FIRST NORTHERN COMMUNITY BANCORP
Form 4
February 19, 2015

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

(Print or Type Responses)

1. Name and Address of Reporting Person *
Orris Bruce A

(Last) (First) (Middle)

195 N. FIRST STREET, P.O. BOX 547

(Street)

DIXON, CA 95620

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
FIRST NORTHERN COMMUNITY BANCORP [FNRN]

3. Date of Earliest Transaction (Month/Day/Year)
02/17/2015

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer
(Check all applicable)

_____ Director _____ 10% Owner
__X__ Officer (give title below) _____ Other (specify below)
EVP/Chief Information Officer

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
Restricted Stock Award/Common Stock	02/17/2015		A[(1)]		3,000	A	$ 7.9	13,157	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8 D S (I
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares	
Employee Stock Option (right to buy)	$ 7.9	02/17/2015		A		2,500		(2)	02/16/2025	Common Stock	2,500	

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Orris Bruce A 195 N. FIRST STREET P.O. BOX 547 DIXON, CA 95620			EVP/Chief Information Officer	

Signatures

Devon Camara-Soucy, AVP/Corporate Secretary	02/19/2015
**Signature of Reporting Person	Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) Restricted Stock Award with four year cliff vesting or upon retirement whichever comes first.

(2) Stock Options Granted vest 0% upon their grant and 25% annually over 4 years.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. nance documents of any Parent Joint Venture. There are no real properties that Parent or any Parent Subsidiary is unconditionally obligated to buy, lease or sublease at some future date except as disclosed on Section 4.19(a) of the Parent Disclosure Letter.

(b) Parent or a Parent Subsidiary owns good and valid legal fee simple title or leasehold title (as applicable) to each of the Parent Properties, in each case, free and clear of Liens, except for Parent Permitted Liens that would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. For the purposes of this Agreement, Parent Permitted Liens means any (i) Liens relating to any Indebtedness incurred in the ordinary course of business consistent with past practice, (ii) Liens that result from any statutory or other Liens for Taxes or

assessments that are not yet subject to penalty or the validity of which is being contested in good faith by appropriate proceedings and for which there are adequate reserves on the Parent Financial Statements (if such reserves are required pursuant to GAAP), or that are otherwise not material, (iii) any Parent Material Contracts or other service contracts, management agreements, leasing commission agreements, agreements or obligations provided to the Company prior to the date hereof, (iv) any Parent Leases or ground leases (including Parent Ground Leases) or air rights affecting any Parent Property, (v) Liens imposed or promulgated by Law or any Governmental Entity, including zoning regulations, permits and licenses, (vi) Liens that are disclosed on the existing Parent Title Insurance Policies, preliminary title policies and title commitments provided by or on behalf of Parent or any Parent Subsidiary to Parent prior to the date hereof and, with respect to leasehold interests, Liens on the underlying fee or leasehold interest of the applicable ground lessor, lessor or sublessor, (vii) any cashiers , landlords , workers , mechanics , carriers , workmen s, repairmen s and materialmen s Liens and other similar Liens imposed by Law and incurred in the ordinary course of business consistent with past practice that are not yet subject to penalty or the validity of which is being contested in good faith by appropriate proceedings, and (viii) any other Liens, limitations, restrictions or title defects that do not materially impair the value of the applicable Parent Property or the continued use and operation of the applicable Parent Property as currently used and operated. Neither Parent nor any Parent Subsidiary has received written notice of any outstanding threat of modification or cancellation of any such certificate, variance, permit or license, except for any of the foregoing as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect.

(c) Neither Parent nor any Parent Subsidiary has received (i) written notice that any certificate, permit or license from any Governmental Entity having jurisdiction over any of the Parent Properties or any agreement, easement or other right of an unlimited duration that is necessary to permit the lawful use and operation of the buildings and improvements on any of the Parent Properties or that is necessary to permit the lawful use and operation of all utilities, parking areas, retention ponds, driveways, roads and other means of egress and ingress to and from any of the Parent Properties is not in full force and effect as of the date of this Agreement, except for such failures to be in full force and effect that, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect, or of any pending written threat of modification or cancellation of any of same, that would reasonably be expected to have a Parent Material Adverse Effect, or (ii) written notice of any uncured violation of any Laws affecting any of the Parent Properties which, individually or in the aggregate, would reasonably be expected to have a Parent Material Adverse Effect.

(d) No material condemnation, eminent domain or similar proceeding has occurred or is pending with respect to any owned Parent Property or, to the knowledge of Parent, any Parent Property leased by Parent or any Parent Subsidiary, and neither Parent nor any Parent Subsidiary has received any written notice to the effect that (i) any material condemnation or rezoning proceedings are threatened with respect to any of the Parent Properties, or (ii) any zoning regulation or ordinance (including with respect to parking), Board of Fire Underwriters rules, building, fire, health or other Law has been violated (and remains in violation) in any material respect for any Parent Property.

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(e) Except for discrepancies, errors or omissions that, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect, the rent roll summaries for each of the Parent Properties as previously provided to the Company, and the schedules with respect to the Parent Properties subject to triple-net leases, which schedules have previously been made available to Parent, correctly reference each lease or sublease that was in effect as of the dates shown therein and to which Parent or any Parent Subsidiary is a party as lessor or sublessor with respect to each of the applicable Parent Properties (all leases or subleases (including any triple-net leases), together with all amendments, modifications, supplements, renewals, exercise of options and extensions related thereto, the Parent Leases).

(f) True and complete in all material respects copies of all material ground leases affecting the interest of Parent or any Parent Subsidiary in the Parent Properties (the Parent Ground Leases), in each case in effect as of the date of this Agreement, have been made available to the Company. Except as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect, (i) neither Parent nor any Parent Subsidiary is and, to the knowledge of Parent, no other party is in breach or violation of, or default under, any Parent Ground Lease, (ii) no event has occurred which would result in a breach or violation of, or a default under, any Parent Ground Lease by Parent or any Parent Subsidiary, or, to the knowledge of Parent, any other party thereto (in each case, with or without notice or lapse of time) and no tenant under a Parent Ground Lease is in monetary default under such Parent Ground Lease, and (iii) each Parent Ground Lease is valid, binding and enforceable in accordance with its terms and is in full force and effect with respect to Parent or a Parent Subsidiary and, to the knowledge of Parent, with respect to the other parties thereto, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law). Neither Parent nor any Parent Subsidiary is party to any oral Parent Ground Lease.

(g) There are no Tax abatements or exemptions specifically affecting Parent Properties, and Parent and the Parent Subsidiaries have not received any written notice of (and Parent and the Parent Subsidiaries do not have any knowledge of) any proposed increase in the assessed valuation of any of the Parent Properties or of any proposed public improvement assessments that will result in the Taxes or assessments payable in the next tax period increasing by an amount material to Parent and the Parent Subsidiaries, considered as a whole.

(h) As of the date of this Agreement, no purchase option, right of first refusal, right of first offer, or other purchase right has been exercised under any Parent Lease for which the purchase has not closed prior to the date of this Agreement.

(i) Except for Parent Permitted Liens, as set forth in contracts provided to the Company prior to the date hereof, and as set forth in the governance documents of the Parent Joint Ventures and disclosed in the materials made available to the Company prior to the date hereof, (i) there are no unexpired option to purchase agreements, rights of first refusal or first offer or any other rights to purchase or otherwise acquire any Parent Property or any portion thereof that would materially adversely affect Parent s, or any Parent Subsidiary s, ownership, ground lease or right to use a Parent Property, and (ii) there are no other outstanding rights or agreements to enter into any contract for sale, ground lease or letter of intent to sell or ground lease any Parent Property or any portion thereof that is owned by Parent or any Parent Subsidiary, which, in each case, is in favor of any party other than Parent or a Parent Subsidiary (a Parent Third Party).

(j) Except pursuant to a Parent Lease or any ground lease affecting any Parent Property, and except in connection with the Parent Joint Ventures, neither Parent nor any Parent Subsidiary is a party to any agreement pursuant to which Parent or any Parent Subsidiary manages or manages the development of any real property for any Parent Third Party.

(k) Parent and each Parent Subsidiary, as applicable, is in possession of title insurance policies or valid marked-up title commitments evidencing title insurance with respect to each Parent Property (each, a Parent Title Insurance Policy and, collectively, the Parent Title Insurance Policies). A copy of each Parent Title

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Insurance Policy in the possession of Parent has been made available to the Company. No written claim has been made against any Parent Title Insurance Policy, which, individually or in the aggregate, would reasonably be expected to have a Parent Material Adverse Effect.

(l) Parent and the Parent Subsidiaries have good and valid legal title to, or a valid and enforceable leasehold interest in, or other right to use, all personal property owned, used or held for use by them as of the date of this Agreement (other than property owned by tenants and used or held in connection with the applicable tenancy and other than property owned by any third party managers), except as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect. None of Parent s or any of the Parent Subsidiaries ownership of or leasehold interest in any such personal property is subject to any Liens, except for Parent Permitted Liens and Liens that would not reasonably be expected to have a Parent Material Adverse Effect.

(m) Section 4.19(m) of the Parent Disclosure Letter lists the parties currently providing third-party property management services to Parent or a Parent Subsidiary and the number of Parent Properties currently managed by each such party (the Parent Management Agreements). True and complete copies of all such third-party Parent Management Agreements listed have been made available to the Company. Except as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect, (i) neither Parent nor any Parent Subsidiary is and, to the knowledge of Parent, no other party is in breach or violation of, or default under, any Parent Management Agreement, (ii) no event has occurred which would result in a breach or violation of, or a default under, any Parent Management Agreement by Parent or any Parent Subsidiary, or, to the knowledge of Parent, any other party thereto (in each case, with or without notice or lapse of time), and (iii) each Parent Management Agreement is valid, binding and enforceable in accordance with its terms and is in full force and effect with respect to Parent or a Parent Subsidiary and, to the knowledge of Parent, with respect to the other parties thereto, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law). Neither Parent nor any Parent Subsidiary is party to any oral Parent Management Agreement.

Section 4.20 Information in the Joint Proxy Statement. None of the information supplied or to be supplied in writing by or on behalf of Parent or any Parent Subsidiary for inclusion or incorporation by reference in (i) the Form S-4 will, at the time such document is filed with the SEC, at any time such document is amended or supplemented or at the time such document is declared effective by the SEC, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) the Joint Proxy Statement will, at the date it is first mailed to the stockholders of the Company and of Parent, at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, at the time the Form S-4 is declared effective by the SEC or at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. All documents that Parent is responsible for filing with the SEC in connection with the Transactions, to the extent relating to Parent or any Parent Subsidiary or other information supplied by or on behalf of Parent or any Parent Subsidiary for inclusion therein, will comply as to form, in all material respects, with the provisions of the Securities Act or Exchange Act, as applicable, and the rules and regulations of the SEC thereunder and each such document required to be filed with any Governmental Entity (other than the SEC) will comply in all material respects with the provisions of any applicable Law as to the information required to be contained therein. The representations and warranties contained in this Section 4.20 will not apply to statements or omissions included in the Form S-4 or the Joint Proxy Statement to the extent based upon information supplied to Parent by or on behalf of the Company.

Section 4.21 Opinion of Parent Financial Advisor. The Parent Board has received the opinion of UBS Securities LLC (the Parent Financial Advisor) to the effect that, as of the date of such opinion and subject to the limitations,

qualifications and assumptions set forth in such opinion, the Merger Consideration to be paid

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by Parent in the Merger is fair from a financial point of view to Parent. Parent shall make available to the Company, solely for informational purposes, a complete and current copy of such written opinion promptly after receipt thereof by the Parent Board. The Company acknowledges that the opinion of the Parent Financial Advisor is for the benefit of the Parent Board and the Company shall not be entitled to rely on such opinion for any purpose.

Section 4.22 Insurance. Parent and the Parent Subsidiaries are either self-insured or have policies of insurance covering Parent, the Parent Subsidiaries and any of their respective employees, properties or assets, including policies of property, fire, workers compensation, products liability, directors and officers liability, and other casualty and liability insurance (the Parent Insurance Policies), and in each case in such amounts and with respect to such risks and losses, which Parent believes are adequate for the operation of its business. All such insurance policies are in full effect, no written notice of cancellation has been received by Parent or any Parent Subsidiary under such policies, and there is no existing default or event which, with the giving of notice or lapse of time or both, has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Except as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect, all premiums payable under the Parent Insurance Policies have been paid, and Parent and the Parent Subsidiaries have otherwise complied in all material respects with the terms and conditions of the Parent Insurance Policies.

Section 4.23 Related Party Transactions. Except as set forth in the Parent SEC Documents made through and including the date of this Agreement or in connection with any Parent Joint Venture or as permitted by this Agreement, from January 1, 2011 through the date of this Agreement there have been no transactions, agreements, arrangements or understandings between Parent or any Parent Subsidiary, on the one hand, and any officer, director or affiliate (including any officer or director of any affiliate) thereof, on the other hand.

Section 4.24 Brokers; Expenses. No broker, investment banker, financial advisor or other Person (other than the Parent Financial Advisors, whose fees and expenses shall be paid by Parent), is entitled to receive any broker s, finder s, financial advisor s or other similar fee or commission in connection with this Agreement or the Merger based upon arrangements made by or on behalf of Parent.

Section 4.25 Bridge Financing.

(a) Parent has delivered to the Company true, correct and complete copies of (i) the fully executed debt commitment letter from Citigroup Global Markets Inc., UBS AG, Stamford Branch and UBS Securities LLC (collectively, the Lenders), dated as of the date hereof (including all exhibits, schedules, annexes and amendments thereto as of the date of this Agreement, collectively, the Bridge Commitment Letter), pursuant to which, and subject to the terms and conditions thereof, the Lenders have committed to lend, or cause to be lent, up to $1,000,000,000 of bridge financing to Parent LP and/or Merger Sub for the purpose of funding a portion of the Merger Consideration (the Bridge Financing). Parent has also delivered to the Company accurate and complete copies of any fee letter entered into in connection with the Bridge Commitment Letter, which has been redacted in a manner reasonably acceptable to the Lenders (the Fee Letter).

(b) The Bridge Commitment Letter, in the form provided to the Company by Parent (except to the extent amended or replaced after the date hereof in accordance with the terms of this Agreement), is in full force and effect and is a legal, valid and binding obligation of Parent LP and, to the knowledge of Parent, the other parties thereto, enforceable against Parent LP and, to the knowledge of Parent, the other parties thereto in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law). As of the date of this Agreement, (i) the Bridge Commitment Letter has not been withdrawn, terminated, repudiated, rescinded, amended, supplemented or modified, in any respect, and (ii) no such withdrawal,

termination, repudiation, rescission, amendment, supplement or modification is contemplated.

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(c) As of the date of this Agreement (i) neither Parent LP nor Merger Sub nor, to the knowledge of Parent, any other counterparty thereto is in breach of any of its covenants or other obligations set forth in, or is in default under, the Bridge Commitment Letter, and (ii) to Parent s knowledge no event has occurred or circumstance exists that, with or without notice, lapse of time or both, would or would reasonably be expected to (A) constitute or result in a breach or default on the part of Parent LP or Merger Sub, or to the knowledge of Parent, any counterparty thereto, under any of the Bridge Commitment Letter, (B) assuming the Company s representations and warranties are true and correct and the conditions set forth in Section 7.1 and Section 7.2 are satisfied, constitute or result in a failure to satisfy a condition precedent set forth in the Bridge Commitment Letter, (C) assuming the Company s representations and warranties are true and correct and the conditions set forth in Section 7.1 and Section 7.2 are satisfied, make any of the assumptions or any of the statements set forth in the Bridge Commitment Letter inaccurate in any material respect or (D) assuming the Company s representations and warranties are true and correct and the conditions set forth in Section 7.1 and Section 7.2 are satisfied, otherwise result in any portion of the Bridge Financing being unavailable. As of the date of this Agreement, neither Parent nor Merger Sub has received any notice or other communication from any party to the Bridge Commitment Letter with respect to (i) any breach or default on the part of Parent, Merger Sub or any other party to the Bridge Commitment Letter or (ii) any intention of such party to terminate the Bridge Commitment Letter or to not provide all or any portion of the Bridge Financing. Parent and Merger Sub (both before and after giving effect to any market flex provisions contained in the Bridge Commitment Letter) assuming the Company s representations and warranties are true and correct and the conditions set forth in Section 7.1 and Section 7.2 are satisfied: (x) have no reason to reasonably believe that they will not be able to satisfy on a timely basis each condition relating to the closing or funding of the Bridge Financing; and (y) know of no fact, occurrence, circumstance or condition that would reasonably be expected to (1) cause the Bridge Commitment Letter to terminate, to be withdrawn, modified, repudiated or rescinded or to be or become ineffective or (2) otherwise cause the full amount (or any portion) of the funds contemplated to be available under the Bridge Financing to not be available to Parent and Merger Sub on a timely basis (and in any event as of the Closing). Parent and/or Merger Sub have fully paid any and all commitment fees or other fees or deposits required by the Bridge Commitment Letter to be paid on or before the date of this Agreement.

(d) The aggregate proceeds from the Bridge Financing, together with any available cash on hand of Parent and other available lines of credit and financing sources, if any, constitute all of the financing required for the consummation of the Transactions and are sufficient in amount to provide Parent and Merger Sub with the funds necessary for Parent and Merger Sub to consummate the Transactions and to satisfy their respective obligations under this Agreement, including for Parent and Merger Sub to pay the Cash Consideration, the Fractional Share Consideration and the aggregate amount of any repayment or refinancing of debt contemplated by this Agreement or the Bridge Commitment Letter and the payment of all fees, costs and expenses to be paid by Parent, Merger Sub or the Surviving Entity related to the Transactions, including such fees and expenses relating to the Bridge Financing (such amounts, collectively, the Required Payment Amount).

(e) There are no conditions precedent to the obligation of any party to the Bridge Commitment Letter to fund the full amount of the Bridge Financing, including any condition relating to the availability of any market flex provisions, other than as expressly set forth in unredacted portions of the Bridge Commitment Letter as in effect and provided to the Company on the date hereof (the Disclosed Conditions). Other than the Disclosed Conditions, no Lender or other Person has any right to impose, and none of Parent, Merger Sub, the Company or any of their respective Subsidiaries have any obligation to accept, any condition precedent to any funding of the Bridge Financing nor any reduction to the aggregate amount available under the Bridge Commitment Letter (nor any term or condition which would have the effect of reducing the aggregate amount available under the Bridge Commitment Letter). There are no side letters and (except for the Bridge Commitment Letter and the Fee Letter) there are no agreements, contracts, arrangements or understandings, whether written or oral, with any Lender relating to the Bridge Financing that affect the conditionality or availability of the full amount of the Bridge Financing, except for any customary fee and engagement letters in

respect of the Bridge Financing.

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(f) Immediately after giving effect to the Transactions, Parent shall be solvent and shall: (i) be able to pay its debts as they become due; (ii) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (iii) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay or defraud either present or future creditors of any of Parent or the Company. In connection with the Transactions, Parent has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 4.26 Vote Required. The affirmative vote of not less than a majority of the votes cast by the holders of Parent Common Stock (*provided* that the total vote cast represents over fifty percent (50%) in interest of all Parent Common Stock) at the Parent Stockholder Meeting to approve the issuance of Parent Common Stock in connection with the Merger (the Parent Stockholder Approval) is the only vote of the holders of any class or series of shares of capital stock of Parent or Merger Sub necessary to adopt this Agreement and approve the Merger and the other Transactions, including the issuance of Parent Common Stock in connection with the Merger.

Section 4.27 Ownership of Company Common Stock. Neither Parent, Merger Sub nor any of their respective affiliates is, nor at any time during the last three (3) years has been, an interested stockholder of the Company as defined in Section 3-601 of the MGCL. Neither Parent nor any Parent Subsidiary nor any of their respective affiliates or associates (as defined in Rule 12b-2 of the Exchange Act) beneficially owns, directly or indirectly (other than investments made in the ordinary course of business in their investment portfolios that, in the aggregate, do not exceed 5% of the Company Common Stock), or has the right to acquire (whether such right is exerciseable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or the right to vote pursuant to any agreement, arrangement or understanding, any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock or any securities of any Company Subsidiary and neither Parent nor any Parent Subsidiary has any rights to acquire any shares of Company Common Stock except pursuant to this Agreement. Neither Parent nor any of the Parent Subsidiaries is an affiliate or associate (as defined in Rule 12b-2 of the Exchange Act) of the Company. Neither Parent nor any of the Parent Subsidiaries has at any time been an assignee or has otherwise succeeded to the beneficial ownership of any shares of Company Common Stock during the last two (2) years.

Section 4.28 Outstanding Commissions and Fees. Section 4.28 of the Parent Disclosure Letter lists all broker s, finder s and other commissions or fees outstanding and payable to any third-party in connection with the sale, leasing or financing of Parent s assets (or any of them) in excess of $100,000. Except as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect, (i) neither Parent nor any Parent Subsidiary is and, to the knowledge of Parent, no other party is in breach or violation of, or default under, any such agreement described in Section 4.28 of the Parent Disclosure Letter, (ii) no event has occurred which would result in a breach or violation of, or a default under, any such agreement by Parent or any Parent Subsidiary or, to the knowledge of Parent, any other party thereto (in each case, with or without notice or lapse of time), and (iii) each such agreement is in full force and effect, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting creditors rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law).

Section 4.29 Potential Construction Defect Liability Exposure. All apartment projects that have been developed during the last ten (10) years and sold by Parent or any Parent Subsidiary have been sold subject to (a) an enforceable covenant prohibiting the conversion or sale of such project (or any portion thereto) to or as condominiums prior to the expiration of the applicable statute of repose for construction defect claims in the jurisdiction where the project is located, (b) insurance policies purchased to cover any construction defect claims that may arise upon conversion to or

sale as condominiums, or (c) a requirement that insurance be obtained prior to any such conversion or sale to or as condominiums to cover construction defect claims).

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Section 4.30 No Other Representations or Warranties. Except for the representations and warranties set forth in this Article IV, neither Parent, Merger Sub nor any other Person makes any express or implied representation or warranty with respect to Parent or Merger Sub or with respect to any other information provided to the Company in connection with the Transactions.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS PENDING THE MERGER

Section 5.1 Conduct of Business by the Company Pending the Closing. The Company agrees that between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, except (a) as set forth in Section 5.1 of the Company Disclosure Letter, (b) as expressly required or permitted pursuant to this Agreement, (c) to the extent required by Law or (d) as consented to in writing by Parent (which consent in the case of clauses (e), (f), (g), (h), (i), (j), (m), and (q) shall not be unreasonably withheld, delayed or conditioned), the Company (x) shall and shall cause the Company Subsidiaries to, conduct its business in all material respects in the ordinary course of business and in a manner consistent with past practice, and (y) shall use its commercially reasonable efforts to (A) maintain its material assets and properties in their current condition (normal wear and tear excepted), (B) preserve intact in all material respects its current business organization, goodwill, ongoing businesses and significant relationships with third parties, (C) provided it does not require additional compensation, keep available the services of its present officers, (D) maintain all Company Insurance Policies and (E) maintain the status of the Company as a REIT. Without limiting the generality of the foregoing, the Company agrees that between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, the Company shall not, and shall not permit any Company Subsidiary to:

(a) amend or propose to amend (A) the Company Certificate or Company Bylaws, or (B) such equivalent organizational or governing documents of any Company Subsidiary material to the Company and the Company Subsidiaries, considered as a whole, if such amendment would be materially adverse to the Company, the applicable Company Subsidiary or Parent;

(b) split, combine, subdivide or reclassify any shares of capital stock of the Company or any Company Subsidiary;

(c) declare, set aside or pay any dividend on or make any other distributions (whether in cash, stock, property or otherwise) with respect to shares of capital stock of the Company or any Company Subsidiary or other equity securities or ownership interests in the Company or any Company Subsidiary, except for (A) the declaration and payment by the Company of regular quarterly dividends, payable in accordance with past practice at a rate not to exceed (i) $0.395 per share of Company Common Stock and (ii) $0.421875 per share of Company Series D Preferred Stock, (B) the declaration and payment of dividends or other distributions to the Company by any directly or indirectly wholly owned Company Subsidiary, (C) distributions by any Company Subsidiary that is not wholly owned, directly or indirectly, by the Company, in accordance with the requirements of the organizational documents of such Company Subsidiary, and (D) the Special Dividend and any required REIT Dividend in accordance with Section 6.16;

(d) redeem, purchase or otherwise acquire, or offer to redeem, purchase or otherwise acquire, any Company Equity Interests, except (i) from holders of Company Stock Options in full or partial payment of any exercise price and any applicable Taxes payable by such holder upon exercise of the Company Stock Options to the extent required or permitted under the terms of such Company Stock Options, or (ii) from holders of Company Restricted Shares of any applicable Taxes payable by such holder upon the lapse of restrictions on the Company Restricted Shares;

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(e) acquire or agree to acquire (including by merger, consolidation or acquisition of stock or assets) any real property, personal property (other than (i) pursuant to the Company s operating budget provided to Parent prior to the date hereof or (ii) personal property at a total cost of less than $1,500,000 in the aggregate), corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof, except (A) acquisitions by the Company or any wholly owned Company Subsidiary of or from an existing wholly owned Company Subsidiary or joint venture partners pursuant to existing purchase rights or options and are set forth on Section 5.1(e) of the Company Disclosure Letter, or (B) subject to Section 5.1(v) below, the pending acquisitions set forth on Section 5.1(e) of the Company Disclosure Letter (the Company Pending Acquisitions);

(f) sell, pledge, lease, assign, transfer, dispose of or encumber, or effect a deed in lieu of foreclosure with respect to, any property or assets, except (A) as set forth on Section 5.1(f) of the Company Disclosure Letter, (B) pledges and encumbrances on property and assets in the ordinary course of business consistent with past practice and that would not be material to any Company Property or any assets of the Company or any Company Subsidiary, (C) pledges or encumbrances of direct or indirect equity interests in entities from time to time under the Company s existing revolving credit facility that (1) acquire properties that are the subject of Company Pending Acquisitions, or (2) are not currently included in the Company s borrowing base under the Company s existing revolving credit facility as are set forth on Section 5.1(f) of the Company Disclosure Letter, (D) with respect to property or assets with a value of less than $500,000 in the aggregate and (E) sales to joint venture partners pursuant to existing purchase rights or options and which are set forth in the Company Joint Venture Agreements made available to Parent;

(g) incur, create, assume, refinance, replace or prepay any Indebtedness for borrowed money or issue or amend the terms of any debt securities or assume, guarantee or endorse, or otherwise become responsible (whether directly, contingently or otherwise) for the Indebtedness of any other Person (other than a wholly owned Company Subsidiary), except (A) Indebtedness incurred under the Company s existing revolving credit facility for working capital purposes in the ordinary course of business consistent with past practice (including to the extent necessary to pay dividends permitted under this Agreement), and (B) funding any Company Pending Acquisitions;

(h) make any loans, advances or capital contributions to, or investments in, any other Person (including to any of its officers, directors, affiliates, agents or consultants), make any change in its existing borrowing or lending arrangements for or on behalf of such Persons, or enter into any keep well or similar agreement to maintain the financial condition of another entity, other than (A) by the Company or a wholly owned Company Subsidiary to the Company or a wholly owned Company Subsidiary, and (B) loans or advances required to be made under any of the Company Leases or ground leases affecting the Company Properties;

(i) enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any Company Material Contract (or any contract that, if existing as of the date of this Agreement, would be a Company Material Contract), other than (A) any termination or renewal in accordance with the terms of any existing Company Material Contract that occur automatically without any action by the Company or any Company Subsidiary, (B) subject to Section 6.2(c), the entry into any modification or amendment of, or waiver or consent under, any mortgage or related agreement to which the Company or any Company Subsidiary is a party as required or necessitated by this Agreement or the Transactions; *provided* that any such modification, amendment, waiver or consent does not increase the principal amount thereunder or otherwise materially adversely affect the Company, any Company Subsidiary or Parent or (C) subject to Section 6.2(c), as may be reasonably necessary to comply with the express terms of this Agreement;

(j) except as set forth on Section 5.1(j) of the Company Disclosure Letter, enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any Company Ground Lease or Company Office Lease (or any lease for real property that, if existing as of the date of this Agreement, would be a

Company Ground Lease or Company Office Lease);

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(k) make any material Tax election, enter into any material closing agreement with a Tax authority, file any amended Tax Return with respect to any material Tax or change any material method of accounting for Tax purposes or annual Tax accounting period, except in each case (A) if required by Law, (B) in the ordinary course of business or (C) if necessary (x) to preserve the Company s qualification as a REIT under the Code or (y) to qualify or preserve the status of any Company Subsidiary as a disregarded entity or partnership for United States federal income tax purposes or as a qualified REIT subsidiary within the meaning of Section 856(i)(2) of the Code (a Qualified REIT Subsidiary) or a Taxable REIT Subsidiary under the applicable provisions of Section 856 of the Code, as the case may be;

(l) take any action that could, or fail to take any action, the failure of which could reasonably be expected to cause the Company to fail to qualify as a REIT;

(m) except (A) pursuant to the Company s operating budget made available to Parent prior to the date hereof, and (B) capital expenditures in the ordinary course of business consistent with past practice necessary to repair and/or prevent damage to any of the Company Properties or as is necessary in the event of an emergency situation (which, to the extent practicable taking into account the urgency of the emergency situation, will require prompt prior notice to Parent), incur any capital expenditures or any obligations or liabilities in respect thereof in excess of $500,000 individually, or $1,000,000 in the aggregate;

(n) except (i) as required by applicable Law, (ii) as required by the terms of any Company Benefit Plan, agreement or other contract in effect on the date hereof, (iii) to the extent necessary to comply with, or satisfy an exemption from, Section 409A of the Code, (iv) in order to effectuate the actions contemplated by this Agreement or (v) as set forth on Section 5.1(n) of the Company Disclosure Letter, (A) increase the salary or bonus opportunity of any officers or directors of the Company, other than as set forth on Section 5.1(n) of the Company Disclosure Letter, (B) grant any officer or director of the Company any increase in severance or termination pay, (C) establish, adopt or enter into any collective bargaining agreement, (D) hire any officer (with a title of vice president or higher) of the Company or promote or appoint any Person to a position with a title of vice president or higher of the Company, (E) enter into, adopt, amend or terminate any employment, bonus, severance or retirement contract or other compensation or Company Benefit Plan or any Benefit Plan that if entered into or adopted would be a Company Benefit Plan other than a stay bonus program for employees of the Company as set forth on Section 5.1 of the Company Disclosure Letter, (F) accelerate the vesting or payment of any award under any Company Equity Plan or of any other compensation or benefits other than as set for on Section 5.1(n) of the Company Disclosure Letter, (G) grant any awards under any Company Equity Plan or any bonus, incentive, performance or other compensation plan or arrangement, or (H) grant any bonuses to employees and officers, other than in the normal course of business pursuant to the terms of the bonus plans and as set forth in Section 5.1(n) of the Company Disclosure Letter;

(o) enter into, amend or modify any agreement or arrangement that materially limits or otherwise materially restricts the Company, or upon completion of the Transactions, Parent or its Subsidiaries or any successor thereto, from engaging or competing in any line of business in which it is currently engaged or in any geographic area material to the business or operations of Parent;

(p) change any of the accounting methods used by it materially affecting its assets, liabilities or business, except for such changes required by GAAP, applicable Laws or any Government Entity;

(q) other than settlement of claims, liabilities or obligations in connection with any stockholder litigation against the Company and/or its officers, directors, employees and Representatives relating to this Agreement, the Merger and/or the other Transactions in accordance with Section 6.10, (i) settle or compromise any material claim or Legal Proceeding where the amount paid in settlement or compromise exceeds $500,000 individually or $1,000,000 in the aggregate or (ii) enter into any consent decree, injunction or similar restraint or form of equitable relief that would

materially restrict the operations of the business of the Company and its Subsidiaries taken as a whole after the Effective Time;

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(r) adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company (other than the Merger);

(s) form any new joint ventures or funds;

(t) undertake any development projects except for, and in accordance with, the development projects set forth on Section 5.1(t) of the Company Disclosure Letter (Existing Development Projects) or conduct any activity, incur any costs with respect to, or change the scope of any Existing Development Projects except in accordance with the development plan/budget provided to Parent prior to the date hereof;

(u) amend or modify the compensation terms or any other obligations of the Company contained in the engagement letter with the financial advisor referred to in Section 3.21 that would increase the liabilities, including, without limitation, any indemnification obligation of the Company or any Company Subsidiary in a manner materially adverse to the Company, any Company Subsidiary or Parent or engage other financial advisors in connection with the Merger or the Transactions;

(v) modify or amend (or permit any Company Subsidiary to modify or amend) the Option Agreement (*provided* that the Company may amend the Option Agreement to extend its term if the Company will use its commercially reasonable efforts to include a termination without cause right in favor of the Company Subsidiary that is a party to the Option Agreement) or exercise the Option or deliver the Option Notice or enter into the Lease (as such terms are defined in the Option Agreement) or enter into any other agreement which obligates the Company or any Company Subsidiary to prosecute or pay for the ownership, lease or development of the Parcels (as defined in the Option Agreement); or

(w) enter into any written agreement, contract, commitment or arrangement to do any of the foregoing, or authorize in writing any of the foregoing.

Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall prohibit the Company from taking any action, at any time or from time to time, that in the reasonable judgment of the Company, upon advice of counsel to the Company, is reasonably necessary for the Company to maintain its qualification as a REIT under the Code for any period or portion thereof ending on or prior to the Effective Time or to avoid incurring entity level income or excise Taxes under the Code or applicable state Law, including making dividend or other distribution payments to stockholders of the Company in accordance with Section 6.16. Notwithstanding the foregoing, none of the provisions of Section 5.1 shall in any way restrict the ability of the Company or any of the Company Subsidiaries to take any action or fail to take any action at the request or with the written consent of Parent, including the Asset Transfer, the Debt Exchange Offers or the Preferred Redemption.

Section 5.2 Conduct of Business by Parent Pending the Closing. Parent agrees that between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, except (a) as set forth in Section 5.2 of the Parent Disclosure Letter, (b) as expressly required or permitted pursuant to this Agreement, (c) to the extent required by Law or (d) as consented to in writing by the Company (which consent shall in the case of clauses (e), (f), (g), or (h), not be unreasonably withheld, delayed or conditioned), Parent (x) shall and shall cause the Parent Subsidiaries to, conduct its business in all material respects in the ordinary course of business and in a manner consistent with past practice and (y) shall use its commercially reasonable efforts to (A) maintain its material assets and properties in their current condition (normal wear and tear excepted), (B) preserve intact in all material respects its current business organization, goodwill, ongoing businesses and significant relationships with third parties, and (C) maintain the status of Parent as a REIT. Without limiting the generality of the foregoing, Parent agrees that between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is

terminated pursuant to Section 8.1, Parent shall not, and shall not permit any Parent Subsidiary to:

(a) amend or propose to amend the Parent Certificate or Parent Bylaws;

(b) split, combine, subdivide or reclassify any shares of capital stock of Parent or any Parent Subsidiary;

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(c) declare, set aside or pay any dividend on or make any other distributions (whether in cash, stock, property or otherwise) with respect to shares of capital stock of Parent or any Parent Subsidiary or other equity securities or ownership interests in Parent or any Parent Subsidiary, except for (A) the declaration and payment by Parent of regular quarterly dividends, payable in accordance with past practice at a rate not to exceed (i) $1.21 per share of Parent Common Stock, (ii) $0.30469 per share of Parent Series G Preferred Stock and (iii) $0.44531 per share of Parent Series H Preferred Stock, (B) the declaration and payment of dividends or other distributions to Parent by any directly or indirectly wholly owned Parent Subsidiary and (C) distributions by any Parent Subsidiary that is not wholly owned, directly or indirectly, by Parent, in accordance with the requirements of the organizational documents of such Parent Subsidiary;

(d) redeem, purchase or otherwise acquire, or offer to redeem, purchase or otherwise acquire, any Parent Equity Interests, except (i) from holders of Parent Options in full or partial payment of any exercise price and any applicable Taxes payable by such holder upon exercise of Parent Stock Options to the extent required or permitted under the terms of such Parent Stock Options, or (ii) from holders of restricted stock of Parent in full or partial payment of any purchase price and any applicable Taxes payable by such holder upon the lapse of restrictions on the restricted stock of Parent;

(e) acquire or agree to acquire (including by merger, consolidation or acquisition of stock or assets) any real property, personal property, corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof, if such transaction would reasonably be expected to prevent or materially delay the consummation of the Merger or the other Transactions;

(f) incur, create, assume, refinance, replace or prepay any Indebtedness for borrowed money or issue or amend the terms of any debt securities or assume, guarantee or endorse, or otherwise become responsible (whether directly, contingently or otherwise) for the Indebtedness of any other Person (other than a wholly owned Parent Subsidiary), if such transaction would reasonably be expected to prevent or materially delay the consummation of the Merger or the other Transactions;

(g) make any loans, advances or capital contributions to, or investments in, any other Person (including to any of its officers, directors, affiliates, agents or consultants), make any change in its existing borrowing or lending arrangements for or on behalf of such Persons, or enter into any keep well or similar agreement to maintain the financial condition of another entity, if such transaction would reasonably be expected to prevent or materially delay the consummation of the Merger or the other Transactions;

(h) enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any Parent Material Ground Lease (or any lease for real property that, if existing as of the date of this Agreement, would be a Parent Material Ground Lease);

(i) make any material Tax election, enter into any material closing agreement with a Tax authority, file any amended Tax Return with respect to any material Tax or change any material method of accounting for Tax Purposes or annual Tax accounting period, except in each case (A) if required by Law, (B) in the ordinary course of business or (C) if necessary (x) to preserve Parent s qualification as a REIT under the Code or (y) to qualify or preserve the status of any Parent Subsidiary as a REIT, as a disregarded entity or partnership for United States federal income tax purposes or as a Qualified REIT Subsidiary or a Taxable REIT Subsidiary under the applicable provisions of Section 856 of the Code, as the case may be;

(j) take any action that could, or fail to take any action, the failure of which could, reasonably be expected to cause Parent to fail to qualify as a REIT;

(k) change any of the accounting methods used by it materially affecting its assets, liabilities or business, except for such changes required by GAAP, applicable Laws or any Government Entity;

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(l) adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of Parent (other than the Merger); or

(m) enter into any written agreement, contract, commitment or arrangement to do any of the foregoing, or authorize in writing any of the foregoing.

Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall prohibit Parent from taking any action, at any time or from time to time, that in the reasonable judgment of Parent, upon advice of counsel to Parent, is reasonably necessary for Parent to maintain its qualification as a REIT under the Code for any period or portion thereof ending on or prior to the Effective Time or to avoid incurring entity level income or excise Taxes under the Code or applicable state Law, including making dividend or other distribution payments to stockholders of Parent in accordance with Section 6.16. Notwithstanding the foregoing, none of the provisions of Section 5.2 shall in any way restrict the ability of Parent to take any action or fail to take any action with respect to the Asset Transfer or the Debt Exchange Offers.

Section 5.3 Solicitation.

(a) From and after the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, and except as otherwise provided for in this Agreement, the Company agrees that it shall not (and shall not permit any Company Subsidiary to), and that it shall use its reasonable best efforts to cause its Representatives not to, directly or indirectly: (i) solicit, initiate or knowingly facilitate any inquiry, offer or request that constitutes, or reasonably could be expected to result in, any Competing Proposal, (ii) participate in any negotiations regarding, or furnish to any Person any material nonpublic information relating to the Company in connection with a Competing Proposal, (iii) engage in discussions with any Person with respect to any Competing Proposal, (iv) approve or recommend, or propose publicly to approve or recommend, any Competing Proposal, (v) withdraw, change, amend, modify or qualify, or otherwise propose publicly to withdraw, change, amend, modify or qualify, in a manner adverse to Parent or Merger Sub, or otherwise make any statement or proposal inconsistent with, the Company Board Recommendation, (vi) enter into any letter of intent, agreement in principle, merger agreement, asset purchase or share exchange agreement, option agreement or other similar agreement or commitment related to any Competing Proposal, or (vii) resolve, propose or agree to do any of the foregoing (any act described in clauses (v) and (vi) above, a Change in Recommendation).

(b) Notwithstanding the limitations set forth in Section 5.3(a), if the Company receives, prior to the Company Stockholder Approval being obtained, a written Competing Proposal (that did not result from a breach of Section 5.3(a) or a material breach of any other provision of this Section 5.3), which the Company Board determines in good faith after consultation with the Company s outside legal and financial advisors constitutes a Superior Proposal or could reasonably be likely to result, after the taking of any of the actions referred to in either of clause (x) or (y) below, in a Superior Proposal, the Company may, subject to material compliance with the other terms of this Section 5.3, take the following actions: (x) furnish nonpublic information to the Person making such Competing Proposal, if, and only if, prior to furnishing such information, the Company receives from such Person an executed Acceptable Confidentiality Agreement and (y) engage in discussions or negotiations with such Person with respect to the Competing Proposal, if and only to the extent that the Company Board concludes in good faith after consultation with outside legal advisors that failure to do so would be inconsistent with their duties under applicable law. The Company shall provide Parent with any nonpublic information concerning the Company provided to such Person which was not previously provided to Parent substantially simultaneously with furnishing such nonpublic information to the Person making the Competing Proposal.

(c) The Company shall notify Parent promptly (but in no event later than 24 hours after receipt of any Competing Proposal, or any request for nonpublic information relating to the Company or any Company Subsidiary by any Person that informs the Company or any of the Company Subsidiaries that it is considering

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making a Competing Proposal, or any inquiry from any Person seeking to have discussions or negotiations with the Company relating to a possible Competing Proposal. Such notice shall be made orally and confirmed in writing, and shall indicate the identity of the person making the Competing Proposal, inquiry or request and the material terms and conditions of any inquiries, proposals or offers (including a copy thereof if in writing and any related documentation or correspondence). The Company shall also promptly, and in any event within 24 hours, notify Parent, orally and in writing, if it enters into discussions or negotiations concerning any Competing Proposal or provides nonpublic information or data to any Person in accordance with Section 5.3(b) and keep Parent informed in all material respects of the status and terms of any such proposals, offers, discussions or negotiations on a current basis, including by providing a copy of all material documentation or correspondence relating thereto.

(d) Notwithstanding the limitations set forth in Section 5.3(a), with respect to a Competing Proposal, the Company Board may make a Change in Recommendation if and only if (i) a written Competing Proposal (that did not result from a breach of Section 5.3(a) or a material breach of any other provision of this Section 5.3) is made to the Company and is not withdrawn, (ii) the Company Board has concluded in good faith (after consultation with outside legal counsel and financial advisors) that such Competing Proposal constitutes a Superior Proposal, (iii) the Company Board has concluded in good faith (after consultation with outside legal counsel) that failure to do so would be inconsistent with the exercise of its duties under applicable Law, (iv) three (3) business days (the Notice Period) shall have elapsed since the Company has given written notice to Parent advising Parent that the Company Board intends to take such action and specifying in reasonable detail the reasons therefor, including the terms and conditions of any such Superior Proposal that is the basis of the proposed action, (v) during such Notice Period, the Company Board has considered and, at the reasonable request of Parent, engaged in good faith discussions with Parent regarding, any adjustment or modification of the terms of this Agreement proposed by Parent, and (vi) the Company Board, following such Notice Period, again reasonably determines in good faith (after consultation with outside legal counsel and financial advisors, and taking into account any adjustment or modification of the terms of this Agreement proposed by Parent) that such Competing Proposal constitutes a Superior Proposal; *provided, however*, that (1) if, during the Notice Period, any material revisions are made to the Superior Proposal, the Company Board shall give a new written notice to Parent and shall comply with the requirements of this Section 5.3(d) with respect to such new written notice (*provided* that the Notice Period following any such new written notice shall be two (2) business days) and (2) in the event the Company Board does not determine that such Competing Proposal constitutes a Superior Proposal, but thereafter determines to make a Change in Recommendation pursuant to this Section 5.3 with respect to a Competing Proposal, the foregoing procedures referred to in this Section 5.3(d) shall apply anew and shall also apply to any subsequent withdrawal, amendment or change with respect thereto. Notwithstanding the limitations set forth in this Section 5.3, if the Company Board has concluded after consultation with the Company s outside legal and financial advisors that a Competing Proposal constitutes a Superior Proposal, then the Company Board may, prior to the Company Stockholder Approval being obtained, cause the Company to, after complying with this Section 5.3(d), enter into a binding written agreement with respect to such Superior Proposal and terminate this Agreement in accordance with Section 8.1(e).

(e) Notwithstanding the limitations set forth in Section 5.3(a), in circumstances not involving or relating to a Competing Proposal, the Company Board may make a Change in Recommendation, if and only if (i) a material development or change in circumstances has occurred or arisen after the date of this Agreement that was neither known to the Company Board nor reasonably foreseeable by the Company Board as of the date of this Agreement (and which change or development does not relate to a Competing Proposal), (ii) the Company Board has first reasonably determined in good faith (after consultation with outside legal counsel) that failure to do so would be inconsistent with the exercise of its duties under applicable Law, (iii) three (3) business days (the Intervening Event Notice Period) shall have elapsed since the Company has given notice to Parent advising Parent that the Company Board intends to take such action and specifying in reasonable detail the reasons therefor, (iv) during such Intervening Event Notice Period, the Company Board has considered and, at the reasonable request of Parent, engaged in good

faith discussions with Parent regarding, any adjustment or modification of the terms of this Agreement proposed by Parent, and (v) the Company Board, following such

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Intervening Event Notice Period, again reasonably determines in good faith (after consultation with outside legal counsel, and taking into account any adjustment or modification of the terms of this Agreement proposed by Parent) that failure to do so would be inconsistent with the exercise of its duties under applicable Law; *provided*, *however*, that in the event the Company Board does not make a Change in Recommendation following such Intervening Event Notice Period, but thereafter determines to make a Change in Recommendation pursuant to this Section 5.3 in circumstances not involving a Competing Proposal, the foregoing procedures referred to in this Section 5.3(e) shall apply anew and shall also apply to any subsequent withdrawal, amendment or change.

(f) Nothing contained in this Agreement shall prohibit the Company or the Company Board from (i) disclosing to the Company s stockholders a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act or (ii) making any disclosure to its stockholders if the Company Board has reasonably determined in good faith, after consultation with outside legal counsel, that the failure to do so would be inconsistent with any applicable Law; *provided,* that this Section 5.3(f) shall not permit the Company Board to make a Change in Recommendation except to the extent permitted by Section 5.3(d) and Section 5.3(e).

(g) The Company agrees that it will and will cause the Company Subsidiaries, and its Representatives to, cease immediately and terminate any and all existing activities, discussions or negotiations with any Person conducted heretofore with respect to any Competing Proposal. The Company agrees that it will use its reasonable best efforts to promptly inform its Representatives of the obligations undertaken in this Section 5.3.

(h) Notwithstanding any Change in Recommendation, unless this Agreement is validly terminated in accordance with its terms pursuant to Article VIII, the Company shall cause the approval of the Merger and the other Transactions to be submitted to a vote of its stockholders at the Company Stockholder Meeting.

(i) References in this Section 5.3 to the Company Board shall include a duly authorized committee thereof.

Section 5.4 Preparation of the Form S-4 and the Joint Proxy Statement; Stockholders Meetings.

(a) As promptly as reasonably practicable following the date of this Agreement, (i) the Company and Parent shall jointly prepare and cause to be filed with the SEC the Joint Proxy Statement in preliminary form, and (ii) Parent shall prepare and cause to be filed with the SEC, the Form S-4 with respect to the Parent Common Stock issuable in the Merger, which will include the Joint Proxy Statement with respect to the Company Stockholder Meeting and Parent Stockholder Meeting. Each of the Company and Parent shall use its reasonable best efforts to (x) have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing, (y) ensure that the Form S-4 complies in all material respects with the applicable provisions of the Exchange Act or Securities Act, and (z) keep the Form S-4 effective for so long as necessary to complete the Merger. Each of the Company and Parent shall furnish all information concerning itself, its affiliates and the holders of its capital stock to the other and provide such other assistance as may be reasonably requested in connection with the preparation, filing and distribution of the Form S-4 and Joint Proxy Statement. The Form S-4 and Joint Proxy Statement shall include all information reasonably requested by such other Party to be included therein. Each of the Company and Parent shall promptly notify the other upon the receipt of any comments from the SEC or any request from the SEC for amendments or supplements to the Form S-4 or Joint Proxy Statement, and shall, as promptly as practicable after receipt thereof, provide the other with copies of all correspondence between it and its Representatives, on one hand, and the SEC, on the other hand, and all written comments with respect to the Joint Proxy Statement or the Form S-4 received from the SEC and advise the other party or any oral comments with respect to the Joint Proxy Statement or the Form S-4 received from the SEC. Each of the Company and Parent shall use its reasonable best efforts to respond as promptly as practicable to any comments from the SEC with respect to the Joint Proxy Statement, and Parent shall use its reasonable best efforts to respond as promptly as practicable to any comment from the SEC with respect to the Form S-4. Notwithstanding the

foregoing, prior to filing the Form S-4 (or any amendment or supplement thereto) or mailing the Joint Proxy Statement (or any amendment or supplement thereto) or responding to any comments of the SEC with respect

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thereto, each of the Company and Parent shall cooperate and provide the other a reasonable opportunity to review and comment on such document or response (including the proposed final version of such document or response). Parent shall advise the Company, promptly after it receives notice thereof, of the time of effectiveness of the Form S-4, the issuance of any stop order relating thereto or the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, and Parent shall use its reasonable best efforts to have any such stop order or suspension lifted, reversed or otherwise terminated. Parent shall also take any other action required to be taken under the Securities Act, the Exchange Act, any applicable foreign or state securities or blue sky Laws and the rules and regulations thereunder in connection with the issuance of the Parent Common Stock in the Merger, and the Company shall furnish all information concerning the Company and the holders of the Company Common Stock as may be reasonably requested in connection with any such actions.

(b) If, at any time prior to the receipt of the Company Stockholder Approval or the Parent Stockholder Approval, any information relating to the Company or Parent, or any of their respective affiliates, should be discovered by the Company or Parent which, in the reasonable judgment of the Company or Parent, should be set forth in an amendment of, or a supplement to, any of the Form S-4 or the Joint Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Party which discovers such information shall promptly notify the other Parties, and the Company and Parent shall cooperate in the prompt filing with the SEC of any necessary amendment of, or supplement to, the Joint Proxy Statement or the Form S-4 and, to the extent required by Law, in disseminating the information contained in such amendment or supplement to stockholders of the Company and the stockholders of Parent. Nothing in this Section 5.4(b) shall limit the obligations of any Party under Section 5.4(a). For purposes of this Section 5.4, any information concerning or related to the Company, its affiliates or the Company Stockholder Meeting will be deemed to have been provided by the Company, and any information concerning or related to Parent, its affiliates or the Parent Stockholder Meeting will be deemed to have been provided by Parent.

(c) As promptly as practicable following the date of this Agreement, the Company shall, in accordance with applicable Law and the Company Governing Documents, establish a record date for, duly call, give notice of, convene and hold the Company Stockholder Meeting. The Company shall use its reasonable best efforts to cause the Joint Proxy Statement to be mailed to the stockholders of the Company entitled to vote at the Company Stockholder Meeting and to hold the Company Stockholder Meeting as soon as practicable after the Form S-4 is declared effective under the Securities Act. The Company shall, through the Company Board, recommend to its stockholders that they give the Company Stockholder Approval, include such recommendation in the Joint Proxy Statement and solicit and use its reasonable best efforts to obtain the Company Stockholder Approval, except to the extent that the Company Board shall have made a Change in Recommendation as permitted by Section 5.3. Notwithstanding the foregoing provisions of this Section 5.4(c), if, on a date for which the Company Stockholder Meeting is scheduled, the Company has not received proxies representing a sufficient number of shares of Company Common Stock to obtain the Company Stockholder Approval, whether or not a quorum is present, the Company shall have the right to make one or more successive postponements or adjournments of the Company Stockholder Meeting; *provided,* that the Company Stockholder Meeting is not postponed or adjourned to a date that is more than thirty (30) days after the date for which the Company Stockholder Meeting was originally scheduled (excluding any adjournments or postponements required by applicable Law) without the consent of Parent. Unless this Agreement is terminated in accordance with Section 8.1, nothing contained in this Agreement shall be deemed to relieve the Company of its obligation to submit the approval of the Merger Agreement to its stockholders for a vote on the approval thereof.

(d) As promptly as practicable following the date of this Agreement, Parent shall, in accordance with applicable Law and the Parent Governing Documents, establish a record date for, duly call, give notice of, convene and hold the Parent Stockholder Meeting. Parent shall use its reasonable best efforts to cause the Joint Proxy Statement to be

mailed to the stockholders of Parent entitled to vote at the Parent Stockholder Meeting and to hold the Parent Stockholder Meeting as soon as practicable after the Form S-4 is declared effective under the

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Securities Act. Parent shall, through the Parent Board, recommend to its stockholders that they give the Parent Stockholder Approval, include such recommendation in the Joint Proxy Statement, and solicit and use its reasonable best efforts to obtain the Parent Stockholder Approval. Notwithstanding the foregoing provisions of this Section 5.4(d), if, on a date for which the Parent Stockholder Meeting is scheduled, Parent has not received proxies representing a sufficient number of shares of Parent Common Stock to obtain the Parent Stockholder Approval, whether or not a quorum is present, Parent shall have the right to make one or more successive postponements or adjournments of the Parent Stockholder Meeting; *provided,* that the Parent Stockholder Meeting is not postponed or adjourned to a date that is more than thirty (30) days after the date for which the Parent Stockholder Meeting was originally scheduled (excluding any adjournments or postponements required by applicable Law) without the consent of the Company. Nothing contained in this Agreement shall be deemed to relieve Parent of its obligation to submit the issuance of the Parent Common Stock in the Merger to its stockholders for a vote on the approval thereof.

(e) The Company and Parent will use their respective reasonable best efforts to hold the Company Stockholder Meeting and the Parent Stockholder Meeting on the same date and as soon as reasonably practicable after the date of this Agreement.

ARTICLE VI

ADDITIONAL AGREEMENTS

Section 6.1 Access; Confidentiality; Notice of Certain Events.

(a) From the date of this Agreement until the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, to the extent permitted by applicable Law and contracts, and subject to the reasonable restrictions imposed from time to time upon advice of counsel, each of the Company and Parent shall, and shall cause each of the Parent Subsidiaries (to the extent permitted by the applicable Parent Subsidiary s governance documents) and the Company Subsidiaries, respectively, to, afford to the other Party and to the Representatives of such other Party reasonable access during normal business hours and upon reasonable advance notice to all of their respective properties, offices, books, contracts, commitments, personnel and records and, during such period, each of the Company and Parent shall, and shall cause each of the Company Subsidiaries and the Parent Subsidiaries, respectively, to, furnish reasonably promptly to the other Party (i) a copy of each report, schedule, registration statement and other document filed by it during such period pursuant to the requirements of federal or state securities Laws, and (ii) all other information (financial or otherwise) concerning its business, properties and personnel as such other Party may reasonably request. Notwithstanding the foregoing, neither the Company nor Parent shall be required by this Section 6.1 to provide the other Party or the Representatives of such other Party with access to or to disclose information (x) that is subject to the terms of a confidentiality agreement with a third party entered into prior to the date of this Agreement or entered into after the date of this Agreement in the ordinary course of business consistent with past practice (*provided*, *however*, that the withholding Party shall use its reasonable best efforts to obtain the required consent of such third party to such access or disclosure), (y) the disclosure of which would violate any Law or duty (*provided*, *however*, that the withholding Party shall use its reasonable best efforts to make appropriate substitute arrangements to permit reasonable disclosure not in violation of any Law or duty) or (z) that is subject to any attorney-client, attorney work product or other legal privilege (*provided*, *however*, that the withholding Party shall use its reasonable best efforts to allow for such access or disclosure to the maximum extent that does not result in a loss of any such attorney-client, attorney work product or other legal privilege). Each of the Company and Parent will use its reasonable best efforts to minimize any disruption to the businesses of the other Party that may result from the requests for access, data and information hereunder. Prior to the Effective Time, each of Parent and Merger Sub shall not, and shall cause their respective Representatives and affiliates not to, contact or otherwise communicate with the employees of the Company or any Company Subsidiary (other than those employees set forth on Section 6.1(a) of the

Company Disclosure Letter) or other parties with which the Company or any Company

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Subsidiary has a business relationship regarding the business of the Company and the Company Subsidiaries or this Agreement and the Transactions without the prior written consent of the Company.

(b) Each of the Company and Parent will hold, and will cause its Representatives and affiliates to hold, any nonpublic information, including any information exchanged pursuant to this Section 6.1, in confidence to the extent required by and in accordance with, and will otherwise comply with, the terms of the Confidentiality Agreement, subject to the following: (x) notwithstanding the second paragraph of Section 2 of the Confidentiality Agreement, the Company and Parent may disclose any of the terms, conditions or other facts of the Merger and other Transactions in accordance with this Agreement; (y) the third paragraph of Section 2 of the Confidentiality Agreement is terminated and of no further force and effect, with the effect that the Company has no consent rights with respect to Parent s selection of any potential source of debt or equity financing (and their respective counsel) or Parent s ability to share Evaluation Material (as defined in the Confidentiality Agreement) with such financing sources and (z) any such financing sources shall be included within the definition of Representatives .

(c) The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, (i) of any notice or other communication received by such Party from any Governmental Entity in connection with this Agreement, the Merger or the other Transactions, or from any Person alleging that the consent of such person is or may be required in connection with the Merger or the other Transactions, if the subject matter of such communication or the failure of such Party to obtain such consent could be material to the Company, the Surviving Entity or Parent, (ii) of any Legal Proceeding commenced or, to any Party s knowledge, threatened against, such Party or any of its Subsidiaries or affiliates or otherwise relating to, involving or affecting such Party or any of its Subsidiaries or affiliates, in each case in connection with, arising from or otherwise relating to the Merger or any other Transaction, and (iii) if (A) any representation or warranty made by such Party contained in this Agreement becomes untrue or inaccurate such that it would be reasonable to expect that the applicable closing conditions would be incapable of being satisfied by the Outside Date or (B) such Party fails to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement such that it would be reasonable to expect that the applicable closing conditions would be incapable of being satisfied by the Outside Date; *provided*, *however*, that no such notification shall affect the representations, warranties, covenants or agreements of the Parties or the conditions to the obligations of the Parties under this Agreement. Without limiting the foregoing, the Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, if, to the knowledge of such Party, the occurrence of any state of facts, change, development, event or condition would cause, or would reasonably be expected to cause, any of the conditions to Closing set forth herein not to be satisfied or satisfaction to be materially delayed, as the case may be, *provided*, *however*, that the delivery of any notice pursuant to this Section 6.1(c) shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date of this Agreement or otherwise limit or affect the remedies available hereunder to any Party. The failure to deliver any such notice shall not affect any of the conditions set forth in Article VII.

Section 6.2 Consents and Approvals.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Company and Parent shall and shall cause their respective Subsidiaries, to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper or advisable under applicable Law or pursuant to any contract or agreement to consummate and make effective, as promptly as practicable, the Merger and the other Transactions, including (i) the taking of all actions necessary to cause the conditions to Closing set forth in Article VII to be satisfied, (ii) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities or other Persons necessary in connection with the consummation of the Merger and the other Transactions and the making of all necessary registrations and filings (including filings with Governmental Entities, if any) and the taking of all reasonable steps as may be

necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity or other Persons necessary in connection with the consummation of the Merger and the other Transactions, (iii) the defending of any lawsuits or other legal

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proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Merger or the other Transactions, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed, the avoidance of each and every impediment under any antitrust, merger control, competition or trade regulation Law that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to as soon as reasonably practicable, and (iv) the execution and delivery of any additional instruments necessary to consummate the Merger and the other Transactions and to fully carry out the purposes of this Agreement.

(b) In connection with and without limiting the foregoing, each of Parent and the Company shall give (or shall cause to be given) any notices to any Person, and each of Parent and the Company shall use, and cause each of their respective affiliates to use, its reasonable best efforts to obtain any consents from any Person not covered by Section 6.2(a) that are necessary, proper or advisable to consummate the Merger. Each of the Parties will furnish to the other such necessary information and reasonable assistance as the other may request in connection with the preparation of any required governmental filings or submissions and will cooperate in responding to any inquiry from a Governmental Entity, including promptly informing the other Party of such inquiry, consulting in advance before making any presentations or submissions to a Governmental Entity, and supplying each other with copies of all material correspondence, filings or communications between either Party and any Governmental Entity with respect to this Agreement. To the extent reasonably practicable, the Parties or their Representatives shall have the right to review in advance and each of the Parties will consult the others on, all the information relating to the other and each of their affiliates that appears in any filing made with, or written materials submitted to, any Governmental Entity in connection with the Merger and the other Transactions (other than Tax Returns), except that confidential competitively sensitive business information may be redacted from such exchanges. To the extent reasonably practicable, neither the Company nor Parent shall, nor shall they permit their respective Representatives to, participate independently in any meeting or engage in any substantive conversation with any Governmental Entity in respect of any filing, investigation or other inquiry without giving the other Party prior notice of such meeting or conversation and, to the extent permitted by applicable Law, without giving the other Party the opportunity to attend or participate (whether by telephone or in person) in any such meeting with such Governmental Entity. Notwithstanding the foregoing, obtaining any approval or consent from any Person pursuant to this Section 6.2(b) shall not be a condition to the obligations of the Parties to consummate the Merger.

(c) Notwithstanding anything to the contrary in this Agreement, in connection with obtaining any approval or consent from any Person (other than any Governmental Entity) with respect to the Merger, the Company, the Company Subsidiaries and their respective Representatives shall not be obligated to, and shall not without the consent of Parent, pay or commit to pay to such Person whose approval or consent is being solicited any cash or other consideration**,** make any accommodation or commitment or incur any liability or other obligation to such Person. The Parties shall cooperate with respect to accommodations that may be requested or appropriate to obtain such consents.

(d) Without limiting the generality of the foregoing, each of the Parties hereto acknowledges that the Specified Consent may be required with respect to the Merger and the Transactions and such Specified Consent has not been obtained as of the date of this Agreement. Parent and the Company shall, and shall cause their respective Representatives to use reasonable best, good faith and diligent efforts to obtain the Specified Consent promptly after the date of this Agreement. The Parties acknowledge that Parent will have the right to commence and lead all negotiations with the relevant Persons with respect to obtaining the Specified Consent. In connection therewith, the Company shall promptly provide, and cause each Company Subsidiary and their respective Representatives to promptly provide, all assistance and cooperation reasonably requested by Parent in connection with obtaining such Specified Consent, including the preparation and delivery of any information regarding the Company or any Company Subsidiary as may be requested by Parent, and, if requested by Parent, the participation in any meetings or discussions or communications with, and communications, from the relevant Persons. The Company shall execute, or cause to be

executed by any applicable Company Subsidiary, any customary documents reasonably requested by Parent or required by the relevant Persons in connection with

obtaining the Specified Consent; *provided* that (i) no obligation of the Company or any of the Company Subsidiaries under any such customary documents shall be effective until the actual occurrence of the Effective Time, and (ii) none of the Company or any of the Company Subsidiaries or their respective Representatives shall be required to pay any fee or incur any other cost or expense that is not simultaneously reimbursed by Parent in connection with the obtaining the Specified Consent prior to the Effective Time.

Section 6.3 Publicity. So long as this Agreement is in effect, neither the Company nor Parent, nor any of their respective affiliates, shall issue or cause the publication of any press release or other announcement with respect to the Merger or this Agreement without the prior consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed), unless such Party determines, after consultation with outside counsel, that it is required by applicable Law or by any listing agreement with or the listing rules of a national securities exchange or trading market to issue or cause the publication of any press release or other announcement with respect to the Merger or this Agreement, in which event such Party shall endeavor, on a basis reasonable under the circumstances, to provide a meaningful opportunity to the other Party to review and comment upon such press release or other announcement and shall give due consideration to all reasonable additions, deletions or changes suggested thereto; *provided, however*, that the Company shall not be required to provide any such review or comment to Parent in connection with the receipt and existence of a Competing Proposal and matters related thereto or a Change in Recommendation; *provided, further*, each Party and their respective controlled affiliates may make statements that are not inconsistent with previous press releases, public disclosures or public statements made by Parent and the Company in compliance with this Section 6.3. The Parties have agreed upon the form of joint press release announcing the Merger and the execution of this Agreement.

Section 6.4 Directors and Officers Insurance and Indemnification.

(a) Parent shall, or shall cause the Surviving Entity to, honor and fulfill in all respects the obligations of the Company to the fullest extent permissible under applicable Law, under the Company Governing Documents in effect on the date hereof and under any indemnification or other similar agreements in effect on the date hereof (the Indemnification Agreements) to the individuals covered by such Company Governing Documents or Indemnification Agreements (the Covered Persons) arising out of or relating to actions or omissions in their capacity as such occurring at or prior to the Effective Time, including in connection with the approval of this Agreement and the Transactions.

(b) Without limiting the provisions of Section 6.4(a), for a period of six (6) years after the Effective Time, Parent shall, or shall cause the Surviving Entity to: (i) indemnify and hold harmless each Covered Person against and from any costs or expenses (including attorneys fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, to the extent such claim, action, suit, proceeding or investigation arises out of or pertains to: (A) any action or omission or alleged action or omission in such Covered Person s capacity as such, or (B) this Agreement and any of the Transactions; and (ii) pay in advance of the final disposition of any such claim, action, suit, proceeding or investigation the expenses (including attorneys fees) of any Covered Person upon receipt of an undertaking by or on behalf of such Covered Person to repay such amount if it shall ultimately be determined that such Covered Person is not entitled to be indemnified. Notwithstanding anything to the contrary contained in this Section 6.4 or elsewhere in this Agreement, neither Parent nor the Surviving Entity shall (and Parent shall cause the Surviving Entity not to) settle or compromise or consent to the entry of any judgment or otherwise seek termination with respect to any claim, action, suit, proceeding or investigation of a Covered Person for which indemnification may be sought under this Section 6.4(b) unless such settlement, compromise, consent or termination includes an unconditional release of such Covered Person from all liability arising out of such claim, action, suit, proceeding or investigation. Notwithstanding anything to the contrary contained in this Section 6.4 or elsewhere in this Agreement, no Covered Person shall settle or compromise or consent to the entry of any judgment or otherwise seek termination

with respect to any claim, action, suit, proceeding or investigation of a Covered Person for which indemnification

may be sought under this Section 6.4(b) without the prior consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned).

(c) For a period of six (6) years after the Effective Time, the certificate of incorporation and bylaws of the Surviving Entity or any of its successors or assigns shall contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of Covered Persons for periods prior to and including the Effective Time than are currently set forth in the Company Governing Documents. The Indemnification Agreements with Covered Persons that survive the Merger shall continue in full force and effect in accordance with their terms.

(d) The Company may, prior to Closing, purchase a directors and officers liability insurance tail or runoff insurance program for a period of six (6) years after the Effective Time with respect to wrongful acts and/or omissions committed or allegedly committed at or prior to the Effective Time (such coverage shall have an aggregate coverage limit over the term of such policy in an amount not to exceed the annual aggregate coverage limit under the Company s existing directors and officers liability policy, and in all other respects shall be comparable to such existing coverage), *provided*, *however*, that the cost of such program may not exceed 250% of the annual premiums paid as of the date of this Agreement by the Company for directors and officers liability insurance (such 250% amount, the Base Premium); *provided*, *further*, if such insurance coverage cannot be obtained at all, or can only be obtained at a cost in excess of the Base Premium, the Company may purchase the most advantageous policies of tail or run-off directors and officers insurance obtainable for a cost equal to the Base Premium.

(e) In the event the Surviving Entity or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then and in each such case, proper provision shall be made so that such continuing or surviving corporation or entity or transferee of such assets, as the case may be, shall assume all of the applicable obligations set forth in this Section 6.4.

(f) The Covered Persons (and their successors and heirs) are intended third party beneficiaries of this Section 6.4, and this Section 6.4 shall not be amended in a manner that is adverse to the Covered Persons (including their successors and heirs) or terminated without the consent of the Covered Persons (including their successors and heirs) affected thereby.

Section 6.5 Takeover Statutes. The Parties shall use their respective reasonable best efforts (a) to take all action necessary so that no Takeover Statute is or becomes applicable to the Merger or any of the other Transactions and (b) if any such Takeover Statute is or becomes applicable to any of the foregoing, to take all action necessary so that the Merger and the other Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to eliminate or minimize the effect of such Takeover Statute on the Merger and the other Transactions.

Section 6.6 Obligations of Merger Sub. Parent shall take all action necessary to cause Merger Sub and the Surviving Entity to perform their respective obligations under this Agreement and to consummate the Transactions, including the Merger, upon the terms and subject to the conditions set forth in this Agreement.

Section 6.7 Employee Benefits Matters.

(a) Effective as of the Effective Time and for a period of one (1) year thereafter, Parent shall provide, or shall cause the Surviving Entity to provide, to each employee of the Company and/or its Subsidiaries who continues to be employed by the Company or the Surviving Entity or any Subsidiary thereof (the Continuing Employees), (i) compensation (excluding any equity-based compensation) that is not less favorable in the aggregate than the

compensation provided to similarly situated employees of Parent, (ii) severance benefits that are no less favorable than the severance benefits provided to such Continuing Employee by the Company

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immediately prior to the Effective Time, (iii) employee benefits that are, in the aggregate, no less favorable than those provided to similarly situated employees of Parent. Effective as of the Effective Time and thereafter, Parent shall provide, or shall cause the Surviving Entity to provide, that periods of employment with the Company (including any current or former affiliate of the Company or any predecessor of the Company) shall be taken into account for purposes of determining, as applicable, the eligibility for participation and vesting, but not for benefit accrual purposes, of any Continuing Employee under all employee benefit plans maintained by Parent or an affiliate of Parent for the benefit of the Continuing Employees, including vacation or other paid-time-off plans or arrangements, 401(k), pension or other retirement plans and any severance or health or welfare plans.

(b) Effective as of the Effective Time and thereafter, Parent shall, and shall cause the Surviving Entity to, (x) ensure that no eligibility waiting periods, actively-at-work requirements or pre-existing condition limitations or exclusions shall apply with respect to the Continuing Employees under the applicable health and welfare benefits plan of Parent or any affiliate of Parent (except to the extent applicable under Company Benefit Plans immediately prior to the Effective Time), (y) waive any and all evidence of insurability requirements with respect to such Continuing Employees to the extent such evidence of insurability requirements were not applicable to the Continuing Employees under the Benefits Plans immediately prior to the Effective Time, and (z) credit each Continuing Employee with all deductible payments, out-of-pocket or other co-payments paid by such employee under the health benefit plans of the Company or its affiliates prior to the Closing Date during the year in which the Closing occurs for the purpose of determining the extent to which any such employee has satisfied his or her deductible and whether he or she has reached the out-of-pocket maximum under any health benefit plan of Parent or an affiliate of Parent for such year. The Merger shall not affect any Continuing Employee s accrual of, or right to use, in accordance with Company policy as in effect immediately prior to the Effective Time, any personal, sick, vacation or other paid-time-off accrued but unused by such Continuing Employee immediately prior to the Effective Time.

(c) From and after the Closing Date, Parent shall cause the Surviving Entity and/or its affiliates, as applicable, to honor and perform all written agreements listed as Employment Agreements or Equity Plans on Section 3.11(a) of the Company Disclosure Letter, between the Company and/or its affiliates, as applicable, on the one hand, and any Continuing Employee on the other.

(d) Nothing in this Agreement shall confer upon any Continuing Employee any right to continue in the employ or service of Parent, the Surviving Entity or any affiliate of Parent, or shall interfere with or restrict in any way the rights of Parent, the Surviving Entity or any affiliate of Parent, which rights are hereby expressly reserved, to discharge or terminate the services of any Continuing Employee at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between Parent, the Surviving Entity, the Company or any affiliate of Parent and the Continuing Employee or any severance, benefit or other applicable plan or program covering such Continuing Employee, nor shall anything herein alter or limit the ability of Parent, the Surviving Entity or any affiliate of Parent to amend, modify or terminate any benefit plan, program, policy agreement or arrangement at any time, assumed, established, sponsored or maintained by any of them. Notwithstanding any provision in this Agreement to the contrary, nothing in this Section 6.7 shall (x) be deemed or construed to be an amendment or other modification of any Company Benefit Plan or Merger Sub employee benefit plan, or (y) create any third party rights in any current or former service provider of the Company or its affiliates (or any beneficiaries or dependents thereof).

Section 6.8 Rule 16b-3. Prior to the Effective Time, the Company shall be permitted to take such steps as may be reasonably necessary or advisable hereto to cause dispositions of Company equity securities (including derivative securities) pursuant to the Merger by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 6.9 Control of Operations. Without in any way limiting any Party s rights or obligations under this Agreement, the Parties understand and agree that (i) nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company s operations prior to the Effective Time, and

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(ii) prior to the Effective Time, the Company shall exercise, consistent with and subject to the terms and conditions of this Agreement, complete control and supervision over its operations.

Section 6.10 Security Holder Litigation. In the event that any litigation related to this Agreement, the Merger or the other Transactions is brought against the Company and/or its directors by security holders of the Company, the Company shall promptly notify Parent of such litigation and shall keep Parent informed on a current basis with respect to the status thereof. The Company shall give Parent the opportunity to participate, subject to a customary joint defense agreement, in, but not control, the defense and settlement of any such litigation against the Company and/or its directors by security holders of the Company and no such settlement shall be agreed to by the Company or any Company Subsidiary without the Parent s prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned in the case of settlements that do not exceed in the aggregate the amount set forth on Schedule 6.10 of the Company Disclosure Letter).

Section 6.11 Delisting. Each of the Parties agrees to cooperate with the other Parties in taking, or causing to be taken, all actions necessary to delist the Company Common Stock and the Company Series D Preferred Stock from the NYSE and terminate their registration under the Exchange Act, *provided*, that such delisting and termination shall not be effective until after the Effective Time.

Section 6.12 Director and Officer Resignations. The Company shall use commercially reasonable efforts to cause to be delivered to Parent resignations executed by each director and officer of the Company and the Company Subsidiaries in office immediately prior to the Effective Time.

Section 6.13 Certain Tax Matters. Each of Parent and the Company shall use its reasonable best efforts to cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code, including by executing and delivering the tax representation letters referred to herein. None of Parent or the Company shall take any action, or fail to take any action, that could reasonably be expected to cause the Merger to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code. All Parties shall treat the Merger as a reorganization under Section 368(a) of the Code and no Party shall take any positions inconsistent therewith for Tax purposes.

Section 6.14 Tax Opinions and Tax Representation Letters.

(a) Parent shall use its commercially reasonable best efforts to (i) obtain the opinions of counsel referred to in Section 7.3(c) and Section 7.2(e), (ii) deliver to Goodwin Procter LLP, counsel to Parent (or other nationally recognized REIT counsel to Parent, if applicable) a tax representation letter, dated as of the Closing Date and signed by an officer of Parent, in form and substance as set forth in Exhibit E-1, with such changes as are reasonably determined by Goodwin Procter LLP (or such other counsel) to be necessary or appropriate to account for the operation of Parent and the Parent Subsidiaries after the execution of this Agreement and that are approved by the Company, such approval not to be unreasonably withheld, and such other changes as are mutually agreeable to Parent and the Company, containing representations of Parent for purposes of rendering the opinion described in Section 7.3(c), and (iii) deliver to Latham & Watkins LLP, counsel to the Company, and Goodwin Procter LLP, counsel to Parent, tax representation letters, dated as of the effective date of the Form S-4 and the Closing Date, respectively, and signed by an officer of Parent, in form and substance as set forth in Exhibit E-2, with such changes as are mutually agreeable to the Company and Parent, containing representations of Parent as shall be reasonably necessary or appropriate to enable Latham & Watkins LLP to render an opinion on the effective date of the Form S-4 and on the Closing Date, as described in Section 7.3(d), respectively, and Goodwin Procter LLP to render an opinion on the effective date of the Form S-4 and on the Closing Date, as described in Section 7.2(e), respectively.

(b) The Company shall use its commercially reasonable best efforts to (i) obtain the opinions of counsel referred to in Section 7.2(d) and Section 7.3(d), (ii) deliver to Latham & Watkins LLP, counsel to the Company, Parent, and Goodwin Procter LLP (or other counsel as may be rendering the opinion referred to in

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Section 7.3(c)), a tax representation letter, dated as of the Closing Date and signed by an officer of the Company, in form and substance as set forth in Exhibit E-3, with such changes as are reasonably determined by Latham & Watkins LLP to be necessary or appropriate to account for the operation of the Company and the Company Subsidiaries after the execution of this Agreement and that are approved by Parent, such approval not to be unreasonably withheld, and such other changes as are mutually agreeable to Parent and the Company, containing representations of the Company for purposes of rendering the opinion described in Section 7.2(d), and (iii) deliver to Goodwin Procter LLP, counsel to Parent, and Latham & Watkins LLP, counsel to the Company, tax representation letters, dated as of the effective date of the Form S-4 and the Closing Date, respectively, and signed by an officer of the Company, in form and substance as set forth in Exhibit E-4, with such changes as are mutually agreeable to the Company and Parent, containing representations of the Company as shall be reasonably necessary or appropriate to enable Goodwin Procter LLP to render an opinion on the effective date of the Form S-4 and on the Closing Date, as described in Section 7.2(e), respectively, and Latham & Watkins LLP to render an opinion on the effective date of the Form S-4 and on the Closing Date, as described in Section 7.3(d), respectively.

Section 6.15 Stock Exchange Listing. Parent shall use its reasonable best efforts to cause the shares of Parent Common Stock to be issued in the Merger to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Effective Time.

Section 6.16 Dividends.

(a) Except as provided in Sections 6.16(b) (with respect to REIT dividends payable in 2014) through (c) below, from and after the date of this Agreement until the earlier of the Effective Time and termination of this Agreement pursuant to Section 8.1, neither the Company nor Parent shall make, declare or set aside any dividend or other distribution to its respective stockholders without the prior written consent of the Company (in the case of Parent) or Parent (in the case of the Company); *provided, however*, that the written consent of the other Party shall not be required (but written notice shall be given) for the authorization and payment of dividends expressly permitted by Section 5.1 or Section 5.2, as applicable, or to enable Parent or the Company, respectively, to maintain its qualification as a REIT and avoid incurring entity level income or excise taxes under the Code or applicable state law, including payment of dividends under Code Sections 858 or 860, as permitted in Article V (any such dividend, a REIT Dividend); *provided*, that the Parties agree to take such actions as are necessary to ensure that if either the holders of Company Common Stock or the holders of Parent Common Stock receive a distribution for a particular quarter prior to the Closing Date, then the holders of Company Common Stock and the holders of Parent Common Stock, as the case may be, shall also receive a distribution for such quarter whether in full or pro-rated for the applicable quarter as necessary to result in the holders of Company Common Stock and the holders of Parent Common Stock receiving dividends covering the same periods prior to the Closing Date. In the case of a REIT Dividend payable by the Company with respect to any taxable year, the amount of such REIT Dividend shall be determined without regard to the Special Dividend and shall not reduce the Merger Consideration.

(b) If the Company or Parent determines that it is or may be necessary to declare a REIT Dividend with respect to 2014, the taxable year that includes the Closing Date, it shall notify the Parent (in the case of the Company) or the Company (in the case of Parent) as soon as practicable. The record date for any dividend payable pursuant to this Section 6.16(b) shall be the close of business on the last business day prior to the Closing Date and the payment date shall be within three business days after the Effective Time (or as soon as practicable thereafter). For the avoidance of doubt, the requirements set forth in this Section 6.16(b) shall not apply to the declaration and payment of a REIT dividend with respect to taxable years prior to 2014, although written notice shall be provided to the other Party in accordance with Section 6.16(a) above.

(c) Promptly following Parent s Delivery of a valid Asset Transfer Notice pursuant to Section 6.17, the Company Board (i) shall authorize and declare a dividend (the Special Dividend) to the Company s stockholders in an amount per share determined by the Company after consultation with Parent (the Special

Dividend Amount), based on the net proceeds (but which amount may be less than such net proceeds) to the Company from the Asset Transfer and an estimate of the aggregate number of shares of Company Common Stock that will be outstanding as of the close of business on the last business day prior to the Closing Date, and (ii) promptly set the record date for the Special Dividend as the close of business on the last business day prior to the anticipated Closing Date and deliver notice of such record date to the NYSE at least ten (10) days prior to the anticipated Closing Date. The Special Dividend shall be conditioned upon the closing of the Asset Transfer as set forth in Section 6.17. The Company shall deposit the Special Dividend Amount with the Company s transfer agent on the closing date of the Asset Transfer and the payment date for the Special Dividend shall be within three business days after the Effective Time (or as soon as practicable thereafter). For purposes of determining whether the Company shall have distributed sufficient amounts to avoid incurring entity level income or excise taxes under the Code or applicable state Law, it is intended by the Parties and it shall be assumed that the amount of the Special Dividend that is attributable to the Company s current or accumulated earnings and profits for U.S. federal income tax purposes shall result in a dividends paid deduction within the meaning of Section 561 of the Code.

Section 6.17 Asset Transfer.

(a) Parent shall have the right to make an irrevocable election (the Asset Transfer Election), by written notice to the Company (the Asset Transfer Notice) delivered to the Company no later than 5:00 p.m. Pacific time on the business day that is at least fifteen (15) business days prior to the initial scheduled date for the Company Stockholder Meeting, to require that the Company sell, and for Parent or one or more Persons designated by Parent to agree to purchase or cause to be purchased (as described below) (collectively, the Asset Transfer), on the business day prior to the Effective Time, those assets, partial interests in assets, and/or interests in Subsidiaries, of the Company and the Company Subsidiaries as specified by Parent in the Asset Transfer Notice (the Disposition Assets); *provided, however*, the net equity value of such Disposition Assets shall not in the aggregate exceed $1,000,000,000. An Asset Transfer may include a contribution of Disposition Assets to a newly-formed single-member limited liability company owned by the Company. The Asset Transfer Notice shall specify the dollar amount of the purchase price in cash to be paid to the Company and the Company Subsidiaries in the Asset Transfer, which amount shall be equal to the reasonably equivalent fair market value for the Disposition Assets (the Asset Transfer Purchase Price). The Asset Transfer Notice shall not include as Disposition Assets any assets of the Company or any of the Company Subsidiaries that are encumbered by secured debt or that are subject to any third party restrictions on transfer, unless the lender or other beneficiary of such restrictions thereunder has consented to such transfer. At the reasonable request of Parent, the Company shall reasonably cooperate with Parent, at Parent s expense, in obtaining any third-party consents, making any filings or taking any actions necessary to effect the Asset Transfer.

(b) In the event that Parent shall have made a valid Asset Transfer Election, then not later than 9:00 a.m. Pacific time on the business day prior to the Effective Time:

(i) Parent and Merger Sub shall provide the Company with an irrevocable written certification, in form and substance, reasonably satisfactory to the Company that confirms that the conditions to the obligations of Parent and Merger Sub to effect the Merger set forth in Section 7.2 have been irrevocably satisfied or waived; and the Company shall provide Parent and Merger Sub with an irrevocable written certification, in form and substance reasonably satisfactory to Parent and Merger Sub, that confirms that the conditions to the obligations of the Company to effect the Merger set forth in Section 7.3 have been irrevocably satisfied or waived.

(ii) the Company shall, and shall cause the Company Subsidiaries to, and Parent shall or shall cause any purchaser of the Disposition Assets to, (A) establish an escrow with a national title company, as escrow agent, pursuant to a customary escrow arrangements through which such Asset Transfer shall be consummated and (B) enter into and deliver to the other party(ies) through such escrow such customary instruments of transfer (i.e., a grant, special or

limited warranty deed, bill of sale and assignment of leases and contracts) and such other customary documents and instruments (e.g., documentary, excise or transfer tax

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statements, gap affidavits to allow for closing prior to recordation of the deeds and other title affidavits required to issue title insurance policies for the Disposition Assets in favor of any purchaser of the Disposition Assets, FIRPTA and any state equivalent certificates, evidence of authority, etc.) in order to effect the Asset Transfer.

(iii) Parent and Merger Sub shall, or shall cause any purchaser of the Disposition Assets to, take all action necessary to cause to be delivered into escrow the Asset Transfer Purchase Price in immediately available funds.

(c) The Asset Transfer shall close not later than 1:00 p.m., Pacific on the business day prior to the Effective Time The term close as used in this Section 6.17, shall mean the time and date that the transactions with respect to such Asset Transfer are closed through escrow by delivery of the applicable transfer instruments and other documents and instruments and the funds released out of escrow to the Company and the Company Subsidiaries, regardless of whether such transfer instruments have been recorded in the official land records in which the applicable Disposition Assets are located.

(d) Notwithstanding anything to the contrary in this Agreement, the term Transactions as used in this Agreement shall not include the Asset Transfer or any actions to be taken in connection therewith.

(e) Parent and Merger Sub shall indemnify, defend, protect and hold harmless the Company and the Company Subsidiaries for any costs, expenses, liabilities, losses, Taxes, fees, penalties or other amounts due or arising out of or any way related to any Asset Transfer, including, without limitation, in connection with any agreements, documents or other instruments required to be delivered by the Company or any Company Subsidiaries with respect to such Asset Transfer. For purposes of the previous sentence, the U.S. federal and state income and excise Taxes payable by the Company shall equal the amount of such taxes payable by the Company in excess of the amounts that would have been payable had there been no Asset Disposition.

(f) Parent shall bear all third party out-of-pocket expenses and costs (including but not limited to those of the Company and the Company Subsidiaries associated with the Asset Transfers (and any subsequent reconveyance).

Section 6.18 Financing Cooperation.

(a) Parent will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to consummate and obtain the Bridge Financing on the terms and conditions described in the Bridge Commitment Letter, including using reasonable best efforts to (i) maintain in effect the commitment provided under the Bridge Commitment Letter, (ii) negotiate definitive agreements with respect to the Bridge Financing consistent with the terms and conditions contained in the Bridge Commitment Letter (any such agreements, the Definitive Bridge Agreements), (iii) satisfy on a timely basis (or obtain the waiver of) all conditions within Parent s control in the Bridge Commitment Letter or the Definitive Bridge Agreements, as applicable, and comply with its obligations thereunder, and (iv) upon the satisfaction or waiver of such conditions, consummate the Bridge Financing at or prior to the Closing. Parent will have the right from time to time to amend, modify or replace the Bridge Commitment Letter; *provided*, that Parent will not, without the prior written consent of the Company, agree to, or permit, any amendment, modification or replacement of, or waiver under, the Bridge Commitment Letter or the definitive agreements relating to the Bridge Financing if such amendment, modification, replacement or waiver would (A) reduce the aggregate amount of the financing or (B) impose new or additional conditions or otherwise adversely expand or amend any of the conditions precedent or contingencies to the funding on the Closing Date of the financing as set forth in the Bridge Commitment Letter that, when considered with the other conditions taken as a whole, would reasonably be expected to prevent, impede or delay the consummation of the financing or the Transactions contemplated by this Agreement or make the funding of the financing less likely to occur or adversely impact the ability of the Parent to enforce its rights against the other parties to the Bridge Commitment Letter or the definitive documents with respect thereto; *provided,*

further, that notwithstanding the foregoing, Parent may amend the Bridge Commitment Letter

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to add lenders, lead arrangers, bookrunners, syndication agents or similar entities who had not executed the Bridge Commitment Letter as of the date hereof if the addition of such parties, individually or in the aggregate, would not reasonably be expected to delay or prevent the consummation of the financing or the Closing.

(b) If, notwithstanding the use of reasonable best efforts by Parent to satisfy its obligations under Section 6.18(a), any portion of the financing contemplated hereby is terminated or expires or otherwise becomes unavailable (other than any reductions in the commitment as contemplated by the section titled Mandatory Prepayments and Commitment Deductions set forth in the Bridge Commitment Letter) on the terms and conditions specified in the Bridge Commitment Letter or the Definitive Bridge Agreements, Parent will promptly notify the Company and will use its reasonable best efforts to arrange and obtain alternative financing from the same and/or alternative sources on terms and conditions not less favorable, taken as a whole, to Parent, than those contained in the Bridge Commitment Letter (Alternative Financing), upon terms and conditions which would not have any of the effects specified in clauses (A) or (B) of Section 6.18(a) above as promptly as reasonably practicable following the occurrence of such event.

(c) Parent will keep the Company informed on a reasonably current basis of the status of its efforts to satisfy the conditions set forth in the Bridge Commitment Letter (other than any reductions, in the commitment as provided in the section titled Mandatory Prepayments and Commitment Reductions set forth in the Bridge Commitment Letter) , including (1) giving the Company prompt written notice of any material adverse change with respect to the financing, including if at any time the Bridge Commitment Letter expire or are terminated for any reason or if any financing source party to the Bridge Commitment Letter notifies Parent that such source no longer intends to provide financing to Parent on the terms set forth therein, and (2) upon the Company s reasonable request, advising and updating the Company, in a reasonable level of detail, with respect to status and proposed funding date. For purposes of this Agreement, references to financing , Bridge Financing and Definitive Bridge Agreements will include amendments, modifications or replacements permitted by this Section 6.18 and references to Bridge Commitment Letter will include such documents as permitted by this Section 6.18 to be amended, modified or replaced, in each case from and after such amendment, modification, or replacement.

(d) Prior to the Closing, the Company shall use commercially reasonable efforts to cooperate, and shall cause the Company Subsidiaries to use commercially reasonable efforts to cooperate, and shall use its reasonable best efforts to cause its and their Representatives, officers and employees to provide, on a timely basis, all reasonable cooperation requested by Parent in connection with the documentation and arrangement of any debt financing including the Bridge Financing (the Debt Financing) to the extent that such cooperation does not unreasonably interfere with the ongoing operations of the Company and the Company Subsidiaries, including (i) using reasonable best efforts to facilitate the provision of guarantees (effective as of the actual occurrence of Closing), (ii) providing customary financial and other pertinent information regarding the Company and the Company Subsidiaries and cooperating in the preparation of pro forma financial information for the Transactions (including information to be used in the preparation of an information package, offering memorandum, prospectus, prospectus supplement or similar document regarding the business, assets, operations, financial projections and prospects of Parent and the Company customary for such financing or reasonably necessary for the completion of the Debt Financing), including the financial information required to be delivered in connection with the Debt Financing and such other information as may be reasonably requested in writing by Parent to assist in preparation of customary offering or information documents to be used for the arrangement and documentation of the Debt Financing, (iii) reasonably cooperating with the marketing efforts for the Debt Financing (it being acknowledged that the Company agrees to consent, upon the prior written request of Parent, to Parent s reasonable use of the Company s and the Company Subsidiaries logos provided that such logos are used in a manner that is not reasonably likely to harm or disparage the Company or their marks and on such other customary terms and conditions as the Company shall reasonably impose) and using commercially reasonable efforts to provide an introduction and access to the Company s existing lenders in connection with any syndication efforts, (iv) providing copies of any recent appraisals, environmental reports, evidence of title (including copies of deeds,

lease documentation, title insurance policies and/or commitments for title insurance,

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title opinions, surveys, and similar information), and similar information with respect to the properties and assets of the Company and the Company Subsidiaries that are in the Company s possession and that are reasonably requested by Parent, (v) assisting with, and providing information necessary for Parent to prepare other reasonably requested customary certificates, opinions or documents, including a customary certificate with respect to solvency matters, (vi) requesting such customary accountant comfort letters (including consents of accountants for use of their reports in any materials relating to the financing) as may be reasonably requested by Parent, (vii) participating in a reasonable number of meetings (including customary one-on-one meetings with the parties acting as lead arrangers or underwriters, as applicable, for the financing and their counsel and senior management and Representatives, with appropriate seniority and expertise, of the Company), presentations, road shows, drafting sessions, due diligence sessions (including accounting due diligence sessions) and sessions with the rating agencies as are customary and reasonably requested by Parent, (viii) providing reasonable and customary assistance to Parent and its financing sources or underwriters, as applicable, in (A) the preparation of all credit agreements (including review of schedules for completeness), currency or interest hedging agreements or other agreements, offering documents, an offering memorandum, prospectus or prospectus supplement and other marketing and rating agency materials for the financing or (B) the preparation of amendments to or the termination of any of the Company s or the Company Subsidiaries existing credit agreements, currency or interest hedging agreements, or other agreements and the release of all collateral and termination of all security interests thereunder (including by negotiating a customary payoff letter in customary form reasonably satisfactory to Parent with respect to any and all obligations of the Company and the Company Subsidiaries under their existing credit facilities which are intended to be repaid substantially simultaneously with the consummation of the Transactions, a draft of which the Company shall use commercially reasonable efforts to deliver to Parent five (5) business days prior to the Closing Date), in each case, on terms reasonably satisfactory to Parent and that are reasonably requested by Parent in connection with the Debt Financing, (ix) using commercially reasonable efforts, as appropriate, to have its independent accountants provide their reasonable cooperation and assistance, including in connection with due diligence and preparation of pro forma financial information for the Transactions, (x) delivering or making available on EDGAR (A) unqualified audited financial statements for the Company for any fiscal year ending at least 60 days prior to the Closing Date and (B) unaudited financial statements for the Company for any quarterly period ending after the date of its most recent annual financial statements and more than 45 calendar days prior to the Closing Date, which shall be prepared in accordance with, or reconciled to, U.S. generally accepted accounting principles, (xi) using commercially reasonable efforts to permit any cash and marketable securities of the Company and the Company Subsidiaries to be made available to Parent and Merger Sub following the Effective Time, (xii) cooperating reasonably with Parent s Debt Financing sources or underwriters , as applicable, due diligence, to the extent customary and reasonable and to the extent not unreasonably interfering with the business of the Company, and (xiii) furnishing Parent and the financing sources promptly with all documentation and other information required by any Governmental Entity with respect to the financing under applicable know your customer and anti-money laundering rules and regulations, including the PATRIOT Act, and (xiii) providing customary authorization letters to the financing sources authorizing the distribution of information to prospective lenders; *provided* that (A) no obligation of the Company or any of the Company Subsidiaries under any such agreements, amendments. authorizations, resolutions, consents shall be effective until the actual occurrence of the Effective Time and (B) none of the Company or any of the Company Subsidiaries or their respective Representatives shall be required to pay any commitment or other similar fee or incur any other cost or expense that is not promptly reimbursed by Parent in connection with the Debt Financing prior to the Effective Time and (C) no member of the Company Board shall be required to take any action with respect to the Debt Financing and neither the Company nor any of the Company Subsidiaries shall be obligated to take any action that requires action or approval by the Company Board prior to the Effective Time. All non-public or other confidential information provided by the Company or any of its Representatives pursuant to this Section 6.18 shall be (1) kept confidential in accordance with the Confidentiality Agreement, except that Parent shall be permitted to disclose such information to potential financing sources and to rating agencies during the syndication and marketing of the financing subject to customary confidentiality undertakings by such potential financing sources and (2) supplied only

to financial institutions or rating agencies or any of their respective representatives for use in connection with the financing.

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(e) Parent shall (A) promptly, upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs (including reasonable and documented attorneys fees) incurred by the Company or any of the Company Subsidiaries in connection with the cooperation of the Company and the Company Subsidiaries contemplated by this Section 6.18 and (B) indemnify and hold harmless the Company, the Company Subsidiaries and their respective Representatives from and against any and all documented out-of-pocket losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with Third Party claims arising out of the arrangement of the financing and any information used in connection therewith, except with respect to any information provided in writing by the Company or any of the Company Subsidiaries or contained in the Company SEC Documents. All non-public or other confidential information provided by or on behalf of the Company and the Company Subsidiaries pursuant to this Section 6.18 will be kept confidential in accordance with Section 6.1.

(f) If Parent raises capital through asset sales, financings, refinancings, debt or equity offerings or otherwise (Financing Proceeds) and, as a result, the aggregate amount available under the Bridge Commitment Letter is reduced pursuant to the terms of the Bridge Commitment Letter, then Parent shall retain such portion of the Financing Proceeds equal to such reduction through the earlier of the Effective Time and the termination of this Agreement pursuant to Article VIII. For the avoidance of doubt, retaining such Financing Proceeds shall, without limitation, mean that (x) such Financing Proceeds shall not be used to repay indebtedness, to pay a dividend, to acquire any assets or to satisfy any financial obligations of Parent or any Parent Subsidiaries, and (y) Parent shall hold such Financing Proceeds in a bank deposit account, money market account, certificate of deposit, or other similar short-term investment.

(g) Notwithstanding anything to the contrary set forth in this Section 6.18, Parent may amend, modify, replace, or terminate such Bridge Financing in any respect if (x) Parent has obtained, or entered into definitive agreements arranging for, Replacement Financing, and (y) the Company has provided its prior written consent to such amendment, modification, replacement or termination (such consent not to be unreasonably withheld, conditioned or delayed); *provided*, that such Replacement Financing is upon terms and conditions which would not reasonably be expected to prevent, impede or delay the consummation of the Transactions contemplated by this Agreement. For purposes of this Section 6.18, Replacement Financing shall mean the issuance of equity and/or debt securities by Parent and/or any Parent Subsidiary, the sale of assets, the financing or refinancing of secured debt, the formation of a joint venture, any similar transaction or arrangement pursuant to which Parent receives cash proceeds or any combination of the foregoing.

ARTICLE VII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 7.1 Conditions to Each Party s Obligations to Effect the Merger. The respective obligations of each Party to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions, any and all of which may be waived in whole or in part by Parent, Merger Sub and the Company, as the case may be, to the extent permitted by applicable Law:

(a) Stockholder Approval. Each of the Company Stockholder Approval and the Parent Stockholder Approval shall have been obtained;

(b) Registration Statement. The Form S-4 shall have become effective in accordance with the provisions of the Securities Act. No stop order suspending the effectiveness of the Form S-4 shall have been issued by the SEC and remain in effect and no proceeding to that effect shall have been commenced or threatened.

(c) Statutes; Court Orders. No statute, rule or regulation shall have been enacted or promulgated by any Governmental Entity of competent jurisdiction which prohibits or makes illegal the consummation of the Merger

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or the other Transactions, and there shall be no order or injunction of a court of competent jurisdiction in effect preventing the consummation of the Merger or the other Transactions; and

(d) Listing. The shares of Parent Common Stock to be issued in the Merger shall have been approved for listing on the NYSE, subject to official notice of issuance.

Section 7.2 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are also subject to the satisfaction or waiver (in writing) by Parent on or prior to the Closing Date of each of the following additional conditions:

(a) Representations and Warranties. The representations and warranties set forth in Section 3.3 (Authority), Section 3.24 (Broker, Expenses) and Section 3.26 (Vote Required), shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time, as though made as of the Effective Time, (ii) the representations and warranties set forth in the second sentence of Section 3.2(a) (Capital Structure) shall be true and correct in all but de minimis respects as of the as of the specific date set forth in such sentence, and (iii) each of the other representations and warranties of the Company contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Effective Time, as though made as of the Effective Time, except (x) in each case, representations and warranties that are made as of a specific date shall be true and correct only on and as of such date, and (y) in the case of clause (iii) where the failure of such representations or warranties to be true and correct (without giving effect to any materiality or Company Material Adverse Effect qualifications set forth therein) would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and Parent shall have received a certificate signed on behalf of the Company by a duly authorized executive officer of the Company to the foregoing effect. The Parties acknowledge and agree that any changes in the representations and warranties of the Company solely as a result of actions taken by the Company or the Company Subsidiaries after the date of this Agreement at the request or with the written consent of Parent, including the Asset Transfer, the Exchange Offers or the Preferred Redemption, shall be disregarded when determining whether the representations and warranties of the Company are true and correct as of the Effective Time.

(b) Performance of Obligations of the Company. The Company shall have performed or complied in all material respects with all obligations required to be performed or complied with by it under this Agreement at or prior to the Effective Time; and Parent shall have received a certificate signed on behalf of the Company by a duly authorized executive officer of the Company to such effect.

(c) No Material Adverse Effect. Since the date of this Agreement, no Effects have occurred that constitute a Company Material Adverse Effect.

(d) REIT Opinion. Parent shall have received a written opinion of Latham & Watkins LLP, dated as of the Closing Date and in form and substance as set forth in Exhibit G and with such changes as are mutually agreeable to Parent and the Company, such agreement not to be unreasonably withheld, to the effect that, commencing with the Company s taxable year that ended on December 31, 1997, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code and its method of operation has enabled the Company to meet, through the Effective Time, the requirements for qualification and taxation as a REIT under the Code, which opinion shall be subject to customary exceptions, assumptions and qualifications and based on customary representations contained in the tax representation letter described in Section 6.14(b)(ii).

(e) Section 368 Opinion. Parent shall have received the written opinion of its counsel, Goodwin Procter LLP, dated as of the effective date of the Form S-4, satisfying the requirements of Item 601 of Regulations S-K under the Securities Act, and the Closing Date and in form and substance as set forth in Exhibit H, and with such changes as are mutually

agreeable to Parent and the Company, such agreement not to be unreasonably withheld, to the effect that, on the basis of facts, representations and assumptions set forth in such opinion, the Merger will

qualify as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinion, counsel may rely upon the tax representation letters delivered pursuant to Section 6.14(b). The condition set forth in this Section 7.2(e) shall not be waivable after receipt of the Parent Stockholder Approval, unless further stockholder approval is obtained with appropriate disclosure.

Section 7.3 Conditions to Obligations of the Company. The obligations of the Company to effect the Merger are also subject to the satisfaction or waiver (in writing) by the Company on or prior to the Closing Date of each of the following additional conditions:

(a) Representations and Warranties. The representations and warranties set forth in Section 4.3 (Authority), Section 4.24 (Broker, Expenses) and Section 4.26 (Vote Required), shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time, as though made as of the Effective Time, (ii) the representations and warranties set forth in the second sentence of Section 4.2(a) (Capital Structure) shall be true and correct in all but de minimis respects as of the specific date set forth in such sentence, and (iii) each of the other representations and warranties of Parent and Merger Sub contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Effective Time, as though made as of the Effective Time, except (x) in each case, representations and warranties that are made as of a specific date shall be true and correct only on and as of such date, and (y) in the case of clause (iii) where the failure of such representations or warranties to be true and correct (without giving effect to any materiality or Parent Material Adverse Effect qualifications set forth therein) would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Performance of Obligations of Parent and Merger Sub. Parent and Merger Sub shall have performed or complied in all material respects with all obligations required to be performed or complied with by them under this Agreement at or prior to the Effective Time, and the Company shall have received a certificate signed on behalf of Parent by a duly authorized executive officer of Parent to such effect.

(c) REIT Opinion. The Company shall have received a written opinion of Goodwin Procter LLP, or such other nationally recognized REIT counsel as may be reasonably acceptable to Parent and the Company, dated as of the Closing Date and in form and substance as set forth in Exhibit I and with such changes as are mutually agreeable to Parent and the Company, such agreement not to be unreasonably withheld, to the effect that, commencing with Parent s taxable year that ended on December 31, 2009, Parent has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and its proposed method of operation will enable Parent to continue to meet the requirements for qualification and taxation as a REIT under the Code, which opinion shall be subject to customary exceptions, assumptions and qualifications and based on customary representations contained in the tax representation letter described in Section 6.14(a)(ii).

(d) Section 368 Opinion. The Company shall have received a written opinion of its counsel, Latham & Watkins LLP, dated as of the effective date of the Form S-4, satisfying the requirements of Item 601 of Regulations S-K under the Securities Act, and the Closing Date and in form and substance as set forth in Exhibit J, and with such changes as are mutually agreeable to the Company and Parent, such agreement not to be unreasonably withheld, to the effect that, on the basis of facts, representations and assumptions set forth in such opinion, the Merger will qualify as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinion, counsel may rely upon the tax representation letters delivered pursuant to Section 6.14(a). The condition set forth in this Section 7.3(d) shall not be waivable after receipt of the Company Stockholder Approval, unless further stockholder approval is obtained with appropriate disclosure.

(e) No Material Adverse Effect. Since the date of this Agreement, no Effects have occurred that constitute a Parent Material Adverse Effect.

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ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated and the Merger and the other Transactions may be abandoned (except as otherwise provided below, whether before or after receipt of the Company Stockholder Approval, if applicable) as follows:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company, prior to the Effective Time, if there has been a breach by the other Party or Parties of any representation, warranty, covenant or agreement set forth in this Agreement, which breach (i) in the case of the Company would, or would reasonably be expected to, result in the conditions in Section 7.1 and Section 7.2 not being satisfied and (ii) in the case of a breach by Parent or Merger Sub, that would reasonably be expected to prevent, or materially impair or delay, the ability of either Parent or Merger Sub to perform its obligations under this Agreement, or to consummate the Merger and the other Transactions (and in each case such breach is not curable prior to the Outside Date, or if curable prior to the Outside Date, has not been cured within the earlier of (x) twenty (20) calendar days after the receipt of notice thereof by the defaulting Party from the non-defaulting Party or (y) three (3) business days before the Outside Date); *provided, however*, this Agreement may not be terminated pursuant to this Section 8.1(b) by any Party if such Party is then in material breach of any representation, warranty, covenant or agreement set forth in this Agreement;

(c) by either Parent or the Company, if the Effective Time shall not have occurred by midnight, New York City time on the Outside Date; *provided, however*, that the right to terminate this Agreement pursuant to this Section 8.1(c) shall not be available to any Party whose breach of any representation, warranty, covenant or agreement set forth in this Agreement has been the primary cause of, or resulted in, the Effective Time not occurring prior to the Outside Date;

(d) by Parent, prior to the Company Stockholder Approval being obtained, if (i) the Company Board shall have effected a Change in Recommendation; (ii) the Company Board approves or adopts, recommends to the stockholders of the Company to approve or adopt, or enters into an agreement with respect to any Competing Transaction (other than a confidentiality agreement entered into in compliance with Section 5.3(b)); (iii) the Company shall have failed to include in the Joint Proxy Statement the recommendation of the Company Board in favor of the approval of the Merger; (iv) if a tender offer or exchange offer for 20% or more of the outstanding shares of capital stock of the Company is commenced, and the Company Board does not recommend against acceptance of such tender offer or exchange offer by its stockholders within ten business days following commencement of such offer (or, in the event of a change in the terms of the tender offer, within ten business days of the announcement of such changes); (v) the Company has materially breached its obligations under Section 5.3(a); or (vi) the Company publicly announces its intention to do any of the foregoing; *provided* that Parent s right to terminate this Agreement pursuant to this Section 8.1(d) shall expire at 5:00 p.m., California time, on the tenth (10th) business day following the date on which Parent became aware that the event permitting such termination occurred;

(e) by the Company if, prior to the Company Stockholder Approval being obtained, (i) the Company Board (or any committee thereof) has received a Superior Proposal, and (ii) the Company Board (or any committee thereof) has determined in good faith (after consulting with its outside legal counsel) that the failure to accept such Superior Proposal is reasonably likely to be inconsistent with the exercise of the duties of the members of the Company Board (or any committee thereof) under applicable Law; *provided* that the Company shall thereafter pay the Company Termination Fee to Parent concurrently with such termination;

(f) by either the Company or Parent if a Governmental Entity of competent jurisdiction, that is within a jurisdiction that is material to the business and operations of the Company, shall have issued a final, non-

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appealable order, decree or ruling in each case permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger or other Transactions; *provided, however*, that the Party seeking to terminate this Agreement pursuant to this Section 8.1(f) shall have complied with its obligations under Section 6.2 to use reasonable best efforts to prevent the entry of and to remove such order, decree or ruling;

(g) by either the Company or Parent, if the Company Stockholder Approval in favor of the approval of the Merger shall not have been obtained at the Company Stockholder Meeting or at any adjournment or postponement thereof, in each case at which a vote on such approval was taken; *provided* that the right to terminate this Agreement under this Section 8.1(g) shall not be available to the Company if the failure to obtain such Company Stockholder Approval was primarily caused by any action or failure to act of the Company that constitutes a material breach of this Agreement; or

(h) by either Parent or the Company, if the Parent Stockholder Approval to approve the issuance of Parent Common Stock in connection with the Merger shall not have been obtained at the Parent Stockholder Meeting or at any adjournment or postponement thereof, in each case at which a vote on such approval was taken; *provided* that the right to terminate this Agreement under this Section 8.1(h) shall not be available to Parent if the failure to obtain such Parent Stockholder Approval was primarily caused by any action or failure to act of Parent that constitutes a material breach of this Agreement.

Section 8.2 Effect of Termination.

(a) In the event of the termination of this Agreement as provided in Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void and there shall be no liability on the part of Parent, Merger Sub or the Company, except that the Confidentiality Agreement, Section 6.1(b), this Section 8.2 and Section 9.3 through Section 9.14 shall survive such termination; *provided*, *however*, that subject to Section 8.2(b), nothing herein shall relieve any Party from liability for a Willful Breach of its covenants or agreements set forth in this Agreement prior to such termination; *provided, further*, that nothing in this Agreement shall prohibit the Company from seeking to prove that any damages include the benefit of the bargain lost by the Company stockholders (taking into consideration relevant matters, including the total amount payable to such stockholders under this Agreement and the time value of money and any relevant breaches by the Company, Parent or Merger Sub), in each case to the extent not otherwise recoverable by such stockholders.

(b) Company Termination Fee and Expense Reimbursements.

(i) If (A) the Company terminates this Agreement pursuant to Section 8.1(e) or (B) Parent terminates this Agreement pursuant to Section 8.1(d), within two (2) business days after such termination (or concurrently with the termination if terminated pursuant to Section 8.1(e)) the Company shall pay a fee of $170,000,000 in cash (the Company Termination Fee) and, upon the payment of the Company Termination Fee, the Company shall have no further liability with respect to this Agreement or the Transactions to Parent or Merger Sub.

(ii) If (A) this Agreement is terminated by either the Company or Parent pursuant to Section 8.1(g) or by Parent pursuant to Section 8.1(b), and (B) the Company Board had received prior to the Company Stockholder Meeting a Competing Proposal, which was not withdrawn at or prior to the time of the Company Stockholder Meeting or, if there has been no Company Stockholder Meeting, prior to the termination of this Agreement, and (C) within twelve (12) months after termination of this Agreement, the Company consummates a Competing Transaction or enters into an agreement providing for a Competing Transaction (that is later consummated), within one (1) business day after the consummation of such Competing Transaction, the Company shall pay or cause to be paid to the Parent the Company

Termination Fee less, if applicable, any Reimbursable Expenses previously paid by the Company to Parent, and upon the payment of the Company Termination Fee the Company shall have no further liability with respect to this Agreement or the Transactions to Parent or Merger Sub.

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(iii) If this Agreement is terminated (A) by Parent pursuant to Section 8.1(b) or (B) by the Company or Parent pursuant to Section 8.1(g), the Company shall pay to Parent an amount equal to Parent s Reimbursable Expenses. If this Agreement is terminated (A) by the Company pursuant to Section 8.1(b) or (B) by the Company or Parent pursuant to Section 8.1(h), Parent shall pay to the Company an amount equal to the Company s Reimbursable Expenses. Any payments pursuant to this Section 8.2(b)(iii) shall be made within two (2) business days of termination. Reimbursable Expenses means any and all out-of-pocket fees and expenses (including, without limitation, legal, investment banking, accounting, banking and consulting fees and expenses) up to an aggregate of $10,000,000 actually incurred in connection with the due diligence investigation, negotiation, preparation and execution of this Agreement and the preparation for the consummation of the Transactions contemplated hereby (subject to reasonable documentation).

(iv) In the event the Company Termination Fee and/or Parent s Reimbursable Expenses are payable pursuant to the preceding clauses (i)-(iii), the Company Termination Fee and/or Parent s Reimbursable Expenses shall be paid by wire transfer of immediately available funds to an account designated in writing by Parent. For the avoidance of doubt, in no event shall the Company be obligated to pay the Company Termination Fee on more than one occasion. In the event the Company s Reimbursable Expenses are payable pursuant to clause (iii) above, the Company s Reimbursable Expenses shall be paid by wire transfer of immediately available funds to an account designated in writing by the Company.

(v) If one Party to this Agreement (the Payor) is required to make a payment to another Party to this Agreement (the Payee) pursuant to this Article VIII, then notwithstanding anything to the contrary in this Agreement, unless the Payee shall have received, and notified the Payor in writing of its receipt and directing that payment be made otherwise than into escrow as provided below, a tax opinion of counsel or a ruling from the IRS to the effect that the Payee s receipt of such payment will be treated as qualifying income with respect to the Payee for purposes of Section 856(c)(2) and 856(c)(3) of the Code or shall be excluded from income for such purposes (a Positive Tax Opinion or Ruling), the aggregate amount of the payment to be paid to the Payee pursuant to this Article VIII shall be placed into escrow as directed by the Payee and the amounts payable to the Payee shall be limited to the maximum amount (Allowed Fee) that can be paid without causing the Payee s receipt of its pro rata share of such funds to cause the Payee to fail to meet the requirements of Sections 856(c)(2) and (3) of the Code, determined as if the payment of such amount did not constitute qualifying income for such purposes, as determined by independent accountants to the Payee . In the event that any payment to be made pursuant to this Article VIII exceeds the Allowed Fee, then such excess amount (the Escrowed Fee) shall be retained by the escrow agent in a separate interest-bearing, segregated account for the account of the Payor. The Payee shall pay all costs associated with obtaining any tax opinion of counsel or ruling from the IRS described above. The Escrowed Fee shall be fully disbursed (and therefore any unpaid portion of the payment pursuant to this Article VIII shall be paid to the Payee) upon receipt of a Positive Tax Opinion or Ruling. To the extent not previously paid, upon any determination by independent accountants to the Payee that any additional amount of the Company Termination Fee may be disbursed to the Payee without causing the Payee to fail to meet the requirements of Sections 856(c)(2) and 856(c)(3) of the Code, determined as if the payment of such amount did not constitute qualifying income for such purposes, the determination of such independent accountants shall be provided to the escrow agent and such additional amount shall be disbursed. At the end of the second calendar year beginning after the date on which the Competing Transaction is consummated (or earlier if directed by the Payee), any remainder of the Escrowed Fee (together with interest thereon) then being held by the escrow agent shall be disbursed to the Payor and, in the event that the payment pursuant to this Article VIII has not by then been paid in full, such unpaid portion shall be deemed forgiven. The Payee shall bear any and all expenses associated with the escrow of the Escrowed Fee. The Payee is hereby granted the power of attorney on behalf of the Payor to execute, acknowledge, swear to and deliver all such documents required in connection with the foregoing escrow account, such power to be irrevocable and coupled with an interest.

(c) Liquidated Damages. Each of the Parties acknowledges that the agreements contained in this Section 8.2 are an integral part of the Transactions and that the Company Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent and Merger Sub in the

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circumstances in which the Company Termination Fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision. Notwithstanding anything to the contrary in this Agreement, Parent s right to receive payment of the Company Termination Fee from the Company shall be the sole and exclusive remedy of Parent and Merger Sub against the Company and its Subsidiaries and any of their respective former, current or future officers, directors, partners, stockholders, managers, members, affiliates or agents for the loss suffered as a result of the failure of the Merger to be consummated, and upon payment of such amount, none of the Company, any of its Subsidiaries or any of their respective former, current or future officers, directors, partners, stockholders, managers, members, affiliates or agents shall have any further liability or obligation relating to or arising out of this Agreement or the Transactions.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Amendment and Modification; Waiver.

(a) Subject to applicable Law and except as otherwise provided in this Agreement, this Agreement may be amended, modified and supplemented, whether before or after receipt of the Company Stockholder Approval, if applicable, by written agreement of the Parties; *provided, however*, that after the approval of the Merger by the stockholders of the Company, no amendment shall be made which by Law requires further approval by such stockholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties. Notwithstanding anything to the contrary contained herein, this Section 9.1(a), and Section 9.9, Section 9.11(c), Section 9.12, Section 9.13 and Section 9.16 (and any provision of this Agreement to the extent a modification, waiver or termination of such provision would adversely modify the substance of any of the foregoing provisions in any manner that is materially adverse to any Lender Party or any Lender Related Party) may not be modified, waived or terminated in a manner that is adverse in any respect to a Lender Party or a Lender Related Party without the prior written consent of such Lender Party or Lender Related Party.

(b) At any time and from time to time prior to the Effective Time, any Party or Parties may, to the extent legally allowed and except as otherwise set forth herein, (i) extend the time for the performance of any of the obligations or other acts of the other Party or Parties, as applicable, (ii) waive any inaccuracies in the representations and warranties made to such Party or Parties contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such Party or Parties contained herein. Any agreement on the part of a Party or Parties to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party or Parties, as applicable. The failure of a Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights. No single or partial exercise of any right, remedy, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Any waiver shall be effective only in the specific instance and for the specific purpose for which given and shall not constitute a waiver to any subsequent or other exercise of any right, remedy, power or privilege hereunder.

Section 9.2 Non-Survival of Representations and Warranties. None of the representations, warranties, covenants and agreements in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, and agreements, shall survive the Effective Time; *provided* that this Section 9.2 shall not limit any covenant or agreement of the Parties which by its terms contemplates performance after the Effective Time, which shall each survive. The Confidentiality Agreement will survive termination of this Agreement in accordance with its terms.

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Section 9.3 Expenses. Except as provided in Section 8.2, all Expenses incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring such Expenses, except that Parent shall pay, whether or not the Merger or any other Transaction is consummated, all Expenses incurred in connection with (a) printing, filing and mailing the Joint Proxy Statement and all SEC and other regulatory filing fees incurred in connection with the Joint Proxy Statement, (b) any filing with antitrust authorities, and (c) the Exchange Agent. Notwithstanding anything to the contrary contained herein, Parent shall pay the amount of any documentary, sales, use, real property transfer, real property gains, registration, value-added, transfer, stamp, recording and other similar Taxes, fees, and costs together with any interest thereon, penalties, fines, costs, fees, additions to tax or additional amounts with respect thereto incurred in connection with this Agreement and the Transactions.

Section 9.4 Notices. All notices, requests, claims, consents, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally (notice deemed given upon receipt), telecopied (notice deemed given upon confirmation of receipt) or sent by a nationally recognized overnight courier service, such as Federal Express (notice deemed given upon receipt of proof of delivery), to the Parties. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice, and a copy of each notice shall also be sent via e-mail.

if to Parent or Merger Sub, to:

Essex Property Trust, Inc.

925 East Meadow Drive

Palo Alto, CA 94303

Attention: Chief Executive Officer

Facsimile: (650) 494-8743

with copies to:

Goodwin Procter LLP

Exchange Place

53 State Street

Boston, Massachusetts 02109

Attention: Gilbert G. Menna

John T. Haggerty

Facsimile: (617) 523-1231

and

if to the Company, to:

BRE Properties, Inc.

525 Market Street

4th Floor

San Francisco, CA 94105

Attention: Chief Executive Officer

Facsimile: 415-445-6577

with copies to:

Latham & Watkins LLP

505 Montgomery Street

San Francisco, California 94111

Attention: John M. Newell

William J. Cernius

Facsimile: (415) 395-8095

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Section 9.5 Certain Definitions. For the purposes of this Agreement, the term:

Acceptable Confidentiality Agreement means a confidentiality agreement that contains terms that are no less favorable in any material respect to the Company than those contained in the Confidentiality Agreement; *provided, however*, that an Acceptable Confidentiality Agreement shall not be required to contain standstill provisions.

Below Market Rate Agreement is any obligation imposed by a Governmental Entity to provide apartment units at a project owned by a Party to moderate, low or very low income families at below market rate rents whether identified as an Affordable Housing Agreement, regulatory agreement or covenants and restrictions running with the property.

Benefit Plan means any employee benefit plan (within the meaning of Section 3(3) of ERISA) and any employment, consulting, termination, severance, change in control, separation, retention, stock option, restricted stock, restricted stock unit, profits interest unit, equity, outperformance, stock purchase, deferred compensation, bonus, incentive compensation, fringe benefit, health, medical, dental, vision, disability, accident, life insurance, welfare benefit, cafeteria, vacation, paid time off, perquisite, retirement, pension, profit sharing or savings or any other compensation or employee benefit plan, agreement, program, policy or other arrangement, whether or not subject to ERISA, whether funded or unfunded, written or unwritten, for the benefit of any current or former employee, officer, manager, director or consultant.

business days has the meaning set forth in Rule 14d-1(g)(3) of the Exchange Act.

Code means the Internal Revenue Code of 1986, as amended.

Company Bylaws means the bylaws of the Company, as amended and restated as of the date of this Agreement.

Company Certificate means the Articles of Incorporation of the Company as amended, amended and restated and supplemented and in effect on the date hereof.

Company Equity Plan means the Amended and Restated 1992 Employee Stock Plan, the 1999 Stock Incentive Plan and the Fifth Amended and Restated Non-Employee Stock Option and Restricted Stock Plan, as each such plan may be amended from time to time.

Company Governing Documents means the Company Bylaws and the Company Certificate.

Company Joint Venture shall mean the joint ventures set forth in Section 9.5 of the Company Disclosure Letter.

Company Material Adverse Effect means any Effect that, individually or in the aggregate, has a material adverse effect on the financial condition, business, assets, properties, or results of operations of the Company and the Company Subsidiaries, taken as a whole; *provided, however*, that no Effects resulting or arising from the following shall be deemed to constitute a Company Material Adverse Effect or shall be taken into account when determining whether a Company Material Adverse Effect has occurred or is reasonably likely to exist or occur: (i) any changes in general United States or global economic conditions to the extent that such Effects do not disproportionately have a greater adverse impact on the Company relative to other companies of comparable size to the Company operating in the REIT industry, (ii) conditions (or changes therein) in the REIT industry to the extent that such Effects do not disproportionately have a greater adverse impact on the Company relative to other companies of comparable size to the Company operating in the REIT industry, (iii) general legal, tax, economic, political and/or regulatory conditions (or changes therein), including any changes effecting financial, credit or capital market conditions, (iv) any change in GAAP or interpretation thereof, (v) any adoption, implementation,

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promulgation, repeal, modification, amendment, reinterpretation, change or proposal of any applicable Law of or by any Governmental Entity, (vi) any actions expressly required by, or the failure to take any action expressly prohibited by, the terms of this Agreement or any actions taken at the request or with the consent of Parent or Merger Sub and any Effect attributable to the negotiation, execution or announcement of this Agreement and the Transactions (including the Merger), including any litigation arising therefrom (including any litigation arising from allegations of a breach of duty or violation of applicable Law), (vii) changes in the Company Common Stock price or the trading volume of the Company Common Stock, in and of itself (it being understood that the facts or occurrences giving rise or contributing to such changes that are not otherwise excluded from the definition of a Company Material Adverse Effect may be taken into account), (viii) any failure by the Company to meet any internal or published projections, estimates or expectations of the Company s revenue, earnings or other financial performance or results of operations for any period, in and of itself, or any failure by the Company to meet its internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations, in and of itself (it being understood that the facts or occurrences giving rise or contributing to such failure that are not otherwise excluded from the definition of a Company Material Adverse Effect may be taken into account), (ix) Effects arising out of changes in geopolitical conditions, acts of terrorism or sabotage, war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, weather conditions or other force majeure events, including any material worsening of such conditions threatened or existing as of the date of this Agreement, and (x) any reduction in the credit rating of the Company or the Company Subsidiaries (it being understood that the facts or occurrences giving rise or contributing to such reduction that are not otherwise excluded from the definition of a Company Material Adverse Effect may be taken into account).

Company Office Leases means each of the leases set forth in Section 9.5 of the Company Disclosure Letter.

Company Stockholder Meeting means the meeting of the holders of shares of Company Common Stock for the purpose of seeking the Company Stockholder Approval, including any postponement or adjournment thereof.

Competing Proposal means any proposal made by a Person or group (other than a proposal or offer by Parent or any of its Subsidiaries) at any time which is structured to permit such Person or group to acquire beneficial ownership of at least 20% of the assets of, equity interest in, or businesses of, the Company or any Company Subsidiary (whether pursuant to a merger, consolidation or other business combination, sale of shares of capital stock, sale of assets, tender offer, exchange offer, joint venture or otherwise, including any single or multi-step transaction or series of related transactions), in each case other than the Merger or the other Transactions.

Competing Transaction means a transaction with a Person or group (other than a proposal or offer by Parent or any of its Subsidiaries) pursuant to which such Person or group acquire beneficial ownership of at least 20% of the assets of, equity interest in, or businesses of, the Company or any Company Subsidiary (whether pursuant to a merger, consolidation or other business combination, sale of shares of capital stock, sale of assets, tender offer, exchange offer, joint venture or otherwise, including any single or multi-step transaction or series of related transactions).

Confidentiality Agreement means the Confidentiality Agreement, dated November 11, 2013, between Parent and the Company.

DRIP means the Company s Direct Stock Purchase and Dividend Reinvestment Plan.

DSOS means the Secretary of State of the State of Delaware.

Effect means any change, effect, development, circumstance, condition, state of facts, event or occurrence.

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Environmental Law means all Laws relating to pollution or protection of health, safety, natural resources or the environment, or the generation, use, treatment, storage, handling, transportation or release of, or exposure to, Hazardous Substances, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) and other similar federal, state, and local statutes.

Environmental Permits means any material permit, license, authorization or approval required under applicable Environmental Laws.

ERISA means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated and rulings issued thereunder.

ERISA Affiliate means any entity, trade or business (whether or not incorporated) that, together with any other entity, trade or business (whether or not incorporated), is required to be treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

Expenses means all reasonable out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a Party and its affiliates) incurred by a Party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement, the preparation, printing, filing and mailing of the Joint Proxy Statement, the solicitation of stockholder and stockholder approvals, any filings with the SEC and all other matters related to the closing of the Merger and the other Transactions.

Hazardous Substances means any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, or hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Laws, including any quantity of asbestos, urea formaldehyde, polychlorinated biphenyls (PCBs), radon gas, and petroleum products or by-products.

Indebtedness means with respect to any Person, (i) all indebtedness, notes payable, accrued interest payable or other obligations for borrowed money, whether secured or unsecured, (ii) all obligations under conditional sale or other title retention agreements, or incurred as financing, in either case with respect to property acquired by such Person, (iii) all obligations issued, undertaken or assumed as the deferred purchase price for any property or assets, (iv) all obligations under capital leases, (v) all obligations in respect of bankers acceptances or letters of credit, (vi) all obligations under interest rate cap, swap, collar or similar transaction or currency hedging transactions, and (vii) any guarantee (other than customary non-recourse carve-out or badboy guarantees) of any of the foregoing, whether or not evidenced by a note, mortgage, bond, indenture or similar instrument.

Intellectual Property Rights means all rights in or to all U.S. or foreign: (i) inventions (whether or not patentable), patents and patent applications and any other governmental grant for the protection of inventions or industrial designs, (ii) trademarks, service marks, trade dress, logos, brand names, trade names and corporate names, whether registered or unregistered, and the goodwill associated therewith, together with any registrations and applications for registration thereof, (iii) copyrights, whether registered or unregistered, and any registrations and applications for registration thereof, (iv) trade secrets and confidential information, including know-how, concepts, methods, processes, designs, schematics, drawings, formulae, technical data, specifications, research and development information, technology, and business plans, (v) rights in databases and data collections (including knowledge databases, customer lists and

customer databases), and (vi) domain name registrations.

Investment Company Act means the Investment Company Act of 1940, as amended.

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knowledge when used herein (A) with respect to Parent and Merger Sub shall mean the actual knowledge of the persons named in Schedule A and (B) when used with respect to the Company means the actual knowledge of the persons named in Schedule B.

Law means any statute, code, rule, regulation, order, ordinance, judgment or decree or other pronouncement of any Governmental Entity having the effect of law.

Lender Party means, any Lender or any arranger, administrative agent or collateral agent in respect of the Debt Financing.

Lender Related Party means any former, current and future affiliates of any Lender Party and any officers, directors, managers, employees, shareholders, equityholders, members, managers, partners, agents, controlling person, advisor, attorney or representatives, or the heirs, executors, successors and assigns of any of the foregoing or any Lender Party.

Lien means any lien, pledge, hypothecation, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

Merger Sub Governing Documents means (i) the certificate of incorporation of Merger Sub as in effect on the date hereof and (ii) the bylaws of Merger Sub as in effect on the date hereof.

NYSE means the New York Stock Exchange.

Outside Date means June 17, 2014.

Parent Equity Plan means Parent s 1994 Stock Incentive Plan, as amended, 1994 Non-Employee and Director Stock Incentive Plan, 2004 Stock Incentive Plan, 2013 Stock Award and Incentive Compensation Plan, and Non-Employee Director Equity Award Program.

Parent Governing Documents means (i) the Articles of Incorporation of Parent as amended and in effect on the date hereof and (ii) the bylaws of Parent, as amended and restated as of the date of this Agreement.

Parent Material Adverse Effect means any Effect that, individually or in the aggregate, has a material adverse effect on the financial condition, business, assets, properties, or results of operations of Parent and the Parent Subsidiaries, taken as a whole; *provided, however*, that no Effects resulting or arising from the following shall be deemed to constitute a Parent Material Adverse Effect or shall be taken into account when determining whether a Parent Material Adverse Effect has occurred or is reasonably likely to exist or occur: (i) any changes in general United States or global economic conditions to the extent that such Effects do not disproportionately have a greater adverse impact on Parent relative to other companies of comparable size to Parent operating in the REIT industry, (ii) conditions (or changes therein) in the REIT industry to the extent that such Effects do not disproportionately have a greater adverse impact on Parent relative to other companies of comparable size to Parent operating in the REIT industry, (iii) general legal, tax, economic, political and/or regulatory conditions (or changes therein), including any changes effecting financial, credit or capital market conditions,(iv) any change in GAAP or interpretation thereof, (v) any adoption, implementation, promulgation, repeal, modification, amendment, reinterpretation, change or proposal of any applicable Law of or by any Governmental Entity, (vi) any actions expressly required by, or the failure to take any action expressly prohibited by, the terms of this Agreement or any actions taken at the request or with the consent of the Company and any Effect attributable to the negotiation, execution or announcement of this Agreement and the Transactions (including the

Merger), including any litigation arising therefrom (including any litigation arising from allegations of a breach of duty or

violation of applicable Law), (vii) changes in the Parent Common Stock price or the trading volume of the Parent Common Stock, in and of itself (it being understood that the facts or occurrences giving rise or contributing to such changes that are not otherwise excluded from the definition of a Parent Material Adverse Effect may be taken into account), (viii) any failure by Parent to meet any internal or published projections, estimates or expectations of Parent s revenue, earnings or other financial performance or results of operations for any period, in and of itself, or any failure by Parent to meet its internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations, in and of itself (it being understood that the facts or occurrences giving rise or contributing to such failure that are not otherwise excluded from the definition of a Parent Material Adverse Effect may be taken into account), (ix) Effects arising out of changes in geopolitical conditions, acts of terrorism or sabotage, war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, weather conditions or other force majeure events, including any material worsening of such conditions threatened or existing as of the date of this Agreement, and (x) any reduction in the credit rating of Parent or the Parent Subsidiaries (it being understood that the facts or occurrences giving rise or contributing to such reduction that are not otherwise excluded from the definition of a Parent Material Adverse Effect may be taken into account).

Parent Joint Venture means a partnership, limited liability company or other entity in which Parent or a Parent Subsidiary is a partner, member, investor or constituent with a Parent Third Party (whether or not Parent or a Parent Subsidiary holds or owns a majority of the ownership interests therein).

Parent LP means Essex Portfolio, L.P., a California limited partnership.

Parent Stockholder Meeting means the meeting of the holders of shares of Parent Common Stock for the purpose of seeking the Parent Stockholder Approval, including any postponement or adjournment thereof.

Person or *person* means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, person (including a person as defined in Section 13(d)(3) of the Exchange Act) or other entity or organization.

Representatives means, when used with respect to Parent, Merger Sub or the Company, the directors, officers, employees, consultants, financial advisors, accountants, legal counsel, investment bankers, and other agents, advisors and representatives of Parent or the Company, as applicable, and its Subsidiaries.

Specified Consent means the consent set forth on Section 9.5 of the Company Disclosure Letter.

Subsidiary or *Subsidiaries* means with respect to any Person, any corporation, limited liability company, partnership or other organization, whether incorporated or unincorporated, of which (i) at least a majority of the outstanding shares of capital stock of, or other equity interests, having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries or (ii) with respect to a partnership, such Person or any other Subsidiary of such Person is a general partner of such partnership.

Superior Proposal means a written Competing Proposal (that did not result from a material breach of Section 5.3) for or in respect of at least a majority of the outstanding Company Common Stock or assets of the Company, made by any Person on terms that the Company Board determines in good faith, after consultation with the Company s financial and legal advisors, and considering such factors as the Company Board considers to be appropriate (including all regulatory and timing aspects of such proposal and the availability of financing), are more favorable to the Company and its stockholders than the Merger, which Competing Proposal is reasonably likely to be consummated.

Tax or *Taxes* means any and all taxes, levies, duties, tariffs, imposts and other similar charges and fees (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect

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thereto) imposed by any Governmental Entity or domestic or foreign taxing authority, including, income, franchise, windfall or other profits, gross receipts, premiums, property, sales, use, net worth, capital stock, payroll, employment, social security, workers compensation, unemployment compensation, excise, withholding, ad valorem, stamp, transfer, value-added, gains tax and license, registration and documentation fees, severance, occupation, environmental, customs duties, disability, real property, personal property, registration, alternative or add-on minimum, or estimated tax, including any interest, penalty, or addition thereto, whether disputed or not.

Tax Return means any report, return, certificate, claim for refund, election, estimated tax filing or declaration required to be filed with any Governmental Entity or domestic or foreign taxing authority with respect to Taxes, including any schedule or attachment thereto, and including any amendments thereof.

VWAP of Parent Common Stock means the volume weighted average price of Parent Common Stock for a (10) trading day period, starting with the opening of trading on the first trading day to the closing of the second to last trading day prior to the Closing Date, as reported by Bloomberg.

Willful Breach means a deliberate act or a deliberate failure to act, which act or failure to act constitutes in and of itself a material breach of this Agreement, regardless of whether breaching was the object of the act or failure to act.

Section 9.6 Terms Defined Elsewhere. The following terms are defined elsewhere in this Agreement, as indicated below:

Agreement	*Preamble*
Allowed Fee	*Section 8.2(b)*
Alternative Financing	*Section 6.18(b)*
Articles of Merger	*Section 1.3*
Asset Transfer	*Section 6.17(a)*
Asset Transfer Election	*Section 6.17(a)*
Asset Transfer Notice	*Section 6.17(a)*
Asset Transfer Purchase Price	*Section 6.17(a)*
Base Premium	*Section 6.4(d)*
Book-Entry Shares	*Section 2.2(b)*
Bridge Commitment Letter	*Section 4.25(a)*
Bridge Financing	*Section 4.25(a)*
Cash Consideration	*Section 2.1(a)*
Cash Consideration Exchange Ratio	*Section 2.4(a)*
Certificate of Merger	*Section 1.3*
Certificates	*Section 2.2(b)*
Change in Recommendation	*Section 5.3(a)*
Closing	*Section 1.2*
Closing Date	*Section 1.2*
Company	*Preamble*
Company Benefit Plans	*Section 3.11(a)*
Company Board	*Recitals*
Company Board Recommendation	*Recitals*
Company Common Stock	*Recitals*
Company Designees	*Section 1.6*

Company Disclosure Letter	*Article III*
Company Equity Awards	*Section 2.4(d)*
Company Equity Interests	*Section 3.2(a)*
Company Financial Advisor	*Section 3.21*
Company Financial Statements	*Section 3.6*

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Company Ground Leases	*Section 3.19(f)*
Company Insurance Policies	*Section 3.22*
Company Leases	*Section 3.19(e)*
Company Management Agreements	*Section 3.19(m)*
Company Material Contract	*Section 3.14(b)*
Company Pending Acquisitions	*Section 5.1(e)*
Company Permits	*Section 3.18(b)*
Company Permitted Liens	*Section 3.19(b)*
Company Preferred Stock	*Section 3.2(a)*
Company Properties	*Section 3.19(a)*
Company Property	*Section 3.19(a)*
Company Restricted Shares	*Section 2.4(b)*
Company SEC Documents	*Section 3.6*
Company Series D Preferred Stock	*Section 3.2(a)*
Company Shares	*Recitals*
Company Stock Option	*Section 2.4(a)*
Company Stockholder Approval	*Section 3.26*
Company Subsidiary	*Section 3.1(b)*
Company Subsidiary Partnership	*Section 3.13(f)*
Company Tax Protection Agreements	*Section 3.13(f)*
Company Termination Fee	*Section 8.2(b)(i)*
Company Third Party	*Section 3.19(i)*
Company Title Insurance Policies	*Section 3.19(k)*
Company Title Insurance Policy	*Section 3.19(k)*
Company Voting Debt	*Section 3.2(a)*
Continuing Employees	*Section 6.7(a)*
Covered Persons	*Section 6.4(a)*
Debt Exchange Offers	*Section 2.7(a)*
Debt Financing	*Section 6.18(d)*
Definitive Bridge Agreements	*Section 6.18(a)*
DGCL	*Recitals*
Disclosed Conditions	*Section 4.25(e)*
Disposition Assets	*Section 6.17(a)*
EDGAR	*Section 3.6(b)*
Effective Time	*Section 1.3*
Exchange Act	*Section 3.6*
Exchange Agent	*Section 2.2(a)*
Exchange Fund	*Section 2.2(a)*
Exchange Ratio	*Section 2.1(a)*
Existing Development Projects	*Section 5.1(t)*
Financing Proceeds	*Section 6.18(f)*
Form S-4	*Section 3.5*
Fractional Share Consideration	*Section 2.1(a)*
GAAP	*Section 3.6*
Governmental Entity	*Section 3.5*
Indemnification Agreements	*Section 6.4(a)*
Intervening Event Notice Period	*Section 5.3(e)*
Joint Proxy Statement	*Section 3.5*

Legal Proceeding	*Section 3.10*
Lenders	*Section 4.25(a)*
Lifestyle Associates	*Section 3.29*
Maryland Court	*Section 9.11(b)*

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Merger	*Recitals*
Merger Consideration	*Section 2.1(a)*
Merger Sub	*Preamble*
MGCL	*Recitals*
New Notes	*Section 2.7(a)*
Notes	*Section 2.7(a)*
Offer Documents	*Section 2.7(c)*
Option Agreement	*Section 3.29*
Parent	*Preamble*
Parent Agreements	*Section 4.14(a)*
Parent Benefit Plans	*Section 4.11(a)*
Parent Board	*Recitals*
Parent Common Stock	*Section 2.1(a)*
Parent Disclosure Letter	*Article IV*
Parent Equity Awards	*Section 4.2(a)*
Parent Equity Interests	*Section 4.2(a)*
Parent Financial Advisor	*Section 4.21*
Parent Financial Statements	*Section 4.6*
Parent Ground Leases	*Section 4.19(f)*
Parent Leases	*Section 4.19(e)*
Parent Management Agreements	*Section 4.19(m)*
Parent Material Contract	*Section 4.14(b)*
Parent Permits	*Section 4.18(b)*
Parent Permitted Liens	*Section 4.19(b)*
Parent Preferred Stock	*Section 4.2(a)*
Parent Properties	*Section 4.19*
Parent Property	*Section 4.19(a)*
Parent Restricted Shares	*Section 2.4(b)*
Parent SEC Documents	*Section 4.6*
Parent Series G Preferred Stock	*Section 4.2(a)*
Parent Series H Preferred Stock	*Section 4.2(a)*
Parent Stock Option	*Section 2.4(a)*
Parent Stockholder Approval	*Section 4.26*
Parent Subsidiary	*Section 4.1(c)*
Parent Subsidiary Partnership	*Section 4.13(g)*
Parent Tax Protection Agreements	*Section 4.13(g)*
Parent Third Party	*Section 4.19(i)*
Parent Title Insurance Policies	*Section 4.19(k)*
Parent Title Insurance Policy	*Section 4.19(k)*
Parent Voting Debt	*Section 4.2(a)*
Parties	*Recitals*
Party	*Recitals*
Payee	*Section 8.2(b)*
Payor	*Section 8.2(b)*
Positive Tax Opinion or Ruling	*Section 8.2(b)*
Preferred Redemption	*Section 2.1(b)*
Qualified REIT Subsidiary	*Section 5.1(k)*
Reimbursable Expenses	*Section 8.2(b)*

REIT	*Section 3.13(b)*
REIT Dividend	*Section 6.16(a)*
Replacement Financing	*Section 6.18(g)*
Required Payment Amount	*Section 4.25(d)*

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Sarbanes-Oxley Act	*Section 3.6*
SDAT	*Section 1.3*
SEC	*Section 3.5*
Securities Act	*Section 3.6*
Special Dividend	*Section 6.16(c)*
Special Dividend Amount	*Section 6.16(c)*
Stock Award Exchange Ratio	*Section 2.4(a)*
Stock Consideration	*Section 2.1(a)*
Surviving Entity	*Section 1.1*
Takeover Statutes	*Section 3.25*
Taxable REIT Subsidiary	*Section 3.13(n)*
Transactions	*Recitals*

Section 9.7 Interpretation. When a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. Whenever the words include , includes or including are used in this Agreement they shall be deemed to be followed by the words without limitation, unless the context expressly provides otherwise. As used in this Agreement, the term affiliates shall have the meaning set forth in Rule 12b-2 of the Exchange Act. The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof. The words hereof, herein and hereunder and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement, except to the extent otherwise specified. References in this Agreement to any item, document or information having been delivered, made available or any variation thereof means an item or document has been delivered or made available to the applicable recipient party by posting such item, document and information to, in the case of the Company, the Project LRM data room on intralinks.com or the Due Diligence data room on rrdvenue.com, or in the case of Parent, the Project Bronco data room on intralinks.com, at least one (1) business day prior to the execution of this Agreement and not removed after it was posted. Any pronoun shall include the corresponding masculine, feminine and neuter forms, and the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. All terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. When reference is made herein to a Person, such reference shall be deemed to include all direct and indirect Subsidiaries of such Person unless otherwise indicated or the context otherwise requires. All references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person unless otherwise indicated or the context otherwise requires. The Parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

Section 9.8 Counterparts. This Agreement may be executed manually or by facsimile by the Parties, in any number of counterparts, each of which shall be considered one and the same agreement and shall become effective when a counterpart hereof shall have been signed by each of the Parties and delivered to the other Parties (including by means of electronic delivery), it being understood that the Parties need not sign the same counterpart. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

Section 9.9 Entire Agreement; Third-Party Beneficiaries.

(a) This Agreement (including the Company Disclosure Letter and the Parent Disclosure Letter) and the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject

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matter hereof and thereof and supersede all other prior agreements (except that the Confidentiality Agreement shall be amended so that until the termination of this Agreement in accordance with Section 8.1 hereof, Parent and Merger Sub shall be permitted to take the actions contemplated by this Agreement) and understandings, both written and oral, among the Parties or any of them with respect to the subject matter hereof and thereof.

(b) Except (i) as provided in Section 1.6 and Section 6.4 and (ii) the right of the Company, on behalf of its stockholders, to pursue damages in the event of Parent s or Merger Sub s breach of this Agreement, neither this Agreement (including the Company Disclosure Letter and the Parent Disclosure Letter) nor the Confidentiality Agreement are intended to confer upon any Person other than the Parties and, only with respect to Section 9.1(a), this Section 9.9 and Section 9.11, Section 9.12, Section 9.13 and Section 9.16, the Lender Parties and the Lender Related Parties, any rights or remedies hereunder.

Section 9.10 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by rule of Law or public policy in any jurisdiction, such term or other provision shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability and, unless the effect of such invalidity or unenforceability would prevent the Parties from realizing the major portion of the economic benefits of the Mergers that they currently anticipate obtaining therefrom, shall not render invalid or unenforceable the remaining terms and provisions of this Agreement or affect the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the Merger are fulfilled to the extent possible.

Section 9.11 Governing Law; Jurisdiction.

(a) This Agreement, and all claims or causes of actions (whether at Law, in equity, in contract or in tort) that may be based upon, arise out of, or are related to, this Agreement or the negotiation, execution or performance of this Agreement, shall be governed by, and construed in accordance with, the Laws of the State of Maryland applicable to agreements entered into and performed entirely therein by residents thereof, without giving effect to conflicts of laws principles (whether of the State of Maryland or any other jurisdiction that would cause the application of the Laws of any jurisdiction other than the State of Maryland).

(b) All Legal Proceedings and proceedings arising out of or relating to this Agreement shall be heard and determined exclusively in the Circuit Court for Baltimore City (Maryland) (the Maryland Court). Each of the Parties hereby irrevocably and unconditionally agrees to request and/or consent to the assignment of any such proceeding to the Maryland Court s Business and Technology Case Management Program. Each of the Parties hereby irrevocably and unconditionally (a) consents and submits to the exclusive jurisdiction of the Maryland Court for the purpose of any Legal Proceeding brought by any Party arising out of or relating to this Agreement or any ancillary agreement, (b) agrees not to commence any such action or proceeding except in the Maryland Court, (c) agrees that any claim with respect to any such action or proceeding shall be heard and determined in the Maryland Court, (d) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to venue of any such action or proceeding in the Maryland Court, and (e) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Maryland Court. Each of the Parties agrees that a final judgment in any such action or proceeding shall be conclusive, subject to any rights of appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Agreement shall, however, limit or affect the rights of any Party to pursue appeals from any judgments or orders of the Maryland Court as provided by Law. Each Party irrevocably consents to service of process in the manner provided for notices in Section 9.4. Nothing in this Agreement will affect the right of any Party to serve process in any

other manner permitted by Law.

(c) Notwithstanding anything in preceding clause (b) to the contrary, and without limiting anything set forth in Section 9.16, each of the parties hereto agrees that it will not bring or support any suit, action or other

proceeding (whether at law, in equity, in contract, in tort or otherwise) against any Lender Party or Lender Related Party in any way relating to this Agreement or any of the transactions contemplated by this Agreement (including the Transactions and any related financing), including any dispute arising out of or relating in any way to the Bridge Financing, or the performance thereof, in any forum other than any New York State court or federal court sitting in the County of New York and the Borough of Manhattan (and appellate courts thereof). The parties hereto further agree that all of the provisions of Section 9.12 relating to waiver of jury trial shall apply to any suit, action or other proceeding referenced in this Section 9.11(c).

Section 9.12 Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE MERGER AND OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (C) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.12.

Section 9.13 Assignment. This Agreement shall not be assigned by any of the Parties (whether by operation of Law or otherwise) without the prior written consent of the other Parties, except that (a) Merger Sub may assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests and obligations hereunder to (i) Parent, (ii) Parent and one or more direct or indirect wholly owned Subsidiaries of Parent, or (iii) one or more direct or indirect wholly owned Subsidiaries of Parent and (b) Parent and Merger Sub may assign, in their sole discretion and without the consent of any other Party, any or all of their rights, interests and obligations hereunder to any of their lenders or other financing sources from time to time as collateral security. Any attempt to make any such assignment without such consent shall be null and void. Subject to the preceding sentences, but without relieving any Party of any obligation hereunder, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

Section 9.14 Enforcement; Remedies.

(a) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Except as set forth in this Section 9.14, including the limitations set forth in Section 9.14(c), it is agreed that prior to the termination of this Agreement pursuant to Article VIII, the non-breaching Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by any other Party and to specifically enforce the terms and provisions of this Agreement.

(c) The Parties right of specific enforcement is an integral part of the Transactions and each Party hereby waives any objections to the grant of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by any other Party (including any objection on the basis that there is an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity), and each Party shall be entitled to an injunction or injunctions and to specifically enforce the terms and provisions of this Agreement to

prevent or restrain breaches or threatened breaches of, or to enforce compliance

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with, the covenants and obligations of such Party under this Agreement all in accordance with the terms of this Section 9.14. In the event any Party seeks an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, such Party shall not be required to provide any bond or other security in connection with such order or injunction all in accordance with the terms of this Section 9.14.

Section 9.15 Tax Advice. Neither Parent, Merger Sub or their respective advisors, on the one hand, nor the Company or their respective advisors, on the other hand, make any representations or warranties to the other regarding the Tax treatment of the Merger or any other Transaction, and each of the Parties acknowledges that it is relying solely on its own Tax advisors in connection with this Agreement.

Section 9.16 No Recourse. Without limiting any other provision in this Agreement (including the rights of the Lender Parties and the Related Lender Parties set forth in Section 9.9(b), this Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, may only be made against the parties hereto, and no Lender Party or Lender Related Party shall have any liability for any obligations or liabilities of the parties hereto or for any claim (whether in tort, contract or otherwise), based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith. In no event, shall the Company or any of its affiliates, and the Company agrees not to, and to cause its affiliates not to, (A) seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Lender Party or Lender Related Party or (B) seek to enforce the commitments against, make any claims for breach of the Bridge Financing or Debt Financing commitments against, or seek to recover monetary damages from, or otherwise sue, the Lender Parties or the Lender Related Parties for any reason, including in connection with the Bridge Financing or Debt Financing commitments or the obligations of Lenders thereunder. Nothing in this Section 9.16 shall in any way limit or qualify the obligations and liabilities of the parties to the Bridge Commitment Letter or the Debt Financing commitments to each other or in connection therewith.

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IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

ESSEX PROPERTY TRUST, INC.

By /s/ Michael Schall
Name: Michael Schall

Title: President and Chief Executive Officer

BRONCO ACQUISITION SUB, INC.

By /s/ Michael Schall
Name: Michael Schall

Title: President

BRE PROPERTIES, INC.

By /s/ Constance B. Moore
Name: Constance B. Moore

Title: President and Chief Executive Officer

Signature Page to Agreement and Plan of Merger

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EXHIBITS AND SCHEDULES*

* Essex will furnish supplementally a copy of any omitted exhibit or schedule to the SEC upon request; provided, however, that Essex may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule or exhibit so furnished.

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Annex B

FORM OF BRE VOTING AGREEMENT

(Company Shareholders)

This Voting Agreement (this "Agreement") is made and entered into as of December 19, 2013, by and among Essex Property Trust, Inc., a Maryland corporation ("Parent") and the undersigned shareholder (the "Shareholder") of BRE Properties, Inc., a Maryland corporation (the "Company").

RECITALS

A. Concurrently with the execution of this Agreement, Parent, Bronco Acquisition Sub, Inc., a Delaware corporation ("Merger Sub"), and the Company have entered into an Agreement and Plan of Merger (the "Merger Agreement") which provides for the merger of the Company with and into Merger Sub with Merger Sub being the surviving entity (the "Merger").

B. As a condition and an inducement to Parent's willingness to enter into the Merger Agreement, Parent has required that the Shareholder, and the Shareholder has agreed, to enter into this Agreement with respect to all shares of common stock, par value $0.01 per share, of the Company ("Company Common Stock") that the Shareholder now or hereafter owns beneficially (as defined for purposes of this Agreement in Rule 13d-3 under the Exchange Act) or of record.

C. The Shareholder is the current beneficial or record owner, and has either sole or shared voting power over, such number of Company Common Stock (the "Company Shares") as is indicated on Schedule A attached hereto.

D. Parent desires the Shareholder to agree, and the Shareholder is willing to agree, subject to the limitations herein, not to Transfer (as defined below) any of the Company Shares and New Company Shares (as defined below), and to vote the Company Shares in a manner so as to facilitate consummation of the Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Section 1 or elsewhere in this Agreement.

"Affiliate" of a specified Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Expiration Date" shall mean the earlier to occur of (i) the Effective Time or (ii) such date and time as the Merger Agreement shall be terminated pursuant to Article VIII thereof.

"Permitted Transfer" shall mean, in each case, so long as (i) such Transfer is in accordance with applicable Law and (ii) the Shareholder is and at all times has been in compliance with this Agreement, any Transfer (x) to an Affiliate of the Shareholder or (y) to any member of the Shareholder's immediate family, or to a trust for the benefit of the Shareholder or any member of the Shareholder's immediate family, so long as such Affiliate or other permitted

transferee (if applicable), in connection with such Transfer, executes a joinder to this Agreement pursuant to which such Affiliate or other permitted transferee (if applicable) agrees to become a party to this Agreement and be subject to the restrictions applicable to the Shareholder and otherwise become a party for all purposes of this Agreement; provided, that no such Transfer shall relieve the transferring Shareholder from his obligations under this Agreement.

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Transfer shall mean (i) any direct or indirect offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, loan or other transfer (by operation of Law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, loan or other transfer (by operation of Law or otherwise), of any capital stock (or any security convertible or exchangeable into capital stock) or interest in any capital stock, or (ii) entering into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such capital stock or interest in capital stock, whether any such swap, agreement, transaction or series of transactions is to be settled by delivery of securities, in cash or otherwise.

2. Agreement to Retain Company Shares.

2.1 Transfer and Encumbrance of Company Shares. Other than a Permitted Transfer, until the Expiration Date, the Shareholder shall not (i) Transfer any of the Company Shares or New Company Shares, or (ii) deposit any Company Shares or New Company Shares into a voting trust or enter into a voting agreement or arrangement with respect to such Company Shares or New Company Shares or grant any proxy (except as otherwise provided herein) or power of attorney with respect thereto.

2.2 Additional Purchases. The Shareholder agrees that any Company Common Shares and any other capital shares of the Company that the Shareholder purchases or otherwise acquires or with respect to which the Shareholder otherwise acquires sole or shared voting power after the execution of this Agreement and prior to the Expiration Date (the New Company Shares) shall be subject to the terms and conditions of this Agreement to the same extent as if they constituted the Company Shares.

2.3 Unpermitted Transfers. Any Transfer or attempted Transfer of any of the Company Shares or New Company Shares in violation of this Section 2 shall, to the fullest extent permitted by Law, be null and void *ab initio*, and the Company shall not, and shall instruct their transfer agent and other third parties not to, record or recognize any such purported Transfer on the share register of the Company. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, to the extent any Company Shares held by the Shareholder subject to any Lien (as set forth on Schedule A hereto) become subject to foreclosure, forfeiture or other similar proceedings, thereby causing the Shareholder to be unable to comply with his obligations under this Agreement with respect to such securities, neither the Shareholder nor the Company shall be deemed to be in breach of this Agreement with respect to the Shareholder s obligations with respect to such Company Shares.

3. Agreement to Vote and Approve; Irrevocable Proxy.

3.1 Company Shares. Hereafter until the Expiration Date, at every meeting of the shareholders of the Company called with respect to any of the following matters, and at every adjournment or postponement thereof, and on every action or approval by written consent of the shareholders of the Company with respect to any of the following matters, the Shareholder shall, or shall cause the holder of record on any applicable record date to (including via proxy), vote or cause to be voted, the Company Shares and any New Company Shares: (i) in favor of the approval of the Merger and the other Transactions, (ii) in favor of any other matter that is required to facilitate the consummation of the Merger and the other transactions contemplated by the Merger Agreement, (iii) in favor of any proposal to adjourn a meeting of the shareholders of the Company to solicit additional proxies in favor of the approval of the Merger and the other Transactions, and (iv) against (a) any Competing Proposal for the Company, (b) any action or agreement that would reasonably be expected to result in any condition to the consummation of the Merger set forth in Article VII of the Merger Agreement not being fulfilled, and (c) any action which could reasonably be expected to impede, interfere with, materially delay, materially postpone or adversely affect consummation of the Transactions.

3.2 Irrevocable Proxy. By execution of this Agreement, the Shareholder does hereby appoint and constitute Parent, Keith R. Guericke and Michael J. Schall, and any one or more other individuals designated by

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Parent, and each of them individually, until the Expiration Date (at which time this proxy shall automatically be revoked), with full power of substitution and resubstitution, as the Shareholder s true and lawful attorneys-in-fact and irrevocable proxies, to the fullest extent of the Shareholder s rights with respect to the Company Shares and any New Company Shares, to vote each of the Company Shares and any New Company Shares solely with respect to the matters set forth in Section 3 hereof; *provided, however*, the foregoing shall only be effective if the Shareholder fails to be counted as present, to consent or to vote the Shareholder s Company Shares and New Company Shares, as applicable, in accordance with Section 3 above. The Shareholder intends this proxy to be irrevocable and coupled with an interest hereafter until the Expiration Date for all purposes, including without limitation Section 2-507(d) of the Maryland General Corporation Law, and hereby revokes any proxy previously granted by the Shareholder with respect to the Company Shares or New Company Shares. The Shareholder hereby ratifies and confirms all actions that the proxies appointed hereunder may lawfully do or cause to be done in accordance with this Agreement.

4. Ownership Interest. Nothing contained in this Agreement shall be deemed to vest in the Company, Parent, any of the Persons identified in Section 3.2 or any other Person any direct or indirect ownership or incidence of ownership of or with respect to, or pecuniary interest in, any of the Company Shares or New Company Shares. All rights, ownership and economic benefits of and relating to, and pecuniary interest in, the Company Shares and New Company Shares shall remain vested in and belong to the Shareholder, and neither the Company, Parent, the Persons identified in Section 3.2 nor any other Person shall have any power or authority to direct either the Shareholder in the voting or disposition of any of the Company Shares or New Company Shares, except as otherwise expressly provided in this Agreement.

5. Representations, Warranties and Covenants of the Shareholder. The Shareholder hereby represents, warrants and covenants to Parent as follows:

5.1 Due Authority. The Shareholder has the legal capacity and full power and authority to make, enter into and carry out the terms of this Agreement and to grant the irrevocable proxy as set forth in Section 3.2 hereof. This Agreement has been duly and validly executed and delivered by the Shareholder and constitutes a valid and binding agreement of the Shareholder enforceable against it in accordance with its terms, except to the extent enforceability may be limited by the effect of applicable bankruptcy, reorganization, insolvency, moratorium or other Laws affecting the enforcement of creditors rights generally and the effect of general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity.

5.2 Ownership of Company Shares. As of the date hereof, the Shareholder (i) is the beneficial or record owner of the Company Shares indicated on Schedule A hereto, free and clear of any and all Liens, other than those created by this Agreement, those related to margin related loans or as would not prevent the Shareholder from performing his obligations under this Agreement, and (ii) has either sole or shared voting power over all of the Company Shares. As of the date hereof, the Shareholder does not own, beneficially or of record, any capital stock or other securities of the Company other than the Company Shares set forth on Schedule A. As of the date hereof, the Shareholder does not own, beneficially or of record, any rights to purchase or acquire any shares of capital stock of the Company.

5.3 No Conflict; Consents.

(a) The execution and delivery of this Agreement by the Shareholder do not, and the performance by the Shareholder of the obligations under this Agreement and the compliance by the Shareholder with any provisions hereof do not and will not: (i) conflict with or violate in any material respect any Laws applicable to the Shareholder or the Company Shares, or (ii) result in any material breach of or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the Company Shares pursuant to, any note,

bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Shareholder is a party or by which the Shareholder or the Company Shares are bound.

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(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person, is required by or with respect to the Shareholder in connection with the execution and delivery of this Agreement or the consummation by the Shareholder of the transactions contemplated hereby.

5.4 Absence of Litigation. There is no Action pending against, or, to the knowledge of the Shareholder, threatened against or affecting, the Shareholder or any of its Affiliates or any of their respective properties or assets (including the Company Shares) at Law or in equity that could reasonably be expected to impair or adversely affect the ability of the Shareholder to perform the Shareholder s obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

6. Further Assurances. From time to time, at the request of the Company and without further consideration, the Shareholder shall take such further action as may reasonably be requested by the Company to carry out the intent of this Agreement.

7. Termination. This Agreement shall terminate and shall have no further force or effect on the Expiration Date.

8. Notice of Certain Events. The Shareholder shall notify Parent promptly of (a) any fact, event or circumstance that would cause, or reasonably be expected to cause or constitute, a breach in any material respect of the representations and warranties of the Shareholder under this Agreement and (b) the receipt by the Shareholder of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with this Agreement; provided, however, that the delivery of any notice pursuant to this Section 8 shall not limit or otherwise affect the remedies available to any party.

9. Miscellaneous.

9.1 Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

9.2 Binding Effect; Assignment; Third Party Beneficiaries. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Company shall be express third party beneficiaries of the agreements of the Shareholder contained in this Agreement.

9.3 Amendments and Modifications. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

9.4 Specific Performance; Injunctive Relief. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof or was otherwise breached. It is accordingly agreed that the parties shall be entitled to specific relief hereunder, including, without limitation, an injunction or injunctions to prevent and enjoin breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, in any state or federal court in the State of Maryland, in addition to any other remedy to which they may be entitled at Law or in equity. Any requirements for the securing or posting of any bond with respect to any such remedy are hereby waived.

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9.5 Notices. All notices, requests, claims, consents, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, sent by overnight courier (providing proof of delivery) to the parties or sent by facsimile or e-mail of a pdf attachment (providing confirmation of transmission) at the following addresses or facsimile numbers (or at such other address or facsimile number for a party as shall be specified by like notice):

(a) if to Parent to:

Essex Property Trust, Inc.

925 East Meadow Drive

Palo Alto, California 94303

Telephone: (650) 494-3700
Facsimile: (650) 494-8743
Attention: Michael J. Schall
Chief Executive Officer and President

with a copy (which shall not constitute notice) to:

Goodwin Procter LLP

Exchange Place

53 State Street

Boston, MA 02109

Telephone: (617) 570-1000
Facsimile: (617) 523-1231
Attention: Gilbert G. Menna
John T. Haggerty

(b) if to the Shareholder:

To the address for notice set forth on the last page hereof.

Or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective upon receipt.

10.6 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with the internal laws of the State of Maryland without regard to its rules of conflict of laws. The parties hereto irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the Circuit Court for Baltimore City (Maryland) (the Maryland Court) and the Maryland Court s Business and Technology Case Management Program for any litigation arising out of this Agreement and the transactions contemplated hereby (and agree not to commence any

litigation relating thereto except in such court), waive any objection to the laying of venue of any such litigation in the Maryland Court and agree not to plead or claim in the Maryland Court that such litigation brought therein has been brought in any inconvenient forum. Each of the parties to this Agreement hereby irrevocably and unconditionally agrees to request and/or consent to the assignment of any such proceeding to the Maryland Court s Business and Technology Case Management Program. Nothing in this Agreement shall limit or affect the rights of any party to pursue appeals from any judgments or order of the Maryland Court as provided by law.

10.7 WAIVER OF JURY TRIAL. EACH OF THE PARENT AND THE SHAREHOLDER HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE PARENT OR THE SHAREHOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

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10.8 Entire Agreement. This Agreement contains the entire understanding of the parties in respect of the subject matter hereof, and supersedes all prior negotiations and understandings between the parties with respect to such subject matter.

10.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

10.10 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of interpretation of this Agreement.

10.11 No Agreement Until Executed. Irrespective of negotiations among the parties or the exchanging of drafts of this Agreement, this Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the parties hereto unless and until (i) the Merger Agreement is executed by all parties thereto, and (ii) this Agreement is executed by all parties hereto.

10.12 Legal Representation. This Agreement was negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation thereof.

10.13 Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense, whether or not the Merger is consummated.

10.14 Action in Shareholder Capacity Only. No Person executing this Agreement who is or becomes during the term of this Agreement a director, officer or fiduciary of the Company shall be deemed to make any agreement or understanding in this Agreement in such Person s capacity as a director, officer or fiduciary of the Company. The parties acknowledge and agree that this Agreement is entered into by the Shareholder solely in his or her capacity as the beneficial owner or record holder of the Shareholder s Company Shares and nothing in this Agreement shall restrict, limit or affect in any respect any actions taken by the Shareholder in his or her capacity as a director, officer or fiduciary of the Company. The Shareholder shall have no liability to Parent under this Agreement as a result of any action or inaction by the Shareholder acting in his or her capacity as a director, officer or fiduciary of the Company, it being understood that any action taken by the Shareholder in such capacity to approve a Change in Recommendation shall have no effect on the obligations of the Shareholder under this Agreement as the record holder or beneficial owner of the Company Shares or New Company Shares if this Agreement has not been terminated in accordance with its terms. For the avoidance of doubt, nothing in this Section 10.14 shall in any way modify, alter or amend any of the terms of the Merger Agreement.

10.15 Documentation and Information. The Shareholder consents to and authorizes the publication and disclosure by the Company and Parent of the Shareholder s identity and holdings of the Company Shares, and the nature of the Shareholder s commitments, arrangements and understandings under this Agreement, in any press release or any other disclosure document required in connection with the Merger or any other transaction contemplated by the Merger Agreement. As promptly as practicable, the Shareholder shall notify Parent of any required corrections with respect to any written information supplied by such Shareholder specifically for use in any such disclosure document, if and to the extent such Shareholder becomes aware that any have become false or misleading in any material respect.

[*Signature page follows*]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date and year first above written.

ESSEX PROPERTY TRUST, INC.

By:
Name:
Title:

SHAREHOLDER

By:

Shareholder s Address for Notice:

Voting Agreement

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SOLELY FOR PURPOSES OF

SECTIONS 2.3 AND 3.2 HEREOF:

BRE PROPERTIES, INC.

By:
Name:
Title:

Voting Agreement

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SCHEDULE A

Company Shares	Number of Shares

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Annex C

FORM OF ESSEX VOTING AGREEMENT

(Parent Shareholders)

This Voting Agreement (this "Agreement") is made and entered into as of December 19, 2013, by and among BRE Properties, Inc., a Maryland corporation (the "Company") and the undersigned shareholder (the "Shareholder") of Essex Property Trust, Inc., a Maryland corporation ("Parent").

RECITALS

A. Concurrently with the execution of this Agreement, Parent, Bronco Acquisition Sub, Inc., a Delaware corporation ("Merger Sub"), and the Company have entered into an Agreement and Plan of Merger (the "Merger Agreement") which provides for the merger of the Company with and into Merger Sub with Merger Sub being the surviving entity (the "Merger").

B. As a condition and an inducement to the Company's willingness to enter into the Merger Agreement, the Company has required that the Shareholder, and the Shareholder has agreed, to enter into this Agreement with respect to (i) all shares of common stock, par value $0.0001 per share, of Parent ("Parent Common Stock") that the Shareholder now or hereafter owns beneficially (as defined for purposes of this Agreement in Rule 13d-3 under the Exchange Act) or of record and (ii) all limited partnership interests designated as a "Partnership Unit" ("Parent OP Units") under the Second Amended and Restated Agreement of Limited Partnership of Essex Portfolio, L.P., dated as of May 27, 2009, as amended, modified or supplemented from time to time (the "Parent LP Agreement"), that the Shareholder now or hereafter owns, if any, beneficially or of record.

C. The Shareholder is the current beneficial or record owner, and has either sole or shared voting power over, such number of Parent Common Stock (the "Parent Shares") and Parent OP Units ("Parent Units"), if any, as is indicated on Schedule A attached hereto.

D. The Company desires the Shareholder to agree, and the Shareholder is willing to agree, subject to the limitations herein, not to Transfer (as defined below) any of the Parent Shares, New Parent Shares (as defined below), Parent Units and New Parent Units (as defined below), and to vote the Parent Shares in a manner so as to facilitate consummation of the Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Section 1 or elsewhere in this Agreement.

"Affiliate" of a specified Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Expiration Date" shall mean the earlier to occur of (i) the Effective Time or (ii) such date and time as the Merger Agreement shall be terminated pursuant to Article VIII thereof.

Permitted Transfer shall mean, in each case, so long as (i) such Transfer is in accordance with applicable Law and (ii) the Shareholder is and at all times has been in compliance with this Agreement, any Transfer (x) to an Affiliate of the Shareholder or (y) to any member of the Shareholder s immediate family, or to a trust for the benefit of the Shareholder or any member of the Shareholder s immediate family, so long as such Affiliate or other permitted transferee (if applicable), in connection with such Transfer, executes a joinder to this Agreement pursuant to which such Affiliate or other permitted transferee (if applicable) agrees to become a party to this

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Agreement and be subject to the restrictions applicable to the Shareholder and otherwise become a party for all purposes of this Agreement; provided, that no such Transfer shall relieve the transferring Shareholder from his obligations under this Agreement.

Transfer shall mean (i) any direct or indirect offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, loan or other transfer (by operation of Law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, loan or other transfer (by operation of Law or otherwise), of any capital stock (or any security convertible or exchangeable into capital stock) or interest in any capital stock, or (ii) entering into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such capital stock or interest in capital stock, whether any such swap, agreement, transaction or series of transactions is to be settled by delivery of securities, in cash or otherwise. For purposes of this Agreement, (i) capital stock shall include interests in a limited partnership and (ii) Transfer shall not include a redemption of Parent OP Units pursuant to the terms of the Parent LP Agreement.

2. Agreement to Retain Parent Shares and Parent Units.

2.1 Transfer and Encumbrance of Parent Shares and Parent Units. Other than a Permitted Transfer, until the Expiration Date, the Shareholder shall not (i) Transfer any of the Parent Shares, New Parent Shares, Parent Units or New Parent Units, or (ii) deposit any Parent Shares, New Parent Shares, Parent Units or New Parent Units into a voting trust or enter into a voting agreement or arrangement with respect to such Parent Shares, New Parent Shares, Parent Units or New Parent Units or grant any proxy (except as otherwise provided herein) or power of attorney with respect thereto.

2.2 Additional Purchases. The Shareholder agrees that any Parent Common Shares, Parent OP Units, other capital shares of Parent that the Shareholder purchases or otherwise acquires, including Parent Common Shares received upon redemption of Parent OP Units pursuant to the terms of the Parent LP Agreement, or with respect to which the Shareholder otherwise acquires sole or shared voting power after the execution of this Agreement and prior to the Expiration Date (the New Parent Shares), and other partnership interests of Parent LP that the Shareholder purchases or otherwise acquires or with respect to which the Shareholder otherwise acquires sole or shared voting power after the execution of this Agreement and prior to the Expiration Date (the New Parent Units), shall, in each case, be subject to the terms and conditions of this Agreement to the same extent as if they constituted the Parent Shares or Parent Units, as applicable.

2.3 Unpermitted Transfers. Any Transfer or attempted Transfer of any of the Parent Shares, New Parent Shares, Parent Units or New Parent Units in violation of this Section 2 shall, to the fullest extent permitted by Law, be null and void *ab initio*, and Parent and Parent LP shall not, and shall instruct their transfer agent and other third parties not to, record or recognize any such purported Transfer on the share register of Parent or the books and records of Parent LP. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, to the extent any Parent Shares or Parent Units held by the Shareholder subject to any Lien become subject to foreclosure, forfeiture or other similar proceedings, thereby causing the Shareholder to be unable to comply with his obligations under this Agreement with respect to such securities, neither the Shareholder nor Parent shall be deemed to be in breach of this Agreement with respect to the Shareholder s obligations with respect to such Parent Shares or Parent Units.

3. Agreement to Vote and Approve; Irrevocable Proxy.

3.1 Parent Shares. Hereafter until the Expiration Date, at every meeting of the shareholders of Parent called with respect to any of the following matters, and at every adjournment or postponement thereof, and on every action or

approval by written consent of the shareholders of Parent with respect to any of the following matters, the Shareholder shall, or shall cause the holder of record on any applicable record date to (including via proxy), vote or cause to be voted, the Parent Shares and any New Parent Shares: (i) in favor of the issuance of

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Parent Common Stock in connection with the Merger, (ii) in favor of any other matter that is required to facilitate the consummation of the Merger and the other transactions contemplated by the Merger Agreement, (iii) in favor of any proposal to adjourn a meeting of the shareholders of Parent to solicit additional proxies in favor of the approval of the issuance of the Parent Common Stock in connection with the Merger, and (iv) against (a) any action or agreement that would reasonably be expected to result in any condition to the consummation of the Merger set forth in Article VII of the Merger Agreement not being fulfilled, and (b) any action which could reasonably be expected to impede, interfere with, materially delay, materially postpone or adversely affect consummation of the Transactions.

3.2 Irrevocable Proxy. By execution of this Agreement, the Shareholder does hereby appoint and constitute the Company, Connie Moore and John Schissel, and any one or more other individuals designated by the Company, and each of them individually, until the Expiration Date (at which time this proxy shall automatically be revoked), with full power of substitution and resubstitution, as the Shareholder s true and lawful attorneys-in-fact and irrevocable proxies, to the fullest extent of the Shareholder s rights with respect to the Parent Shares and any New Parent Shares, to vote each of the Parent Shares and any New Parent Shares solely with respect to the matters set forth in Section 3 hereof; *provided, however*, the foregoing shall only be effective if the Shareholder fails to be counted as present, to consent or to vote the Shareholder s Parent Shares and New Parent Shares, as applicable, in accordance with Section 3 above. The Shareholder intends this proxy to be irrevocable and coupled with an interest hereafter until the Expiration Date for all purposes, including without limitation Section 2-507(d) of the Maryland General Corporation Law, and hereby revokes any proxy previously granted by the Shareholder with respect to the Parent Shares or New Parent Shares. The Shareholder hereby ratifies and confirms all actions that the proxies appointed hereunder may lawfully do or cause to be done in accordance with this Agreement.

4. Ownership Interest. Nothing contained in this Agreement shall be deemed to vest in the Company, Parent, any of the Persons identified in Section 3.2 or any other Person any direct or indirect ownership or incidence of ownership of or with respect to, or pecuniary interest in, any of the Parent Shares or New Parent Shares. All rights, ownership and economic benefits of and relating to, and pecuniary interest in, the Parent Shares and New Parent Shares shall remain vested in and belong to the Shareholder, and neither the Company, Parent, the Persons identified in Section 3.2 nor any other Person shall have any power or authority to direct either the Shareholder in the voting or disposition of any of the Parent Shares or New Parent Shares, except as otherwise expressly provided in this Agreement.

5. Representations, Warranties and Covenants of the Shareholder. The Shareholder hereby represents, warrants and covenants to the Company as follows:

5.1 Due Authority. The Shareholder has the legal capacity and full power and authority to make, enter into and carry out the terms of this Agreement and to grant the irrevocable proxy as set forth in Section 3.2 hereof. This Agreement has been duly and validly executed and delivered by the Shareholder and constitutes a valid and binding agreement of the Shareholder enforceable against it in accordance with its terms, except to the extent enforceability may be limited by the effect of applicable bankruptcy, reorganization, insolvency, moratorium or other Laws affecting the enforcement of creditors rights generally and the effect of general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity.

5.2 Ownership of Parent Shares and Parent Units. As of the date hereof, the Shareholder (i) is the beneficial or record owner of the Parent Shares and Parent OP Units indicated on Schedule A hereto, free and clear of any and all Liens, other than those created by this Agreement, those related to margin related loans or as would not prevent the Shareholder from performing his obligations under this Agreement, and (ii) has either sole or shared voting power over all of the Parent Shares. As of the date hereof, the Shareholder does not own, beneficially or of record, any capital stock or other securities of Parent or Parent LP other than the Parent Common Shares and Parent OP Units set forth on Schedule A. As of the date hereof, the Shareholder does not own, beneficially or of record, any rights to

purchase or acquire any shares of capital stock of Parent or Parent LP.

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5.3 No Conflict; Consents.

(a) The execution and delivery of this Agreement by the Shareholder do not, and the performance by the Shareholder of the obligations under this Agreement and the compliance by the Shareholder with any provisions hereof do not and will not: (i) conflict with or violate in any material respect any Laws applicable to the Shareholder, the Parent Shares or the Parent Units, or (ii) result in any material breach of or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the Parent Shares or the Parent Units pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Shareholder is a party or by which the Shareholder, the Parent Shares or the Parent Units are bound.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person, is required by or with respect to the Shareholder in connection with the execution and delivery of this Agreement or the consummation by the Shareholder of the transactions contemplated hereby.

5.4 Absence of Litigation. There is no Action pending against, or, to the knowledge of the Shareholder, threatened against or affecting, the Shareholder or any of its Affiliates or any of their respective properties or assets (including the Parent Shares and the Parent Units) at Law or in equity that could reasonably be expected to impair or adversely affect the ability of the Shareholder to perform the Shareholder s obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

6. Further Assurances. From time to time, at the request of the Company and without further consideration, the Shareholder shall take such further action as may reasonably be requested by the Company to carry out the intent of this Agreement.

7. Termination. This Agreement shall terminate and shall have no further force or effect on the Expiration Date.

8. Notice of Certain Events. The Shareholder shall notify the Company promptly of (a) any fact, event or circumstance that would cause, or reasonably be expected to cause or constitute, a breach in any material respect of the representations and warranties of the Shareholder under this Agreement and (b) the receipt by the Shareholder of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with this Agreement; provided, however, that the delivery of any notice pursuant to this Section 8 shall not limit or otherwise affect the remedies available to any party.

9. Miscellaneous.

9.1 Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

9.2 Binding Effect; Assignment; Third Party Beneficiaries. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted

assigns. Parent and Parent LP shall be express third party beneficiaries of the agreements of the Shareholder contained in this Agreement.

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9.3 Amendments and Modifications. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

9.4 Specific Performance; Injunctive Relief. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof or was otherwise breached. It is accordingly agreed that the parties shall be entitled to specific relief hereunder, including, without limitation, an injunction or injunctions to prevent and enjoin breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, in any state or federal court in the State of Maryland, in addition to any other remedy to which they may be entitled at Law or in equity. Any requirements for the securing or posting of any bond with respect to any such remedy are hereby waived.

9.5 Notices. All notices, requests, claims, consents, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, sent by overnight courier (providing proof of delivery) to the parties or sent by facsimile or e-mail of a pdf attachment (providing confirmation of transmission) at the following addresses or facsimile numbers (or at such other address or facsimile number for a party as shall be specified by like notice):

(a) if to the Company to:

BRE Properties, Inc.

525 Market Street, 4th Floor

San Francisco, CA 94105

Telephone: (415) 445-6530

Facsimile:

Attention: Constance B. Moore
President and Chief Executive Officer

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP

505 Montgomery Street

San Francisco, California 94111

Attention: John M. Newell
William J. Cernius

Facsimile: (415) 395-8095

(b) if to the Shareholder:

To the address for notice set forth on the last page hereof.

Or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective upon receipt.

10.6 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with the internal laws of the State of Maryland without regard to its rules of conflict of laws. The parties hereto irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the Circuit Court for Baltimore City (Maryland) (the Maryland Court) and the Maryland Court s Business and Technology Case Management Program for any litigation arising out of this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in such court), waive any objection to the laying of venue of any such litigation in the Maryland Court and agree not to plead or claim in the Maryland Court that such litigation brought therein has been brought in any inconvenient forum. Each of the parties to this Agreement hereby irrevocably and unconditionally agrees to request and/or consent to the assignment of any such proceeding to the Maryland Court s Business and Technology Case Management Program. Nothing in this

Agreement shall limit or affect the rights of any party to pursue appeals from any judgments or order of the Maryland Court as provided by law.

10.7 WAIVER OF JURY TRIAL. EACH OF THE COMPANY AND THE SHAREHOLDER HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE COMPANY OR THE SHAREHOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

10.8 Entire Agreement. This Agreement contains the entire understanding of the parties in respect of the subject matter hereof, and supersedes all prior negotiations and understandings between the parties with respect to such subject matter.

10.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

10.10 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of interpretation of this Agreement.

10.11 No Agreement Until Executed. Irrespective of negotiations among the parties or the exchanging of drafts of this Agreement, this Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the parties hereto unless and until (i) the Merger Agreement is executed by all parties thereto, and (ii) this Agreement is executed by all parties hereto.

10.12 Legal Representation. This Agreement was negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation thereof.

10.13 Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense, whether or not the Merger is consummated.

10.14 Action in Shareholder Capacity Only. No Person executing this Agreement who is or becomes during the term of this Agreement a director, officer or fiduciary of Parent shall be deemed to make any agreement or understanding in this Agreement in such Person s capacity as a director, officer or fiduciary of Parent. The parties acknowledge and agree that this Agreement is entered into by the Shareholder solely in his or her capacity as the beneficial owner or record holder of the Shareholder s Parent Shares and Parent Units and nothing in this Agreement shall restrict, limit or affect in any respect any actions taken by the Shareholder in his or her capacity as a director, officer or fiduciary of Parent. The Shareholder shall have no liability to the Company under this Agreement as a result of any action or inaction by the Shareholder acting in his or her capacity as a director, officer or fiduciary of Parent.

10.15 Documentation and Information. The Shareholder consents to and authorizes the publication and disclosure by the Company and Parent of the Shareholder s identity and holdings of the Parent Shares and Parent Units, and the nature of the Shareholder s commitments, arrangements and understandings under this Agreement, in any press release or any other disclosure document required in connection with the Merger or any other transaction contemplated by the Merger Agreement. As promptly as practicable, the Shareholder shall notify the Company of any required corrections with respect to any written information supplied by such Shareholder specifically for use in any such disclosure document, if and to the extent such Shareholder becomes aware that any have become false or misleading in any

material respect.

[*Signature page follows*]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date and year first above written.

BRE PROPERTIES, INC.

By:

Name:
Title:

SHAREHOLDER

By:

Shareholder s Address for Notice:

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SOLELY FOR PURPOSES OF

SECTIONS 2.3 AND 3.2 HEREOF:

ESSEX PROPERTY TRUST, INC.

By:

Name:
Title:

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SCHEDULE A

	Number of Shares or Units
Parent Shares	
Parent Units	

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Annex D

[LETTERHEAD OF UBS SECURITIES LLC]

December 18, 2013

The Board of Directors

Essex Property Trust, Inc.

925 East Meadow Drive

Palo Alto, California 94303

Dear Members of the Board:

We understand that Essex Property Trust, Inc., a Maryland real estate investment trust (the Company), is considering a transaction whereby the Company will acquire control of BRE Properties, Inc., a Maryland real estate investment trust (BRE). Pursuant to the terms of an Agreement and Plan of Merger, draft dated December 17, 2013 (the Agreement), by and among BRE, the Company and Bronco Acquisition Sub, Inc., a Delaware corporation and wholly owned subsidiary of the Company (Sub), BRE will merge with and into Sub, with Sub continuing as the surviving entity, as a result of which the successor entity to BRE will be a wholly owned subsidiary of the Company (the Transaction), and all of the issued and outstanding shares of the common stock, par value $0.01 per share, of BRE (BRE Common Stock) will be converted into the right to receive, for each outstanding share of BRE Common Stock, (x) 0.2971 shares of the common stock, par value $0.0001 per share, of the Company (Company Common Stock and, such aggregate number of shares of Company Common Stock, the Stock Consideration), and (y) $12.33 in cash (the Cash Consideration and, collectively with the Stock Consideration, the Consideration). The terms and conditions of the Transaction are more fully set forth in the Agreement.

You have requested our opinion as to the fairness, from a financial point of view, to the Company of the Consideration to be paid by the Company in the Transaction.

UBS Securities LLC (UBS) has acted as financial advisor to the Company in connection with the Transaction and will receive a fee for its services, a portion of which is payable in connection with this opinion and a significant portion of which is contingent upon consummation of the Transaction. UBS has been requested by the Company to provide financing to the Company in connection with the Transaction and, in such event, would receive compensation in connection therewith. In the past, UBS and its affiliates have provided investment banking services to the Company and BRE unrelated to the proposed Transaction, for which UBS and its affiliates received compensation, including having acted as a joint book-running manager in BRE s offering of $300 million 3.375% Senior Notes due 2023 completed in 2012. In addition, UBS or an affiliate is a participant in a credit facility of BRE for which it received and continues to receive fees and interest payments. In the ordinary course of business, UBS and its affiliates may hold or trade, for their own accounts and the accounts of their customers, securities of the Company and BRE and, accordingly, may at any time hold a long or short position in such securities. The issuance of this opinion was approved by an authorized committee of UBS.

Our opinion does not address the relative merits of the Transaction or any related transaction as compared to other business strategies or transactions that might be available to the Company or the Company s underlying business decision to effect the Transaction or any related transaction. Our opinion does not constitute a recommendation to any

shareholder as to how such shareholder should vote or act with respect to the Transaction or any related transaction. At your direction, we have not been asked to, nor do we, offer any opinion as to the terms, other than the Consideration to the extent expressly specified herein, of the Agreement or any related documents or the form of the Transaction or any related transaction, including without limitation (i) any joint venture arrangement that may be entered into in connection with the Transaction or (ii) any other transfer, sale or other disposition of any assets of BRE or the Company in connection with the consummation of the Transaction.

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The Board of Directors

Essex Property Trust, Inc.

December 18, 2013

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In addition, we express no opinion as to the fairness of the amount or nature of any compensation to be received by any officers, directors or employees of any parties to the Transaction, or any class of such persons, relative to the Consideration. We express no opinion as to what the value of Company Common Stock will be when issued pursuant to the Transaction or the prices at which Company Common Stock or BRE Common Stock will trade at any time. In rendering this opinion, we have assumed, with your consent, that (i) the final executed form of the Agreement will not differ in any material respect from the draft that we have reviewed, (ii) the parties to the Agreement will comply with all material terms of the Agreement and (iii) the Transaction will be consummated in accordance with the terms of the Agreement without any adverse waiver or amendment of any material term or condition thereof. We have also assumed, at your direction, that all governmental, regulatory or other consents and approvals necessary, proper or advisable for the consummation of the Transaction (including, without limitation, the Specified Consents (as such term is defined in the Agreement)) will be obtained without any adverse effect on the Company, BRE or the Transaction in any way meaningful to our analysis.

In arriving at our opinion, we have, among other things: (i) reviewed certain publicly available business and financial information relating to BRE and the Company; (ii) reviewed certain internal financial information and other data relating to the business and financial prospects of BRE that were provided to us by the managements of BRE and the Company and not publicly available, including (A) financial forecasts and estimates of BRE prepared by the management of BRE and (B) financial forecasts and estimates of BRE prepared by the management of the Company, provided that for purposes of our analysis we have utilized, at your direction, the financial forecasts and estimates of BRE prepared by the management of the Company; (iii) reviewed certain internal financial information and other data relating to the business and financial prospects of the Company that were provided to us by the management of the Company and not publicly available, including financial forecasts and estimates prepared by the management of the Company that you have directed us to utilize for purposes of our analysis; (iv) reviewed certain estimates of synergies prepared by the management of the Company that were provided to us by the Company and not publicly available that you have directed us to utilize for purposes of our analysis; (v) conducted discussions with members of the senior managements of the Company and BRE concerning the businesses and financial prospects of BRE and the Company; (vi) reviewed publicly available financial and stock market data with respect to certain other companies we believe to be generally relevant; (vii) compared the financial terms of the Transaction with the financial terms of certain other transactions we believe to be generally relevant, which financial terms were either publicly available or provided to us by the management of the Company; (viii) reviewed current and historical market prices of Company Common Stock and BRE Common Stock; (ix) considered certain pro forma effects of the Transaction on the Company s financial statements; (x) reviewed the Agreement; and (xi) conducted such other financial studies, analyses and investigations, and considered such other information, as we deemed necessary or appropriate.

In connection with our review, with your consent, we have assumed and relied upon, without independent verification, the accuracy and completeness in all material respects of the information provided to or reviewed by us for the

purpose of this opinion. In addition, with your consent, we have not made any independent evaluation or appraisal of any of the assets or liabilities (contingent or otherwise) of the Company or BRE, nor have we been furnished with any such evaluation or appraisal (except that BRE management provided to us appraisals of four individual properties of BRE). With respect to the financial forecasts, estimates, synergies and pro forma effects referred to above that we have utilized for our analysis, we have assumed, at your direction, that they have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company as to the future financial performance of the Company and BRE and such synergies and pro forma effects. In addition, we have assumed with your approval that the financial forecasts and estimates, including synergies, referred to above will be achieved at the times and in the amounts projected. We also have assumed, with your consent, that the Transaction will qualify for U.S. federal income tax purposes as a

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The Board of Directors

Essex Property Trust, Inc.

December 18, 2013

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reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended. We have been advised by the Company and BRE that each of the Company and BRE has operated in conformity with the requirements for qualification as a real estate investment trust (REIT) for U.S. federal income tax purposes since its formation as a REIT and we have assumed, at your direction, that the Transaction will not adversely affect such status or operations of the Company or BRE. Our opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information available to us as of, the date hereof.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration to be paid by the Company in the Transaction is fair, from a financial point of view, to the Company.

This opinion is provided for the benefit of the Board of Directors (in its capacity as such) in connection with, and for the purpose of, its evaluation of the Consideration in the Transaction.

Very truly yours,

/s/ UBS Securities LLC

UBS SECURITIES LLC

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Annex E

[LETTERHEAD OF WELLS FARGO SECURITIES, LLC]

December 18, 2013

The Board of Directors

BRE Properties, Inc.

525 Market Street, 4th Floor

San Francisco, California 94105

The Board of Directors:

The Board of Directors (the Board) of BRE Properties, Inc., a Maryland corporation (BRE), has asked Wells Fargo Securities, LLC (Wells Fargo Securities) to advise it with respect to the fairness, from a financial point of view, to holders of the common stock, par value $0.01 per share, of BRE (BRE Common Stock), other than as specified below, of the Merger Consideration (defined below) to be received by such holders pursuant to an Agreement and Plan of Merger (the Merger Agreement) among BRE, Essex Property Trust, Inc., a Maryland corporation (Essex), and Bronco Acquisition Sub, Inc., a Delaware corporation and wholly owned subsidiary of Essex (Merger Sub). Pursuant to the Merger Agreement, BRE will be merged with and into Merger Sub (the Merger), with Merger Sub as the surviving entity of the Merger, and each outstanding share of BRE Common Stock will be converted into the right to receive (i) $12.33 in cash (the Cash Consideration) and (ii) 0.2971 (the Exchange Ratio) of a share of the common stock, par value $0.0001 per share, of Essex (Essex Common Stock) (such number of shares of Essex Common Stock issuable pursuant to the Exchange Ratio, the Stock Consideration and, together with the Cash Consideration, the Merger Consideration), subject to certain adjustments as specified in the Merger Agreement. The terms and conditions of the Merger and related transactions are more fully set forth in the Merger Agreement.

In arriving at our opinion, we have, among other things:

Reviewed an execution version, provided to us on December 18, 2013, of the Merger Agreement, including the financial terms thereof;

Reviewed certain publicly available business, financial and other information regarding BRE and Essex, including information set forth in their respective annual reports to stockholders and annual reports on Form 10-K for the fiscal years ended December 31, 2010, 2011 and 2012 and quarterly reports on Form 10-Q for the period ended September 30, 2013;

Reviewed certain other business and financial information regarding BRE and Essex furnished to us by and discussed with the managements of BRE and Essex, including financial forecasts relating to BRE for the fiscal years ending December 31, 2013 through December 31, 2016 and certain estimates and other data for the fiscal year ending December 31, 2017 prepared by BRE s management and financial forecasts relating to

Essex for the fiscal years ending December 31, 2013 through December 31, 2016 and certain estimates and other data for the fiscal year ending December 31, 2017 prepared by Essex s management;

Discussed with the managements of BRE and Essex the operations and prospects of BRE and Essex, including the historical financial performance and trends in the results of operations of BRE and Essex;

Participated in discussions and negotiations among representatives of BRE, Essex and their respective advisors regarding the proposed Merger;

Reviewed reported prices and trading activity for BRE Common Stock and Essex Common Stock;

Analyzed the estimated net asset value of each of BRE s and Essex s real estate portfolios and other assets based upon the financial forecasts and estimates referred to above and assumptions relating thereto discussed with and confirmed as reasonable by the managements of BRE and Essex;

Compared certain financial data of BRE and Essex with similar data of certain publicly traded companies that we deemed relevant in evaluating BRE and Essex;

The Board of Directors

BRE Properties, Inc.

December 18, 2013

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Analyzed the estimated present value of the future dividends per share of BRE and Essex based upon the financial forecasts and estimates referred to above and assumptions relating thereto discussed with and confirmed as reasonable by the managements of BRE and Essex; and

Considered such other information, such as financial studies and analyses, as well as financial, economic and market criteria, and made such other inquiries, as we deemed relevant.

In connection with our review, we have assumed and relied upon the accuracy and completeness of the financial and other information provided, discussed with or otherwise made available to us, including all accounting, tax, regulatory and legal information, and we have not made (and have not assumed any responsibility for) any independent verification of such information. We have relied upon assurances of the managements of BRE and Essex that they are not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to the financial forecasts, estimates and other information relating to BRE and Essex utilized in our analyses, we have been advised by the respective managements of BRE and Essex and, at the direction of the Board, we have assumed that they have been reasonably prepared and reflect the best currently available estimates, judgments and assumptions as to the future financial performance of BRE and Essex, as the case may be, the potential pro forma financial effects of, and potential synergies that may result from, the Merger and the other matters covered thereby. We assume no responsibility for, and express no view as to, such forecasts, estimates or other information or the judgments or assumptions upon which they are based. We also have assumed that there have been no meaningful changes in the condition (financial or otherwise), results of operations, businesses or prospects of BRE or Essex since the respective dates of the most recent financial statements and other information provided to us. We have relied, at the direction of the Board, upon the assessments of the managements of BRE and Essex as to (i) the potential impact on BRE and Essex of certain trends and recent developments in, and prospects for, the commercial real estate market and related credit and financial markets and (ii) the ability to integrate the businesses of BRE and Essex. We have assumed, with the Board s consent, that there will be no developments with respect to any such matters that would have an adverse effect on BRE, Essex or the Merger (including the contemplated benefits thereof) or that would otherwise be meaningful in any respect to our analyses or opinion. We also have assumed, with the Board s consent, that there will not be any adjustments to the Merger Consideration that would be meaningful in any respect to our analyses or opinion.

In arriving at our opinion, we have not conducted physical inspections of the properties or assets of BRE, Essex or any other entity, nor have we made or been provided with any evaluations or appraisals of the properties, assets or liabilities (contingent or otherwise) of BRE, Essex or any other entity. We also have not evaluated the solvency or fair value of BRE, Essex or any other entity under any state, federal or other laws relating to bankruptcy, insolvency or similar matters.

In rendering our opinion, we have assumed, at the direction of the Board, that the final form of the Merger Agreement, when signed by the parties thereto, will not differ from the execution version of the Merger Agreement reviewed by us in any respect meaningful to our analyses or opinion, that the Merger and related transactions will be consummated in accordance with the terms described in the Merger Agreement and in compliance with all applicable laws and other requirements without amendment or waiver of any material terms or conditions and that, in the course of obtaining any necessary legal, regulatory or third party consents, approvals or agreements for the Merger and related transactions, no delay, limitation or restriction will be imposed or action will be taken that will have an adverse effect on BRE, Essex, the Merger or related transactions. We also have assumed, at the direction of the Board, that the Merger will qualify for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended. We have been advised that each of BRE and Essex has operated in conformity with the

requirements for qualification as a real estate investment trust (REIT) for U.S. federal income tax purposes since its formation as a REIT and further have assumed, at the direction of the Board, that the Merger and related transactions will not adversely affect such status or operations.

We are not expressing any opinion as to what the value of Essex Common Stock actually will be when issued pursuant to the Merger or the prices at which BRE Common Stock or Essex Common Stock will trade at any time. Our opinion is necessarily based on economic, market, financial and other conditions existing, and information made available to us, as of the date hereof. As the Board is aware, the credit, financial and stock markets have experienced significant volatility and we express no opinion or view as to any potential effects of such volatility on BRE, Essex, the Merger or related transactions. Although subsequent developments may affect the matters set forth in this opinion, we do not have any obligation to update, revise, reaffirm or withdraw this opinion or otherwise comment on or consider any such events occurring or coming to our attention after the date hereof.

Our opinion only addresses the fairness, from a financial point of view and as of the date hereof, of the Merger Consideration to be received by holders of BRE Common Stock (other than Essex, Merger Sub and their respective affiliates) pursuant to the Merger Agreement to the extent expressly specified herein, and does not address any other terms, aspects or implications of the Merger or any related transactions, including, without limitation, the form or structure of the Merger Consideration or the Merger, any adjustments to the Merger Consideration, any asset sale, transfer or other disposition by BRE prior to consummation of the Merger or any voting agreement or other agreement, arrangement or understanding entered into in connection with or contemplated by the Merger, any related transactions or otherwise. In addition, our opinion does not address the fairness of the amount or nature of, or any other aspects relating to, any compensation to be received by any officers, directors or employees of any parties to the Merger or related transactions, or class of such persons, relative to the Merger Consideration or otherwise. Our opinion does not address the merits of the underlying decision by BRE to enter into the Merger Agreement or the relative merits of the Merger or related transactions compared with other business strategies or transactions available or that have been or might be considered by the management of BRE or the Board or in which BRE might engage. We also are not expressing any view or opinion with respect to, and with the Board s consent have relied upon the assessments of representatives of BRE regarding, accounting, tax, regulatory, legal or similar matters as to which we understand that BRE obtained such advice as it deemed necessary from qualified professionals.

The issuance of this opinion was approved by an authorized committee of Wells Fargo Securities. Wells Fargo Securities is the trade name for certain capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wells Fargo Securities, LLC. Wells Fargo Securities has been engaged as financial advisor to BRE in connection with the Merger and will receive a fee for such services, a portion of which will be payable upon delivery of this opinion and a substantial portion of which is contingent upon consummation of the Merger. BRE has agreed to reimburse certain of Wells Fargo Securities expenses and to indemnify us and certain related parties against certain liabilities that may arise out of our engagement. Wells Fargo Securities and our affiliates provide a full range of investment banking and financial advisory, securities trading, brokerage and lending services in

the ordinary course of business for which we and such affiliates receive customary fees. Wells Fargo Securities and our affiliates in the past have provided, currently are providing, and in the future may provide banking and other financial services to BRE, Essex and their respective affiliates for which Wells Fargo Securities and our affiliates have received and expect to receive fees, including (i) having acted as a placement agent or joint bookrunner for certain equity or debt offerings of BRE, (ii) acting as a lender under, and as administrative agent or co-lead arranger for, certain credit facilities of BRE, (iii) having acted as joint book-running manager for certain debt offerings of Essex and Essex Portfolio, L.P. (Essex

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Portfolio) and (iv) acting as a lender under, and as co-lead arranger, joint bookrunner or co-documentation agent for, certain credit facilities of Essex and Essex Portfolio. In the ordinary course of business, Wells Fargo Securities and our affiliates may actively trade, hold or otherwise effect transactions in the securities or financial instruments (including bank loans or other obligations) of BRE, Essex and their respective affiliates for our and our affiliates own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities or financial instruments.

It is understood that this opinion is for the information and use of the Board (in its capacity as such) in its evaluation of the Merger. Our opinion does not constitute a recommendation to the Board or any other person or entity in respect of the Merger or any related transactions, including as to how any stockholder should vote or act in connection with the Merger, any related transactions or any other matters.

Based upon and subject to the foregoing, our experience as investment bankers, our work as described above and other factors we deemed relevant, it is our opinion that, as of the date hereof, the Merger Consideration to be received by holders of BRE Common Stock (other than Essex, Merger Sub and their respective affiliates) pursuant to the Merger Agreement is fair, from a financial point of view, to such holders.

Very truly yours,

/s/ Wells Fargo Securities, LLC

WELLS FARGO SECURITIES, LLC

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. ***Indemnification of Officers and Directors***

Section 2-418 of the Maryland General Corporation Law permits a corporation to indemnify its directors and officers and certain other parties against judgments, penalties, fines, settlements, and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (i) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty; (ii) the director or officer actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the director or officer in connection with the proceeding; provided, however, that if the proceeding is one by or in the right of the corporation, indemnification may not be made with respect to any proceeding in which the director or officer has been adjudged to be liable to the corporation. In addition, a director or officer may not be indemnified with respect to any proceeding charging improper personal benefit to the director or officer, whether or not involving action in the director s or officer s official capacity, in which the director or officer was adjudged to be liable on the basis that personal benefit was received. The termination of any proceeding by conviction, or upon a plea of nolo contendere or its equivalent, or an entry of any order of probation prior to judgment, creates a rebuttable presumption that the director or officer did not meet the requisite standard of conduct required for indemnification to be permitted.

In addition, Section 2-418 of the Maryland General Corporation Law requires that, unless prohibited by its charter, a corporation shall indemnify any director or officer who is made a party to any proceeding by reason of service in that capacity against reasonable expenses incurred by the director or officer in connection with the proceeding, in the event that the director or officer is successful, on the merits or otherwise, in the defense of the proceeding.

Essex s charter and bylaws provide in effect for the indemnification by Essex of the directors and officers to the fullest extent permitted by applicable law. Essex has purchased directors and officers liability insurance for the benefit of its directors and officers.

Essex has entered into indemnification agreements with each of its executive officers and directors. The indemnification agreements provide, among other provisions, and subject to the definitions, procedures and applicable terms of the agreements, that (i) Essex will indemnify the indemnitee to the fullest extent permitted by applicable law in the event indemnitee is or is threatened to be made a party to any Proceeding (as defined in the indemnification agreements); (ii) Essex will advance Expenses (as defined in the indemnification agreements) incurred in connection with any Proceeding by the indemnitee; and (iii) the rights of the indemnitee under the indemnification agreements are in addition to any other rights the indemnitee may have under applicable law, Essex s charter documents or bylaws, or otherwise. The indemnification agreements also set forth the procedures for determining entitlement to indemnification, the requirements relating to notice and defense of claims for which indemnification is sought, the procedures for enforcement of indemnification rights, and the limitations on and exclusions from indemnification.

The amended and restated partnership agreement of Essex LP requires it to indemnify Essex, its affiliates and any individual or entity acting on Essex s behalf against any loss or damage, including reasonable legal fees and court costs incurred by the person by reason of anything it may do or refrain from doing for or on behalf of Essex LP or in connection with its business or affairs unless it is determined that indemnification is not permitted.

The general effect to investors of any arrangement under which any of Essex s directors or officers are insured or indemnified against liability is a potential reduction in distributions resulting from Essex s payment of

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premiums associated with insurance or, to the extent any such loss is not covered by insurance, Essex s payment of indemnified loss. In addition, indemnification could reduce the legal remedies available to Essex and Essex stockholders against the officers and directors.

Insofar as the foregoing provisions permit indemnification of directors or officers of Essex for liability arising under the Securities Act, as amended, Essex has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 21. ***Exhibits***

A list of the exhibits included as part of this registration statement is set forth in the Exhibit Index that immediately precedes such exhibits and is incorporated herein by reference.

Item 22. ***Undertakings***

The undersigned registrant hereby undertakes as follows:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933, as amended, to any purchaser: if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of

contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

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(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933, as amended, to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, as amended, each filing of the Registrant s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended, (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934, as amended) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned Registrant hereby undertakes as follows: That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

The Registrant undertakes that every prospectus: (i) that is filed pursuant to the immediately preceding paragraph, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act, as amended, and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, as amended, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act, as amended, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate

jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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The undersigned Registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of Form S-4, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

The undersigned Registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Palo Alto, State of California, on January 28, 2014.

Essex Property Trust, Inc.

By: /s/ Michael J. Schall
Michael J. Schall

President and Chief Executive Officer

(Principal Executive Officer)

Each person whose signature appears below hereby constitutes and appoints Michael J. Schall and Michael T. Dance, each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and for his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and to file the same with all exhibits thereto and any other documents in connection therewith, with the Securities and Exchange Commission under the Securities Act of 1933, as amended, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing necessary or desirable to be done in and about the premises, as fully to all intents and purposes as they, he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their respective substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities indicated on January 28, 2014.

Signature	Title	Date
/s/ Michael J. Schall Michael J. Schall	President and Chief Executive Officer and Director (Principal Executive Officer)	January 28, 2014
/s/ Michael T. Dance Michael T. Dance	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	January 28, 2014
/s/ George M. Marcus	Chairman of the Board	January 28, 2014

George M. Marcus		
/s/ Keith R. Guericke	Vice Chairman of the Board	January 28, 2014
Keith R. Guericke		
/s/ David W. Brady	Director	January 28, 2014
David W. Brady		
/s/ Gary P. Martin	Director	January 28, 2014
Gary P. Martin		
/s/ Issie N. Rabinovitch	Director	January 28, 2014
Issie N. Rabinovitch		

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Signature	Title	Date
/s/ Thomas E. Randlett Thomas E. Randlett	Director	January 28, 2014
/s/ Byron A. Scordelis Byron A. Scordelis	Director	January 28, 2014
/s/ Janice L. Sears Janice L. Sears	Director	January 28, 2014
/s/ Claude J. Zinngrabe, Jr. Claude J. Zinngrabe, Jr.	Director	January 28, 2014

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EXHIBIT INDEX

Exhibit Index	Description of Document
2.1	Agreement and Plan of Merger, dated as of December 19, 2013, by and among Essex Property Trust, Inc., BRE Properties, Inc. and Bronco Acquisition Sub, Inc. (attached as Annex A to the joint proxy statement/prospectus included in this registration statement).
3.1	Articles of Amendment and Restatement of Essex Property Trust, Inc., (attached as Exhibit 3.1 to Essex s Current Report on Form 8-K, filed on May 17, 2013, and incorporated herein by reference).
3.2	Third Amended and Restated Bylaws of Essex Property Trust, Inc. (as of May 14, 2013) (attached as Exhibit 3.2 to Essex s Current Report on Form 8-K, filed on May 17, 2013, and incorporated herein by reference).
4.1	Form of 4.875% Series G Cumulative Convertible Preferred Stock Certificate (attached as Exhibit 4.1 to Essex s Current Report on Form 8-K, filed on July 27, 2006, and incorporated herein by reference).
4.2	Form of 7.125% Series H Cumulative Redeemable Preferred Stock Certificate (attached as Exhibit 4.1 to Essex s Current Report on Form 8-K, filed on April 13, 2011, and incorporated herein by reference).
4.3	Indenture, dated August 15, 2012, among Essex Portfolio, L.P., Essex Property Trust, Inc., and U.S. Bank National Association, as trustee, including the form of 3.625% Senior Notes due 2022 and the guarantee thereof (attached as Exhibit 4.1 to Essex s Current Report on Form 8-K, filed on August 15, 2012, and incorporated herein by reference).
4.4	Indenture, dated April 15, 2013, among Essex Portfolio, L.P., Essex Property Trust, Inc., and U.S. Bank National Association, as trustee, including the form of 3.25% Senior Notes due 2023 and the guarantee thereof (attached as Exhibit 4.1 to Essex s Current Report on Form 8-K, filed on April 15, 2013, and incorporated herein by reference).
4.5*	Form of Common Stock Certificate of the Combined Company.
5.1*	Opinion of Goodwin Procter LLP as to the legality of the securities.
8.1*	Tax Opinion of Goodwin Procter LLP.
8.2*	Tax Opinion of Latham & Watkins LLP.
9.1	Form of Voting Agreement, dated as of December 19, 2013, by and between Essex Property Trust, Inc. and certain stockholders of BRE Properties, Inc. (attached as Annex B to the joint proxy statement/prospectus included in this registration statement).
9.2	Form of Voting Agreement, dated as of December 19, 2013, by and between BRE Properties, Inc. and certain stockholders of Essex Property Trust, Inc. (attached as Annex C to the joint proxy statement/prospectus included in this registration statement).
10.1	Third Amended and Restated Agreement of Limited Partnership of Essex Portfolio, L.P., dated as of December 10, 2013 (attached as Exhibit 10.1 to Essex s Current Report on Form 8-K, filed on December 12, 2013, and incorporated herein by reference).

21.1	List of Subsidiaries of Essex Property Trust, Inc. (attached as Exhibit 21.1 to Essex s Annual Report on Form 10-K for the year ended December 31, 2012, and incorporated herein by reference).
23.1*	Consent of Goodwin Procter LLP as to the legality of the securities (included as part of the opinion filed as Exhibit 5.1 hereto and incorporated herein by reference).
23.2*	Consent of Goodwin Procter LLP as to tax issues (included as part of the opinion filed as Exhibit 8.1 hereto and incorporated herein by reference).

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Exhibit Index	Description of Document
23.3*	Consent of Latham & Watkins LLP as to tax issues (included as part of the opinion filed as Exhibit 8.2 hereto and incorporated herein by reference).
23.4*	Consent of KPMG LLP, independent registered public accounting firm.
23.5*	Consent of Ernst & Young LLP, independent registered public accounting firm.
23.6*	Consent of KPMG LLP, independent auditors.
23.7*	Consent of Ernst & Young LLP, independent auditor.
24.1*	Powers of Attorney (included on the signature page of this Registration Statement).
99.1*	Consent of UBS Securities LLC.
99.2*	Consent of Wells Fargo Securities, LLC.
99.3*	Form of Proxy Card of Essex Property Trust, Inc.
99.4*	Form of Proxy Card of BRE Properties, Inc.
99.5*	Consent of Irving F. Lyons, III to become director of the Combined Company.
99.6*	Consent of Thomas E. Robinson to become director of the Combined Company.
99.7*	Consent of Thomas P. Sullivan to become director of the Combined Company.

* Filed herewith.