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8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 In re

12 THE ZUERCHER TRUST OF 1999,

13 Debtor.  
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Case No. 12-32747 HLB

Chapter 11

**CHAPTER 11 TRUSTEE'S MOTION FOR  
ENTRY OF AN ORDER (1) APPROVING  
SALE PROCEDURES AND OVERBID  
PROTECTIONS IN CONNECTION WITH  
THE SALE OF CERTAIN REAL  
PROPERTY LOCATED AT 2400-2420  
BAYSHORE BLVD, SAN FRANCISCO, CA  
94134 FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES AND  
INTERESTS; AND (2) SCHEDULING AN  
AUCTION FOR AND HEARING TO  
APPROVE THE SALE; DECLARATION  
OF PETER S. KRAVITZ; DECLARATION  
OF MATTHEW C. SHERIDAN**

**Hearing Scheduled**

**Date:** August 5, 2014

**Time:** 10:00 a.m.

**Place:** Courtroom 23

235 Pine Street

San Francisco, CA 94104

**Judge:** Hon. Hannah L. Blumenstiel

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COMES NOW Peter S. Kravitz, the duly appointed, qualified and acting chapter 11 trustee (“**Trustee**”) for the bankruptcy estate (“**Estate**”) of debtor, The Zuercher Trust of 1999 (“**Debtor**”) and hereby moves (“**Motion**”) this Court for entry of an order pursuant to sections 11 U.S.C. §§105 and 363 of the United States Code (“**Bankruptcy Code**”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**” and collectively, the “**Bankruptcy Rules**”): (1) approving the proposed sale procedures and overbid protections substantially in the form set forth below (“**Sale Procedures**”) in connection with the proposed sale at auction (“**Auction**”) of that certain real property located at 2400-2424 Bayshore Blvd, San Francisco, CA 94134 (with any personal property that may be located thereon, the “**Bayshore Property**”) free and clear from all liens, claims, encumbrances and interests with any disputed liens, claims, encumbrances and interests to attach to the net sale proceeds; and (2) confirming the date of the Auction and date of the hearing (“**Sale Hearing**”) to consider the motion for approval of the sale (“**Sale Motion**”).

This Motion is based on the concurrently filed Declarations of Peter S. Kravitz, chapter 11 trustee (“**Kravitz Dec.**”) and Matthew Sheridan of ARA Pacific (“**Sheridan Dec.**”). The legal points and authorities supporting the Sale Motion, including the notice required under Rule 6004, will be included in the papers to be filed in conjunction with that motion. This Motion merely seeks the Court’s approval of the proposed bidding procedures which are to be conveyed to interested parties by formal notice in advance of the Sale Hearing.

In the Sale Motion, the Trustee will seek Court authorization to sell the Bayshore Property free and clear of all liens, claims, interests and encumbrances, as well as all personal property of the Debtor located on the Bayshore Property, to Mr. Rasmi Zeidan and any designee or assignee (collectively “**Zeidan**”).

## **I. INTRODUCTION**

The Debtor was at all times relevant herein the owner of the Bayshore Property. Mr. Sterling Heatley (“**Heatley**”) claims to be the minority owner of an 11.5% interest in the Bayshore Property. On September 26, 2012 the Debtor filed its voluntary petition under chapter 11 of title 11 of the

1 Bankruptcy Code. Thereafter, the Court found the Debtor to have grossly mismanaged Estate assets  
2 and following a further evidentiary hearing in January 2013 ordered the Debtor removed from  
3 possession and appointed a chapter 11 trustee. On January 31, 2013 Peter S. Kravitz was appointed  
4 as the chapter 11 trustee and has served in that capacity to the present time. Following his  
5 appointment, the Trustee negotiated the sale of two other Estate assets pursuant to section 363 which  
6 sales were approved by Court Order entered June 10, 2013. The order approving sale of the two  
7 assets is currently on appeal by the Debtor. The Bayshore Property is currently the sole operating  
8 property of the Estate and the only source of immediate funds from which creditors can be paid.<sup>1</sup>  
9 (Kravitz Dec. ¶2.)

10 As the Bayshore Property is the only currently available source of funds to pay creditors, and  
11 the Bayshore Property operates on a very thin margin, the Trustee has decided that the sale of this  
12 asset is in the best interest of the Estate, its creditors and Debtor. (Kravitz Dec. ¶3.) The Court, after  
13 considering the input of the Trustee and interested parties, has directed that any sale be subject to  
14 auction so as to allow for any interested overbidders to make a higher or better offer for the purchase  
15 of the Bayshore Property. Pursuant to the Court's July 3, 2014 Order, the Trustee will therefore  
16 serve notice of the proposed auction and hearing on the Sale Motion in order to attract additional  
17 bidders who may present an overbid pursuant to the procedures set forth herein.

## 18 **II. THE PROPOSED SALE**

19 Currently the Trustee is overseeing the daily operations of the Bayshore Property via his  
20 retained property manager Jackson Group Property Management. (Kravitz Dec. ¶2.) Repairs and  
21 overdue maintenance have been completed to the extent possible with the limited resources available  
22 to the Trustee. (Kravitz Dec. ¶2.) The Trustee retained his Court approved brokers Madison Partners  
23 and ARA Pacific to market and sell the property. ARA Pacific is located in the Bay Area and has  
24 extensive experience in the marketing and sale of mixed use residential and commercial properties in  
25 the San Francisco area. (Sheridan Dec. ¶1.) Based on the opinions and advise of his brokers the  
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28 <sup>1</sup> The Trustee has also filed an adversary proceeding against three LLC entities wholly owned by the Debtor's principal, Monica Hujazi, in which the Trustee is seeking to avoid and recover five parcels of property also believed to belong to the Estate – *Kravitz v Peninsula Commons, LLC, et al* proceeding number 13-03046-HLB.

1 Trustee believes the Bayshore Property has a current fair market “AS IS” value of \$3,000,000 to  
2 \$3,500,000. (Kravitz Dec. ¶4.)

3 The Trustee engaged the services of Madison Partners and ARA in the fall of 2013. The  
4 Trustee has been soliciting offers for the Bayshore Property based on his brokers’ advice, the  
5 Trustee’s personal investigation of the Bayshore Property and surrounding conditions, and the  
6 records and files available to the Trustee. (Kravitz Dec. ¶5.) After months of marketing by the  
7 Trustee’s brokers, the Trustee has now entered into a contract with Zeidan for the sale of the  
8 Bayshore Property for an all cash purchase price of \$3,050,000 subject to overbid and Court  
9 approval. (Kravitz Dec. ¶5; Sheridan Dec. ¶5.) Below is a summary of the key terms of the proposed  
10 sale to Zeidan.

11 1. Sale of the Bayshore Property for an all cash price of \$3,050,000 free and clear of all  
12 liens, claims, interests and encumbrances, with any disputed liens, claims, interests and  
13 encumbrances to attach to the sale proceeds;

14 2. In addition to the regular notice requirements, notice of the Sale Hearing is to be  
15 posted on each unit at the Property;

16 3. The sale is an “*AS IS, WHERE IS, WITH ALL FAULTS*” sale;

17 4. The sale of the Bayshore Property shall be subject to overbid at auction;

18 5. The sale will be subject to final approval by the Court.

### 19 **III. THE SALE PROCEDURES**

20 Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of  
21 business may be by private sale or auction. The Trustee has contracted with a potential purchaser for  
22 the sale of the Bayshore Property and at the direction of the Court now seeks to conduct an auction  
23 at which the contracted sale price to Zeidan will be subjected to potential higher and better offers.  
24 Exposure of the Bayshore Property to sale at Auction can only increase the benefit to the Estate. The  
25 current contracted sale price is within the range of value that the Trustee has established for the  
26 Bayshore Property. (Kravitz Dec. ¶4.) By subjecting the proposed sale to auction and overbid, the  
27 potential to increase the ultimate sale price can only result in a greater, but not lesser, benefit to the  
28 Estate.

1 The Auction will be conducted at the same time as the Sale Hearing on the Sale Motion and  
2 in accordance with the procedures established and approved by the Court through this Motion. The  
3 proposed overbid procedures are as follows:

4 **A. The Bayshore Property is to be Sold Free and Clear.**

5 The specifics of the sale of the Bayshore Property will be set forth in the Sale Motion. Notice  
6 as required by Rule 6004 will be provided with the Sale Motion papers. The Bayshore Property shall  
7 be sold free and clear of all liens, claims, interests and encumbrances with all disputed liens, claims,  
8 interests and encumbrances to attach to the net sale proceeds with the same validity, amount and  
9 priority, if any, as the disputed lien, claim, interest or encumbrance currently has, if any.

10 **B. Notice of the Motion.**

11 The Trustee proposes to serve the Notice of the Court approved Bid Procedures, Auction and  
12 Sale Hearing within ten days after entry of the order on this Bid Procedure Motion, by first class  
13 mail, personal service, or electronic means where prior agreement exists, upon all creditors,  
14 interested parties, all parties who have contacted the Trustee or his brokers and indicated an interest  
15 in the Bayshore Property, all entities known to have asserted an interest in or upon the Bayshore  
16 Property, all tenants who reside at the Bayshore Property, and all entities required to be served by  
17 Bankruptcy Rule 2002.

18 **C. Submission of Offers.**

19 Any person or entity ("**Potential Purchaser**") interested in submitting a bid on the Bayshore  
20 Property will be directed to deliver an offer to Peter S. Kravitz, c/o Steven T. Gubner or Richard D.  
21 Burstein at Ezra Brutzkus Gubner LLP, 21650 Oxnard Street, Suite 500, Woodland Hills, CA 91367,  
22 Tel: (818) 827-9000, Facsimile: (818) 827-9099, email: sgubner@ebg-law.com or rburstein@ebg-  
23 law.com, so that such bid is **actually received** no later than 5:00 p.m. (prevailing Pacific Time) five  
24 (5) business days before the scheduled Sale Hearing and Auction date (each such offer shall be  
25 referred to hereinafter as an "**Offer**"). Counsel for the Trustee shall circulate copies of all Offers to  
26 Mr. Zeidan, counsel for Heatley, and such other parties as the Court may direct.

27 In order to submit an Offer and participate in the Auction for the sale of the Bayshore  
28 Property, any Potential Purchaser must be deemed a "Qualified Bidder" as set forth below.

1                   1.     Deposit.

2           An Offer shall be accompanied by a cashier's check or otherwise confirmable method of  
3 transfer in the amount of twenty-five percent (25%) of the Offer (the "***Deposit***") which will be either  
4 credited against the purchase price in the event the Court approves a sale of Bayshore Property to  
5 such overbidder(s), or returned to such overbidder in the event that a different bidder(s) is the  
6 successful bidder(s). The Sale Motion may provide that any such deposit made by a Qualified Bidder  
7 who ultimately becomes the successful bidder ("***Successful Bidder***") shall be subject to a liquidated  
8 damages provision should the sale of Bayshore Property fail to close as the result of an act or  
9 omission or other malfeasance of the Successful Bidder. All Deposits will be held in a segregated  
10 account until after the Auction is complete.

11                   2.     Proof of Good Funds.

12           An offer must contain the information, satisfactory to the Trustee in his sole discretion,  
13 which demonstrates that the Potential Purchaser has sufficient cash on hand or a binding financial  
14 commitment from an established, commercial, financial institution in good standing to ensure that  
15 such Potential Purchaser has the ability to close and will in fact close the transaction within the time  
16 frame established; such financial information includes, but is not limited to, certified financial  
17 statements from the Potential Purchaser.

18                   3.     Minimum Overbid Amounts.

19           An Offer on the Bayshore Property must be a minimum initial overbid of \$3,150,000.00  
20 (which equals the contracted Zeidan sale price plus \$100,000.00). Each subsequent overbid must be  
21 in an increment of at least \$25,000.00. Only Potential Purchasers who meet the conditions set forth  
22 in this section "C" shall be deemed qualified bidders ("***Qualified Bidders***") who are eligible to  
23 submit overbids at the Auction.

24                   4.     No Right of Objection to Other Bidders.

25           The Trustee in his sole discretion shall determine whether an Offer has satisfied all of the  
26 conditions set forth above. Neither Zeidan or Heatley, nor any Potential Bidder may object to the  
27 designation of another Potential Bidder, as a Qualified Bidder. Any Offer that satisfies the conditions  
28 set forth in section "C" shall be deemed a "***Qualified Bid.***" Zeidan is deemed a Qualified Bidder and

1 has submitted a Qualified Bid. If a Qualified Bid is received, Zeidan shall have the right to submit  
2 subsequent overbid(s) to the Trustee at any time prior to the Auction/Sale Motion hearing date to be  
3 set for the Bayshore Property.

4 **D. The Auction and Selection of the Successful Bid.**

5 Unless otherwise ordered by the Court, the Auction will be conducted at the same time and  
6 date as the Sale Hearing, at a time and date to be disclosed by future notice, in courtroom 23 of the  
7 United States Bankruptcy Court for the Northern District of California, located at 235 Pine Street,  
8 San Francisco, CA 94104, a minimum of thirty days after the Court enters an order approving the  
9 Bid Procedures.

10 Only parties who have timely submitted a Qualified Bid and are determined to by Qualified  
11 Bidders will be permitted to participate in and/or make any statements on the record at the Auction,  
12 unless otherwise ordered by the Court. All Qualified Bidders must appear in person at the Auction,  
13 or through a representative with authorization to bind the Qualified Bidder to any bid made. If  
14 multiple Qualified Bids satisfying all Auction requirements are received by the deadline set forth in  
15 section "C" above, each Qualified Bidder shall have the right to continue to improve its bid at  
16 Auction. The Auction will be an "open format" such that all participants are required to inform the  
17 Court at the podium of their subsequent bids.

18 The Trustee may conduct the Auction in the manner that the Trustee determines will result in  
19 the highest, best or otherwise financially superior offer(s) for the Bayshore Property provided that  
20 such manner in not inconsistent with the provisions set forth herein or with the Bankruptcy Code.

21 **E. Return of Deposit.**

22 As noted above in paragraph C.1, Deposits of all Qualified Bidders shall be held in a  
23 segregated account. All Deposits from unsuccessful bidders shall be returned within the third  
24 business day after the Auction has been completed.

25 **F. Closing.**

26 The Sale Motion shall seek an order further authorizing the Trustee to execute any and all  
27 documents, assignments, consents or instruments on behalf of any third party, including the holders  
28 of any liens, claims, interests or encumbrances identified in the Sale Motion or in this Motion, and/or

1 any and all documents which are reasonably necessary or appropriate to effectuate or consummate  
2 the sale of the Bayshore Property and transfer good and clean title to Zeidan or the Successful  
3 Bidder(s) as required by a title insurance company.


4 **IV. CONCLUSION**

5 The Trustee believes that the Sale Procedures set forth above provide adequate and  
6 appropriate notice for sale of the Bayshore Property and will enable the Trustee to review, analyze  
7 and compare all bids received to determine which bids are in the best interest of Debtor's Estate and  
8 its creditors. The Trustee further believes that the Sale Procedures are fair and reasonable under the  
9 circumstances. The Trustee therefore respectfully requests that the Court approve the Sale  
10 Procedures and this Motion in its entirety.

11 Respectfully submitted.

12 DATED: July 8, 2014

EZRA BRUTZKUS GUBNER LLP

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14 By:   
15 Reagan E. Boyce  
16 Attorneys for, Peter S. Kravitz,  
17 Chapter 11 Trustee  
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**DECLARATION OF PETER S. KRAVITZ, CHAPTER 11 TRUSTEE**

I, PETER S. KRAVITZ, declare:

1. I am the duly qualified and acting Chapter 11 Trustee in the above-captioned case. I make this Declaration in support of my *Motion For Entry Of An Order (1) Approving Sale Procedures And Overbid Protections In Connection With The Sale Of Certain Real Property Located At 2400-2420 Bayshore Blvd, San Francisco, CA 94134 Free And Clear Of All Liens, Claims, Encumbrances And Interests; And (2) Scheduling An Auction For And Hearing To Approve The Sale*. I have personal knowledge of the facts stated herein and if called to testify as a witness, I could and would competently so do. Any capitalized terms not herein defined shall have the same meaning ascribed to them in the Motion.

2. I was appointed as the chapter 11 trustee for the Debtor's Estate in January 2013. Following attempts to work with Debtor's principal and Heatley to oversee and manage the day to day business operations of the Bayshore Property, and given the amount of time required to address same, I decided to hire Jackson Group Property Management ("**Jackson**") to run the day to day business operations of the Bayshore Property. Jackson has been managing the property since January 2014. At the present time, the Bayshore Property is the only operating asset of the Debtor's Estate. I have approved the repair and maintenance of the Bayshore Property to the full extent possible given the resources available to the Estate.

3. Currently, the Bayshore Property is the only available source of funds to pay creditors. The operating margin of the Bayshore Property is very small. Given the amount of claims against Debtor and the nominal net monthly proceeds currently generated by the Bayshore Property I have determined, in my business judgment that the sale of this asset is in the best interest of the Estate, its creditors and the Debtor.


4. I retained and the Court approved real estate brokers Madison Partners and ARA Pacific to market and sell the Bayshore Property. Madison Partners is familiar with bankruptcy sales and the controlling rules. ARA Pacific is located in the Bay Area and has extensive experience in the marketing and sale of mixed use residential and commercial properties in the San Francisco area. Based on the opinions and advise of my brokers I believe the Bayshore Property has a current fair

1 market "AS IS" value of between \$3,000,000 to \$3,500,000. Based on the various offers received,  
2 the due diligence conducted over the last six months by various interested parties, and the reports  
3 and inspections completed to date, the proposed sale price of the Bayshore Property is in line with  
4 market conditions.

5 5. Since I engaged the services of Madison Partners and ARA in the fall of 2013, I have  
6 been soliciting offers for the Bayshore Property based on my brokers' advice, my own personal  
7 investigation of the Bayshore Property and surrounding conditions, and the records and files, reports  
8 and inspections obtained through my own as well as third party efforts. After six plus months of  
9 marketing I have entered into a contract with Rasmi Zeidan for the sale of the Bayshore Property.  
10 The sale is for an all cash purchase price of \$3,050,000 subject to overbid and Court approval.  
11 Attached hereto as Exhibit "1" is a true and correct of copy of the Purchase Agreement.

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

14 Executed this 9th day of July, 2014, at Agoura Hills, California.

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Peter S. Kravitz

**DECLARATION OF MATT SHERIDAN**

I, Matthew C. Sheridan declare as follows:

1. I am a California licensed real estate agent and Senior Vice President of ARA Pacific, the Court approved local real estate broker the Trustee has employed to list, market and sell the real property located at 2400 Bayshore Blvd./5-15 Leland Avenue, San Francisco, CA, (the "**Bayshore Property**"). I and my co-brokers have extensive experience marketing and selling real estate, both commercial and residential, in the Bay Area. I have personal knowledge of the facts set forth herein and am competent to make them. If I was called as a witness, I could and would competently testify thereto. Any capitalized terms not defined herein shall have the same meaning ascribed to them in the Trustee's Motion.

2. Since the Court approved ARA Pacific and Madison Partners to market and sell the Bayshore Property by Order entered December 12, 2013 and in full compliance with the terms of the Court's Order entered February 14, 2014, ARA has marketed the Bayshore Property in a commercially reasonable manner. Efforts undertaken include listing the Bayshore Property through the ARA marketing channels, on the MLS and LoopNet. In addition to electronic media, hard copy marketing materials were custom prepared and sent out to thousands of potential interested buyers and brokers. In addition, Phill Boersma, also of ARA, and I have conducted hundreds of personal telephone calls, sent out individual and group email blasts, and conducted both private and broker tours of the Bayshore Property. Results from these marketing efforts were communicated to the Trustee and his counsel on a regular basis, including formal monthly reports which included statistical data which I understand was included in the Trustee's monthly reports filed with the Court.

3. Throughout the marketing period, multiple offers have been received. The Trustee has with our assistance negotiated with more than one buyer for a potential contract to bring to the Court for approval. Even during contingency periods while a potential buyer was conducting inspections and a general agreement of terms had been agreed upon as between the Trustee and a potential buyer, our marketing efforts did not cease. The first potential buyer entered into a contingent contract which contingency period was extended through May 16, 2014 before the

1 potential buyer declined to remove the final inspection contingency before the expiration period.  
2 Thereafter a second potential buyer inspected the property in late May/early June and made an offer.  
3 Following several rounds of negotiations, terms were agreed upon, contingencies removed and a  
4 final contract has been executed in full.

5 4. On June 23, 2014, Mr. Zeidan agreed to remove the last of the pending contingencies  
6 pursuant to the terms offered by the Trustee. Upon receiving confirmation of final contingency  
7 removal, I communicated this news to the Trustee and his counsel who prepared a formal contract  
8 memorializing the terms of the sale. I received the contract from Trustee's counsel on June 25, 2014  
9 and forwarded it to Mr. Zeidan and his broker the same day. An executed copy was returned to me  
10 by Mr. Zeidan on July 1, 2014. The price and terms resulted from negotiations that were successful  
11 in removing all contingencies to sale, many of which would have made ultimate consummation of an  
12 agreement problematic had they remained in place.

13 6. The first potential purchaser who entered into a contingent contract with the Trustee  
14 was called Veritas Property S-1, LLC, a well-known real estate investor in the Bay Area. I am very  
15 familiar with this investment group, have worked with them on other properties in the past and am  
16 aware that their group controls a \$750 million property portfolio. Veritas also has a very good  
17 reputation in the real estate community and are considered a good group to work with. Other offers  
18 received at or around the same time as the Veritas group were from smaller entities without cash  
19 purchase capabilities, or were otherwise less well known or lacked a current presence in San  
20 Francisco. Veritas made an initial offer which went through several rounds of negotiations with the  
21 Trustee before a final contract; contingent only upon Veritas removing the inspection contingency  
22 was reached. Throughout this extended contingency period, the Bayshore Property remained on the  
23 market, all listings remained in place and additional inquiries, although no new offers, were received  
24 through the MLS, LoopNet and ARA channels. Ultimately, Veritas declined to remove the  
25 inspection contingency before the last and final deadline extension granted by the Trustee.

26 7. Upon Veritas letting the contingent contract expire ARA resumed prior and new  
27 marketing efforts to continue to market the Bayshore Property through the June 27, 2014 deadline  
28 set by the Court. On June 9 a new offer was received from the newly confirmed buyer, Rasmi

1 Zeidan. Mr. Zeidan was determined to be a viable purchaser capable of meeting the Trustee's terms  
2 and negotiations followed. After just a few short weeks of offer/counter-offer exchanges, inspections  
3 and due diligence, terms were reached, and a final has been executed.

4 8. In full compliance with the Court's Order, all references to the Zuercher Trust  
5 bankruptcy action, stalking horse buyers or overbids were removed from the original marketing  
6 materials after February 14, 2014. Copies were forwarded to the Trustee's attorneys and as I  
7 understand, through them to counsel for Sterling Heatley's counsel who had requested copies of the  
8 marketing materials in use.

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

11 Executed this 9<sup>th</sup> day of July 2014 in San Francisco, California.

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13 DocuSigned by:  
14 Matthew C. Sheridan  
15 Matthew C. Sheridan  
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**EXHIBIT "1"**

**Purchase Agreement for Bayshore Property**

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** ( "**Agreement**") is entered into as of June 23, 2014, (the "**Effective Date**"), by and between PETER S. KRAVITZ ("**Trustee**"), in his capacity as Chapter 11 Trustee for the estate ("**Estate**") of The Zuercher Trust of 1999 ("**Debtor**" or "**Zuercher**"), the debtor in case no. 12-bk-32747-HLB (the "**Bankruptcy Case**") pending in the United States Bankruptcy Court, Northern District of California (the "**Bankruptcy Court**" or "**Court**") (and collectively hereinafter, "**Seller**"), and Rasmi Zeidan, an individual or his assignee (collectively "**Buyer**"), (each of which are hereafter referred to jointly as the "**Parties**" and each individually a "**Party**") with reference to the following facts:

### RECITALS

**A.** By virtue of the Bankruptcy Case and operation of the United States Bankruptcy Code, 11 U.S.C. §101 *et seq.*, the Estate holds title to that certain real property located at 2400-2424 Bayshore Blvd, San Francisco, California (the "**Bayshore Property**").

**B.** Trustee is the duly appointed and acting Chapter 11 trustee for the Estate of Zuercher, holding title pursuant to 11 U.S.C. §521.

**C.** Buyer desires to purchase the Bayshore Property, and Seller desires to sell the Bayshore Property under the terms set forth below.

**D.** The proposed sale of the Bayshore Property by Seller to Buyer and the terms of this Agreement are subject to Court approval.

**E.** This Agreement amends and replaces the offer and counter-offers (collectively the offer) previously entered into between Buyer and Seller.

**NOW, THEREFORE, IN RELIANCE** upon the foregoing Recitals and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

### ARTICLE I TERMS OF AGREEMENT

**1.1. Agreement of Sale.** Seller agrees to sell and convey the Bayshore Property to Buyer, and Buyer agrees to purchase the Bayshore Property from Seller by grant deed in the form of Exhibit 1 attached hereto (the "**Grant Deed**"), subject to and in strict accordance with the terms and conditions set forth in this Agreement and upon Court approval.

**1.2. Closing Date.** The closing (the "**Closing**") shall occur, unless this Agreement is terminated in accordance with the provisions hereof, upon the date the Grant Deed is recorded in the Office of the County Recorder of San Francisco County (the "**Closing Date**"). The Closing Date shall occur forty-five (45) days after the entry of a final Approval Order (as defined below).

For purposes of this Agreement, “**Approval Order**” shall mean an order of the Court, or other court of competent jurisdiction, confirming the Sale after the Overbid Auction (defined in Section 8.3 below) which (1) approves Buyer as the final purchaser of the Bayshore Property; (2) confirms the terms of the Sale, and (3) that is final for purposes of appeal, as to which the time for appeal, including any extensions, has expired, and from which no appeal has been taken. Notwithstanding the foregoing sentence, nothing shall prevent the sale from Closing if an appeal of the Approval Order is filed but no stay pending appeal is issued by a court of competent jurisdiction.

## **ARTICLE II** **PURCHASE PRICE**

**2.1. Purchase Price.** The purchase price for Bayshore Property (the “**Purchase Price**”) shall be Three Million Fifty Thousand Dollars (\$3,050,000), which shall be payable in good and immediate federal funds, subject to bidding procedures as set forth in Sections 8.2 and 8.3 and subject to only those prorations outlined in Section 6.4.

**2.2. Payment of Purchase Price.** Within three (3) business days after the execution of this Agreement Buyer shall deliver to Escrow (as hereinafter defined) the sum of One Hundred and Five Thousand Dollars (\$105,000) as an earnest money deposit (the “**Deposit**”). Escrow shall hold the Deposit in trust pending Closing. In the event that the Closing does not occur on or before the **Closing Date**, (or a later date agreed to in writing by the Parties), either Party may terminate this Agreement and Escrow will return the Deposit to Buyer within three (3) business days after receipt of written notice of such termination. The Deposit shall be delivered to and held by Escrow pursuant to the terms, covenants and conditions of this Agreement; provided that if the close of Escrow occurs as contemplated by this Agreement, the Deposit shall be applied against the Purchase Price and shall be subject to and held in accordance with the Liquidated Damages provision of this Agreement. The balance of the Purchase Price shall be paid by Buyer to escrow holder by wire transfer at least one (1) business day prior to the Closing Date.

**2.3. Escrow.** Old Republic Title Company (the “**Title Company**”) shall act as escrow holder for the transactions contemplated by this Agreement (“**Escrow**”). Any escrow instructions which shall be executed by the Parties hereto shall implement the performance of this Agreement and shall be deemed to incorporate the provisions hereof, whether or not specifically stated therein. Buyer and Seller shall jointly execute and deposit any other documents necessary to facilitate the close of Escrow.

## **ARTICLE III** **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.1. Authorization of Seller.** Trustee is the duly appointed, qualified, and acting Chapter 11 Trustee for the Estate. This Agreement has been duly executed and delivered by Seller, and upon entry of a final Approval Order, is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except to the extent that enforcement may be affected by applicable bankruptcy, reorganization, insolvency and/or similar laws affecting creditors' rights and remedies and by general principles of equity). In addition, the

terms of the Sales Procedures Order contemplated by Sections 8.2 hereof, or any other Orders of the Court regarding the Bayshore Property, shall be binding upon the Parties upon entry thereof, and to the extent that such orders contradict any terms of this Agreement, such Orders shall supersede the terms of this Agreement; all other terms of this Agreement shall remain in full force and effect. In the event that the Court issues an Order(s) at the Auction and Hearing to approve Sale that materially alters the terms of this Agreement, Buyer must either 1) inform the Court that it is not in agreement with said terms and withdraws its offer to purchase under this Agreement before the Auction concludes, or 2) inform the Court on the record that Buyer is in agreement with any Order(s) that materially alters this Agreement.

**3.2. Title to Bayshore Property.** Subject to Section 8.2 below, Seller has (or will have as of the Closing pursuant to Sections 363(b), (f), and (h) of the Bankruptcy Code) good and marketable title to the Bayshore Property, and will convey the Bayshore Property free and clear of all liens, claims encumbrances and/or interests. The Bayshore Property will be maintained by Seller until the Closing in accordance with normal business and maintenance practices.

**3.3. Liens, Claims, Encumbrances, and Other Interests in the Bayshore Property.** Seller has made best efforts to identify to Buyer all liens, claims, encumbrances, and other interests in the Bayshore Property of which Seller has notice or actual knowledge; provided, however, that Seller has no obligation to obtain a title report or certified UCC search. The Bayshore Property shall be sold free of liens, claims and encumbrances, pursuant to Section 363(f) and (h) of the Bankruptcy Code.

**3.4. "AS IS" SALE.** Other than the obligation of Seller to remove any third-party monetary liens on the Bayshore Property prior to Closing, BUYER ACKNOWLEDGES AND AGREES THAT, SELLER IS SELLING AND BUYER IS PURCHASING THE BAYSHORE PROPERTY ON AN "**AS IS WITH ALL FAULTS**" BASIS, AND BUYER HAS MADE OR HAS HAD AN OPPORTUNITY TO MAKE SUCH INDEPENDENT, FACTUAL, PHYSICAL, AND LEGAL EXAMINATIONS, INQUIRIES, INSPECTIONS, TESTS AND STUDIES AS BUYER DEEMS NECESSARY OR DESIRABLE WITH RESPECT TO THE BAYSHORE PROPERTY AND BUYER WILL NOT AND IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ANY CONSULTANTS AS TO ANY MATTERS CONCERNING THE BAYSHORE PROPERTY, INCLUDING, WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition of the Bayshore Property, including square footage, drainage, soils, geology and/or any groundwater; (ii) the existence, quality, nature, adequacy and/or physical condition of utilities serving the Bayshore Property; (iii) any development approvals, development potential of, and/or the Bayshore Property's use, merchantability, or fitness, suitability, value or adequacy of the Bayshore Property for any particular purpose; (iv) title, zoning, or other legal status of the Bayshore Property, or any other public or private restrictions on use of the Bayshore Property, including without limitation, encroachments, easements and/or the existence of adverse claims; (v) the compliance of the Bayshore Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and/or restrictions of any governmental or quasi-governmental entity, or of any other person or entity; (vi) the presence of Hazardous Materials (as defined

below) on, under, or about the Bayshore Property, the adjoining property, or neighboring the Bayshore Property; (vii) the condition of title to the Bayshore Property; (viii) the economics of the operation of the Bayshore Property including, without limitation, any occupancy or use of the Bayshore Property by any party or entity; or (ix) the affect or availability of any governmental fee credits including, without limitation, any transportation, universal mitigation fees, or any other fees or credits available for the Bayshore Property. The terms of this Section 3.4 shall survive Closing or the earlier termination of this Agreement. The "AS-IS" terms of this sale include any Notices of Violation ("NOV") issued by any city, county or state governmental agency, and specifically includes the following NOV's currently recorded against the Bayshore Property: #201324102 – all work except item number 2 has been completed (completion of item no. 2 scope of work and final inspection will be Buyer's responsibility; #200346024 – remains open; #200911301 – scope of work may be complete, review by building inspector pending; #201151871 – work has been completed, final inspection pending.

**3.5. Buyer's Representations.** Buyer hereby represents and warrants, both as of the date hereof and again as of the Closing, that this Agreement and all documents executed by Buyer which are to be delivered to Seller hereunder will be duly authorized, executed and delivered by Buyer, are, and as of the Closing will be, legal, valid and binding obligations of Buyer, and do not, and as of the Closing will not, violate any provisions of any agreement or judicial order to which Buyer is a party or to which he is subject.

**3.6. Seller's Representations.** Seller hereby represents and warrants, both as of the date hereof and again as of the Closing, that this Agreement and all documents executed by Seller which are to be delivered to Buyer hereunder will be duly authorized, executed and delivered by Seller, are, and as of the Closing will be, legal, valid and binding obligations of Seller, and do not, and as of the Closing will not, violate any provisions of any agreement or judicial order to which Seller is a party or to which it is subject.

#### **ARTICLE 4** **ADDITIONAL COVENANTS**

**4.1. Best Efforts to Obtain Consent of Lienholders.** Without representation or warranty that it will be able to do so, Seller shall use its best efforts to obtain the consent to the sale contemplated hereby of any party asserting a lien, claim, encumbrance or other interest in the Bayshore Property.

**4.2. Removal of Third-Party Personal Property from the Bayshore Property.** Prior to Closing, Seller shall have used its best efforts to remove all personal property from the Bayshore Property, and any other equipment or other personal property which is not to be acquired by Buyer under this Agreement; provided, however, that Buyer may designate any such equipment or other personal property located at the Bayshore Property which may remain at the Bayshore Property pursuant to separate agreements between Buyer and third parties. Seller shall give Buyer at least five (5) business days' notice prior to removal of any equipment not to be acquired by Buyer, and Buyer shall have the right to be present during any such removal.

**4.3. Inspections.** Buyer agrees that he has made all physical and documentary inspections he requires to complete the transactions contemplated by this Agreement. Buyer further agrees that he has removed all inspection contingencies.

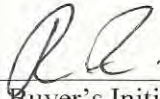
## **ARTICLE V** **RELEASES**


### **5.1. Release of Seller.**

(a) Except for matters included within Seller's representations and warranties expressly set forth in Article 3, Buyer, for itself and his or its agents, representatives, brokers, employees, attorneys, independent contractors, officers, directors, shareholders, partners, members, managers and their respective heirs, personal representatives, successors and assigns, and each of them, hereby waives, releases, acquits and forever discharges Seller and his respective partners, attorneys, officers, directors, employees, agents, representatives, brokers, independent contractors, heirs, successors and assigns, and each of them, and their respective personal representatives, heirs, successors and assigns, and each of them (collectively, the "**Released Parties**"), of and from any and all claims, liabilities, demands, liens, penalties, costs and expenses, including, without limitation, attorneys' fees and costs, of any kind whatsoever, at law or in equity, known or unknown, which Buyer has ever had or may hereafter acquire or possess arising out of or in connection with, directly or indirectly, (a) any condition or characteristic of the Bayshore Property, or any part thereof, or any structure or improvements therein; (b) the environmental, zoning, safety, land use, and/or financial aspects of the Bayshore Property; (c) the nature, contamination, or environmental state of the Bayshore Property; (d) the existence, presence, or release of Hazardous Substances in, on, or under the Bayshore Property, and/or any other matter described in this Agreement; and/or (e) any other matter related to the Bayshore Property or Seller's ownership of an interest therein.

(b) Except for matters included within Seller's representations and warranties expressly set forth in Article 3, effective as of the Closing, this release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release of the Released Parties. To the extent permitted by law, except for the limitations contained in the preceding sentence, Buyer hereby agrees, represents and warrants, which representation and warranty shall survive the closing, that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown and unsuspected, and Buyer further agrees, represents and warrants, which representation and warranty shall survive the closing, that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller's performance hereunder. The foregoing release shall not apply to any of the matters expressly contained in this contract.

Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this Paragraph "b." Seller and Buyer have each initialed this Paragraph to further indicate their awareness and acceptance of each and every provision hereof.

  
\_\_\_\_\_  
Buyer's Initials

  
\_\_\_\_\_  
Seller's Initials

(c) Buyer hereby waives the benefits of Section 1542 of the California *Civil Code*, which provides as follows:

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

(d) Buyer expressly waives and relinquishes any and all rights and benefits under any state or federal statute and/or any common law which provides rights and benefits in any way similar to those provided under California *Civil Code* Section 1542.

(e) **Definition of Hazardous Substances.** For purposes of this Agreement, "Hazardous Substances" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government, including, without limitation any material substance which is: (1) defined as "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste," under Sections 25115, 25117 or 25122.7, or as listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 including any amendments thereto; (2) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 including any amendments thereto; (3) defined as "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501, or as a "hazardous substance" under Section 25501.1, of the California Health and Safety Code, Division 20, Chapter 6.7 including any amendments thereto; (4) defined as "waste" under Section 13050 of the California Water Code; (5) any petroleum or petroleum products; (6) asbestos in any form; (7) any hydrocarbon substances; (8) PCBs; (9) transformers; (10) formaldehyde; (11) leakage from underground storage tanks; (12) listed under Article 9 of Title 22 of the California Administrative Code, or defined as "hazardous," or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, including any amendments thereto; (13) listed as a "toxic pollutant" pursuant to Section 311 of the Federal Pollution Control Act (33 U.S.C. Section 1317) including amendments thereto; (14) defined as "hazardous waste," or "solid waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq., or 42 U.S.C. Section 6903), including any amendments thereto; or (15) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.

Section 9601) including any amendments thereto; or in the regulations adopted, or judicial or administrative orders, decisions, or decrees promulgated, pursuant to any of the foregoing laws. The foregoing list of definitions and statutes is intended to be illustrative and not exhaustive, and such list shall be deemed to include all definitions and laws applicable to the subject matter contained herein.

(f) Except for matters included within Seller's representations and warranties expressly set forth in Article 3, Buyer shall indemnify, protect, defend, and hold the Released Parties harmless from all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, for (i) any matters relating to the Bayshore Property arising out of acts or activities of Buyer or its agents, representatives and/or consultants on or about the Bayshore Property, including but not limited to bodily injury, and/or damage to the Bayshore Property; (ii) claims made by third parties against any of the Released Parties for amounts owed with respect to the Bayshore Property that arise from and/or after the Closing including, but not limited to, taxes, utility costs, maintenance costs, and/or vendor fees; and (iii) claims made with respect to matters from which the Released Parties are released pursuant to this Article V. This obligation shall survive Closing or any termination of this Agreement.

## **ARTICLE VI**

### **CLOSING**

**6.1. Conditions Precedent.** Seller shall have no obligation to sell the Bayshore Property to Buyer and Buyer shall have no obligation to purchase the Bayshore Property from Seller unless and until:

(i) The other Party shall have delivered all items to be delivered by it pursuant to Section 6.2 and Section 6.3 below and shall have complied with each and every condition of this Agreement applicable to it;

(ii) The Approval Order shall have been entered, approving this Agreement and conveyance of Bayshore Property to Buyer upon payment of the Purchase Price or such Overbid Price approved by the Court, and all conditions precedent to Closing have been satisfied; and

(iii) All provisions of Section 8.2, et seq., have been complied with.

**6.2. Delivery by Seller.** At least three (3) business days prior to Closing Seller shall deposit with Title Company the following:

(a) The Grant Deed in the form of Exhibit 1 attached hereto duly executed and acknowledged in recordable form; and

(b) Such other instruments as are reasonably requested by the other Party or otherwise required to close Escrow and consummate the purchase of the Bayshore Property in accordance with the terms hereof.

**6.3. Delivery by Buyer.**

(a) Within five (5) business days after the date of this Agreement, Buyer shall deposit with Title Company any documents or instruments as are reasonably requested by the other Party or otherwise required to close the Escrow and consummate the purchase of Bayshore Property in accordance with the terms hereof.

(b) Within five (5) business days after notification of amounts due, Buyer shall deliver to Title Company the amount of recording costs, transfer taxes and other charges owed by Buyer pursuant to Section 6.4 below. If any such amounts cannot be determined prior to Closing, then Buyer shall pay such amounts to Trustee within five (5) business days after receipt of an invoice for such amounts after Closing. It is expressly understood that Buyer shall be responsible for all closing costs, recording fees, transfer taxes and any other cost or fee related to the transfer of the Bayshore Property to Buyer as contemplated by this Agreement from any source. This requirement includes the payment of any of Buyer's broker fees not approved by the Court to be paid from the sale proceeds in accordance with the Court's December 12, 2013 Order. Broker fees will be paid from sale proceeds in accordance with paragraph 1 of Schedule "A" to the Listing Agreement as approved by the Court. A copy is attached as Exhibit 2 hereto.

**6.4. Prorations and Apportionments.**

(a) From and after Closing, Buyer shall be solely responsible for liabilities and expenses related to the Bayshore Property and which arise from or after the Closing Date, including but not limited to taxes, utility costs, maintenance costs, vendor fees, and tenant security deposits. In connection therewith, Buyer expressly acknowledges and agrees that Buyer has been informed that Seller does not have custody of any pre-paid rent and/or security deposits from any source relating to the occupancy or operations of the Bayshore Property (including, without limitation tenant security deposits) (collectively, the "**Security Deposits**") and Buyer shall be given **NO** credit for any Deposits at Closing related to any space, commercial or residential that was leased prior to the Seller's appointment as Trustee. Seller will however, provide a credit for any monies held, including security deposits or pre-paid rents which are actually held by Seller, including without limitation such Security Deposits received by Seller from and after the date of his appointment as Trustee. Seller shall not be obligated for repayment of any Security Deposits to any parties entitled thereto unless Seller was in possession of such Security Deposits during the course of his appointment as Trustee. In connection therewith, the agreement for Buyer to be solely responsible for the payment of the Deposits to the parties entitled thereto, if any, is a material inducement for Seller entering into this Agreement and shall survive Closing.

(b) Prepaid, fixed and additional rents, if any in connection with any leases shall be prorated as of the Closing. As long as Seller is provided proration credit for such rents which are due and payable to Seller prior to Closing such rents that are uncollected as of the Closing shall become payable to Buyer.

(c) **Taxes.** All real estate taxes against or in respect of the Bayshore Property for the taxable period prior to the Closing Date shall be prorated between Seller and Buyer as of

the day prior to the Closing Date. In the event the amount of such taxes and assessments cannot be ascertained as of the Closing Date, proration shall be made on the basis of the preceding year and to the extent that such proration may be inaccurate, each Party shall make such payment to the other after the tax statements have been received as may be necessary to allocate such taxes properly between Seller and Buyer as of the day prior to the Closing Date.

## **ARTICLE VII**

### **DEFAULT AND TERMINATION**

**7.1. Default By Seller.** In the event that (1) Seller fails to perform any of its obligations on or before the Closing Date or is otherwise in default hereunder, or (2) the Approval Order has not been lodged with the Court for entry within fifteen (15) days of the Overbid Auction and Hearing on Sale Motion, Buyer shall have the right to give notice to Seller and Title Company, specifically setting forth the nature of such failure and stating that Seller shall have a period of ten (10) days to cure such failure. If Seller has not cured such failure within such period (or, if such failure is not capable of being cured within ten (10) days, Seller either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date), Buyer shall have the right to exercise one of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Closing with no reduction in the Purchase Price.

(b) Terminate this Agreement in writing by notice to Seller to that effect.

(c) File an action in the United States Bankruptcy Court for the Northern District of California to enforce specific performance. Except for matters included within Seller's representations and warranties expressly set forth in Article 3 hereto, in no event shall the Released Parties be liable for damages.

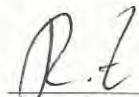
(d) Except for matters included within Seller's representations and warranties expressly set forth in Article 3, effective as of the Closing, Buyer and anyone claiming by, through or under Buyer hereby waives its right to recover from and fully and irrevocably releases the Released Parties from any and all claims that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damages, expenses, demand, action or cause of action arising from or related to any matter affecting the Bayshore Property, or any portion thereof.

**7.2. Default By Buyer.** In the event Buyer fails to perform any of its obligations or is otherwise in default hereunder on or before the Closing Date, Seller shall have the right to give notice to Buyer and Title Company specifically setting forth the nature of such failure and stating that Buyer shall have either (i) a period of three (3) business days to cure any failure to either pay money or perform by a date certain; or (ii) a period of ten (10) days to cure any other failure. If Buyer has not cured such failure within the applicable period (or, if any such failure under (ii) above is not capable of being cured within ten (10) days, Buyer either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete

such cure prior to the Closing Date), Seller shall have the right to exercise one of the following mutually exclusive remedies:

- (a) Waive such failure and proceed to the Closing.
- (b) Terminate this Agreement in writing by giving notice to Buyer to that effect.
- (c) File an action in the United States Bankruptcy Court for the Northern District of California to enforce any remedy available to Seller with respect to such breach hereunder, at law or in equity.

**7.3. Liquidated Damages.** THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER AS A RESULT OF BUYER'S DEFAULT THAT RESULTS IN A FAILURE TO CLOSE UNDER THIS AGREEMENT IS DIFFICULT OR IMPRACTICAL TO DETERMINE AS OF THE EFFECTIVE DATE OF THIS AGREEMENT AND THAT IN SUCH EVENT THE AMOUNT OF THE DEPOSIT IN ESCROW AT THE TIME OF THE DEFAULT, EXCLUSIVE OF ANY INTEREST ACCRUED THEREON, SHALL BE DELIVERED OR CAUSED TO BE DELIVERED BY BUYER TO SELLER AS LIQUIDATED DAMAGES, WHICH LIQUIDATED DAMAGES SHALL CONSTITUTE SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY, INCLUDING ANY REMEDY FOR SPECIFIC PERFORMANCE) AGAINST BUYER ON ACCOUNT OF BUYER'S DEFAULT THAT RESULTS IN A FAILURE TO CLOSE UNDER THIS AGREEMENT AND SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO CONVEY THE BAYSHORE PROPERTY TO BUYER. SELLER HEREWITH WAIVES ALL OTHER CLAIMS OR CAUSES OF ACTION AGAINST BUYER OR BUYER'S AGENTS AND EMPLOYEES, INCLUDING ANY CLAIMS ARISING BY STATUTE OR COMMON LAW, WHETHER SUCH CLAIMS BE CHARACTERIZED AS CONTRACT OR TORT CLAIMS.

  
Buyer's Initials

  
Seller's Initials

**7.4. Effect Of Termination.** Upon the termination of this Agreement for any reason, neither Buyer nor Seller shall have any further obligations hereunder, except those which explicitly survive termination of this agreement as set forth herein.

## **ARTICLE VIII** **MISCELLANEOUS**

**8.1. Notices.** Any notice, request, demand, consent, approval or other communication required, provided or permitted under this Agreement shall be in writing, signed by the Party

giving such notice, and shall be deemed to have been given: (a) upon hand delivery; (b) one (1) business day after being deposited with Fed Ex or another reliable overnight courier service; (c) upon receipt if transmitted by facsimile or e-mail, provided that an additional notice is sent pursuant to clause (a), (b) or (d) herein, or (d) three (3) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Seller: Peter Kravitz  
Chapter 11 Trustee  
29209 Canwood Street, Suite 210  
Agoura Hills, CA 91301  
Facsimile: (310) 974-6342  
E-mail: pkravitz@solutiontrust.com

With a copy to: Ezra Brutzkus Gubner LLP  
21650 Oxnard St., Suite 500  
Woodland Hills, CA 91367  
Attention: Glenn Fuller, Esq.  
Facsimile: (818) 827-9099  
E-mail: gfuller@ebg-law.com

If to Buyer: Rasmi Naser Zeidan  
6955 Skyline Blvd.  
Hillsborough, CA 94010

If to Title Company: Old Republic Title Company  
851 Cherry Avenue, Suite 212  
San Bruno, CA 94066  
(650) 871-9462  
Escrow # 0227014699

or such other address as either Party may from time to time specify in writing to the other in accordance with this Section 8.1.

**8.2. Court Approval.** Promptly upon full execution of this Agreement, Seller shall apply to the Bankruptcy Court pursuant to 11 U.S.C. §363 for a Sale with Overbid Procedures Order (the “**Sale Order**”), in a form reasonably acceptable to Buyer, providing for overbid procedures which will govern the auction (“**Overbid Auction**”) to be held at the same time as the hearing on the Trustee’s Motion for Order Approving Sale of the Bayshore Property (the “**Sale Motion**”). The Seller shall file the Sale Motion in the Bankruptcy Court seeking approval of this Agreement and the sale contemplated hereby free and clear of any lien, claim, encumbrance, or interest. The sale will be subject to the Court granting the Sale Motion and ultimately entering the Approval Order. Both Buyer’s and Seller’s obligations to consummate the transactions contemplated in this Agreement shall be conditioned upon the Court’s entry of the Approval Order and upon Buyer’s being the successful bidder at the Overbid Auction, if any auction is held. This Agreement shall remain in full force and effect except to the extent modified by the

Approval Order or any further Order of the Court regarding the Bayshore Property. Buyer shall provide all information reasonably required by Trustee to demonstrate that Buyer can provide adequate assurance of future performance under any contracts to be assumed by Buyer pursuant to this Agreement, and Buyer shall be solely responsible for providing such adequate assurance.

The Sale Motion, or such other additional motion as may be required, shall also request entry of a preliminary order approving the bidding procedures set out in Section 8.3 below (the “**Sale Procedures Order**”). The sale of the Bayshore Property shall be subject to higher and better bids, as determined by the Trustee in the exercise of his reasonable business judgment and approved by the Court in accordance with the Sales Procedures Order. The notice of the hearing to consider the Sale Motion (the “**Hearing**”), the Sale Procedures Order and the Sale Motion shall be served on all parties required by the Bankruptcy Code and any other person, party, or entity identified by Buyer (the “**Notice**”). At the Hearing, Seller shall offer testimony (whether live, documentary, or by proffer) to establish that the transactions proposed herein are fair and equitable, entered into in good faith by both Parties, are in the best interests of the creditors and the Estate, and that the sale is a valid and proper exercise of the Sellers’ business judgment, and such other evidence as Buyer reasonably believes is necessary to obtain approval of the Sale Motion and entry of the Approval Order. If the Court refuses to issue the Approval Order at the Hearing on the Sale Motion or if an overbid by another potential purchaser to purchase the Bayshore Property for more than the Purchase Price is approved by the Court at the Overbid Auction, then this transaction shall automatically terminate and Seller and Buyer shall be relieved of any further liability or obligation hereunder; provided, however that Seller shall be required to instruct Title Company to deliver the Deposit to Buyer together with any and all interest accrued thereon within the time period set forth in section 2.2 above.

**8.3 Bidding Procedures; Reimbursement of Buyer’s Expenses.** The Sale Motion shall contain at least the following terms: In the event that other parties submit competing bids, (“**Overbids**”) for the Bayshore Property, at least five (5) business days prior to the Hearing, such parties shall make an earnest money deposit of at least \$125,000, and such parties shall provide evidence satisfactory to the Trustee that such parties have the financial ability to complete the sale. The Trustee shall retain sole discretion to determine whether any potential bidder is deemed a “**Qualified Bidder**,” and only Qualified Bidders may participate at the Auction for the Bayshore Property, to be conducted in accordance with the Sale Procedures Order. Buyer may, but is not required to submit further bids in the event Overbids are made. Any initial Overbid must be by at least \$100,000 – in other words, any party wishing to be determined to be a Qualified Bidder must submit an initial bid of not less than \$3,150,000. Any further Overbids prior to or at auction must be in increments of not less than \$25,000. The Sales Procedures Order shall approve the obligations in this paragraph, which shall thereafter be binding on Buyer, Seller, and any Qualified Bidder who participates at the Overbid Auction.

**8.4. Brokers and Finders.**

(a) Buyer hereby represents and warrants that it has agreed to pay Shawkat Zaidan of WEM Pacific Investment Inc., DRE License #01460462 (“**Buyer’s Broker**”), a commission in connection with the acquisition of the Bayshore Property. Other than Buyer’s Broker, Buyer hereby represents and warrants that he has not agreed to pay any fee, finder’s fee,

commission or other similar compensation in connection herewith and he has not acted through any broker or finder who could claim any such other or additional compensation. Buyer further agrees to indemnify and hold Seller harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of any claim for any such fee or compensation including any claims by Buyer's Broker.

(b) Seller hereby represents and warrants that he has agreed to pay Madison Partners and ARA Pacific ("Trustee's Brokers") a joint commission in connection with the sale of the Bayshore Property pursuant to the Order approving retention of the Trustee's Brokers entered December 12, 2013, and he has not acted through any broker or finder who could claim any such other or additional compensation related thereto.

**8.5. Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors, and assigns.

**8.6. Further Acts.** Each Party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver such additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

**8.7. Merger Of Prior Agreements; Amendments.** This Agreement and the Exhibits hereto constitute the full and complete agreement and understanding, and supersede all prior and contemporaneous agreements and understandings, between the Parties hereto relating to the subject matter hereof. Without limiting the foregoing, the Parties acknowledge and agree that upon full execution of the Agreement, all prior offers, counter offers and correspondence regarding the Bayshore Property among the Parties or their predecessors or agents are null and void and of no force or effect. This Agreement may be amended or modified only by a written instrument executed by the Party asserted to be bound thereby.

**8.8. Attorneys' Fees.** In the event either Buyer or Seller brings any suit or other proceeding with respect to the subject matter or to enforce any provision of this Agreement, the prevailing party (as determined by the court, agency or other authority which adjudicates such suit or proceeding) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, in establishing the right to indemnification or in any action or participation in, or in connection with, any state or federal bankruptcy or debtor relief case or proceeding).

**8.9. Authority Of Individuals.** Each individual executing this Agreement on behalf of Buyer or Seller hereby represents and warrants that (a) such individual has full power and authority to execute this Agreement on behalf of its Party; and (b) the execution and delivery of this Agreement have been duly authorized by such Party and such execution is binding thereon.

**8.10. Validity.** In the event any provision of this Agreement, or the application thereof in a particular context, is held unenforceable, invalid or in violation of law by any court or quasi-judicial body of competent jurisdiction, then the application of such provision in other contexts