



Auction Terms and Conditions

These Auction Terms and Conditions (the “**Auction Terms**”) apply to each auction event (each, an “**Auction**”) performed or hosted by Commercial Real Estate Exchange, Inc. or CREXI.com (“**Crexi**”). Each Auction shall also be subject to the general Crexi Customer Terms of Service located at <https://www.Crexi.com/tos> and the Crexi Privacy Policy located at <https://www.Crexi.com/privacy> (collectively, the “**General Terms**”).

Auctions are conducted on behalf of sellers (each, a “**Seller**”) of real property, secured note(s) or other real estate assets (each, an “**Asset**”, and, if more than one, the “**Assets**”) and may be facilitated by a listing broker engaged by Seller (a “**Seller’s Broker**”) and/or a cooperating broker engaged by a Bidder (as hereinafter defined) (a “**Bidder’s Broker**”, and when referring to either a Seller’s Broker or a Bidder’s Broker, a “**Broker**”). Each prospective buyer who participates in any Auction shall be referred to herein as a “**Bidder**”. The terms “Crexi”, “Seller”, “Broker” and “Bidder” shall also refer to the respective principals, shareholders, members, managers, officers, employees, agents and affiliates of each. The “**Winning Bidder**” is the Bidder that submits the highest Bid. Each bid submitted in any Auction is a “**Bid**”.

Crexi provides its Auction platform solely as a service to the Seller or Broker that engaged Crexi for the use of such Auction platform, and is not acting as an agent for any Seller, Bidder, Broker or other party in any capacity. By listing an Asset for Auction, registering for an Auction, making a Participation Deposit (as defined herein), representing a Seller or Bidder in connection with an Auction, or submitting a Bid in an Auction through the Crexi website at www.Crexi.com (the “**Website**”), each Seller, Bidder and Broker acknowledges having read and accepted the General Terms and these Auction Terms and shall be deemed to have read and accepted any additional terms and conditions posted on the Asset’s detail page on the Website (the “**Asset Page**”) at the time the Bid was submitted.

1. REGISTRATION PROCESS

Bidders must establish a Crexi account in order to place a Bid in any Auction. The registration process is a three-step process that includes the Bidder (i) submitting contact and background information for Bidder in accordance with Crexi’s requirements (which may, at Crexi’s or Seller election, be provided by populating the Purchase Documents with such information), (ii) proposing a Bid limit for each Auction (the “**Proposed Bid Limit**”) (which Proposed Bid Limit Crexi may approve or reject in its sole discretion, but which approval or rejection shall be based upon the Proof of Funds submitted pursuant to item (iii) below; provided, however, that only liquid funds readily available to each Bidder will be considered by Crexi in its approval or rejection of the Proposed Bid Limit, and further provided that Crexi may, in its sole discretion, consider different or additional factors in its approval or rejection of the Bidder’s Proposed Bid Limit), (iii) providing Crexi with proof of readily available funds up to such Bidder’s Proposed Bid Limit (the “**Proof of Funds**”), and (iv) making a participation deposit via wire transfer or credit card to secure compliance with these Terms (the “**Participation Deposit**”). A Participation Deposit is required for each Auction Bidder participates in or is part of, and such Participation Deposit will be used in connection with each such Auction (including as payment for Earnest Money Deposit in the event Bidder submits the winning Bid); provided, however, if Bidder participates in more than one Auction and has provided a Participation Deposit for each such Auction, Crexi is authorized by Bidder to apply any and/or all Participation Deposits to the funding of any Earnest Money Deposit requirement(s) associated with any winning Bid(s) of the Bidder, regardless of which Auction. A Participation Deposit via credit card is also subject to the terms and conditions set forth in Exhibit A, and a Participation Deposit via wire is also subject to the terms and conditions set forth in Exhibit B. Exhibit A attached hereto is expressly incorporated herein and made a part of these Auction Terms, and all references to these Auction Terms shall include the exhibits. In the event of any inconsistency between these Auction Terms (without reference to Exhibit A) and Exhibit A, the terms of the Exhibit A shall govern to the extent of the conflict.



Once submitted, much of the foregoing information requires verification by Crexi and/or Seller, so registration should be completed at the earliest possible time, and before the bidding window opens. Crexi may modify or waive any of the foregoing participation requirements or may impose additional participation requirements for certain Assets or Bidders, each in its sole discretion or at the request of a Seller.

The Proof of Funds should be emailed to compliance@Crexi.com. Crexi may share any information it receives related to Bidder's Proof of Funds, including, without limitation, bank statements or other financial records and information, with Seller or Seller's Broker for review. Based on the feedback from the Seller and Seller's Broker, Crexi will either approve Bidder or request additional Proof of Funds. Once a Bidder's Proof of Funds has been approved, such Bidder will receive its actual Bid limit (the "**Bid Limit**"), together with the amount of the Participation Deposit and wire instructions for depositing the same. Thereafter, a Bidder may request an increase in its Bid Limit by submitting proof of additional funds up to such requested increase to the Bid Limit, and the process for consideration of such request shall be as outlined above. In the event an Asset's Reserve Price exceeds a Bidder's Bid Limit, Crexi may limit the Bidder's ability to Bid on the Asset until the Bidder's Bid Limit is increased pursuant to the terms herein.

The Winning Bidder's Participation Deposit will be applied towards the required Earnest Money Deposit. Except as otherwise set forth herein, all Participation Deposits from Bidders other than the Winning Bidder will be released after the Auction. Participation Deposits may be held by Crexi or a third-party escrow agent upon notice to the Bidders. If the Participation Deposit is held by a third-party escrow agent, the Bidder may be required to execute a separate escrow agreement by such third party escrow agent.

Crexi permits Bidders to register for one or multiple Assets in an Auction, subject to any restrictions or additional requirements set forth on an Asset Page.

The Bidder represents and warrants as follows: (i) it is duly organized, validly existing and in good standing as a corporation or other entity as represented to Crexi under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (ii) entering into these Auction Terms by its representative has been duly authorized by all necessary corporate actions of Bidder; (iii) it has the full right, power and authority to enter into these Auction Terms, to grant the rights granted hereunder and to perform its obligations hereunder; (iv) the Bidder is not insolvent or bankrupt or subject to a receivership proceeding; (v) no consent or approval of any third party is required for Bidder to validly enter into and perform under these Auction Terms; (vi) when Bidder enters into these Auction Terms, it will constitute the legal, valid and binding obligation of Bidder, enforceable against Bidder in accordance with its terms; and (vii) all information Bidder has provided to Crexi is true, accurate and complete, and that it will immediately notify Crexi if any information it has provided to Crexi is no longer materially true, accurate or complete. To the extent Bidder is an individual, Bidder represents and warrants that the Bidder is at least 18 years of age or older.

2. PURCHASE DOCUMENTS

Purchase Documents. Prior to submitting a Bid, Bidders must review the Purchase and Sale Agreement, any applicable addenda, Seller's disclosure documentation, and all other transaction documents (collectively, the "**Purchase Documents**"), which can be accessed on the applicable Asset Page. All Bids must be based on the posted Purchase Documents, which Purchase Documents are non-negotiable.

3. DUE DILIGENCE

Due Diligence. It is each Bidder's responsibility to conduct its own due diligence and investigate all matters relating to each Asset that Bidder is interested in purchasing, including, without limitation, legal matters, physical condition and attributes, environmental matters, economic matters, encumbrances, and all other aspects. Bidder must coordinate any physical inspections of an Asset with Seller's Broker, and assumes all risks associated with any such inspection. In some circumstances, Seller may be unwilling or unable to



provide physical access for inspections, and Bidders must submit Bids accordingly and at their own risk. All Bids should be based solely on Bidder's independent due diligence and any information contained in the Purchase Documents, and by submitting a Bid, Bidder acknowledges that its Bid is based solely on its independent due diligence and review of the Purchase Documents, and not on any other information or documentation provided by Crexi, Seller or Seller's Broker.

All information provided on an Asset Page or otherwise on the Website with respect to an Asset has been gathered from a variety of sources and has not been independently verified by Crexi. CREXI MAKES NO REPRESENTATIONS WHATSOEVER ABOUT THE ACCURACY OR COMPLETENESS OF ANY ASSET INFORMATION OR ANY ASSET PAGE. Bidders are encouraged to consult with a licensed real estate broker, contractor, attorney, financial advisor, tax advisor, and/or other relevant professionals.

Bidder is responsible for all liability, damages and costs directly or indirectly arising from Bidder's inspection, visit, or investigation of the Asset. Bidder agrees to indemnify, defend and hold harmless Seller, Seller's Broker and Crexi from any such liability, damages and/or costs, and to maintain all applicable policies of insurance insuring over such liability, damages and/or costs.

Bidder shall not contact property managers or any tenants with respect to any Asset. If an Asset is a mortgage note or mezzanine note, Bidder shall not (i) contact the owner of the real property securing such mortgage note or mezzanine note ("Collateral"), (ii) visit the Collateral, or (iii) make contact with any of the parties providing services to the Collateral including, without limitation, any receivers. All Bids should be based solely on Bidder's independent inspections and Purchase Documents. Bidder must submit any Bid(s) at his, her or its own risk.

4. BUYING

Irrevocability of Bids and Winning Bids. All Bids submitted during any Auction are irrevocable and Bidder may not cancel or withdraw any Bid for any reason, except where a Bid withdrawal option is expressly made available to Bidders through the Website. If Bidder submits the highest Bid for an Auction, the Bidder is the Winning Bidder for the Auction. Crexi may, in its sole discretion and without affecting the Bidder's obligations hereunder as Winning Bidder, provide Bidder with confirmation that the Bidder is the Winning Bidder. Notwithstanding, the Winning Bidder must deposit a non-refundable Earnest Money Deposit and execute and submit the executed Purchase Documents, as further detailed herein.

Signing Purchase Documents. The final Purchase Documents will be emailed to Winning Bidder (using the email address associated with Winning Bidder's Crexi account) for electronic signature via DocuSign. Winning Bidder must sign the Purchase Documents within two hours after they are sent to Winning Bidder (unless a longer timeframe is specified in writing by Crexi), time being of the essence. If Winning Bidder fails to timely sign the Purchase Documents, Winning Bidder shall be deemed in default of these Terms, and Seller may (i) reject Winning Bidder's Bid, in which event the Participation Deposit shall immediately and automatically be released to Crexi, (ii) pursue claims against Winning Bidder for specific performance, and (iii) pursue all other remedies available at law or in equity. Seller is an express, intended third party beneficiary of the foregoing.

Payment of Earnest Money Deposit. The Purchase Documents for each Asset require Winning Bidder to pay a deposit (the "Earnest Money Deposit") to the escrow/closing agent. The amount of the Earnest Money Deposit is specified in the Purchase Documents or on the Asset Page for each Asset. Unless otherwise specified in the Purchase Documents, the non-refundable Earnest Money Deposit must be received on or before 5:00 p.m. in the time zone in which the Asset is located on the first business day following the close of the Auction, time being of the essence. If the Earnest Money Deposit is not timely received, Crexi or Seller may declare Winning Bidder to be in default of these Terms, in which event the Participation Deposit shall immediately and automatically be released to Seller or Crexi.



Entity Buyers. Winning Bidders wanting to take title in the name of an entity (not as an individual) may be required to provide Crexi, Seller and/or the escrow/closing agent additional documentation prior to closing, such as entity formation documents and resolutions authorizing the submission of the Bid and the purchase of the applicable Asset.

5. AUCTIONS

Reserve Price. All Assets in an Auction have a minimum selling price established by Seller ("**Reserve Price**"). Seller may accept a Bid that is below the Reserve Price in its sole and absolute discretion.

Auction Time Extension. Crexi may extend the time for bidding on any Asset in its sole discretion in order to allow for additional Bids.

Subject to Confirmation. Seller may designate certain Bids as "subject to confirmation" in its sole and absolute discretion, in which case Winning Bidder's purchase is subject to, and contingent upon, Seller approving the purchase in its sole and absolute discretion within the time period set forth in the Purchase Documents. Winning Bidder will receive a refund of monies deposited if Seller chooses not to approve the purchase.

6. BROKER/AGENT PARTICIPATION

Certain Auctions may offer a commission or referral fee for a Bidder's Broker, in which event the same will be disclosed on the applicable Asset Page, so long as (i) the Bidder's Broker has registered with Crexi as a Bidder's Broker, (ii) the Bidder's Broker is identified by the Bidder with whom it is associated, and (iii) the Bidder represented by such Bidder's Broker actually purchases the Asset in accordance with the terms of these Auction Terms. A Bidder's Broker may only be entitled to a commission if such Bidder's Broker meets the following conditions: (i) the Bidder's Broker agrees to these Auction Terms and all other terms and conditions posted on the applicable Asset Page, and (ii) the Bidder's Broker is properly licensed and complies with applicable law.

For certain Auctions, a registered Bidder's Broker may submit Bids on behalf of a client identified to Crexi prior to Bid submission. By submitting a Bid on behalf of a client, the Bidder's Broker (i) represents and warrants that the Bidder's Broker has received all client authorizations and satisfied all legal requirements necessary to submit Bids on the client's behalf, (ii) acknowledges and agrees that any Bid submitted will be binding upon the Bidder's Broker and the client identified at registration to the same extent as if the client had submitted the Bid, and (iii) agrees to indemnify and hold harmless Crexi from any and all liability, damages and/or costs resulting, whether directly or indirectly, from a breach of these representations or warranties.

7. GENERAL INFORMATION

Seller and Crexi reserve the right to deny, limit, or impose conditions on submitting Bids and/or access to the Website or any Auction at any time, for any reason (including, without limitation, Bidder's solvency, credit history, transaction history, and Participation Deposit amounts).

Crexi, at its discretion or at the request of Seller, may postpone or cancel an Auction, remove any Asset from an Auction, or reject any or all Bids. Crexi may rearrange the order or sequence of the Asset in an Auction and modify these Terms by posting notice of such modification on the Asset Page.

Crexi, Sellers and/or their agents may issue press releases and other public communications regarding any Auction and/or any Asset offered or sold during at an Auction.

These Auction Terms and the conduct of each Auction shall be governed by the laws of the state in which the Assets or Collateral are located.



Crexi is authorized to place a Bid on a Seller's behalf during an Auction. No Crexi Bid will be disclosed to Bidders, unless required by applicable law, in which case such Crexi Bid shall be disclosed in accordance with such law(s). Crexi will not place a Bid that meets Seller's Reserve Price and will stop bidding once such Reserve Price has been met. Crexi is not responsible for failing to place any Bid, nor, in the event that Crexi places a Bid, is Crexi responsible for any errors that may or do occur during the placement of any such Bid.

No information on any website, or in any brochure, email or postcard, nor any information available regarding one or more Assets shall constitute an offer to sell or a solicitation of any offer to buy any of the Assets. Bids submitted or solicitations made during any Auction are void where prohibited by law. If any sale would require registration or qualification under applicable state securities laws, no such sale may be consummated until such applicable requirements have been met.

As between Seller and Bidder, no obligation to sell shall be binding on Seller unless and until the Purchase Documents have been signed and delivered by Seller and the Earnest Money Deposit has been received as required hereunder. After the Purchase Documents have been fully signed, the Purchase Documents shall govern the relationship between Winning Bidder and Seller.

8. PLATFORM FEE

Winning Bidder may be required to pay a "**Platform Fee**" at closing, as stated on an Asset Page. Any required Platform Fee is in addition to the Winning Bidder's Bid and is due at closing along with the amount of the Winning Bidder's Bid for the Asset (as provided in the Purchase Documents).

9. DISCLAIMERS; BIDDER REPRESENTATIONS; CANCELLATION; LIQUIDATED DAMAGES

CREXI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY ASSET OR THE SUFFICIENCY (WHETHER LEGAL OR OTHERWISE) OR TAX CONSEQUENCES OF ANY DOCUMENT OR INFORMATION PROVIDED BY CREXI, A SELLER OR A BROKER. EACH BIDDER HEREBY RELEASES CREXI AND ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, BROKERS AND AGENTS ("REPRESENTATIVES") FROM ANY AND ALL CLAIMS THAT ANY SUCH BIDDER MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST CREXI OR ANY OF ITS REPRESENTATIVES FOR ANY DAMAGE OR INJURY RESULTING FROM OR RELATING TO ANY ERRORS, OMISSIONS OR OTHER CONDITIONS AFFECTING ANY ASSET OR THE DOCUMENTS OR INFORMATION USED IN EVALUATING OR ACQUIRING ANY ASSET. THIS RELEASE INCLUDES (BUT IS NOT LIMITED TO) CLAIMS OF WHICH BIDDER IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN BIDDER'S FAVOR WHICH, IF KNOWN BY BIDDER, WOULD MATERIALLY AFFECT BIDDER'S RELEASE OF CREXI. EACH BIDDER SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (AND OTHER SUBSTANTIALLY SIMILAR APPLICABLE STATE STATUTES) WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Bidder represents and warrants that (a) it is not located in a country embargoed by the United States of America; (b) neither it, nor its affiliates, members, directors or other equity owners (excluding holders of publicly traded shares), and none of their principal officers and employees (i) is listed as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control ("**OFAC**"), (ii) is a person or entity with whom U.S. persons or entities are restricted from doing business under OFAC regulations or any other statute or executive order (including the September 24, 2001 "Executive Order Blocking Property and Prohibiting transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or (iii) is engaged in prohibited dealings



or transactions with any such persons or entities: and (c) it (i) is a sophisticated purchaser or real property or secured notes, as applicable, (ii) is capable of evaluating the merits and risks of purchasing real property or secured notes, as applicable, on the Website, and (iii) understands and is able to bear the economic risks of purchasing real property or secured notes, as applicable, on the Website, including, without limitation, a total loss of investment and/or the risk that Bidder may be required to hold such Property for an indefinite period of time.

CANCELLATION. IF WINNING BIDDER BREACHES THESE TERMS, WINNING BIDDER'S BID MAY BE REJECTED BY CREXI AND/OR SELLER, THE ASSET MAY BE IMMEDIATELY SOLD TO ANOTHER BIDDER OR PLACED IN ANOTHER AUCTION, AND WINNING BIDDER SHALL AUTOMATICALLY FORFEIT ITS PARTICIPATION DEPOSIT AS LIQUIDATED DAMAGES WITHOUT NOTICE OF SUCH FORFEITURE TO WINNING BIDDER. WINNING BIDDER WILL NOT, UNDER ANY CIRCUMSTANCES, RECEIVE A CREDIT OR A REFUND OF THE PARTICIPATION DEPOSIT. WINNING BIDDER ACKNOWLEDGES THAT THE ACTUAL DAMAGES RESULTING FROM WINNING BIDDER'S BREACH OF THESE TERMS WOULD BE DIFFICULT AND IMPRACTICAL TO CALCULATE, AND THAT THE LIQUIDATED DAMAGES AMOUNT SET FORTH HEREIN IS A REASONABLE PRE-ESTIMATE OF THE RESULTING DAMAGES TO CREXI AND IT IS NOT A PENALTY OR FORFEITURE. ANY SERVICEROR AGENT HOLDING THE PARTICIPATION DEPOSIT MAY REMIT SUCH PARTICIPATION DEPOSIT TO CREXI AS LIQUIDATED DAMAGES WIHTOUT ANY FURTHER AUTHORIZATION OR DIRECTION FROM BIDDER.



Exhibit A Credit Card Terms and Conditions

Bidder may fund its Participation Deposit using its credit card (the "Card"). By selecting to fund the Participation Deposit using a Card, Bidder agrees to the terms set forth in these Auction Terms and Bidder authorizes Crexi and/or a third party escrow agent to charge the Card for an amount equal to the Participation Deposit. Bidder further agrees that it is responsible for all taxes and fees associated with the funding of the Participation Deposit using the Card.

Payments for the Participation Deposit are processed using a third-party payment service provider (a "Payment Service Provider"). By agreeing to fund the Participation Deposit using the Card, Bidder agrees to be bound by the Payment Service Provider's service agreement. In the event Stripe is the Payment Service Provider, Bidder agrees to be bound by Stripe's Services Agreement available at <https://stripe.com/us/legal>. Crexi does not view or store full credit card information. By providing Card information to Crexi or the Payment Service Provider, Bidder authorizes Crexi and the Payment Service Provider to store and use the Card as a payment method for funding any Participation Deposit. Prior to accepting a Card to fund the Participation Deposit, Crexi may also request additional information from Bidder. Verification of information may be required prior to the acknowledgment or completion of any transaction. Crexi reserves the right to refuse or cancel any transaction contemplated by this Exhibit A for any reason.

Without limiting any other right available to Crexi under these Auction Terms, if a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, Crexi may suspend Bidder's participation in an Auction. The Card issuer may charge Bidder certain fees, such as foreign transaction fees or other fees relating to the processing of the Card. Check with Card issuer for details.

Bidder represents and warrants that (i) Card information and any related information required to process the transaction contemplated here is true, correct, and complete; (ii) Bidder is duly authorized to use such Card to fund the Participation Deposit. Bidder understands it may be required to provide evidence of such authorization; (iii) charges incurred by Bidder will be honored by the Card issuing bank; (iv) Bidder will pay all charges incurred by it in connection with funding the Participation Deposit using the Card, if any; and (v) the Card is a commercial credit card and not a consumer credit card or a credit card used for personal, family or household purposes. To the greatest extent permitted by law or the card network rules, Bidder waives any rights to dispute any charges related to the funding of the Participation Deposit pursuant to the terms herein. Bidder further acknowledges and agrees that Crexi is not liable for any unauthorized use of the Card by a third party in connection with its funding of the Participation Deposit through services made available to Bidder by Crexi or a Payment Service Provider.



Exhibit B Wire Terms and Conditions

Bidder may fund its Participation Deposit using a wire transfer (the "Wire"). By selecting to fund the Participation Deposit using a Wire, Bidder agrees to the terms set forth herein (this "Agreement"). Bidder acknowledges and agrees that it is entering into this Agreement with Servicer (as defined below), and Crexi is not a party to this Exhibit B, unless otherwise indicated. Bidder and Servicer agree to the following:

The bank identified on the wire instructions provided to Bidder at the time of registration for the applicable Auction ("Servicer") will act as Bidder's servicing agent for the purpose of holding funds for the purpose identified in this Agreement. Capitalized terms used herein without definition shall have the meanings assigned to them in the Auction Terms and Conditions.

1. Any Participation Deposit must be received by the Servicer (and not subject to chargeback or recall) prior to any Bid submitted by Bidder in an Auction for an Asset. Each Participation Deposit will be associated with only one Auction; provided, however, any Participation Deposit held by Servicer on behalf of Bidder may be applied to any winning Auction for which Bidder submitted the winning Bid. Servicer shall have no liability for any Participation Deposit not timely received or otherwise delayed.
2. Bidder directs the Servicer to provide Crexi with the details of this Agreement and the fact of receipt of Bidder's Participation Deposit instructions and/or the Bidder's Participation Deposit. Bidder authorizes Service to collect any information required by Servicer to perform the services contemplated by this Agreement from Crexi and has authorized Crexi to share such information.
3. The Bidder's Participation Deposit will be held in Servicer's non-interest bearing escrow trust account. Such escrow account shall be denominated in a manner reflecting the interest of Bidder or its Broker. The Servicer shall segregate and hold all funds collected and received pursuant to this Agreement separate and apart from any of its own funds and general assets. The Bidder shall not take any action to cause the release of any monies from the escrow trust account, unless otherwise permitted by the terms of this Agreement, and Servicer shall release the monies in accordance with the terms of this Agreement.
4. Bidder has the option at any time prior to submitting a Bid to withdraw as a Bidder and request that the Bidder's Participation Deposit associated with the Auction that Bidder withdrew from be returned by contacting the Servicer's office with an email/faxed written statement of cancellation and request for the return of the Bidder's Participation Amount; provided, however, Service will not be required to honor any release until it receives confirmation from Crexi that no Bid has been submitted by Bidder in connection with such Auction.
5. If Bidder is not the winning bidder for an Asset in connection with an Auction, the Bidder's Participation Deposit Amount for such Asset shall be returned to the Bidder within three (3) business days after the close of the Auction for such Asset.
6. Bidder hereby irrevocably agrees that if Bidder is the winning bidder for any Asset, Servicer may, without further authorization or direction from Bidder and immediately following the conclusion of the Auction for such Asset, transfer any Participation Deposit held by Servicer on behalf of Bidder to the designated escrow/closing agent as payment of the Earnest Money Deposit. Any remaining balance of the Participation Deposit shall be returned to the Bidder within three (3) business days after the close of the Auction for such Asset. Notwithstanding anything to the contrary, if Bidder fails to (1) timely execute and return the Purchase Documents in accordance with the Auction Terms and Conditions for such Asset, (2) timely submit the required Earnest Money Deposit for such Asset as required by the Auction Terms and Conditions, or (3) comply with the Asset Terms and Conditions resulting in the Bid being rejected by Crexi or Seller, then Servicer shall release to Crexi or its designee the Bidder's Participation Deposit as



liquidated damages without further authorization or direction from Bidder. For the avoidance of doubt, Bidder acknowledges and agrees that the Participation Deposit provided to Servicer pursuant to the terms herein may be released to Crexi as liquidated damages, as contemplated by the Auction Terms and Conditions.

7. Relationship. Bidder recognizes and agrees that Servicer has no authority, express or implied, to act as agent for Bidder other than for the limited purpose of holding and disbursing funds in accordance with the terms of this Agreement or as otherwise set forth herein. Bidder agrees that Bidder has no right or authority to direct or control the actions of Servicer other than Servicer's limited actions as set forth in this Agreement.

8. Notices. Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by facsimile or electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party identified on the Auction specific wire instructions provided at the time of enrollment in the Auction. Any such notice or communication shall be deemed to have been given on (w) the day such notice or communication is personally delivered, (x) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (y) one (1) working day after such notice or communication is sent by overnight courier, or (z) the day such notice or communication is faxed or sent electronically, provided that the sender has received a confirmation of such fax or electronic transmission.

9. Rights, Duties and Responsibilities of Servicer. Servicer is holding and disbursing funds in accordance with the provisions of this Agreement and Servicer is not responsible or liable in any manner for the correctness, genuineness, or authenticity of any instrument or for the identity, authority, or rights of any person executing or depositing funds. Notwithstanding any provision herein incorporating other instruments by reference, Servicer shall not be charged with notice of the terms of any such instruments, and its duties, responsibilities, and immunities shall be determined solely by reference to this Agreement.

10. Dispute. In the event of a dispute between the Servicer and Bidder relating to this Agreement, the parties will first attempt to resolve such dispute by negotiation and consultation between themselves. If there are conflicting claims to the funds held pursuant to this Agreement, Bidder expressly agrees that Servicer shall have the right, at its election, to discontinue any acts or services under this Agreement, terminate this Agreement, or commence an interpleader action in the appropriate court requiring the claimants to answer and litigate their several claims and rights among themselves, and Servicer is authorized to deposit with the clerk of the court all documents and funds held on behalf of Bidder pursuant to this Agreement. If such an action is filed, Bidder agrees to pay all cancellation charges and costs, expenses and reasonable attorneys' fees which Servicer is required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefore to be rendered by the court. Upon the filing of an interpleader action, Servicer shall be fully and completely absolved from all further obligation or liability under this Agreement.

11. Attorneys' Fees. In the event any party is required to engage the services of any attorneys for the purpose of enforcing this Agreement, or any provision, the Bidder agrees that Bidder is severally liable to Servicer for all attorneys' fees and costs incurred by it relating to this Agreement or the underlying transaction, whether or not suit is filed, including any attorneys' fees and costs incurred as part of any court, bankruptcy, arbitration proceeding, or appeal. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Bidder agrees that jurisdiction and venue for any court action shall be in the Superior Court of California, County of Orange.

12. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its term.



13. Third Party Beneficiary. This Agreement is between Servicer and Bidder only, and is not intended (and may not be construed) to confer any benefits or rights upon other persons (other than Crexi) not expressly made parties hereto or thereto. The parties expressly acknowledge and agree that the Crexi is a third party beneficiary of this Agreement and that the Crexi shall have the full right to sue upon and enforce this Agreement in accordance with its terms as if it were a signatory hereto.

14. Entire Agreement. This Agreement constitutes the entire understanding between Servicer and Bidder. No amendment or modification of this Agreement shall be effective unless set forth in writing and signed by both Servicer and Bidder.