

# **Representations and Warranties in Commercial Real Estate Sales Contracts**

Strategies for Buyers and Sellers Negotiating Agreements of Sale

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# Representations and Warranties in Commercial Real Estate Sales Contracts

*Strategies for Buyers and Sellers  
when Negotiating Agreements of Sale*

*Important Topics for Buyers  
when Negotiating a Purchase and Sale Agreement*

**Presented by:**

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# Critical Issues for Buyer

- Negotiating the Purchase and Sale Agreement can be expensive and time consuming
- Outside pressures and costs can limit review and negotiation
- Most current form contracts favor Seller
- Focus on fundamental issues to Buyer
- The Market Dictates/Limits What is Realistic for Well-represented Sellers and Buyers!!

# Due Diligence

- Buyer is almost always entitled to perform due diligence investigation of the property
- Differing Requirements for Property Types:  
Investment Property Types
  - Office, Industrial, Retail, Multi-family, Mixed Use, Development Property
  - Special Situations
    - Brownfields

## Due Diligence *(Cont'd)*

- Timing and Scope of Due Diligence
  - Due Diligence Period
  - Land Use Conditions
  - Intrusive Testing
- Limitations on Contract Representations based upon Findings of Buyer's Due Diligence



# Due Diligence Items

- Materials from Seller in Seller's possession
- Books and records
- Title and Survey
- Plans and Specifications
- Agreements and other materials outside of public records
- Permits, licenses and approvals

## Due Diligence Items *(Cont'd)*

- Violations/emergency repairs
- Threatened or pending litigation
  - Including condemnation proceedings
- Proposed assessments
- Engineering reports
- Rent roll and arrears report
- Leases and lease abstracts
- Environmental reports and assessments

## Due Diligence Items *(Cont'd)*

- Physical site inspection reports
- Zoning/land use reports
- Insurance
- Existing financing documents

# AS-IS Language

- Typically comprehensive provision (“disclaimer”)
- Risk Shifting to Buyer
- Exceptions to As-Is Language
  - “Except as expressly otherwise provided in this Agreement,…”
- Trade for longer due diligence period

# Representation and Warranties

- Usually heavily negotiated
- Buyer wants Extensive Reps (*as much as Buyer can get*)
  - All material information
  - Knowledge vs. absolute reps
  - Implied reps in Deed, Closing Documents
    - Agree when negotiating contract
  - Protections under law
    - Fraud, concealment
  - Remedies

# Representation and Warranties(Cont'd)

- Seller wants Limited (*as narrow as possible*)
  - Shift responsibility to Buyer
  - No liability for matters discoverable during due diligence
  - Duration and other limitations on remedies
- See sample provisions

# Knowledge Standards

- “Knowledge” and qualifications
- Various Standards
  - Knowledge-of whom?
  - Investigation/inquiry?
  - Knowledge about due diligence materials?
- Extensively negotiated

# Seller Liability Issues

- Seller as “special purpose entity” (“SPE”)
- Exculpation provisions
  - Release; indemnity
- Forms of security
- Escrow Holdback
  - Common for environmental issues
- Letters of credit
- Personal Guaranties
- Liquidity is always the issue



# Remedies/Survival

- Merge with deed or survive closing?
- Failure of Condition vs. Default...
  - What are Buyer's remedies/options?
- Survival Period
- Bringing suit/timing
- “Floor”/“ceiling”

# Conclusion

- Buyer to thoroughly investigate
- Identify potential issues early
- Use closing conditions/remedies provisions as an “out”/possibility to get back to where Buyer was before entering into the Agreement
- Maintain adequate security and survival of representations

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REGENSTREIF + TAYLOR LLP

# Representations and Warranties in Commercial Real Estate Sales Contracts

**Wednesday, February 15, 2012**

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# Representations and Warranties from the Seller's Perspective: *You'll Get Nothing and Like It!*

## **Representations and Warranties in General**

**Representation:** *Statement of fact made to induce another to enter into a contract*

- » Cause of Action: fraud or negligent misrepresentation
- » Remedy: rescission/specific performance/damages for benefit of the bargain

**Warranty:** *A promise that a proposition of fact is true*

- » Cause of Action: breach of contract—no need to prove intent to defraud or reliance
- » Remedy: actual and benefit of the bargain damages; requirement to cure



# Representations and Warranties in General

<u><b>Warranty</b></u>	<u><b>Representation</b></u>
essential part of a contract	usually only collateral term of contract
only written	can be written or oral
presumed material	party claiming breach must prove materiality
must be strictly complied with	only requires substantial truth

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# General Types of Real Estate Contract Representations and Warranties

## **Status and Authority of the Seller**

Examples: Seller is valid entity in good standing; agreement will not default other agreements; no bankruptcy or insolvency; contract enforceable against Seller; no additional consents; FIRPTA/no foreign person; etc.

## **Current Status of the Property**

Examples: Good title; no condemnation; compliance with codes and ordinances; no litigation; no unrecorded liens; no other contracts concerning property; no access issues; no environmental issues; no other parties in possession; no increased taxes/special assessments; no litigation; all utilities present; no strikes or work stoppages; etc.

## **Operation of the Property**

Examples: All leases in effect; no breach of leases; rent roll and books and records are accurate; no deferred maintenance; no bulk sales/employment/sales tax issues; no management agreements or agreements surviving sale; etc.

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# Status of the Seller

## Representations and Warranties (“R/W”)

- I. **Seller’s entity:** no knowledge carve out (?); limit to selling entity; Limit to good standing as of the date of the contract; What is a “valid” entity?
- II. **Authority to enter into agreement:** no knowledge carve out—do not want to have to share operating or partnership agreement; Limit to as of the date of the contract
- III. **Pending litigation:** limit to selling entity; Limit to actual knowledge, or better, R/W received no notice of pending or threatened litigation; Limit notice received only to selling entity and not to any agent or affiliate; Cannot give absolute as litigation may be pending but not yet served; Limit to actions affecting ability to perform agreement
- IV. **Bankruptcy/insolvency:** no knowledge carve out for bankruptcy; Define insolvency or delete it (if single purpose entity, sale of property could render it “insolvent”); Delete representations about settling or compromising debts to creditors—or better define and limit





# Status of the Seller

## Representations and Warranties

- V. Does not Violate Other Agreements:** Knowledge carve out (?) or limit to written agreements
- VI. Is not Prohibited by Governmental Regulations:** All R/Ws regarding governmental issues must be with knowledge carve out
- VII. Enforceability of Sales Contract:** Will Purchaser pay for legal opinion?; Limit to knowledge as calls for legal conclusion
- VIII. Foreign Person and No Consents Required:** No issue with representing



# Status of the Property

## Representations and Warranties

- I. **Marketable Title:** Limit definition or change to “indefeasible title”; Subject to permitted exceptions or attach commitment; Issuance of title policy constitutes proof of marketable title
- II. **Property Complies with all Applicable Laws:** Need knowledge carve out, or better, “received no notice” carve out; Limit definition of “applicable laws”
- III. **No Condemnation:** Limit to knowledge, or better, no notice received; Omit any reference to personal property;
- IV. **No Litigation Affecting Property:** Same concerns as Seller’s pending litigation; Left hand-right hand issues; Ideally, “received no notice”
- V. **No Liens Affecting Property:** Why have title insurance?; In large projects, ongoing work done and professional property managers that have lien rights that Seller may not be able to make this representation



# Status of the Property

## Representations and Warranties

- VI. **No Other Parties in Possession:** Limit to knowledge; Exception to Leases and licenses provided during due diligence; Exceptions to matters shown on survey or in title commitment
- VII. **No Other Contracts relating to Property or Seller:** Carve out for contracts with seller in normal course of business, that do not survive closing or that are cancelable within X days; Exception to contracts provided during due diligence
- VIII. **No Environmental Violations:** Attempt to strike completely; Limit to knowledge or notice; Carve out for time limits, damage limits and types of damages (only to remediation costs and exclude lost profit or benefit of bargain damages); Limit warranty to purchaser only
- IX. **No Change in Assessed Value:** Limit to notice
- X. **No strikes or Work Stoppages:** Limit to notice



# Operation of the Property Representations and Warranties

- I. **Tenant Leases in Effect:** Try to omit or give only to the extent not Purchaser provided estoppel certificate; Limit to knowledge regardless; Limit to as of the date of the statement provided; Limit due diligence production to all leases and exhibits in possession or control (there is always an exhibit missing)
- II. **Books and Record Accurate:** Attempt knowledge carve out; Attempt to limit to that which is not otherwise disclosed in the leases; Carve out materials not prepared by Seller (*"blame the manager"*)
- III. **Operations/Maintenance:** Try to avoid, especially if AS IS (any rep may limit AS IS clause); Limit to knowledge; Limit to as of the date of the contract
- IV. **Bulk Sales/Employment/Sales Tax:** Depends on state and type of property; Obtain clearance from local departments to eliminate representation



# General Seller Warranty Limitations

- I. **Identify Party/Parties having “Knowledge”:** Limit knowledge of R/W to a particular person or persons, ideally property manager or operations personnel; Left hand—Right hand issues; Multiple entities
- II. **Limit Knowledge to “Actual Current Knowledge”:** Avoids constructive knowledge (filed but not served); Avoids matters arising after date of contract
- III. **Limit Warranties Only to Particular Paragraph:** Only R/W are contained in Paragraph X; Cannot rely on any statements from anyone other than in Paragraph X



# General Seller Warranty Limitations

- IV. **Warranties Limited to Due Diligence Materials:** Limit all R/W to matters that were provided during due diligence or discovered during due diligence; Attempt to carve out matters that could have been discovered during due diligence; Attempt to carve out for matters that could have been reasonable inferred or implied from due diligence material
- V. **No Warranties on Any Documents Provided:** “Popeye” carve out: *They are What They Are*
- VI. **Omit Requirement to Investigate or Confirm:** Knowledge limited to just that—knowledge; Why have Purchaser’s due diligence?
- VII. **Only Reaffirm Particular Reps at Closing:** Pre-closing versus post-closing breach



# Seller Warranty Remedies Provisions

- I. **Time and Dollar Limits:** Create time limitation in which to bring claims; Limit warranty liability to minimum and maximum amounts—warranty damages too indefinite to not limit
- II. **Pre-Closing Breach:** Right to Cancel/Failed condition to closing; Out of pocket costs; Specific Performance; Agreed reduction in purchase price (Seller's reluctant because uncertain—include limits); If relating to property's income, agree on cap rate to determine purchase price
- III. **Post-Closing Breach:** Specific performance useless?; Cap damage amounts to the lesser of actual costs incurred or pre-determined X dollars; Benefit of the bargain damages; Rescind contract
- IV. **No Escrows or Letters of Credit:** Invites claims; Agree to not disburse proceeds to members/partners/shareholders until claim time expires



# Warranties and Representations: A Philosophy

- I. Insurance Against Fraud
- II. Should not Cause Seller's Counsel's Insomnia—If you don't know it; don't say it
- III. Argument for SPEs—Buyer may be S.O.L.
- IV. Are you “Judgment Proof”? Do you want to find out?
- V. Buyer's should not Rely—Not a Substitute for Due Diligence





# LARRY N. WOODARD

## ROBBINS, SALOMON & PATT, LTD.

- Larry Woodard is a shareholder in the Real Estate Group and chair of the Construction Law Group of Robbins, Salomon & Patt, Ltd., in Chicago, Illinois. Larry has represented Fortune 500 companies, private developers, condominium associations, units of local government, investors, landlords, tenants, private REITs and syndications in the development, financing, leasing, zoning, acquisition or disposal of their real estate interests. His practice also extends into general business transactions and governance, construction and mechanics lien litigation and asset protection. He has experience negotiating and documenting a broad range of transactional matters, including letters of intent, asset and stock sales, joint ventures, buy-sell agreements, operating agreements, partnership agreements and non-disclosure agreements.
- Larry is a real estate developer and investor and is an Illinois licensed real estate broker and Illinois licensed real estate brokerage instructor. He is a periodic speaker and contributor on the subject of real estate law to numerous publications and is the General Editor for Illinois Institute for Continuing Legal Education's (IICLE) ILLINOIS CONDOMINIUM LAW handbook.

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# **DISTRESSED TRANSACTIONS:**

## ***How Much Risk Can You Afford?***

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February 15, 2012

# Distressed Deals

- The lender/seller may have little or no information or operational experience with respect to the property
- The lender/seller unwilling to provide any representations even as to what is at least theoretically "known"
- The property was or is a troubled property (low occupancy, deferred maintenance, uncertain entitlement status, environmental liabilities undefined, etc.)
- The lender/seller is a single purpose entity with no other assets

- The buyer is paying a “REO Price” instead of “Retail Price”
- The lender/seller is particularly risk adverse
- Decision making control and authority over the asset uncertain

# Distressed Sale Risk Factors

- The realities of REO sales
- How the lender/seller acquired the loan (originator, syndicator, note purchaser, etc.)
- How the lender/seller acquired the property (judicial or non-judicial foreclosure, receiver, deed in lieu, etc.)

# Distressed Sale Risk Factors

- How the property was managed/operated before acquisition by the lender/seller (decision making and control during forbearance period)
- How the property has been managed/operated by the lender/seller (active or passive?)
- How long has the lender/seller operated the property?

# Understanding the Seller's History

Understanding the history of the property will help the buyer understand and assess:

- The extent to which the lender/seller may be willing (or unwilling) to negotiate various provisions in the Purchase Agreement and the Lender's/Seller's rationale for that position
- The risks that the buyer will be taking on with its purchase of the property and the magnitude of those risks.



# What is the Loan History?

- How did the lender/seller acquire the loan?
- How long did the lender/seller hold the loan?
- How does the length of the loan affect the information available and the lender/seller's risk tolerance?

# How Was the Property Acquired?

- How did the lender/seller acquire the property?
- What does a more cooperative borrower mean?

- How has the property been managed/operated?
  - Prior to the lender/seller's acquisition?
  - After the lender/seller's acquisition?
  - Entitlements, Approvals, Regulatory Compliance?

# Type of Lender/Seller (Bank or Servicer?)

- Lender/seller's experience with REO
- Lender/seller's internal approval issues
- Lender/seller's particular risk tolerance issues
- Closing timing may be driven by financial statement dates

# Buyer Beware: Discounted Price = Risk

Beyond the dirt and the improvements, it's important that the buyer identify critical components of the acquisition and confirm that, as a legal matter, they will be conveyed to the buyer as of the closing.

# Transactional Shifting of Risk of Unknowns

- Analysis of the lender/seller's acquisition
- Concern re express or implied representations/warranties by lender/seller
- Purchase Agreement Limitations

# Leases and Foreclosure Issues

If the lender/seller acquired the property by foreclosure, the buyer will need to confirm whether or not the Leases survived the foreclosure.

- Analysis of the effect of the foreclosure
- Lease vs. Lease amendments
- Comfort regarding survival
- Estoppels, Security Deposits, Unfunded TI's

# Buyer's Due Diligence

The buyer's due diligence is even more critical because of the nature of a REO sale.

- Limits on information provided by the lender/seller
- Limits on the lender/seller's representations



# Representations and Warranties

- Limited representations and warranties from the lender/seller reflect the allocation of risk
- Buyer post-closing considerations

# Seller's Representations and Warranties

- Typical lender/seller Representations:
  - Lender/seller organization
  - Lender/seller authority to sell
  - FIRPTA compliance
- Representations may also (though not always) include:
  - OFAC compliance
  - Pending litigation naming the lender/seller relating to the property

- Property related matters (physical condition, environmental matters, tenant and lease issues)
- Material adverse conditions of which the lender/seller has actual knowledge
- Delivery of material information in the lender/seller's possession (including representation as to accuracy and completeness)

- Leases and Assigned Contracts (copies, estoppels, termination rights, adequate review period)
- Governmental Actions
- For loans acquired from the FDIC, receipt of all necessary FDIC approvals

# Expanding Seller's Representations

- Limit representations to actual knowledge of specified individuals
- Limit representations to lender/seller's period of ownership
- Limit representations to material adverse matters
- Cap Survival period and damages
- Each limitation dilutes the value of the representation to the buyer

# Limitations on Recourse

- Reality of SPE lender/seller
- Time limit for assertion of representation breach claims
- Additional dollar limitation on the lender/seller's liability

## PURCHASE AND SALE AGREEMENT

( [REDACTED], CALIFORNIA)

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 (the "**Effective Date**") by and between [REDACTED] Bank, [REDACTED] ("**Seller**"), and [REDACTED], LP, a California limited partnership ("**Purchaser**").

This Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto:

- A. Seller acquired the Property (as defined in this Agreement) by the foreclosure of the lien of its deed of trust.
- B. Seller has never occupied the Property.
- C. Because Seller acquired the Property in foreclosure, Seller is unwilling to make any representations or warranties whatsoever regarding the Property, and Seller is only willing to sell to Purchaser the Property on an "as is, where is" and "with all faults" basis.
- D. Purchaser is willing to purchase the Property from Seller without any representations or warranties whatsoever regarding the Property and on an "as is, where is" and "with all faults" basis.

In consideration of the mutual covenants and representations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

## 4. PURCHASE AND SALE

### 4.1 Purchaser's Diligence.

4.1.1 **Acknowledgement of Inspection.** Purchaser acknowledges and agrees that (a) Purchaser was afforded the opportunity to inspect the Property and its operation and that it has previously reviewed all documents and materials that it required to perform its due diligence in connection with the transactions contemplated by this Agreement, (b) if this transaction is consummated, Purchaser will be purchasing the Property pursuant to Purchaser's independent examination, study, inspection and knowledge of the Property, and (c) Purchaser is relying upon its own determination of the value and condition of the Property and not on any information provided or to be provided by Seller. Purchaser is relying solely upon its own inspections, investigations, research and analyses in entering into this Agreement and is not relying in any way upon any way upon representations or warranties, statements, plans, specifications, cost estimates, studies, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives to Purchaser or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any such matters. Purchaser certifies that it has satisfied itself with respect to its evaluation of the Property, including, without limitation, the physical and environmental condition of the Property, the character, quality, value and general utility of the Property, the zoning, land use, environmental and building requirements and restrictions applicable to the Property, the state of title to the Property, and any other factors or matters relevant to Purchaser's decision to purchase the Property, and after the conclusion of such investigations, Purchaser has elected to proceed to purchase the Property in accordance with the provisions of this Agreement



4.2 **Inspection.** Purchaser may inspect, test, and survey: (a) the Property, (b) all financial records pertaining to the operation of the Property, excluding any documents which Seller is bound to keep confidential, and (c) photocopies of all Leases and Contracts in the possession of Seller or Seller's property manager, [REDACTED] (the "**Property Manager**"), at any reasonable time during business hours at any time following the Effective Date, all of which are provided by Seller without warranty or representation. Notwithstanding the foregoing, Purchaser must obtain Seller's prior written approval of the scope and method of any environmental testing or investigation (other than a non-intrusive Phase I environmental inspection) and any inspection which would materially alter the physical condition of the Property, prior to Purchaser's commencement of such inspections or testing. In any event, Seller and its representatives, agents, and/or contractors shall have the right to be present during any such testing, investigation, or inspection. All information provided by Seller to Purchaser or obtained by Purchaser relating to the Property in the course of Purchaser's review before or after the Effective Date, including, without limitation, any environmental assessment or audit and any employee information as described in Section 4.8 hereof (collectively, the "**Reports**") shall be treated as confidential information by Purchaser, and Purchaser shall instruct all of its employees, agents, representatives and contractors as to the confidentiality of all such information. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Purchaser relating to the inspection of the Property will be solely Purchaser's expense. Purchaser shall not permit any liens to attach to the Property or any portion thereof by reason of such inspections.

**4.3 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that (a) Purchaser is a limited partnership, duly organized and in good standing under the laws of the State of California, and has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed on it hereunder, and Purchaser has obtained all necessary partnership and corporate authorizations required in connection with the execution, delivery and performance contemplated by this Agreement and has obtained the consent of all entities and parties necessary to bind Purchaser to this Agreement, and (b) neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which Purchaser, or any partner or related entity or affiliate of Purchaser, is a party or by which Purchaser, any partner or related entity or affiliate of Purchaser, or any of Purchaser's assets is bound, and (c) neither Purchaser nor any partner, related entity or affiliate of Purchaser is in any way affiliated with Seller, and (d) that, with respect to each source of funds to be used by it to purchase the Property (respectively, the "**Source**"), at least one of the following statements shall be accurate as of the Closing Date: (i) the Source does not include the assets of (A) an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), which is subject to Title I of ERISA, or (B) a "plan" as defined in Section 4975(a) of the Internal Revenue Code of 1986, as amended ("**Code**"), or (ii) the Source includes the assets of (A) an "employee benefit plan" as defined in Section 3(3) of ERISA or (B) a "plan" as defined in Section 4975 of the Code (each of which has been identified to the Seller in writing pursuant to this Section 4.3 at least eight (8) business days prior to the Closing Date), but the use of such Source to purchase the Property will not result in a nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. Purchaser further represents, warrants and covenants to Seller as follows:

**4.4 Seller's Representations and Warranties.** Seller represents and warrants to Purchaser that Seller has the full right, power, and authority, without the joinder of any other person or entity, to enter into, execute and deliver this Agreement, and to perform all duties and obligations imposed on Seller under this Agreement, and neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which Seller or any of Seller's assets is bound.



5.  
**NO REPRESENTATIONS OR WARRANTIES BY SELLER;**  
**ACCEPTANCE OF PROPERTY**

5.1 **Disclaimer.** PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES (OTHER THAN THE SPECIAL WARRANTY OF TITLE AS SET OUT IN THE DEED, AS DEFINED BELOW), PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER OR ANY TENANT MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (H) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE

PROPERTY OF HAZARDOUS MATERIALS (AS DEFINED BELOW) OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. ADDITIONALLY, NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF OF PURCHASER ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY, GUARANTY OR PROMISE REGARDING THE PROPERTY OR THE TRANSACTION CONTEMPLATED HEREIN; AND NO SUCH REPRESENTATION, WARRANTY, AGREEMENT, GUARANTY, STATEMENT OR PROMISE IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF SELLER SHALL BE VALID OR BINDING UPON SELLER UNLESS EXPRESSLY SET FORTH HEREIN. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, PURCHASER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER AND AGREES TO ACCEPT THE PROPERTY AT THE CLOSING AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST SELLER (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY OR TO ANY HAZARDOUS MATERIALS ON THE PROPERTY. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT,



REPRESENTATION OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS", "WHERE IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. PURCHASER HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS SELLER FROM AND AGAINST ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, FEES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO, OR IN CONNECTION WITH OR ARISING OUT OF THE ACQUISITION, OWNERSHIP, LEASING, USE, OPERATION, MAINTENANCE AND MANAGEMENT OF THE PROPERTY, WHETHER ARISING FROM EVENTS THAT OCCURRED BEFORE OR AFTER CLOSING, EXCEPT AS CAUSED BY THE SOLE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER. THE PROVISIONS OF THIS SECTION 5.1 SHALL SURVIVE THE CLOSING OR ANY TERMINATION HEREOF.

5.3 Assumption/Release. UPON CLOSING, PURCHASER ASSUMES THE RISK OF ADVERSE MATTERS, INCLUDING ADVERSE PHYSICAL CONDITIONS, DEFECTS, CONSTRUCTION DEFECTS, ENVIRONMENTAL, HEALTH, SAFETY AND WELFARE MATTERS WHICH MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS. AS OF THE CLOSING DATE, PURCHASER, FOR ITSELF AND ITS AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY WAIVES, INDEMNIFIES, RELEASES AND FOREVER DISCHARGES PROPERTY MANAGER, SELLER, SELLER'S AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, AFFILIATES, INTEREST HOLDERS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASEES") FROM ANY AND ALL RIGHTS, CLAIMS AND DEMANDS AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THIS AGREEMENT, WHICH PURCHASER HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC OR LEGAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION ARISING UNDER CERCLA, RCRA, OR ANY SIMILAR FEDERAL, STATE OR LOCAL STATUTE, RULE OR REGULATION, AND ALL OTHER TITLE OR DUE DILIGENCE MATTERS DESCRIBED ABOVE IN THIS SECTION, ARTICLE 4, ARTICLE 5 OR ANY OTHER PROVISIONS OF THIS AGREEMENT. PURCHASER HEREBY ASSUMES THE RISK OF CHANGES IN APPLICABLE LAWS AND REGULATIONS RELATING TO PAST, PRESENT AND FUTURE ENVIRONMENTAL CONDITIONS AND THE RISK THAT ADVERSE PHYSICAL CHARACTERISTICS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE PRESENCE OF HAZARDOUS MATERIALS OR OTHER CONTAMINANTS, MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION. PURCHASER HEREBY WAIVES ANY AND ALL OBJECTIONS AND



COMPLAINTS, WHETHER KNOWN OR UNKNOWN, CONCERNING THE PHYSICAL CHARACTERISTICS AND ANY EXISTING CONDITIONS OF THE PROPERTY, INCLUDING SELLER'S OBLIGATIONS UNDER THE LEASES RELATING TO THE PHYSICAL, ENVIRONMENTAL OR LEGAL COMPLIANCE STATUS OF THE PROPERTY, WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE. PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER AND ALL OTHER RELEASEES FROM AND AGAINST ANY AND ALL MATTERS AFFECTING THE PROPERTY, INCLUDING, ANY AND ALL COMPLAINTS OR OBJECTIONS CONCERNING THE PHYSICAL CHARACTERISTICS OF THE PROPERTY OR EXISTING PROPERTY CONDITIONS. PURCHASER EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS;

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

THE PROVISIONS OF THIS SECTION 5.3 SHALL SURVIVE INDEFINITELY THE CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO THE CLOSING DOCUMENTS.

\_\_\_\_\_ Seller

\_\_\_\_\_ Purchaser



### 3. INSPECTIONS AND APPROVALS.

3.1 Inspections. Purchaser shall have a period of time (the “**Due Diligence Period**”), commencing on the Effective Date, and expiring at 5:00 p.m., [REDACTED] on that day which is the fifteenth (15<sup>th</sup>) Business Day following the later of (i) the Effective Date, or (ii) the date on which Seller notifies Purchaser that Seller has delivered or made available to Purchaser the Property Documents, to the extent such Property Documents are within Seller’s possession or control, in which to conduct the inspections and studies described in this Section 3.

3.2 Access to the Property and Indemnification by Purchaser. During the Due Diligence Period, Seller shall permit Purchaser and Purchaser's agents and representatives access to the Land and Improvements for the purpose of conducting such physical and environmental inspections of the Land and Improvements (collectively, the "Inspections") as Purchaser shall deem necessary to determine the feasibility of the Land and Improvements for Purchaser's intended use. Before Purchaser enters the Land and Improvements to perform Inspections, Purchaser shall give Seller reasonable advance written notice and, at Seller's option, a representative of Seller may accompany Purchaser and/or Purchaser's representative. Purchaser agrees to be solely responsible for the conduct of Purchaser's representatives on and adjacent to the Land and Improvements and shall assume and pay for all expenses incurred in connection with the Inspections. At all times during the presence of Purchaser or Purchaser's representatives on the Land and Improvements, Purchaser agrees that Purchaser will not allow, and Purchaser's representatives will not conduct, any physically invasive testing of, on, or under the Land or Improvements without first obtaining Seller's written consent. Purchaser agrees to return the Land and Improvements to substantially the same condition and cleanliness existing before entry and/or occupation by Purchaser's representatives, including, but not limited to, sealing wells or other similar subsurface investigations. Purchaser shall use reasonable efforts to minimize interference with Seller's and any tenants' use and occupancy of the Building. Purchaser shall keep confidential the information resulting from the Inspections. Purchaser may

disclose confidential information to Purchaser's representatives to the extent each needs to know confidential information for the sole purpose of evaluating the Land and Improvements, provided Purchaser takes all reasonable measures to assure that Purchaser's representatives keep such information confidential. Purchaser shall indemnify, defend and hold Seller harmless from any loss, injury, liability, damage or expense, including reasonable attorneys' fees and costs, directly caused by Purchaser, which Seller may incur as a result of (a) any act or omission of Purchaser or its agents or representatives arising in connection with any tests or inspections conducted by Purchaser or its agents or representatives, or (b) the failure of Purchaser to restore the Property in accordance with this Section 3.2; provided, however, that Purchaser shall not be required to indemnify Seller if and to the extent that any such loss, injury, liability, damage or expense was caused by the negligence or misconduct of Seller, its employees or its agents. The foregoing shall survive termination of this Agreement or the Closing, as applicable. Furthermore, Purchaser shall, at its sole expense, keep and maintain a policy of comprehensive public liability insurance with a contractual liability endorsement that covers Purchaser's indemnity obligation set forth above. This insurance policy shall name Seller, Seller's sole Member and [REDACTED] as an additional insured and afford protection in limits of not less than [REDACTED] Dollars [REDACTED] for bodily injury or death in any one accident, and not less than [REDACTED] Dollars [REDACTED] for property damage. All insurance shall be effected under standard form policies, issued by insurers of recognized

insurance shall be effected under standard form policies, issued by insurers of recognized responsibility authorized to do business in the state in which the Property is located and having a national rating of A-XI or better. Within two (2) days after the Effective Date, Purchaser shall deliver to Seller certificates of such insurance coverage and, not less than thirty (30) days before the expiration of the policy, a certificate of the renewal of such coverage accompanied by evidence reasonably satisfactory to Seller of payment of premiums therefore. In addition, the insurance shall be primary, non-contributing, and contain a waiver of subrogation in favor of Seller, Seller's sole member and [REDACTED]

Notwithstanding the foregoing, Purchaser shall not directly contact any tenant or its employees without the prior written approval of Seller.

3.3.1 Purchaser acknowledges, understands and agrees that the Property Documents may have been prepared by parties other than Seller and that Seller makes no representation or warranty whatsoever, express or implied, as to the completeness, content or accuracy of the Property Documents. Purchaser specifically releases Seller from all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not), whether known or unknown, liquidated or contingent (collectively "Claims") asserted against or incurred by Purchaser by reason of the information contained in, or that should have been contained in, the Property Documents. The provisions of this Section 3.3.1 shall survive Closing, or the early termination of this Agreement.



### 3.4 Survey.

3.4.1 As part of the Property Documents, Seller shall deliver the most recent survey, if any, in its possession to the Purchaser (the “**Existing Survey**”). Purchaser may, within five (5) days after the Effective Date, at its sole cost and expense, order an update to the Existing Survey (or if there is no Existing Survey, a new survey) for delivery to Purchaser no later than ten (10) days after the Effective Date (the Existing Survey, as updated, or a new survey, the “**Survey**”). Purchaser shall deliver a copy of the Survey to Seller promptly following receipt. On or before the expiration of the tenth (10<sup>th</sup>) day after the Effective Date, Purchaser shall deliver to Seller, in writing any objections to any matters shown on the Survey, which such objections shall be delivered simultaneous with any objection to the Title Commitment delivered pursuant to Section 3.5 (“**Objection Letter**”). Purchaser’s failure to timely object to any such matters shall be deemed to constitute Purchaser’s approval thereof. If Purchaser timely objects to any matters shown on the Survey, then Seller shall have the right, but not the obligation, to agree in writing to cure before Closing such objections, or to decline to cure such objections. Purchaser acknowledges that:

(a) Seller will not execute an affidavit or other documentation regarding whether there have been any changes at the Property since the date of the Existing Survey (if any), and if Purchaser fails to order an updated survey for receipt prior to the expiration of the Due Diligence Period: (i) there will be an exception added to Purchaser's title policy and the Deed (as defined in Section 8.1.1) for matters which would have been shown by a current survey; and (ii) Seller will not agree to an extension of the Due Diligence Period to allow Purchaser to receive such an updated survey.

(b) Seller obtained title to the Property pursuant to foreclosure or deed in lieu of foreclosure, and that the legal description attached to the Deed (as defined in Section 8.1.1) shall contain the legal description under which title to the Land was taken. It shall be Purchaser's obligation to cause its surveyor to provide such certifications as the Title Company may require to confirm that the two legal descriptions describe the same property and to cause the Title Company to use the description of the Land from said plat in its final form in Purchaser's title policy.

3.4.2 Seller shall have until 5:00 p.m. on the date which is five (5) days after receipt of the Objection Letter (the “**Cure Date**”) to agree in writing to cure before Closing, or decline to cure, Purchaser’s objections to the Survey in a manner acceptable to Purchaser. If Seller elects not to cure, or fails to timely respond to Purchaser’s Objection Letter, Seller shall be deemed to have elected not to cure, in which event, Purchaser shall, on or before the expiration of the Due Diligence Period, either (i) terminate this Agreement by delivery of written notice to Seller and Title Company, whereupon Title Company shall release and return the Deposit to Purchaser, or (ii) waive in writing its objection to the Survey. Purchaser’s failure to timely deliver to Seller and Title Company a written notice of termination or waive its objection to the Survey shall be deemed to constitute Purchaser’s waiver of such objections.



3.9 Estoppels. Seller agrees within three (3) business days of receipt of same from Purchaser, to submit or cause its property manager to submit to tenants under the Leases (as defined in Section 4.6) a request for such tenants to execute and deliver a tenant estoppel certificate in the form provided by Purchaser, or as required by the applicable Leases (a “**Tenant Estoppel**”). If Purchaser does not receive a completed Tenant Estoppel duly executed by such tenants for each of the Leases prior to the expiration of the Due Diligence Period, then Purchaser may prior to the expiration of the Due Diligence Period either (i) terminate this Agreement by delivering to Seller and Title Company a written notice of termination, whereupon Title Company shall release and return the Deposit to Purchaser, or (ii) waive in writing its objection to the failure to receive any such Tenant Estoppel. If Purchaser shall not have terminated this Agreement under this Section 3.9 on or before the expiration of the Due Diligence Period, then Purchaser shall be deemed to have waived the Tenant Estoppel requirement. In no event shall receipt of any Tenant Estoppel be a condition precedent to Purchaser’s obligation to Close.

## 5. REPRESENTATIONS AND WARRANTIES.

5.1 By Seller. Seller represents and warrants to Purchaser, as of the Effective Date, that:

5.1.1 Seller has the power, right and authority to enter into and perform all of the obligations required of Seller under this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

5.1.2 Seller has taken all requisite action and obtained, or will obtain prior to the expiration of the Due Diligence Period, all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced herein or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required hereunder, and no consent of any other party is required for the performance by Seller of its obligations hereunder.

5.1.3 This Agreement is, and all agreements, instruments and documents to be executed and delivered by Seller pursuant to this Agreement shall be duly authorized, executed and delivered by Seller. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Seller pursuant to this Agreement shall be valid and legally binding upon Seller and enforceable in accordance with their respective terms.

5.1.4 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby does now constitute or shall result in a breach of, or a default under, any agreement, document, instrument or other obligation to which Seller is a party or by which Seller may be bound.

5.1.5 Survival. The representations and warranties set forth in this Section 5.1 shall not survive Closing of this transaction, and no action or claim may be brought against Seller by Purchaser or any affiliate of Purchaser with respect to a breach of such representations or warranties or any action, suit or other proceedings commenced or pursued, for or in respect of any breach of any representation or warranty made by Seller in this Agreement from and after the Closing.

5.1.6 Limitation on Remedies. Notwithstanding anything herein to the contrary, if Purchaser discovers prior to Closing that one or more of the representations and warranties under the provisions of this Section 5.1 are false or untrue as of the Date of Closing, Purchaser's sole remedy will be to exercise its rights under the provisions of Section 10.4 hereof.



5.2 By Purchaser. Purchaser represents and warrants to Seller as of the Effective Date that:

5.2.1 Purchaser is a corporation, partnership, limited liability company, trust or other type of business organization that is duly organized, validly existing and in good standing under the laws of the state in which it was organized and Purchaser is qualified to do business in the jurisdiction in which the Property is located.

5.2.2 Purchaser has taken all requisite action and obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced herein or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required hereunder, and no consent of any other party is required for the performance by Purchaser of its obligations hereunder.

5.2.3 This Agreement is, and all agreements, instruments and documents to be executed and delivered by Purchaser pursuant to this Agreement shall be, duly authorized, executed and delivered by Purchaser. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Purchaser pursuant to this Agreement shall be, valid and legally binding upon Purchaser and enforceable in accordance with their respective terms.

5.2.4 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby does now constitute or shall result in a breach of, or a default under, any agreement, document, instrument or other obligation to which Purchaser is a party or by which Purchaser may be bound, or any law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body, applicable to Purchaser or to the Property.

5.2.5 No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or state bankruptcy law is pending against or, to the best of Purchaser's knowledge, contemplated by Purchaser.

5.2.6 There are no actions, suits, claims or other proceedings (collectively, "Litigation") pending or, to the best of the Purchaser's knowledge, contemplated or threatened against Purchaser that could affect the Purchaser's ability to perform its obligations when and as required under the terms of this Agreement.

#### 5.4 Property Condition.

5.4.1 Disclaimer. THE PROPERTY IS BEING SOLD “AS IS”, “WHERE IS” AND “WITH ALL FAULTS” AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT. PURCHASER ACKNOWLEDGES THAT PURCHASER IS PURCHASING THE PROPERTY BASED SOLELY UPON PURCHASER’S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER OR SELLER’S AGENTS OR CONTRACTORS, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.



5.4.2 Release of Claims. Without limiting the provisions of Section 5.4.1, Purchaser releases Seller from any and all Claims (whether known or unknown, and whether contingent or liquidated) arising from or related to (a) any defects, errors or omissions in the design or construction of the Property, whether the same are a result of negligence or otherwise; or (b) other conditions (including environmental conditions) affecting the Property, whether the same are a result of negligence or otherwise. The release set forth in this Section specifically includes any Claims under any Environmental Laws, under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., or with respect to any environmental risk. “Environmental Laws” includes, but is not limited to, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.), the Clean Air Act (42 U.S.C. §§7401 et seq.), the Clean Water Act (33 U.S.C. §§1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§300f et seq.), as any of the same may be amended from time to time, and any state or local law dealing with environmental matters, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement.

5.4.3 Acknowledgment of Inspection. Purchaser acknowledges and agrees that (a) this Agreement gives Purchaser the opportunity to inspect the Property and its operation, (b) if this transaction is consummated, Purchaser will be purchasing the Property pursuant to Purchaser's independent examination, study, inspection and knowledge of the Property, and (c) Purchaser is relying upon its own determination of the value and condition of the Property and not on any information provided or to be provided by Seller. Purchaser is relying solely upon its own inspections, investigations, research and analyses in entering into this Agreement and is not relying in any way upon any representations or warranties (except those expressly provided in Section 5), statements, plans, specifications, cost estimates, studies, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives to Purchaser or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any such matters.



5.4.4 RELEASE. PURCHASER HEREBY RELEASES SELLER AND ANY SERVICER, AGENT, REPRESENTATIVE, MANAGER, AFFILIATE, OFFICER, PARTNER, SHAREHOLDER OR EMPLOYEE OF SELLER (A “SELLER RELATED PARTY”) FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES WHICH PURCHASER OR ANY PARTY RELATED TO OR AFFILIATED WITH PURCHASER (A “PURCHASER RELATED PARTY”) HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO THE PHYSICAL CONDITION OF THE PROPERTY, ANY CONSTRUCTION DEFECTS, ANY ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY AND ANY ENVIRONMENTAL CONDITIONS AT, IN, ON OR UNDER THE PROPERTY, AND PURCHASER WILL NOT LOOK TO SELLER OR ANY SELLER RELATED PARTY IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF.

5.4.5 ASSUMPTION. EFFECTIVE AS OF THE CLOSING DATE, PURCHASER WILL ASSUME ALL OF SELLER’S LIABILITIES AND OBLIGATIONS WITH RESPECT TO THE CONTRACTS, LEASES, AND PERMITS (TO THE EXTENT SUCH PERMITS ARE ASSIGNED OR TRANSFERRED) ARISING AND ACCRUING FROM AND AFTER THE CLOSING DATE.

5.4.6 SURVIVAL. THE ACKNOWLEDGEMENTS AND AGREEMENTS OF PURCHASER SET FORTH IN THIS SECTION 5 WILL SURVIVE THE CLOSING.

5.4.7 PERSONAL PROPERTY; INTANGIBLE PROPERTY. SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO SELLER'S TITLE TO THE PERSONAL PROPERTY OR THE INTANGIBLE PROPERTY.

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