

Agenda Item:	III A: Recommended Action Item
Date:	November 3, 2022
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“MPS”) Audit & Facilities Committee (the “Committee”)
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead(s):	Patrick Ontiveros, Director of Facilities/Real Estate & General Counsel
RE:	16600 Vanowen Street – New Property Acquisition

**1. Action Proposed for Board Recommendation:**

MPS Staff recommends that the Magnolia Public Schools (MPS) Audit & Facilities Committee approve and ratify the execution of a purchase and sale agreement and opening of escrow for that certain property located at 1600 Vanowen Street (the “Property”) for the benefit of Magnolia Science Academy —2 (“MSA-2”). Furthermore, for the Committee to move and recommend for the Board to adopt the same.

**2. Purpose:**

The purpose is to provide a campus for MSA-2 following its last school year in 2023-24 on the Birmingham Community Charter High School (“BCCHS”) under a co-location use agreement (“CUA”) with the Los Angeles Unified School District (“LAUSD”).

**3. Background:**

MSA-2 operates on the BCCHS campus under the CUA with LAUSD. By its terms the CUA is co-terminus with MSA-2’s charter. Originally, MSA-2’s charter was scheduled to expire in June 2022. However, when the State of California through legislation provided an extension for all charters expiring during the COVID pandemic, MSA-2’s charter was extended for two years, now expiring in June 2024. Notwithstanding, LAUSD asserted that such extension was inapplicable to the CUA and that MSA-2 was required to submit an application for Prop 39 space commencing with the 2022-23 school year, with no guarantee that MSA-2 would remain on the BCCHS campus. MPS disputed LAUSD’s position. After negotiation, MPS and LAUSD agreed that MSA-2 could remain on the BCCHS property through the 2023-24 school year. Thereafter, MSA-2 will have to apply for space under Prop 39. In fact, MSA-2 submitted a Prop 39 application when the FUA’s interpretation was being disputed by LAUSD. Around the time that the MPS and LAUSD came to a resolution, LAUSD prepared a response to the Prop 39 application which revealed that LAUSD intended to split the MSA-2 campus in two.

4. **Analysis:**

MPS wishes to find a private site for MSA-2 in the general proximity of its current location on the BCCHS campus. For over a year, MPS has worked with its broker to locate an appropriate property for MSA-2. Nothing promising has been found. In light of the pending expiration of the CUA, it is imperative that MPS locate a new site for MSA-2 so that it is not split up.

The Property was brought to the attention of MPS Staff by our broker. It is 4.3 acres and has been owned by the same family for some time. It was placed on the market by the family's broker and received multiple offers. After a couple rounds of back and forth with MPS and other interested buyers, MPS was chosen by the seller because MPS largely agreed to the Seller's terms documented in a letter of intent.

Using the extra-ordinary powers granted to him by the Board of Directors at its February 10, 2022 meeting and because no amount of money would be put at risk (as the good faith deposit is entirely refundable before the end of the due diligence period), MPS's CEO and Superintendent signed the purchase and sale agreement, a copy of which is attached as Exhibit A, and opened escrow with Fidelity National Title on October 12, 2022. MPS made a good faith deposit of \$400,000 which is fully refundable until the end of the due diligence period. The due diligence period is sixty (60) days and therefore ends on December 11, 2022.

Since opening escrow MPS staff has engaged vendors for due diligence activities. An appraisal, ALTA and topographic survey, Phase I environmental site assessment, geotechnical study and design options are all underway. Because the Property is not currently zoned for schools, it will need a conditional use permit which will require additional studies including a traffic study. MPS's land use consultant is preparing the appropriate documents for the application. MPS does not expect to be able to file an application before the end of the due diligence period. Consequently, MPS, if it closes escrow will face the risk that the Property is not properly entitled and therefore MPS must dispose of it. All of these scenarios are being examined by MPS staff.

5. **Impact:**

MPS Staff believes that if it is successful, the Property will provide an excellent campus for MSA-2. MSA-2 is fully enrolled, and is a high performing school. As a result, MPS Staff believes that since the Property is approximately one mile away from MSA-2's current home on the BCCHS campus, it will retain its student body and will continue to attract students due to being able to stay in its current community.

6. **Budget Implications:**

MPS Staff is analyzing the financial implications of the purchase and focusing on affordability. MPS staff is working with its financial advisor in order to source financing and develop strategies that will make the overall project – acquisition, entitlements, construction – affordable for MSA2.

7. **Exhibits:**

- (A) Purchase and Sale Agreement

Exhibit A

Purchase and Sale Agreement for 16600 Vanowen Street

STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS
FOR PURCHASE OF REAL ESTATE
(Vacant Land)

Dated: October 10, 2022

1. Buyer.

1.1 Magnolia Educational & Research Foundation, a California nonprofit public benefit corporation, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow ("Escrow") to close 30 or 60 days after the waiver or satisfaction of the Buyer's Contingencies, ("Expected Closing Date") to be held by Fidelity National Title, National Commercial Services (Attn: Bobbie Purdy) ("Escrow Holder") whose address is 555 South Flower Street, Suite 4420, Los Angeles, CA 90071, Phone No. 213-452-7104, Facsimile No. 213-452-7148 upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer. See Paragraph 37.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document Agreement, including any or a subsequent counteroffer thereto, the Buyer and Seller have reached an agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property, and the Agreement has been delivered to Escrow upon terms accepted by both Parties.

2. Property.

2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) approximately +/- 4.29 acres of vacant land is located in the County of Los Angeles, is commonly known as (street address, city, state, zip) 16600 Vanowen Street and 16631 Archwood Street, Van Nuys, CA 91406 and is legally described as: to be provided by Fidelity National Title (APN: 2231-007-008, -016, -017.)

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Fidelity National Title (Attn: Thomas Szopinsky) ("Title Company"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: all rights, title and interest of Seller in and to any and all water and mineral rights, development rights, and entitlements and any easements, contracts, plans, surveys, agreements and appurtenances pertaining to the Property. (collectively, the "Improvements").

2.4 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and N/A all of which shall be removed by Seller prior to Closing.

3. Purchase Price.

3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be [X] \$13,900,000.00, or [ ] (complete only if purchase price will be determined based on a per unit cost instead of a fixed price) per unit. The unit used to determine the Purchase Price shall be: [ ] lot [ ] acre [ ] square foot [ ] other prorating areas of less than a full unit. The number of units shall be based on a calculation of total area of the Property as certified to the Parties by a licensed surveyor in accordance with paragraph 9.1(g). However, the following rights of way and other areas will be excluded from such calculation: The Purchase Price shall be payable as follows:

(Strike any not applicable)

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): \$13,900,000.00

(b) Amount of "New Loan" as defined in paragraph 5.1, if any:

(c) Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)");

(i) An Existing Note ("First Note") with an unpaid principal balance as of the Closing of approximately:

Said First Note is payable at per month, including interest at the rate of % per annum until paid (and/or the entire unpaid balance is due on ).

(ii) An Existing Note ("Second Note") with an unpaid principal balance as of the Closing of approximately:

Said Second Note is payable at per month, including interest at the rate of % per annum until paid (and/or the entire unpaid balance is due on ).

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~~(d) Buyer shall give Seller a deed of trust ("Purchase Money Deed of Trust") on the property, to secure the promissory note of Buyer to Seller described in paragraph 6 ("Purchase Money Note") in the amount of:~~

~~3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.~~

#### 4. Deposits.

4.1  Buyer has delivered to Broker a check in the sum of \_\_\_\_\_, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or \_\_\_\_\_ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or  W within 2 or 5 business days after both Parties have executed this Agreement and the executed Agreement has been delivered to and accepted by Escrow Holder as determined by Escrow Holder's delivery of written notice to the Parties Buyer shall deliver wire to Escrow Holder a check in the sum of \$400,000.00 (the "Deposit"). If said check wire is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

##### 4.2 Additional deposits:

(a) ~~Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of \_\_\_\_\_ to be applied to the Purchase Price at the Closing.~~

(b) ~~Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (m) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of \_\_\_\_\_ to be applied to the Purchase Price at the Closing.~~

(c) ~~If an Additional Deposit is not received by Escrow Holder within the time period provided then Seller may notify Buyer, Escrow Holder, and Brokers, in writing that, unless the Additional Deposit is received by Escrow Holder within 2 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.~~

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is \_\_\_\_\_. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

4.4 Notwithstanding the foregoing, within 5 days after Escrow Holder receives the monies described in paragraph 4.1 above, Escrow Holder shall release \$100 of said monies to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the contingency period to Buyer as herein provided. Such independent consideration is non-refundable to Buyer but shall be credited to the Purchase Price in the event that the purchase of the Property is completed.

4.5 Upon waiver of all of Buyer's contingencies by Buyer the Deposit shall be released to the Seller or Seller's identified 1031 exchange accommodator and shall become non-refundable but applicable to the Purchase Price except in the event of a Seller breach of, or default under, this Agreement or, or in the event that the Escrow is terminated pursuant to the provisions of Paragraph 9.1(n) (Destruction, Damage or Loss) or 9.1(o) (Material Change).

#### 5. Financing Contingency. (Strike if not applicable)

~~5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least \_\_\_\_\_% of the Purchase Price, on terms acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.~~

~~5.2 If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within \_\_\_\_\_ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.~~

~~5.3 If Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.~~

#### 6. Seller Financing. (Purchase Money Note). (Strike if not applicable)

~~6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of \_\_\_\_\_% per annum, with principal and interest paid as follows: \_\_\_\_\_. The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.~~

~~6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):~~

~~(a) Prepayment. Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.~~

~~(b) Late Charge. A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.~~

~~(c) Due On Sale. In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.~~

~~6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.~~

~~6.4 WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.~~

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6.5 Seller's obligation to provide financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 3 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available, and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate, Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.

## 7. Real Estate Brokers.

7.1 Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this transaction with the following real estate broker(s) ("**Brokers**") and/or their agents ("**Agent(s)**"):

Seller's Brokerage Firm Evanisko Realty & Investment, Inc. License No. \_\_\_\_\_ is the broker of (check one):  the Seller; or  both the Buyer and Seller (dual agent).

Seller's Agent Frank Evanisko License No. 01383591 is (check one):  the Seller's Agent (salesperson or broker associate); or  both the Seller's Agent and the Buyer's Agent (dual agent).

Buyer's Brokerage Firm InSite EFS, Inc. License No. 01957797 is the broker of (check one):  the Buyer; or  both the Buyer and Seller (dual agent).

Buyer's Agent Dan Morrar License No. 01716132 is (check one):  the Buyer's Agent (salesperson or broker associate); or  both the Buyer's Agent and the Seller's Agent (dual agent).

The Parties acknowledge that other than the Brokers and Agents listed above, there are no other brokers or agents representing the Parties or due any fees and/or commissions under this Agreement. ~~Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.~~

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker, agent or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers and Agents named in paragraph 7.1, and no broker, agent or other person, firm or entity, other than said Brokers and Agents is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses (including reasonable attorneys' fees) or liability for compensation, commission or charges which may be claimed by any broker, agent, finder or other similar party, other than said named Brokers and Agents by reason of any dealings or act of the indemnifying Party. **The terms of this section shall survive the Closing (as hereinafter defined) or any termination of this Agreement.**

## 8. Escrow and Closing.

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by the Parties or a Broker herein. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "**Closing**") by recording a ~~general warranty deed (a grant deed in California)~~ and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement.

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees, ~~and any~~ **Buyer shall pay all** required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance. (See also paragraph 11.)

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived **by Buyer** prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in Paragraph 9.2 or disapproval of any other matter subject to Buyer's approval, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, be promptly refunded all funds deposited by Buyer with Escrow Holder, less only the \$100 provided for in paragraph 4.4 and the Title Company and Escrow Holder cancellation fees and costs **required to be paid by and to Escrow Holder shall be borne one-half (1/2) by Seller and one-half (1/2) by Buyer and all other charges shall be borne by the party incurring same, all of which shall be Buyer's obligation.** If this transaction is terminated as a result of ~~seller's a party's~~ **breach of this Agreement or due to a default on the part of a party, then the breaching party** Seller shall pay the Title Company and Escrow Holder cancellation fees and costs, **all of which shall be the breaching party's obligation.**

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

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8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this Escrow is terminated for any reason other than Seller's breach or default, then as a condition to the return of Buyer's deposit, Buyer shall within 5 days after written request deliver to Seller, at no charge and without any warranties whatsoever, copies of all surveys, engineering studies, soil reports, and maps, ~~master plans, feasibility studies and other similar items~~ prepared by or for Buyer that pertain to the Property.

## 9. Contingencies to Closing.

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies. **IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS NOT APPROVED SUCH ITEM, MATTER OR DOCUMENT.** Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer. Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. With regard to subparagraphs (a) through (m) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) *Disclosure.* Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR CRE ("AIR") standard form entitled "**Seller's Mandatory Disclosure Statement**") and provide Buyer with a completed Property Information Sheet ("**Property Information Sheet**") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within ~~10 or~~ 5 days following the Date of Agreement. Buyer has ~~10~~ 60 days from the ~~receipt of said disclosures.~~ **Date of Agreement** to approve or disapprove the matters disclosed.

(b) *Physical Inspection.* Buyer has ~~10 or~~ 60 days following the ~~receipt of the Property Information Sheet or the~~ Date of Agreement, ~~whichever is later,~~ to satisfy itself with regard to the physical aspects and size of the Property.

(c) *Hazardous Substance Conditions Report.* Buyer has ~~30 or~~ 60 days following the ~~receipt of the Property Information Sheet or the~~ Date of Agreement, ~~whichever is later,~~ to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "**Hazardous Substance**" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "**Hazardous Substance Condition**" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) *Soil Inspection.* Buyer has ~~30 or~~ 60 days following the ~~receipt of the Property Information Sheet or the~~ Date of Agreement, ~~whichever is later,~~ to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within ~~10~~ 5 days following the Date of Agreement.

(e) *Governmental Approvals.* Buyer has ~~30 or~~ 60 days following the Date of Agreement to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, ~~handicapped persons with disabilities~~ and Americans with Disabilities Act requirements, transportation and environmental matters.

NOTE: Past uses of the Property may no longer be allowed. In the event that the Property must be rezoned, it is Buyer's responsibility to obtain the rezoning from the appropriate government agencies. Seller shall sign all documents Buyer is required to file in connection with rezoning, conditional use permits and/or other development approvals.

(f) *Conditions of Title.* Escrow Holder shall cause a current commitment for title insurance ("**Title Commitment**") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("**Underlying Documents**"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within ~~10 or~~ 5 days following the Date of Agreement. Buyer has ~~10~~ 60 days from the ~~receipt of the Title Commitment, the Underlying Documents and the plot plan~~ **Date of Agreement** to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) *Survey.* Buyer has ~~30 or~~ 60 days following the ~~receipt of the Title Commitment and Underlying Documents.~~ **Date of Agreement** to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("**ALTA**") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto **provided, however that Buyer shall be solely responsible for the difference in costs and expenses between a standard coverage owner's form policy of title insurance and an ALTA extended coverage owner's form policy of title insurance.**

(h) *Existing Leases and Tenancy Statements.* ~~Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "Existing Leases") affecting the Property, and with a tenancy statement ("Estoppel Certificate") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.~~

(i) *Owner's Association.* Seller shall within ~~10 or~~ 5 days following the Date of Agreement provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has ~~10~~ 60 days from the ~~receipt of such documents~~ **Date of Agreement** to satisfy itself with regard to the association.

(j) *Other Agreements.* Seller shall within ~~10 or~~ 5 days following the Date of Agreement provide Buyer with legible copies of all other agreements ("**Other Agreements**") known to Seller that will affect the Property after Closing. Buyer has ~~10~~ 60 days from the ~~receipt of said Other Agreements~~ **Date of Agreement** to satisfy itself with regard to such Agreements. **Except if otherwise notified by Buyer prior to the expiration of the**

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Contingency Period, it shall be a condition to Buyer's obligation to Close that Seller shall cause all Other Agreements to be terminated on or before the Closing Date.

(k) ~~Financing.~~ ~~If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency,~~

(l) ~~Existing Notes.~~ ~~If paragraph 3.1(c) has not been stricken, Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "Loan Documents") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("Beneficiary Statement") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or \_\_\_\_\_ days following the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or \_\_\_\_\_ days from the receipt of such documents to satisfy itself with regard to the form and content thereof.~~

(m) ~~Personal Property.~~ ~~In the event that any personal property is included in the Purchase Price, Buyer has 10 or \_\_\_\_\_ days following the Date of Agreement to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or \_\_\_\_\_ days following the Date of Agreement.~~

(n) ~~Destruction, Damage or Loss.~~ Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(o) ~~Material Change.~~ Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change **and Buyer may terminate this Agreement in such time period and receive a return of the Deposit, which shall release both parties from any and all liability hereunder, except such obligations as expressly survive the termination. "Material Change"** shall mean a substantial adverse change in the use, occupancy, tenants **such that the Property is no longer vacant and free of tenants and occupants,** or title, ~~or condition of the Property~~ that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(p) ~~Seller Performance.~~ The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(q) ~~Brokerage Fee.~~ Payment at the Closing of such brokerage fee as is specified in this Agreement ~~or later written instructions to Escrow Holder executed by Seller and Brokers.~~ ("Brokerage Fee"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers.

9.2 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "Buyer's Contingencies."

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("Disapproved Item"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("Seller's Election"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. The above time periods only apply once for each Disapproved Item. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions ~~or to the Financing Contingency.~~ Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.

## 10. Documents and Other Items Required at or Before Closing.

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder **no less than two (2) business days prior to the Closing, in time for delivery to Buyer at the Closing:**

(a) Grant ~~or general warranty deed,~~ duly executed and in recordable form, conveying fee title to the Property to Buyer.

(b) ~~If applicable, the Beneficiary Statements concerning Existing Note(s).~~

(c) ~~If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.~~

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(d) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

(e) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.

~~(f) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.~~

(g) If the Seller is a corporation **or limited liability company**, a duly executed corporate **or limited liability company** resolution authorizing the execution of this Agreement and the sale of the Property.

**(h) Affidavits as may reasonably be requested by the Title Company to comply with Paragraph 10.4.**

10.3 Buyer shall deliver to Seller through Escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date provided, however, that Buyer shall not be required to deposit such monies into Escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed Buyer need only provide Escrow with evidence establishing that the required monies were available.

~~(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.~~

~~(c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.~~

~~(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.~~

~~(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.~~

~~(f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.~~

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.

**IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.**

## 11. Prorations and Adjustments.

11.1 *Taxes.* Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 *Insurance.* **WARNING:** Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

11.3 *Rentals, Interest and Expenses.* ~~Scheduled rentals, interest on Existing Notes, utilities, and operating expenses~~ **Utilities** shall be prorated as of the date of Closing. ~~The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.~~ **There shall be no proration of Rentals - Property is to be delivered free of tenants.**

11.4 *Security Deposit.* ~~Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.~~ **There shall be no credit of Security Deposit - Property is to be delivered free of tenants.**

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

~~11.6 *Variations in Existing Note Balances.* In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(s), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof ("Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.~~

~~11.7 *Variations in New Loan Balance.* In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.~~

11.8 *Owner's Association Fees.* Escrow Holder shall: (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up front fees required by the association from Buyer's funds.

## 12. Representations and Warranties of Seller and Disclaimers.

~~12.1 *Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and any lawsuit or action based upon them must be commenced within such time period.*~~ Seller's warranties and representations are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers **to Seller's Actual Knowledge:**

(a) *Authority of Seller.* Seller is the owner of the Property, **duly organized and in good standing under the laws of California, with and/or has** the full right, power and authority to **enter into this Agreement and to** sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder. **Each person signing this Agreement on behalf of Seller is authorized to do so.**

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in paragraph 9.1(n) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) *Hazardous Substances/Storage Tanks.* Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence

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on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) *Compliance.* Except as otherwise disclosed in writing, Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement to be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, ~~which approval will not be unreasonably withheld.~~

(f) *Possessory Rights.* ~~Seller has no knowledge that anyone~~ **No one** will, at the Closing, have any right to possession of the Property, ~~except as disclosed by this Agreement or otherwise in writing to Buyer.~~

(g) *Mechanics' Liens.* There are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) *Notice of Changes.* Seller will ~~promptly~~ **immediately** notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(o)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy, insolvency or probate proceeding, **and no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Seller.**

(l) *Personal Property.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

**(m) *Condemnation; Special Assessments.* Seller has no knowledge of any pending or contemplated condemnation, eminent domain or similar proceeding or special assessment which would affect the Property or any part thereof in anyway whatsoever.**

**(n) *No Conflicts.* The execution and delivery of this Agreement by Seller, the consummation of the transactions herein contemplated to be performed by Seller, and compliance with the terms of this Agreement by Seller will not conflict with, or, with or without notice or the passage of time or both, result in a breach of any of the terms or provisions of, or constitute a default under, any document, instrument or agreement, oral or written, to which Seller is a party or by which Seller or its assets are bound, or any applicable regulation of any governmental agency, or any judgement, order or decree of any court having jurisdiction over Seller or all or any portion of the Property.**

"Actual Knowledge" shall mean the actual, not constructive, knowledge of D. Moe, without any duty of inquiry.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty ~~might be~~ **is** untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, feasibility studies, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered ~~as an accommodation to Buyer~~ and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk, **provided that except as disclosed by Seller in writing to Buyer, Seller has no Actual Knowledge that any of such reports are inaccurate or incomplete.** ~~believes said documents to be accurate, but~~ Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

### 13. Possession.

~~Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.~~ **See Paragraph 29 of the Addendum attached hereto and made a part of.**

### 14. Buyer's Entry.

At any time during the Escrow period **but upon not less than forty-eight (48) hours prior written notice**, Buyer, and its agents, **consultants, advisors and employees** and representatives, shall have the right at reasonable times ~~and subject to rights of tenants~~, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith **except to the extent such damage or injury is caused by Seller or Seller's agents, employees, consultants, advisors or representatives gross negligence or willful misconduct.**

### 15. Further Documents and Assurances.

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The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

**16. Attorneys' Fees.**

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees and costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

**17. Prior Agreements/Amendments.**

- 17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.
- 17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

**18. Broker's Rights.**

~~18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.~~  
~~18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.~~

**19. Notices.**

- 19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger, or by mail, postage prepaid, to the address set forth in this agreement or by facsimile transmission, electronic signature, digital signature, or email.
- 19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. Any such communication sent by regular mail shall be deemed given ~~48 hours~~ **five (5) days** after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.
- 19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

**20. Duration of Offer.**

- 20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of Van Nuys, CA on the date of October 14, 2022, it shall be deemed automatically revoked.
- 20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

**21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties).**

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT **AND DOES NOT CURE SUCH BREACH WITHIN FIVE (5) BUSINESS DAYS AFTER WRITTEN NOTICE**, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$400,000.00. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER (EXCEPT FOR SUCH OBLIGATIONS WHICH EXPRESSLY OR BY THEIR NATURE ARE INTENDED TO SURVIVE THE TERMINATION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY OF BUYER'S INDEMNITY OBLIGATIONS), ~~AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.~~

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Buyer's Initials

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Seller's Initials

~~**22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)**~~

~~22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF THE DEPOSIT SHALL BE DETERMINED BY BINDING ARBITRATION ADMINISTERED BY THE JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS") IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. SUCH CONTROVERSY SHALL BE ARBITRATED BY A SINGLE ARBITRATOR, APPOINTED UNDER THE COMMERCIAL RULES WHO HAS HAD AT LEAST 5 YEARS OF EXPERIENCE IN THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THE ARBITRATOR SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW OF THE JURISDICTION WHERE THE PROPERTY IS LOCATED, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE ARBITRATOR SHALL RENDER AN AWARD WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, WHICH MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF AND SHALL BE ACCOMPANIED BY A REASONED OPINION. THE FAILURE OR REFUSAL OF A PARTY TO PAY SUCH PARTY'S REQUIRED SHARE OF THE DEPOSITS FOR ARBITRATOR COMPENSATION OR ADMINISTRATIVE CHARGES SHALL CONSTITUTE A WAIVER BY SUCH PARTY TO PRESENT EVIDENCE OR CROSS-EXAMINE WITNESSES, BUT SUCH WAIVER SHALL NOT ALLOW FOR A DEFAULT JUDGMENT AGAINST THE NON-PAYING PARTY IN THE ABSENCE OF EVIDENCE AND LEGAL ARGUMENT AS THE ARBITRATOR MAY REQUIRE FOR MAKING AN AWARD. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.~~

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~~22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.~~

~~22.3 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.~~

~~WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.~~

Buyer's Initials

Seller's Initials

### 23. Miscellaneous.

23.1 **Binding Effect.** Buyer and Seller both acknowledge that they have carefully read and reviewed this Agreement and each term and provision contained herein. In addition, this Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed. Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

23.3 **Time of Essence.** Time is of the essence of this Agreement.

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

23.5 **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

23.6 **Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions. **Seller and Buyer must initial any and all handwritten provisions.**

23.7 **1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 exchange.

23.8 **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

### 24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.

24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) **Seller's Agent.** A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) **Buyer's Agent.** A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) **Agent Representing Both Seller and Buyer.** A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including Seller's willingness to accept a price less than the listing price or Buyer's willingness to pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Buyer has the duty to exercise reasonable care to protect Buyer, including as to those facts about the Property which are known to Buyer or within Buyer's diligent attention and observation. Both Seller and Buyer should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 *Confidential Information.* Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

**25. Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

**26. Additional Provisions.**

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum or addenda consisting of paragraphs 28 through 45. (If there are no additional provisions write "NONE".)

**ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.

**WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.**

**NOTE:**

1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
2. IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

Date: 10/10/2022

**BROKER**

InSite EFS, Inc.

Attn: Dan Morrarr  
Title: Broker of Record

Address: \_\_\_\_\_  
Phone: 323-686-6539  
Fax: \_\_\_\_\_  
Email: dmorrarr@insiteefs.com  
Federal ID No.: \_\_\_\_\_  
Broker DRE License #: 01957797  
Agent DRE License #: 01716132

**BUYER**

Magnolia Educational & Research Foundation, a California nonprofit public benefit corporation

DocuSigned by:  
By: Alfredo Rubalcava  
Name: Alfredo Rubalcava  
Title: CEO and Superintendent  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: arubalcava@magnoliapublicschools.org  
Address: 250 E 1st Street, Suite 1500, Los Angeles, CA 90012

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Address: \_\_\_\_\_

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**27. Acceptance.**

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to 3.5 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker 2 % and Buyer's Broker 1.5 %. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

**NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.**

Date: 10/11/2022

**BROKER**

**SELLER**

Evanisko Realty & Investment, Inc.

U-1 Enterprises, LLC, a California limited liability company

Attn: Frank Evanisko

By: [Signature]

Title: President

Name Printed: D. Moe

Address: 12400 Ventura Boulevard, Suite 606, Studio City, CA 91604

Title: Manager

Phone: 818-985-9700

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: frank@evaniskorealty.com

Email: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

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

Broker DRE License #: \_\_\_\_\_

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

Agent's DRE License #: 01383591

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

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: 6750 Balboa Boulevard, Van Nuys, CA 91406

Federal ID No.: \_\_\_\_\_

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**ADDENDUM TO STANDARD OFFER, AGREEMENT AND  
ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE**

This Addendum ("**Addendum**") is attached to and incorporated in that STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE dated for reference purposes only as of October 10, 2022 (the "**AIR Form Agreement**"), by and between U-1 Enterprises, LLC, a California limited liability company, as "**Seller**", and Magnolia Educational & Research Foundation, a California nonprofit public benefit corporation, as "**Buyer**". The AIR Form Agreement, together with all exhibits attached thereto and this Addendum, are referred to in this Addendum as the "**Agreement**". Any capitalized terms not specifically defined herein shall have the meaning set forth in the AIR Form Agreement. All references in the AIR Form Agreement shall be deemed to include this Addendum. In the event of any conflict between the provisions of this Addendum and the provisions of the AIR Form Agreement, the provisions of this Addendum will control.

28. **BUYER'S RIGHT TO TERMINATE.** Notwithstanding any other provision in Paragraph 9 or elsewhere in the Agreement, Buyer shall have sixty (60) days from the Date of Agreement (the "**Contingency Period**") to investigate, review and approve or disapprove any or all Buyer's Contingencies prior to the expiration of the Contingency Period in Buyer's sole and absolute discretion. During the Contingency Period, Buyer may, in its sole and absolute discretion, for any reason, or no reason at all, terminate the Agreement, and following such a termination the Escrow Holder shall promptly return to Buyer the Deposit within two (2) days after written notice from Buyer of such termination. After such termination, Buyer and Seller shall have no further rights or obligations under the Agreement, except for items that expressly survive the termination thereof. Further, unless Buyer provides Seller with written notice that Buyer elects to waive all contingencies on or before the expiration of the Contingency Period, it shall be deemed that Buyer has elected to terminate the Agreement, and the Deposit shall be promptly returned to Buyer by the Escrow Holder without any additional authorizations or approvals of any kind required.

29. **DELIVERY OF THE PROPERTY.** Seller shall, at no expense to Buyer, cause the Property to be delivered to Buyer free and clear of all tenants, occupants, leases, other occupancy agreements, personal property (other than as otherwise agreed to herein), and in the same general condition as of the date of this Agreement at the Close of Escrow.

30. **SELLER'S DOCUMENTS.** In addition to delivering the Seller's Mandatory Disclosure Statement, which shall include a Natural Hazard Disclosure Report, and Property Information Sheet as required by paragraph 9.1(a), Seller agrees to deliver to, or make available to Buyer on or before five (5) days following the Date of Agreement, the following documents and records (or copies thereof) relating to the Property but only to the extent in the possession of Seller or Seller's employees, agents or representatives (the "**Documentation**"):

- A. Copies of third party reports with respect to the Property including without limitation, Environmental Impact Report (EIR), ESA Phase I or Phase II, geotechnical report, physical inspection report, and toxic or zoning studies of any type if available.
- B. Any existing ALTA survey, showing location of utilities, improvements and any easements.
- C. Any letters from, agreements with, or approvals or disapprovals by municipal agencies, including City, County, and State, including all entitlements related to the Property.
- D. Any current or past lawsuits or disputes or actions related to the Property, which have occurred or been initiated over the past five (5) years.
- E. Statement of current property taxes and assessed value, as well as tax bills for the last three (3) years.
- F. The Title Policy insuring Seller ownership, and if available a current and complete title report, including full copies of all exceptions and underlying documents.
- G. Copies of any and all leases, subleases or other occupancy agreements, currently in effect with respect to the Property.
- H. Copies of any and all service and maintenance contracts, utility agreements, management agreements (including any correspondence relating to any deficiencies Seller has identified at the Property), parking agreements, operating agreements, ground leases and other agreements of any kind or nature relating to, or affecting any portion of, the Property.

31. **INDEMNITY:** Buyer, on behalf of itself, its successors, assigns and successors-in-interest, hereby agrees to indemnify, defend (with legal counsel selected by Buyer and reasonably approved by Seller) and hold Seller and Seller Parties harmless from any and all Claims resulting from, related to, or based upon: (i) the breach by Buyer of any representation, warranty, covenant or obligation contained in the Agreement or in any other agreement, document, exhibit or instrument related hereto or referenced herein; and (ii) any claim(s) arising from an event occurring after the Closing, which is based upon, relates to or pertains to, the Property, so long as the claim does not arise solely from Seller's negligence or willful misconduct; and (iii) any claim(s) by any third party which claim(s) (or the basis for which) arose from, is based upon, relates to or pertains to, any act or omission of Buyer.



Seller, on behalf of itself, its successors, assigns and successors-in-interest, hereby agrees to indemnify, defend (with legal counsel selected by Seller and reasonably approved by Buyer) and hold Buyer and Buyer Parties harmless from any and all Claims resulting from, related to, or based upon: (i) the breach by Seller of any representation, warranty, covenant or obligation contained in the Agreement or in any other agreement, document, exhibit or instrument related hereto or referenced herein; and (ii) any claim(s) arising from an event occurring prior to the Closing, which is based upon, relates to or pertains to, the Property and which Buyer could not have discovered through the exercise of reasonable diligence, so long as the claim does not arise solely from Buyer's negligence or willful misconduct; and (iii) any claim(s) by any third party which claim(s) (or the basis for which) arose from, is based upon, relates to or pertains to, any act or omission of Seller.

Each and every provision of this Section 31 shall survive the Closing and the delivery and recordation of the Grant Deed. Each party acknowledges that but for agreements herein set forth in this Section 31, neither party would not have entered into the Agreement.

32. **RELEASE.** Save and except for Seller's representations and warranties expressly set forth in this Agreement, and except in the case of fraud on the part of Seller, Buyer, on its own behalf, and on behalf of its agents, employees, and representatives, officers, directors, attorneys, shareholders and corporate affiliates does hereby generally release and discharge Seller and Seller's partners, members, principals, agents, employees, predecessors, successors, heirs, representatives, officers, directors, attorneys, shareholders and corporate affiliates from any and Claims, whether anticipated or unanticipated, and whether known or unknown, which arise out of, may arise out of, or are in any way connected to the matters set forth in the Agreement. The parties hereto understand that the general release provided for herein is intended to release any and all Claims which may not be presently known to the releasing parties. In that regard, Buyer acknowledges and expressly waives the provisions of Section 1542 of the Civil Code of California which section provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A 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." Buyer further understands that it has conducted its own investigation of facts relating to the matters released herein, and is not relying upon any statements, warranties, or representations of Seller or its agents in deciding on whether or not to execute this general release. Buyer acknowledges that in the event of the discovery of different facts than it understood or assumed, the release contained herein, and the waiver of the provisions of Civil Code §1542, shall nonetheless remain in full force and effect.

33. **PROPERTY "AS IS":**

a. No person acting on behalf of Seller is authorized to make, and by execution hereof, Buyer acknowledges that no person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property except as may be expressly set forth in the Agreement. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any person acting on behalf of Seller which is not contained in the Agreement will be valid or binding on Seller.

b. Buyer acknowledges and agrees that, except as may be expressly set forth in this Agreement, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to: (i) value of the Property; (ii) the income to be derived from the Property; (iii) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon, including, without limitation, the possibilities for future development of the Property; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; (v) the manner, quality, state of repair or lack of repair of the Property; (vi) the nature, quality or condition of the Property, including, without limitation, the water, soil and geology; (vii) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (viii) the manner or quality of the construction or materials, if any, incorporated into the Property; (ix) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements; (x) the presence or absence of hazardous materials at, on, under, or adjacent to the Property; (xi) the content, completeness or accuracy of the due diligence materials or commitment regarding title; (xii) the conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to Buyer; (xiii) the conformity of the Property to past, current or future applicable zoning or building requirements; (xiv) deficiency of any undershoring; (xv) deficiency of any drainage; (xvi) the fact that all or a portion of the Property may be located on or near an earthquake fault line or on or near a flood plain; and (xvii) the existence of vested land use, zoning or building entitlements affecting the Property. Buyer further acknowledges and agrees that having been given the opportunity to inspect the Property and review information and documentation affecting the Property, Buyer is relying solely on its own investigation of the Property and review of such information and documentation, and not on any information provided or to be provided by Seller, except as otherwise expressly provided herein. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Property was obtained

from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information, except (1) for materials matters actually known to Seller to be false, misleading or inaccurate and which Buyer could not have discovered through the exercise of reasonable diligence, and (2) that Seller represents that the copies provided or made available to Buyer are accurate reproductions of the same documents in Seller's files. Buyer agrees to fully and irrevocably release Seller from any and all claims that they may now have or hereafter acquire against Seller for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee or other person. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "as is" condition and basis with all faults, and that Seller has no obligation to make repairs, replacements or improvements to the Property. Buyer represents, warrants, and covenants to Seller, which representation, warranty, and covenant shall survive the Closing and not be merged with the Grant Deed, that, except for Seller's express representations and warranties specified in the Agreement, Buyer is relying solely upon Buyer's own investigation of the Property.

c. Buyer acknowledges that if the Property is located in an area which the Secretary of HUD has found to have special flood hazards, then pursuant to the National Flood Insurance Program, Buyer will be required to purchase flood insurance in order to obtain any loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the United States government. Buyer shall have sole responsibility to determine whether the Property is located in an area, which is subject to the National Flood Insurance Program.

d. Notwithstanding anything in this Agreement to the contrary, (i) Buyer shall not be entitled to make a claim against Seller following Closing for a breach of the representations and warranties contained herein unless the amount of damages to Buyer equals or exceeds Twenty-Five Thousand Dollars (\$25,000.00) (the "**Threshold Amount**") in the aggregate of all such claims, and (ii) the cumulative, maximum amount of liability that Seller shall have to Buyer for a breach of the representations, warranties contained in this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000.00) ("**Cap Amount**"). The Cap Amount shall not limit Buyer's right to recover attorneys' fees or interest awarded to it by a court of competent jurisdiction. The representations and warranties set forth in this Agreement shall survive Closing for a period of twelve (12) months (the "**Survival Period**"), and no claim for a breach of any representation or warranty shall be actionable or payable unless written notice containing a description of the specific nature of such breach shall have been given to Seller prior to the expiration of the Survival Period, and, if the parties fail to resolve the matter amicably, an action shall have been commenced in a court having jurisdiction within sixty (60) days after the expiration of the Survival Period

34. **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants, which representations and warranties shall survive the Closing and not be merged with the Grant Deed, that Buyer has, or shall have, inspected and conducted tests and studies of the Property, and that Buyer is or will be prior to the Closing familiar with the general condition of the Property. Buyer understands and acknowledges that the Property may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil conditions, hazardous materials and similar occurrences that may alter its condition or affect its suitability for any proposed use. Seller shall have no responsibility or liability with respect to any such occurrence or condition, except if such condition was caused or contributed to by the acts or omissions of Seller. Except as expressly set forth in this Agreement, Buyer represents and warrants that Buyer is acting, and will act only, upon information obtained by Buyer directly from Buyer's own inspection of the Property. Notwithstanding anything to the contrary contained in this Agreement, the suitability or lack of suitability of the Property for any proposed or intended use, or availability or lack of availability of: (i) permits or approvals of governmental or regulatory authorities, or; (ii) easements, licenses or other rights with respect to any such proposed or intended use of the Property, shall not affect the rights or obligations of the Buyer hereunder.

35. **INSPECTION OF PROPERTY:** Prior to commencement of any investigative activities on the Property, Buyer or its consultants shall obtain, at Buyer's sole cost and expense, a policy of commercial general liability insurance in a form reasonably acceptable to Seller, covering any and all liability of Buyer and its consultants with respect to or arising out of any investigative activities. Such policy of insurance shall be kept and maintained in force during the term of the Agreement and so long thereafter as necessary to cover any claims of damages suffered by persons or property resulting from any acts or omissions of Buyer, Buyer's employees, agents, contractors, suppliers, consultants or other related parties. Such policy of insurance shall have liability limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability and shall name Seller and any other parties reasonably requested by Seller and for which coverage can be obtained at reasonable cost by Buyer, as additional insureds. To the fullest extent permitted by law and in addition to all other indemnities provided for in law or at equity or in the documentation for the transactions described in the Agreement, Buyer shall protect, indemnify, defend and hold the Property, Seller and Seller's members, managers, employees, agents, representatives, contractors, attorneys and invitees of all of the foregoing (collectively, "**Seller Parties**") free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs

and expenses, including, without limitation, reasonable attorneys' fees and court costs (collectively, "**Claims**"), resulting from Buyer's inspection and testing of the Property, including, without limitation, repairing any and all damages to any portion of the Property, arising out of or related (directly or indirectly) to Buyer's conducting such inspections, surveys, tests, and studies. Buyer shall keep the Property free and clear of any mechanics' liens or materialmen's liens related to Buyer's right of inspection and the activities contemplated by the Agreement. Buyer's indemnification obligations set forth herein shall survive the Closing, shall not be merged with the Grant Deed, and shall survive the expiration or earlier termination of the Agreement and escrow. Buyer acknowledges that a portion of the property is currently under agreement to use tennis courts and Buyer's ability to enter and investigate is subject to the terms and conditions of the agreement.

36. **GOVERNMENT APPROVALS.** Supplementing Section 9.1(e), following the date hereof, Buyer may pursue, at its sole cost and expense, the entitlements or other approvals it wishes to be approved (the "**Entitlements**") by the governmental authorities having jurisdiction over the Property (the "**Authorities**") regarding the construction and maintenance of a public charter school on the Property (the "**Project**"). Seller agrees to cooperate with Buyer, at no cost to Seller, in Buyer's efforts to obtain the Entitlements including signing any applications and other documents needed for the Project, including without limitation, the execution of such applications or documentation as required to process such Entitlements. Seller agrees that it will not take any action, direct or indirect, which is adverse to, or in opposition of, the proposed Project and/or Buyer's efforts to obtain the Entitlements. Notwithstanding the foregoing, Seller shall have no obligation to consent to any action or sign any document which would be binding upon the Property prior to the Close of Escrow.

37. **ASSIGNMENT:** Buyer shall not assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Buyer may assign its interests herein to any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control ("**control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "**controlling**" and "**controlled**" have the meanings correlative to the foregoing) with Buyer (an "**Affiliate**") without Seller's prior written consent; provided, that in order for any such assignment to be effective, Buyer must give Seller written notice of such assignment not fewer than ten (10) days prior to the Closing Date. Furthermore, in order to be effective, such notice shall: (a) set forth the correct name and signature block of any qualifying assignee; and (b) include a copy of the agreement assigning Buyer's interest in this Agreement to such third party entity. In the event of an assignment of this Agreement by Buyer, both Buyer and any assignee shall be jointly and severally liable to Seller for all covenants, agreements, duties and obligations of Buyer under this Agreement, whether arising before or after such assignment, or before or after Closing. This Agreement will be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Agreement to Seller or Buyer, such reference will include the successors and permitted assigns of such party under this Agreement.

38. **JUDICIAL REFERENCE:** Any dispute between the parties hereto pursuant to this Agreement shall, at the option of either party, be heard by a referee pursuant to the provisions of California Code of Civil Procedure Section 638 et seq., for a determination to be made which shall be binding upon the parties as if tried before a court or jury. The parties agree specifically as to the following: (i) within five (5) business days after service of a demand by a party hereto, the parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and then report a finding or judgment thereon, provided that if the parties are unable to agree upon a referee either party may seek to have one appointed, pursuant to California Code of Civil Procedure Section 640, by the presiding judge of the Los Angeles County Superior Court; (ii) the compensation of the referee shall be such charge as is customarily charged by the referee for like services, and the cost of such proceedings shall initially be borne equally by the parties; provided, however, the prevailing party in such proceedings shall be entitled, in addition to all other costs, to recover its contribution for the cost of the reference as an item of damages and/or recoverable costs; (iii) if a reporter is requested by either party, then a reporter shall be present at all proceedings, and the fees of such reporter shall be borne by the party requesting such reporter and such fees shall be an item of recoverable costs, provided that only a party shall be authorized to request a reporter; (iv) the referee shall apply all California Rules of Procedure and Evidence and shall apply the substantive law of California in deciding the issues to be heard, and notice of any motions before the referee shall be given, and all matters shall be set at the convenience of the referee; (v) the referee's decision under California Code of Civil Procedure Section 644, shall stand as the judgment of the court, subject to appellate review as provided by the laws of the State of California; (vi) the parties agree that they shall in good faith endeavor to cause any such dispute to be decided within six (6) months; and the date of hearing for any proceeding shall be determined by agreement of the parties and the referee, or if the parties cannot agree, then by the referee; and (vii) the referee shall have the power to award damages and all other relief.

39. **OFAC REPRESENTATION.** Supplementing Paragraph 12 of the Agreement, Seller hereby warrants and represents that they are not, and will not become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department

of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons list), or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action, and is not and will not engage in any dealing or transaction or be otherwise associated with such persons or entities.

40. **LIMITATION ON LIABILITY.** Seller agrees that neither the holders of beneficial interests nor the trustees, officers, members, employees or agents of the Buyer (or any assignee of Buyer) shall be personally liable under the Agreement and all parties hereto shall look solely to the assets of the entity, for the payment of any claim or for the performance of any obligation of Buyer under the Agreement. Buyer agrees that neither the holders of beneficial interests nor the trustees, officers, members, employees or agents of the Seller (or any assignee of Seller) shall be personally liable under the Agreement and all parties hereto shall look solely to the assets of the entity, for the payment of any claim or for the performance of any obligation of Seller under the Agreement.

41. **SELLER DEFAULT; BUYER REMEDIES.** In the event of a default by Seller which is not cured within five (5) business days after written notice from Buyer, Buyer's sole remedies shall be to either: (i) terminate this Agreement and receive a refund of the Deposit, including any portion theretofore released to Seller, and any interest earned therein and Seller shall reimburse Buyer for its reasonable due diligence costs and expenses, including its attorney's fees, in a sum not to exceed One Hundred Thousand Dollars (\$100,000.00); or (ii) seek specific performance of this Agreement. Buyer's failure to file an action for specific performance within sixty (60) days from the date of Seller's breach of this Agreement shall be deemed a waiver of that remedy by Buyer. In no event shall Buyer be entitled to seek any form punitive, compensatory, general, special and/or incidental damages, except as set forth above.

42. **COMPUTATION OF TIME PERIODS:** Paragraph 23.8 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following: "Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days. All periods of time referred to in this Agreement shall, unless otherwise expressly provided, include all Saturdays, Sundays and state and national holidays, provided that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or a California or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or a California or national holiday. Saturdays, Sundays, California or national holidays shall not be "business" days for purposes of this Agreement."

43. **ELECTRONIC SIGNATURES AND COUNTERPARTS:** DocuSign or ".pdf" copies of executed copies of the Agreement, this Addendum, or any notice or election made pursuant thereto shall be as binding as originals. Additionally, the parties to this Agreement hereby agree to accept and rely on Copies (as defined below) and Electronic Signatures (as defined below) as originals, as sufficient to enter into a contract for the purchase and sale transactions contemplated under this Agreement. "Copies" means a copy by any means including photocopy, facsimile and electronic. "Electronic Signatures" means an electronic signature or Copy of a signature complying with California law. Seller and Buyer agree that electronic means will not be used by either party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other party. This Addendum may be executed in one or more counterparts, which, taken together, shall constitute a single instrument.

44. **CONFIDENTIALITY.** Brokers, Seller and Buyer each hereby agree that neither they, nor any of their employees or agents will disclose to any other person any of the terms, conditions or other facts with respect to this Agreement and the transaction contemplated herein prior to the Close of Escrow (the "Confidential Information"); provided, however, that Buyer may disclose such Confidential Information (i) to such of Buyer's lenders, consultants, representatives or agents who need such information for the purpose of evaluating the Property for purposes set forth in this Agreement and for the purpose of consummating the transaction contemplated by the Agreement; (ii) to the City and County of Los Angeles or other state governmental agencies having jurisdiction over the Buyer and/or the Property; (iii) to the extent that Seller or Buyer gives its prior written consent to such disclosure to the other party, or (iv) as otherwise required by law (a "Legal Obligation"), but only upon the condition that Buyer provide Seller copies of all written materials related to such Legal Obligation within two (2) business days of its receipt of a request for Confidential Information so that Seller may seek a protective order or such other relief in order to protect the Confidential Information.

45. **MISCELLANEOUS.** Except as set forth herein, the Agreement shall remain unmodified. The Agreement, as modified by this Addendum, shall remain in full force and effect.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date referenced above.

BUYER:

**Magnolia Educational & Research Foundation,  
a California nonprofit public benefit corporation**

DocuSigned by:  
By: Alfredo Rubalcava  
Alfredo Rubalcava  
CEO and Superintendent

SELLER:

**U-1 Enterprises, LLC,  
a California limited liability company**

By: D. Moe  
D. Moe  
It's Manager