

SALE AND PURCHASE AGREEMENT

BY AND BETWEEN

\_\_\_\_\_ (SELLER)

AND

\_\_\_\_\_ (PURCHASER)

Dated as of \_\_\_\_\_, 2016

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## SALE AND PURCHASE AGREEMENT

This SALE AND PURCHASE AGREEMENT dated as of \_\_\_\_\_, 2016 (this "Agreement"), is made by and between \_\_\_\_\_ ("Seller"), and \_\_\_\_\_ ("Purchaser"). Seller and Purchaser are sometimes herein referred to collectively as the "Parties" and individually as a "Party."

### RECITALS

On or about \_\_\_\_\_, 20\_\_\_\_, Seller filed a voluntary petition for relief (the "Bankruptcy Case") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court").

Seller owns the Assets (as defined below) as debtor in possession. Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and accept from Seller, the Assets, all as more specifically provided herein.

In consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereby agree as set forth in this Agreement.

### ARTICLE I

#### DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Assets" means the Real Property and the Furniture and Equipment.

"Business Day" means any day of the year on which national banking institutions in Arizona are open to the public for conducting business and are not required or authorized to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contract" means any written contract, indenture, note, bond, lease or other agreement.

“Effective Date” means the date of this Agreement.

“Environmental Law” means each and every federal, state, county, regional or local laws, statutes, ordinances, decisional law, rules, regulations, codes, orders, decrees, directives, requirements and judgments, now existing or hereafter enacted or promulgated, together with all amendments, renewals and successors thereto, relating to public health or safety, pollution, damage to or protection of the environment, environmental conditions, Releases or threatened Releases of Hazardous Substances or the presence, use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Substances, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, 42 U.S.C. §§ 6901 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Same Drinking Water Act, 42 U.S.C 300(f), et seq.; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601-9675; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629; and the federal underground storage tank law (Subtitle I) of the Resource Conservation and Recovery Act, as amended, P.L. 98-616, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 651, et seq.; the National Environmental Policy Act, 42 U.S.C. 4321, et seq.; together with any and all amendments to the foregoing laws, regulations promulgated thereunder, and all substitutions thereof, and any successor legislation and regulations promulgated under any or all of the foregoing, whether now existing or hereafter enacted or promulgated.

“Escrow Agreement” means the Escrow Agreement, dated as of the Effective Date, by and among Seller, Purchaser and the Escrow Holder, a copy of which is attached hereto as Exhibit A.

“Excluded Matter” means any one or more of the following: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general; (ii) the effect of any change that generally affects any industry in which Seller operates; (iii) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the Effective Date; (iv) the effect of any action taken by Purchaser or its Affiliates with respect to the Transactions or with respect to Seller, including Seller’s employees; (v) any matter of that Purchaser is aware on the Effective Date (vi) any matter disclosed on the Schedules or in any filings by Seller with the Bankruptcy Court; (vii) the effect of any changes in applicable Laws or accounting rules; (viii) any effect resulting from the public announcement of this Agreement; (ix) any effect resulting from the compliance with terms of this Agreement or the consummation of the Transactions; or (x) any effect resulting from the filing of the Bankruptcy Case and reasonably anticipated effects thereof.

“Exhibits” means the exhibits that are referred to in and attached to this Agreement.

“Furniture and Equipment” means all furniture, fixtures, furnishings, equipment and other tangible personal property, if any, owned by Seller for use at the Real Property and presently located at the Real Property.

“GAAP” means generally accepted accounting principles in the United States as of the Effective Date.

“Governmental Body” means any government or governmental or regulatory body thereof, or any political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“Hazardous Substances” means any substance, material or waste (whether liquid, gaseous or solid), pollutant, irritant or contaminant that is: (i) infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive; or (ii) regulated under, or defined, listed or referred to or included in any Environmental Law; including without limitation, petroleum products and petroleum based derivatives, polychlorinated biphenyls, asbestos and asbestos containing materials and urea formaldehyde. Where an Environmental Law defines any of these terms more broadly than another, the broader definition shall apply for purposes of this Agreement.

“Indebtedness” of any Person means, without duplication: (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, and all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the ordinary course of business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Person for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Knowledge of Seller” means the actual knowledge of Dennis R. Haydon without inquiry or investigation and shall not be construed to refer to the knowledge of any employee or agent of Seller or any Affiliate of Seller or any other Person, or to impose upon Seller any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains, including the contents of the files, documents, and information made available to or disclosed to Purchaser.

“Law” means each and every federal, state, county, regional or local laws, statutes, ordinances, decisional law, rules, regulations, codes, orders, decrees, directives,



requirements and judgments, now existing or hereafter enacted or promulgated, together with all amendments, renewals and successors thereto, and any and all rules and regulations promulgated thereunder, whether now existing or hereafter enacted or promulgated, including without limitation Environmental Laws.

“Legal Proceeding” means any judicial, administrative or arbitration actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

“Liability” means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

“Lien” means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance.

“Material Adverse Effect” means a material adverse effect on the ability of Seller to consummate the Transactions or perform its obligations under this Agreement, other than an effect resulting from an Excluded Matter.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“Permit” means any approval, authorization, consent, license, permit or certificate of a Governmental Body.

“Permitted Assigns” means any Person appointed (i) pursuant to a plan of reorganization or liquidation to administer and implement such plan of reorganization or liquidation, as applicable, or (ii) to facilitate the administration and closure of the Bankruptcy Case whether under Chapter 11 or Chapter 7 of the Bankruptcy Code.

“Permitted Exceptions” means: (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance that have been delivered or made available to Purchaser or that would not be reasonably likely to result in a Material Adverse Effect; (ii) Liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings; (iii) mechanics’, carriers’, workers’, warehousemens’, repairers’ and similar Liens arising or incurred in the ordinary course of business; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated; (v) title of a lessor under a capital or operating lease; (vi) all Liens set forth on Schedule 1.1; (vii) any matters that would be disclosed by an accurate survey of the Real Property; and (viii) such other imperfections in title, charges, easements, restrictions and encumbrances that would not be reasonably likely to result in a Material Adverse Effect.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, estate, trust, unincorporated organization, Governmental Body or other entity.

“Real Property” means that certain real property identified on Exhibit B attached hereto, provided, that as of the Closing Date, the Real Property shall be further identified by its legal description. The Real Property includes the land and any and all improvements, structures, tenements, hereditaments and appurtenances belonging or in any way pertaining thereto, including but not limited to fixtures (to the extent either Seller owns or has rights in such fixtures) and easements for ingress and egress, storm water drainage or otherwise over adjoining property, if any.

“Release” means any spill, emission, leakage, pumping, injection, deposit, disposal, discharge, dispersal, leaching or other movement into the environment, but excludes (i) any release that results in exposure to natural persons solely within a workplace, (ii) any emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine, (iii) any normal applications of fertilizer, and (iv) any discharge in compliance with a Permit.

“Sale Motion” means the motion or motions of Seller seeking approval and entry of the Sale Order.

“Sale Order” means an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and Seller approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the Transactions.

“Schedules” means the schedules prepared in connection with this Agreement and either referred to in and attached (or to be attached) to this Agreement.

“Specially Designated National or Blocked Person” means a Person (i) designated by the Office of Foreign Assets Control at the U.S. Department of the Treasury, or other U.S. governmental entity, and appearing on the List of Specially Designated Nationals and Blocked Persons (<http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.shtml>), which List may be updated from time to time; or (ii) with whom Purchaser or Seller is prohibited from engaging in transactions by any trade embargo, economic sanction or other prohibition of United States law, regulation, or Executive Order of the President of the United States.

“Tax Returns” means all returns (including, without limitation, all forms, schedules, statements, and attachments thereto), declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

“Taxes” means (i) all federal, state, local or foreign taxes, charges or other assessments, including all income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation,

property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed in connection with any item described in clause (i).

“Transactions” means the sale and purchase of the Assets and the related transactions contemplated by this Agreement.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the Sections indicated:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Closing	4.1
Closing Date	4.1
Confidentiality Agreement	Reserved
Deed	4.2
Escrow Holder	3.2
Escrowed Funds	3.2
Material Contracts	5.6
Party or Parties	Preamble
Purchase Price	3.1
Purchaser	Preamble
Purchaser Documents	6.2
Seller	Preamble
Seller Documents	5.2
Termination Date	4.4(a)
Transfer Taxes	11.1

1.3 Other Definitional and Interpretive Matters

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a not a Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules attached hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Any capitalized terms used in any Schedule

or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections, clauses or other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Article” or “Section” are to the corresponding Article or Section of this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

## ARTICLE II

### PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Purchaser, all of Seller’s right, title and interest in, to and under the Assets.

2.2 Further Conveyances and Assumptions. From time to time following the Closing, Seller and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, instructions, assumptions and such other instruments, and shall take such further actions as may be necessary or reasonably appropriate to assure fully to Purchaser and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and Seller Documents and to assure fully to Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, Purchaser Documents and Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby. Notwithstanding the foregoing, nothing in this Section

2.2 or this Agreement shall require Seller to remain validly existing entities beyond the Closing Date or to take any action, perform any obligations, or comply with any terms or covenants set forth in this Section after the Closing Date if Seller's corporate or limited liability company existence, as applicable, has ceased or has been cancelled.

### ARTICLE III

#### CONSIDERATION

3.1 Consideration. The consideration to be delivered by Purchaser for the Assets is an amount, payable in immediately available funds, equal to \$ \_\_\_\_\_ (the "Purchase Price").

3.2 Purchase Price Deposit. Upon the execution of this Agreement and the Escrow Agreement, pursuant to the terms of the Escrow Agreement, Purchaser shall immediately deposit with \_\_\_\_\_, in its capacity as escrow holder (the "Escrow Holder"), an amount equal to \$ \_\_\_\_\_, which is 10% of the Purchase Price, by wire transfer to the Escrow Holder of immediately available U.S. funds (together with all investment income thereon, the "Escrowed Funds"), to be released by the Escrow Holder and delivered to either Purchaser or Seller, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrowed Funds shall be distributed as follows:

(a) if the Closing shall occur, the Escrowed Funds shall be applied towards the Purchase Price payable by Purchaser to Seller under Section 3.3;

(b) if this Agreement is terminated by Seller pursuant to Section 4.4(f), the Escrowed Funds shall be delivered to Seller; or

(c) if this Agreement is terminated for any reason other than by Seller pursuant to Section 4.4(f), the Escrowed Funds shall in each case be returned to Purchaser.

3.3 Payment of Purchase Price. On the Closing Date, Purchaser shall pay the Purchase Price (less the Escrowed Funds) to Escrow Holder, all of which shall be released to Seller by the Escrow Holder, by wire transfer of immediately available funds into one or more accounts designated by Seller.

3.4 Escrow Holder Responsible. The Escrow Holder is, and shall be, the person responsible for closing the Transactions within the meaning of Section 6045(a)(2)(A) of the Code and shall file all necessary information, reports, returns and statements regarding the Transactions that are required by the Code, including, without limitation, any tax reports required under Section 6045 of the Code.

### ARTICLE IV

#### CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the sale and purchase of the Assets provided for in Article II (the "Closing") shall take place at the offices of \_\_\_\_\_ (or at such other place as Seller and Purchaser may designate in writing) at 10:00 a.m. (eastern time) on the date that is one (1) Business Day following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by Seller and Purchaser. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by Seller and Purchaser in writing, the Closing shall be deemed effective and all right, title and interest of Seller in and to the Assets to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 12:01 a.m. (eastern time) on the Closing Date.

4.2 Deliveries by Seller. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser:

(a) a quit claim deed in the form of Exhibit C, duly executed and acknowledged by Seller in a form recordable in the applicable public land records office where the Real Property is located (the "Deed");

(b) any sales disclosure, transfer, environmental disclosure, or similar documents required under local Law in connection with the Real Property;

(c) a duly executed bill of sale, without any warranties of any kind, for the Furniture and Equipment in the form of Exhibit D;

(d) the certificates required to be delivered pursuant to Sections 9.1(a) and 9.1(b); and

(e) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Seller and Purchaser, as may be necessary to convey the Assets to Purchaser.

4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller:

(a) the Purchase Price (less the Escrowed Funds) in immediately available U.S. funds as set forth in Section 3.3;

(b) the certificates required to be delivered pursuant to Sections 9.2(a) and 9.2(b); and

(c) such other documents, instruments and certificates as Seller may reasonably request.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Seller or Purchaser, if the Closing shall not have occurred by the close of business on \_\_\_\_\_ (the “Termination Date”); provided, however, that, if the Closing shall not have occurred due to the failure of the Bankruptcy Court to enter the Sale Order and if all other conditions to the respective obligations of the Parties to close hereunder that are capable of being fulfilled by the Termination Date have been so fulfilled or waived, then no Party may terminate this Agreement prior to \_\_\_\_\_; provided, further, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by the mutual written consent of Seller and Purchaser;

(c) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 10.1 and 10.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(d) by Seller, if any condition to the obligations of Seller set forth in Sections 10.2 and 10.3 shall have become incapable of fulfillment other than as a result of a breach by Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by Seller;

(e) by Purchaser, if there shall be a breach by Seller of any representation or warranty by or any covenant or agreement of Seller contained in this Agreement that would result in a failure of a condition set forth in Sections 10.1 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Purchaser to Seller of such breach and (ii) the Termination Date;

(f) by Seller, if there shall be a breach by Purchaser of any representation or warranty by or any covenant or agreement of Purchaser contained in this Agreement that would result in a failure of a condition set forth in Sections 10.2 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Seller to Purchaser of such breach and (ii) the Termination Date;

(g) by Seller or Purchaser, if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; and

(h) by Seller or Purchaser, if the Bankruptcy Court enters an order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement.

4.5 Procedure Upon Termination. In the event of termination by Purchaser or Seller pursuant to Section 4.4, written notice thereof shall forthwith be given to the other Party, and, without further action by Purchaser or Seller, this Agreement shall terminate and the sale and purchase of the Assets hereunder shall not occur. If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material belonging to or delivered by the other Party relating to the Transactions, whether so obtained before or after the execution hereof, to the Party furnishing the same.

4.6 Effect of Termination. In the event this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Seller; provided, however, that the obligations of the Parties set forth in Section 3.2 and Article XII shall survive any such termination and shall be enforceable hereunder.

4.7 Casualty or Condemnation. In addition, Seller shall promptly notify Purchaser in writing of any casualty or damage to the physical condition of the Real Property and of any condemnation proceeding commenced with respect to any of the Real Property prior to the Closing Date. If any such casualty, damage or proceeding relates to or may result in the loss of any material portion of the Real Property, then Purchaser may elect, by notice to Seller within ten (10) days after receipt of Seller's notice, to terminate this Agreement, in which event this Agreement shall terminate as provided in Section 4.6. If Purchaser does not terminate this Agreement, or in the event of any casualty, damage or condemnation does not result in a loss of a material portion of the Real Property, then Purchaser shall proceed with the Closing and shall accept the Real Property in its then condition and, upon the Closing: (a) for a casualty loss or damage, Purchaser shall receive a credit against the Purchase Price in the amount of Seller's deductible under its insurance policy and Seller shall assign to Purchaser all insurance proceeds payable to Seller for the casualty or damage from Seller's insurer resulting from such casualty or damage; and (b) for a condemnation, Seller shall assign to Purchaser any compensation, awards or other payments or relief Seller has received or is or may be entitled to receive resulting from such condemnation proceeding. For purposes of this Agreement, a "material portion of the Property" shall mean damage or loss to the Property in the amount of \$ \_\_\_\_\_ or more. All risk of loss of any kind or nature and to any extent shall pass to Purchaser on the Closing.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that, except as set forth in the Schedules:

5.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Seller is duly qualified or



authorized to do business and is in good standing under the laws of each jurisdiction in which it owns or leases real property or in which the conduct of its business or the ownership of its properties requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not be reasonably likely to result in a Material Adverse Effect.

5.2 Authorization of Agreement. Except for the Sale Order and any other authorization as is required by the Bankruptcy Court (as hereinafter provided), Seller has all requisite power and authority, and the natural person executing this Agreement on behalf of Seller has the legal capacity, to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by Seller in connection with the consummation of the Transactions (the “Seller Documents”), to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by Seller of this Agreement and the Seller Documents and the consummation of the Transactions have been duly authorized by all requisite action on the part of Seller. This Agreement has been, and each of the Seller Documents will be, at or prior to the Closing, duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order) this Agreement constitutes, and the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of Seller, subject to the Sale Order.

5.3 Conflicts; Consents of Third Parties. Except as specified on the attached Schedule 5.3:

(a) None of the execution and delivery by Seller of this Agreement or the Seller Documents, the consummation of the Transactions, or compliance by Seller with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Seller; (ii) subject to entry of the Sale Order, any Contract or Permit to which Seller is a party or by which Seller or any of its properties or assets is bound; (iii) subject to entry of the Sale Order, any Order of any Governmental Body applicable to either Seller or any of the Assets of Seller as of the Effective Date; or (iv) subject to entry of the Sale Order, any applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not be reasonably likely to result in a Material Adverse Effect.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Seller in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by Seller with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Seller or of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Order, and (ii) such other consents, waivers, approvals, Orders, Permits, authorizations,

declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Material Adverse Effect.

5.4 FIRPTA. Seller is not a “foreign person” within the meaning of Section 1445 of the Code.

5.5 Assets. Upon the Closing and delivery of the Deed, Purchaser will acquire the Real Property free and clear of all Liens, except for the Permitted Exceptions. Without limiting the generality of any other provisions of this Agreement, no representations or warranties are being made in this Agreement with respect to any of the Furniture and Equipment.

5.6 Material Contracts.

(a) Schedule 5.6 sets forth all of the following Contracts, other than those included in Permitted Exceptions, to which Seller is a party or by which Seller is bound on the Effective Date and that are related to the operation of the Real Property or by which the Real Property may be bound or affected (collectively, the “Material Contracts”):

(i) Contracts that constitute leases by Seller, as lessor, of any portion of the Real Property;

(ii) Contracts for the sale of any portion of the Real Property or an option to purchase the Real Property; or

(iii) Contracts that involve the expenditure of more than \$50,000 in the aggregate or require performance by any party more than one (1) year from the Effective Date that, in either case, are not terminable by Seller without penalty on less than one hundred eighty (180) days’ notice.

(b) Seller has not received any written notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any Material Contract, except for defaults that would not be reasonably likely to result in a Material Adverse Effect.

5.7 Litigation. Except for the Bankruptcy Case and except as set forth on the attached Schedule 5.7, there are no Legal Proceedings pending or, to the Knowledge of Seller, threatened against Seller or to which Seller is otherwise a party before any Governmental Body, which, if adversely determined, would be reasonably likely to adversely and materially affect the Assets.

5.8 Compliance with Laws; Permits. Except as specified on the attached Schedule 5.8:

(a) To the Knowledge of Seller, Seller is in compliance with all Laws applicable to the Real Property, except where the failure to be in compliance would not be reasonably likely to result in a Material Adverse Effect. Since October 26, 2015,

Seller has not received any written notice of or been charged with the violation of any Laws, except where such violation would not be reasonably likely to result in a Material Adverse Effect.

(b) To the Knowledge of Seller, Seller has all Permits that are required for the ownership of the Real Property, except in each case where the absence of which would not be reasonably likely to result in a Material Adverse Effect. Seller is not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit relating to the Real Property to which it is a party, except where such default or violation would not be reasonably likely to result in a Material Adverse Effect.

5.9 Brokers. Except for Keen-Summit Capital Partners LLC, no Person has acted, directly or indirectly, as a broker or finder for Seller in connection with the Transactions and no Person is entitled to any fee or commission or like payment from Seller in respect of the Transactions.

5.10 No Other Representations or Warranties; Schedules. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS EXCEPTED OR MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), SELLER DOES NOT MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER, THE ASSETS OR THE TRANSACTIONS, AND SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER, ANY AFFILIATE OF SELLER OR ANY OF THEIR RESPECTIVE MANAGERS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS EXCEPTED OR MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), SELLER (i) EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO THE CONDITION OF THE ASSETS (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND (ii) DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER BY ANY MANAGER, OFFICER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES). SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING. (i) THE VALUE OF THE ASSETS; (ii) ANY CONTRACTS, (iii) ANY PARTY TO ANY CONTRACT; (iv) THE INCOME TO BE DERIVED FROM THE ASSETS; (v) THE SUITABILITY OF THE ASSETS FOR ANY AND ALL ACTIVITIES AND USES THAT PURCHASER MAY CONDUCT THEREON OR THEREFROM, INCLUDING THE POSSIBILITIES FOR DEVELOPMENT OF THE REAL

PROPERTY; (vi) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE ASSETS; (vii) THE MANNER, NATURE, QUALITY, CONDITION, STATE OF REPAIR OR LACK OF REPAIR OF ANY OF THE ASSETS; (viii) THE NATURE, QUALITY OR CONDITION OF THE REAL PROPERTY, INCLUDING, WITHOUT LIMITATION, SOILS AND GEOLOGY; (ix) THE COMPLIANCE OF OR BY THE ASSETS OR THEIR OPERATION WITH ANY LAWS OF ANY APPLICABLE GOVERNMENTAL BODY; (x) COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR PROTECTION, POLLUTION OR LAND USE LAWS; (xi) THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES AT, ON, UNDER, OR ADJACENT TO THE REAL PROPERTY; (xii) THE CONFORMITY OF THE REAL PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING, USE OR BUILDING REQUIREMENTS; (xiii) DEFICIENCY OF ANY DRAINAGE OR UNDERSHORING; (xiv) THAT THE REAL PROPERTY MAY BE LOCATED ON OR NEAR EARTHQUAKE FAULTS; (xv) THE EXISTENCE OR NON-EXISTENCE OF LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE REAL PROPERTY; (xvi) THE LAND USE STATUS OF THE REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, GENERAL PLAN STATUS, SPECIFIC PLAN STATUS, ZONING STATUS, OR SUBDIVISION STATUS; (xvii) THE APPLICABILITY OF ANY ENDANGERED SPECIES ACTS AND THE EXISTENCE OF ANY SPECIES PROTECTED THEREUNDER; OR (xviii) ANY OTHER MATTER. THE DISCLOSURE OF ANY MATTER OR ITEM IN ANY SCHEDULE SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD BE REASONABLY LIKELY TO RESULT IN A MATERIAL ADVERSE EFFECT.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

6.1 Organization and Good Standing. Purchaser is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties, to carry on its business as now conducted, and to purchase the Assets.

6.2 Authorization of Agreement. Purchaser has all requisite power and authority, and the natural person executing this Agreement on behalf of Seller has the legal capacity, to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the Transactions (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement and the Purchaser Documents and the consummation of the Transactions have been duly authorized by all necessary actions on the part of Purchaser. This Agreement has been,

and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

### 6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Purchaser of this Agreement or the Purchaser Documents, the consummation of the Transactions, or the compliance by Purchaser with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Purchaser, (ii) any Contract or Permit to which Purchaser is a party or by which Purchaser or its properties or assets is bound or (iii) any Order of any Governmental Body applicable to Purchaser or any of its properties or assets or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Purchaser of any other action contemplated hereby or thereby, or for Purchaser to conduct its business, except for compliance with the applicable requirements of the Sale Order.

6.4 Litigation. There are no Legal Proceedings pending or, to the knowledge of Purchaser after due inquiry, threatened against Purchaser, or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions. Purchaser is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions.

6.5 Brokers. No Person has acted, directly or indirectly, as a broker or finder for Purchaser in connection with the Transactions, and no Person is entitled to any fee or commission or like payment from Purchaser in respect thereof.

6.6 Bankruptcy. There are no bankruptcy, reorganization or insolvency proceedings pending against, being contemplated by or, to the knowledge of Purchaser, threatened against, Purchaser.

6.7 Financial Capability. Purchaser (i) has, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the entire Purchase Price and any expenses incurred by Purchaser in connection with the Transactions, (ii) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform all of its obligations hereunder and under the Purchaser Documents, and (iii) has not incurred any obligation, commitment, restriction or Liability of any kind that would impair or adversely affect such resources and capabilities.

6.8 Blocked Persons. Neither Purchaser nor any of Purchaser's owners, directors, managers, officers or, if applicable, trustees is a Specially Designated National or Blocked Person.

6.9 Condition of the Assets. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY GIVEN BY SELLER IN ARTICLE V (AS EXCEPTED OR MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), AND PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE V (AS EXCEPTED OR MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), THE ASSETS ARE BEING CONVEYED AND TRANSFERRED ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS AND WITHOUT REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS, IMPLIED OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE OR DESCRIPTION, BY SELLER, OR ANY AFFILIATE OR ANY OF THEIR RESPECTIVE AGENTS, CONSULTANTS OR REPRESENTATIVES. ANY CLAIMS PURCHASER MAY HAVE FOR BREACH OF REPRESENTATION OR WARRANTY SHALL BE BASED SOLELY ON THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN ARTICLE V (AS EXCEPTED OR MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED). PURCHASER FURTHER REPRESENTS THAT NEITHER SELLER NOR ANY OF ITS AFFILIATES NOR ANY OTHER PERSON HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING SELLER, THE ASSETS OR THE TRANSACTIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, AND NEITHER SELLER, NOR ANY OF ITS AFFILIATES OR ANY OTHER PERSON WILL HAVE OR BE SUBJECT TO ANY LIABILITY TO PURCHASER OR ANY OTHER PERSON RESULTING FROM THE DISTRIBUTION TO PURCHASER OR ITS REPRESENTATIVES OR PURCHASER'S USE OF, ANY SUCH INFORMATION, INCLUDING ANY CONFIDENTIAL MEMORANDA DISTRIBUTED ON BEHALF OF SELLER RELATING TO THE ASSETS OR OTHER

PUBLICATIONS OR DATA ROOM INFORMATION PROVIDED TO PURCHASER OR ITS REPRESENTATIVES, OR ANY OTHER DOCUMENT OR INFORMATION IN ANY FORM PROVIDED TO PURCHASER OR ITS REPRESENTATIVES IN CONNECTION WITH THE SALE AND PURCHASE OF THE ASSETS AND THE TRANSACTIONS. PURCHASER ACKNOWLEDGES THAT IT HAS CONDUCTED, TO ITS SATISFACTION, ITS OWN INDEPENDENT INVESTIGATION OF THE ASSETS AND, IN MAKING THE DETERMINATION TO PROCEED WITH THE TRANSACTIONS, PURCHASER HAS RELIED ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER. EXCEPT AS PROVIDED IN THIS SECTION 6.9, EFFECTIVE FROM AND AFTER THE CLOSING, PURCHASER HEREBY WAIVES, RELEASES, ACQUITS, AND FOREVER DISCHARGES SELLER, AND SELLER'S OWNERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS AND AGENTS TO THE MAXIMUM EXTENT PERMITTED BY LAW, OF AND FROM ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, LIABILITIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES), LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, INCOME OR PROFITS OR DIMINUTION OF VALUE), COSTS, EXPENSES, OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT ANY OF THEM NOW HAS OR THAT MAY ARISE IN THE FUTURE BECAUSE OF OR IN ANY WAY GROWING OUT OF OR CONNECTED WITH THIS AGREEMENT, THE ASSETS (INCLUDING, WITHOUT LIMITATION, THE CONDITION OF SUCH ASSETS) OR THE TRANSACTIONS.

The provisions of this Section 6.9 shall survive the Closing and termination of this Agreement.

6.10 Purchaser Knowledge. In the event that, prior to the Closing, Purchaser obtains knowledge that any representation or warranty of Seller set forth in Article V is inaccurate, then Purchaser may notify Seller in writing of such inaccuracy and Seller shall have the right, but not the obligation, to cure or remedy such matter as provided in Section 4.4(e). If Purchaser fails to so notify Seller or fails to terminate this Agreement pursuant to the terms of Section 4.4(e), Purchaser shall be conclusively deemed to have waived any objection to such representation or warranty inaccuracy in its entirety. In the event Purchaser elects to terminate this Agreement pursuant to Section 4.4(e), then if such inaccuracy resulted from a change in circumstance occurring after the Effective Date through no act or omission by Seller, including without limitation, Seller obtaining any Knowledge of Seller not possessed on the Effective Date, then Seller shall not be deemed in breach or default of the same. If Purchaser does not exercise such right to terminate this Agreement and the Closing, then at the Closing Purchaser shall be conclusively deemed to have waived all rights and remedies on account of any representation or warranty of Seller to the extent, but only the extent, that Purchaser had knowledge prior to the Closing that such representation or warranty was not accurate.

## ARTICLE VII

### BANKRUPTCY COURT MATTERS

7.1 Bankruptcy Court Filings. This Agreement and the Closing and consummation of the Transactions are subject to approval by the Bankruptcy Court and Seller will file with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code. In the event the entry of the Sale Order shall be appealed, Seller and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

## ARTICLE VIII

### COVENANTS

8.1 Access to Real Property.

(a) Seller agrees that, prior to the Closing Date, Purchaser shall be entitled, through its managers, officers, employees and representatives (including its legal advisors, accountants and consultants), to make such investigation of the Real Property as Purchaser reasonably requests. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice to Seller and under reasonable circumstances and shall be subject to restrictions under applicable Law. Seller shall cause the manager, officers and employees of Seller to cooperate with Purchaser and Purchaser’s managers, officers, employees and representatives in connection with Purchaser’s investigation and examination, and Purchaser and its representatives shall cooperate with Seller and their representatives and shall use their reasonable efforts to minimize any disruption to or disturbance of the Real Property.

(b) Purchaser shall: (i) perform all such investigations, or cause them to be performed, in a safe and professional manner; (ii) not create, or permit to be created, any dangerous or hazardous condition on the Real Property; (iii) comply with all applicable laws with respect to Purchaser’s investigations; and (iv) obtain and pay for all permits and authorizations required to be obtained therefore; and (v) pay all fees and charges (including, without limitation, Purchaser’s designees (who include Purchaser’s officers, managers, employees, agents and consultants) with respect to Purchaser’s investigations. Except as expressly required by applicable Law, Purchaser or its designees shall deliver to Seller copies of all title commitments and amendments, all surveys, and all environmental audits, assessments and reports and supplements thereto relating to the Real Property. No investigation shall drill, extract or physically alter or change the condition of the land or any improvements without Seller's prior written



approval, in Seller's sole discretion. Prior to Purchaser or Purchaser's designees entering onto the Real Property or in any improvements, Purchaser shall: (i) if Purchaser does not then have such a policy in force, procure a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Seller covering all of the activities of Purchaser and its designees, with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00; and (ii) deliver to Seller a certificate of insurance evidencing that such insurance is in force and effect and evidencing that Seller has been named as an additional insured thereunder with respect to any Purchaser's activities.

(c) Purchaser may, at Purchaser's sole expense, conduct (or have conducted on its behalf by an environmental consultant or auditor) a Phase I environmental audit or assessment of the Property, subject to the terms and conditions of this Section 8.1. Purchaser shall not conduct any Phase II environmental audit or assessment on the Property without Seller's prior written consent, in Seller's sole discretion. In the event Purchaser conducts a Phase I or, with Seller's consent, Phase II environmental audit of the Real Property, Purchaser shall provide Seller with reasonable advance written notice of its intent to do so. Purchaser shall not disclose to any third party, other than Purchaser's consultants, agents and attorneys associated with such environmental investigation, the results of any of Purchaser's inspections or testing of the Real Property (collectively, "Investigations").

(d) Purchaser shall indemnify, defend by counsel reasonably acceptable to Seller, and hold Seller harmless for, from and against any and all costs, expenses, claims, liabilities, losses, damages, fines, penalties and demands, including reasonable attorneys' fees and costs, arising from such entry and activities by Purchaser and its designees or from the performance of any testing or other Investigations of the Real Property by Purchaser and its designees, except with respect to any loss or liability incurred by Seller resulting from the mere discovery by Purchaser or its designees of the presence of Hazardous Substances on, under or at the Property or the existence of other pre-existing defects with respect to the Real Property. If the Transactions do not close for any reason, Purchaser shall repair any and all damage to the land or the improvements to the Real Property resulting from such entry and activity on the Real Property, including any tests and other investigations. The aforesaid indemnity and other agreements of Purchaser set forth in this Section 8.1 shall survive, without limitation, the termination or other expiration of this Agreement.

8.2 Operation of the Real Property Pending the Closing. Except (a) as set forth on Schedule 8.2, (b) as required by applicable Law or by order of the Bankruptcy Court, (c) as otherwise contemplated by this Agreement, or (d) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Seller shall not, solely as it relates to the Real Property:

(i) subject the Real Property to any Lien, except for Permitted Exceptions and any Lien securing any debtor in possession loan facility; or

(ii) sell, assign, license, transfer, convey, lease or otherwise dispose of any portion of the Real Property;

8.3 Consents. Seller shall use commercially reasonable efforts, and Purchaser shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals required to consummate the Transactions, including the consents and approvals referred to in Section 5.3(b); provided, however, that Seller shall not be obligated to pay any consideration or make any financial accommodation to any third party from whom consent or approval is requested or to initiate any Legal Proceeding to obtain any such consent or approval.

8.4 Further Assurances. Seller and Purchaser shall use their commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transactions and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions; provided, however, that Seller shall not be obligated to pay any consideration or make any financial accommodation to any third party from whom consent or approval is requested or to initiate any Legal Proceeding to obtain any such consent or approval..

8.5 Publicity. Neither Seller nor Purchaser shall issue any press release or other public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld, conditioned or delayed, unless, in the judgment of Purchaser or Seller disclosure is otherwise required by applicable Law or by order of the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, the Sale Motion or the Sale Order; provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or order of the Bankruptcy Court to consult with the other Party with respect to the text thereof.

8.6 Supplementation and Amendment of Schedules. Seller may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in the Schedules shall constitute a disclosure for all purposes under this Agreement notwithstanding any reference to a specific Section, and all such information shall be deemed to qualify the entire Agreement and not just such Section. From time to time prior to the Closing, Seller shall have the right to supplement or amend the Schedules with respect to any matter hereafter arising or discovered after the delivery of any prior Schedules pursuant to this Agreement. No such supplement or amendment shall have any effect on the satisfaction of the condition to closing set forth in Section 10.1(a); provided, however, if the Closing shall occur, then Purchaser shall be deemed to have waived any right or claim pursuant to the terms of this Agreement or otherwise with respect to any and all matters disclosed pursuant to any such supplement or amendment to any Schedule at or prior to the Closing.

## 8.7 Environmental Matters.

(a) Condition of Real Property. In addition to and not in limitation of any other provisions of this Agreement, Purchaser shall and does take the Real Property in its “AS-IS,” “WHERE-IS” and “WITH ALL FAULTS” condition, and without representation or warranty of any kind or nature by Seller. Purchaser acknowledges and agrees that neither Seller nor any Affiliate, successor or assign of Seller, nor any of any of their Affiliates, nor any of their respective shareholders, members, equity holders, directors, managers, officers, employees, attorneys, consultants, agents or representatives (collectively with Seller, the “Seller Parties”) has made, Seller Parties hereby disclaim, and Seller Parties are not and shall not be liable or responsible for, or bound in any manner by, any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Real Property or any part thereof, title to the Real Property, the environmental condition of the Real Property, the physical condition of the Real Property, the fitness and quality of the Real Property, the value and profitability of the Real Property, the zoning of the Real Property, the acreage of the Real Property, or any other matter or thing whatsoever with respect to the Real Property. Without limiting the foregoing, Purchaser acknowledges and agrees that none of Seller Parties is or shall be liable or responsible for or bound in any manner by (and Purchaser has not relied upon) any oral, written or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Real Property, or any part or condition thereof, and any other information respecting same, furnished by or obtained from any of Seller Parties. Purchaser represents, warrants, acknowledges and agrees that it has entered into this Agreement on the basis of its own prior or future full inspection and investigation of all facts and conditions underlying or relating to the Real Property and the use of the Real Property, including without limitation, the environmental condition of the Real Property, that it has relied, and shall continue to rely, solely upon its own inspection and investigation and that it is not relying on any representation or warranty of any Seller Party with respect to the Real Property. Purchaser also acknowledges and agrees that the purchase price for the Assets, including the Real Property, reflects and takes into account that the Real Property is being sold in its “AS-IS,” “WHERE-IS” and “WITH ALL FAULTS” condition and without representation or warranty of any kind or nature by Seller or any other Seller Parties.

(b) Purchaser’s Release, Waiver and Covenant Not to Sue. From and after the Closing Date, Purchaser releases all Seller Parties, (collectively, the “Releasees”), of and from any and all claims and/or causes of action, waives the right to bring any claim and/or cause of action against the Releasees with respect to, covenants not to sue any of the Releasees for and assumes all liability and responsibility for the condition of the Real Property, including without limitation the buildings, improvements, and equipment at the Real Property and any environmental condition at, in, on, under or migrating from or onto the Real Property regardless of whether the condition (i) resulted from on-site and/or off-site activities of any one or more of the Releasees, and/or any third party, (ii) migrated from or onto the Real Property, (iii) arises from or relates to the demolition, remodeling, construction and/or decontamination of land and/or structures at the Real Property, (iv) arises from or relates to the removal, treatment, transportation

and/or disposal of any environmental condition at, in, on, under or migrating from or onto the Real Property and/or its environs, and regardless of whether (x) the claim or cause of action arises from and/or relates to property damage, natural resource damage, personal injury, toxic tort, or medical monitoring and/or (y) the claim or cause of action now exists or is hereafter created under common law, or now exists or is hereafter enacted pursuant to Laws, including, without limitation, claims and causes of action under: (A) the federal Comprehensive Environmental Response, Compensation, and Liability Act, the federal Resource Conservation and Recovery Act, and analogous state, county or municipal Laws; (B) federal, state, county or municipal (1) clean water and clean air Laws; (2) Laws concerning hazardous substances or wastes and their use, generation, handling, storage or disposal; (3) Laws imposing restrictions or preconditions on closures, transactions or transfers of properties or entities; and (4) Laws governing flood plains, stream encroachment and wetlands.

(c) Survival. The terms and provisions of this Section 8.7 shall survive the Closing and the delivery of the Deed.

## ARTICLE IX

### CONDITIONS TO CLOSING

9.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Seller set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that, individually and in the aggregate, would not be reasonably likely to result in a Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of Seller, dated the Closing Date, to the foregoing effect;

(b) Seller shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date; provided that the condition set forth in this Section 9.1(b) shall be deemed satisfied unless such failures to so perform or comply taken together would be reasonably likely to result in a Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of Seller, dated the Closing Date, to the forgoing effect; and

(c) Seller shall have delivered, or caused to be delivered, to Purchaser all of the deliveries set forth in Section 4.2.

9.2 Conditions Precedent to Obligations of Seller. The obligation of Seller to consummate the Transactions is subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Seller in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, in each case, on and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), and Seller shall have received a certificate signed by an authorized signatory of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and Seller shall have received a certificate signed by an authorized signatory of Purchaser, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the deliveries set forth in Section 4.3.

9.3 Conditions Precedent to Obligations of Purchaser and Seller. The respective obligations of Purchaser and Seller to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Seller in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by any Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; and

(b) the Bankruptcy Court shall have entered the Sale Order and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court.

9.4 Frustration of Closing Conditions. Neither Purchaser nor Seller may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

## ARTICLE X

### NO SURVIVAL

10.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement shall not survive the Closing, and no Party shall have any Liability to the other Party after the Closing for any breach thereof, except for those representations and warranties that are expressly provided in this

Agreement to survive the Closing. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing, and each Party shall be liable to the other Party after the Closing for any breach thereof.

10.2 No Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF SUCH OTHER PARTY OR PERSON, INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH HEREOF (PROVIDED THAT SUCH LIMITATION WITH RESPECT TO LOST PROFITS SHALL NOT LIMIT SELLER'S RIGHT TO RECOVER CONTRACT DAMAGES IN CONNECTION WITH PURCHASER'S FAILURE TO CLOSE IN VIOLATION OF THIS AGREEMENT).

## ARTICLE XI

### TAXES

11.1 Transfer Taxes. Purchaser shall be responsible for, and shall indemnify and hold harmless Seller and its Affiliates and their owners, managers, officers, employees, attorneys, agents, successors and assigns from and against, any and all sales, use, stamp, documentary, filing, recording, transfer or similar fees or similar Taxes or governmental charges (including any real property transfer Taxes, UCC-3 filing fees, title recording or filing fees and other amounts payable in respect of transfer filings, and including any interest and penalty thereon) payable in connection with the Transactions ("Transfer Taxes"). To the extent that any Transfer Taxes are required to be paid by Seller (or such Transfer Taxes are assessed against Seller), Purchaser shall promptly pay (or if paid by Seller, promptly reimburse Seller, for the Transfer Taxes. Seller and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes. Seller and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds of Transfer Taxes.

11.2 Tax Payments. Beginning as of 12:01 a.m. (eastern time) on the Closing Date, Purchaser shall be responsible for and shall pay all real property Taxes or similar ad valorem taxes or obligations payable with respect to the Real Property, regardless of the taxable period to which such Taxes are attributable.

11.3 Closing Costs. Purchaser shall pay (a) all costs of recording the Deed and any instruments required to discharge any Liens, (b) the entire cost of any abstract of title or any standard or extended coverage policy of title insurance and any endorsements requested by Purchaser, and (c) all of the fees and costs of the Escrow Holder.

## ARTICLE XII

### MISCELLANEOUS

12.1 Expenses. Except as otherwise provided in this Agreement, Seller and Purchaser shall bear their own costs and expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement, the performance of this Agreement, and the consummation of the Transactions; provided that Purchaser shall be responsible for and shall indemnify Seller for any charges of any Governmental Body relating to title recording or filing fees and other amounts payable in respect of transfer filings in connection with the Transactions.

12.2 Injunctive Relief. Damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and accordingly either Party shall be entitled to injunctive relief with respect to any actual or threatened breach by the other Party, including specific performance of any covenants, promises or agreements or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 12.2 shall be in addition to any other rights which a Party may have at Law or in equity pursuant to this Agreement.

12.3 Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of, or relate to this Agreement (including the Exhibits and Schedules), or the negotiation, execution, termination, performance or nonperformance of this Agreement, shall be governed by and construed in accordance with the Laws of the State of Arizona applicable to contracts made and performed in such State, without regard to any conflict of law principles that would require or permit the application of the Laws of any other jurisdiction.

12.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement or any of the documents or instruments delivered pursuant to this Agreement, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.7; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Arizona or the courts of the State of Arizona sitting in Maricopa County and any appellate court from any thereof, for the resolution of any such claim, dispute or matter. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to such venue for any such claim, dispute or matter brought in such court or any defense of inconvenient forum for the maintenance of such any such claim, dispute or matter. Each Party agrees that a judgment in any such any such claim, dispute or matter may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each Party hereby consents to process being served by the other Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.7.

12.5 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR INSTRUMENT DELIVERED PURSUANT TO THIS AGREEMENT, ANY PROVISION HEREOF OR THEREOF, OR THE TRANSACTIONS.

12.6 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits) and the Escrow Agreement represent the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

12.7 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) when sent by facsimile (with written confirmation of transmission), (c) five (5) days after being deposited with the United States Post Office, by registered or certified mail, postage prepaid, (d) one (1) business day following the day sent by overnight courier (with written confirmation of receipt), or (e) when sent by electronic mail (with acknowledgment received), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Seller:                   7655 East Gelding Drive, Suite A  
  Scottsdale, Arizona 85260  
  Attention: Dennis R. Haydon



With a copy to: Gust Rosenfeld P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attention: Sean P. O'Brien

If to Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The giving of notice to a Party's counsel shall not constitute notice to that Party.

12.8 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

12.9 Binding Effect; No Third-Party Beneficiaries; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other Party and any attempted assignment without the required consent shall be void, provided, however, notwithstanding the foregoing, Seller is authorized to assign this Agreement or any of its rights or obligations hereunder to any Permitted Assigns without the consent of Purchaser. No assignment of any obligations hereunder shall relieve the Parties of any such obligations. Upon any permitted assignment by Purchaser, as assignor, the references in this Agreement to Purchaser shall also apply to the assignee of Purchaser's rights or obligations unless the context otherwise requires. Upon any permitted assignment by Seller, as assignor, the references in this Agreement to Seller shall also apply to any assignee of Seller's rights or obligations unless the context otherwise requires.

12.10 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, agent or equity holder of Seller shall have any liability for any obligations or liabilities of Seller under this Agreement or Seller Documents of or for

any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

12.12 State Specific Requirements. Reserved.

In witness whereof, Seller and Purchaser have caused this Sale and Purchase Agreement to be executed by their respective authorized person as of the Effective Date written above.

SELLER:

\_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

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

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

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

PURCHASER:

\_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

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

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

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

## Schedules

- 1.1 Liens
- 5.3(b) Conflicts; Consents of Third Parties
- 5.6 Material Contracts
- 5.7 Litigation
- 5.8 Compliance with Laws; Permits
- 5.9 Environmental Matters
- 8.2 Exceptions to Operation of Real Property

**Exhibit A**  
**to**  
**Sale and Purchase Agreement**

ESCROW AGREEMENT

This ESCROW AGREEMENT (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and among \_\_\_\_\_ (“Seller”), and \_\_\_\_\_ (“Purchaser”), and \_\_\_\_\_ (“Escrow Holder”), pursuant to Sections 3.2, 3.3 and 3.4 of that certain Sale and Purchase Agreement dated \_\_\_\_\_, 2016 (the “SPA”), by and between Seller and Purchaser with respect to the sale and purchase of certain real and personal property identified therein.

Seller and Purchaser (but not Escrow Holder) are sometimes referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms used in this Agreement but not defined herein have the meanings given to them in the SPA. In consideration of the SPA and the mutual covenants and agreements herein set forth, the Parties, intending to be legally bound, agree as follows:

1. Deposit.

(a) Escrow Holder acknowledges receipt of Purchaser’s check in the amount of \$ \_\_\_\_\_, a copy of which is attached and which is the Deposit required in the SPA. Escrow Holder is to hold the Deposit in escrow and disburse the same pursuant to the provisions of the SPA. The Deposit shall be held in an interest-bearing account in a bank and an account selected by Escrow Holder. The Parties acknowledge that the account selected by Escrow Holder may be at the lowest available yield, and Escrow Holder shall have no liability for the interest rate selected or the yield from that rate. Purchaser shall furnish to Escrow Holder Purchaser’s taxpayer identification number and certification required by the bank for that account, in the form of a Form W-9, and any other documents required by the bank. All interest earned on the Deposit shall be included in the Deposit and disbursed in the same manner provided in the SPA for as the principal portion of the Deposit.

(b) At the Closing (as defined in the SPA), the Deposit shall be paid as provided in the SPA provided that written notice of the Closing is given to Escrow Holder at least three (3) Business Days (as defined in the SPA) before the Closing. If a Party elects to terminate the SPA or if the Closing does not occur, and if either Party makes a demand upon Escrow Holder for payment pursuant to the SPA, Escrow Holder shall give written notice to the other Party of such demand. If Escrow Holder does not receive a written objection to the proposed payment from the other Party within ten (10) Business Days after the giving of such notice, Escrow Holder is hereby authorized to and shall make such payment. If Escrow Holder does receive a written objection from the other Party within such ten (10) day period, Escrow Holder shall continue to hold the amount demanded until otherwise directed by written instructions from Purchaser and Seller or a final judgment of a court having jurisdiction, but shall nevertheless pay to the Party entitled thereto under the SPA the amount (if any) of the Deposit held by Escrow Holder in excess of the amount demanded.

(c) Seller and Purchaser acknowledge that Escrow Holder is acting solely as a stakeholder at their request and for their convenience, that Escrow Holder shall not be deemed for this purpose to be the agent of any of the Parties, and that Escrow Holder shall not be liable to either 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 the SPA or unless involving gross negligence or in bad faith, in willful disregard of this Agreement or the SPA or unless involving gross negligence or willful misconduct. Accordingly, Escrow Holder shall not incur any such liability for (i) any action that is taken or omitted in good faith regarding any question relating to its duties and responsibilities hereunder, or (ii) any action taken or omitted in reliance upon any instrument that Escrow Holder shall in good faith believe to be genuine, to have been signed or delivered by a proper Person (as defined in the SPA) and to conform to the provisions set forth herein or in the SPA. In acting hereunder, Escrow Holder shall have only such duties as are specified herein and no implied duty shall be read into this Escrow Agreement. Escrow Holder may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any Person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Holder shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability for, and shall be fully protected by acting in accordance with, the advice or opinion of such counsel. Any cost incurred by Escrow Holder in consulting with legal counsel shall be paid to Escrow Holder by the Parties in equal shares or may be deducted by Escrow Holder from any Deposit held by Escrow Holder. Escrow Holder shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any its rights or powers, and shall not be required to take any action which, in Escrow Holder's sole and absolute judgment, could involve it in expense or liability, unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

(d) Escrow Holder shall receive no compensation for serving as Escrow Holder hereunder; provided, however, that each of Purchaser and Seller agrees to reimburse Escrow Holder for one-half of all costs and expenses incurred by it in the performance of, or otherwise in connection with, its services hereunder. Escrow Holder may deduct such costs and expenses from the Deposit in the event payment is not otherwise made by either of the Parties.

2. Interpleader. If at any time there shall exist any dispute with respect to the holding or disposition of any of the property held by Escrow Holder or any other obligations of Escrow Holder hereunder, or if at any time Escrow Holder is unable to determine, to Escrow Holder's sole satisfaction, the proper disposition of any of the property held by Escrow Holder or Escrow Holder's proper actions with respect to its obligations hereunder, or if Escrow Holder resigns from serving as escrow holder hereunder, then Escrow Holder may, in its sole discretion, take either or both of the following actions:

(a) Suspend the performance of any of its obligations under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Holder or until a successor Escrow Holder shall have been appointed (as the case may be); or

(b) Petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Holder, for instructions with respect to such dispute or uncertainty, and to the extent required by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all funds and other property held by it in the escrow, after deduction from the Deposit and payment to Escrow Holder of all fees and expenses (including court costs and attorney's fees) payable to, incurred by or expected to be incurred by Escrow Holder in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Holder shall have no liability to the Parties or to any other Person with respect to any such suspension or performance or disbursement into court, specifically including any liability or claim liability that may arise, shall be alleged to have arisen, out of or as a result of any delay in or with respect to any action required or requested of Escrow Holder.

Escrow Holder shall give written notice of such action to Purchaser and Seller. Upon such deposit and filing, Escrow Holder shall be relieved and discharged of all further obligations and responsibilities under this Agreement, notwithstanding any other provision of this Agreement to the contrary.

3. Notices. All notices, demands, requests or other communications hereunder shall be in writing, addressed to such Party at its address provided in the SPA or to such other address as may have been properly provided hereunder, and shall be delivered by (a) United States Postal Service, certified mail, return receipt requested, postage prepaid, (b) by reputable overnight courier providing for receipted delivery. Any such notice, demand, request or other communication shall be deemed given when received or when receipt is refused or unclaimed, as indicated by the notations or records of (as applicable) the United States Postal Service or such overnight courier service. Any notices, demands, requests or other communications to Escrow Holder shall be addressed to:

[insert Escrow Holder's address]

Notwithstanding anything contained in this Agreement to the contrary, Escrow Holder shall not be required to respond to any instructions other than those in writing. In the event instructions are given, whether by letter, by facsimile, by electronic mail or other written medium, Escrow Holder is authorized (but not required) to seek confirmation of such instructions by telephone call-back. Escrow Holder may rely upon the confirmations of anyone purporting to be the Person or Persons so designated. The Persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Holder. The Parties acknowledge that such security procedures are commercially reasonable. The Persons designated for call-back confirmation for each Party, and their separate telephone numbers, are as follows:

For Seller:	7655 East Gelding Drive, Suite A3 Scottsdale, Arizona 85260 480-436-8466 Attention: Dennis R. Haydon
-------------	---

For Purchaser: \_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

4. Indemnity. Each of Purchaser and Seller, jointly and severally, shall indemnify and hold Escrow Holder harmless against, from and in respect of (i) any claim, damage or deficiency, of any type whatsoever, arising out of or in any other manner stemming or resulting from its services as Escrow Holder (other than when done in bad faith, in willful disregard of this Agreement or the SPA, gross negligence or willful misconduct), and (ii) all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including, without limitation, reasonable legal fees) incident to any of the foregoing. Notwithstanding any other provision of this Agreement to the contrary, all reimbursement and indemnity obligations of the Parties with respect to Escrow Holder shall survive the termination of this Agreement or the resignation or removal of Escrow Holder.

5. Whole Agreement; Agreements. This Agreement and the applicable provisions of the SPA set forth all of the agreements, representations, warranties and conditions of the Parties and Escrow Holder with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, representations, warranties and conditions with respect to the subject matter hereof. No alteration, agreement, modification or waiver of any of the terms or provisions hereof shall be valid unless the same is in writing and signed by the Party against whom enforcement of same is sought. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of, and be binding upon, the respective successors and assigns of Seller, Purchaser and Escrow Holder.

6. Governing Law. This is an Arizona agreement and shall be governed by substantive laws of the State of Arizona, without regard to conflict of law principles that would require or permit the application of the laws of any other jurisdiction. Except as may be elected by Escrow Holder with respect to the filing of interpleader or similar actions in connection with this Agreement, any action to enforce, construe or challenge the provisions of this Agreement or otherwise arising out of or concerning this Agreement or any of the transactions contemplated hereby, shall be filed exclusively in the federal or state courts in Maricopa County, Arizona and in no other court, and Seller, Purchaser and Escrow Holder each consents to personal jurisdiction in such courts in Arizona for any such action and to the service of process by notice to Seller, Purchaser and Escrow Holder respective legal counsel, each of Seller, Purchaser and Escrow Holder hereby consenting thereto.

7. Severability. To the extent any provision of this Agreement is prohibited by or invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such prohibition, unenforceability or invalidity, without affecting the remainder of such provision or the remaining provisions of this Agreement.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of such counterparts together shall constitute and be one and the same instrument.

In witness whereof, Seller, Purchaser and Escrow Holder each have caused this Escrow Agreement to be executed by its duly authorized person as of the date first above written.

SELLER:

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

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

PURCHASER:

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

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

ESCROW HOLER: \_\_\_\_\_

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



**Exhibit B**  
**to**  
**Sale and Purchase Agreement**

[LEGAL DESCRIPTION OF REAL PROPERTY]

**Exhibit C**  
**to**  
**Sale and Purchase Agreement**

[QUIT CLAIM DEED]

**Exhibit D**  
**to**  
**Sale and Purchase Agreement**

[BILL OF SALE]