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7 for Namco Capital Group, Inc.

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11
12 In re:
13
14 NAMCO CAPITAL GROUP, INC., a California
corporation,
15
16 Debtor.

Case Number: 2:08-bk-32333-BR

Chapter 11

**NOTICE OF MOTION AND MOTION OF
BRADLEY D. SHARP, CHAPTER 11
TRUSTEE FOR THE ESTATE OF NAMCO
CAPITAL GROUP, INC. FOR ORDER
AUTHORIZING SALE OF PROPERTY OF
THE ESTATE, FREE AND CLEAR OF
LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES [1929 PICO
BOULEVARD]; MEMORANDUM OF
POINTS AND AUTHORITIES; AND
DECLARATION OF BRADLEY D. SHARP**

Hearing:

Date: February 17, 2010
Time: 10:00 a.m.
Judge: Courtroom 1668
255 East Temple Street
Los Angeles, CA 90012

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27 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**
28 **AND INTERESTED PARTIES:**

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1 **PLEASE TAKE NOTICE** that on February 17, 2010 at 10:00 a.m., or as soon thereafter as
2 the matter can be heard, before the Honorable Barry Russell, United States Bankruptcy Judge, in
3 Courtroom 1668, located at 255 East Temple Street, Los Angeles, CA, the Bankruptcy Court will
4 consider the *Motion of Bradley D. Sharp (the "Trustee")*, Chapter 11 Trustee for the Estate of
5 *Namco Capital Group, Inc. ("Debtor" or "Namco") for an Order Authorizing Sale of Property of*
6 *the Estate, Free and Clear of Liens, Claims, Interests and Encumbrances [1929 Pico Boulevard]*
7 (the "Motion"). The Motion is based upon this Notice and the Motion, the accompanying
8 Memorandum of Points and Authorities, the accompanying declaration of Bradley D. Sharp (the
9 "Sharp Declaration"), and any additional evidence and argument that may be submitted at or before
10 the hearing on the Motion.

11 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-1(f),
12 any opposition to the Motion must be filed with the Bankruptcy Court and served on counsel for the
13 Trustee no later than 14 days before the date designated for hearing on the Motion. Pursuant to
14 Local Bankruptcy Rule 9013-1(h), the failure to file and serve timely a response to the Motion may
15 be deemed by the Court to be consent to the granting of the Motion.

16
17 Date: January 25, 2010

JEFFER, MANGELS, BUTLER & MARMARO LLP

18
19 By: /s/ David M. Poitras
20 DAVID M. POITRAS P.C.
21 Counsel for Bradley D. Sharp,
22 Chapter 11 Trustee for Namco Capital Group, Inc.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **JURISDICTION AND VENUE**

4 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
5 matter relates to the administration of the debtor's bankruptcy estate and is accordingly a core matter
6 pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of this case is proper in this Court pursuant
7 to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Sections
8 105(a), 363 and 365 of title 11, United States Code (the "Bankruptcy Code") and Rules 6004, 9006
9 and 9019 of the Federal Rules of Bankruptcy Procedure ("FRBP").

10 **II.**

11 **SUMMARY OF RELIEF REQUESTED**

12 The Trustee hereby moves the Court for an Order:

13 (1) Authorizing the Trustee to sell (the "Sale"), for the sum of \$3,100,000 (the "Purchase
14 Price") to AJ Industrial Properties, LLC ("Buyer"), or to such other qualified purchaser who makes
15 a higher and better offer ("Successful Bidder"), property of the Debtor's estate consisting of that
16 certain real property and improvements thereon commonly known as 1929 Pico Boulevard, Los
17 Angeles, California (the "Property"), free and clear of all liens, claims, interests and encumbrances;

18 (2) Finding that Buyer/Successful Bidder is a "good faith" purchaser entitled to all of the
19 protections and benefits of Bankruptcy Code § 363(m); and

20 (3) Granting such other and further relief as is just and appropriate under the
21 circumstances.

22 **III.**

23 **STATEMENT OF FACTS**

24 **A. General Case Background.**

25 On December 22, 2008 (the "Petition Date"), involuntary chapter 11 petitions were filed
26 against Namco and its sole shareholder Ezri Namvar ("Namvar"). On January 29, 2009, orders for
27 relief were entered in both the Namco bankruptcy case and the Namvar bankruptcy case.

28 On March 11, 2009, the Court entered an order approving the appointment of R. Todd

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1 Neilson as the chapter 11 trustee in the Namvar bankruptcy case.

2 On May 8, 2009, the Court entered an order approving the appointment of Bradley D. Sharp
3 as the chapter 11 trustee in the Namco bankruptcy case.

4 As of the Petition Date, Namco was a California corporation, and Namvar was the President,
5 Chief Financial Officer, sole director and sole shareholder of Namco.

6 Prior to the Petition Date, Namco had been in business for approximately 20 years. Namco's
7 business model was relatively simple and straightforward - Namco would borrow money from
8 individuals ("Lender Funds"), most often members of the West Los Angeles Persian community
9 (hereinafter referred to as a "Namco Lender"), agree to pay such Namco Lender a fixed rate of
10 return, and Namco would then either lend those funds to third parties (hereinafter a "Borrower"), at
11 interest rates typically six percent or more higher than the cost of capital payable to the Namco
12 Lender, or invest such funds in various real estate projects. Most often, the funds provided by the
13 Namco Lenders were not earmarked for a specific purpose; rather, such funds were pooled by
14 Namco and lent to third parties as opportunities were presented. Typically, the transactions
15 between Namco and a Namco Lender would be memorialized by way of an unsecured promissory
16 note from Namco to the Namco Lender ("Note" or "Notes"), although in some cases Namco secured
17 or attempted to secure the Notes in various ways, typically by assigning interests in third party
18 deeds of trust owned by Namco or affiliates of Namco. Namvar purportedly personally guaranteed
19 many of Namco's obligations to the Namco Lenders. So long as a Note was outstanding, Namco
20 typically paid such Namco Lender interest on a monthly basis. The loans that Namco made to
21 Borrowers were typically real estate loans secured by deeds of trust.

22 B. Trustee's Efforts to Sell the Property and the Proposed Sale.

23 Effective as of September 1, 2009, this Court authorized the Trustee to employ Lee &
24 Associates, Los Angeles West, Inc. ("Broker") as real estate brokers to market and sell the Property.
25 Broker began listing the Property on September 1, 2009.

26 Subject to overbid and the approval of this Court, Buyer has agreed to purchase the Property
27 from the Trustee, free and clear of all liens, claims, interests and encumbrances. The Purchase Price
28 for the Property is \$3,100,000.00, pursuant to the terms and conditions of that certain *Standard*

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1 Offer, Agreement and Escrow Instructions for Purchase of Real Estate, dated November 24, 2009
2 (the "Sale Agreement"), a copy of which is appended to the attached Declaration of Bradley D.
3 Sharp ("Sharp Decl.") as Exhibit A. The Trustee and Broker have evaluated the offers received by
4 the Trustee, and in the exercise of his reasonable business judgment, the Trustee has decided to
5 accept Buyer's offer, subject to Bankruptcy Court approval and overbid pursuant to the procedures
6 set forth below and as ordered by the Court (the "Sale Procedures"). Sharp Decl. at ¶ 5. A
7 complete copy of the Bid Procedures is attached as Exhibit A to the *Order Establishing Bidding*
8 *Procedures for the Sale of Estate Property [1929 Pico Boulevard]* (the "Sale Procedures Order")
9 entered on January 7, 2010 (Doc. No. 664). A true and correct copy of the Sale Procedures Order is
10 attached to the Sharp Decl. as Exhibit B.

11 Buyer has conditioned the closing of the Sale upon a good faith finding under § 363(m) by
12 the Court. Sharp Decl. at ¶ 6.

13 C. Purported Liens, Claims, Interests and Encumbrances on the Property.

14 Pursuant to the Property's preliminary title report obtained for the Sale, the Property is
15 encumbered by the following deeds of trust and assignments (the "Assignments") of beneficial
16 interests thereof:

17 (i) Deed of Trust¹ in the amount of \$1,650,000.00 dated December 7, 2001 to Namco
18 Financial, Inc. ("NFI") (the "First Deed of Trust").

19 Partial assignments of the beneficial interest under the First Deed of Trust from NFI
20 were purportedly made to the following:

- 21 (a) M.M.P. Family Trust (31% beneficial interest)
22 (b) Moosai Revocable Family Trust (31% beneficial interest)
23 (c) Manouchehr Pirian (19% beneficial interest)

24
25 ¹ A Notice of Default under the terms of the First Deed of Trust has been recorded by American
26 Trust Deed Services Corporation on November 28, 2008. As set forth below, the Trustee disputes the
27 validity of the First Deed of Trust. The Trustee also disputes the validity or enforceability of any
28 assignments of the First Deed of Trust. If the Trustee is unable to settle the claims associated with the First
Deed of Trust, he will commence an adversary proceeding to avoid the First Deed of Trust and any
assignments thereof.

- 1 (d) Maryam Pirian, as Trustee of MMP Family Trust (31% beneficial interest)
2 (e) Mehrdad Naim (12% beneficial interest)
3 (f) Joseph Pirian (6.5% beneficial interest)
4 (ii) Deed of trust in the amount of \$2,000,000.00 dated June 25, 2008 to NFI (the
5 "Second Deed of Trust").

6 Partial assignments² of the beneficial interest under the Second Deed of Trust from the
7 Debtor, were purportedly made to the following:

- 8 (a) Fereshteh Kohanim (20% beneficial interest)
9 (b) Soleiman Israel Naim³ (80% beneficial interest)

10 Sharp Decl. at ¶ 7.

11 In addition, the Property is subject to an attachment issued by the Los Angeles Superior
12 Court (Case No. BC398619) in connection with the case, *Abraham B. Assil, as trustee, etc. v.*
13 *Namco Capital Group, Inc., etc., et al.* Sharp Decl. at ¶ 8.

14 Thus, the total amount of all liens against the Property, as set forth in the preliminary title
15 reports, is \$3,650,000.00, all of which are subject to *bona fide* dispute, as described below. Sharp
16 Decl. at ¶ 9.

17 The Trustee and his professionals have conducted an investigation into the First Deed of
18 Trust, recorded on December 19, 2001 as Instrument No. 01-2432349. The First Deed of Trust
19 purportedly secures a note in the amount of \$1,650,000.00. The First Deed of Trust purportedly
20 secures "[p]ayment of the indebtedness evidenced by one promissory note of even date herewith . . .
21 in the principal sum of \$1,650,000.00." A true and correct copy of the First Deed of Trust is
22 attached to the Sharp Decl. as Exhibit C. Currently, to the extent it even exists, the whereabouts of
23

24 ² As the Trustee has previously asserted in pleadings filed in connection with the *Motion for Relief*
25 *from Stay* filed by Fereshteh Kohanim and Soleiman Israel Naim (the "Transferees"), the Trustee disputes the
26 validity of the Second Deed of Trust and all purported transfers of the Second Deed of Trust to the
27 Transferees. If the Trustee is unable to settle the claims associated with the Second Deed of Trust, he will
28 commence an adversary proceeding to avoid the Second Deed of Trust and any assignments thereof.

³ Soleiman Israel Naim has recorded a notice of a pending Court Action in Los Angeles Superior
Court.

1 such note is unknown. No money was received by Namco from NFI anywhere near the date of the
2 First Deed of Trust. Sharp Decl. at ¶ 10.

3 Additionally, the Trustee and his professionals have conducted an investigation into the
4 Second Deed of Trust, recorded on July 3, 2008 as Instrument No. 2008-1191182. The Second
5 Deed of Trust purportedly secures a note in the amount of \$2,000,000.00, which allegedly
6 memorializes a loan by NFI to Namco. According to the Trustee's investigation to date into the
7 Second Deed of Trust, no funds were advanced to Namco in connection with the Second Deed of
8 Trust. Namco's books and records reflect that Namco received the sum of \$2,000,000.00 from NFI
9 in June 2007, but makes no reference to such loan being secured by a deed of trust on the Property
10 or any intention for such loan to be secured by any of Namco's property. Sharp Decl. at ¶ 11.

11
12 IV.

13 **SALE OF THE PROPERTY SHOULD BE APPROVED FREE AND CLEAR OF ALL**
14 **LIENS, INTERESTS, CLAIMS AND ENCUMBRANCES**

15 A. The Sale Satisfies the Standards for Approval of a Sale Outside the Ordinary Course
16 of Business.

17 Section 363(b) of the Bankruptcy Code provides, in pertinent part, that "[t]he trustee, after
18 notice and hearing, may . . . sell, other than in the ordinary course of business, property of the
19 estate." 11 U.S.C. § 363(b)(1). The Ninth Circuit Court of Appeals has ruled in cases under the
20 Bankruptcy Act that a sale of a debtor's property should be approved if it is in the best interests of
21 the estate and creditors. *In re Huntington Ltd.*, 654 F.2d 578, 589 (9th Cir. 1991); *In re Equity*
22 *Funding Corp.*, 492 F.2d 793, 794 (9th Cir. 1974). Whether such a transaction is in the best
23 interests of the estate is still a significant factor under the Bankruptcy Code. *In re Canyon*
24 *Partnership*, 55 B.R. 520, 526 (Bankr. S. D. Cal. 1985).

25 In evaluating the propriety of a sale of property of the estate, courts have evaluated whether:
26 (i) a "sound business purpose" justifies the sale; (ii) "accurate and reasonable notice" of the sale was
27 provided; (iii) "the price to be paid is adequate, i.e., fair and reasonable;" and (iv) "good faith, i.e.,
28 the absence of any lucrative deals with insiders, is present." *In re Copy Crafters Quickprinting*,

1 *Inc.*, 92 B.R. 973, 983 (Bankr. N.D.N.Y. 1988) and *In re Industrial Valley Refrig. and Air Cond.*
2 *Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987). An examination of each of the above four
3 factors reveals that the proposed Sale should be approved.

4 1. Sound Business Justification.

5 Application of a debtor in possession's or trustee's sound business judgment in the use, sale
6 or lease of property of the estate is subject to great judicial deference. *Matter of WPRV-TV, Inc.*,
7 143 B.R. 315, 319 (D. P.R. 1991), *aff'd in part, rev'd in part*, 983 F.2d 336 (1st Cir. 1993); *In re*
8 *Thrifty Liquors, Inc.*, 26 B.R. 26, 28 (Bankr. D. Mass. 1982). The application of the business
9 judgment test affords a debtor in possession or trustee discretion in balancing the costs and benefits
10 of administering or disposing of estate assets according to the needs of the estate. *See In re Canyon*
11 *Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

12 Here, the proposed Sale will substantially benefit Namco, its Estate and all creditors because
13 (a) the holders of all **undisputed**⁴ liens, if any, against the Property will be paid and satisfied;
14 (b) the Estate will be relieved of the costs required to manage, insure and maintain the Property, and
15 (c) the Sale will monetize the Property for the benefit of creditors of the Namco Estate, and generate
16 money to fund a plan of reorganization. *See Sharp Decl.* at ¶ 12.

17 2. Accurate and Reasonable Notice.

18 Pursuant to § 363(b)(1), a debtor in possession or trustee must give notice of any sale of
19 property of the estate. Most transactions not in the ordinary course of business are governed by
20 Federal Rule of Bankruptcy Procedure 6004. Rule 6004(a) refers, in turn, to Rule 2002(a), which
21 requires a twenty-one (21) day notice period for any "proposed use, sale, or lease of property of the
22 estate other than in the ordinary course of business, unless the court for cause shown, shortens the
23 time" F.R.B.P. 2002(a).

24 The Trustee, pursuant to that *Order Establishing Notice Procedures and Permitting Service*
25 *on Insured Depository Institutions by First Class Mail* (the "Limited Notice Order"), entered on

26 _____
27 ⁴ For the reasons set forth below, the Property may be sold free and clear of all claims, liens,
28 interests and encumbrances pursuant to 11 U.S.C. § 363(f). Thus, any such interests that exist as to the
Property will attach to the Sale proceeds.

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1 February 9, 2009, has served the Notice of Motion and Motion on all parties entitled thereto as
2 established by the Limited Notice Order. In addition, the Trustee is filing, concurrently with this
3 Motion, a *Notice of Sale of Estate Property* (Local Bankruptcy Rules Form F 6004-2) to be posted
4 on the Court's website. As such, the Trustee has satisfied the requirements for accurate and
5 reasonable notice.

6 3. Adequate Price.

7 The Trustee contends that the consideration provided to the estate by the Buyer pursuant to
8 the Sale Agreement represents adequate and fair consideration for the Property. Broker began
9 marketing and listing the Property on or about September 1, 2009. The Trustee and his
10 professionals have contacted numerous potential buyers and have provided various types of due
11 diligence information to such parties, and the Trustee and Broker have encouraged potential
12 overbidders to submit bids. The Sale Procedures, described in detail in the *Motion of Chapter 11*
13 *Trustee Bradley D. Sharp, Chapter 11 Trustee for the Estate of Namco Capital Group, Inc. for*
14 *Order Approving Procedures in Connection with Proposed Sale of Property of the Estate*, filed on
15 December 16, 2009 (Doc. No. 654), have been approved by this Court by order entered January 7,
16 2010.

17 The Sale Procedures include the following provisions, intended to increase the likelihood
18 that the estate will receive the highest and best price for the Property:⁵

19 (a) The Sale Procedures require that prospective purchasers submit to the Trustee by
20 5:00 p.m. on the fifth business day prior to the scheduled hearing date for the Trustee's Sale Motion,
21 satisfactory evidence of such purchaser's financial ability to perform and a \$250,000 deposit in good
22 funds, which will be non-refundable if such bidder is the successful bidder at the Sale Hearing and
23 the sale does not close due to purchaser's default. These provisions give the Trustee time in
24 advance of the hearing to evaluate whether a bidder is financially capable of promptly closing a
25 proposed transaction. Also, such provisions will give potential bidders the comfort that they will

26 _____
27 ⁵ A complete copy of the Bid Procedures is attached as Exhibit A to the *Order Establishing Bidding*
28 *Procedures for the Sale of Estate Property [1929 Pico Boulevard]* entered on January 7, 2010 (Doc. No.
664)

1 not be engaging in a bidding war with parties who are not *bona fide* competitive bidders. Sharp
2 Decl. at ¶ 13.

3 (b) The Sale Procedures provide that any party seeking to overbid the Buyer's bid must
4 bid an amount not less than \$125,000 above the Buyer's offer, which is a total overbid of
5 approximately 4% of the Purchase Price. In order for the estate to benefit in any material way
6 from an overbid, it is necessary to fix a minimum overbid in excess of the additional costs
7 associated therewith, such as increased broker's commissions, legal fees, interest and other costs.
8 Sharp Decl. at ¶ 14.

9 (c) The Sale Procedures entitle Qualified Bidders to make further bids at the Sale
10 Hearing. Affording parties the opportunity to increase their bids at the Sale Hearing undoubtedly
11 gives all Qualified Bidders a fair and final opportunity to make a higher and better bid. Sharp Decl.
12 at ¶ 15. By open solicitation of higher bids, the Trustee has made every effort to maximize the
13 value of the Property to the estate and its creditors. Sharp Decl. at ¶ 12.d.

14 4. Good Faith.

15 Finally, the Sale is proposed in good faith. The "good faith" requirement focuses principally
16 on the element of special treatment of a debtor's insiders in the sale transaction. *Industrial Valley*,
17 77 B.R. at 21. Here, Buyer is not an insider or affiliate of Namco, and the negotiations between the
18 Trustee and Buyer regarding the proposed Sale were at arms-length and no collusion was involved.
19 Additionally, Buyer was honest and cooperative with the Trustee in the negotiation of the Sale
20 Agreement and did not seek to gain any advantage over any other interested party or chill any other
21 previous bidding for the Property. Sharp Decl. at ¶ 13.

22 B. The Sale Should be Approved Free and Clear of all Liens, Claims, Interests and
23 Encumbrances.

24 Section 363(f) of the Bankruptcy Code provides, in pertinent part, that "[t]he trustee may
25 sell property . . . free and clear of any interest in such property of an entity other than the estate,
26 only if . . . (2) such entity consents; [or] (3) such interest is a lien and the price at which such
27 property is to be sold is greater than the aggregate value of all liens on such property; [or] (4) such
28 interest is in bona fide dispute . . ." 11 U.S.C. § 363(f). The language of § 363(f) is in the

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1 disjunctive, that is, the sale free of the interest may occur if any one of the conditions of § 363(f)
2 has been met.

3 Here, each of the purported liens, claims, interests and encumbrances described in § III.C.
4 *supra*, is subject to a good faith dispute. The Trustee has the burden of demonstrating that a *bona*
5 *fide* dispute exists. *See Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments,*
6 *Ltd.)*, 159 B.R. 821, 828 (N.D. Ill. 1993) (*citing Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D.
7 Ill. 1991)). To meet this burden, the Trustee must establish that there is an objective basis for either
8 a factual or legal dispute as to the validity of the debt. *Octagon Roofing*, 123 B.R. at 590. The
9 Court is not required to resolve the underlying dispute, but must determine that it exists. *Id.*

10 For the reasons set forth in § III.C., *supra*, the Trustee believes that the "loan" allegedly
11 secured by the First Deed of Trust was a sham transaction due to failure of consideration, as no
12 funds were advanced to Namco at the time of the transfer or otherwise in connection with the First
13 Deed of Trust. In addition, the Trustee has been unable to determine whether the note that is
14 allegedly secured by the First Deed of Trust even exists, and neither the original note nor any copy
15 has been produced to date. Sharp Decl. at ¶ 10.

16
17 Likewise, no funds were advanced to Namco from NFI in connection with the Second Deed
18 of Trust. As Namco gave NFI a lien on the Property to allegedly secure repayment of a \$2,000,000
19 loan, which loan was never made to Namco, the Deed of Trust, and lien created thereby, is a
20 fraudulent transfer. The recordation of the Second Deed of Trust against the Property, which is
21 owned by Namco, occurred approximately 6 months prior to Namco's petition date, easily within
22 the two-year period required by 11 U.S.C. § 548. Namco clearly received less than reasonably
23 equivalent value for the transfer, in that Namco received no consideration for the transfer of an
24 interest in Namco's property, *i.e.* the Second Deed of Trust. The NFI Note and Deed of Trust are
25 dated June 25, 2008, and recorded on July 3, 2008. At the time of the transfer, the Trustee is
26 informed and believes that Namco was insolvent. Sharp Decl. at ¶ 17.

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1 To the extent that NFI's transfer to Namco of \$2,000,000 in June 2007, represented the
2 funding for the alleged loan referenced in the Second Deed of Trust, the Trustee submits that the
3 transfer of the Second Deed of Trust is avoidable as a preferential transfer.

4 Accordingly, both the First Deed of Trust and the Second Deed of Trust are subject to *bona*
5 *fide* dispute, and pursuant to Bankruptcy Code § 363, the Property can be sold free and clear of all
6 claims, liens, interests and encumbrances. Any claims, liens, interests and encumbrances of record,
7 including the Assignments, shall attach to the proceeds of the Sale with the same validity, and
8 priority as existed on the Petition Date.

9 C. Buyer is Entitled to a "Good Faith" Finding.

10 Section 363(m) of the Bankruptcy Code provides that a reversal or modification of a sale
11 order does not effect the validity of a sale to "an entity that purchased ... the property in good faith."

12 "Typically, lack of good faith is shown by fraud, collusion between the purchaser and other
13 bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re M*
14 *Capital Corporation*, 290 B.R. 743, 746 (9th Cir. BAP 2003).

15 Here, Buyer is not an insider or affiliate of Namco or the Trustee. Also, the negotiations
16 leading to the Sale Agreement were at "arm's length," and no collusion was involved. Sharp Decl.
17 at ¶ 16. Thus, the Trustee believes that Buyer is a "good faith" purchaser and that this Court should
18 so find.

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VII.

CONCLUSION

Based on the foregoing the Trustee requests that this Court enter an order:

- (1) Authorizing the Sale to Buyer/Successful Bidder of the Property free and clear of all liens, claims, interests and encumbrances. Any claims, liens, interests and encumbrances of record shall attach to the proceeds of the Sale with the same validity, and priority as existed on the Petition Date;
- (2) Finding that Buyer/Successful Bidder is a "good faith" purchaser entitled to all of the protections and benefits of Bankruptcy Code § 363(m);
- (3) Waiving the 14 day stay provided for in Rule 6004(g) of the Federal Rules of Bankruptcy Procedure; and
- (4) Granting such other and further relief the Court deems just and proper.

Respectfully submitted,

Dated: January 25, 2010

JEFFER, MANGELS, BUTLER & MARMARO LLP

By: /s/ David M. Poitras
DAVID M. POITRAS P.C.
Counsel for Bradley D. Sharp,
Chapter 11 Trustee for Namco Capital Group, Inc.

JMBM
Jeffery Mangels
Butler & Marmaro LLP

DECLARATION OF BRADLEY D. SHARP

I, Bradley D. Sharp, declare as follows:

1. I am the chapter 11 trustee for the bankruptcy estate of Namco Capital Group, Inc. Each of the facts contained in this declaration is based upon my personal knowledge and, if called as a witness to do so, I could competently testify thereto.

2. The Court entered the order approving my appointment as chapter 11 trustee in this case on May 8, 2009.

3. I make this declaration in support of the *Motion of Bradley D. Sharp, Chapter 11 Trustee for the Estate of Namco Capital Group, Inc. ("Debtor" or "Namco") for an Order Authorizing Sale of Property of the Estate, Free and Clear of Liens, Claims, Interests and Encumbrances [1929 Pico Boulevard]* (the "Motion").

4. Subject to overbid and the approval of this Court, AJ Industrial Properties, LLC ("Buyer") has agreed to purchase that certain real property and improvements thereon commonly known as 1929 Pico Boulevard, Los Angeles, California (the "Property"), free and clear of all liens, claims, interests and encumbrances (the "Sale"). The Purchase Price for the Property is \$3,100,000.00, pursuant to the terms and conditions of that certain *Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate*, dated November 24, 2009 (the "Sale Agreement"), a copy of which is attached hereto as Exhibit A.

5. I have evaluated the offers to purchase the Property I have received, and in the exercise of my reasonable business judgment, I have decided to accept Buyer's offer, subject to Bankruptcy Court approval and overbid pursuant to the procedures set forth herein and as ordered by the Court. A complete copy of the Bid Procedures is attached as Exhibit A to the *Order Establishing Bidding Procedures for the Sale of Estate Property [1929 Pico Boulevard]* (the "Sale Procedures Order") entered on January 7, 2010 (Doc. No. 664). A true and correct copy of the Sale Procedures Order is attached hereto as Exhibit B.

6. Buyer has conditioned the closing of the Sale upon a good faith finding under § 363(m) by the Court.

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1 7. Pursuant to the Property's preliminary title report obtained for the Sale, the Property
2 is encumbered by the following deeds of trust and assignments (the "Assignments") of beneficial
3 interests thereof:

4 (a) Deed of Trust⁶ in the amount of \$1,650,000.00 dated December 7, 2001 to Namco
5 Financial, Inc. ("NFI") (the "First Deed of Trust").

6 Partial assignments of the beneficial interest under the First Deed of Trust from NFI
7 were purportedly made to the following:

- 8 (i) M.M.P. Family Trust (31% beneficial interest)
- 9 (ii) Moosai Revocable Family Trust (31% beneficial interest)
- 10 (iii) Manouchehr Pirian (19% beneficial interest)
- 11 (iv) Maryam Pirian, as Trustee of MMP Family Trust (31% beneficial interest)
- 12 (v) Mehrdad Naim (12% beneficial interest)
- 13 (vi) Joseph Pirian (6.5% beneficial interest)

14 (b) Deed of trust in the amount of \$2,000,000.00 dated June 25, 2008 to NFI (the
15 "Second Deed of Trust").

16 Partial assignments⁷ of the beneficial interest under the Second Deed of Trust from the
17 Debtor, were purportedly made to the following:

- 18 (a) Fereshteh Kohanim (20% beneficial interest)
- 19 (b) Soleiman Israel Naim⁸ (80% beneficial interest)

20
21 ⁶ A Notice of Default under the terms of the First Deed of Trust has been recorded by American
22 Trust Deed Services Corporation on November 28, 2008. As set forth below, I dispute the validity of the
23 First Deed of Trust. I also dispute the validity or enforceability of any assignments of the First Deed of
Trust. If I am unable to settle the claims associated with the First Deed of Trust, I will commence an
adversary proceeding to avoid the First Deed of Trust and any assignments thereof.

24 ⁷ As I have previously asserted in pleadings filed in connection with the *Motion for Relief from Stay*
25 filed by Fereshteh Kohanim and Soleiman Israel Naim (the "Transferees"), I dispute the validity of the
26 Second Deed of Trust and all purported transfers of the Second Deed of Trust to the Transferees. If I am
unable to settle the claims associated with the Second Deed of Trust, I will commence an adversary
proceeding to avoid the Second Deed of Trust and any assignments thereof.

27 ⁸ Soleiman Israel Naim has recorded a notice of a pending Court Action in Los Angeles Superior
28 Court.

1 8. In addition, the Property is subject to an attachment issued by the Los Angeles
2 Superior Court (Case No. BC398619) in connection with the case, *Abraham B. Assil, as trustee, etc.*
3 *v. Namco Capital Group, Inc., etc., et al.*

4 9. Thus, the total amount of all liens against the Property, as set forth in the preliminary
5 title reports, is \$3,650,000.00, all of which are subject to *bona fide* dispute, as described in the
6 Motion.

7 10. With the assistance of my professionals, I have conducted an investigation into the
8 First Deed of Trust, recorded on December 19, 2001 as Instrument No. 01-2432349. The First
9 Deed of Trust purportedly secures a note in the amount of \$1,650,000.00. The First Deed of Trust
10 purportedly secures "[p]ayment of the indebtedness evidenced by one promissory note of even date
11 herewith . . . in the principal sum of \$1,650,000.00." A true and correct copy of the First Deed of
12 Trust is attached hereto as Exhibit C. Currently, to the extent it even exists, the whereabouts of
13 such note is unknown. No money was received by Namco from NFI anywhere near the date of the
14 First Deed of Trust. In addition, I have been unable to determine whether the note that is allegedly
15 secured by the First Deed of Trust even exists, and neither the original note nor any copy has been
16 produced to date.

17 11. Additionally, I have conducted an investigation into the Second Deed of Trust,
18 recorded on July 3, 2008 as Instrument No. 2008-1191182. The Second Deed of Trust purportedly
19 secures a note in the amount of \$2,000,000.00, which allegedly memorializes a loan by NFI to
20 Namco. According to my investigation to date into the Second Deed of Trust, no funds were
21 advanced to Namco in connection with the Second Deed of Trust. Namco's books and records
22 reflect that Namco received the sum of \$2,000,000.00 from NFI in June 2007, but makes no
23 reference to such loan being secured by a deed of trust on the Property or any intention for such
24 loan to be secured by any of Namco's property.

25 12. Based upon the facts of this case and the advice of my counsel as to the legal issues
26 presented, I believe that it is in the best interests of the Namco estate for the Sale to be approved, for
27 at least the following reasons:

28

1 a. The holders of all **undisputed**⁹ liens, if any, against the Property will be paid
2 and satisfied;

3 b. The Estate will be relieved of the costs required to manage, insure and
4 maintain the Property;

5 c. The Sale will monetize the Property for the benefit of creditors of the Namco
6 Estate, and generate money to fund a plan of reorganization; and

7 d. The consideration provided to the estate by the Buyer pursuant to the Sale
8 Agreement represents adequate and fair consideration for the Property. Broker began marketing
9 and listing the Property on or about September 1, 2009. My professionals and I have contacted
10 numerous potential buyers and have provided various types of due diligence information to such
11 parties. Broker and I have encouraged potential overbidders to submit bids. The Sale Procedures,
12 which have been approved by this Court, were intended to increase the likelihood that the estate will
13 receive the highest and best price for the Property. By open solicitation of higher bids, I have made
14 every effort to maximize the value of the Property to the estate and its creditors.

15 13. The Sale Procedures require that prospective purchasers submit to me by 5:00 p.m.
16 on the fifth business day prior to the scheduled hearing date for the Sale Motion, satisfactory
17 evidence of such purchaser's financial ability to perform and a \$250,000 deposit in good funds,
18 which will be non-refundable if such bidder is the successful bidder at the Sale Hearing and the sale
19 does not close due to purchaser's default. These provisions give me time in advance of the hearing
20 to evaluate whether a bidder is financially capable of promptly closing a proposed transaction.
21 Also, such provisions will give potential bidders the comfort that they will not be engaging in a
22 bidding war with parties who are not bona fide competitive bidders.

23 14. The Sale Procedures provide that any party seeking to overbid the Buyer's bid must
24 bid an amount not less than \$125,000 above the Buyer's offer, which is a total overbid of
25 approximately 4% of the Purchase Price. In order for the estate to benefit in any material way

26 _____
27 ⁹ For the reasons set forth below, the Property may be sold free and clear of all claims, liens,
28 interests and encumbrances pursuant to 11 U.S.C. § 363(f). Thus, any such interests that exist as to the
Property will attach to the Sale proceeds.

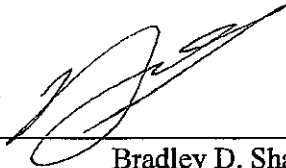
1 from an overbid, it is necessary to fix a minimum overbid in excess of the additional costs
2 associated therewith, such as increased broker's commissions, legal fees, interest and other costs.

3 15. The Sale Procedures entitle Qualified Bidders to make further bids at the Sale
4 Hearing. Affording parties the opportunity to increase their bids at the Sale Hearing undoubtedly
5 gives all Qualified Bidders a fair and final opportunity to make a higher and better bid.

6 16. Buyer is not an insider or affiliate of Namco or me, and the negotiations between me
7 and Buyer regarding the proposed Sale were at arms-length and no collusion was involved.
8 Additionally, Buyer was honest and cooperative with me in the negotiation of the Sale Agreement
9 and did not seek to gain any advantage over any other interested party or chill any other previous
10 bidding for the Property.

11 17. At the time of the transfer of the Second Deed of Trust, I am informed and believe
12 that Namco was insolvent.

13 I declare under penalty of perjury under the laws of the United States of America that
14 the foregoing is true and correct and that this declaration is executed this 22 day of January, 2010
15 at Los Angeles, California.

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18 _____
Bradley D. Sharp

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EXHIBIT A



**STANDARD OFFER, AGREEMENT AND ESCROW
INSTRUCTIONS FOR PURCHASE OF REAL ESTATE**
(Non-Residential)
AIR Commercial Real Estate Association

November 24, 2009

(Date for Reference Purposes)

1. Buyer.
1.1 ~~AJ Apartments, LLC~~ AJ Industrial Properties, LLC JB ("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 See Addendum #8.11 days after the waiver or expiration of the Buyer's Contingencies, ("Expected Closing Date") to be held by Fidelity National Title Company ("Escrow Holder") whose address is

915 Wilshire Blvd., Suite 2125, Los Angeles, CA 90017; Attn: Linda Kane
Phone No. (213) 452-7100, Facsimile No. (213) 689-9330

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.

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 or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property 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) an approximate 21,000 SF two-story building on approximately 31,000 SF of land

is located in the City of Los Angeles, County of Los Angeles
State of California, is commonly known by the street address of 1929 Pico Boulevard

and is legally described as:

(APN: 5136-022-027).

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 Company ("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: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("HVAC"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and delivered "as is where is"

(collectively, the "Improvements").

2.4 The fire sprinkler monitor is owned by Seller and included in the Purchase Price, is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, ownership will be determined during Escrow, or there is no fire sprinkler monitor.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and

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 \$3,100,000.00, payable as follows:

- (a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): \$3,100,000.00
- (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 _____).
- (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: \$

Total Purchase Price: \$3,100,000.00

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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 [X] within 2 or _____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder. Buyer shall deliver to Escrow Holder a check in the sum of \$fifty thousand dollars (\$50,000.00). If said check 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 (k) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of \$200,000.00 to be applied to the Purchase Price at the Closing.

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.

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 reasonably 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 Buyer hereby agrees to diligently pursue obtaining the New Loan. 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, after due diligence, 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.

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 The following real estate broker(s) ("Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check the applicable boxes):

- [] _____ represents Seller exclusively ("Seller's Broker");
[] _____ represents Buyer exclusively ("Buyer's Broker"); or
[X] Lee & Associates - Los Angeles West, Inc. represents both Seller and Buyer ("Dual Agency").

The Parties acknowledge that Brokers are the procuring cause of this Agreement. See paragraph 24 regarding the nature of a real estate agency relationship. 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 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 named in paragraph 7.1, and no broker or other person, firm or entity, other than said Brokers 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 or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Brokers by reason of any dealings or act of the indemnifying Party.

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.

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 20.3 and advise the Parties and Brokers, in writing, of the date ascertained.

Handwritten initials and date: AL, 1.2, INITIALS

INITIALS

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 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 prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 9.5, 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, 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 be promptly refunded all funds deposited by Buyer with Escrow Holder, less only Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

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. See Addendum B.11.

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 sale of the Property is not consummated for any reason other than Seller's breach or default, then at Seller's request, and as a condition to any obligation to return Buyer's deposit (see paragraph 21), Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property. Provided, however, that Buyer shall not be required to deliver any such report if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

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 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 (l) 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 Commercial Real Estate Association ("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 _____ days following the Date of Agreement. Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) Physical Inspection. Buyer has 10 or _____ days from 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 _____ days from 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 _____ days from 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 days of the Date of Agreement.

(e) Governmental Approvals. Buyer has 30 or _____ days from 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 and Americans with Disabilities Act requirements, transportation and environmental matters.

(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 _____ days following the Date of Agreement. Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan 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 _____ days from the receipt of the Title Commitment and Underlying Documents 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.

(h) Existing Leases and Tenancy Statements. Seller shall within 10 or _____ days of 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 _____ days of 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 days from the receipt of such documents to satisfy itself with regard to the association.

(j) Other Agreements. Seller shall within 10 or _____ days of 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 days from the receipt of said Other Agreements to satisfy itself with regard to such Agreements.

(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 of 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


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nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or _____ days from 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.

(m) ~~Personal Property.~~ In the event that any personal property is included in the Purchase Price, Buyer has 10 or _____ days from 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 of the Date of Agreement.

(n) ~~Destruction, Damage or Loss.~~ There shall not have occurred prior to the Closing, 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. "Material Change" shall mean a substantial adverse change in the use, occupancy, tenants, 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. 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 Buyer understands and agrees that until such time as all Buyer's Contingencies have been satisfied or waived, Seller and/or its agents may solicit, entertain and/or accept back-up offers to purchase the Property.

9.5 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 Required at or Before Closing: See Addendum 9.6.

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 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.

~~(d) If applicable, Estoppel Certificates executed by Seller and/or the tenant(s) of the Property.~~

(e) 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.

(f) 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.

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

~~(h) If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.~~

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.

~~(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of these 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


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reason of events occurring prior to the Closing, the amount 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 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.

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.

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(f) 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.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and, 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:

(a) Authority of Seller. Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) Maintenance During Escrow and Equipment Condition At Closing. Except as otherwise provided in paragraph 9.1(m) 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 on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) Compliance. 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 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 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 notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(n)) 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.

(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.

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 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, 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. Seller 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.

14. Buyer's Entry.

At any time during the Escrow period, Buyer, and its agents 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.

15. Further Documents and Assurances.

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. 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.

Handwritten initials and signature area.

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19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered. Any such communication sent by regular mail shall be deemed given 48 hours 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. Communications transmitted by facsimile transmission shall be deemed delivered upon telephonic confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. 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 -

on the date of _____

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, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF _____ UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

Buyer Initials

Seller 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 THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. ANY SUCH CONTROVERSY SHALL BE ARBITRATED BY 3 ARBITRATORS WHO SHALL BE IMPARTIAL REAL ESTATE BROKERS WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THEY SHALL BE APPOINTED UNDER THE COMMERCIAL RULES. THE ARBITRATORS SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, 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 AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF. 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.

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 Initials

Seller Initials

23. Miscellaneous.

23.1 Binding Effect. 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.

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.

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.

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.

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.

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

BROKER:

Lee & Associates - Los Angeles West, Inc.
a California Corporation

Attn: Patrick H. Ayau
Title: Managing Principal
Address: 1508 17th Street
Santa Monica, CA 90404
Telephone: (310) 899-2700
Facsimile: (310) 899-2701
Email: payau@leewestla.com
Federal ID No. _____

Broker/Agent DRE License #: 01222000

BUYER:

A&J Apartments, LLC AJ Industrial Properties, LLC

By: _____
Date: _____
Name Printed: _____
Title: _____
Telephone: () _____
Facsimile: () _____

By: _____
Date: _____
Name Printed: _____
Title: _____
Address: 9468 Daines Drive
Tempe City, CA 91780
Telephone: (626) 627-6185
Facsimile: (626) 872-6062
Email: aaron.chang@mac.com
Federal ID No. 26-3338173 27-1449461

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 Seller acknowledges that Brokers have been retained to locate a Buyer and are the procuring cause of the purchase and sale of the Property set forth in this Agreement. 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 _____ % of the Purchase Price to be divided equally between Seller's Broker and Buyer's Broker. 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. For the Employment Agreement with the U.S. Bankruptcy Court Case 2:08BK32333BR.

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.

BROKER:

SAME AS ABOVE.

Attn: _____
Title: _____
Address: _____
Telephone: () _____
Facsimile: () _____
Email: _____
Federal ID No.: _____

Broker/Agent DRE License #: _____

SELLER:

Bradley D. Sharp Chapter 11 Trustee ATF
The Bankruptcy Estate of Namco Capital
Group, Inc.

By: _____
Date: _____
Name Printed: _____
Title: _____
Telephone: () _____
Facsimile: () _____

By: _____
Date: _____
Name Printed: _____
Title: _____
Address: 12121 Wilshire Blvd., Suite 200
Los Angeles, CA 90025
Telephone: (310) 820-8600
Facsimile: (310) 820-7373
Email: _____
Federal ID No.: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8516.

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INITIALS

THIS AMENDMENT TO THE STANDARD OFFER AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE DATED NOVEMBER 24, 2009 (THE AGREEMENT) BY AND BETWEEN A&J APARTMENTS LLC (HEREINAFTER THE BUYER) AND BRADLEY D. SHARP CHAPTER 11 TRUSTEE FOR THE BANKRUPTCY ESTATE OF NAMCO CAPITAL GROUP, INC (HEREINAFTER THE SELLER) SHALL GIVE FULL FORCE AND EFFECT TO THE FOLLOWING ITEMS SET FORTH BELOW. TO THE EXTENT THERE ARE ANY INCONSISTENCIES BETWEEN THIS AMENDMENT AND THE STANDARD OFFER AGREEMENT AND ESCROW INSTRUCTIONS THEN THIS AMENDMENT SHALL PREVAIL.

- 8.11 THE SALE SHALL OCCUR THE LATER OF THIRTY (30) DAYS AFTER THE CONTINGENCY PERIOD OR BANKRUPTCY COURT APPROVAL OF THE SALE.
- 9.6 THE CONTINGENCY PERIOD SHALL BE FORTY FIVE (45) DAYS FROM THE MUTUAL EXECUTION AND DELIVERY OF ESCROW INSTRUCTIONS TO THE ESCROW HOLDER EXCEPT FOR ITEM 9.1 (F) WHICH SHALL BE AS STATED IN THE AGREEMENT.

27. BANKRUPTCY COURT APPROVAL CONTINGENCY

THIS PURCHASE OF REAL ESTATE IS SUBJECT TO AND CONDITIONED UPON APPROVAL OF THE UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, OR SUCH OTHER COURT OR TRIBUNAL AS HAS JURISDICTION OVER CASES FILED UNDER TITLE 11, UNITED STATES CODE. BUYER UNDERSTANDS THAT SELLER SHALL APPLY TO THE BANKRUPTCY COURT TO SELL THE PROPERTY TO BUYER ONCE ALL BUYERS' CONTINGENCIES ARE REMOVED OR SATISFIED.

BUYER UNDERSTANDS AND IS AWARE THAT:

THE BANKRUPTCY COURT MAY DISAPPROVE THIS TRANSACTION IF, IN THE COURTS' DETERMINATION, THE SALE FAILS TO MEET AT LEAST ONE OF THE QUALIFYING PROVISIONS OF 11 USC SECTION 363 FOR A SALE OUT OF THE ORDINARY COURSE; OR

THERE MAY BE AN OVERBID IN WHICH BUYER HEREIN IS NOT THE SUCCESSFUL OVERBIDDER, OR

THE TRUSTEE MAY NOT SEEK TO OBTAIN A COURT ORDER TO APPROVE THIS SALE IF HE HAS DETERMINED IT WOULD NOT BE IN THE BEST INTEREST OF THE BANKRUPTCY ESTATE TO DO SO.

IF ANY OF THE FOREGOING EVENTS SHALL OCCUR, SELLER SHALL HAVE NO LIABILITY TO BUYER AND BUYER'S PURCHASE ESCROW SHALL BE CANCELLED AND BUYER'S DEPOSIT RETURNED. SELLER SHALL HAVE NO LIABILITY TO BUYER IF THE BANKRUPTCY COURT DOES NOT APPROVE THIS SALE.

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28. REPRESENTATIONS AND WARRANTIES

All references (to the extent that such exist) as to Seller's representations, warranties, the Property's condition, its maintenance, availability of utilities, zoning, deed restrictions, special study areas, hazardous waste materials, and any other similar item stipulating or describing the condition of the Property in the Offer are deleted in their entirety with the substitution of the following new paragraphs which shall read as follows:

Buyer acknowledges that Seller has not acquired the Property for the purpose of maintaining same, but rather for the sole purpose of liquidating same.

Due to the unique nature of the Bankruptcy, Seller is unaware of the true condition of the Property.

Seller is unable to make, and shall not be required to make any representation or warranty whatsoever as to the physical condition of the Property, or as to the operative or proposed governmental laws and regulations, zoning, environmental, and land use laws and regulations, to which the Property may be subject.

As a standard matter of practice involving properties conveyed from Bankruptcy estates through court-appointed administrator, Seller's limited knowledge of the Property as the Trustee of a Bankruptcy estate does not permit Seller to sell the Property other than in its present "AS IS" condition, subject to all faults. Accordingly, the Property being sold hereunder is being sold "AS IS AND WITH ALL FAULTS, WITH NO REPRESENTATIONS MADE BY SELLER".

Personal Property: The parties understand that some of the personal property presently found at the Property as of the date of this counter-offer, including some of the appliances, may belong to Debtor, or persons other than Seller and not to the Estate or Seller. It is presently unknown which personal property is owned by Debtor, or persons other than the Estate or Seller. Any personal property not owned by Seller is also excluded from this transaction. All other goods, fixtures, furnishings, and equipment now or hereafter attached to, installed, or placed in, on, or about the Property for use as a part of the Property or in conjunction with the use and occupancy of the Property, including, but not limited to, all apparatus, machinery, fittings, doors, windows, screenings, awnings, shades, blinds, carpets, floor coverings, draperies, gas and oil and electric burners and heaters, ducts, vents, hoods, flues and registers, hot water heaters, sinks, stoves, ovens, cabinets, drain boards, heating, cooling and air-conditioning equipment, fans, ventilators, wiring, panels, all lighting fixtures, sconces, globes and tubes, time clocks and other electrical equipment, and all plumbing and plumbing fixtures and equipment, sprinklers and sprinkler equipment, and all trees, plants, shrubs, and other landscaping, together with all of the Estate's right, title,

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and interest (or equitable interest, if subject to a lease Agreement, conditional sale Agreement, or any other security interest) in such personal property shall be conveyed to Buyer without warranty or representation and are included in the purchase price.

Except for the limited scope of replacement in event of material casualty loss, there is no requirement for Seller to maintain the Property or any other items in or on the Property during the pendency of this transaction.

29. MUTUAL WARRANTIES AND REPRESENTATION OF PARTIES

The parties mutually represent and warrant each to the other as follows:

That, subject to the jurisdiction and approval of the United States Bankruptcy Court for the Central District of California and conditioned by the terms and provisions of the Order approving this transaction to be sought herein, each party has full right, power, legal capacity, and authority to enter into and perform its respective obligations under this Agreement, and no approvals or consents of any other persons or authorities are necessary in connection with this Agreement, and that the person or persons executing this Agreement on behalf of Buyer and Seller have full authority to do so.

30. WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

Seller represents and warrants that Seller is the duly appointed Trustee of the Bankruptcy Estate referenced herein.

Except for the foregoing representations and warranties contained herein and without limiting the provisions of Paragraph 6 above, Seller makes and shall be required to make, no representation or warranty, either express or implied, with respect to the Property, the physical condition of the Property, its present condition, or its fitness for any particular purpose; or the operative or proposed governmental laws and regulations, zoning, environmental, and land use laws and regulations, to which the Property may be subject.

31. WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

That Buyer's purchase of the Property shall be on the basis of Buyer's own independent review and investigation.

That Buyer has made or will make all factual, physical, and legal examinations, including the applicability and effect of all laws and regulations, and any other inquiries deemed necessary or material to Buyer's interest.

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That Buyer is purchasing property in its "AS IS" condition, SUBJECT TO ALL FAULTS, and shall assume the risk that adverse matters may not have been disclosed by Buyer's investigation.

32. DISPUTES


In the event of any dispute, claim, or controversy between the parties arising out of the sale of the Property, the Bankruptcy Court having jurisdiction over this bankruptcy Estate shall decide any such matter and all controversies or claims between the parties pursuant to Title 11 of the United States Code and the State of California, unless otherwise agreed to in writing by mutual Agreement of the parties herein. BUYER WAIVES THE RIGHT TO TRIAL BY JURY WITH REGARD TO ANY CLAIM AGAINST THE SELLER OR BROKER THAT IN ANY WAY RELATES TO THIS AGREEMENT OR TRANSACTION.

33. ASSERTION OF DISAPPROVAL OF CONTINGENCIES: All of Buyer's contingencies in this transaction shall be deemed approved unless Seller has received written notification of any disapproval on or before the time period(s) stated herein.

In Witness Hereof, both parties have agreed to this Amendment as of the time and date executed below.

A&J Apartments, LLC
A California Limited Liability Company

Bradley D. Sharp Chapter 11 Trustee
ATF the Bankruptcy Estate of
Namco Capital Group INC

BY: 
DATE: 12/19/09

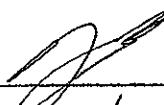
BY: 
DATE: 1-22-10

EXHIBIT B

FILED & ENTERED
JAN 07 2010
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY fortier DEPUTY CLERK

1 JOSEPH A. EISENBERG P.C. (State Bar No. 52346)
2 DAVID M. POITRAS P.C. (State Bar No. 141309)
3 THOMAS M. GEHER (State Bar No. 130588)
4 CAROLINE R. DJANG (State Bar No. 216313)
5 JEFFER, MANGELS, BUTLER & MARMARO LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, California 90067-4308
Telephone: (310) 203-8080
Facsimile: (310) 203-0567

6 Counsel for Bradley D. Sharp, Chapter 11 Trustee
7 for Namco Capital Group, Inc.

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11
12 In re:
13
14 NAMCO CAPITAL GROUP, INC., a California
corporation,
15
16 Debtor.

Case Number.: 2:08-bk-32333-BR
Chapter 11

**ORDER ESTABLISHING BIDDING
PROCEDURES FOR THE SALE OF
ESTATE PROPERTY [1929 PICO
BOULEVARD]**

Hearing:
Date: December 29, 2009
Time: 2:00 p.m.
Judge: Courtroom 1668
255 East Temple Street
Los Angeles, CA 90012

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26 The Motion of Bradley D. Sharp (the "Trustee"), Chapter 11 Trustee for the Estate of
27 Namco Capital Group, Inc. for an Order Approving Procedures in Connection with Proposed Sale
28 of Property of the Estate (the "Motion"), came on for hearing on December 29, 2009, at 2:00 p.m.,

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Butler & Marmaro LLC

1 after notice, pursuant to that *Order Establishing Notice Procedures and Permitting Service on*
2 *Insured Depository Institutions by First Class Mail* (the "Limited Notice Order"), entered on
3 February 9, 2009, to all parties entitled to notice as established by the Limited Notice Order.

4 Based on the Motion and the other pleadings on file herein, this Court finds that notice of
5 the Motion given to creditors and the hearing thereon was appropriate in the particular
6 circumstances of this case pursuant to 11 U.S.C. § 102.

7 Any objections to the Motion are overruled to the extent inconsistent with this Order.

8 Based thereon and other good cause appearing therefor,

9 **IT IS HEREBY ORDERED:**

10 1. The Motion is hereby approved and granted.

11 2. The form of bidding procedures ("Bidding Procedures") described in Exhibit 1
12 attached hereto are approved. Capitalized terms used in this Order and not specifically defined
13 herein shall have the meaning ascribed to such terms in Exhibit 1.

14 3. A hearing will be held on February 17, 2010 at 10:00 a.m. to consider a motion to be
15 filed by the Trustee for approval to sell that certain real property and improvements thereon
16 commonly known as 1929 Pico Boulevard, Los Angeles, California (the "Property") ("Sale Motion"
17 or "Sale Hearing" as applicable) to AJ Industrial Properties ("Buyer") pursuant to that certain
18 *Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate*, dated November
19 24, 2009 (the "AJ Sale Agreement").

20 4. The proposed sale to Buyer pursuant to the AJ Sale Agreement shall be subject to
21 overbid at the Sale Hearing on the terms and conditions set forth below.

22 5. In order to bid, unless waived by the Trustee, any prospective purchaser must submit
23 the following items to the Trustee by 5:00 p.m. on the fifth business day prior to the scheduled
24 hearing date for the Sale Motion (i.e. 5:00 p.m. on February 10, 2010):

- 25 • A letter stating that the bidder's offer is irrevocable until the earlier of (x) two (2)

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1 business days after the Property has been disposed of pursuant to the Bidding Procedures, and
2 (y) thirty (30) days after the Sale Hearing.

3 • An executed copy of an asset purchase agreement: (i) acceptable in form to the
4 Trustee (the "Overbid Purchase Agreement"), (ii) clearly marked to show any changes from the
5 terms of the AJ Sale Agreement, or (iii) on the same or more favorable terms as the AJ Sale
6 Agreement; provided, however, the purchase price in such proposed Overbid Purchase Agreement
7 must be at least \$3,250,000.

9 • A good faith deposit (the "Good Faith Deposit") in the form of a certified check (or
10 other form acceptable to the Trustee in its sole discretion) payable to the order of the Trustee (or
11 such other party as the Trustee may determine to hold such funds in escrow) in an amount equal to
12 \$250,000.

13 • Written evidence of a commitment for financing or other evidence of ability to
14 consummate the proposed transaction satisfactory to the Trustee in his sole discretion.

16 • Only bids on terms that are not conditioned on obtaining financing will be
17 considered. A bid received from a Qualified Overbidder that includes all of the Required Bid
18 Documents and meets all of the above requirements is a "Qualified Bid." The AJ offer and any
19 overbid by AJ is also a "Qualified Bid."

21 6. Any bidding for the Property shall be conducted pursuant to the following rules and
22 procedures:

23 a. After all Qualified Bids have been received, the Trustee may conduct an auction (the
24 "Auction") for the Property. Such Auction shall take place at the United States Bankruptcy Court
25 for the Central District of California, Los Angeles Division, 255 E. Temple Street, Los Angeles,
26 California 90012, Courtroom 1668 (the "Bankruptcy Court") on February 17, 2010, commencing at
27 10:00 a.m. Only a Qualified Overbidder who has submitted a Qualified Bid will be eligible to
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1 participate at the Auction. At such Auction, AJ and Qualified Overbidders will be permitted to
2 increase their bids. Based upon the terms of the Qualified Bids received, the level of interest
3 expressed as to the Property and such other information as the Trustee determines is relevant, the
4 Trustee, in its reasonable discretion, may conduct an Auction in the manner he determines will
5 result in the highest or otherwise best offer for the Property including, but not limited to (i) setting
6 subsequent bid amounts in \$25,000 increments or such other amounts as the Bankruptcy Court may
7 order; and (ii) providing for such additional procedural rules that the Trustee determines, subject to
8 Bankruptcy Court approval, to be reasonable under the circumstances for conducting the Auction.
9

10 b. Upon conclusion of an Auction (or, if the Trustee determines not to hold an Auction,
11 then promptly following the Bid Deadline), the Trustee shall (i) review each Qualified Bid on the
12 basis of financial and contractual terms and the factors relevant to the sale process, including those
13 factors affecting the speed and certainty of consummating the Sale and (ii) identify the highest and
14 otherwise best offer (the "Successful Bid"). At the Sale Hearing, the Trustee shall present to the
15 Court for approval the Successful Bid and any backup bids. Subject to Bankruptcy Court approval,
16 Seller may adopt rules for the bidding process that are not inconsistent with any of the provisions of
17 the Bankruptcy Code, any Bankruptcy Court Order, or these Bidding Procedures.
18

19 c. The Sale Hearing shall take place at the Bankruptcy Court immediately following the
20 Auction. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of
21 the adjourned date of a Sale Hearing. At such Sale Hearing, Seller shall present the Successful Bid
22 to the Bankruptcy Court for approval.
23

24 d. Following a Sale Hearing approving the sale of the Property to a Successful Bidder,
25 if such Successful Bidder fails to consummate an approved sale because of a breach or failure to
26 perform on the part of such Successful Bidder, (a) it will forfeit its Good Faith Deposit to the
27 Trustee and the Trustee may pursue any and all of its options at law and in equity with respect to
28 such breach and (b) the next highest or otherwise best Qualified Bid, as disclosed at the Sale

1 Hearing, shall be deemed to be the Successful Bid and the Trustee shall be authorized to effectuate
2 such sale without further order of the Bankruptcy Court or (c) the Trustee shall reschedule at a later
3 date and time another auction for the Property.

4 7. Pursuant to Local Bankruptcy Rule 9013-1(f), any opposition to the Sale Motion
5 must be filed with the Bankruptcy Court and served on counsel for the Trustee no later than 14 days
6 before the date designated for hearing on the Sale Motion.

7 8. Pursuant to Local Bankruptcy Rule 9013-1(g), any reply to any opposition to the
8 Sale Motion must be in writing and must be filed and served so that it is actually received no later
9 than 7 days before the date designated for hearing on the Sale Motion.

10 9. This Order shall take effect immediately upon entry.

11 10. This Court retains exclusive jurisdiction to resolve any dispute arising from or
12 relating to this Order.

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26 DATED: January 7, 2010

27 United States Bankruptcy Judge

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Butler & Marmaro LLP

1 **EXHIBIT "A"**

2 **Bidding Procedures**

3 Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with
4 respect to the prospective sale (the "Sale") of the following real property of Bradley D. Sharp,
5 Chapter 11 Trustee for the Estate of Namco Capital Group, Inc. (the "Seller"): (i) that certain real
6 property commonly known as: 1929 Pico Boulevard, Los Angeles, California (the "Property"),
7 (ii) all of Seller's rights appurtenant thereto.

8 Seller has currently entered into an agreement for the purchase and sale of the Property to
9 AJ Industrial Properties, LLC or its designee ("AJ") (the "AJ Sale Agreement"). Seller will seek
10 entry of an order by the United States Bankruptcy Court, among other things, authorizing and
11 approving the Sale to AJ or to a Qualified Overbidder (as hereinafter defined) which the Bankruptcy
12 Court may determine to have made the highest or otherwise best offer to purchase the Property (the
13 "Successful Bidder").

14 **The Bidding Process**

15 Seller shall (i) determine whether any person is a Qualified Overbidder, (ii) coordinate the
16 efforts of Qualified Overbidders in conducting their respective due diligence investigations
17 regarding the Property, (iii) receive offers from Qualified Overbidders, and (iv) negotiate any offer
18 made to purchase the Property (collectively, the "Bidding Process"). Any person who wishes to
19 participate in the Bidding Process must be a Qualified Overbidder. Neither Seller nor its
20 representatives shall be obligated to furnish any information of any kind whatsoever related to the
21 Property to any person who is not a Qualified Overbidder. Seller shall have the right to adopt such
22 other rules for the Bidding Process which, in its reasonable judgment, will better promote the goals
23 of the Bidding Process and which are not inconsistent with any of the other provisions hereof or of
24 any Bankruptcy Court order.

25 **Participation-Bid Requirements**

26 Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the
27 Bidding Process, each person (a "Potential Bidder") must deliver (unless previously delivered) to
28 Seller the following documents (the "Required Bid Documents"), unless Seller waives in writing
any/all of these requirements:

(a) An executed confidentiality agreement in form and substance satisfactory to Seller;

(b) Current financial statements or other financial information of the Potential Bidder,
or, if the Potential Bidder is an entity formed for the purpose of acquiring the Property, current
financial statements or other financial information of the equity holder(s) of the Potential Bidder, or
such other form of financial disclosure acceptable to Seller and its advisors, demonstrating such
Potential Bidder's ability to close the proposed transaction;

(c) A letter stating that the bidder's offer is irrevocable until the earlier of (x) two (2)
business days after the Property has been disposed of pursuant to these Bidding Procedures, and (y)
thirty (30) days after the Sale Hearing;

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1 (d) An executed copy of an asset purchase agreement: (i) acceptable in form to Seller
2 (the "Overbid Asset Purchase Agreement"), (ii) clearly marked to show any changes from the terms
3 of the AJ Sale Agreement, or (iii) on the same or more favorable terms as the AJ Sale Agreement;
4 provided, however, the purchase price in such proposed Overbid Asset Purchase Agreement must
5 be at least \$3,250,000;

6 (e) A good faith deposit (the "Good Faith Deposit") in the form of a certified check (or
7 other form acceptable to Seller in its sole discretion) payable to the order of Seller (or such other
8 party as Seiler may determine to hold such funds in escrow) in an amount equal to \$250,000; and

9 (f) Written evidence of a commitment for financing or other evidence of ability to
10 consummate the proposed transaction satisfactory to Seller in its sole discretion.

11 Seller will consider a bid only if the bid is on terms that are not conditioned on obtaining
12 financing.

13 A Qualified Overbidder is a Potential Bidder that delivers the documents described in
14 subparagraphs (a), (b), (c), (d), (e) and (f) above, whose financial information demonstrates the
15 financial capability of the Potential Bidder to consummate the Sale, and that Seller determines is
16 reasonably likely (based on the availability of financing, experience and other considerations) to
17 submit a bona fide offer and to be able to consummate the Sale if selected as the Successful Bidder.

18 Within three (3) business days after a Potential Bidder delivers all of the materials required
19 by subparagraphs (a), (b), (c), (d), (e) and (f) above, Seller shall determine, and shall notify the
20 Potential Bidder in writing, whether the Potential Bidder is a Qualified Overbidder.

21 The A&J offer set forth in the AJ Sale Agreement and any overbid by AJ is also a "Qualified
22 Bid" herein.

23 **Bid Protection**

24 AJ shall be entitled to be paid a \$93,000 termination fee if a higher or otherwise better offer
25 from another bidder results in a closed sale to such other bidder and AJ was not in default of any of
26 its obligations under the AJ Sale Agreement and was otherwise ready, willing and able to close a
27 sale for the Property.

28 **Due Diligence**

Seller may afford each Qualified Overbidder due diligence access to the Property. Seller
will designate an employee or other representative to coordinate all reasonable requests for
additional information and due diligence access for such bidders. Seller shall not be obligated to
furnish any due diligence information after the Bid Deadline (as defined herein). Neither Seller nor
any of its affiliates (or any of their respective representatives) are obligated to furnish any
information relating to the Property to any person except to a Qualified Overbidder who makes an
acceptable preliminary proposal. Bidders are advised to exercise their own discretion before relying
on any information regarding the Property provided by anyone other than Seller or its
representatives.

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Bid Deadline

A Qualified Overbidder that desires to make a bid shall deliver a written copy of its bid to Seller's counsel, David M. Poitras P.C. of Jeffer, Mangels, Butler & Marmaro LLP at 1900 Avenue of the Stars, Seventh Floor, Los Angeles, California 90067 (fax 310-203-0567; email: dpoitras@jmbm.com) on or before 5:00 p.m. on the fifth business day prior to the scheduled hearing date for the Trustee's Sale Motion. Seller may extend such deadline in its sole discretion (such deadline, including such extension, the "Bid Deadline"). In addition to the above-referenced extension, Seller may extend the Bid Deadline once or successively, but it is not obligated to do so.

"As Is, Where Is"

The sale of the Property shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by Seller, its agents or its bankruptcy estate except to the extent set forth in the Overbid Asset Purchase Agreement of the Successful Bidder as accepted by Seller and approved by the Bankruptcy Court. Except as otherwise provided in the AJ Sale Agreement or an Overbid Asset Purchase Agreement acceptable to Seller, and approval by the Bankruptcy Court, all Seller's right, title and interest in and to the Property shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "Interests") in accordance with Sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale of the Property.

Each bidder shall be deemed to acknowledge and represent it has had an opportunity to inspect and examine the Property and to conduct any and all due diligence regarding the Property prior to making its offer; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, the AJ Sale Agreement or the Overbid Asset Purchase Agreement.

Auction

After all Qualified Bids have been received, Seller may conduct an auction (the "Auction") for the Property if Qualified Bids have been received. Such Auction shall take place at the United States Bankruptcy Court for the Central District of California, Los Angeles Division, 255 East Temple Street, Los Angeles, California, Courtroom 1668 (the "Bankruptcy Court") on February 17, 2010 commencing at 10:00 a.m. Only a Qualified Overbidder who has submitted a Qualified Bid will be eligible to participate at the Auction. At such Auction, AJ and Qualified Overbidders will be permitted to increase their bids. Based upon the terms of the Qualified Bids received, the level of interest expressed as to the Property and such other information as Seller determines is relevant, Seller, after reasonable efforts to consult with interested parties, Seller shall recommend and the Bankruptcy Court may conduct an Auction in the manner designed to result in the highest or otherwise best offer for the Property including, but not limited to (i) setting subsequent bid amounts in \$25,000 increments or such other amounts as the Bankruptcy Court may order and (ii) providing for such additional procedural rules that Seller determines, subject to Bankruptcy Court approval, to be reasonable under the circumstances for conducting the Auction.

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Jeffer Mangels
Butler & Marmaro LLP

1 Upon conclusion of an Auction or, if Seller determines not to hold an Auction, then
 2 promptly following the Bid Deadline, Seller shall (i) review each Qualified Bid on the basis of
 3 financial and contractual terms and the factors relevant to the sale process, including those factors
 4 affecting the speed and certainty of consummating the Sale and (ii) identify the highest and
 5 otherwise best offer (the "Successful Bid"). At the Sale Hearing, Seller shall present to the
 6 Bankruptcy Court for approval the Successful Bid and any backup bids. Subject to Bankruptcy
 7 Court approval, Seller may adopt rules for the bidding process that are not inconsistent with any of
 8 the provisions of the Bankruptcy Code, any Bankruptcy Court Order, or these Bidding Procedures.

6 **Acceptance of Qualified Bids**

7 Seller presently intends to sell the Property to A&J or the highest or otherwise best Qualified
 8 Overbidder. Seller's presentation to the Bankruptcy Court for approval of a particular Qualified Bid
 9 does not constitute Sellers' acceptance of such bid. Seller will be deemed to have accepted a bid
 10 only when the bid has been approved by an order of the Bankruptcy Court.

10 **Sale Hearing**

11 The Sale Hearing, shall take place at the Bankruptcy Court immediately following the
 12 Auction. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of
 13 the adjourned date of a Sale Hearing. At such Sale Hearing, Seller shall present the Successful Bid
 14 to the Bankruptcy Court for approval.

15 Following a Sale Hearing approving the sale of the Property to a Successful Bidder, if such
 16 Successful Bidder fails to consummate an approved sale because of a breach or failure to perform
 17 on the part of such Successful Bidder, (a) it will forfeit its Good Faith Deposit to Seller and Seller
 18 may pursue any and all of its options at law and in equity with respect to such breach and (b) the
 19 next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be deemed to be
 20 the Successful Bid and Seller shall be authorized to effectuate such sale without further order of the
 21 Bankruptcy Court or (c) Seller shall reschedule at a later date and time another auction for the
 22 Property.

19 **Return of Good Faith Deposit**

20 Within five (5) business days after the entry by the Bankruptcy Court approving the sale of
 21 the Property to the Successful Bidder, any Good Faith Deposits submitted by Qualified Bidders
 22 shall be returned, along with interest accrued thereon, except for the Good Faith Deposit of the
 23 Successful Bidder (and except with respect to any Qualified Bidder willing to serve as a back-up
 24 bidder), in which case the Good Faith Deposit will be applied to the purchase price for the Property,
 25 and except with respect to any bidder that forfeits its Good Faith Deposit. In the event a back-up
 26 bidder is selected and agrees to be designated as such, that Qualified Bidder's Good Faith Deposit
 27 shall continue to be held until the time the sale to the Successful Bidder closes or the back-up bidder
 28 becomes the Successful Bidder, at which time the Good Faith Deposit will be applied to the
 purchase price.

26 **Modifications**

27 Seller may (a) determine, in its business judgment, which Qualified Bid, if any, is the
 28 highest or otherwise best offer; and (b) reject at any time before the entry of an order of the
 Bankruptcy Court approving a Qualified Bid, any bid that, in Seller's reasonable discretion is (i)
 inadequate or insufficient, (ii) not in conformity with the conditions of sale, or (iii) contrary to the

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1 best interests of Seller, its estate and/or its creditors. At or before the Sale Hearing, Seller may
 2 impose such other terms and conditions as it may determine to be in the best interest of Seller's
 3 bankruptcy estate, its creditors and/or other parties in interest, provided that any such other terms or
 4 conditions are approved by the Bankruptcy Court.
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1 **NOTICE OF ENTERED ORDER AND SERVICE LIST**

2 Notice is given by the court that a judgment or order entitled (specify) ORDER ESTABLISHING
3 BIDDING PROCEDURES FOR THE SALE OF ESTATE PROPERTY [1929 PICO
4 BOULEVARD] was entered on the date indicated as "Entered" on the first page of this judgment or
order and will be served in the manner indicated below:

5 **I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** Pursuant
6 to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served
7 on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of
8 December 30, 2009, the following person(s) are currently on the Electronic Mail Notice List for this
bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es)
indicated below.

9 Service information continued on attached page

10 **II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this
11 judgment or order was sent by U.S. Mail to the following person(s) and/or entity(ies) at the
address(es) indicated below:

12 Service information continued on attached page

13 **III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of
14 this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will
15 serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile
16 transmission or email and file a proof of service of the entered order on the following person(s)
and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es)
indicated below:

17 Service information continued on attached page

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1 **ADDITIONAL SERVICE INFORMATION**

2
3 **I. TO BE SERVED BY NEF**

- 4 • Simon Aron saron@wrslawyers.com
- 5 • Raymond H Aver ray@averlaw.com
- 6 • Robert D Bass rbass@greenbass.com
- 7 • Christine E Baur christine.e.baur@bakernet.com,
8 tracey.l.angelopoulos@bakernet.com;anne.w.hamann@bakernet.com;ali.m.m.mojdehi@bak
9 ernet.com;jane.b.mackie@bakernet.com
- 10 • Michael Jay Berger michael.berger@bankruptcypower.com,
11 michael.berger@bankruptcypower.com
- 12 • Stephen F Biegenzahn efile@sfblaw.com
- 13 • J Scott Bovitz bovitz@bovitz-spitzer.com
- 14 • Gillian N Brown gbrown@pszjlaw.com, gbrown@pszjlaw.com
- 15 • Shirley Cho scho@pszjlaw.com
- 16 • Russell Clementson russell.clementson@usdoj.gov
- 17 • Alicia Clough alicia.clough@kayescholar.com
- 18 • Yona Conzevoy yconzevoy@dwclaw.com
- 19 • Brian L Davidoff b davidoff@rutterhobbs.com,
20 calendar@rutterhobbs.com;jreinglass@rutterhobbs.com
- 21 • Melissa Davis mdavis@shbllp.com
- 22 • Daniel Denny ddenny@gibsondunn.com
- 23 • Richard K Diamond rdiamond@dgdgk.com
- 24 • Richard K Diamond jlv@dgdgk.com, rdiamond@ecf.epiqsystems.com
- 25 • Caroline Djang crd@jmbm.com
- 26 • Joseph A Eisenberg jae@jmbm.com
- 27 • Robert Esensten resensten@wcclaw.com
- 28 • Michael G Fletcher mfletcher@franzel.com, efileing@franzel.com;shom@franzel.com
- Alan W Forsley awf@fredmanlieberman.com
- Heather Fowler heather.fowler@lw.com, colleen.rico@lw.com
- Jon H Freis jon@jhflaw.net
- Sandford Frey Sfrey@cmkllp.com
- Vanessa B Fung vfung@sobini.com
- Philip A Gasteier pgasteier@rdwlawcorp.com
- Thomas M Geher tmg@jmbm.com
- Barry S Glaser bglaser@swjlaw.com
- Steven Glaser sglaser@wwlp.com
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rgoe@goeforlaw.com,mforsythe@goeforlaw.com
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- Seymone Javaherian sj@javlaw.com

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- 3 • Stuart I Koenig Skoenig@cmkllp.com
- 4 • Michael S Kogan mkogan@ecjlaw.com
- 5 • John P Kreis jkreis@attglobal.net
- 6 • Jeffrey A Krieger jkrieger@ggfirm.com
- 7 • Duane Kumagai dkumagai@rutterhobbs.com, calendar@rutterhobbs.com
- 8 • Steven N Kurtz lgreenstein@laklawyers.com, rfeldon@laklawyers.com
- 9 • Pamela Labruyere pamelal@sgsslaw.com
- 10 • Ronald L Leibow rleibow@kayescholar.com
- 11 • Jennifer Leland jleland@pwkllp.com
- 12 • John T Madden jmadden@wglp.com
- 13 • Harris M Madnick hmadnick@reederlugreen.com
- 14 • William Malcolm bill@mclaw.org
- 15 • Elmer D Martin elmermartin@msn.com
- 16 • Daniel J McCarthy dmccarthy@hillfarrer.com
- 17 • David W. Meadows david@davidwmeadowslaw.com
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- 19 • Elissa Miller emiller@sulmeyerlaw.com
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- 21 • Susan I Montgomery susan@simontgomerylaw.com
- 22 • Monserrat Morales mmorales@pwkllp.com
- 23 • Randall P Mroczynski randym@cookseylaw.com
- 24 • Vicente Matias Murrell murrell.vicente@pbgc.gov
- 25 • R. Todd Neilson rneilson@ecf.epiqsystems.com, vdoran@lecg.com;sgreenan@lecg.com
- 26 • David Norouzi david@norouzi.us
- 27 • Scott H Noskin snoskin@mirmanbubman.com
- 28 • William Novotny william.novotny@mwmf.com
- Walter K Oetzell woetzell@dgdk.com
- Sam S Oh sam.oh@limruger.com,
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- Bruce S Schildkraut bruce.schildkraut@usdoj.gov
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- David B Shemano dshemano@pwkllp.com
- Robyn B Sokol ecf@ebg-law.com, rsokol@ebg-law.com

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- Nico N Tabibi nico@tabibilaw.com
- Sam Tabibian sam.tabibian@gmail.com
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- David A Tilem davidtilem@tilemlaw.com,
malissamurguia@tilemlaw.com;marcyarman@tilemlaw.com;ldiaz@tilemlaw.com;dianach
au@tilemlaw.com
- Alan G Tippie atippie@sulmeyerlaw.com, jbartlett@sulmeyerlaw.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Howard J Weg hweg@pwkllp.com
- Michael H Weiss mw@weissandspees.com,
lm@weissandspees.com;jb@weissandspees.com
- Kimberly S Winick kwinick@clarktrev.com
- Rebecca J Winthrop winthropr@ballardspahr.com
- Beth Ann R Young bry@lnbrb.com
- Afshin Youssefeyeh ady@adylaw.com

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JMBM

EXHIBIT C



01-2432349

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
1:21 PM DEC 19 2001

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FEE \$ 17 BB

CODE
20

DA. FEE Code 20 \$ 4.00

CODE
19

CODE
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NOTIFICATION SENT \$4

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

THIS FORM IS NOT TO BE DUPLICATED

01 2432349

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

TIMCOR FINANCIAL CORP.
11500 W. Olympic Blvd., #425
Los Angeles, CA 90064-1528

A.P.N. : 4352-002-014

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LONG FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this 7th day of December 2001, between Namco Capital Group, Inc, a California corporation

whose address is 11940 San Vicente Blvd, Los Angeles, CA 90049 (number and street) hereinafter called TRUSTOR, Woodman Partners LLC, a California limited liability company (city) (zone) (state) Namco Financial Inc., a California corporation herein called TRUSTEE, and herein called BENEFICIARY.

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Los Angeles County, California, described as:

Lots 19,20,21, 22 and south 40 feet of Lot 23 of Victoria Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 34 Page(s) 7 of Miscellaneous Records, in the office of the County Recorder of said county.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing:

1. Performance of each agreement of Trustor herein contained. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension of renewal thereof, in the principal sum of \$1,650,000.00 executed by Trustor in favor of Beneficiary or order.

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonable necessary, the specific enumeration herein not excluding the general.

(2) To provide maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all incumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof; Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

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(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note of endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

Signature of Trustor

Napco Capital Group, Inc.

Eli Namvar - President

STATE OF CALIFORNIA
COUNTY OF Los Angeles
On Dec 7, 2001 before me, Jo Ann Knight, a
Notary Public in and for said County and State, personally appeared

Eli Namvar, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Signature

WITNESS my hand and official seal.



(This Area for Official notarial seal)

01-2432349

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In re: NAMCO CAPITAL GROUP, INC., a California corporation Debtor(s).	CHAPTER 11 CASE NUMBER 2:08-bk-32333-BR
--	--

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 Avenue of the Stars, Seventh Floor, Los Angeles, California 90067-4308

The foregoing document described NOTICE OF MOTION AND MOTION OF BRADLEY D. SHARP, CHAPTER 11 TRUSTEE FOR THE ESTATE OF NAMCO CAPITAL GROUP, INC. FOR ORDER AUTHORIZING SALE OF PROPERTY OF THE ESTATE, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES [1929 PICO BOULEVARD]; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF BRADLEY D. SHARP will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On January 25, 2010, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):
On January 25, 2010, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

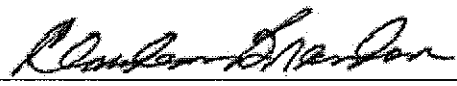
[Served By U.S. Mail]
Honorable Barry Russell
United States Bankruptcy Court
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

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

<u>January 25, 2010</u> Date	Claudean Brandon Type Name	
---------------------------------	-------------------------------	--

In re: NAMCO CAPITAL GROUP, INC., a California corporation	Debtor(s).	CHAPTER 11 CASE NUMBER 2:08-bk-32333-BR
--	------------	--

ADDITIONAL SERVICE INFORMATION (if needed):

I. To Be Served By NEF

- Simon Aron saron@wrslawyers.com
- Raymond H Aver ray@averlaw.com
- Robert D Bass rbass@greenbass.com
- Christine E Baur christine.e.baur@bakernet.com,
tracey.l.angelopoulos@bakernet.com;anne.w.hamann@bakernet.com;ali.m.m.mojdehi@bakernet.com;jane.b.mackie@bakernet.com
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michael.berger@bankruptcypower.com;crisina.frankian@bankruptcypower.com
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- J Scott Bovitz bovitz@bovitz-spitzer.com
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In re: NAMCO CAPITAL GROUP, INC., a California corporation	Debtor(s).	CHAPTER 11 CASE NUMBER 2:08-bk-32333-BR
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In re: NAMCO CAPITAL GROUP, INC., a California corporation

Debtor(s).

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