

**PURCHASE AND SALE AGREEMENT**  
**Kirkland 405 Corporate Center – Building L**

This **PURCHASE AND SALE AGREEMENT** (this “Agreement”) is made and entered as of June \_\_, 2009 (the “Effective Date”) by and between MEPT Kirkland Flex LLC, a Delaware limited liability company (“Seller”), and the City of Kirkland, a Washington municipal corporation (“Purchaser”).

For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

**1. Purchase and Sale.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy from Seller, the Property (hereinafter defined) for the consideration and upon and subject to the terms, provisions and conditions hereinafter set forth. The “Property” means:

(a) The land commonly known as 11511 NE 118<sup>th</sup> Street or 11515 NE 118<sup>th</sup> Street situated in City of Kirkland, King County, Washington more particularly described in Exhibit A to this Agreement (the “Land”), together with all of Seller’s right, title and interest in (i) all structures, fixtures, buildings and improvements situated on the Land (collectively, the “Improvements”), and (ii) any and all rights, titles, powers, privileges, easements, licenses, rights-of-way and interests (A) appurtenant to the Land and the Improvements, (B) if any, of Seller, either at law or in equity, in possession or in expectancy, in and to any real estate lying in the streets, highways, roads, alleys, rights-of-way or sidewalks, open or proposed; in front of, above, over, under, through or adjoining the Land and in and to any strips or gores of real estate adjoining the Land, and (C) appurtenant or incident to any of the foregoing, including, without limitation, to the extent owned by Seller, all mineral, oil, gas and other hydrocarbon substances on and under and that may be produced from the Land, as well as all development rights, land use entitlements, air rights, water, water rights, riparian rights, and water stock relating to the Land;

(b) All equipment, fixtures, appliances, inventory, and other personal property of whatever kind or character owned by Seller and attached to or installed or located on or in the Land or the Improvements, if any (the “Personal Property”);

(c) All of Seller's right, title and interest in and to all agreements that relate to or affect the Land, the Improvements, the Personal Property or the operation thereof, including that certain Triple Net Lease dated January 27, 2004 between the Seller (as successor to the Multi-Employer Property Trust), as Landlord, and the Purchaser, as Tenant (“Tenant Lease”) and the security deposit actually paid to or received by Seller in connection with the Tenant Lease, if any, (and not as of the Closing Date returned to or forfeited by tenant).

**2. Sales Price.** The total sales price for the Property is \$2,750,000 (the “Sales Price”), payable in cash at Closing. Payment in cash means payment by wire transfer of immediately available federal funds (“Immediately Available Funds”).

3. **Earnest Money.** Within two (2) Business Days of the Effective Date, Purchaser will deliver to Stewart Title Insurance Company – Commercial Division, 1420 5<sup>th</sup> Avenue, Suite 500, Seattle, Washington 98101 Attention: Kim Azure (the “Title Company”), as escrow agent, \$100,000 (by Immediately Available Funds) as earnest money (the “Earnest Money”), which the Title Company will deposit and hold in an interest bearing account. If Purchaser does not timely deliver the Earnest Money as provided in this Section 3, or if the Title Company is unable to immediately cash the check representing the Earnest Money and obtain the proceeds thereof, then this Agreement shall be null and void, and neither party shall have any right or obligation hereunder. For the purpose of this Agreement, the term “Earnest Money” shall include any interest earned thereon. If the transaction contemplated by this Agreement is closed, then the Earnest Money will be applied in payment of the Sales Price to be paid at Closing. If the transaction is not closed, then the Title Company will disburse the Earnest Money in accordance with the provisions of this Agreement.

4. **Closing.**

(a) **Time and Place.** The closing of this transaction (the “Closing”) will take place in escrow at the Title Company on June 30, 2009 (the “Closing Date”).

(b) **Seller's Closing Deliveries.** At the Closing, Seller will deliver or cause to be delivered to Purchaser, at Seller's sole expense, except as otherwise provided in this Section 4(b), the following:

(i) **Deed.** A Statutory Warranty Deed (the “Deed”), in the form attached hereto as Exhibit B, duly executed and acknowledged by Seller, conveying good and indefeasible title in fee simple to the Land and Improvements, free and clear of any and all liens, encumbrances, easements and assessments, created by, through or under Seller, except for Permitted Exceptions (defined below) and any others approved by Purchaser in writing.

(ii) **Bill of Sale.** Seller's counterpart to a Bill of Sale (the “Bill of Sale”), in the form attached hereto as Exhibit C, duly executed by Seller.

(iii) [intentionally omitted].

(iv) **Owner Policy.** The Title Company shall have unconditionally committed to issue an Owner's Policy of Title Insurance (the “Owner Policy”), delivered in due course by the Title Company after Closing, to be issued by the Title Company on the standard form in use in the State of Washington in the full amount of the Sales Price, dated as of the Closing Date, insuring Purchaser's fee simple title to the Land and Improvements to be good and indefeasible subject only to Permitted Exceptions and others approved by Purchaser in writing.

(v) **Possession.** Possession of the Property, subject only to the Tenant Lease and the Permitted Exceptions.

(vi) **Non-foreign Affidavit.** A non-foreign affidavit, in the form attached hereto as Exhibit E, duly executed by Seller.

(vii) **Authority.** Evidence reasonably acceptable to the Title Company of Seller's capacity and authority for the closing of this transaction.

(viii) **Other Documents.** Any other documents that may be reasonably required to close this transaction, duly executed.

(c) **Purchaser's Closing Deliveries.** Purchaser will be prepared to authorize Closing no later than 1:00 p.m. Pacific Time on the Closing Date and will perform and deliver, before 1:00 p.m. Pacific Standard Time on the Closing Date, at Purchaser's sole expense, the following:

(i) **Sales Price.** The Sales Price in Immediately Available Funds (reduced by the amount, if any, of the Earnest Money applied for that purpose).

(ii) **Bill of Sale.** Purchaser's counterpart to the Bill of Sale, duly executed by Purchaser.

(iii) **Authority.** Evidence reasonably acceptable to the Title Company of Purchaser's capacity and authority for the closing of this transaction.

(iv) **Other Documents.** Any other documents that may be reasonably required to close this transaction, duly executed.

(d) **Expenses of Closing.** Seller will pay (i) Washington excise tax (ii) the base premium for the Owner Policy; (iii) 1/2 of any escrow fee; (iv) Seller's attorneys' fees; and (v) other expenses stipulated to be paid by Seller under other provisions of this Agreement. Purchaser will pay (A) the premium for any endorsements to the Owner Policy and the cost of any lender policies and endorsements thereto; (B) recording fees; (C) 1/2 of any escrow fee; (D) Purchaser's attorneys' fees; (E) Purchaser's appropriate share of the prorations set forth in Section 4(e) below; and (F) other expenses stipulated to be paid by Purchaser under other provisions of this Agreement.

(e) **Prorations.** At Closing, items of income and expense of the Property shall be prorated as of midnight on the day immediately preceding the Closing Date. Income and expenses attributable to the period prior to the Closing Date shall be for the account of Seller, and income and expenses attributable to the period on and after the Closing Date shall be for the account of Purchaser. The following items shall be prorated through escrow:

(i) **Taxes.** All real estate, personal property and ad valorem taxes, assessments and bonds ("Taxes") payable with respect to the Property shall be prorated between Seller and Purchaser as of the Closing Date for the year in which the Closing is held on the basis of the statements for such amounts for such year. If any tax assessment for the current or prior year is under protest, the closing tax proration shall be re-prorated between Purchaser and Seller at such time as there is a final determination on such protest.

(ii) **Income and Expenses.** Income from the Property other than Rent (as defined below), and ordinary operating expenses incurred by Seller with respect to the Property, shall be prorated between Seller and Purchaser as of the Closing Date. Such expenses include, without limitation, utility charges, and sewer, janitorial, cleaning and maintenance costs. Seller and Purchaser shall each cooperate with the other diligently and promptly to correct any errors in computations or estimates under this Section 4(e) and shall promptly pay to the party entitled thereto any refund, credit or other payment necessary to comply with this Section 4(e) on demand therefor. Purchaser shall cause all utilities to be placed in the name of Purchaser as of the Closing Date. All utility services shall be prorated at Closing between Seller and Purchaser. The parties shall use commercially reasonable efforts to obtain readings for all utilities as of the Closing Date. If readings cannot be obtained as of the Closing Date, the cost of such utilities shall be prorated between Seller and Purchaser by estimating such cost on the basis of the most recent bill for such service; provided, however, that after the Closing, the parties shall re-prorate the amount for such utilities and pay any deficiency in the original proration to the other party promptly upon receipt of the actual bill for the relevant billing period.

(iii) **Rentals and Other Tenant Charges.** Rents under the Tenant Lease, including, without limitation, fixed rent, additional rent and operating expense pass-throughs (collectively, “Rents”), shall be addressed in the manner set forth in this subsection. All prepaid Rents for any period subsequent to the Closing Date shall be credited to Purchaser at Closing. All collected Rents for the month in which the Closing occurs shall be prorated as of the Closing Date. All Rents which are due but uncollected as of the Closing Date (the “Delinquent Rents”) shall be credited to Seller at and prorated as of Closing.

(iv) **Security Deposit.** Purchaser shall receive a credit for the security deposit reflected as owing in the Tenant Lease which is held by Seller as of the Closing.

(v) **Survival.** The provisions of this Section 4(e) shall survive Closing.

## 5. **Due Diligence and Inspection.**

(a) **Inspection.** Purchaser may conduct an acquisition due diligence investigation of the Property (the “Inspection”), including (i) a review of financial statements and other documentation related to the Property, and (ii) a physical inspection of the Property to determine the condition of the Property including the existence of any environmental hazards or conditions during the period commencing on the Effective Date and ending at 5:00 p.m., Pacific Standard time ten (10) Business Days thereafter (the “Inspection Period”). During the Inspection Period, subject to the limits set forth in this Section 5, Seller shall provide Purchaser with full access to the Property, including the books and records relating to the Property in Seller’s possession or control. With Seller’s permission, Purchaser or its agents or contractors may enter upon the Property for purposes of analysis or other tests and inspections deemed necessary by Purchaser for the Inspection; provided, however, Purchaser is not permitted to perform any intrusive testing, including, without limitation, a Phase II environmental assessment or boring, without (i) submitting to Seller the scope and inspections for the testing, and (ii) obtaining the prior written consent of Seller which may be withheld in Seller’s sole and absolute discretion. Seller may have a representative present at any inspection or testing made by Purchaser on the Property. Purchaser shall not alter the physical condition of the Property without notifying Seller of its requested tests, and obtaining the prior written consent of Seller to any physical alteration of the Property.

(b) **Termination.** If Purchaser determines, in its sole judgment, that the Property is not suitable for any reason for Purchaser’s intended use or purpose, or is not in satisfactory condition, then Purchaser may terminate this Agreement by written notice to Seller before the expiration of the Inspection Period, in which case the Earnest Money will be returned to Purchaser, and neither party shall have any further right or obligation under this Agreement except for those rights or obligations that expressly survive termination. If this Agreement is not terminated on or before the expiration of the Inspection Period, the Inspection condition and any objections regarding the Inspection shall be deemed to have been waived by Purchaser for all purposes, and the Earnest Money shall become non-refundable. The Inspection shall be conducted at Purchaser’s sole cost and expense.

(c) **Reports.** In the event that the transaction does not close, upon written request from Seller, Purchaser shall provide to Seller, at no cost to Seller, with a copy of the results of any tests and inspections made by Purchaser, excluding any market and economic feasibility studies (collectively, “Purchaser Reports”). Any Purchaser Reports delivered to Seller will be delivered for informational purposes only and Purchaser makes no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in the Purchaser Reports. Seller agrees not to enforce any claim or cause of action against Purchaser or the preparers of the Purchaser Reports for any inaccuracies in the Purchaser Reports. Except to the extent disclosure may be required under RCW 42.56, Purchaser shall keep the Purchaser’s Reports confidential, and may not disclose the results to any third parties, except to Purchaser’s attorneys, accountants, agents, insurers and other professionals and prospective lenders (and their

advisors), who shall be obliged to keep such information confidential. **PURCHASER HEREBY INDEMNIFIES AND HOLDS SELLER HARMLESS FROM ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), ACTIONS, AND CAUSES OF ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THE INSPECTION PERFORMED BY PURCHASER, ITS AGENTS, INDEPENDENT CONTRACTORS, AND/OR EMPLOYEES.** Purchaser further waives and releases any claims, demands, damages, actions, causes of action or other remedies of any kind whatsoever against Seller for property damages or bodily and/or personal injuries to Purchaser, its agents, independent contractors, servants and/or employees arising out of the Inspection of the Property.

(d) **Insurance.** Purchaser shall promptly restore the Property to its original condition if damaged or changed due to the tests and inspections performed by Purchaser, free of any mechanic's or materialman's liens or other encumbrances arising out of any of the inspections or tests. Prior to the date that Purchaser's agents or contractors first enter the Property, Purchaser's agents and contractors shall provide evidence of commercial general liability insurance, including direct contractual and contingent liability, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

(e) **Survival.** The provisions of this Section 5 shall survive the Closing or any termination of this Agreement and are not subject to any liquidated damage limitation on remedies, notwithstanding anything to the contrary in this Agreement.

## **6. Title Approval.**

(a) **Commitment.** Purchaser acknowledges that Seller has delivered a Preliminary Title Report with copies of all recorded instruments affecting the Property and recited as exceptions in the Preliminary Title Report (collectively, the "Commitment").

(b) **Objections.** If Purchaser has an objection to items disclosed in the Commitment, then Purchaser may give Seller written notice of its objections within ten (10) days of full execution of the Purchase Agreement, but in any event not later than three (3) days before the expiration of the Inspection Period. Any exception to title identified in the Commitment not objected to by Purchaser in the manner and within the time period specified in this Section 6 shall be deemed accepted by Purchaser. If Purchaser gives timely written notice of its objections, then Seller shall notify Purchaser in writing within five (5) Business Days after receipt of Purchaser's notice ("Seller's Cure Period") whether Seller elects to remove or to cause the Title Company to insure against the same. Seller's failure to deliver such written notice shall constitute Seller's election not to cure Purchaser's title objections. Seller shall have no obligation to expend any money, to incur any contractual or other obligations, or to institute any litigation in pursuing its efforts other than to remove at Closing financing liens of an ascertainable amount created by Seller. If any objection is not satisfied during Seller's Cure Period, then Purchaser shall elect not later than five (5) days after the expiration of Seller's Cure Period, but in any event on or before expiration of the Inspection Period, as its sole and exclusive remedy to either: (i) terminate this Agreement, in which case the Earnest Money shall be refunded to Purchaser, and neither party will have any further rights or obligations pursuant to this Agreement, other than rights or obligations that expressly survive termination; or (ii) waive the unsatisfied objection (which shall thereupon become a Permitted Exception) and proceed to Closing. Purchaser's failure to give such notice of termination on or before such date shall constitute Purchaser's waiver of any title objections that Seller is unwilling to cure, and such title objections shall be deemed Permitted Exceptions, and Closing shall occur as provided in this Agreement without any reduction of or credit against the Sales Price.

(c) **Permitted Exceptions.** The phrase "Permitted Exceptions" means those exceptions to title set forth in the Commitment and that have been accepted or deemed accepted by Purchaser. The failure

of Seller to deliver a Commitment satisfying the requirements of this Section 6 will not under any circumstances extend the period for review of the Commitment beyond the Inspection Period, and Purchaser's sole and exclusive remedy for Seller's failure, if any, shall be to terminate this Agreement before the expiration of the Inspection Period in accordance with the provisions of Section 5.

(d) **Encumbrances.** After the Effective Date, Seller will not intentionally or deliberately place on the Property any encumbrance (references to "encumbrance" include any lien, encumbrance, or other exception to title) other than the Permitted Exceptions. If, before the Closing Date, title to the Property becomes subject to any encumbrance other than a Permitted Exception, then Seller may (but has no obligation to) attempt to cure the encumbrance. If Seller is unable or unwilling to cure the encumbrance, then Purchaser, as its sole and exclusive remedy, may either: (i) terminate this Agreement by written notice to Seller whereupon the Earnest Money shall be returned to Purchaser, and neither party will have any right or obligation under this Agreement other than rights or obligations that expressly survive termination; or (ii) proceed to Closing without receiving any credit against or reduction of the Sales Price whereupon Purchaser shall be deemed to have accepted the encumbrance as an exception to title (which shall thereupon become a Permitted Exception).

7. **Due Diligence Materials.** Seller will use reasonable diligence to cause to be delivered to Purchaser or made available to Purchaser within two (2) Business Days after the Effective Date, copies of the materials listed on Exhibit D (the "Due Diligence Materials"), to the extent (and only to the extent) that these items are available and in Seller's actual possession. Any failure of Seller to timely deliver or make available any of the Due Diligence Materials will not extend the Inspection Period, and Purchaser's sole and exclusive remedy for Seller's failure, if any, shall be to terminate this Agreement before the expiration of the Inspection Period in accordance with the provisions of Section 5. Seller makes no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in the Due Diligence Materials, and Purchaser acknowledges that the Due Diligence Materials will be for informational purposes only and shall not give Purchaser any cause of action against Seller or the preparer, absent an agreement from the preparer that Purchaser is entitled to rely on a particular matter. In no event will the Due Diligence Materials include appraisals, valuation memos, or correspondence related to the sale of the Property.

8. **[Reserved]**

9. **Broker's Fee.** Each party represents to the other that it has not authorized any broker or finder to act on its behalf in connection with the sale and purchase under this Agreement and that it has not dealt with any broker or finder purporting to act on behalf of any other party. Purchaser and Seller each hereby agree to indemnify, defend, and hold the other harmless from any claim, liability, obligation, cost, or expense (including attorneys' fees and expenses) for fees or commissions relating to Purchaser's acquisition of the Property asserted against either party by any broker or other person claiming by, through, or under the indemnifying party or whose claim is based on the indemnifying party's acts. The provisions of this Section 9 shall survive the Closing or any termination of this Agreement.

**10. Limitation of Seller's Representations and Warranties; Release.**

(a) **AS-IS.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 12 OF THIS AGREEMENT, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS PURCHASING THE PROPERTY IN AN "AS-IS" CONDITION "WITH ALL FAULTS" AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESSED OR IMPLIED, OF ANY NATURE WHATSOEVER FROM OR ON BEHALF OF SELLER, INCLUDING WITHOUT LIMITATION, THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND USE.

Seller's Initials: \_\_\_\_\_ Buyer's Initials: \_\_\_\_\_

(b) **No Reliance.** Purchaser acknowledges that (i) Purchaser has had or will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigation as Purchaser deems necessary, desirable or appropriate with respect to the Property, and (ii) except as otherwise expressly set forth in Section 12 of this Agreement, neither Seller, nor anyone acting for or on behalf of Seller, has made any representation, warranty, promise or statement, express or implied, to Purchaser, or to anyone acting for or on behalf of Purchaser, concerning the Property or the condition, use or development thereof. Purchaser represents that, in entering into this Agreement, Purchaser has not relied on any representation, warranty, promise or statement, express or implied, of Seller, or anyone acting for or on behalf of Seller, other than as expressly set forth in Section 12 of this Agreement, and that Purchaser shall purchase the Property based upon Purchaser's own prior investigation and examination of the Property. If Purchaser elects (A) not to inspect the Property, (B) to terminate this Agreement on or before the expiration of the Inspection Period, or (C) to proceed to Closing, such election will be made at Purchaser's absolute discretion, in reliance solely upon the tests, analyses, inspections and investigations that Purchaser makes, or had the right to make and opted not, or otherwise failed, to make, and not in reliance upon any alleged representation made by or on behalf of Seller, except as set forth in Section 12.

(c) **Release.** Except as may be expressly provided in Section 12 of this Agreement, Purchaser, for itself and its successors in interest, releases Seller from, and waives all claims and liability against Seller for, any structural, physical or environmental condition at the Property, and hereby releases Seller from, and waives all liability against Seller attributable to, the structural, physical or environmental condition of the Property, including without limitation the presence, discovery or removal of any hazardous materials or substances in, at, about or under the Property, or connected with or arising out of any and all claims or causes of action based upon CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by SARA Superfund Amendment and Reauthorization Act of 1986 and as may be further amended from time to time) or any related claims or causes of action or any other federal, state or municipal based statutory or regulatory causes of action for environmental contamination at, in or under the Property. The provisions of this Section 10 shall survive indefinitely any Closing or termination of this Agreement and shall not be merged into the Closing documents.

**11. DEFAULT.**

(a) **Seller's Remedies.** If Purchaser fails to perform its obligations pursuant to this Agreement at or prior to Closing for any reason except failure by Seller to perform its obligations hereunder, or if prior to Closing any one or more of Purchaser's representations or warranties are breached in any material respect, then Seller, as its sole and exclusive remedy (except as provided in Sections 5 and 9), may terminate this Agreement and receive the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder (except for claims arising under Section 5 or Section 9). Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine, and the Earnest Money is a fair estimate of those damages and has been agreed to in

an effort to cause the amount of damages to be certain. Notwithstanding anything in this Section 11(a) to the contrary, in the event of Purchaser's default or termination of this Agreement, Seller shall have all remedies available at law or in equity if Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible and marketable title to the Property. If Closing is consummated, then Seller shall have all remedies available at law or in equity if Purchaser fails to perform any obligation of Purchaser under this Agreement.

(b) **Purchaser's Remedies.** If Seller fails to perform its obligations pursuant to this Agreement for any reason except failure by Purchaser to perform its obligations hereunder, or if before Closing any one or more of Seller's representations or warranties are breached in any material respect, and this failure or breach is not cured within three (3) Business Days after written notice from Purchaser to Seller, then Purchaser may, as its sole and exclusive remedy, either: (i) terminate this Agreement by giving Seller timely written notice of its election before or at Closing and recover the Earnest Money; (ii) enforce specific performance of Seller's obligations under this Agreement; or (iii) waive Seller's failure or breach and proceed to Closing. If Purchaser enforces specific performance of this Agreement by Seller, Purchaser agrees that Purchaser shall be required to pay the entire Sales Price in Immediately Available Funds, and that Purchaser shall accept whatever title Seller has to the Property, if any, subject to all liens, encumbrances and other matters affecting title to the Property (all of which shall be deemed Permitted Exceptions) except for (A) liens and encumbrances intentionally or deliberately placed by Seller on the Property after expiration of the Inspection Period; (B) any liens granted by Seller under a deed of trust or other security instrument securing indebtedness of Seller; (C) unpaid taxes and special assessments for any years before the year of Closing during which Seller has had title to the Property; and (D) liens, encumbrances, and other matters that Seller is requested by Purchaser to cure or remove or bond against and that Seller expressly and unconditionally agrees in writing, in response to that request, to cure or remove or bond against (the matters described in items (A), (B), (C) and (D) are referred to herein as "Non-Permitted Liens"), with no reduction in the Sales Price, and in no event shall Seller be obligated to cure or remove or bond against any title defects, liens, encumbrances, or other matters affecting title, other than Non-Permitted Liens. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement if Purchaser fails to deliver to Seller written notice of its intent to file a claim or assert a cause of action for specific performance against Seller on or before ten (10) Business Days following the scheduled Closing Date or, having given that notice, fails to file a lawsuit asserting the claim or cause of action in King County, Washington, within thirty (30) days following the scheduled Closing Date. Unless Purchaser in good faith either (1) disputes an allegation of Purchaser's default and promptly files suit for declaratory judgment or (2) alleges a Seller default that continues after the notice and cure period set forth above and timely files suit for specific performance and the action is pending, Purchaser may not place a *lis pendens* against all or any portion of the Property, and Purchaser hereby waives and releases any right it may have under applicable law to file any *lis pendens*. In no event or circumstance shall Purchaser be entitled to any consequential or punitive damages. Purchaser's remedies shall be limited to those described in this Section 11(b). The provisions of this Section 11(b) shall survive the Closing or any termination of this Agreement.

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

(a) **Representations and Warranties.** Seller hereby represents and warrants to Purchaser, which representations and warranties shall be deemed made by Seller to Purchaser as of the Effective Date and also as of the Closing Date, that:

(i) **Authority.** Seller has the power and authority to sell and convey the Property as provided in this Agreement and to carry out Seller's obligations under this Agreement, and that all requisite corporate or partnership action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations under this Agreement has been, or on the Closing Date will have been, taken.

(ii) **No Notice of Violations.** Except as may have been disclosed to Purchaser prior to the Effective Date, Seller has received no written notice (that remains uncured) from any government agency having jurisdiction over the Land or Improvements that considers either the construction of the Improvements or the operation or use of the Property to be in violation of any law, ordinance, regulation, or order.

(iii) **Not a Foreign Person.** Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder.

(iv) **OFAC.** Seller is not a person or entity described by Section 1 of the Executive Order (No. 13,224) Blocking Property and Prohibiting Transactions With Persons Who commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (September 25, 2001), and does not engage in any dealings or transactions, and is not otherwise associated, with any of those persons or entities.

(b) **Seller's Knowledge.** Whenever the phrases "to Seller's actual knowledge" or "to the best of Seller's knowledge" or any similar phrase is used herein, those phrases mean the present, actual knowledge (as opposed to the imputed knowledge), without inquiry or investigation, of the fact or condition by Dan Lowen, Vice President of Acquisitions, Kennedy Associates Real Estate Counsel, L.P., the asset manager for Seller (collectively if one or more "Seller's Representative"). The representations and warranties contained in Section 12 are the representations and warranties of Seller, not Seller's Representative, and shall not create any individual liability for Seller's Representative.

(c) **Condition Precedent.** It is a condition precedent to Purchaser's obligations under this Agreement that as of the Closing Date, all of Seller's representations and warranties shall be true and correct in all material respects. If the representations and warranties of Seller, which to Seller's actual knowledge were true and correct when made, are not true and correct in all material respects on the Closing Date, and that change is not directly attributable to Seller's actions or conscious failure to act, then Purchaser may, at its option, (a) waive this condition and close this transaction in accordance with the terms and provisions of this Agreement, or (b) terminate this Agreement by notice in writing to Seller and receive back the Earnest Money whereupon neither party shall have any further rights or obligations under this Agreement, other than rights or obligations that expressly survive termination.

(d) **Survival Period.** Subject to the provisions of Section 12(e), and notwithstanding anything else to the contrary contained in this Agreement, in any exhibits attached hereto, or in any documents executed or to be executed at Closing or otherwise in connection herewith (collectively, the "Purchase Documents"), all of Seller's representations, warranties, covenants, undertakings, indemnities, and agreements contained in any of the Purchase Documents (collectively, "Seller's Undertakings") shall survive the Closing for a period of six (6) months (the "Survival Period"). Purchaser acknowledges that it is a sophisticated purchaser who is familiar with the ownership and operation of real estate projects similar to the Property, and Purchaser and Seller have negotiated and agreed upon the length of the Survival Period as an adequate period of time for Purchaser to discover any and all facts that could give rise to a claim or cause of action for a breach of a representation. Purchaser may bring an action against Seller on the breach of any Seller's Undertakings, but only if: (i) Purchaser first learns of the breach after Closing and files the action within the Survival Period and (ii) the damage to Purchaser on account of the breach (individually or when combined with damages from other breaches) equals or exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00). The provisions of this Section 12(d) shall survive the Closing. Furthermore, Purchaser agrees that Seller's liability, however and whenever arising, whether based on or through, directly or indirectly, in whole or in part, any breach of Seller's Undertakings, at law or in equity, or any other claim or basis arising under the Purchase Documents or with respect to the Property, at law or in equity, shall not exceed, in the aggregate, Five Hundred Thousand and No/100 Dollars (\$500,000.00). The provisions of this Section 12(d) shall survive the Closing.

(e) **Untrue Representation or Warranty.** If Purchaser obtains knowledge that any representation or warranty of Seller in this Agreement is incorrect in any material respect, Purchaser shall promptly notify Seller of such incorrectness. Upon receiving such notification, Seller shall have the right take such action as shall be necessary in order to render correct the representation or warranty which was incorrect. If Seller fails to notify Purchaser within ten (10) days after receiving Purchaser's notice that Seller intends to take such action, then Purchaser's sole remedy, assuming that Purchaser was correct in stating that Seller's representation or warranty was materially incorrect, shall be to terminate this Agreement by notice to Seller given within five (5) days after the expiration of such ten (10) day period, in which case Purchaser shall be entitled to the return of the Earnest Money, where upon no party shall have any further rights or obligations under this Agreement other than those that expressly survive Closing; otherwise, Purchaser shall be deemed to have waived any right to terminate this Agreement or to recover from Seller on account of such incorrectness. If Purchaser obtains knowledge prior to the Closing that any representation or warranty of Seller herein is incorrect in any material respect but does not notify Seller as provided above, Purchaser will be deemed to have forever waived any right to recover from Seller on account of such incorrectness.

### **13. Covenants of Seller.**

From the Effective Date until Closing, Seller will:

(i) **Operations.** Maintain and operate the Property in its current state and condition, reasonable wear and tear and damage from casualty excepted.

(ii) **Insurance.** Continue all insurance policies relative to the Property in full force and effect.

(iii) **Contracts.** Refrain from entering into or amending any contracts, or other agreements (excluding leases) regarding the Property, other than contracts in the ordinary and usual course of business and which are cancelable by the owner of the Property without penalty as of the Closing Date.

(iv) **Notices.** Provide Purchaser with copies of all written notices received by Seller after the Effective Date which assert any violation of laws, covenants or permits applicable to the Property.

**14. Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller, which representations and warranties shall be deemed made by Purchaser to Seller as of the Effective Date and also as of the Closing Date:

(a) **Authority.** Purchaser has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and that all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out Purchaser's obligations hereunder has been taken.

(b) **OFAC.** Purchaser is not a person or entity described by Section 1 of the Executive Order (No. 13,224) Blocking Property and Prohibiting Transactions With Persons Who commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (September 25, 2001), and to Purchaser's knowledge does not engage in any dealings or transactions, and is not otherwise associated, with any of those persons or entities.

Notwithstanding anything herein to the contrary, any breach by Purchaser of any of the foregoing representations or warranties shall constitute a default by Purchaser hereunder, and Seller may thereupon, at its option, terminate this Agreement by giving written notice thereof, in which event the Earnest Money shall

be paid to Seller as liquidated damages, and neither Purchaser nor Seller shall have any further rights or liabilities under this Agreement, except as otherwise provided herein.

**15. Condemnation.** In the event that all or any substantial portion of the Project shall be taken in condemnation or under the right of eminent domain prior to the Closing Date, Seller shall promptly notify Purchaser thereof. Within five (5) Business Days after receipt of the foregoing notice, Purchaser shall notify Seller, electing either: (a) to proceed with this transaction and Closing in accordance with this Agreement notwithstanding such condemnation; or (b) to terminate this Agreement, receive a refund of the Earnest Money and neither party shall have any further rights or obligations under this Agreement except for those that expressly survive termination. If Purchaser elects to proceed with this transaction pursuant to clause (a) above, or if there is a taking in condemnation or eminent domain that does not affect a substantial portion of the Property, there shall be no reduction in the Purchase Price and Seller shall (i) deliver to Purchaser at the Closing, or as soon thereafter as available, any proceeds actually received by Seller attributable to the Property from such condemnation or eminent domain proceeding, and (ii) transfer and assign to Purchaser any and all rights Seller may have with respect to payments by or from and with respect to recovery against any party for damages or compensation relating to the Property on account of such condemnation or eminent domain proceeding. A failure by Purchaser to notify Seller in writing within five (5) Business Days after receiving written notice of such taking shall be deemed an election to proceed under clause (a) in this Section 15. If Purchaser elects (or is deemed to elect) to proceed under clause (a) in this Section 15, Seller shall not compromise, settle or adjust any claims to such award without Purchaser's prior written consent. For purposes of this provision, a "substantial portion" of the Project shall be deemed to include (A) any taking of any portion of the building on the Land or the Land underlying the building, (B) any taking of the lesser of (I) five percent (5%) of the parking spaces for the Project, or (II) such number of parking spaces as would leave the Project in violation of any zoning ordinance, lease, reciprocal easement agreement or declaration of covenants, conditions and restrictions affecting the Project, (C) any taking which gives rise to a right on behalf of any tenant under a Tenant Lease to terminate its Tenant Lease, and (D) any taking which materially alters the means of vehicular access to the Project.

**16. Damage to Property.** Seller agrees to give Purchaser prompt notice of any fire or other casualty affecting the Land, the Improvements, or the Personal Property between the Effective Date and the Closing.

(a) If, before Closing, the Property is damaged (i) by an insured fire or other casualty that would cost \$750,000.00 or more to repair or (ii) by an uninsured casualty that Seller is unwilling or unable to repair on or before Closing (collectively, a "Major Casualty"), then either Purchaser or Seller may, at its option, elect to terminate this Agreement by written notice to the other party within twenty (20) days after the date of Seller's notice to Purchaser of the casualty or at the Closing, whichever is earlier, in which case the Earnest Money shall be refunded to Purchaser, and neither party shall have any further rights or obligations under this Agreement, other than rights and obligations that expressly survive termination. If neither Purchaser nor Seller timely makes its election to terminate this Agreement pursuant to this Section 16 and the casualty is insured, then the Closing shall take place as provided herein, the Sales Price shall be reduced by an amount equal to Seller's deductible under its insurance policies, and Seller shall assign to Purchaser at the Closing all of Seller's interest in and to any casualty insurance proceeds that may be payable to Seller on account of the occurrence, including, to the extent assignable, the proceeds of any business interruption or loss of rental insurance. If neither Purchaser nor Seller timely makes its election to terminate this Agreement pursuant to this Section 16 and the casualty is uninsured, then the Closing shall take place as provided herein, Purchaser shall accept the Property in its condition at Closing and the Sales Price shall not be reduced.

(b) If, before Closing, the Property is damaged by a fire or other casualty that is not a Major Casualty or if an uninsured casualty and Seller repairs the damage before Closing, then Purchaser may

not terminate this Agreement, and if the casualty is insured, the Sales Price shall be reduced by an amount equal to Seller's deductible under its insurance policies, and Seller shall assign to Purchaser at the Closing all of Seller's interest in and to any casualty insurance proceeds that may be payable to Seller on account of the occurrence, including, to the extent assignable, the proceeds of any business interruption or loss of rental insurance.

(c) Seller and Purchaser both agree to use the Seller's insurance adjuster's assessment to determine the amount of damages.

**17. Assignment.** Purchaser may not assign this Agreement without Seller's prior written consent, which consent shall be given or denied in Seller's sole and absolute discretion, except that Purchaser may make a one time assignment of this Agreement to a title holding entity that is an affiliate of and controlled by Purchaser; provided, however, that (a) Purchaser shall not be released from any of its liabilities and obligations under this Agreement by reason of such designation or assignment; and (b) such designation or assignment shall not be effective until Purchaser has provided Seller with a fully executed copy of such designation or assignment and assumption instrument, which shall (i) provide that Purchaser and such designee(s) or assignee(s) shall be jointly and severally liable for all liabilities and obligations of Purchaser under this Agreement, (ii) include a representation and warranty in favor of Seller that all representations and warranties made by Purchaser in this Agreement are true and correct with respect to such designee(s) or assignee(s) as of the date of such designation or assignment, and will be true and correct as of the Closing, and (iii) otherwise be in customary form and substance reasonably satisfactory to Seller.

**18. Confidential Information.** Purchaser agrees that any information obtained by Purchaser or its attorneys, consultants, or accountants, (collectively, for purposes of this Section 18 (the "**Permitted Outside Parties**")) in the conduct of its Due Diligence (including, without limitation, the review of the Due Diligence Materials, but excluding any information generally available to the public other than by reason of Purchaser's breach of its obligations hereunder) shall be treated as confidential and shall be used only to evaluate the acquisition of the Property from Seller. Purchaser agrees not to divulge such information prior to the Closing except as expressly set forth above or to the extent that Purchaser is required to under the Public Records Act (RCW Chapter 42.56) or as otherwise required by law. Except as required by applicable law, court order, or governmental regulatory body neither party shall (a) prior to Closing, issue any press release or make any statement to the media or otherwise disclose the Agreement or any terms thereof to any other person or entity, except those with a genuine need-to-know, without the other party's written consent, and except to the extent that the Purchaser is required to obtain City Council authorization for acquisition of the Property in an open public meeting, or (b) after Closing, issue any press release or make any statement to the media which names the other party to this transaction without such other party's written consent. In permitting Purchaser and the Permitted Outside Parties to review the Due Diligence Materials, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created by Seller and any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent with regard to such waiver. The provisions of this Section 18 shall survive the Closing or any termination of this Agreement.

**19. Miscellaneous.**

**(a) Notice.** All notices, demands, and requests and other communications required or permitted under this Agreement must be in writing and will be deemed to be delivered when actually received by facsimile or personal delivery or, if earlier and regardless whether actually received or not, (i) upon deposit with a nationally recognized overnight courier for next Business Day delivery, charges prepaid, or (ii) upon three (3) Business Days following deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage prepaid, in either event to be addressed to the addressee as follows:

If to Seller: NewTower Trust Company Multi-Employer  
Property Trust  
Three Bethesda Metro Center  
Suite 1600  
Bethesda, MD 20814  
Attn: Patrick O. Mayberry  
Fax: (240) 235-9961

With a copy to: Kennedy Associates Real Estate Counsel, LP  
1215 Fourth Avenue, Suite 2400  
Seattle, WA 98161  
Attn: Dan Lowen  
Phone: (206) 623-4739  
Fax: (206) 682-4739

And with a copy to: Staci Snyder Jones  
3 Orange Properties Law Group, PLLC  
2425 33rd Avenue W, Suite A-2  
Seattle, WA 98199  
Phone: (206) 972-4980  
Fax: (206) 260-9039

If to Purchaser: Kirkland City Manager's Office  
123 Fifth Avenue  
Kirkland, WA 98033  
Attn: Marilynne Beard  
Phone: (425) 587-3001  
Fax: (425) 587-3019

With a copy to: Kirkland City Attorney's Office  
123 Fifth Avenue  
Kirkland, WA 98033  
Attn: Oskar Rey  
Phone: (425) 587-3030  
Fax: (425) 587-3025

**(b) Governing Law.** This Agreement will be construed under and in accordance with the laws of the State of Washington, and all obligations of the parties created hereunder are performable in King County, Washington.

(c) **Attorney's Fees.** Any party to this Agreement who is the prevailing party in any legal proceeding against the other party brought under or with respect to this Agreement or transaction will be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

(d) **Exculpation for Liability.** None of the Seller's members, officers, directors, agents, employees, affiliates, investment advisors or trustees shall have any personal liability of any kind or nature, nor shall Purchaser have the right to receive any judgment or otherwise recover against the assets of the aforesaid, under or arising out of or in any way relating to this Agreement and the transactions contemplated under this Agreement. Purchaser hereby waives for itself and anyone who may claim by, through or under Purchaser any and all rights to sue or recover on account of any such alleged personal liability or to receive any judgment or otherwise recover against the assets of any member, officer, director, agent, employee, affiliate, investment advisor or trustee of Seller. None of the Purchaser's officers, agents, employees and officials shall have any personal liability of any kind or nature, nor shall Seller have the right to receive any judgment or otherwise recover against the assets of the aforesaid, under or arising out of or in any way relating to this Agreement and the transactions contemplated under this Agreement. Seller hereby waives for itself and anyone who may claim by, through or under Seller any and all rights to sue or recover on account of any such alleged personal liability or to receive any judgment or otherwise recover against the assets of any officer, agent, employee or official of the Purchaser.

(e) **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

(f) **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of any invalid, illegal, or unenforceable provision, there shall be automatically added to this Agreement a provision as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

(g) **Entire Agreement.** This Agreement (i) constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof (ii) supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof, and (iii) cannot be changed except by their written consent.

(h) **Time for Performance.** Time is of the essence with this Agreement.

(i) **References.** All references to "Sections" contained in this Agreement are, unless specifically indicated otherwise, references to articles, sections, subsections, and paragraphs of this Agreement. Whenever in this Agreement the singular number is used, the same shall include the plural where appropriate (and vice versa), and words of any gender shall include each other gender where appropriate. All references to "Exhibits" and "Schedules" are, unless specifically indicated otherwise, references to exhibits, schedules, and attachments to this Agreement, which are incorporated into this Agreement by each reference.

(j) **Survival.** None of the covenants or other obligations of Seller or Purchaser shall survive the Closing unless such survival is expressly provided for in this Agreement, in which case such covenants or obligations shall survive for the periods provided in this Agreement (or, if no period is provided, indefinitely) and shall not be deemed to have merged or terminated at the Closing or any termination or cancellation of this Agreement.

(k) **Counterparts.** The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.

(l) **Rule of Construction.** The parties hereto acknowledge that the parties and their respective counsel have each reviewed and revised this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(m) **No Recording of Agreement.** Neither party (nor any of their respective agents or representatives) shall record this Agreement (or any memorandum or short form of this Agreement) without the prior written consent of the other.

(n) **Waiver of Jury Trial.** Each party hereto, knowingly and voluntarily, and for their mutual benefit, waives any right to trial by jury in the event of litigation regarding the performance or enforcement of, or in any way related to, this Agreement

(o) **Business Day.** “Business Day” means a date that is not a Saturday, Sunday or holiday observed by federally chartered banks in the State where the Property is located. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if the date falls upon a date that is not a Business Day, the date for the determination or action shall be extended to the first Business Day immediately thereafter.

(p) **Backup Contracts.** Purchaser acknowledges that Seller may enter into one or more backup contracts for the sale of the Property to one or more purchasers other than Purchaser.

(q) **Effective Date.** The “Effective Date” of this Agreement shall be the date an original of this Agreement (or original counterparts of this Agreement) is executed by both Seller and Purchaser and each party has received a fully executed copy thereof.

(r) **Schedule and Exhibits.** The following schedules and exhibits are hereby incorporated into this Agreement:

- Exhibit A - Legal Description of Land
- Exhibit B - Special Warranty Deed
- Exhibit C - Bill of Sale
- Exhibit D - Due Diligence Materials
- Exhibit E - Non-Foreign Affidavit

*[Signature pages follow.]*

EXECUTED to be effective as of the Effective Date.

**PURCHASER:**

**City of Kirkland,**  
a Washington municipal corporation

By: \_\_\_\_\_,  
a \_\_\_\_\_,  
its \_\_\_\_\_

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

**SELLER:**

**MEPT Kirkland Flex LLC, a Delaware limited liability company**

By: NEWTOWER TRUST COMPANY, as trustee of the NewTower Trust Company Multi-Employer Property Trust, its sole member

By: \_\_\_\_\_  
Name: Patrick O. Mayberry  
Title: President

**TITLE COMPANY:**

Receipt of \$\_\_\_\_\_ Earnest Money is  
acknowledged in the form of \_\_\_\_\_.  
Title Company agrees to hold the Earnest Money in  
accordance with the terms of this Agreement.

By: Stewart Title Insurance Company

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

**EXHIBIT A**  
**to**  
**Purchase and Sale Agreement**

**LEGAL DESCRIPTION OF LAND**

Lot 12, Kirkland 405 Corporate Center, a binding site plan, according to the plat thereof recorded in Volume 154 of Plats, page 58 through 64, records of King County, Washington

Situate in the County of King, State of Washington

**EXHIBIT B**  
to  
**Purchase and Sale Agreement**

**FORM OF STATUTORY WARRANTY DEED**

For good and valuable consideration the receipt and adequacy of which are hereby acknowledged, MEPT Kirkland Flex LLC, a Delaware limited liability company (“Grantor”) conveys and warrants to the City of Kirkland, a Washington municipal corporation (“Grantee”) the following described real estate, situated in the City of Kirkland, County of King, State of Washington:

See **Exhibit A**, attached hereto and incorporated herein by this reference.

SUBJECT TO the encumbrances listed on **Exhibit B** attached hereto and incorporated herein by this reference.

Tax Parcel No.

Abbr. Legal Description:

EXECUTED as of \_\_\_\_\_, 2009.

GRANTOR:

**MEPT Kirkland Flex LLC, a Delaware limited liability company**

By: NEWTOWER TRUST COMPANY, as trustee of the NewTower Trust Company Multi-Employer Property Trust, its sole member

By: \_\_\_\_\_  
Name: Patrick O. Mayberry  
Title: President

Acknowledgment to be attached

**EXHIBIT C**  
to  
**Purchase and Sale Agreement**

**BILL OF SALE**

This **BILL OF SALE**(this "Bill of Sale") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

**AGREEMENTS**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1 Assignor hereby sells, transfers, assigns, and conveys to Assignee the following: All equipment, fixtures, appliances, inventory, and other personal property of whatever kind or character owned by Assignor and attached to or installed or located on or in the land located in the City of \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_ (as more particularly described in the attached Exhibit A, the "Land") or the improvements located on the Land ("Improvements") (collectively, the "Personal Property").

2. Except as set forth in this Bill of Sale or in that certain Purchase and Sale Agreement by and between Assignor, as seller, and Assignee, as purchaser, dated \_\_\_\_\_ (the "Agreement"), the Personal Property is conveyed by Assignor and accepted by Assignee **AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, IT BEING THE INTENTION OF ASSIGNOR AND ASSIGNEE EXPRESSLY TO NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY CONVEYED HEREUNDER, OR BY ANY SAMPLE OR MODEL THEREOF, AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW**, except that the foregoing shall not be construed to negate the special warranty of title hereinafter set forth.

3. Notwithstanding anything to the contrary contained in this Bill of Sale, any liability of Assignor under this Bill of Sale is limited as set forth in Section 12(d) of the Agreement.

4. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, this Bill of Sale is executed on the dates set forth below to be effective as of the date first above written.

**ASSIGNOR:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_,  
a \_\_\_\_\_,  
its \_\_\_\_\_

**EXHIBIT ONLY. DO NOT EXECUTE**

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

**ASSIGNEE:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_,  
a \_\_\_\_\_,  
its \_\_\_\_\_

**EXHIBIT ONLY. DO NOT EXECUTE**

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

Exhibit A – Land Description

**EXHIBIT A**  
**to**  
**Bill of Sale**

**LAND DESCRIPTION**

**EXHIBIT D**  
**to**  
**Purchase and Sale Agreement**  
  
**Due Diligence Materials**

1. The most recent survey for the Property in the possession or control of Seller. (Seller comment: No copy in files.)
2. Each maintenance or service contract for the Property and a written summary of any oral maintenance or service contracts. In addition, current contact information for each maintenance or service provider. (Seller comment: Vendor list to be provided; all contracts have been cancelled effective July 1, 2009.)
3. Financial books and records for the property including: (1) operating statements for the past two year ends (2007 and 2008) and for current year to date; (2) a schedule of capital expenditures (if not already included in the operating statements) for the last two years (2007 and 2008) and current year to date. (Seller comment: Operating statements to be provided.)
4. Any and all third party engineering, environmental and geotechnical reports and assessments (both draft and final), action or work plans, contracts for remediation, and soil and groundwater sampling reports and results. (Seller comment: Environmental Audit letter dated April 28, 1988, Mold Report dated 8.16.04, Mold Report Update dated 9.29.04. To be provided)
5. All plans and specifications in the possession or control of the Seller relating to the Improvements on the Property. (Seller comment: Building Plans on site at CBRE- can be reviewed at property manager's office and picked up at time of closing.)
6. Copies of any unexpired warranties or guarantees relating to the Improvements on the Property. (Seller comment: No warranties.)
7. Documents relating to any security interests in personal property or fixtures on the Property. (Seller comment: No personal property at the building.)
8. Documents relating to any insurance claims submitted in the past three years with respect to the Property, including pending claims. (Seller comment: N/A)
9. A schedule of pending litigation affecting or relating to the Property or the ability of the Seller to sell the Property. (Seller comment: N/A)
10. Any CC&Rs, Rules and Regulations and other requirements relating to the Owners Association. (Seller comment: CC&R and First Amendment to CC&Rs. To be provided.)
11. Any reports or documents prepared since January 1, 2007 that assess or document the condition of the Improvements on the property, including but not limited to the roof (Seller comment: N/A).

**EXHIBIT E**  
**to**  
**Purchase and Sale Agreement**  
  
**NON-FOREIGN AFFIDAVIT**

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_, a \_\_\_\_\_ (“Transferor”), the undersigned hereby certifies the following on behalf of the Transferor.

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate, or foreign person (as those terms are defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's address is \_\_\_\_\_.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that it has examined this certification and to the best of its knowledge and belief it is true, correct and complete, and it further declares that it has authority to sign this document on behalf of Transferor.

Executed to be effective as of \_\_\_\_\_.

**TRANSFEROR:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_,  
a \_\_\_\_\_,  
its \_\_\_\_\_

**EXHIBIT ONLY. DO NOT EXECUTE**

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

