

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: :  
2671 CENTERVILLE HWY LLC : CASE NUMBER: 18-71822wlh  
Debtor : CHAPTER 11  
:

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**DEBTOR'S EXPEDITED**  
**(I) APPLICATION TO RETAIN TEN-X, INC. TO MARKET AND CONDUCT**  
**AUCTIONS PURSUANT TO 11 U.S.C. §§ 327 AND 328**  
**AND**  
**(II) APPLICATION TO RETAIN FRANKLIN STREET REAL ESTATE SERVICES,**  
**LLC AS LISTING AGENT PURSUANT TO 11 U.S.C. §§ 327 AND 328**

COMES NOW, 2671 CENTERVILLE HWY LLC, Debtor-in -possession in the above styled matter (“Debtor”), by and through its attorney, and hereby files this Application for (I) entry of an order authorizing retention of Ten-X, Inc. (“Ten-X”) under the terms set forth in the agreement dated January 4, 2019 (the “Marketing Agreement”) attached to Ten-X’s Affidavit of Disinterestedness (Composite Exhibit A, attached) and (II) entry of an order authorizing retention of Franklin Street Real Estate Services, LLC as listing broker (the “Listing Broker”) under the terms set forth in the agreement dated November 13, 2018 (the “Representation Agreement”), attached to Listing Broker’s Affidavit of Disinterestedness (Composite Exhibit B, attached). In support thereof, the Debtor respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (M), (N), and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

3. On December 31, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and has continued in possession of its property and management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As of the date of this filing, no official committee of unsecured creditors has been appointed and no request for the appointment of a trustee or examiner has been made.
4. Debtor owns real property located at 2671 Centerville Highway, Snellville, GA, (the "Property").
5. Debtor scheduled, or represents, the Property as having a value of no less than \$1,850,000.00 subject to a first priority security interest in favor of Keriman Guven ("Secured Creditor 1") in the amount owed on the Petition Date of approximately \$651,000.00.
6. Debtor scheduled, or represents, the Property as having a value of no less than \$1,850,000.00 subject to a second priority security interest in favor of Westmoore Lending Partners III LLC ("Secured Creditor 2") in the amount owed on the Petition Date of approximately \$279,000.00.
7. To facilitate the orderly sale of the Property, Debtor requests authority pursuant to Sections 327 and 328(a) of the Bankruptcy Code (I) to retain TEN-X to market the Property for sale and conduct the Auction, and to pay the Buyer's Premium directly to TEN-X at closing of the sale of the Property, and (II) to retain the Listing Broker to conduct open houses and to facilitate communications with prospective buyers, and to pay the Commission.

## APPLICATION

### **A. TEN-X Should Be Retained and Compensated for the Public Auction of the Property**

8. Section 328(a) of the Bankruptcy Code provides, in relevant part, that a trustee (here, Debtor-In-Possession) “with the court’s approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage or fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the Court to approve TEN-X’s compensation arrangement as set forth in the Marketing Agreement, and the Court may then allow compensation different from the terms provided in the Marketing Agreement only “if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.”
9. TEN-X operates and manages an online real estate auction platform, conducting commercial real estate auctions and providing marketing services to promote the auction of assets for clients. TEN-X has extensive experience marketing real property sales and conducting online auctions, thereby creating a process to liquidate the Property with significantly faster and better execution for the estate. Debtor believes that the highest and best value for the Property will be generated via TEN-X’s online auction and that an online auction is in the best interest of the estate. Debtor further believes that the retention of TEN-X is in the best interests of the estate.
10. TEN-X will be paid a commission equal to five (5%) percent of the Winning Bid Amount, but in no event less than \$40,000.00, which will be charged as a “Buyer’s Premium” payable by the purchaser(s) at closing directly to TEN-X. The Buyer’s Premium will only be paid if the Property is successfully sold to a third-party bidder.
11. Per the Amendment(s) to Marketing Agreement, the Buyer Broker Commission offered by TEN-X was deleted and replaced by the following language, “Seller may retain 20% of the applicable Transaction Fee, earned by TEN-X for the Property net of any revenue share, discounts or concessions offered by TEN-X relating to the Property.”

12. Debtor submits that TEN-X's terms of employment and compensation as set out in the Marketing Agreement are reasonable in light of TEN-X's extensive experience and the nature of the services TEN-X provides, which do not translate well to hourly billing. Thus, Debtor requests that TEN-X's compensation be approved under Section 328(a) of the Bankruptcy Code and seeks a waiver of all monthly, interim, and final fee application requirements. As further detailed in the sale motion, Debtor seeks authority to release the Buyer's Premium to TEN-X at closing, subject only to a successful closing of the sale transaction, without further order of this Court.
13. TEN-X attests that it is a disinterested person within the meaning of Section 101(14) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2014 and 2016(a).  
TEN-X
14. Upon completion of the auction, TEN-X will provide a summary to Debtor of the results of the auction and stating the fees and expenses which will be paid to TEN-X in accordance with the Order approving its retention. The Debtor will file an appropriate report with the Court. The report shall be served only on the U.S. Trustee and any other interested party who specifically requests a copy.

**B. The Listing Broker Should Be Retained and Compensated in Connection with the Sale of the Property**

15. For the aforementioned reasons, Debtor believes that the highest and best value of the Property will be generated via auction and that an auction is in the best interest of the estate. To facilitate additional marketing of the Property, open houses, and certain communication with prospective buyers, Debtor also believes the retention of a Listing Broker is in the best interest of the estate and its creditors. Debtor proposes the employment of Franklin Street Real Estate Services, LLC., a licensed real estate firm in Georgia
16. With respect to sales to third party purchasers only, the Listing Broker will be paid a commission equal to four and one-half (4.5%) percent if there is a co-op broker and

three and one-quarter (3.25%) percent if there is no outside broker, of the Winning Bid Amount, which will be paid at closing directly to the Listing Broker.

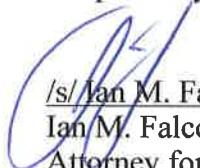
17. Debtor submits that the Listing Broker's term of employment and compensation as set out in the Representation Agreement are reasonable in light of the nature of the services the Listing Broker provides. Thus, Debtor requests that the Listing Broker's compensation shall be approved under Section 328(a) of the Bankruptcy Code and seeks a waiver of all monthly, interim, and final fee application requirements. As further detailed in the sale motion, Debtor seeks authority to release the Commission to the Listing Broker at closing, subject only to a successful closing of the sale transaction, without further order of this Court.
18. The Listing Broker attested that he and his agency are disinterested persons within the meaning of Section 101(14) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2014 and 2016(a).

### CONCLUSION

For the foregoing and all other necessary and proper purposes, Debtor seeks the court's authority to retain TEN-X to conduct an auction and to retain Franklin Street as the Debtor's Listing Broker in this case, and requests that the Court approve the compensation arrangements set forth in the Marketing Agreement and the Representation Agreement pursuant to Section 328(a) of the Bankruptcy Code.

DATED this 15 day of February 2019

Respectfully submitted,

  
/s/ Ian M. Falcone  
Ian M. Falcone  
Attorney for Debtor  
Georgia Bar No. 254470

THE FALCONE LAW FIRM, P.C.  
363 Lawrence Street  
Marietta, GA 30060  
(770) 426-9359  
imf@falcofirm.com

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: :  
2671 CENTERVILLE HWY LLC : CASE NUMBER: 18-71822w/h  
Debtor : CHAPTER 11

AFFIDAVIT OF DISINTERESTED PARTY

TEN-X

STATE OF Florida  
COUNTY OF Miami-Dade

The undersigned hereby declares penalty of perjury:

1. I am employed by TEN-X which is an entity duly licensed by the State of Georgia to conduct a public auction of the asset described in the Marketing Agreement and Amendment. I am authorized by Applicant to submit this Affidavit on Applicant's behalf in support of the Application.

2. To the best of my knowledge, neither I nor any member of TEX-X is a creditor, equity holder or insider, am not and have not within 2 years been a director, officer of employee of the Debtor, and have no interest materially adverse to interest of the estate or any class of creditors or security holder, by reason or direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason.

3. TEN-X has agreed to provide services to Debtor at a rate which is its normal rate for this type of service.

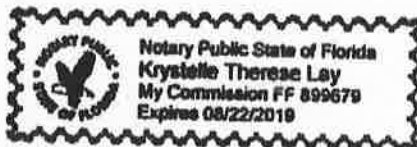
4. The Marketing Agreement and Amendment sets forth the compensation paid or promised in connection with its representation in this matter.

Dated this 15<sup>th</sup> day of February, 2019

[Signature]  
TEN-X  
By: [Signature]

Sworn to and subscribed before me  
this 15 day of Feb, 2019

[Signature]  
Notary Public





# TEN-X MARKETING AGREEMENT

This Ten-X Marketing Agreement ("Agreement") is between Seller and Ten-X, Inc. ("Ten-X"), and is effective as of 1/4/19 ("Effective Date"). Seller is engaging Ten-X to advertise, market and promote the sale of the Property and Ten-X will include the Property in one or more marketing events (each, an "Event") through Ten-X's website during the Marketing Period. This Agreement is subject to the Ten-X Marketing Agreement Standard Terms located at <http://www.ten-x.com/company/legal/tkmas101012019/> ("Standard Terms").

I. SELLER AND PROPERTY INFORMATION	
(a) Seller (legal entity or individual, as applicable)	2671 Centerville Hwy LLC
(b) Site Contact	Name: <u>Yochonon Goldman</u> Phone: <u>770-730-1707</u> Email: <u>goldman@highlandfinancialgrp.com</u>
(c) Property	Address: <u>2671 Centerville Hwy, Snellville, GA 30078</u>
(d) Marketing Period	The <u>100</u> day period beginning on the Effective Date
(e) Tail Period	The <u>90</u> day period beginning the day after the last day of the Marketing Period
(f) Minimum Price	\$ <u>1,500,000</u> (Seller's obligation to accept the highest offer at or above the Minimum Price applies to Live Bid and Managed Bid Events only)
II. FEES	
(a) Transaction Fee	5% of the buyer's offer price paid at closing, but in no event less than \$40,000 <i>(For a sale facilitated by Ten-X, the Transaction Fee will be added to the buyer's offer price to establish the total purchase price payable by the buyer)</i>
(b) Withdrawal Fee	5% of the Minimum Price, but in no event less than \$40,000
(c) Buyer Broker Commission	<u>0</u> % of the buyer's offer price (exclusive of any Transaction Fee), paid at closing by: <u>n/a</u>
III. TRANSACTION DETAILS	
(a) Event Format	<input type="checkbox"/> Offer Select (Ten-X's form Offer Select Addendum, available at <a href="http://mlhdocs.com/legal/OfferSelectAddendum.pdf">http://mlhdocs.com/legal/OfferSelectAddendum.pdf</a> , will be used in the marketing of the Property through Ten-X's website) <input checked="" type="checkbox"/> Live Bid (to be held on date(s) mutually acceptable to Seller and Ten-X) <input type="checkbox"/> Managed Bid (to be held on date(s) mutually acceptable to Seller and Ten-X)
(b) Listing Broker	The listing broker for the Property will be: Brokerage: <u>Franklin Street</u> Name: <u>Todd Mitchell</u> Phone: <u>404-832-1250 x442</u> Email: <u>todd.mitchell@franklinst.com</u>
(c) Escrow/Closing Agent	The escrow/closing agent for the Property will be: Company: <u>Novare NSS, a division of Fidelity National Title</u> Phone: <u>(714) 352-4088</u> Email: <u>NovareEscrow@novarens.com</u>
(d) Purchase Agreement	The purchase agreement to be used in the marketing of the Property through Ten-X's website will be: <input type="checkbox"/> Ten-X's Form PSA (Ten-X's standard form purchase agreement, available at <a href="http://mlhdocs.com/legal/CommercialPSA1012019.pdf">http://mlhdocs.com/legal/CommercialPSA1012019.pdf</a> , with Ten-X's applicable state-specific rider and other Ten-X standard form addenda selected by Seller) <input checked="" type="checkbox"/> Ten-X's Form PSA, together with Seller's addendum (must provide within 5 days after the Effective Date) <input type="checkbox"/> Seller's own form purchase agreement (must provide within 5 days after the Effective Date)
IV. DUE DILIGENCE MATERIALS PROVIDED BY THIRD PARTIES	
(a) Title Report	<input checked="" type="checkbox"/> Ten-X will order title report (or property report or abstract of title) from Novare National Settlement Service, a division of Fidelity National Title Insurance Company; Seller must reimburse Ten-X or the issuer of the report for the cost thereof only if (i) Ten-X earns a Transaction Fee or Withdrawal Fee, or (ii) Seller later selects a different title company for the transaction <input type="checkbox"/> Seller will provide title report at Seller's own cost (must not be more than 90 days old as of the start of the Marketing Period)
(b) Phase I Environmental Site Assessment ("Phase I")	<input checked="" type="checkbox"/> Ten-X will order Phase I (or limited Phase I); Seller must reimburse Ten-X or issuer of the Phase I for the cost thereof only if Ten-X earns a Transaction Fee or Withdrawal Fee <input type="checkbox"/> Seller will provide Phase I at Seller's own cost (must be not more than 90 days old as of the start of the Marketing Period) <input type="checkbox"/> None
(c) Property Condition Assessment ("PCA")	<input checked="" type="checkbox"/> Ten-X will order PCA; Seller must reimburse Ten-X or issuer of the PCA for the cost thereof only if Ten-X earns a Transaction Fee or Withdrawal Fee <input type="checkbox"/> Seller will provide PCA at Seller's own cost (must be not more than 90 days old as of the start of the Marketing Period) <input type="checkbox"/> None
(d) Agency Disclosures	Seller acknowledges receipt of the agency disclosure located at <a href="http://mlhdocs.com/legal/agencydisclosures/Ten-X/Georgia.pdf">http://mlhdocs.com/legal/agencydisclosures/Ten-X/Georgia.pdf</a>



V. ADDITIONAL TERMS

**SELLER**

2671 Centerville Hwy LLC

By: Sabi Varon

Name: Sabi Varon

Title: Owner

3500 Lenox Road, Suite 1500 Atlanta, GA, 30326

Address:

Email: [sabivaron@highlandfinancialgrp.com](mailto:sabivaron@highlandfinancialgrp.com)

Telephone: 770-730-1707

**TEN-X**

**Ten-X, Inc.**

DocuSigned by:

By: Scott Reid

Name: SCOTT REID

Title: Supervising Broker

15295 Alton Parkway, Irvine, CA 92618

Attention: Legal Department

[legal-notice@ten-x.com](mailto:legal-notice@ten-x.com)

(800) 793-6107



## AMENDMENT TO MARKETING AGREEMENT

This Amendment to the Ten-X Marketing Agreement ("Amendment") is between Seller and Ten-X, Inc. ("Ten-X"), and is effective as of 1/21/2019 ("Amendment Effective Date"). If there is a conflict between the terms of the MA and the terms of this Amendment, the terms of this Amendment shall control. Any capitalized terms not defined herein shall have the meanings set forth in the MA.

SELLER AND PROPERTY INFORMATION	
Seller (legal entity or individual, as applicable)	2671 Centerville Hwy LLC
Property	2671 Centerville Highway, Snellville, GA 30078
MA	That certain Marketing Agreement currently in effect between Seller and Ten-X relating to the Property.
AMENDMENT TERMS	
Buyer Broker Commission	Notwithstanding anything to the contrary in the MA, Section II.(c) is hereby deleted and restated as follows: "1% of the buyer's offer price (exclusive of any Transaction Fee), paid at closing by: Ten-X"  Notwithstanding the foregoing, if the buyer is not represented by a registered broker, and no Buyer Broker Commission or referral fee is required to be paid by Ten-X to the broker representing or referring a buyer, Seller may retain 20% of the applicable Transaction Fee, earned by Ten-X for such Property net of any revenue share, discounts or concessions offered by Ten-X relating to the Property.

SELLER	TEN-X
2671 Centerville Hwy LLC	<b>Ten-X, Inc.</b>
By <u>Sabi Varon</u> DocuSigned by: Sabi Varon 62E605B784104A8	By <u>Scott Reid</u> DocuSigned by: Scott Reid F855F24815C89A
Name: Sabi Varon	Name: Scott Reid
Title: Owner	Title: Supervising Broker
Address: 3500 Lenox Road, Suite 1500 Atlanta, GA 30326	15295 Alton Parkway, Irvine, CA 92618 Attention: Legal Department <a href="mailto:legal-notice@ten-x.com">legal-notice@ten-x.com</a>
Email: <a href="mailto:sabivaron@highlandfinancialgrp.com">sabivaron@highlandfinancialgrp.com</a>	(800) 793-6107
Telephone: 770-730-1707	



## AMENDMENT TO MARKETING AGREEMENT

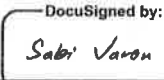
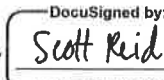
This Amendment to the Ten-X Marketing Agreement ("Amendment") is between Seller and Ten-X, Inc. ("Ten-X"), and is effective as of 1/21/2019 ("Amendment Effective Date"). If there is a conflict between the terms of the MA and the terms of this Amendment, the terms of this Amendment shall control. Any capitalized terms not defined herein shall have the meanings set forth in the MA.

### SELLER AND PROPERTY INFORMATION

Seller (legal entity or individual, as applicable)	2671 Centerville Hwy LLC
Property	2671 Centerville Highway, Snellville, GA 30078
MA	That certain Marketing Agreement currently in effect between Seller and Ten-X relating to the Property.

### AMENDMENT TERMS

Buyer Broker Commission	<p>Notwithstanding anything to the contrary in the MA, Section II.(c) is hereby deleted and restated as follows: "1% of the buyer's offer price (exclusive of any Transaction Fee), paid at closing by: Ten-X"</p> <p>Notwithstanding the foregoing, if the buyer is not represented by a registered broker, and no Buyer Broker Commission or referral fee is required to be paid by Ten-X to the broker representing or referring a buyer, Seller may retain 20% of the applicable Transaction Fee, earned by Ten-X for such Property net of any revenue share, discounts or concessions offered by Ten-X relating to the Property.</p>
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SELLER	TEN-X
2671 Centerville Hwy LLC	<b>Ten-X, Inc.</b>
By 	By 
Name: Sabi Varon	Name: <del>Scott</del> Reid
Title: Owner	Title: Supervising Broker
Address: 3500 Lenox Road, Suite 1500 Atlanta, GA 30326	15295 Alton Parkway, Irvine, CA 92618 Attention: Legal Department <a href="mailto:legal-notice@ten-x.com">legal-notice@ten-x.com</a>
Email: <a href="mailto:sabivaron@highlandfinancialgrp.com">sabivaron@highlandfinancialgrp.com</a>	(800) 793-6107
Telephone: 770-730-1707	

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:  
2671 CENTERVILLE HWY LLC  
Debtor

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CASE NUMBER: 18-71822wlh  
CHAPTER 11

AFFIDAVIT OF DISINTERESTED PARTY  
FRANKLIN STREET

STATE OF Georgia  
COUNTY OF Fulton

The undersigned hereby declares penalty of perjury:

3. I am employed by Franklin Street Real Estate Services, LLC., a licensed real estate firm in the State of Georgia. I am authorized by Applicant to submit this Affidavit on Applicant's behalf in support of the Application.

4. To the best of my knowledge, neither I nor any member of Franklin Street is a creditor, equity holder or insider, am not and have not within 2 years been a director, officer of employee of the Debtor, and have no interest materially adverse to interest of the estate or any class of creditors or security holder, by reason or direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason.

3. Franklin Street has agreed to provide services to Debtor at a rate which is its normal rate for this type of service.

4. The Marketing Agreement sets forth the compensation paid or promised in connection with its representation in this matter.

Dated this 15<sup>th</sup> day of February, 2019

Bryan Belk  
FRANKLIN STREET  
By: Bryan Belk

Sworn to and subscribed before me  
this 15<sup>th</sup> day of February, 2019

Tracie L. Lee  
Notary Public

TRACIE L. LEE  
NOTARY PUBLIC  
Fulton County  
State of Georgia  
My Comm. Expires 12/11/2020



**REPRESENTATION AGREEMENT**

**(EXCLUSIVE AUTHORIZATION TO SELL OR EXCHANGE REAL PROPERTY)  
THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY.**

THE UNDERSIGNED ("SELLER") HEREBY EMPLOYS FRANKLIN STREET REAL ESTATE SERVICES, LLC ("BROKER") AND GRANTS TO BROKER, FOR A PERIOD OF TIME (THE "TERM") COMMENCING ON THE DATE BELOW, AND ENDING AT MIDNIGHT ON FOUR (4) MONTHS FROM THE DATE BELOW, AND SUBJECT TO EXTENSION AS SET FORTH IN PARAGRAPH 13 BELOW, THE EXCLUSIVE AND IRREVOCABLE RIGHT AND AUTHORITY TO SELL THAT CERTAIN REAL PROPERTY (THE "PROPERTY") LOCATED IN THE CITY OF SNELLVILLE, STATE OF GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS

**PROPERTY NAME:** SIMS CROSSING SHOPPING CENTER  
**STREET ADDRESS:** 2671 CENTERVILLE HWY  
**CITY, STATE:** SNELLVILLE, GA 30078

**\*LEGAL DESCRIPTION TO BE ATTACHED**

IF THE PROPERTY DESCRIBED ABOVE CONSISTS OF TWO OR MORE SEPARATE LEGAL PARCELS, SELLER AGREES TO SELL ALL OF ANY COMBINATION OF SUCH PARCELS, AND THE TERM "PROPERTY" AS USED HEREIN SHALL REFER TO ANY SUCH COMBINATION

1.) **TERMS AND CONDITIONS OF SALE:** SELLER AGREES TO ACCEPT AND OFFER CONTAINING THE FOLLOWING TERMS AND CONDITIONS OF SALE:

**PURCHASE PRICE:** \$ 1,850,000.00

2.) **TITLE:** SELLER REPRESENTS AND WARRANTS TO BROKER THAT FEE TITLE TO THE PROPERTY IS NOW VESTED AS FOLLOWS: 2671 CENTERVILLE HWY LLC THAT SELLER AND OR THE INDIVIDUALS EXECUTING THIS REPRESENTATION AGREEMENT ON BEHALF OF THE SELLER ARE DULY AUTHORIZED AND EMPOWERED TO EXECUTE THIS REPRESENTATION AGREEMENT AND SUBSEQUENT PURCHASE AND SALES AGREEMENT.

3.) **COMMISSION:** IN CONSIDERATION OF THE SERVICES RENDERED BY BROKER, SELLER AGREES TO PAY BROKER A COMMISSION BASED ON THE FOLLOWING TERMS AND SCHEDULE: FOUR AND A HALF PERCENT (4.5%) OF THE SALES PRICE IF THERE IS A CO-OP BROKER AND THREE AND A QUARTER PERCENT (3.25%) OF THE SALES PRICE IF THERE IS NO OUTSIDE BROKER

- a.) BROKER PROCURES A BUYER DURING THE TERM, OR ANY EXTENSION THERE OF WHO IS READY, WILLING AND ABLE TO PURCHASE THE PROPERTY ON THE TERMS AND CONDITIONS SET FORTH HEREIN OR ON ANY OTHER TERMS AND CONDITIONS ACCEPTABLE TO THE SELLER AND BUYER CLOSSES TRANSACTION OR CLOSING IS PREVENTED BY SELLER DEFAULT; OR
- b.) THE PROPERTY IS SOLD, EXCHANGED OR OTHERWISE CONVEYED DURING THE TERM, OR ANY EXTENSION THEREOF, WHETHER BY THE SELLER OR THROUGH ANY OTHER PERSON OR ENTITY
- c.) A SALE, EXCHANGE OR OTHER CONVEYANCE OF THE PROPERTY IS MADE WITHIN TWELVE (12) MONTHS AFTER THE EXPIRATION OF THE PROPERTY WITH A PROSPECTIVE PURCHASER WHO WAS INTRODUCED TO THE SELLER BY BROKER AS A PROSPECTIVE PURCHASER PROVIDED THAT THE NAME OF ANY SUCH PERSON OR ENTITY HAS BEEN SUBMITTED TO THE SELLER

BROKER BB SELLER [Signature]



BY DELIVERY OF WRITTEN OFFER TO PURCHASE THE PROPERTY PRIOR TO THE EXPIRATION OF THE TERM OR BY WRITTEN NOTICE WITHIN THREE MONTHS (3) MONTHS OF SUCH EXPIRATION.

IN THE CASE OF ANY SALE ACCOMPLISHED THROUGH AN ESCROW OR CLOSING ATTORNEY, THIS COMMISSION SHALL BE PAID AT THE CLOSING AND BROKER SHALL BE ENTITLED TO MAKE DEMAND OF ANY ESCROW HOLDER OR CLOSING ATTORNEY FOR PAYMENT FROM PROCEEDS OF SALE.

4) **SELLER'S REPRESENTATIONS AND WARRANTIES:**

- A.) **MATERIAL DEFECT:** SELLER REPRESENTS AND WARRANTS THAT SELLER KNOWS OF NO MATERIAL DEFECTS OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, ENERGY CONSERVATION AND/OR SAFETY RETROFIT(S) REQUIRED BY LOCAL ORDINANCE AS A CONDITION OF TRANSFER
- B.) **COMPLIANCE WITH LAWS:** SELLER REPRESENTS AND WARRANTS THAT TO THE BEST OF SELLER'S KNOWLEDGE THAT PROPERTY AND ALL IMPROVEMENTS THEREON ARE IN COMPLIANCE WITH ALL APPLICABLE LAWS, CODES, REGULATIONS, AND OTHER SIMILAR GOVERNMENTAL STANDARDS AND REQUIREMENTS AND THAT NO MATERIAL STRUCTURAL MODIFICATIONS OR ALTERATIONS OF THE IMPROVEMENTS ON THE PROPERTY HAVE BEEN MADE WITHOUT APPROPRIATE PERMITS.
- C.) **FLOOD ZONE:** SELLER REPRESENTS AND WARRANTS THAT TO THE BEST OF SELLER'S KNOWLEDGE THE PROPERTY IS LOCATED IN FLOOD ZONE "X"
- D.) **HAZARDOUS MATERIALS:** SELLER REPRESENTS AND WARRANTS THAT, TO THE BEST OF SELLER'S KNOWLEDGE, THE PROPERTY IS NOT CONTAMINATED WITH ANY HAZARDOUS MATERIALS, INCLUDING BUT NOT LIMITED TO, ASBESTOS, PCB TRANSFORMERS, OTHER TOXIC HAZARDOUS OR CONTAMINATED SUBSTANCES, AND UNDERGROUND STORAGE TANKS.
- 6.) **RECORDS, FINANCIAL DATA AND MARKETING ASSISTANCE:** SELLER AGREES TO FURNISH, TO CERTIFY AS TRUE AND CORRECT, AND TO MAKE AVAILABLE TO BROKER AND PROSPECTIVE BUYERS ALL FINANCIAL DATA, RENT STATEMENTS, LEASES AND OTHER OPERATING RECORDS OF THE PROPERTY, AND TO PROVIDE BROKER WITH SUCH ASSISTANCE AS BROKER MAY REASONABLY REQUEST IN MARKETING THE PROPERTY. SELLER AGREES TO REFER PROMPTLY TO BROKER ALL INQUIRIES OF ANYONE INTEREST IN THE PROPERTY.
- 7.) **INDEMNIFICATION:** SELLER AGREES TO INDEMNIFY AND HOLD BROKER HARMLESS FROM ANY AND ALL LIABILITY, DAMAGES, LOSSES, CAUSES OF ACTION, OR OTHER CLAIMS (INCLUDING ATTORNEYS' FEES AND OTHER DEFENSE COSTS) ARISING FROM OR ASSERTED IN CONNECTION WITH ANY INCOMPLETE OR INACCURATE INFORMATION PROVIDED BY SELLER, OR ANY MATERIAL INFORMATION CONCERNING THE PROPERTY WHICH SELLER HAS FAILED TO DISCLOSE.
- 5.) **SCOPE OF BROKERS AUTHORITY AND RESPONSIBILITY:** BROKER SHALL ASSIST SELLER IN MARKETNG THE PROPERTY AND IN NEGOTIATING THE TERMS AND CONDITIONS OF THE PURCHASE AND SALES AGREEMENT WITH ANY PROSPECTIVE PURCHASER'S. BROKER SHALL NOT; HOWEVER HAVE THE AUTHORITY TO BIND SELLER TO ANY CONTRACT OF PURCHASE AGREEMENT. BROKER SHALL NOT BE RESPONSIBLE FOR PERFORMING ANY DUE DILIGENCE OR OTHER INVESTIGATION OF THE PROPERTY, OR FOR PROVIDING PROFESSIONAL ADVICE WITH RESPECT TO ANY LEGAL, TAX, ENGINEERING, CONSTRUCTION OR HAZARDOUS MATERIALS ISSUES. SELLER AND BROKER AGREE THAT EXCEPT FOR CONFIDENTIAL INFORMATION AND NEGOTIATIONS OF THE PURCHASE AND SALE AGREEMENT THEIR RELATIONSHIP IS AT ARMS LENGTHY AND IS NEITHER CONFIDENTIAL NOR FIDUCIARY IN NATURE.
- 6.) **LIMITATION OF LIABILITY:** EXCEPT FOR BROKERS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BROKER'S LIABILITY FOR ANY BREACH OR NEGLIGENCE IN ITS PERFORMANCE OF THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF \$500.00 OR THE AMOUNT OF COMPENSATION ACTUALLY RECEIVED BY BROKER IN ANY TRANSACTIONS. PROPERTY BEING SOLD "AS-IS".

BROKER BB SELLER AW



7.) **ARBITRATION OF DISPUTES:** IF A CONTROVERSY ARISES WITH RESPECT TO THE SUBJECT MATTER OF THIS REPRESENTATION AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREIN (INCLUDING BUT NOT LIMITED TO THE PARTIES' RIGHTS TO THE DEPOSIT OR THE PAYMENT OF COMMISSIONS AS PROVIDED HEREIN), BUYER, SELLER AND BROKER AGREE THAT SUCH CONTROVERSY SHALL BE SETTLED BY FINAL, BINDING ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

SELLER'S INITIALS \_\_\_\_\_

BROKER'S INITIALS BB

8.) **ATTORNEYS' FEES:** IN ANY LITIGATION, ARBITRATION OR OTHER LEGAL PROCEEDING WHICH MAY ARISE BETWEEN ANY OF THE PARTIES HERETO, INCLUDING BROKER, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS COSTS, INCLUDING COSTS OF ARBITRATION, AND REASONABLE ATTORNEYS' FEES IN ADDITION TO ANY OTHER RELIEF TO WHICH SUCH PARTY MAY BE ENTITLED.

9.) **EXCHANGE:** AS USED IN THIS AGREEMENT, THE TERMS "SALE," "SELL" OR "PURCHASE" SHALL BE UNDERSTOOD TO INCLUDE AN EXCHANGE OF THE PROPERTY. IN THE EVENT OF AN EXCHANGE, IF NO PURCHASE PRICE IS IDENTIFIED, THE COMMISSION DESCRIBED IN PARAGRAPH 5 ABOVE SHALL BE CALCULATED AS A PERCENTAGE OF THE EXCHANGE VALUE OF THE PROPERTY. BROKER IS HEREBY AUTHORIZED TO REPRESENT ALL PARTIES TO ANY SUCH EXCHANGE TRANSACTION AND TO COLLECT COMPENSATION OR COMMISSION FROM THEM, PROVIDED THERE IS FULL DISCLOSURE TO ALL PRINCIPALS OF SUCH AGENCY.

10.) **TAX WITHHOLDING:** SELLER AGREES TO EXECUTE AND DELIVER ANY INSTRUMENT, AFFIDAVIT OR STATEMENT, OR TO PERFORM ANY ACT REASONABLY NECESSARY TO CARRY OUT THE PROVISIONS OF THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT AND REGULATIONS PROMULGATED THERE UNDER, AS WELL AS ANY SIMILAR REQUIREMENTS OF STATE LAW.

11.) **ADDENDA:** ANY ADDENDUM ATTACHED HERETO, AND EITHER SIGNED OR INITIALED BY THE PARTIES SHALL BE DEEMED A PART HEREOF. THIS AGREEMENT, INCLUDING ADDENDA, IF ANY, EXPRESSES THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDES ANY AND ALL PREVIOUS AGREEMENTS BETWEEN THE PARTIES WITH REGARD TO THE PROPERTY. THERE ARE NO OTHER UNDERSTANDINGS, ORAL OR WRITTEN, WHICH IN ANY WAY ALTER OR ENLARGE ITS TERMS, AND THERE ARE NO WARRANTIES OR REPRESENTATIONS OF ANY NATURE WHATSOEVER EITHER EXPRESS OR IMPLIED, EXCEPT AS SET FORTH HEREIN. ANY FUTURE MODIFICATION OF THIS AGREEMENT WILL BE EFFECTIVE ONLY IF IT IS IN WRITING AND SIGNED BY THE PARTY TO BE CHARGED.

12.) **GOVERNING LAW:** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA.

13.) **EXTENSION OF TERM:** IF AN AGREEMENT OR LETTER OF INTENT FOR THE SALE OF THE PROPERTY IS EXECUTED BY ALL NECESSARY PARTIES, AND IF SAID AGREEMENT OR LETTER OF INTENT IS REVOKED, RESCINDED OR OTHERWISE TERMINATED, AND/OR THE TRANSACTION IS SUBSEQUENTLY CANCELED, THE TERM SHALL BE EXTENDED BY THE NUMBER OF CALENDAR DAYS DURING WHICH THE SALE AGREEMENT OR LETTER OF INTENT WAS IN EFFECT. THE MAXIMUM EXTENSION PERMITTED HEREUNDER SHALL BE THE NUMBER OF DAYS REMAINING ON THE TERM FROM THE DATE THE SALE AGREEMENT OR LETTER OF INTENT WAS EXECUTED, OR AN ESCROW OPENED, WHICHEVER EVENT OCCURRED EARLIER. NOTWITHSTANDING THE FOREGOING, THIS REPRESENTATION AGREEMENT SHALL EXPIRE IN ALL CASES NO LATER THAN TWELVE (12) MONTHS AFTER THE ORIGINAL TERMINATION DATE STATED ABOVE. THE PURPOSE OF THIS EXTENSION PROVISION IS TO ALLOW BROKER THE OPPORTUNITY TO EXPOSE THE PROPERTY TO THE MARKETPLACE FOR THE FULL PERIOD OF TIME CONTEMPLATED BY THIS AGREEMENT.

14.) **OTHER TERMS AND CONDITIONS:**

*Exclude marketing on Loopnet.*

[SIGNATURES CONTINUED TO NEXT PAGE, PAGE 5]

BROKER BB

SELLER [Signature]



THE UNDERSIGNED SELLER AND BROKER AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS REPRESENTATION AGREEMENT, AND SELLER ACKNOWLEDGES RECEIPT OF AN EXECUTED COPY HEREOF.

**SELLER:** 2671 CENTERVILLE HWY LLC

SELLER  
PRINT: *[Signature]*  
DATE: 11/13/18  
ADDRESS:  
PHONE:  
FAX:  
EMAIL:

**BROKER:** FRANKLIN STREET

*[Signature]*  
BROKER  
PRINT: BRYAN BELK  
DATE: 11/13/18  
ADDRESS: 3384 PEACHTREE RD STE 650  
ATLANTA, GA 30326  
PHONE: 404-832-1250  
FAX: 404-842-1755

NO REPRESENTATION IS MADE BY BROKER AS TO THE LEGAL EFFECT OR VALIDITY OF ANY PROVISION OF THIS REPRESENTATION AGREEMENT. A REAL ESTATE BROKER IS QUALIFIED TO GIVE ADVICE ON REAL ESTATE MATTERS. IF YOU DESIRE LEGAL, FINANCIAL OR TAX ADVICE, CONSULT YOUR ATTORNEY, ACCOUNTANT OR TAX ADVISOR.

BROKER BP SELLER *[Signature]*



IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: :  
2671CENTERVILLE HWY LLC : CASE NUMBER: 18-71822wlvh  
Debtor : CHAPTER 11

**CERTIFICATE OF SERVICE**


This is to certify that I have this day served the within and foregoing "MOTION", upon all parties to this action by depositing a true and complete copy of same in the United States Mail, with adequate postage thereon, addressed as follows:

Thomas Dworschak, Trustee  
Office of the US Trustee  
362 Richard Russell Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303

Will Rountree, Esq  
2800 North Druid Hills Rd  
Bldg B, Ste 100  
Atlanta, GA 30329

Mathew Schuh, Esq.  
Two Midtown Plaza, Ste 1350  
1349 W. Peachtree Street  
Atlanta, GA 30309

This 15<sup>th</sup> day of February 2019

  
/s/ Ian M. Falcone  
Ian M. Falcone  
GA Bar No. 254470  
Attorney for Debtor

THE FALCONE LAW FIRM, P.C.  
363 Lawrence Street  
Marietta, GA 30060  
(770) 426-9359  
imf@falconefirm.com

Label Matrix for local noticing  
113E-1  
Case 18-71822-wlh  
Northern District of Georgia  
Atlanta  
Fri Feb 15 14:32:15 EST 2019

2671 CENTERVILLE HWY, LLC  
3500 Lenox Road  
Suite 1500  
Atlanta, GA 30326-4231

6138 Jackson Hwy LLC  
3500 Lenox Road, Ste 1500  
Atlanta, GA 30326-4231

Thomas Wayne Dworschak  
Office of the U. S. Trustee  
Room 362  
75 Ted Turner Drive, SW  
Atlanta, GA 30303-3330

Ian M. Falcone  
The Falcone Law Firm, P.C.  
363 Lawrence Street  
Marietta, GA 30060-2056

Gwinnett County Tax Commission  
75 Langley Drive  
Lawrenceville, GA 30046-6935

Ian Hamilton  
4045 Maple Crest Court  
Winston, GA 30187-2061

Internal Revenue Service  
P. O. Box 7346  
Philadelphia, PA 19101-7346

Keriman Guven  
3396 Caverton Lane  
Alpharetta, GA 30022-4401

Kerlman Guven  
3396 Caverton Lane  
Alpharetta, GA 30022-4401

Mathew Schuh, Esq.  
Two Midtown Plaza, Ste 1350  
1349 W. Peachtree Street  
Atlanta, GA 30309-2917

Newton County Tax Commissioner  
1113 Usher Street Suite 101  
Covington, GA 30014-2470

William Anderson Rountree  
Rountree & Leitman, LLC  
2800 North Druid Hills Road  
Building B, Suite 100  
Atlanta, GA 30329-3987

Mathew A. Schuh  
Mathew A. Schuh, P.C.  
Suite 1350, Two Midtown Plaza  
1349 West Peachtree Street, NW  
Atlanta, GA 30309-2917

Secretary of the Treasury  
15th & Pennsylvania Avenue, NW  
Washington, DC 20200

U. S. Securities and Exchange Commission  
Office of Reorganization  
Suite 900  
950 East Paces Ferry Road, NE  
Atlanta, GA 30326-1382

United States Trustee  
362 Richard Russell Federal Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303-3315

Westfall Law  
4994 Lower Roswell Road, Suit  
Marietta, GA 30068-4332

Westmoore Lending Partners III  
c/o The Westmoore Group, LLC  
303 Perimeter Center N, Suite  
Atlanta, GA 30346-3401

Will Rountree  
2800 N. Druid Hills Rd  
Bldg B, Ste 100  
Atlanta, GA 30329-3987

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Keriman Guven

(u)Shopes at Centerville Highway, LLC

End of Label Matrix	
Mailable recipients	19
Bypassed recipients	2
Total	21