

**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
	:	

**EMERGENCY MOTION TO SELL REAL PROPERTY
VIA ONLINE COMMERCIAL AUCTION**

COMES NOW, the Debtor in Possession, 2671 CENTERVILLE HWY LLC., (hereinafter also referred to as “Movant” or “Debtor”), and files this Emergency Motion and Notice of Proposed Sale of Real Property, respectfully showing as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 USC §§ 157 and 1334. Venue is proper before this Court pursuant to 28 USC §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 USC § 157(b)(2). The statutory predicate for the relief sought in this Motion is § 363(b) and (f) of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) as contemplated by Rule 6004 of the Federal Rules of Bankruptcy Procedure.

Background- The Chapter 11 Case

2. On December 31, 2018 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code pursuant to §§ 1107 and 1108 of the Bankruptcy Code. The Debtor is continuing to operate as a debtor in possession. No trustee or examiner has been appointed in the Debtor’s Chapter 11 case.
3. A critical component to the success of the Debtor’s Chapter 11 case is the liquidation and sale of real property to pay debts. The Debtor proposes to sell 2671 Centerville Highway, Snellville, GA, (the “Property”), via commercial online auction.
4. The Debtor has filed an “Application to Retain Ten-X, Inc, to Market and Conduct

Auctions Pursuant to 11 USC §§327 and 327 and Application to Retain Franklin Street Real Estate Services, LLC as Listing Agent Pursuant to 11 USC §§327 and 327” (Doc 49).

5. The commercial auction is presently scheduled for February 27, 2019.
6. The Debtor estimates the fair market value of the property to be \$1,850,000.00
7. The reserve price for the sale of the Property is One Million Five Hundred Thousand Dollars (\$1,500,000.00) which amount is sufficient to pay 100% of all creditors of the Debtor.

Relief Requested

8. By this Motion, the Debtor seeks entry of an Order, pursuant to § 363 and §105 of the Bankruptcy Code, to sell the Property under the terms and conditions more specifically set forth below.
9. TEN-X, Inc. will conduct a commercial online auction with a reserve price on the Property of \$1,500,000.00 under the terms set forth in the agreement dated January 4, 2019 (the “Marketing Agreement”) (Exhibit A).
10. Franklin Street Real Estate Services, LLC will assist the sale as listing broker (the “Listing Broker”) under the terms set forth in the agreement dated November 13, 2018 (the “Representation Agreement”) (Exhibit B).
11. Ten-X, Inc. 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.
12. 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.”

13. 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.
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.
15. The Debtor proposes to remit all net proceeds after payment of normal, customary, and necessary realtor commissions, closing costs, taxes, consistent with the Marketing Agreement and Listing Agreement, to Shopes at Centerville, LLC and affiliated loan participants. Any remaining funds shall be remitted to Debtor’s counsel to be held in escrow pending further order of the Court.

Applicable Authority/ Basis For Relief Requested

16. 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 USC §363(b). Section 363(f) of the Bankruptcy Code provides that a debtor in possession may sell property under section 363(f) free and clear of any interest in such property of an entity other than the estate upon certain conditions. *See* 11 USC §363(f).
17. It is well-settled that a debtor in possession may sell assets out of the ordinary course of business pursuant to §363(f) of the Bankruptcy Code if there is a sound business justification for doing so. *See, In re: Lion Corp.*, 722 F2d 1063, 1070 (2nd Cir. 1983); *In re: Naron & Wagner, Chartered*, 89 BR 85 (Bankr. D. Md 1988); *see also, McDow v Official Committee of Equity Security Holders of Criimi Mae, Inc.* 247 BR 156 (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”).

18. The sale of the Property is integral to the Debtor’s Chapter 11 bankruptcy case and to fulfill its obligations under contemplated plan of repayment and reorganization. So long as the Debtor continues to own the Property, it is incurring obligations for property taxes, insurance, and maintenance costs. In addition, as landowner, the Debtor is subject to potential lawsuits for premises liability on the property. Disposition of the Property will provide needed cash to the estate and reduce the debt obligation owed, thereby permitting the Debtor to restructure the remaining debt obligations.
19. The Debtor has conducted an investigation of the Property and has evaluated its option regarding ongoing operations versus its sale. As a result thereof, the Debtor believes that the sale by commercial online auction, represents the best interests and course of action for the estate.

WHEREFORE, Debtor prays for the following relief:

- a) That the Court, after due notice to all interested parties, grant an Order authorizing Debtor’s Motion to Sell Real Property under the terms outlined herein, and allowing the Debtor to remit the net proceeds to Shopes at Centerville, LLC and affiliated loan participants. Any remaining funds shall be remitted to Debtor’s counsel to be held in escrow pending further order of the Court.
- b) For such other and further relief as this Court may deem just and appropriate.

This 19th day of February 2019

Respectfully submitted,

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

The Falcone Law Firm, P.C.
363 Lawrence Street
Marietta, GA 30060
(770) 426-9359
imf@falconefirm.com

**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

CERTIFICATE OF SERVICE


This is to certify that I have this day served the within and foregoing “EMERGENCY MOTION TO SELL REAL PROPERTY”, 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
AND VIA EMAIL:
thomas.w.dworschak@usdoj.gov

Will Rountree, Esq
2800 North Druid Hills Rd
Bldg B, Ste 100
Atlanta, GA 30329
AND VIA EMAIL:
wroundree@randllaw.com

Mathew Schuh, Esq.
Two Midtown Plaza, Ste 1350
1349 W. Peachtree Street
Atlanta, GA 30309
AND VIA EMAIL: matt@schuhpc.com

This 19th 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@falconfirm.com

Label Matrix for local noticing
113E-1
Case 18-71822-wlh
Northern District of Georgia
Atlanta
Tue Feb 19 10:45:39 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 A. 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



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/tenx101012019/> ("Standard Terms").

I. SELLER AND PROPERTY INFORMATION	
(a) Seller (legal entity or individual, as applicable)	2671 Centerville Hwy LLC
(b) Site Contact	Name: <u>Yochanon 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 http://mihdocs.com/legal/OfferSelectAddendum.pdf , 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 http://mihdocs.com/legal/CommercialPSA1012019.pdf , 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 http://mihdocs.com/legal/agencydisclosures/Ten-X/Georgia.pdf



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

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

(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	Ten-X, Inc.
By <u>Sabi Varon</u> DocuSigned by: 82E80567941D4A8	By <u>Scott Reid</u> DocuSigned by: F655F4A8300A
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
Email: sabivaron@highlandfinancialgrp.com	Attention: Legal Department legal-notice@ten-x.com
Telephone: 770-730-1707	(800) 793-6107



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 THE 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 CLOSES 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 A



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 MARKETING 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 LENGTHLY 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 BP SELLER [Signature]



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

RR

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 HEREBUNDER 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 X



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:
DATE:

[Handwritten signature]
11/13/18

ADDRESS:

PHONE:
FAX:
EMAIL:

BROKER: FRANKLIN STREET

BROKER
PRINT:
DATE:

[Handwritten signature: Bryan Belk]
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 X