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Attorneys for Debtor-in-Possession
262 Broad Street Corporation

By: STEVEN D. PERTUZ, Esquire
SDP-5632

In the Matter of: : UNITED STATES BANKRUPTCY COURT
: FOR THE DISTRICT OF NEW JERSEY
: NEWARK VICINAGE
262 BROAD STREET CORP., :
: Case No. 15-23139 (VFP)
: Chapter 11
Debtor-in-Possession. :
_____ :

NOTICE OF MOTION TO APPROVE THE SALE OF THE DEBTOR'S INTEREST IN REAL PROPERTY LOCATED AT 262-270 BROAD STREET, NEWARK, NJ TO LAFENUS CARMICHAEL (OR ENTITY TO BE CREATED), FREE AND CLEAR OF EXISTING LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(b) AND (f), FED. R. BANKR. P. 4001(d) AND 6004, AND RELATED RELIEF

The Law Offices of Steven D. Pertuz, LLC, Counsel to the Debtor, 262 Broad Street Corp., has filed papers with the Court to obtain an Order authorizing the sale of the Debtor's interest in real property located at 262-270 Broad Street, Newark, NJ to Lafenus Carmichael (or entity to be created), free and clear of existing liens, claims, and encumbrances pursuant to 11 U.S.C. §363(b) and (f), Federal Rule of Bankruptcy Procedure 4001(d) and 6004 and related relief. **Your rights may be affected.** You should read these papers carefully and discuss them with your lawyer, if you have one on this case. (If you do not have a lawyer, you may wish to consult one.)

If you do not want the Court to enter the requested order, or if you want the Court to consider your views on the motion, then within seven (7) days prior to the scheduled hearing (September 13, 2016) or upon further order of the Court, you or your lawyer must:

File with the Court a written response or answer explaining your position, and mail a copy to:
Law Offices of Steven D. Pertuz, LLC
111 Northfield Avenue, Suite 304
West Orange, NJ 07052

and

US Bankruptcy Court
Office of the Clerk
50 Walnut Street, 3rd Floor
Newark, NJ 07102

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it by the date stated above.

HEARING SCHEDULED TO BE HELD BEFORE:

Honorable: Vincent F. Papalia, U.S.B.J.

Date: September 13, 2016 Time: 10:00 a.m.

**Place: 50 Walnut Street, 3rd Floor
Newark, NJ 07102**

Pursuant to D.N.J. LBR 4001-1 et seq., appearances are not required by the Court in uncontested Chapter 13 matters. In Chapter 7 matters the **movant waives oral argument** and the court may not hold a hearing unless opposition papers are timely filed. Pursuant to D.N.J. LBR 9013-1(d) et seq., if you wish to contest the within motion, you must file with the Office of the Clerk of the Bankruptcy Court, responding papers stating with particularity the basis of your opposition to the within Motion. A copy of the proposed Order which is sought is enclosed with this Motion.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief requested.

Statement of Non-Necessity of Brief: The movant certifies pursuant to D.N.J. LBR 9013-2 that the within motion involves common questions of law and fact and does not involve complex or novel issues such as to require the submission of a legal brief.

Dated: August 15, 2016

Law Offices of Steven D. Pertuz, LLC
111 Northfield Avenue, Suite 304
West Orange, NJ 07052
Attorney for 262 Broad Street Corp.

By: /s/ Steven D. Pertuz, Esq.
Steven D. Pertuz, Esq.

THE LAW OFFICES OF STEVEN D. PERTUZ, LLC
111 Northfield Avenue, Suite 304
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Tel: (973) 669-8600
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Attorneys for Debtor-in-Possession
262 Broad Street Corporation

By: STEVEN D. PERTUZ, Esquire
SDP-5632

In the Matter of: : UNITED STATES BANKRUPTCY COURT
: FOR THE DISTRICT OF NEW JERSEY
: NEWARK VICINAGE
262 BROAD STREET CORP., :
: Case No. 15-23139 (VFP)
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:

**APPLICATION TO APPROVE THE SALE OF THE DEBTOR'S INTEREST IN REAL
PROPERTY LOCATED AT 262-270 BROAD STREET, NEWARK, NJ TO LAFENUS
CARMICHAEL (OR ENTITY TO BE CREATED), FREE AND CLEAR OF EXISTING
LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(b) AND (f),
FED. R. BANKR. P. 4001(d) AND 6004, AND RELATED RELIEF**

TO: THE HONORABLE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY JUDGE

The Motion of 262 Broad Street Corp., the within Debtor and Debtor in Possession (the "Debtor"), by and through its counsel, The Law Offices of Steven D. Pertuz, LLC, submits this Application in support pursuant to section 363(b) and (f) of the Bankruptcy Code, seeking an order authorizing the sale of real property located at 262-270 Broad Street, Newark, NJ, free and clear of liens, claims and encumbrances (the "Motion"). In support of the Motion, Debtor respectively represents to this Court as follows:

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157

and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief sought herein is permitted under Bankruptcy Code sections 363(b) and (f), as complemented by Rule 6004 of the Federal Rules Of Bankruptcy Procedure.

3. The Debtor continues to operate and manage its affairs as a debtor in possession.

4. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or creditors' committee has been appointed in this chapter 11 case.

BACKGROUND

5. On July 14, 2015 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "Court").

6. The Debtor is a corporation incorporated in New Jersey with an address of 262-270 Broad Street, NJ 07104. The Debtor is the owner of 6 adjoining lots that includes a commercial building of approximately 11,530 square feet. A furniture store, New Era Furniture, occupies the commercial building (New Era Furniture is owned by Evelyn Morales, President of the Debtor, under a separate corporation not included in the within case). The Debtor sought bankruptcy protection on the eve of a Sheriff's sale in order to save the above mentioned Property and have the ability to reorganize its financial affairs.

7. Since the petition date, the Debtor has been carefully reviewing its operations in order to refinance or sell the Property and formulate a successful Plan of Reorganization.

8. The Debtor's post petition obligations continue to be met and the Trustee Quarterly fees are paid and up to date.

Debtor's Property Located at 262-270 Broad Street, Newark, NJ

9. The Debtor is the owner of 6 parcels of real property, located at 262-270 Broad Street, Newark, NJ, known and designated on Tax Map as Lots 26, 27, 28 and 29, Block 443, including a structure of approximately 11,530 square feet located thereon, and all privileges, tenements, rights or way, easements, and appurtenances thereto, in addition, adjacent Lots 23 and 25, Block 443, said premises more commonly known as 257-261 Mount Pleasant Avenue, City of Newark, County of Essex and State of New Jersey (the "Property").

10. On August 11, 2016, the Debtor entered into a purchase and sale agreement for the private sale of the Property to Lafenus Carmichael (or an entity to be formed) for \$675,000.00. The Buyer is not an insider and has no affiliation to the Debtor other than what has been disclosed in the purchase and sale agreement. This is an "arms length" transaction. A copy of such agreement is annexed hereto as **Exhibit A**. The essential terms of the agreement are as follows:

- \$675,000.00 Purchase Price
- \$40,000.00 initial deposit (currently being held in the Attorney Trust Account of Steven D. Pertuz, LLC)
- Lender financing of \$438,750.00 (attached hereto as **Exhibit B** is a copy of Buyer's loan approval)
- Debtor to hold a Note and Mortgage of \$101,250.00 (5% interest rate, term of 4 years, amortized over 15 years, pursuant to Bankruptcy Court approval)
- Buyer to pay balance of purchase price of \$95,000.00 in cash at closing.
- Thirty day due diligence period for all inspections, etc.

11. Included in the sale of the Property are the buildings, structures and improvements thereon, and the fixtures belonging to the Debtor and used in connection with the Property.

RELIEF REQUESTED

12. By this Motion, the Debtor seeks an entry of an order, pursuant to §363 of the Bankruptcy Code, authorizing and approving the sale of the Property to the respective buyer set forth above, free and clear of any existing liens, claims and encumbrances.

13. The sale of the Property is an integral component of the Debtor's reorganization strategy. The Debtor has determined that the terms of the sale are reasonable and it is necessary for the continuation of the Debtor's case to pay off its priority and secured creditors at closing, and also have sufficient funds to appropriately resolve the small pool of unsecured claims in this case. If the Debtor was not able to sell the Property, the Debtor's chances on successful reorganization would be impossible. Based on the foregoing, the Debtor has determined that in the exercise of its business judgment, the sale of the Property to the above mentioned Buyer is in the best interest of the Debtor, its estate, and ultimately its creditors and other parties in interest.

14. The contract price of \$675,000.00 for the sale of the Property meets the current market Property value as per a recent appraisal, which has been attached hereto as **Exhibit C**, and the Debtor believes this purchase price to be a fair and accurate indication of an arm's length transaction as this is the highest offer presented to the Debtor.

15. The Debtor is requesting it be allowed to hold a note and mortgage for the Buyer in order to finalize this transaction. The current loan is \$101,250.00 at 5% interest that is amortized over 15 years with a balloon payment at the conclusion of the four year term (48

months). This payment of \$800.68 per month plus the balloon payment to the Debtor will provide for a new income stream for the Debtor and provide for sufficient cash flow to cover ongoing administrative claims, trustee fees and payment to the unsecured claimants pursuant to any proposed Plan filed by the Debtor.

16. The current liens/claims to be satisfied at closing is that of secured creditor, Roger Saunders Money Purchase Plan of approximately \$400,000.00 (subject to final payoff and/or resolution of claim objection), priority tax lien holder US Bank Custodian for Actlien Holding, Inc. of approximately \$137,000.00 (subject to final redemption statement) and IRS amended claim of approximately \$1,500.00. Any other remaining claims are unsecured claims and are not liens or encumbrances on the real property. However, there will be funds available to satisfy or fix these claims as well after appropriate objections are resolved.

17. The Debtor requests that the attorney fees and the realty transfer fee which are being paid from the Seller's funds, are to be paid out of the closing proceeds. These fees are reasonable and necessary in order to effectuate the sale and have been fully disclosed to the Court with this motion. There is no real estate agent in connection with this transaction and therefore, no broker fee is due at closing.

18. Steven D. Pertuz, Esq. shall act as the Debtor's closing attorney on the sale and has requested a Seller's attorney fee of \$3,500.00, pending court approval of this motion and fee application (if applicable). The requested \$3,500.00 closing attorney fee is standard and within acceptable attorney fees for this type of commercial real estate transaction.

19. A preliminary HUD-1 Settlement Statement/Closing Disclosure reflecting more accurate customary closing costs is currently being prepared by the Settlement Agent and it shall

be filed with the Court prior to the hearing date and attached as **Exhibit D** so as to provide the Court with a more specific breakdown of the transaction costs and fees.

BASIS AND AUTHORITY FOR RELIEF

20. Section 363(b) of the Bankruptcy Code provides that a debtor in possession "may use, sell or lease, other than in the ordinary course of business, property of the estate." *See 11 U.S.C. §363(b)*. Section 363(f) of the Bankruptcy Code provides that a debtor in possession may sell property under section 363(b) free and clear of any interest in such property of an entity other than the estate upon certain conditions. *See 11 U.S.C. §363(f)*.

21. It is well settled that a debtor in possession may sell assets out of the ordinary course of business pursuant to §363(b) of the Bankruptcy Code if there is a sound business judgment justification for doing so. *See in re Lionel Corp.*, 722 F.2d 1063, 1070 (2nd Cir. 1983); *In re Naron & Wagner, Chartered*, 89 B.R. 85, 89 (Bankr. Md. 1988) (adopting standard set forth in *Lionel Corp.*); *See also McDow v. Official Committee of Equity Security Holders of Criimi Mae, Inc.*, 247 B.R. 146, 149 (D. Md. 1999) ("court may authorize the use of estate property other than in the ordinary course of business when some business justification for doing so exists").

22. As previously mentioned, disposing of the Property is necessary for the continuation of the Debtor's case to pay off its priority and secured creditors at closing, and also have sufficient funds to appropriately resolve the small pool of unsecured claims in this case. Accordingly, in the exercise of its sound business judgment, the Debtor believes that the sale of the Property at this time is in the best interests of the Debtor, its estate and its creditors.

23. The Debtor seeks to sell its interest in the Property free and clear of any and all

existing liens, judgments and encumbrances, the Debtor is requesting to be authorized to hold a note and 2nd mortgage on said property and respectfully request that the Court determine that the Buyer is a good faith purchaser as defined in *In re Abbotts Diaries, Inc. of PA*, 788 F2nd 143 (3rd Cir. 1986) and the sale is otherwise in compliance with 11 U.S.C. §363.

Requests For Immediate Relief & Waiver of Stay

24. The Debtor further seeks any stay of effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As the Debtor must proceed to sale as soon as possible to propose a feasible Plan of Reorganization, it is imperative that an order approving this motion be effective immediately. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

WHEREFORE, the Debtor respectfully requests the entry of an Order of this Court, authorizing the Debtor to (a) sell the Property pursuant to the respective agreements set forth herein, (b) be authorized to provide Buyer with a note and 2nd mortgage in the amount of \$101,250.00 pursuant to the terms set forth herein, and (c) granting the Debtor such other and further relief as is just and equitable.

By: /s/ Steven D. Pertuz
Steven D. Pertuz, Esq.
Steven D. Pertuz, LLC
111 Northfield Avenue
Suite 304
West Orange, NJ 07052

Dated: 8/15/16

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement"), is made as of the day of August 2016, by and between 262 BROAD STREET CORP., a New Jersey corporation with a principal place of business located at 262-270 Broad Street, Newark, NJ 07104, ("Seller"), and LAFENUS CARMICHAEL or entity to be formed hereafter, located at 157 S. Munn St, Newark, NJ 07106 ("Purchaser").

Witnesseth:

WHEREAS, Seller is the owner of certain Property (as hereinafter defined) located in Newark, New Jersey, as more particularly described below; and

WHEREAS, Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Seller and Purchaser agree as follows:

1. **Definitions.** As used in this Agreement, the following capitalized terms shall have the meanings indicated below.
 - (a) "Closing" shall have the meaning set forth in Section 4, below.
 - (b) "DEP" shall mean the New Jersey Department of Environmental Protection or a Licensed Site Remediation Professional as defined by the New Jersey Site Remediation Reform Act ("SSRA").
 - (c) "Deposit" shall have the meaning set forth in Section 3(b), below.
 - (d) "Due Diligence Period" means the period commencing on the Effective Date and expiring at 5:00 p.m. thirty (30) calendar days thereafter.
 - (e) "Environmental Laws" shall mean all federal, state, and local laws and regulations currently applicable to Seller and the Property relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, land, surface or subsurface strata), including without limitation, laws relating to emissions, discharges, releases or threatened releases of Hazardous Materials (as hereinafter defined) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Materials.
 - (f) "Effective Date" means the date this Agreement has been fully executed by Seller and Purchaser and delivered to each party.
 - (g) "Escrow Agent" means The Law Offices of Steven D. Pertuz, LLC, 111 Northfield Avenue, Suite 304, West Orange, NJ 07052.
 - (h) "Hazardous Materials" shall mean any and all materials and substances which are or have been determined to be materially harmful to health or the

environment, including but not limited to: (i) "hazardous wastes" as defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or other applicable federal, state or local law, or regulation; (ii) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable federal, state and local law, or regulation; (iii) gasoline or any other petroleum product or byproduct, polychlorinated biphenyls, asbestos and urea formaldehyde, and toxic substances; and (iv) any radioactive materials or substances.

- (i) **"ISRA Approval"** shall mean a Negative Declaration, De Minimis Exemption, No Further Action letter ("NFA") issued by the DEP, or a Response Action Outcome ("RAO"), issued by a Licensed Site Remediation Professional, each as defined under SSRA, or other approval or exemption pursuant to ISRA.
 - (j) **"ISRA Clearance"** means the issuance of an ISRA Approval or a Remediation Agreement, or other such document in accordance with the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6, et seq., and the corresponding regulations, which would permit the Closing to occur in full ISRA compliance.
 - (k) **"Permitted Exceptions"** shall have the meaning set forth in Section 5(a), below.
 - (l) **"Property"** means the real estate commonly known as 262-270 Broad Street, City of Newark, County of Essex and State of New Jersey, known and designated on the Tax Map as Lots 26, 27, 28 and 29, Block 443, including a structure of approximately 11,530 square feet located thereon, and all privileges; tenements; rights-of-way; easements; and appurtenances thereto, in addition, adjacent lots 23 and 25, Block 443 (said premises more commonly known as 257-261 Mt. Pleasant Avenue, City of Newark, County of Essex, State of New Jersey).
 - (m) **"Purchase Price"** shall have the meaning set forth in Section 3(a), below.
2. **Sale and Purchase.** On the terms and conditions set forth in this Agreement, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, fee simple title to the Property.
3. **Purchase Price and Deposit.**
- (a) The Purchase Price for the Property shall be Six Hundred Seventy-Five Thousand Dollars (\$675,000.00; the "Purchase Price"), subject to the closing adjustments.
 - (b) Purchaser shall pay a deposit ("Deposit") of Forty Thousand Dollars (\$40,000) to the Escrow Agent upon execution of this Agreement. The Deposit shall be held in escrow by the Escrow Agent in a non-interest bearing trust account until Closing or termination of this Agreement. The Deposit shall be credited against payment of the Purchase Price at Closing.
 - (c) The remaining balance of the Purchase Price shall be paid by Purchaser at the Closing (subject to closing adjustments) by way of the following:

- Mortgage amount of \$438,750.00.
 - Seller to hold a note and 2nd mortgage in the amount of \$101,250.00 at 5% interest with a 4 year term (amortized over 15 years), balloon payment of balance at loan maturity.
 - Cash of \$95,000.00 by wire transfer of immediately available funds or certified bank/cashier's check.
4. **Closing.** The closing of title to the Property (the "Closing") shall occur at the earlier of: (a) any date prior to September 30, 2016, or (b) within thirty (30) days following satisfaction of the Conditions Precedent to Closing of Title as set forth in Section 9, below unless waived or taken "subject to" by Purchaser. The Closing shall occur in New Jersey, at the office of Seller's attorney.
5. **Title.**
- (a) Seller shall convey to Purchaser good and marketable title to the Property insurable by the Purchaser's title insurance company at regular rates, free and clear of all liens and encumbrances other than (i) those exceptions to title set forth on Schedule A, attached hereto (if applicable); (ii) any and all other easements and restrictions of record, provided that the same would not interfere with the use of the Property for the purposes for which it is zoned; (iii) such state of facts as an accurate survey may disclose, provided that the same do not render title to the Property unmarketable (collectively, the "Permitted Exceptions").
 - (b) Purchaser shall be permitted to examine title and cause a survey to be made of the Property during the Due Diligence Period. In the event that the state of title to Property is not as provided in subparagraph (a), above, Purchaser shall so notify Seller prior to the expiration of the Due Diligence Period of any exceptions to title that are not Permitted Exceptions. If Purchaser fails to object to the condition of title as not being in accordance with subparagraph (a), above, including any survey exceptions by such date, it shall be deemed to have waived the right to do so thereafter, except for title objections arising subsequent to the Due Diligence Period. Seller shall have the right but not the obligation to cure any title or survey defect. If Seller fails or refuses to cure any title or survey defect raised by Purchaser prior to Closing, Purchaser shall have the right prior to Closing to terminate this Agreement and be refunded the Deposit, in which event there shall be no further liability or obligation on either of the parties hereto and this Agreement shall become null and void, except as may be specifically provided for herein. Notwithstanding anything in this Agreement to the contrary, Seller shall remove all liens and other encumbrances that can be discharged by the payment of money at or prior to the Closing, and may use the proceeds of the Purchase Price for such purpose.
 - (c) Seller covenants and agrees not to encumber the title to the Property subsequent to the date hereof.

6. "AS IS" Purchase of Property.

- (a) Except to the extent that may be expressly provided in this Agreement, (i) Purchaser acknowledges and confirms that Purchaser is not relying on any representation or inducement which was or may have been made or implied by Seller or any other party acting on behalf of Seller with respect to the Property or any circumstances or conditions affecting the Property, and (ii) Purchaser is purchasing the Property in an **"AS IS" condition and with "ALL FAULTS"** as of the date of this Agreement. Except as may be specifically provided in this Agreement, Seller disclaims all warranties, express or implied, relating in any way to the Property, including, without limitation, any warranty provided for under statutory or common law and warranties of merchantability, habitability, and fitness for a particular purpose. Purchaser shall not be entitled to, and should not rely on, Seller or its affiliates or its agents as to (A) the quality, nature, adequacy and physical or environmental condition of the Property, (B) the quality, nature, adequacy, and physical or environmental condition of soils, ground water, and geology, (C) the development potential of the Property, its habitability, merchantability, or fitness, suitability, or adequacy of the Property for any particular purpose, (D) the zoning, land use or legal status of the Property, (E) the Property's compliance with applicable codes, laws, regulations, statutes, ordinances, covenants, conditions, and restrictions of any governmental, quasi-governmental entity or any other person or entity, or (F) the compliance of the Property with any Environmental Laws or land use laws, rules, regulations orders or requirements including, but not limited to, those pertaining to the handling, generating, storage, use, discharge, spill, or disposal of any Hazardous Materials.
- (b) This property is not defined as an "industrial establishment" under ISRA and therefore ISRA will not apply in this transaction. In the event it is deemed ISRA does apply however, Seller's sole obligation with respect to Hazardous Materials and Environmental Laws is to obtain the ISRA Approval relating to the sale of the Property if this property falls under an "industrial establishment". Purchaser hereby grants Seller's agents, representatives and consultants, access to the Property following the Closing for purposes of conducting work to obtain the ISRA Approval. In order to obtain the ISRA Approval Seller shall have the right to complete all investigation and remedial actions, to the extent required, in the most cost effective manner practicable, including, without limitation, by way of engineering and/or institutional controls, such as a deed notice, a groundwater classification exception area, well restriction area and/or natural attenuation and Purchaser hereby consents to the foregoing. In addition, Purchaser agrees to cooperate with Seller in connection with Seller's environmental work hereunder, including by providing information and signing documents and other instruments and recording a deed notice, upon Seller's request. Purchaser, by paying the consideration for a deed of the Property at Closing, shall be deemed to release Seller and its successors and assigns, property managers, agents and predecessors-in-title (collectively, the "Released Parties") from, and to waive as against the Released Parties, any and all claims of liability under Environmental Laws and all other applicable laws for or attributable to any and all environmental conditions

involving Hazardous Materials or compliance of the Property, except for the Seller's obligation to obtain the ISRA Approval in accordance with this Agreement. Following the delivery to the Purchaser of the ISRA Approval Purchaser shall be responsible for and assume all obligations and liabilities for environmental conditions and compliance with Environmental Laws relating to the Property and the ISRA Approval. The provisions of this Paragraph 6(a) and (b) shall survive Closing under this Agreement, touch and concern the land, be appurtenant to the Property, and shall be incorporated in the deed to be delivered to Purchaser as a covenant running with the land and shall be binding upon the Purchaser and all subsequent title holders as well as each and every operator now or hereafter located at the Property.

- (c) This Section shall survive the Closing or termination of this Agreement.

7. **Due Diligence Investigation.**

- (a) Purchaser shall have 30 days Due Diligence from contract execution. During the Due Diligence Period, Purchaser and its agents, contractors and consultants shall have the right to inspect the Property, availability of utility services, the physical and environmental condition of the Property and Seller's books and records respecting the income, repair, maintenance and other operating expenses of the Property. At least five (5) business days prior to the expiration of the Due Diligence Period, Purchaser shall provide Seller with a detailed estimate prepared by Purchaser's environmental consultant of the estimated costs for Seller to obtain the ISRA Approval pursuant to this Agreement, if applicable ("ISRA cost estimate"). If Purchaser is not satisfied in its reasonable business judgment, exercised in good faith, with the results of its due diligence inspections and investigations, Purchaser shall have the right to terminate this Agreement upon notice to Seller sent prior to 5:00 p.m. on the thirtieth (30th) day of the Due Diligence Period. In such event, the Deposit shall be returned to Purchaser and neither party shall have any further obligations hereunder except for those that expressly survive termination of this Agreement. If Purchaser does not terminate this Agreement in accordance with the provisions hereof, Purchaser shall have waived any right to terminate this Agreement pursuant to this Section 7(a).
- (b) Purchaser agrees that, in making any inspections of, or conducting any testing of, the Property in accordance with this Agreement, Purchaser will not reveal to any third party not expressly approved by Seller (except for Purchaser's officers, consultants, investors, lenders and professionals) the results of its inspections or tests, and will promptly restore (substantially to the condition existing prior to such inspections or testing) the Property following the performance of any inspections or tests unless otherwise required by law or judicial decree. Purchaser shall give Seller at least twenty-four (24) hours' notice (which may be written or oral) of its intention to enter upon the Property. In the event Purchaser terminates this Agreement and if requested by Seller, Purchaser shall provide Seller with a copy of Purchaser's due diligence results (to the extent in written form) and reports. Purchaser agrees (which agreement shall survive Closing or termination

of this Agreement) to indemnify, defend, and hold Seller free and harmless from any loss, injury, damage, claim, lien, cost or expense, including reasonable attorney's fees and costs, resulting from or arising out of the negligence or willful misconduct by Purchaser (or any of its agents, consultants or contractors) of any physical or environmental inspection of the Property. Any due diligence conducted by or on behalf of Purchaser pursuant to Section 7(a) shall be at Purchaser's sole cost and expense. Additionally, prior to entering the Property, Purchaser or its agents, consultants or contractors shall furnish to Seller a certificate of liability insurance in the sum of at least \$1,000,000.00 and worker's compensation insurance as required by law from a duly reputable insurance company licensed to transact business in the State of New Jersey (with an A.M. Best's rating of at least A-) naming Seller as an additional insured.

8. **Mortgage Contingency/Sale Contingency.**

Purchaser represents that he is using third party financing to satisfy a portion of the purchase price in the amount of \$540,000 and shall have a mortgage contingency date of September 5, 2016. In addition Purchaser agrees to provide proof of funds to satisfy the remaining contract price and closing costs anticipated in connection with this purchase within 10 days of the effective date. Purchaser is also not relying on the proceeds of a sale of any other real property and/or business and/or other property to finalize and close on this transaction.

9. **Conditions Precedent to Closing.** All of the following are conditions precedent to closing of title under this Agreement.

- (a) Title to the Property shall be as provided in this Agreement;
- (b) Seller shall have obtained and delivered to Purchaser a true copy of the ISRA Clearance, if applicable.
- (c) Seller shall have obtained and delivered to Purchaser any resale certificate of occupancy or certificate of continued occupancy that may be required by the City of Newark.

10. **Documents To Be Delivered By Seller At Closing.** At the Closing, Seller shall deliver to Purchaser the following documents:

- (a) The customary New Jersey form of bargain and sale deed, with covenant against grantor's acts, together with the Seller's Residency Certification/Exemption Form and/or Non-Resident Seller's Tax Declaration Form, duly executed, notarized and in recordable form.
- (b) A customary affidavit of title.
- (c) A closing statement showing the applicable closing adjustments.
- (d) FIRPTA affidavit.

- (e) Such other documents as Purchaser's title insurance company may reasonably request.
11. **Documents to be Executed by Purchaser at Closing.** At the Closing, Purchaser shall execute the closing statement delivered by Seller showing the applicable closing adjustments.
12. **Adjustments; Closing Costs.**
- (a) At the Closing, Purchaser and Seller shall adjust for real estate taxes and, if applicable, assessments, rents, utility charges, and municipal water and sewer charges for the Property. Seller shall pay for any assessments for public improvements imposed prior to the Effective Date. Purchaser shall pay for any assessments for public improvements imposed after the Effective Date. All adjustments shall be calculated as of 11:59 p.m. on the day immediately preceding the Closing. Seller shall pay the realty transfer fee, and Purchaser shall pay the "Mansion Tax" or any additional realty transfer taxes imposed on transfers in excess of a given threshold, if applicable.
- (b) Each party shall pay the fees of its own attorneys. Purchaser shall pay the fees and charges for survey, title examination and title insurance.
13. **Seller's Warranties and Representations.** Seller warrants and represents as follows, which warranties and representations shall be true and correct as of the Closing:
- (a) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.
- (b) To Seller's actual knowledge, there is no pending or threatened condemnation proceeding against the Property or any portion thereof.
- (c) There are no actions, suits or proceedings pending or, to Seller's actual knowledge, threatened, involving or relating to the Property or that could have a material adverse effect on the Property or Seller, which has not been previously disclosed to the Buyer. Seller acknowledges that there is an open foreclosure on said Property bearing docket number F-041139-13 and there is sufficient equity in property to fully satisfy the foreclosure Plaintiff.
- (d) No person or entity has an option, right of first refusal or other right to purchase the Property or any part thereof or interest therein.
14. **Purchaser's Warranties and Representations.** Purchaser warrants and represents as follows, which representations shall be true and correct as of the Closing.
- (a) Purchaser is duly authorized to enter into this Agreement and to purchase the Property in accordance with the terms of this Agreement.

- (b) Purchaser represents that he has sufficient assets to pay the Purchase Price at the Closing but is relying on 3rd party financing for \$540,000.

15. **Condemnation.** If a condemnation or eminent domain proceeding affecting all or any part of the Property is commenced prior to Closing, Purchaser shall have the option to terminate this Agreement and be refunded the Deposit and any interest earned thereon by serving notice on Seller in which event there shall be no further liability or obligation on either of the parties hereto and this Agreement shall become null and void, except as specifically provided. If Purchaser does not terminate this Agreement, Purchaser shall take an assignment at Closing of Seller's rights in the condemnation award and the right to negotiate or litigate with the condemning authority, without any adjustment in the Purchase Price.

16. **Risk of Loss.** Seller shall bear the risk of loss to the Property until the Closing.

- (a) In the event of loss or damage which is not "Major" (as hereinafter defined), this Agreement shall remain in full force and effect provided Seller performs any necessary repairs or, at Seller's option, assigns to Purchaser all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the Property. In the event that Seller elects to perform repairs upon the Property, Seller shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs. If Seller elects to assign a casualty claim to Purchaser, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy (or, in the case of an uninsured casualty, an amount equal to the cost to repair or restore the Property). Upon Closing, full risk of loss with respect to the Property shall pass to Purchaser.
- (b) In the event of a "Major" loss or damage, either Seller or Purchaser may terminate this Agreement by written notice to the other, in which event the Deposit shall be returned to Purchaser. If neither Seller nor Purchaser elects to terminate this Agreement within ten (10) days after Seller sends Purchaser written notice of the occurrence of such Major loss or damage, then Seller and Purchaser shall be deemed to have elected to proceed with Closing, in which event Seller shall, at Seller's option, either (a) perform any necessary repairs, or (b) assign to Purchaser all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the Property. In the event that Seller elects to perform repairs upon the Property, Seller shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs. If Seller elects to assign a casualty claim to Purchaser, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy (or, in the case of an uninsured casualty, an amount equal to the cost to repair or restore the Property). Upon Closing, full risk of loss with respect to the Property shall pass to Purchaser.

- (c) For purposes of subparagraphs (a) and (b), above, "Major" loss or damage shall mean: (i) loss or damage such that the cost of repairing or restoring the Property or to substantially the same condition that existed prior to the event of damage would be, in the opinion of an architect licensed by the State of New Jersey selected by Seller and reasonably approved by Purchaser, equal to or greater than twenty percent (20%) of the Purchase Price. If Purchaser does not give notice to Seller of Purchaser's reasons for disapproving an architect within five (5) business days after receipt of notice of the proposed architect, Purchaser shall be deemed to have approved the architect selected by Seller. If Purchaser reasonably disapproves the architect selected by Seller, then within a period of five (5) business days it shall notify Seller of not less than three (3) architects licensed by the State of New Jersey, each having at least ten (10) years experience as a licensed architect, and Seller shall select one of the three to perform the duties set forth in the Article 16. The fees for such architect shall be borne equally by Seller and Purchaser.
17. **Brokers.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker, finder or similar agent in connection with the purchase and sale of the Property and that it has not taken any action which would result in any broker's, finder's or other fee or commission being due or payable to any party other than Brokers. No brokers shall have a lien on the Property on account of any anticipated commission. Seller and Purchaser each shall indemnify and hold harmless the other against any and all liability, loss, cost and expense (including reasonable attorney's fees) resulting from a breach of this representation and warranty by the indemnifying party. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.
18. **Possession.**
- (a) At Closing, Seller will deliver possession of the Property to Purchaser, free of all tenants and occupants, and in "broom clean" condition.
- (b) At Closing, Seller shall deliver to Purchaser all documents, instruments, agreements, and tangible and intangible property, if any, in Seller's possession or subject to Seller's control relating to the Property.
19. **Default.** Upon an uncured default by Seller under the terms of this Agreement, Purchaser's sole and exclusive remedy shall be either to (i) terminate this Agreement and be refunded the Deposit and any interest earned thereon; or (ii) sue for specific performance. Upon an uncured default by Purchaser under the terms of this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement and to retain the Deposit and any interest earned thereon as liquidated damages. The parties agree that Seller's retention of the Deposit and any interest earned thereon as liquidated damages is not intended as a penalty but rather constitutes fair consideration for Seller's loss of the sale of the Property. If litigation is commenced to enforce any of the provisions of this Agreement, the prevailing party, in addition to any other remedy permitted under this Agreement or by law or equity, shall also be entitled to an award of reasonable legal fees and costs.

20. **Notices.** Any report, demand, notice, consent, approval, or other communication required or permitted to be given hereunder shall, unless otherwise specifically provided, be in writing and shall be delivered by (a) recognized overnight national courier service (such as Federal Express) for next day delivery; (b) certified or registered mail, return receipt requested, first class postage prepaid; or (c) personal delivery, to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the other):

To Seller: 262 Broad Street Corp.
 262-270 Broad Street
 Newark, NJ 07101
 Tel: (862) 485-1841
 Attention: Evelyn Morales

With a copy to: Steven D. Pertuz, Esq.
 The Law Offices of Steven D. Pertuz, LLC
 111 Northfield Avenue, Suite 304
 West Orange, NJ 07052
 Tel: (973) 669-8600
 Fax (973) 669-8700
 Email: pertuzlaw@verizon.net

To Purchaser: Lafenus Carmichael
 157 S. Munn Ave
 Newark, NJ 07106

Any notice delivered to a party's designated address shall be deemed to have been received by such party if served by (a) personal delivery, on the date same is delivered; (b) recognized overnight national courier service, the next business day following its deposit with the overnight courier or mail service; or (c) certified or registered mail, return receipt requested, on the third (3rd) business day following its deposit in the US Mail.

21. **Escrow Agent.**

- (a) The Escrow Agent shall not be liable to any party for any act or omission except for bad faith or gross negligence, and the parties agree to indemnify the Escrow Agent and hold the Escrow Agent harmless from any claims, damages, losses or

expenses arising in connection herewith. The parties acknowledge that the Escrow Agent is acting solely as a stakeholder for their convenience. The Escrow Agent shall not be required to defend any legal proceedings which may be instituted against it with respect to the escrowed funds, the Property or the subject matter of this Agreement unless requested to do so by Seller and Purchaser and indemnified to its satisfaction against the cost and expense of such defense. The Escrow Agent shall not be required to institute legal action or proceedings of any kind or nature and shall have no responsibility for the genuineness or validity of any document or other item deposited with it or the collectibility of any check delivered in connection with this Agreement. The Escrow Agent shall be fully protected in acting in accordance with any written instructions given to it hereunder and believed by it to be signed by the proper parties. This provision shall survive Closing.

- (b) The Escrow Agent shall provide the parties with five (5) business days' written notice before releasing the Deposit. In the event the Escrow Agent receives written notice of an objection to the release of the Deposit within such period, the Escrow Agent shall not release or deliver the Deposit to either party but shall either continue to hold the Deposit until otherwise directed in a writing signed by Purchaser and Seller, or by a final, non-appealable order of a court of competent jurisdiction or shall deposit the Deposit with a court of competent jurisdiction. Upon such deposit, the Escrow Agent will be released from all duties and responsibilities hereunder.
- (c) Purchaser acknowledges that The Law Offices of Steven D. Pertuz, LLC will be serving as the Escrow Agent and counsel for Seller in this transaction and any litigation relating to this transaction, and Purchaser waives any conflict of interest with respect to The Law Offices of Steven D. Pertuz, LLC acting in such capacity.

22. **Jury Trial Waiver.** Seller and Purchaser hereby waive their rights to a trial by jury in any action or proceeding arising out of or related to this Agreement.

23. **Miscellaneous.**

- (a) Seller shall not be required to spend more than \$2,500.00 in the aggregate in order to satisfy any condition precedent to or condition subsequent to the Closing as set forth in Section 9. For purposes of the foregoing, the obligations of Seller as set forth in Section 6(b) shall be deemed a condition subsequent. However, Seller, in its sole and absolute discretion, may elect to terminate the Agreement in the event that the ISRA cost estimate, together with any other expenditures to satisfy title and to obtain a certificate of occupancy or of continued occupancy, shall exceed \$2,500.00. In such event, Purchaser shall have the right to be refunded the Deposit, in which event there shall be no further liability or obligation on either of the parties hereto and this Agreement shall become null and void, except as may be specifically provided for herein.

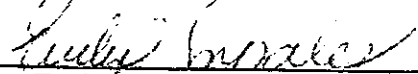
- (b) Any clean-up plan for the Property approved by the DEP may include the use of engineering and institutional controls.
- (c) No provision of this Agreement may be changed or waived orally, but only by an instrument in writing signed by Seller and Purchaser. Venue for any litigation concerning this Agreement shall be the Superior Court of New Jersey, Essex County.
- (d) This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.
- (e) This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns. Neither party shall be relieved of any liability under this Agreement upon any assignment of this Agreement. This Agreement may not be assigned by Purchaser without the prior written consent of Seller except to a corporation, limited liability company or partnership in which Purchaser has a controlling interest. Notice of any such permitted assignment by Purchaser shall be promptly given to Seller.
- (f) This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous representations, agreements and understandings, whether written or oral. Seller and Purchaser have each negotiated the form of this Agreement with the assistance of counsel.
- (g) If any of the provisions of this Agreement shall be determined to be void or unenforceable, by a court of competent jurisdiction or by law, such determination will not render this Agreement invalid or unenforceable and the remaining provisions shall remain in full force and effect.
- (h) If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Eastern Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.
- (i) This Agreement may be signed in any number of counterparts which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

WITNESS:

SELLER:

262 BROAD STREET CORP.


By: Evelyn Morales, President

WITNESS:

PURCHASER:


By: Lafenus Carmichael

We agree to act as Escrow Agent in accordance with the terms of this Agreement

The Law Offices of Steven D. Pertuz, LLC

By: _____
Steven D. Pertuz

EXHIBIT D
TO BE PROVIDED