

PURCHASE AND SALE AGREEMENT

between

(as purchaser)

and

**Eric L. Johnson, in his capacity as Chapter 11 Trustee
of U.S. Real Estate Equity Builder, LLC and USREEB Dayton, LLC
(as seller)**

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of _____, 2021 (the "**Effective Date**") by and between _____, a [state] [type of legal entity] (the "**Purchaser**"), and Eric L. Johnson, in his capacity as Chapter 11 Trustee of U.S. Real Estate Equity Builder LLC and USREEB Dayton LLC (the "**Seller**").

WHEREAS, U.S. Real Estate Equity Builder LLC ("**USREEB**") and USREEB Dayton LLC ("**USREEB Dayton**," and together with USREEB, the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (as defined below) on October 2, 2020. On December 10, 2020, Seller was appointed as the Chapter 11 Trustee of Debtors' estates. The Debtors Chapter 11 cases are administratively consolidated and pending before the United States Bankruptcy Court for the District of Kansas (the "**Bankruptcy Court**") in *In re U.S. Real Estate Equity Builder LLC*, Case No. 20-21358 (the "**Bankruptcy Case**").

WHEREAS, the Purchaser desires to purchase from the Seller, and the Seller desires to sell to the Purchaser, the Property (this and other capitalized terms used and not otherwise defined herein have the meanings given them terms in Section 1 below), subject to and upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the Seller and the Purchaser intending to be legally bound agree as follows:

SECTION I. DEFINITIONS

Capitalized terms used in this Agreement have the meanings set forth below or in the section of this Agreement referred to below:

1.1. "**Accounts Receivable**" means all accounts receivable of any kind as of the Closing Date.

1.2. "**Agreement**" means this Purchase and Sale Agreement, together with all exhibits and schedules attached hereto, as it and they may be amended from time to time as herein provided.

1.3. "**Assumed Contracts**" means the Contracts and Leases.

1.4. "**Bankruptcy Code**" means Title 11 and applicable portions of Titles 18 and 28 of the United States Code.

1.5. "**Business Day**" means any day other than a Saturday, Sunday or any day that is a "Legal Holiday" as defined in Bankruptcy Rule 9006(a)(6).

1.6. "**Closing**" has the meaning given such term in Section 2.2.

1.7. "**Closing Date**" has the meaning given such term in Section 2.2.

1.8. "**Closing Documents**" has the meaning given such term in Section 4.1.

1.9. "**Contracts**" means the contracts and agreements identified on Exhibit A.

1.10. "**Cure Costs**" means all monetary liabilities, including pre-petition monetary liabilities, of Seller that must be paid or otherwise satisfied to cure all of the Seller's monetary defaults under the Assumed Contracts, if any, at the time of the assumption thereof and assignment to Purchaser as provided hereunder as such amounts are determined by the Bankruptcy Court or agreement of the Purchaser, Seller, and the counterparty to the Assumed Contract.

1.11. "**Deposit**" has the meaning given such term in Section 2.3(a)(i).

1.12. "**Effective Date**" has the meaning given such term in the preambles to this Agreement.

1.13. "**Escrow Agent**" means the _____ or such other escrow agent as mutually agreed to by the Seller and Purchaser in writing.

1.14. "**Environmental Law**" means any and all federal, state and municipal statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of Hazardous Substances into the environment including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or the cleanup or other remediation thereof.

1.15. "**Excluded Assets**" means (i) all cash on hand and in banks and cash equivalents (including marketable securities and short term investments), except for Tenant security deposits; (ii) all causes of actions, choses in action and rights or recovery, including, without limitation, avoidance actions of the Debtors' estates under Sections 544-553 of the Bankruptcy Code; (iii) tax refunds and tax attributes; (iv) ownership of the Debtors, including but not limited to all documents related to the organization, maintenance and existence of the Debtors as a limited liability company and/or corporation; (iv) any pension plan, profit sharing plan, or other plan or program providing benefits to employees of the Debtors; (v) Accounts Receivable; (vi) the property specifically listed on Schedule 1.15; and (vii) all other property or assets not described as Property.

1.16. "**Fixtures**" means all fixtures, furniture, equipment, machinery, systems and other items of personal property (including, without limitation, all motor fuels equipment located on or under the Land, all automobile or truck repair bays and facilities, signage, canopies, cash register systems, all refrigeration and freezer units, manual imprinters, pumps, motor fuel islands, storage tanks, all related lines, pumps, meters and dispensers, and car wash equipment) owned by the Seller and attached or appurtenant to, located on or used in connection with the ownership, use, operation or maintenance of the Land and Improvements, with the exception of those items, if any, identified on Schedule 1.15.

1.17. "**Hazardous Substances**" means and include any oils, petroleum products, asbestos, radioactive, biological, medical or infectious wastes or materials, and any other toxic or hazardous wastes, materials and substances that are defined, determined or identified as such in any Environmental Laws, or in any judicial or administrative interpretation of Environmental Laws.

1.18. "**Improvements**" means the buildings and other improvements (including USTs) located on the Land and all Fixtures and other property affixed thereto.

1.19. "**Intangible Property**" means all intangible property owned by the Seller arising from or used in connection with the ownership, use, operation or maintenance of the Land or the Improvements (including all trademarks, trade names, service marks, the goodwill of the Property and the Seller's business and any and all warranties or guaranties related to the FF&E and the Improvements).

1.20. "**Land**" means those certain parcels of land located at the addresses set forth on Schedule 1.20 and the appurtenant easement estates and other rights, which land is more particularly described on Exhibit C, together with all rights and appurtenances thereto, including all right, title and interest in and to any adjacent streets, alleys or rights of way, and all water and mineral rights.

1.21. "**Leases**" means each lease, contract, license or other agreement with respect to the occupancy of Property, or any portion thereof, on Exhibit B.

1.22. "**Licenses and Permits**" means any certificates of occupancy and other licenses, permits, registrations, authorizations, use agreements, orders, or approvals of governmental or quasi-governmental agencies and authorities (whether federal, state, local, municipal, or foreign) or private parties relating to the construction, use, operation, or enjoyment of the Property, in each case to the extent transferable.

1.23. "**Lien**" means any lien, mortgage, pledge, claim, charge, security interest, hypothecation or encumbrance of any nature whatsoever.

1.24. "**Property**" means, collectively, the Land, the Improvements, the Licenses and Permits, and the Assumed Contracts but does not include Excluded Assets.

1.25. "**Purchase Price**" has the meaning given such term in Section 2.3(a).

1.26. "**Purchaser**" has the meaning given such term in the preambles to this Agreement, together with any permitted successors and assigns.

1.27. "**Residential Leases**" means any lease, contract or agreement with respect to the occupancy of Property, or any portion thereof, for family, household, or residential purposes, including leases, contracts, and agreements of single-family housing and units in multi-family housing.

1.28. "**Sale Order**" means the order to be entered by the Bankruptcy Court pursuant to Sections 363 or 365, as applicable, of the Bankruptcy Code (i) authorizing the sale of the

Property to the Purchaser; (ii) approving this Agreement and the transactions contemplated hereby; (iii) approving, with specific findings of fact in support thereof, the sale of the Property to Purchaser free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code; (iv) finding, with specific findings of fact in support thereof, that Purchaser is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code; (v) authorizing and approving the results of any Auction; and (vi) finding that the order is final upon entry by the Bankruptcy Court.

1.29. "**Seller**" has the meaning given such term in the preambles to this Agreement.

1.30. "**Tenant**" means each tenant under a Lease.

1.31. "**Title Company**" means _____ or such other title company as mutually agreed to in writing by the Seller and Purchaser.

SECTION II. PURCHASE AND SALE; CLOSING

2.1. **Purchase and Sale.** On the terms and subject to the conditions contained in this Agreement and the Sale Order, the Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller, the Property for the Purchase Price, subject to and in accordance with the terms and conditions of this Agreement and the Sale Order. Notwithstanding anything to the contrary contained in this Agreement, at Closing, Seller shall not transfer, convey, sell or assign to Purchaser any Excluded Assets.

2.2. **Closing.** The purchase and sale of the Property will be consummated at a closing (the "**Closing**") through an escrow with the Title Company, or at such other location as the Seller and the Purchaser may agree, at 10:00 a.m. Central Standard Time, within five Business Days after the date of entry of the Sale Order (the "**Closing Date**"). The Closing will be deemed to have occurred at 12:01 a.m. Central Standard Time on the Closing Date, even though adjustments hereunder will be made as of 7:00 a.m. local time at the Property on the Closing Date.

2.3. **Purchase Price.**

(a) The purchase price to be paid for the Property is \$_____ for the winning bid plus \$_____ for the six percent (6%) buyer's premium, for a total purchase price of \$_____ (the "**Purchase Price**") is _____. The Purchase Price will be paid as follows:

(i) On the Effective Date, the Purchaser will deposit with Seller the sum of \$[*amount equal to 10% of Purchase Price U.S. Dollars (\$_____)*] (this amount, together all interest earned thereon, being hereinafter referred to as the "**Deposit**") to Seller in good funds; and

(ii) On or prior to the Closing Date, the Purchaser will deposit with the Escrow Agent the balance of the Purchase Price, subject to adjustment as provided in Section IX.

(b) The Purchase Price will be payable in U.S. Dollars by certified funds. At Closing, the Escrow Agent will deliver the Purchase Price by wire transfer of funds to the account or accounts to be specified by the Seller and required by the Sale Order.

SECTION III. NO FURTHER DILIGENCE

3.1. **Diligence Inspections.** As of the Effective Date of this Agreement, the Purchaser hereby represents and certifies to the Seller that the Purchaser and its representatives have completed any and all due diligence on the transaction contemplated by this Agreement, including inspecting the Property and examining the records of the Seller with respect to the Property.

3.2. **Title and Survey Matters.** As of the Effective Date, the Purchaser hereby represents and certifies to the Seller that the Purchaser and its representatives have obtained and examined any surveys of, and title reports on, the Land that the Purchaser desires to be conducted, as well as arranged for the issuance, or not, of a title policy to the Purchaser.

3.3. **Contracts.** Purchaser hereby notifies the Seller that it elects to have the Seller assume and assign to Purchaser the Contracts and no other contracts.

3.4. **Leases.** Purchaser hereby notifies Seller that it elects to have Seller assume and assign to Purchaser the Leases and the Residential Leases.

SECTION IV. CONDITIONS TO THE PURCHASER'S OBLIGATION TO CLOSE

The obligations of the Purchaser to acquire the Property are subject to the satisfaction of the following conditions precedent on and as of the Closing Date such that if any condition fails, and is not waived in writing by the Purchaser, the Purchaser may terminate this Agreement and receive a return of the Deposit:

4.1. **Closing Documents.** The Seller has delivered to the Purchaser the following (collectively, the "**Closing Documents**"):

(a) For each property identified on Schedule 1.20, a trustee's deed, in the form of Exhibit D (each, a "**Deed**");

(b) If applicable, an assignment of the Contracts in favor of Purchaser, duly executed by the Seller in the form of Exhibit E;

(c) If applicable, an assignment of Leases and Residential Leases in favor of Purchaser, duly executed by Seller, in the form of Exhibit E;

(d) To the extent the same are in the Seller's possession or control, fully executed originals (to the extent available) or copies of all material documents and agreements, plans and specifications and licenses and permits pertaining to the Property, including the Contracts, Leases, and Residential Leases.

4.2. **Condition of Property.** The Property, including all improvements located thereon, is in substantially the same physical condition on the Closing Date as on the Effective Date, ordinary wear and tear and damage by casualty or condemnation excepted (except as otherwise provided pursuant to this Agreement).

4.3. **Seller's Representations and Warranties.** All representations and warranties of the Seller herein are true, correct and complete in all material respects on and as of the Closing Date and the Seller has performed all covenants and obligations required to be performed by the Seller on or before the Closing Date.

4.4. **Bankruptcy Court Approval.** The Bankruptcy Court has entered the Sale Order.

SECTION V. CONDITIONS TO THE SELLER'S OBLIGATION TO CLOSE

The obligation of the Seller to convey the Property to the Purchaser is subject to the satisfaction of the following conditions precedent on and as of the Closing Date:

5.1. **Purchase Price.** The Purchaser will deliver to the Seller the Purchase Price payable hereunder.

5.2. **Closing Documents.** The Purchaser will deliver to the Seller duly executed and acknowledged counterparts of the documents described in Section 4.1 (where applicable).

5.3. **Representations.** All representations and warranties of the Purchaser herein are true, correct and complete in all material respects on and as of the Closing Date and the Purchaser has performed all covenants and obligations required to be performed by the Purchaser on or before the Closing Date.

5.4. **Bankruptcy Court Approval.** The Bankruptcy Court has entered the Sale Order.

SECTION VI. REPRESENTATIONS AND WARRANTIES OF THE SELLER

6.1. **Representations of the Seller.** To induce the Purchaser to enter into this Agreement, the Seller represents and warrants to the Purchaser as follows:

(a) **Status and Authority of Seller.** Subject to approval by the Bankruptcy Court, the Seller has all requisite power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby.

(b) **Use and Operation.** To the best of Seller's knowledge, there are no governmental actions pending against the Property and there is no existing eminent domain or similar proceeding which would materially affect the Property, and neither Seller nor any of its agents, representatives or employees has received a written notice from any governmental agency or office or from any other third party alleging the Property's violation or alleged violation of applicable law.

(c) **Foreign Person.** Seller is not a "Foreign Person" within the meaning of Section 1445 of the Internal Revenue Code, as amended.

(d) **Knowledge Definition.** The phrase “*to the best of Seller’s knowledge*” means the actual knowledge, without investigation, of the Seller.

6.2. **Non-Survival of Representations and Warranties.** The representations and warranties made by the Seller herein or pursuant hereto will expire with, and be terminated and extinguished by, the Closing, and thereafter neither the Seller nor any director, officer, creditor or shareholder of the Seller will have any liability whatsoever with respect to any such representations or warranties.

6.3. **"As Is"**. Except as expressly provided in this Agreement or any documents to be delivered to the Purchaser at the Closing, the Seller has not made and the Purchaser has not relied upon, any information, promise, representation or warranty, express or implied, regarding the Property, whether made by the Seller, or any employee, officer, attorney or other party affiliated with the Seller, including the physical condition of the Property, title to or the boundaries of the Property, pest control matters, soil conditions, the presence, existence or absence of Hazardous Substances or other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders, structural and other engineering characteristics, economic conditions or projections, and any other information pertaining to the Property or the market and physical environments in which they are located. The Purchaser acknowledges that, except as otherwise expressly provided in this Agreement or any documents to be delivered to the Purchaser hereunder, it (a) has entered into this Agreement with the intention of making and relying upon its own investigation or that of third parties with respect to the physical, environmental, economic and legal condition of the Property and (b) is not relying upon any statements, representations or warranties of any kind, other than those specifically set forth in this Agreement or in any document to be delivered to the Purchaser at the Closing, made by the Seller or anyone acting or claiming to act on the Seller's behalf. **THE SELLER MAKES NO, AND HEREBY DISCLAIMS ANY, WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE WITH RESPECT TO THE PERSONAL PROPERTY, AND THE SAME IS SOLD IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS.**

SECTION VII. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

7.1. **Representations of the Purchaser.** To induce the Seller to enter in this Agreement, the Purchaser represents and warrants to the Seller as follows:

(a) **Status and Authority of the Purchaser.** The Purchaser is a [*type of entity*], duly organized, validly existing and in good standing under the laws of the State of [*state*], and has all requisite trust power and authority under the laws of the State of [*state*] and its charter documents to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The Purchaser is duly qualified to do business in all States in which the Land is located.

(b) **Action of the Purchaser.** The Purchaser has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and upon the execution and delivery of any document to be delivered by the Purchaser on or prior to the Closing Date, this Agreement and such document will constitute the valid and binding obligation and agreement of the Purchaser, enforceable against the Purchaser in accordance with its terms,

except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

(c) **No Violations of Agreements.** Neither the execution, delivery or performance of this Agreement by the Purchaser, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any Lien upon any property or assets of the Purchaser pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which the Purchaser is bound.

(d) **Litigation.** No investigation, action or proceeding is pending and, to the Purchaser's knowledge, no action or proceeding is threatened and no investigation looking toward such an action or proceeding has begun, that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

(e) **Financing.** The Purchaser has sufficient available funds to pay the Purchase Price at the Closing.

(f) **Bid Required Representations.** Purchaser has (i) had an opportunity to conduct any and all due diligence regarding the Property and the transactions contemplated herein prior to making the offer reflected in this Agreement, (ii) has relied solely upon its own independent review, investigation and/or inspection of the Property in submitting this Agreement, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property or the transaction contemplated herein, or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in this Agreement ultimately accepted and executed by the Seller, and (iv) has authority to enter into this Agreement, execute any necessary documents to close on the transactions contemplated herein, and proceed to Closing.

(g) **Adequate Assurance of Future Performance.** Purchaser is and will be capable of providing to counterparties to any Assumed Contracts adequate assurances of future performance within the meaning of Section 365(f)(2)(B) of the Bankruptcy Code.

7.2. **Survival of Representations and Warranties.** The representations and warranties made by the Purchaser herein or pursuant hereto will not expire with, or be terminated or extinguished by, the Closing or at any time thereafter.

SECTION VIII. COVENANTS OF THE SELLER

The Seller hereby covenants with the Purchaser between the date of this Agreement and the Closing Date as follows:

8.1. **Delivery of Closing Documents.** To deliver to Escrow Agent fully executed originals of the Closing Documents that will be released to the Purchaser on the Closing Date.

8.2. **Compliance with Laws.** To comply in all material respects with all laws, regulations and other requirements from time to time applicable of every governmental body having jurisdiction of the Property, or the use or occupancy thereof.

8.3. **Approval of Agreements.** Not to enter into, modify, amend or terminate any of the Leases, Residential Leases, or Contracts with respect to the Property, that would encumber or be binding upon the Property from and after the Closing Date, without in each instance obtaining the prior written consent of the Purchaser.

8.4. **Notice of Material Changes or Untrue Representations.** Upon learning of any material change in any condition with respect to the Property or of any event or circumstance that makes any representation or warranty of the Seller under this Agreement untrue or misleading, promptly to notify the Purchaser thereof.

8.5. **Operation of Property.** To continue to operate the Property in a fashion consistent with past practices; provided, however, that Seller will terminate, effective as of the Closing Date, all employment contracts with employees at the Property.

SECTION IX. APPORTIONMENTS

9.1. **Real Property Apportionments.**

(a) The following items will be apportioned at the Closing as of 7:00 a.m. local time on the Closing Date (the "**Apportioned Items**"):

(i) amounts owed or owing under any Contract;

(ii) all other items of income and expense normally apportioned in sales of property in similar situations;

(iii) if applicable, monthly rents and other fixed charges payable under the Leases or Residential Leases;

(iv) if applicable, percentage rents and other unfixed charges payable under the Leases or Residential Leases;

(v) gas, electric, water and other utility costs;

(vi) municipal assessments and governmental license and permit fees;

(vii) real estate taxes and assessments other than special assessments, based on the rates and assessed valuation applicable in the fiscal year for which assessed;

(viii) personal property taxes and assessments, if any, based on the rates and assessed valuation applicable in the fiscal year for which assessed;

(ix) water rates and charges; and

- (x) sewer and vault taxes and rents.

For the avoidance of doubt, the Apportioned Items shall be apportioned to Seller prior to the Closing Date, and Apportioned Items shall be apportioned to Purchaser on and after the Closing Date. If any of the foregoing cannot be apportioned at the Closing because of the unavailability of the amounts that are to be apportioned, such items will be apportioned on the basis of a good faith written estimate by the parties and reconciled as soon as practicable after the Closing Date. To the extent granted in the Sale Order, the sale, transfer, assignment and conveyance of the Property to the Purchaser will be entitled to the protections afforded under Section 1146(c) of the Bankruptcy Code.

(b) If there are water, gas or electric meters located at the Property, the Seller will obtain readings thereof to a date not more than thirty (30) days prior to the Closing Date and the unfixed water rates and charges, sewer taxes and rents and gas and electricity charges, if any, based thereon for the intervening time will be apportioned on the basis of the last readings. If readings are not obtainable by the Closing Date, then, at the Closing, any water rates and charges, sewer taxes and rents and gas and electricity charges that are based on the readings will be prorated based upon the *per diem* charges obtained by using the most recent period for which readings are then available.

(c) If any refunds of real property taxes or assessments, water rates and charges or sewer taxes and rents will be made after the Closing, the same will be held in trust by the Seller or the Purchaser, as the case may be, and will first be applied to the unreimbursed costs incurred in obtaining the same, then to any required refunds to Tenants, and the balance, if any, will be paid to the Seller (for the period prior to the Closing Date) and to the Purchaser (for the period commencing with the Closing Date).

(d) No insurance policies of the Seller are to be transferred to the Purchaser, and no apportionment of the premiums therefor will be made.

(e) Tenant security deposits, if any, will be transferred to the Purchaser, and Purchaser shall become responsible for all claims related to the refund of Tenant security deposits.

(f) If a net amount is owed by the Seller to the Purchaser pursuant to this Section 9.2, then such amount will be credited against the Purchase Price. If a net amount is owed by the Purchaser to the Seller pursuant to this Section 9.2, then such amount will be paid together with the Purchase Price.

(g) If there is a dispute between the parties with respect to amounts under this Section 9.2, undisputed amounts will be paid at Closing. With respect to disputed amounts, a proper adjustment will be determined after the Closing Date by the Bankruptcy Court.

The provisions of this Section 9.1 will survive the Closing.

9.2. **Closing Costs.**

(a) The Purchaser will pay (i) all charges for a title commitment (including search and exam fees) and related title policy, (ii) all applicable excise, sale, use, value added, registration, stamp, recording, documentary, conveyance, franchise, transfer, gains and similar taxes and impositions incurred in connection with the transactions contemplated by this Agreement, (iii) all charges for any surveys and (iv) all recording charges for each Deed.

(b) Each party will pay the fees and expenses of its attorneys and other consultants. Any charges and expenses incurred by Escrow Agent in effecting Closing will be shared equally by the parties.

(c) At the Closing, Purchaser shall pay an amount equal to the Cure Costs to the Escrow Agent to be paid out of escrow pursuant to Sale Order. Purchaser shall be solely responsible to provide to counterparties to any Assumed Contracts adequate assurances of future performance within the meaning of Section 365(f)(2)(B) of the Bankruptcy Code.

SECTION X. DAMAGE TO OR CONDEMNATION OF PROPERTY

10.1. **Casualty.** If, prior to the Closing, all or any part of the Land or Improvements is destroyed or damaged by fire or other casualty, then the Seller will promptly notify the Purchaser of this fact. If any such casualty damages all or any material portion of the Land or Improvements, then the Purchaser may terminate this Agreement by giving notice thereof to the Seller not later than two (2) Business Days after the date on which the Purchaser receives the Seller's notice as aforesaid. If the Purchaser elects to terminate this Agreement as aforesaid, then the Escrow Agent will return the Deposit to the Purchaser, and, upon the Purchaser's receipt of the Deposit, this Agreement will terminate and be of no further force and effect and neither party will have any liability to the other hereunder. If any such casualty damages less than a material portion of the Land or Improvements or if the Purchaser elects not to terminate this Agreement as aforesaid, then there will be no abatement of the Purchase Price and the Seller will assign to the Purchaser at the Closing all of the Seller's rights to the insurance proceeds, if any, under the Seller's insurance policies covering the Land and Improvements with respect to such damage or destruction and there will be credited against the Purchase Price the following: (a) the amounts of any applicable insurance deductibles; (b) the amounts of any proceeds previously received by Seller for the damage or destruction to the Land or Improvements; and (c) the amounts of any deficiency of proceeds.

10.2. **Condemnation.** If, prior to the Closing, all or any part of the Land or Improvements is taken by eminent domain (or is the subject of a pending taking that has not yet been consummated), then the Seller will promptly notify the Purchaser of this fact. If such taking affects all or any material portion of the Land or Improvements (including any access or parking), then the Purchaser may terminate this Agreement by giving notice to the Seller not later than two Business Days after the giving of the Seller's notice. If the Purchaser elects to terminate this Agreement as aforesaid, then the Deposit will be returned to the Purchaser, and, upon the Purchaser's receipt of the Deposit, this Agreement will terminate and be of no further force and effect and neither party will have any liability to the other hereunder. If less than a material portion of the Land or Improvements is affected by a taking or if the Purchaser elects

not to terminate this Agreement as aforesaid, then the sale of the Property will be consummated as herein provided without any adjustment to the Purchase Price (except to the extent of any condemnation award received by the Seller prior to the Closing) and the Seller will assign to the Purchaser at the Closing all of the Seller's right, title and interest in and to all awards, if any, for the taking, and the Purchaser will be entitled to receive and keep all awards for the taking of the Land or Improvements or portion thereof.

10.3. **Survival.** The parties' obligations, if any, under this Section X will survive the Closing.

SECTION XI. TERMINATION

11.1. **Default by the Seller.** If the Seller has made any representation or warranty herein that is untrue or misleading in any material respect, or if the Seller fails to perform any of the material covenants and agreements contained herein to be performed by the Seller, then the Purchaser may, as its sole and exclusive remedy, elect prior to the Closing to terminate this Agreement and receive a refund of the Deposit.

11.2. **Default by the Purchaser.** If the Purchaser has made any representation or warranty herein that is untrue or misleading in any material respect, or if the Purchaser fails to perform any of the covenants and agreements contained herein to be performed by it, then the Seller may, as its sole and exclusive remedy, elect prior to the Closing to terminate this Agreement and retain the Deposit, as liquidated damages and not as a penalty.

11.3. **Offer Open Date.** Pursuant to the Bid Procedures approved by the Bankruptcy Court, Purchaser may not revoke, withdraw or otherwise terminate the offer reflected in this Agreement until thirty (30) days after the entry of the Sale Order.

11.4. **Failure to Obtain Bankruptcy Court Approval.** Either party may terminate this Agreement if the Bankruptcy Court has not entered the Sale Order on or before ____ __, 2021 in which event the Purchaser, as its sole and exclusive remedy, will receive a refund of the Deposit.

SECTION XII. MISCELLANEOUS

12.1. **Continuing Jurisdiction.** The Bankruptcy Court will retain jurisdiction over the enforcement of this Agreement including the performance of the obligations and transactions contemplated hereunder.

12.2. **Brokers.** Each of the parties represents to the other party that it dealt with no broker, finder or like agent in connection with this Agreement or the transactions contemplated hereby (other than **[insert approved agents]**, payment to **[insert approved agents]** being the sole responsibility of the Seller).

12.3. **Notices.**

(a) All notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement may be given by the attorneys of

the parties and will be deemed adequately given if in writing and the same will be delivered either in hand, by facsimile with electronic confirmation of receipt, or by mail or FedEx or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all freight charges prepaid (if by FedEx or similar carrier).

(b) All notices required or permitted to be sent hereunder will be deemed to have been given for all purposes of this Agreement upon the date of receipt or refusal, except that whenever under this Agreement a notice is either received on a day that is not a Business Day or is required to be delivered on or before a specific day that is not a Business Day, the day of receipt or required delivery will automatically be extended to the next Business Day.

(c) All such notices must be addressed,

if to the Seller, to:

Eric L. Johnson, Trustee
Spencer Fane LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106
Email: ejohnsontrustee@spencerfane.com

with a copy to:

Andrea Chase
Spencer Fane LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106
Email: achase@spencerfane.com

If to the Purchaser, to:

with a copy to:

(d) by notice given as herein provided, the parties and their respective successors and permitted assigns may from time to time and at any time change their respective addresses effective upon receipt by the other party of such notice and each may specify as its address any other address within The United States of America.

12.4. **Waivers.** Any waiver of any term or condition of this Agreement, or of the breach of any covenant, representation or warranty contained herein, in any one instance, will not operate as or be deemed to be or construed as a further or continuing waiver of any other breach of such term, condition, covenant, representation or warranty or any other term, condition, covenant, representation or warranty, nor will any failure at any time or times to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner such party's right at a later time to enforce or require performance of such provision or any other provision hereof. This Agreement may not be amended, nor will any waiver, change, modification, consent or discharge be effected, except by (a) an instrument in writing executed by or on behalf of the party against whom enforcement of any amendment, waiver, change, modification, consent or discharge is sought, and (b) if the amendment, modification, consent, or discharge is of a material term of this Agreement, a final order of the Bankruptcy Court after appropriate notice and opportunity for a hearing to all parties in interest.

12.5. **Assignment; Successors and Assigns.** This Agreement and all rights and obligations hereunder may not be assigned by any party without the written consent of the other party. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is not intended and may not be construed to create any rights in or to be enforceable in any part by any other persons.

12.6. **Severability.** If any provision of this Agreement is held or deemed to be, or in fact becomes, invalid, inoperative or unenforceable as applied to any particular case in any jurisdiction or jurisdictions, or in all jurisdictions or in all cases, because of the conflict of any provision with any constitution or statute or rule of public policy or for any other reason, such circumstance will not have the effect of rendering the provision or provisions in question invalid, inoperative or unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Agreement will be reformed and construed in any such jurisdiction or case as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted in such jurisdiction or in such case.

12.7. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitutes one and the same instrument. Any such counterparts may be delivered by facsimile.

12.8. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes and take the place of any other instruments purporting to be an agreement of the parties hereto relating to the subject matter hereof.

12.9. **Performance on Business Days.** If the date on which performance or payment of any obligation of a party required hereunder is other than a Business Day, the time for payment or performance will automatically be extended to the next Business Day following such date.

12.10. **Attorneys' Fees.** Notwithstanding anything contained herein to the contrary, if any lawsuit or arbitration or other legal proceeding arises in connection with the interpretation or enforcement of this Agreement, the prevailing party therein will be entitled to receive from the other party the prevailing party's costs and expenses, including reasonable attorneys' fees incurred in connection therewith, in preparation therefor and on appeal therefrom, which amounts will be included in any judgment therein.

12.11. **Certain Interpretive Matters.** In construing this Agreement, it is the intent of the parties that:

(a) no consideration may be given to the section headings, all of which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction;

(b) no consideration may be given to the fact or presumption that one party had a greater or lesser hand in drafting this Agreement;

(c) examples are not to be construed to limit, expressly or by implication, the matter they illustrate;

(d) the word "includes" and its derivatives means "includes, but is not limited to," and corresponding derivative expressions;

(e) a defined term has its defined meaning throughout this Agreement and each exhibit and schedule to this Agreement, regardless of whether it appears before or after the place where it is defined;

(f) the meanings of the defined terms are applicable to both the singular and plural forms thereof;

(g) all references to prices, values or monetary amounts refer to United States dollars;

(h) accounting terms not defined in this Agreement, and accounting terms partly defined to the extent not defined, have the respective meanings given to them under generally accepted accounting principles;

(i) all references to sections, subsections, paragraphs, clauses, exhibits or schedules refer to sections, subsections, paragraphs and clauses of this Agreement, and to exhibits or schedules attached to this Agreement, unless expressly provided otherwise;

(j) each exhibit and schedule to this Agreement is a part of this Agreement and references to the term "Agreement" are deemed to include each such exhibit and schedule to this Agreement except to the extent that the context indicates otherwise, but if there is any conflict or inconsistency between the main body of this Agreement and any exhibit or schedule, the provisions of the main body of this Agreement will prevail;

(k) the words "this Agreement," "herein," "hereby," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular article, section, subsection or other subdivision, unless expressly so limited;

(l) the word "or" is disjunctive but not necessarily exclusive; and

(m) all references to agreements or laws are deemed to refer to such agreements or laws as amended or as in effect at the applicable time.

12.12. **Time of Essence**. Time is of the essence with respect to the performance of each and every covenant and obligation, and the giving of all notices, under this Agreement.

12.13. **Governing Law**. This Agreement is governed by, and is to be construed in accordance with, the laws of the State of Kansas.

[signature page follows]

The parties have caused this Agreement to be executed as of the date first above written.

SELLER:

By: _____
Eric L. Johnson, in his capacity as Chapter 11
Trustee of U.S. Real Estate Equity Builder,
LLC and USREEB Dayton, LLC, and not
individually

PURCHASER:

_____, a [state] [type of entity]

By: _____
Name: _____
Title: _____

EXHIBIT A
CONTRACTS

[See attached list]

EXHIBIT B

LEASES

[See attached list]

EXHIBIT C

LAND

[See attached legal description.]

Exhibit A

EXHIBIT E

ASSIGNMENT OF CONTRACTS

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (this "**Assignment**") is made and entered into as of _____, 2021, by and between _____ (the "**Seller**"), and _____, a _____ (the "**Purchaser**").

WHEREAS, the Seller and the Purchaser are parties to that certain Purchase and Sale Agreement, dated as of [_____], 2021 (the "**Purchase Agreement**"), pursuant to which the Seller has agreed to sell, and the Purchaser has agreed to purchase, certain land and other property as described in the Purchase Agreement;

WHEREAS, in connection with the closing of the sale contemplated by the Purchase Agreement, the Seller has agreed to assign, and the Purchaser has agreed to assume, among other things, the Contracts (as such terms are defined in the Purchase Agreement and set forth on Exhibit A), subject to and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Seller and the Purchaser agree as follows:

1. Capitalized terms used and not otherwise defined herein have the meanings given them in the Purchase Agreement.
2. The Seller hereby assigns to the Purchaser all of the Seller's right, title and interest in and to the Contracts. The Purchaser hereby assumes, as of the date hereof, all of the Seller's obligations under the Contracts. The Purchaser hereby agrees to perform all of the Seller's obligations arising under the Contracts from and after the date hereof.
3. This Assignment is binding on, and will inure to the benefit of, the parties hereto, their respective successors in interest, and their respective assigns.
4. This Assignment is governed by, and is to be construed in accordance with, the laws of the State of Kansas.
5. Neither party will record this Assignment.
6. This Assignment may be executed in two or more counterparts, all of which will be construed together as a single instrument.

[Signature page follows]

The parties have executed this Assignment as of the date first hereinabove written.

SELLER:

By: _____
Eric L. Johnson, in his capacity as
Chapter 11 Trustee of U.S. Real Estate
Equity Builder, LLC and USREEB
Dayton, LLC, and not individually

PURCHASER:

_____,
a _____

By: _____
Name: _____
Title: _____

Exhibit A to Assignment of Contracts

Attach list of Contracts.

EXHIBIT F

ASSIGNMENT OF LEASES

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "**Assignment**") is made and entered into as of _____, 2021, between _____ (the "**Seller**"), and _____, a _____ (the "**Purchaser**").

WHEREAS, the Seller and the Purchaser are parties to that certain Purchase and Sale Agreement, dated as of [_____], 2021 (the "**Purchase Agreement**"), pursuant to which the Seller has agreed to sell, and the Purchaser has agreed to purchase, certain land and other property as described in the Purchase Agreement;

WHEREAS, in connection with the closing of the sale contemplated by the Purchase Agreement, the Seller has agreed to assign, and the Purchaser has agreed to assume, among other things, the Leases and Residential Leases (as such terms are defined in the Purchase Agreement and set forth on Exhibit A), subject to and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Seller and the Purchaser agree as follows:

1. Capitalized terms used and not otherwise defined herein have the meanings given them in the Purchase Agreement.
2. The Seller hereby assigns to the Purchaser all of the Seller's right, title and interest in and to the Leases and Residential Leases. The Purchaser hereby assumes, as of the date hereof, all of the Seller's obligations under the Leases and Residential Leases. The Purchaser hereby agrees to perform all of the Seller's obligations arising under the Leases and Residential Leases from and after the date hereof. Without limiting the generality of the foregoing, Purchaser shall assume liability, and become responsible, for all obligations in connection with the Leases and Residential Leases going forward including security deposits.
3. This Assignment is binding on, and will inure to the benefit of, the parties hereto, their respective successors in interest, and their respective assigns.
4. This Assignment is governed by, and is to be construed in accordance with, the laws of the State of Kansas.
5. Neither party will record this Assignment.
6. This Assignment may be executed in two or more counterparts, all of which will be construed together as a single instrument.

The parties have executed this Assignment as of the date first hereinabove written.

SELLER:

By: _____
Eric L. Johnson, in his capacity as
Chapter 11 Trustee of U.S. Real Estate
Equity Builder, LLC and USREEB
Dayton, LLC, and not individually

PURCHASER:

_____,
a _____

By: _____
Name: _____
Title: _____

Exhibit A to Assignment of Leases

Attach list of Leases.

SCHEDULE 1.15

List of Excluded Property

SCHEDULE 1.20

Common Addresses

Street Address	City	State	ZIP	Purchase Price Allocation for Land, Improvements, and Fixtures