

**ADDENDUM NO. 2  
OPTIONS AND UPGRADES ADDENDUM  
TO DEPOSIT RECEIPT, OFFER TO PURCHASE  
PROPERTY AND JOINT ESCROW INSTRUCTIONS**

**BUYERS:** \_\_\_\_\_

**SELLER:** MSGG El Dorado Realty Partners, L.L.C.

**PROPERTY ADDRESS:** \_\_\_\_\_

**ESCROW NO.:** \_\_\_\_\_

This OPTIONS AND UPGRADES ADDENDUM TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("Options Addendum"), hereby amends that certain Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement"), by and between the above referenced parties for the above described real property, as follows:

1. Agreement to Buy and Sell Options and Upgrades. For the consideration herein stated and subject to the terms and conditions set forth herein, Buyer agrees to purchase, and Seller agrees to sell to Buyer those options/upgrades as listed on Exhibit "A" attached hereto and incorporated herein by this reference ("Options"), to be installed in the Property, for a total cost of \$\_\_\_\_\_. Of such amount, Buyer shall deposit into Escrow the sum of \$\_\_\_\_\_ as an additional deposit ("Option Deposit").

2. Option Deposit Not Refundable. Buyer and Seller agree that the total Purchase Price of the Property shall be increased by the total cost of the options/upgrades listed on Exhibit "A". **THE OPTION DEPOSIT SHALL NOT BE REFUNDABLE EXCEPT IN THE EVENT THAT ESCROW DOES NOT CLOSE BY REASON OF THE DEFAULT OF SELLER. IN THE EVENT ESCROW DOES NOT CLOSE BECAUSE OF THE DEFAULT OF BUYER, THE OPTION DEPOSIT SHALL BE DISBURSED TO SELLER IN ACCORDANCE WITH THE PROCEDURES IN THE LIQUIDATED DAMAGES PROVISIONS BELOW.**

3. **BUYER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT:**

(a) **THE OPTIONAL ITEMS ORDERED BY BUYER REPRESENT BUYER'S TASTES AND PREFERENCES.**

(b) **THE OPTION DEPOSIT AMOUNT REPRESENTS ALL OR A PORTION OF THE PURCHASE PRICE FOR THE OPTIONAL ITEMS AND UPGRADES BEING ORDERED BY BUYER, TO BE CONSTRUCTED OR INSTALLED IN THE PROPERTY PRIOR TO THE CLOSE OF ESCROW.**

(c) **SELLER HAS WARNED BUYER THAT BUYER WILL HAVE THE RISK OF LOSS OF THE OPTION DEPOSIT AMOUNT PAID BY BUYER FOR SUCH OPTIONAL ITEMS AND UPGRADES, AND OF THE OPTIONS AND UPGRADES**

**THEMSELVES, IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AND THIS ESCROW DOES NOT CLOSE FOR ANY REASON NOT THE FAULT OF SELLER;**

**(d) SELLER HAS ADVISED BUYER TO WAIT UNTIL AFTER CLOSING OF ESCROW TO PURCHASE SUCH OPTIONS AND UPGRADES AND TO HAVE THEM INSTALLED, IN ORDER TO AVOID SUCH RISK OF LOSS;**

**(e) IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY, (i) SUCH OPTIONAL ITEMS AND UPGRADES MAY NOT BE DESIRABLE OR ACCEPTABLE TO A SUBSEQUENT PURCHASER OF THE PROPERTY, (ii) INSTALLATION OF SUCH OPTIONAL ITEMS AND UPGRADES MAY RESULT IN SUBSTANTIAL DIFFICULTY OR DELAY IN OBTAINING ANOTHER PURCHASER FOR THE PROPERTY, AND SUCH DELAY WILL CAUSE SELLER TO INCUR ADDITIONAL COSTS, INCLUDING, BUT NOT LIMITED TO, REAL PROPERTY TAXES, INTEREST EXPENSE, AND INSURANCE, (iii) SELLER IS LIABLE TO INCUR SUBSTANTIAL COSTS IN REMOVING FROM THE PROPERTY OR ALTERING THE OPTIONAL ITEMS OR UPGRADES CONSTRUCTED OR INSTALLED AT BUYER'S REQUEST, IN ORDER TO MAKE THE PROPERTY ACCEPTABLE TO ANOTHER PURCHASER, (iv) SELLER IS NOT LIKELY TO REALIZE ANY ADDITIONAL MONETARY BENEFIT FROM SALE OF THE PROPERTY TO ANOTHER PURCHASER AS A RESULT OF THE CONSTRUCTION AND INSTALLATION OF THE OPTIONAL ITEMS AND UPGRADES, AND (v) IT WOULD BE EXTREMELY DIFFICULT, COSTLY AND/OR IMPRACTICAL TO DETERMINE THE DAMAGES TO SELLER RESULTING FROM THE ALTERATION OF THE PROPERTY IN THE MANNER ORDERED BY BUYER IN THIS OPTIONAL ITEMS OPTIONS ADDENDUM;**

**(f) THIS OPTIONS ADDENDUM TO PURCHASE AND SALE AGREEMENT CONSTITUTES AN OBLIGATION OF BUYER SEPARATE FROM AND IN ADDITION TO THE PURCHASE AND SALE AGREEMENT, AND BUYER UNDERSTANDS AND AGREES THAT BUYER IS HEREBY ACCEPTING SEPARATE AND ADDITIONAL RISKS IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AND ESCROW DOES NOT CLOSE FOR ANY REASON NOT THE FAULT OF SELLER.**

**(g) AFTER CONSIDERING THE FOREGOING RISKS AND POTENTIAL LOSS OF THE OPTION DEPOSIT PAID AS PURCHASE PRICE FOR THE OPTIONS AND UPGRADES, AND OF THE OPTIONS AND UPGRADES THEMSELVES, BUYER HEREBY REQUESTS THAT SELLER PROCEED WITH THE ORDERING, CONSTRUCTION AND INSTALLATION OF THE OPTIONS AND UPGRADES LISTED BELOW, AND BUYER, WITH FULL KNOWLEDGE OF SUCH RISKS AND POTENTIAL FOR LOSS, NEVERTHELESS FREELY ASSUMES AND ACCEPTS SUCH RISK OF THE LOSS OF SUCH PURCHASE PRICE AND OF THE IMPROVEMENTS THEMSELVES.**

**BUYER \_\_\_\_\_/\_\_\_\_\_**

**(h) BUYER FURTHER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT (i) THE DEPOSIT PAID BY BUYER FOR THE PURCHASE OF THE PROPERTY UNDER THE PURCHASE AND SALE AGREEMENT, COMBINED WITH THE PURCHASE PRICE OF THE REQUESTED OPTIONS AND UPGRADES, MAY BE MORE THAN THREE PERCENT (3%) OF THE TOTAL PURCHASE PRICE OF THE PROPERTY; (B) THE INCLUSION OF THE OPTION DEPOSIT IN THE AMOUNT OF LIQUIDATED DAMAGES TO BE PAID TO SELLER IN THE EVENT OF BUYER'S FAILURE TO COMPLETE THE**

**PURCHASE OF THE PROPERTY IS REASONABLE IN LIGHT OF THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME THIS OPTIONS ADDENDUM IS ENTERED INTO, AND FOR THE REASONS STATED ABOVE. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER HAS MET ITS OBLIGATION TO FULLY DISCLOSE TO BUYER THE RISKS OF ORDERING THE OPTIONS AND UPGRADES AT THIS TIME, AND THAT SELLER HAS SATISFIED ITS BURDEN OF ESTABLISHING THE REASONABLENESS OF INCLUDING THE PURCHASE PRICE FOR THE OPTIONS AND UPGRADES IN THE AMOUNT SUBJECT TO BEING PAID TO SELLER AS LIQUIDATED DAMAGES IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY, EVEN THOUGH SUCH AMOUNT MAY BE MORE THAN THREE PERCENT (3%) OF THE TOTAL PURCHASE PRICE.**

**BUYER \_\_\_\_\_/\_\_\_\_\_**

**4. LIQUIDATED DAMAGES FOR BUYER'S DEFAULT. IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER, SELLER MAY PURSUE ANY REMEDY IN LAW OR EQUITY THAT IT MAY HAVE AGAINST BUYER ON ACCOUNT OF THE DEFAULT; PROVIDED, HOWEVER, THAT BY PLACING THEIR INITIALS HERE,**

**BUYER \_\_\_\_\_/\_\_\_\_\_ AND SELLER \_\_\_\_\_ AGREE THAT:**

**A. THE AMOUNT OF THE OPTION DEPOSIT PAID PURSUANT TO THIS OPTIONAL ITEMS ADDENDUM SHALL CONSTITUTE AN ADDITIONAL DEPOSIT ON ACCOUNT OF THE PURCHASE PRICE OF THE PROPERTY, AND SHALL CONSTITUTE AN ADDITIONAL PART OF THE LIQUIDATED DAMAGES PAYABLE TO SELLER IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER. THIS PROVISION IS INTENDED TO AND SHALL CONSTITUTE A SEPARATE LIQUIDATED DAMAGES PROVISION WITH RESPECT TO THE OPTION DEPOSIT, SEPARATELY INITIALED, FOR ALL PURPOSES OF CALIFORNIA CIVIL CODE SECTIONS 1675 THROUGH 1678.**

**B. THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF ANY DEFAULT BY BUYER.**

**C. LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S PURCHASE MONEY AND OPTION DEPOSIT ACCORDING TO THE FOLLOWING PROCEDURES:**

**(1) THE SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND"), IN THE MANNER PRESCRIBED BY SECTION 116.340 OF THE CODE OF CIVIL PROCEDURE FOR SERVICE IN A SMALL CLAIMS ACTION, TO ESCROW HOLDER AND TO BUYER, THAT BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT AND THE OPTION DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN TWENTY (20) DAYS, BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF PURCHASE MONEY AND OPTION DEPOSIT AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION"). BUYER'S OBJECTION MUST ALSO AFFIRMATIVELY STATE THAT BUYER IS READY, WILLING AND ABLE TO CLOSE ESCROW AS PROVIDED FOR IN THIS AGREEMENT. BUYER'S FAILURE TO SO SPECIFICALLY**

**STATE THAT THEY ARE PREPARED TO PROCEED WITH THE CLOSE OF ESCROW FOR THE PURCHASE OF THE PROPERTY WILL IMMEDIATELY TERMINATE BUYER'S RIGHT TO PURCHASE THE PROPERTY AND ANY SUCH RIGHTS SHALL THEREUPON BECOME NULL AND VOID. SELLER SHALL, IMMEDIATELY UPON GIVING THE SELLER'S NOTICE AND DEMAND, DELIVER TO ESCROW HOLDER ALL PURCHASE MONEY FUNDS AND OPTION DEPOSIT OF BUYER HELD BY SELLER OUTSIDE OF ESCROW, IF ANY.**

**(2) BUYER SHALL HAVE A PERIOD OF TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND IN WHICH TO GIVE ESCROW HOLDER BUYER'S OBJECTION.**

**(3) IF BUYER FAILS TO GIVE ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND: (a) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (b) SELLER IS RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER.**

**(4) IF BUYER GIVES ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, OR FAILS TO GIVE ESCROW HOLDER BUYER'S SIGNED CONSENT TO THE DEMANDED DISBURSEMENT WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE CONTROVERSY SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION AS PROVIDED IN THE PURCHASE AGREEMENT.**

**BUYER \_\_\_\_\_ / \_\_\_\_\_                      SELLER \_\_\_\_\_ / \_\_\_\_\_**

5. Except as provided above, all other terms and conditions of the Agreement to Purchase shall remain unchanged.

BUYER:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

SELLER:            MSGG EL DORADO REALTY PARTNERS, L.L.C.  
                         a Delaware limited liability company

By: El Dorado Realty Partners, LLC, a Delaware  
    limited liability company, a  
    managing member

By: Downtown Loft Properties I, LLC,  
    a California limited liability company,  
    its manager

By: \_\_\_\_\_  
    William R. Stevenson, Vice President

**EXHIBIT A**