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## CONDOMINIUM TERMINATION AGREEMENT

This Condominium Termination Agreement (the “**Agreement**”) is entered into on April 9<sup>th</sup>, 2019, by and between DORSEY PLACE CONDOMINIUM ASSOCIATION, an Arizona nonprofit corporation (“**Association**”), and PFP DORSEY INVESTMENTS, LLC, a Delaware limited liability company (“**PFP**”), and all the Owners (defined below).

### RECITALS

WHEREAS, Association is a condominium association organized to manage the condominium known as DORSEY PLACE CONDOMINIUMS (the “**Condominium**”), including the management of common elements and enforcement of that certain Declaration of Condominium for Dorsey Place Condominiums recorded on August 15, 2007 as Document No. 2007-0921387, in the Official Records, and as amended by that First Amendment to Declaration of Condominium for Dorsey Place Condominiums recorded on September 3, 2009 as Document No. 2009-0825688, in the Official Records, and as amended by that Second Amendment to Declaration of Condominium for Dorsey Place Condominiums recorded on February 29, 2012 as Document No. 2012-0168217, in the Official Records, and as amended by that Third Amendment to Declaration of Condominium for Dorsey Place Condominiums recorded on March 2, 2018 as Document No. 2018-0161234, in the Official Records of Maricopa County, Arizona (the “**Declaration**”).

WHEREAS, the Condominium is depicted and described in that certain plat recorded in Book 938 of Maps, Page 7 and as Document No. 2007-0856826 in the Official Records of Maricopa County, Arizona and further depicted and described in that certain replat of commercial space and a portion of common element of the Condominium recorded in Book 1246 of Maps, Page 16 and as Document No. 2015-0740949 in the Official Records of Maricopa County, Arizona (the “**Plat**”). All property described in the Plat and subject to the Declaration is referred to herein as the “**Project**.”

WHEREAS, pursuant to the Arizona Condominium Act, at A.R.S. § 33-1228(A), a condominium may be terminated by agreement of Unit owners (the Unit owners of Units within the Condominium are referred to herein collectively as “**Owners**,” and individually as “**Owner**”) of Units to which at least eighty percent (**80%**) of the votes in the Association are allocated, or any larger percentage the Declaration specifies.

WHEREAS, the Declaration specifies that the agreement of at least ninety percent (**90%**) of the Owners is required to terminate the Condominium.

WHEREAS, the Owners of Units to which at least ninety percent of the votes in the Association are allocated have agreed to terminate the Condominium as evidenced by the written ratification of this Agreement by such Unit owners attached hereto as **Exhibit A** and incorporated herein by this reference.

WHEREAS, Association is agreeing on behalf of the Owners to a sale of all portions of and interest in the Project not already owned by PFP, to PFP, upon termination of the Condominium (such property to be sold is referred to herein as “**Purchased Property**” and is described on **Exhibit B** attached hereto and incorporated herein by this reference.

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meaning as provided in the Declaration.

### **AGREEMENT TERMS AND CONDITIONS**

In light of the foregoing, and for valuable consideration, the receipt of which is hereby acknowledged, the Association, PFP, and Owners agree as follows:

1. Recitals. The foregoing recitals, which the parties to this Agreement represent and warrant are true and correct, are incorporated by this reference into these Agreement Terms and Conditions.

2. Effective upon Recording. Unofficial Document This Agreement is effective immediately upon being recorded in the official records of the county recorder of Maricopa County, Arizona.

3. Effect of Termination of Condominium. Upon termination of the Condominium, the Declaration and Plat are of no further force and effect upon recording of this Agreement and at such time the Project will not be subject to any plat.

4. Title to the Project; Power of Association. Upon termination of the Condominium, title to the Purchased Property vests in the Association as trustee for the holders of all interest in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale described in this Agreement.

5. Sale of the Purchased Property. All interest in the Purchased Property shall be sold by the Association to PFP promptly following termination of the Condominium, as described herein and for the consideration set forth below.

a. Determination of the Respective Interests of Unit Owners.

i. *Fair Market Value Determination*. An independent appraiser, K&T Appraisals, Inc., chosen by the Association has valued the Project. The appraiser’s determination of fair market value (“**Association’s Appraisal**”) report will be distributed to the Owners for review and shall become final as to each respective Unit if not disapproved as set forth herein below.

- ii. *Owner Disapproval.* In the event an Owner disapproves of the Association's Appraisal of such Owner's Unit, such Owner shall obtain a second independent appraisal of the fair market value of such Owner's Unit ("Owner's Appraisal") at such Owner's expense and provide the Association with a copy of the Owner's Appraisal report within sixty (60) days from the date the Association's Appraisal was originally distributed to the Owners for review. If the Owner's Appraisal amount differs from the Association's Appraisal amount by:
1. five percent (5%) or less, the higher determination of fair market value shall be final and binding as to such Unit.
  2. more than five percent (5%), the Association's Appraisal of the Unit shall be final and binding as to such Unit; provided, however, that if Owner submits the issue (referred to herein as an "**Arbitrable Issue**") to arbitration in accordance with the terms set forth herein below, then the fair market value determined by the arbitrator shall be final and binding as to such Unit.
- iii. *Arbitration.* Arbitrable Issues shall be resolved by final and binding arbitration as set forth herein.
1. No later than the seventieth (70<sup>th</sup>) day after the Association's Appraisal was originally distributed to the Owners for review (the "**Submission** Unofficial Document"), the Owner shall submit the Arbitrable Issue to arbitration by delivering a notice of arbitration to the Association setting out the nature of the Arbitrable Issue and the relief requested.
  2. Within ten (10) days of the receipt of the notice of arbitration, the Association shall deliver to the Owner its answer, which shall indicate whether the Association will contest the Owner's Appraisal.
  3. The tribunal shall consist of one arbitrator, appointed as follows: the appraiser who authored the Owner's Appraisal and the appraiser who authored the Association's Appraisal shall, within seven (7) days of delivery of the answer, act together to appoint a third independent appraiser who shall act as the arbitrator.
  4. The arbitrator shall decide the procedures to be followed in the arbitration after consultation with the Owner and the Association.
  5. All fees and costs of the arbitrator shall be paid by the Association.
  6. The fair market value determined by the arbitrator shall be final and binding as to such Unit. Failure of the Owner to submit the Arbitrable Issue to arbitration by the Submission Deadline shall result in the Association's Appraisal of the Unit being final and binding as to such Unit.

- b. Purchase Price. PFP agrees to buy and the Association and Owners agree to sell to PFP the Purchased Property for the aggregate fair market value of the Purchased Property pursuant to Section 5(a) above Price in cash or cash equivalent to be paid on or before the later of the following to occur: (i) thirty days after the appraiser's determination of fair market value becomes final; or (ii) within thirty days after the recording of this Agreement.
- c. Proceeds. All proceeds of the sale of the Project, together with the assets of the Association, will be held by the Association as trustee for the Owners and holders of liens on the Units as their interests may appear.

6. Escrow. The parties to this Agreement authorize Commonwealth Land Title Insurance Company, located at 2390 E. Camelback Rd., Suite 230, Phoenix, Arizona 85016, to act as "**Escrow Agent**" to receive funds and other items and, subject to clearance, disburse them in accordance with the terms of this Agreement. Escrow Agent will deposit all funds received in a non-interest bearing escrow account. If Escrow Agent receives conflicting demands or has a good faith doubt as to Escrow Agent's duties or liabilities under this Agreement, he/she may (a) hold the subject matter of the escrow until the Association and PFP mutually agree to its disbursement or until issuance of a court order or decision of arbitrator determining the Association's and PFP's rights regarding the escrow or (b) deposit the subject matter of the escrow with the clerk of the superior court having jurisdiction over the dispute. Upon notifying the parties of such action, Escrow Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. The parties agree that Escrow Agent will not be liable to any person for misdelivery to the Association or PFP of escrowed items, unless the misdelivery is due to Escrow Agent's willful breach of this Agreement or gross negligence.

7. Distribution of Sale Proceeds and Satisfaction of Liens. The Association shall distribute the proceeds of sale of the Purchased Property pursuant to the following terms and in the following order of priority:

- a. The Owner of each Unit that is a portion of the Purchased Property will be paid the net sum of the following amounts: (i) the Fair Market Value of his respective Unit as set forth in the Schedule of Values incorporated into the Agreement as **Exhibit C** hereto, as fair market value for such Owner's respective Unit and that Owner's proportional share on the Common Elements and assets of the Association; plus (ii) any additional amount as may be required to be paid pursuant to A.R.S. § 33-1228(G)(1); less (iii) any amount required to satisfy liens encumbering such Owner's Unit.
- b. Any liens that encumber a Unit shall be paid by the Association to the extent, and nothing more, that the Owner of that particular Unit was entitled to sale proceeds described above in subsection a of this Section 7. The Association shall not be responsible for any deficiency that may exist due to a lack of proceeds available to an Owner. PFP shall pay any such deficiency then existing after the Association has distributed sale proceeds and that is required to satisfy all liens encumbering any portion of the Project. Each Owner for which PFP paid a deficiency to satisfy

lien(s) encumbering that Owner's Unit shall be personally obligated to reimburse PFP for such deficiency paid.

- c. To the extent that after reasonable efforts to locate an Owner, that Owner cannot be located in order to distribute to him or her proceeds, the Escrow Agent is directed to comply with the Revised Arizona Unclaimed Property Act (A.R.S. § 44-301, *et seq.*) for deposit of those proceeds according to Arizona law.

8. Power of Attorney. Upon termination of the Condominium, Matthew Quinn shall be the attorney-in-fact for each Owner with the power to execute any and all documents necessary or appropriate to effectuate the terms of this Agreement.

9. Dissolution of Association. After termination of the Condominium and upon final distribution of sale proceeds, the Association's board of directors shall dissolve the Association by delivering to the Arizona Corporation Commission for filing articles of dissolution pursuant to A.R.S. § 10-11401 and 10-11403.

10. Deadline for Recording. This Agreement is void after August 1, 2019 unless it is recorded before that date.

11. Governing Law. This Agreement shall be governed by the laws of the State of Arizona. The parties irrevocably agree that the courts of the State of Arizona in Maricopa County, Arizona shall have exclusive venue and jurisdiction over the parties with respect to any dispute between the parties related to this Agreement.

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12. Attorneys' Fees. If any action is brought by any party with respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, consultant fees and all other court costs from the non-prevailing party, whether or not taxable by statute.

13. Captions. Any paragraph titles or captions contained in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

14. Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or entity may in the context require.

15. Severability. If any provision of this Agreement shall be held invalid or unenforceable, it shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

16. Complete Agreement. This Agreement, together with the exhibits attached hereto, constitutes the complete and exclusive statement of the agreement between the parties concerning this matter. This Agreement supersedes all prior written and oral statements and no representation, statement, condition or warranty not contained in this Agreement shall be binding on the parties or have any force or effect whatsoever. No amendment to this Agreement shall be binding unless in writing and executed by each of the parties.

17. Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

-----SIGNATURES FOLLOW-----

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