defend and hold the Sellers and Broker harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Buyer in connection with, this transaction, and each Seller shall indemnify, defend and hold Buyer harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by such Seller in connection with this transaction. This indemnity provision shall survive the Closing or any earlier termination of this Agreement. Broker shall not be deemed a party or third party beneficiary of this Agreement. As a condition to the Sellers' obligation to pay the commission pursuant to this Section 14.1, Broker shall execute the signature page for Broker attached hereto solely for purposes of confirming the matters set forth therein; provided, however, that (a) Broker's signature hereon shall not be a prerequisite to the binding nature of this Agreement on Buyer and the Sellers, and the same shall become fully effective upon execution by Buyer and the Sellers, and (b) the signature of Broker will not be necessary to amend any provision of this Agreement.

**14.2 Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than three (3) business days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a

signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

**To Sellers/Receiver:**

Krista L. Freitag  
E3 Advisors  
355 South Grand Avenue, Suite 2450  
Los Angeles, California 90071  
E-mail: kfreitag@ethreadvisors.com  
Facsimile: (213) 943-1374

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP  
One America Plaza, 600 West Broadway, 27th Floor  
San Diego, CA 92101-0903  
Email: tfates@allenmatkins.com  
Facsimile: (619) 233-1158  
Attention: Ted G. Fates, Esq.

**To Buyer:**

Jane Cohen and Mordechai Ami Cohen  
PO Box 1136, Poway, CA 92074-1136  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

**14.3 Confidentiality.** Unless otherwise agreed to in writing by the Sellers and Buyer, each party shall keep confidential all documents, contracts, prices, plans specifications, strategies, marketing programs, financial statements, reports or other information provided to, or generated by the other party relating to the Purchased Assets and shall not disclose any such information to any person other than: (a) employees, agents and attorneys of either Seller or Buyer; (b) those who are actively and directly participating in the evaluation of the Purchased Assets, or the appraisal, investigation or financing of the purchase or construction of the Real Property; and (c) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Purchased Assets with applicable legal requirements. Buyer agrees to provide this confidentiality provision to any consultant, contractor or employee to whom confidential information may be disclosed and shall require any such consultant, contractor or employee to be bound by this confidentiality provision. Buyer expressly covenants and agrees that it shall not disclose any code compliance, environmental or other regulatory matters to governmental or other authorities without the express prior written approval by both Sellers unless required by law, in

which case Buyer shall immediately notify the Sellers thereof. Upon any termination of this Agreement for any reason, Buyer shall promptly return to the Sellers copies of all documents or other information pertaining to the Purchased Assets provided to Buyer by the Sellers. Notwithstanding anything to the contrary contained herein, Buyer hereby acknowledges that a copy of this Agreement shall be provided to Prospective Bidders (as defined below) in connection with the overbid process, in accordance with and subject to the terms and conditions of Article 15, below, and that in no event shall any such provision of this Agreement to Prospective Bidders be considered a violation of the confidentiality requirements set forth herein. Buyer also acknowledges that a copy of this Agreement shall be filed with the Court in connection with the Receiver's motion for Court approval of the sale. The provisions of this Section 14.3 shall survive the Closing or earlier termination of this Agreement.

**14.4 Assignment.** Buyer shall not assign this Agreement without obtaining each Seller's prior written consent, which consent may be withheld by each such Seller in its sole and absolute discretion for any reason whatsoever. Notwithstanding the foregoing, Sellers' consent shall be deemed granted in connection with an assignment of this Agreement by Buyer to an Affiliate (defined below) of Buyer, provided that Buyer notifies the Sellers in writing of such assignment and delivers to the Sellers the proposed written assignment agreement pursuant to which such Affiliate assignee will assume all of Buyer's obligations under this Agreement and such other information with respect to such Affiliate reasonably requested by the Sellers, at least five (5) business days in advance of such assignment. "**Affiliate**" shall mean an entity which is controlled by Buyer. "**Control**," as used in this Section 14.4, 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 this Agreement.

**14.5 Bankruptcy.** Buyer agrees that in the event that: (a) all or substantially all of Buyer's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of thirty (30) days; (b) Buyer makes an assignment for the benefit of creditors; (c) Buyer is adjudicated a bankruptcy; (d) Buyer institutes any proceeding under any law relating to bankruptcy wherein Buyer seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; (e) an involuntary proceeding is filed against Buyer under any bankruptcy laws and Buyer consents thereto or acquiesces therein by pleading or default or such involuntary proceeding is not dismissed within ninety (90) days; or (f) substantially all of Buyer's assets are attached or seized by judicial order where such seizure is not discharged within thirty (30) days then: (i) Buyer shall be deemed to be in default hereunder, (ii) this Agreement, including without limitation the rights granted herein, shall not become an asset in any of such proceedings; (iii) in addition to all other available remedies it shall be lawful for the Sellers to declare this Agreement terminated; and (iv) Buyer shall have no further claim on the Purchased Assets hereunder or otherwise, and no right to return of its Earnest Money Deposit or any other payments or expenses incurred pursuant to this Agreement.

**14.6 Not an Offer; Last Date for Submission.** The Sellers' delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither



the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by the Sellers, nor in any way imply that the Sellers are under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by the Sellers unless and until the Sellers have signed this Agreement and delivered a duplicate original to Buyer.

**14.7 Modification.** This Agreement may not be modified or amended except by a written agreement executed by each Seller and Buyer, and only to the extent set forth therein.

**14.8 Attorneys' Fees.** In the event any legal or equitable action is commenced in connection with this Agreement or the Purchased Assets, whether in contract or in tort, the prevailing party (as determined by the court) shall be entitled to recover from the losing party all reasonable costs and expenses incurred, including but not limited to reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

**14.9 Successors and Assigns.** Subject to the limitations on Buyer's right to assign, this Agreement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties.

**14.10 Duplicate Counterparts.** This Agreement may be executed in duplicate counterparts, all of which together shall constitute a single instrument, and each of which shall be deemed an original of this Agreement for all purposes, notwithstanding that less than all signatures appear on any one counterpart.

**14.11 Section Headings.** The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

**14.12 Survival of Covenants, etc.** Except as otherwise expressly provided herein, all agreements, conditions, acknowledgments, representations, and other obligations set forth in this Agreement shall merge with the grant deed and shall not survive the Close of Escrow.

**14.13 Days/Holidays.** All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday or holiday, notwithstanding any other provisions of this Agreement.

**14.14 No Recorded Memorandum.** Prior to Close of Escrow, neither this Agreement nor any memorandum hereof or reference hereto shall be filed in any place of public record. Failure of Buyer to comply with this Section shall be a material default by Buyer under this Agreement and, at the election of the Sellers, shall automatically and immediately terminate all of Buyer's rights under this Agreement, and thereafter Buyer shall not have any right, title, or interest in or to the Purchased Assets whatsoever.

**14.15 Exhibits.** All Exhibits attached to, and to which reference is made in, this Agreement are incorporated into, and shall be deemed a part of, this Agreement.



**14.16 Entire Agreement.** This Agreement is the entire agreement of the Sellers and Buyer with respect to the Purchased Assets, containing all of the terms and conditions to which the Sellers and Buyer have agreed. This Agreement supersedes and replaces entirely all previous oral and written understandings, offers, counter offers, acceptances, if any, of the Sellers and Buyer respecting the Purchased Assets.

**14.17 Time.** Time is of the essence in this Agreement and each and every provision of this Agreement.

**14.18 Governing Law and Forum.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. The exclusive forum for resolving disputes arising from or related to this Agreement, the overbid process (defined below) or closing of the sale shall be the Court in the Case.

**14.19 Severability.** If any term, provision, covenant or condition of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

**14.20 Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Buyer and either Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

**14.21 Signer's Warranty.** Each individual executing and delivering this Agreement on behalf of a party hereby warrants and represents to the other party that he or she has been duly authorized and empowered to do so.

**14.22 Multiple Buyers.** As used in this Agreement, the term "Buyer" means all entities acquiring any interest in the Purchased Assets at the Closing, including, without limitation, any assignee(s) of the original Buyer. In the event that "Buyer" has any obligations or makes any covenants, representations or warranties under this Agreement, the same shall be made jointly and severally by all entities being a Buyer hereunder. In the event that the Sellers receive notice from any entity being a Buyer hereunder, the same shall be deemed to constitute notice from all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder takes any action, breaches any obligation or otherwise acts pursuant to the terms of this Agreement, the same shall be deemed to be the action of the other entity(ies) being a Buyer hereunder and the action of "Buyer" under this Agreement. In the event that either Seller is required to give notice or take action with respect to Buyer under this Agreement, notice to any entity being a Buyer hereunder or action with respect to any entity being a Buyer hereunder shall be a notice or action to all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder desires to bring an action or arbitration against either Seller, such action must be joined by all entities being a Buyer hereunder in order to be effective. In the event that there is any agreement by either Seller to pay any amount pursuant to this Agreement to Buyer under any circumstance, that amount shall be deemed maximum aggregate amount to be paid to all parties being a Buyer hereunder and not an amount that can be paid to each party being a Buyer hereunder. In the event that the Sellers are

required to return the Earnest Money Deposit or other amount to Buyer, the Sellers shall return the same to any entity being a Buyer hereunder and, upon such return, shall have no further liability to any other entity being a Buyer hereunder for such amount. The foregoing provisions also shall apply to any documents to be executed pursuant to the provisions of this Agreement.

## ARTICLE 15

### SALE PROCEDURES AND OVERBID, POTENTIAL AUCTION PROCESS

**15.1 Due Diligence Information.** After signing a Confidentiality and Non-Disclosure Agreement ("**NDA**") and Access Agreement, all prospective buyers ("**Prospective Buyers**") shall have had the opportunity to inspect the Purchased Assets and any documentation made available to all Prospective Buyers. Prospective Buyers may also request access to information about the Purchased Assets ("**Due Diligence Information**") and obtain a form purchase and sale agreement.

**15.2 No Representations and Warranties for Due Diligence Information.** Any Due Diligence Information provided to Prospective Buyers is for informational purposes only and provided without any warranty, guaranty or representation by Receiver, or Receiver's Broker. All Prospective Buyers shall conduct their own independent investigation and analysis regarding the condition of the Purchased Assets and their suitability for Prospective Buyers' 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.

**15.3 Receivership Sale Requirements for Sales of Real Property.** There are specific statutory requirements that must be met before the Court will approve a sale of real property out of a federal receivership. The procedures set forth herein are designed to meet those requirements, one of which is that the Receiver must accept only the "highest and best" offer. The parties acknowledge it is a condition precedent to the Closing that Receiver obtain the Court Approval and the Receiver shall seek such approval from the Court. Receiver shall, shortly after determining and announcing the highest and best offer, request a hearing date from the Court for the sale motion (the "**Hearing Date**"). Furthermore, once a highest and best offer has been identified, the proposed sale will be published in San Diego Union Tribune for four consecutive weeks with the overbid information included therein. During the offer review process, Receiver will work to qualify all offerors as potential qualified overbidders.

**15.4 Qualified Bidders.** To be determined a qualified overbidder (a "**Qualified Bidder**"), one must: (i) provide a fully executed purchase and sale agreement for the Purchased Assets in form substantially similar to this Agreement ("**Qualified Bid PSA**"), acceptable to the Receiver in her sole discretion; (ii) provide an earnest money deposit (the "**Bid Deposit**") by wire transfer or cashier's check in the amount of Twenty-Seven Thousand Five Hundred and No/100 Dollars (\$27,500.00) 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 Date 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 (a) 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 (b) 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 herein below. If the High Bidder fails to close the purchase and sale of the Purchased Assets, 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 Purchased Assets shall occur. Pursuant to the foregoing, if the initial High Bidder fails to close the purchase and sale of the Purchased Assets 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 Purchased Assets.

**15.5 Overbids, Bid Increments, and Auction.** The minimum overbid shall be Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00). If any overbids are received and are qualified, the Receiver will advise the Court of the overbid and will propose to the Court that the sale of the Purchased Assets be subject to an auction (the "**Auction**") conducted by the Receiver. As applicable, the Receiver will provide the Auction instructions to the Court and Qualified Bidders. Only Qualified Bidders (as defined below) may make bids at the Auction. All bids will be subject to overbids in increments of Five Thousand and No/100 Dollars (\$5,000.00). The Court may reject any and all bids following conclusion of the Auction.

**15.6 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.

**15.7 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 Purchased Assets 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.

**15.8 No Contingencies for Qualified Bidder.** The sale to any Qualified Bidder of the Purchased Assets shall *not* be contingent upon the validity, effectiveness, and or binding nature of the Qualified Bidder's offer; *provided, however*, that contingencies for financing may be permitted.

**15.9 No Conditions Precedent for Qualified Bidder.** The sale to any Qualified Bidder of the Purchased Assets 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.

**15.10 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**").

**15.11 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 Purchased Assets 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.

**15.12 Transfer of Title to Purchased Assets Following Auction.** Following the Auction, title to the Purchased Assets shall be transferred by Grant Deed, and/or Bill of Sale, as applicable, "*AS-IS*", *WITHOUT REPRESENTATIONS AND WARRANTIES*, to the High Bidder.

**15.13 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 this Agreement.

IN WITNESS WHEREOF, this Purchase and Sale Agreement and Joint Escrow Instructions is executed and delivered by the parties as of the Effective Date.

**SELLERS:**

3833 MISSION BLVD, LLC,  
a California limited liability company

By: 

Name: Krista L. Freitag, *in her capacity as*

Title: Court-Appointed Receiver

THE SWELL COFFEE ROASTING COMPANY, LP,  
a California limited partnership

By: 

Name: Krista L. Freitag, *in her capacity as*

Title: Court-Appointed Receiver

**BUYER:**

DocuSigned by:



JANE COHEN, an individual

DocuSigned by:



MORDECHAI AMI COHEN, an individual

**ESCROW HOLDER SIGNATURE PAGE**

The undersigned Escrow Holder hereby agrees to: (i) accept the foregoing Agreement; (ii) be Escrow Holder under said Agreement; and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder, and hereby establishes \_\_\_\_\_, 2020 as the date of opening of escrow and designates \_\_\_\_\_ as the escrow number assigned to this escrow.

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

HERITAGE ESCROW

By \_\_\_\_\_  
Authorized Representative

**BROKER SIGNATURE PAGE**

The undersigned Broker hereby executes this Broker Signature Page solely to confirm the following: (a) Broker represents only the Seller in the transaction described in the Agreement to which this signature page is attached, (b) Broker acknowledges that the only compensation due to Broker in connection with the Closing of the transaction described in the Agreement to which this signature page is attached is as set forth in a separate agreement between Seller and Broker, and (c) Broker represents and warrants to Seller that Broker and its affiliates has not and will not receive any compensation (cash or otherwise) from or on behalf of Buyer or any affiliate thereof in connection with the transaction, and do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to Section 14.4 of the Agreement, acquires the Purchased Assets at the Closing) nor has Buyer granted (as of the Effective Date or the Closing Date) the Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

**BROKER:**

COLLIERS INTERNATIONAL

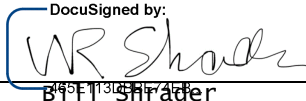
By:  DocuSigned by:  
Name: Bill Schrader  
Title: Senior Vice President

Exhibit List

Exhibit "A"	Legal Description of the Land
Exhibit "B"	Tangible Assets
Exhibit "C"	Contracts
Exhibit "D"	Bill of Sale
Exhibit "E"	General Assignment
Exhibit "F"	Grant Deed



**Exhibit A**

**Legal Description**

All that certain real property situated in the County of San Diego, State of California, described as follows:

THAT PORTION OF BLOCK 208 OF MISSION BEACH, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1651, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 14, 1914, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID BLOCK; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID BLOCK A DISTANCE OF 25.23 FEET TO A POINT; THENCE EASTERLY ALONG A LINE PARALLEL WITH AND DISTANT 25.00 FEET NORTHERLY FROM THE NORTHERLY LINE OF SEAGIRT COURT, A DISTANCE OF 51.75 FEET TO A POINT; THENCE SOUTHERLY IN A DIRECT LINE TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK, DISTANT 46.00 FEET EASTERLY FROM THE SOUTHWESTERLY CORNER OF SAID BLOCK; THENCE ALONG THE SOUTHERLY LINE OF SAID BLOCK TO THE POINT OF BEGINNING.

APN: 423-574-20-00

**Exhibit B****Tangible Assets**

Count	Item	Model #	Location	Note
18	Metal Table Height Chairs		Outdoor Seating	
15	Metal Tables		Outdoor Seating	
1	Metal Storage Locker		Restroom	
1	Surf Inspired Framed Art		Restroom	
12	Woven Vinyl Bar Height Chairs		Front Room	
2	Wooden Highchairs		Front Room	
1	True Refrigeration	GDM-26-HC-TSL01	Front Room	
29	Asst. Disposable Paper Cup Sleeves		Front Room	
24	Asst. Disposable Plastic Lid Sleeves		Front Room	
17	Paper Napkin Sleeves		Front Room	
1	Paper To-Go Box Sleeve		Front Room	
12	2oz Plastic Taster Cup Sleeves		Front Room	
3	Ceramic Mugs		Front Room	
1	Case - S&P Shakers		Front Room	
6	Pre-Pleat 40 Vent Filters		Front Room	
4	Paper Coffee Filter Sleeves		Front Room	
1	Amsec Safe		Front Room	
12	Ceramic Serving Bowls		Front Room	
21	Sm. Ceramic Serving Plates		Front Room	
3	Pour Over Coffee Filters		Front Room	
2	Sm. Metal Food Storage Bins		Front Room	
8	Asst. Barista/Coffee Art Tools		Front Room	
10	Metal Steamed Milk Cups		Front Room	
5	Espresso Press Wands		Front Room	
1	La Marzocco Espresso Machine	LINEA 3EE	Front Room	
1	Mahlkonig Coffee Grinder	K30 TWIN	Front Room	
1	Wooden Counter Top Pastry Case		Front Room	
2	Curtis Coffee Urns	TXSG0101S800	Front Room	
2	Curtis Dual Coffee Brewer	G4TP1T10A3100	Front Room	
1	Rurbo Air Refrigerator	M3R24-1	Front Room	
1	Mahlkonig Coffee Grinder	K32S10/71	Front Room	
1	Glass Beverage Dispenser		Front Room	
1	Hand Sink		Front Room	No Discernable Information
4	Asst. Plastic Servig Trays		Front Room	
1	Sm. Plastic Cutting Brd.		Front Room	
12	Pint Glasses		Front Room	
4	Metal Cream Dispensers		Front Room	
7	Plastic Food Storage Bin w/Lid		Front Room	
1	Manitowoc Ice Machine		Front Room	No Discernable Information
1	Beverage Air Corp. Beverage Dispenser	DD-24-1-B	Front Room	
1	Commercial Vitamix		Front Room	No Discernable Information
1	Reverse Osmosis Water Storage	RO-1070	Front Room	
30	Metal Forks		Front Room	
25	Metal Knives		Front Room	
15	Metal Spoons		Front Room	
30	Wrapped Cutlery Sets		Front Room	
8	Bamboo Serving Brds.		Front Room	
1	Metal French Press		Front Room	
12	S&P Shakers		Front Room	
7	Asst. Wooden/Basket Storage		Front Room	
1	Wooden Decorative Storage Cabinet		Front Room	
1	CaptiveAir Control Panel		Kitchen	
1	True Refrigeration	T-23F-HC	Kitchen	
1	Turbo Air Freezer	M3R24-1	Kitchen	
1	Royal Stove		Kitchen	No Discernable Information
1	CaptiveAir Hood	4812 SND-2	Kitchen	
1	Globe Fryer	PF10E	Kitchen	
1	Hatco Radiant Heater	GRA-72	Kitchen	
1	Proctor Silex Quad Toaster		Kitchen	No Discernable Information
14	Asst. Plastic Lids		Kitchen	

Count	Item	Model #	Location	Note
23	Asst. Plastic Food Storage Bin		Kitchen	
7	Asst. Plastic Cutting Brds.		Kitchen	
1	Edlund Food Scale		Kitchen	No Discernable Information
1	Metal Cheese Grater		Kitchen	
9	Metal Mixing Bowls		Kitchen	
38	Asst. Metal Food Storage Bins		Kitchen	
8	Metal Cooking Trays		Kitchen	
9	Asst. Metal Sauce Pans		Kitchen	
1	Metal & Wooden Strainer		Kitchen	
4	Asst. Plastic Sauce Dispenser		Kitchen	
10	SS Serving Dishes		Kitchen	
7	Ceramic Serving Bowls		Kitchen	
2	Wood & Metal Food Scrapers		Kitchen	
1	Metal Cream Dispenser		Kitchen	
1	Atlanta Culinary Equipment Sink	....SE 15	Kitchen	Information Partially Covered
1	Krowne Handsink	HS-9	Kitchen	
57	Asst. Metal Serving Trays		Kitchen	
11	Ceramic Serving Dishes		Kitchen	
1	Stepstool		Kitchen	
1	18"x36" Metal Prep Table		Kitchen	
1	Turbo Air Refrigerator	TST-48SD	Kitchen	
2	MaxAir Wall Fans		Kitchen	
2	Metro Racks		Kitchen	

**Exhibit C**

Contracts

None.

**Exhibit D**

**Form of Bill of Sale**

**BILL OF SALE**

FOR VALUE RECEIVED, 3833 MISSION BLVD, LLC, a California limited liability company, and THE SWELL COFFEE ROASTING COMPANY, LP, a California limited partnership (collectively, the "**Seller**"), by and through Krista L. Freitag, solely in her capacity as Receiver, appointed by the United States District Court for the Southern District of California, hereby sells, conveys and assigns to JANE COHEN, an individual, and MORDECHAI AMI COHEN, an individual (collectively, the "**Buyer**"), all of Seller's right, title and interest in and to the following:

Those certain apparatus, equipment, computer equipment, software, furniture, appliances, food items, beverage items or other inventory or tangible items of personal property owned by Seller and located in the property as described on Schedule 1 attached hereto and incorporated herein by this reference (collectively, the "**Tangible Assets**").

From and after the date of this Bill of Sale, it is intended by the parties that Buyer and Buyer's successors and assigns shall have the right to use, have, hold and own the Tangible Assets forever. This Bill of Sale may be executed in counterparts, each of which shall be deemed an original, and all of which shall taken together be deemed one document. Seller and Buyer agree that the delivery of an executed copy of this Bill of Sale sent by facsimile or e-mail shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Bill of Sale had been delivered.

Seller makes no warranties of any kind or nature whatsoever, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, with respect to any of the Tangible Assets transferred hereby, any and all such warranties being hereby expressly disclaimed. Buyer hereby assumes all liabilities and obligations in connection with or arising under the matters assigned under this agreement to the extent arising after the date of execution set forth below.

TO HAVE AND TO HOLD unto the grantee and its successors and assigns forever.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Seller and Buyer have executed this Bill of Sale as of the  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Seller:**

3833 MISSION BLVD, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: Krista L. Freitag  
Title: Court-Appointed Receiver

THE SWELL COFFEE ROASTING COMPANY, LP,  
a California limited partnership

By: \_\_\_\_\_  
Name: Krista L. Freitag  
Title: Court-Appointed Receiver

**Buyer:**

\_\_\_\_\_  
JANE COHEN, an individual

\_\_\_\_\_  
MORDECHAI AMI COHEN, an individual



Schedule 1

Tangible Assets

*[to be attached]*

**Exhibit E**

**Form of General Assignment**

**GENERAL ASSIGNMENT AND ASSUMPTION**

This General Assignment and Assumption (this "**Assignment**") is executed by 3833 MISSION BLVD, LLC, a California limited liability company (the "**Real Property Seller**"), and THE SWELL COFFEE ROASTING COMPANY, LP, a California limited partnership (the "**Business Seller**" and together with the Real Property Seller, collectively, the "**Sellers**"), by and through Krista L. Freitag, solely in her capacity as Receiver, appointed by the United States District Court for the Southern District of California, in favor of JANE COHEN, an individual, and MORDECHAI AMI COHEN, an individual (collectively, the "**Buyer**") as of \_\_\_\_\_, 2020 (the "**Effective Date**").

**R E C I T A L S :**

A. Business Seller formerly conducted the business of owning and/or operating a restaurant located at 3833 Mission Blvd, San Diego, California 92109, which is commonly known as "Swell Coffee Co." (the "**Business**").

B. The Sellers and Buyer have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of \_\_\_\_\_, 2020 ("**Agreement**"), in which the Sellers have agreed to sell and Buyer has agreed to purchase the Business, the underlying Real Property and certain other Purchased Assets related thereto, as further described in the Agreement.

C. Pursuant to the Agreement, the Sellers have agreed to assign, without recourse or warranty on an "as is" basis, to Buyer all of Sellers' right, title and interest, if any, in and to those certain rights and obligations set forth below.

D. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

**A G R E E M E N T :**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Sellers and Buyer agree as follows:

1. **Assignment.** As of the Effective Date, the Sellers hereby assign, sell and transfer all of each Seller's right, title and interest (if any and as applicable) in and to the following to Buyer, to the extent assignable by each such Seller, without recourse or warranty:

1.1 Any warranty or guaranty rights of each Seller relating to the Real Property or the Tangible Assets and assignable by each such Seller (the "**Warranties**");

1.2 Any intangible personal property owned by each Seller and/or used in or related to the ownership, use, operating or maintenance of the Real Property (the "**Intangible Assets**"); provided, however, that in no event shall such Intangible Assets include either Seller's

trademark or trade name rights, rights to the name "Swell Coffee Co.," or any other names used, or any title or interest in or to any intellectual property which relates to the Business or the Purchased Assets; and

1.3 All permits, licenses, registrations, certificates, variances, consents, authorizations, governmental approvals and other entitlements necessary for the ownership, use, operation or maintenance of the Real Property or otherwise relating in any way to the Real Property (the "**Permits**").

2. **Assumption.** Buyer expressly agrees to assume and hereby assumes all liabilities and obligations of each Seller in connection with the Warranties, the Intangible Assets and the Permits.

3. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. **Attorneys' Fees.** If any action or proceeding is commenced by any party to enforce its rights under this Assignment, the prevailing party in such action or proceeding shall be awarded all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys' fees and costs (including the cost of in-house counsel and appeals), in addition to any other relief awarded by the court.

5. **Applicable Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of California.

6. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, EACH SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

[Remainder of Page Intentionally Left Blank]

WITNESS the signatures of the undersigned.

Dated: \_\_\_\_\_, 2020

**Sellers:**

3833 MISSION BLVD, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: Krista L. Freitag  
Title: Court-Appointed Receiver

THE SWELL COFFEE ROASTING COMPANY, LP,  
a California limited partnership

By: \_\_\_\_\_  
Name: Krista L. Freitag  
Title: Court-Appointed Receiver

**Buyer:**

\_\_\_\_\_  
JANE COHEN, an individual

\_\_\_\_\_  
MORDECHAI AMI COHEN, an individual

Exhibit F

Grant Deed

Recording Requested by,  
When Recorded Return to and  
Mail Tax Statements to:

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

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SPACE ABOVE THIS LINE FOR RECORDING USE

**GRANT DEED**

THE DOCUMENTARY TRANSFER TAX IS NOT FOR PUBLIC RECORD.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, 3833 MISSION BLVD, LLC, a California limited liability company ("**Grantor**"), by and through Krista L. Freitag, Receiver, appointed by the United States District Court for the Southern District of California, hereby grants to JANE COHEN, an individual, and MORDECHAI AMI COHEN, an individual, that certain real property located in the County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto (the "**Land**"), together with all right, title and interest in and to all buildings and improvements now located or hereafter constructed on the Land, subject to the following:

1. nondelinquent general, special and supplemental real property taxes and assessments, and
2. all other covenants, agreements, conditions, restrictions, reservations, rights, rights-of-way, dedications, offers of dedication and easements of record.

[Signatures on following page]

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 20\_\_.

GRANTOR:

3833 MISSION BLVD, LLC,  
a California limited liability company

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

Name: Krista L. Freitag

Title: Court-Appointed Receiver



EXHIBIT "A" TO GRANT DEED

LEGAL DESCRIPTION

All that certain real property situated in the County of San Diego, State of California, described as follows:

THAT PORTION OF BLOCK 208 OF MISSION BEACH, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1651, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 14, 1914, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID BLOCK; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID BLOCK A DISTANCE OF 25.23 FEET TO A POINT; THENCE EASTERLY ALONG A LINE PARALLEL WITH AND DISTANT 25.00 FEET NORTHERLY FROM THE NORTHERLY LINE OF SEAGIRT COURT, A DISTANCE OF 51.75 FEET TO A POINT; THENCE SOUTHERLY IN A DIRECT LINE TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK, DISTANT 46.00 FEET EASTERLY FROM THE SOUTHWESTERLY CORNER OF SAID BLOCK; THENCE ALONG THE SOUTHERLY LINE OF SAID BLOCK TO THE POINT OF BEGINNING.

APN: 423-574-20-00

### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)