

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
Baltimore Division**

**In re:**

**BAIA, LLC *et al.*,**

**Debtors.**

**Case Nos. 16-26941 and 16-26944-DER**

**(Jointly Administered under case no.  
16-26941-DER)**

**Chapter 11**

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**MOTION FOR ORDER (A) AUTHORIZING SALE OF CERTAIN  
REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES  
AND OTHER INTERESTS; (B) APPROVING PURCHASE AGREEMENT;  
(C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES  
IN CONNECTION THEREWITH; AND (D) GRANTING RELATED RELIEF**

BAIA, LLC (“BAIA”) and Ridgeville Plaza, Inc. (“Ridgeville”), Debtors and Debtors-in-Possessions (collectively the “Debtors”), through undersigned counsel, hereby move this Court for entry of an order (a) pursuant to 11 U.S.C. § 363(f), Fed. R. Bankr. P. 6004 and Local Rule 6004-1, authorizing the Debtors to sell certain improved commercial real property along with furniture, fixtures and equipment used in connection with the real property free and clear of all liens, claims, encumbrances and interests; (b) approving that certain Purchase Agreement (defined below); (c) pursuant to 11 U.S.C. § 365, Fed. R. Bankr. P. 6006 and Local Rule 6006-1, authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; and (d) granting related relief (the “Motion”), and, in support thereof, states as follows:

**Jurisdiction**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).

3. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 363, 365, Rules 2002, Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 6004-1 and 6006-1.

### **Factual Background**

4. On December 30, 2016 (the “Petition Date”), the Debtors commenced voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). The Debtors requested authority for their cases to be jointly administered pursuant to Bankruptcy Rule 1015.

5. The Debtors intend to continue in possession of their property and the management of their respective businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

#### **A. The Debtors’ Properties**

6. BAIA owns and leases improved commercial real property located at 1311 S. Main Street, Mt. Airy, Maryland 21771 (the “1311 Main Street Property”) and 1401 S. Main Street, Mt. Airy Maryland, 21771 (the “1401 Main Street Property”) (the 1311 Main Street Property and the 1401 S. Main Street Property are collectively referred to as the “BAIA Properties”).

7. Ridgeville owns and leases improved commercial real property located at 206, 208 and 210 East Ridgeville Blvd., Mt. Airy, Maryland 21771 (collectively, the “Ridgeville Properties”).

8. By this Motion, the Debtors seek approval to sell the 1401 Main Street Property and the Ridgeville Properties (collectively, the “Subject Properties”). The Debtors do not seek approval, by this Motion, to sell the 1311 Main Street Property.

9. BAIA and Ridgeville may be the owner of certain intangible personal property used in connection with the Debtors’ ownership, maintenance or operation of the Subject Properties (the “Personalty”) (the Personalty, together with the Subject Properties, the “Assets”).

10. In addition to the Subject Properties, the Personalty and other related property, the Debtors are parties to certain unexpired leases and executory contracts, which the Debtors seek authority to assume and assign to the Purchaser (as that term is defined below).

**B. The Secured Claims**

11. The Subject Properties are encumbered by the following secured claims:

**1401 Main Street Property**

1<sup>st</sup> Priority Lien: SF IV Bridge IV, LP: Disputed Claim of \$15,235,403.71  
2<sup>nd</sup> Priority Lien: Deborah Ann Mielke/Holly Eugenia Hubble: Appr. \$275,000.00  
3<sup>rd</sup> Priority Lien: United Bank: \$919,254.00

**Ridgeville Properties**

1<sup>st</sup> Priority Lien: SF IV Bridge IV, LP: Disputed Claim of \$15,235,403.71 (Cross-Collateralized with 1401 Main Street Property)  
2<sup>nd</sup> Priority Lien: United Bank: \$919,254.00 (Cross-Collateralized with 1401 Main Street Property)

12. In addition to the foregoing secured creditors, BAIA is indebted to Carroll County, Maryland on account of real property taxes in the estimated amount of \$107,862.18. Ridgeville Plaza is also indebted to Carroll County on account of real property taxes in the estimated amount of approximately \$43,000.00.

**C. The Marketing Process**

13. Prior to the Petition Date, the Debtors retained Marcus and Millichap Real Estate Investment Services, Inc. (“Marcus & Millichap”) to market the Debtors’ properties, including

the Subject Properties. The Debtors retained Marcus & Millichap post-petition, who contacted potential buyers, distributed marketing materials and widely exposed the Subject Properties to the marketplace, receiving expressions of interest from multiple buyers. The highest and best offer obtained for the Subject Properties through such marketing efforts was \$7,000,000.00.

**D. The Purchase Agreement<sup>1</sup>**

14. On or about June 30, 2017, the Debtors entered into a Purchase Agreement with Ken Talati, on behalf of an entity to be formed (the “Purchaser”), to sell the Assets and other rights, titles and interests for Seven Million Dollars (\$7,000,000.00) (the “Purchase Agreement”). A copy of the Purchase Agreement is attached hereto as “**Exhibit A.**”

**15. The Purchase provides for, *inter alia*, a thirty (30) day Due Diligence Period. The Due Diligence begins upon the provision of certain due diligence documents to the Purchaser, which have commenced. Upon expiration of the Due Diligence Period satisfactory to the Purchaser, Bankruptcy Court approval is required as a condition of closing.**

**16. The sale of the Subject Properties will result in insufficient funds to pay lien holders in full. After customary closing costs, the proceeds from the sale of the Subject Properties will be paid to satisfy unpaid property taxes securing the Subject Properties, with the balance to be paid at Closing to SF IV Bridge IV, LP.**

**17. The Purchaser is not an insider of the Debtors.**

**18. As described above, due to the extensive pre-petition marketing efforts and negotiations between the Debtors and the Purchaser, the Debtors do not believe that further marketing efforts will yield a higher and better offer and that the Court should**

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<sup>1</sup> A proposed Order approving this Motion is attached. **Creditors and Parties-in-Interest are strongly advised to review the Motion and proposed Order.**

**approve the Purchase Agreement without delay. Notwithstanding the foregoing, the Debtors have served this Motion and notice of the Motion on parties that have expressed an interest in the Subject Properties, advising parties that they may submit a higher and/or better offer for the Subject Properties prior to the hearing on this Motion.**

**Relief Requested**

19. The Debtors request approval to sell the Assets, and to enter into the Purchase Agreement with the Purchaser, whereby the Purchaser will acquire the Assets pursuant to Sections 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006 and Local Rules 6004-1 and 6006-1.

20. The Debtors assert that the Assets were fully marketed and the purchase price to be paid by the Purchaser under the Purchase Agreement is fair and reasonable and reflects the highest and best value for the Assets.

**The Purchase Agreement**

21. The following is a summary of the salient terms of the Purchase Agreement:<sup>2</sup>

**Assets to be Sold:** At the Closing the Seller shall transfer to the Purchaser, free and clear of all liens, claims, interests, and encumbrances of every kind, all of the Assets, including, without limitation, the Subject Properties and the Personality.

**Purchase Price:** Purchaser agrees to pay to the Seller, and the Seller agrees to accept payment of Seven Million Dollars (\$7,000,000.00) (the "Purchase Price").

**Deposit:** As of the date of this Motion, Purchaser has deposited One Hundred, Fifty Thousand Dollars (\$150,000) with the Escrow Agent. The Escrow Agent shall hold the deposit in accordance with the terms of the Agreement of Sale and the Escrow Agreement.

**No Assumed Liabilities:** Purchaser shall not assume any of the Seller's debts, liabilities and other obligations with respect to the Assets and Seller shall continue to be responsible for such liabilities, other than (i) those arising after the Closing under any contract that Purchaser specifically assumes under the Purchase Agreement; and (ii) other liabilities, if any, specified in the Purchase Agreement.

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<sup>2</sup> The transaction contemplated by the Purchase Agreement and described herein shall be referred to as the "Sale".

**Assigned Contracts:** Schedule 9(c) to the Purchase Agreement enumerates the unexpired leases and other executory contracts, if any, to be assigned to the Purchaser as well as any amounts proposed to cure existing monetary defaults.

**Relief from Bankruptcy Rule 6004(h):** Pursuant to Bankruptcy Rules 7062, 9014, and 6004(h), the Debtor seeks authority for the Sale Order to be effective immediately upon entry.

**Authority to Sell, Assume and Assign**

**A. The Sale is Supported by Sound Business Judgment and Should be Approved**

22. Pursuant to Section 363(b)(1) of the Bankruptcy Code, after notice and a hearing a debtor-in-possession may use, sell or lease property of the estate other than in the ordinary course of business. This Court has held that transactions should be approved under Section 363(b)(1) of the Bankruptcy Code when they are supported by a sound business reason. *In re Naron & Wagner, Chartered*, 88 B.R. 85, 87 (Bankr. D. Md. 1988). *See also Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *In re Gulf State Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002). In reviewing such a proposed transaction, courts should give substantial deference to the business judgment of the debtor-in-possession. *See e.g., Esposito v. Title Inc. Co. of Pa. (In re Fernwood Mkts)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987).

23. The Sale serves a sound business purpose and should be approved. The Debtors submit, based on the exercise of its business judgment, that the terms of the Purchase Agreement are fair and reasonable. Further, the Sale of the Assets pursuant to Section 363 of the Bankruptcy Code will return a greater benefit to the Debtors' estates and their respective creditors than any of the alternatives, including a sale at a later date or foreclosure. The

proposed prompt sale under Section 363 has the advantage of allowing the Assets to be sold intact, thereby allowing the Debtors to receive a purchase price that reflects its enterprise value despite the Debtors' Chapter 11 filing.

24. Unless the Debtors are able to consummate the Sale through the process described herein, the Assets could be subject to a forced liquidation by SF. Thus, approval of the Sale provides the Debtors the ability to maximize the value of the Assets through an orderly court-monitored sale process and minimize the Debtors need to incur further additional debt and administrative expenses by continuing to operate the hotel and related enterprises. Accordingly, the Debtors believe that the Sale is the best way, at this time, to maximize the value of the Assets.

25. Based on the foregoing, the Debtors submit that the Sale is in the best interest of the Debtors, their estates and creditors, and is based upon sound, reasoned and informed business judgment warranting this Court's approval. *See In re Naron & Wagner, Chartered*, 88 B.R. at 87; *In re Lionel Corp.*, 722 F.2d at 1071; *In re Gulf State*, 285 B.R. at 514.

**B. The Sale Price is Fair and Reasonable**

26. The proposed sale to the Purchaser reflects the highest and best price for the Assets that the Debtors have been able to secure to date. Indeed, as discussed above, the Debtors entered into a pre and post-petition marketing process and, after extensive marketing, were able to find a buyer for the Subject Properties. The Purchase Agreement is the product of those negotiations. As a result of those efforts, the Debtors believe the Sale and the Purchase Price provide for fair and reasonable consideration to be received for the Assets.

**C. The Sale Terms Were Negotiated in Good Faith**

27. The Purchase Agreement is the product of good faith, arm's-length negotiations between the Debtors and the Purchaser and is on commercially reasonable terms. The Debtors and the Purchaser, and their respective professionals, negotiated the terms of the Purchase Agreement over the course of several weeks. The Purchaser is not affiliated with the Debtors or any associated entity. All negotiations were undertaken in good faith and in compliance with the Bankruptcy Code. Accordingly, the Debtors request a finding that the transaction contemplated by the Agreement of Sale is (a) subject to the protections afforded to "good faith" purchasers under Section 363(m) of the Bankruptcy Code, and (b) not subject to avoidance under Section 363(n) of the Bankruptcy Code.

**D. The Sale Should be Free and Clear of All Liens, Claims, Encumbrances and Interests**

28. Pursuant to Section 363(f) of the Bankruptcy Code, the debtor-in-possession may sell property free and clear of any interest in such property of an entity other than the estate if (1) permitted under applicable non-bankruptcy law, (2) the party asserting such interest consents, (3) the interest is a lien and the purchase price of the property is greater than the aggregate amount of all liens on the property, (4) the interest is subject of a bona fide dispute, or (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

29. Section 363(f) of the Bankruptcy Code is stated in the disjunctive. *See In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that Section 363(f) is written in the disjunctive, accordingly courts may approve sales free and clear provided at least one of the subsections is met). Thus, it is only necessary for the Debtors to satisfy one of the five conditions of Section 363(f).



30. The Debtors believe they will be able to satisfy at least one of the elements of Section 363(f) of the Bankruptcy Code. Moreover, any lien, claim, encumbrance or interest in the Assets that exists immediately prior to the closing of the proposed sale will attach to the sale proceeds with the same validity, priority, force and effect as it has at such time.

**E. Assumption and Assignment of the Executory Contracts and Unexpired Leases**

31. The Debtors are parties to certain executory contracts and unexpired leases used in the operation of the Assets, including various tenant leases and executory contracts, which are set forth in Schedule 9(c) to the Purchase Agreement (the “Assigned Contracts”). The Debtors will make all cure payments, if any, as required by Section 365 of the Bankruptcy Code for the Assigned Contracts.

32. Section 365(a) of the Bankruptcy Code authorizes a debtor-in-possession to assume or reject an executory contract or unexpired lease subject to the Bankruptcy Court’s approval. The standard that is applied in determining whether an executory contract or unexpired lease should be assumed or rejected is the debtor’s “business judgment” that assumption or rejection is in its economic best interest. *Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d. Cir. 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

33. Section 365(b) of the Bankruptcy Code requires a debtor-in-possession to satisfy certain requirements at the time of assumption if a default exists under the contracts to be assumed. 11 U.S.C. § 365(b). The Debtors assert that the assumption and assignment of the Assigned Contracts is in their economic interest because each of the Assigned Contracts are necessary for the continued operation of the Subject Properties and without which the value of the Assets would decline.

34. For each Assigned Contract, one of the Debtors will pay all cure costs as determined by the Court or as agreed by the parties to be payable to the non-debtor party thereto in accordance with section 365 of the Bankruptcy Code.

35. The Purchaser has the financial capabilities and other qualifications necessary to satisfy any and all obligations it may incur in connection with the Assigned Contracts and thereby provide the non-debtor party to the Assigned Contracts adequate assurance of future performance.

36. The Assigned Contracts may contain provisions that purport to limit the assignment of the individual agreements. Because the Bankruptcy Code provides that such provisions are either unenforceable or may be satisfied by other means established under the Bankruptcy Code, the Debtors request that the assumption and assignment of the Assigned Contracts be permitted without regard to such provisions. *See* 11 U.S.C. § 365(f); *see also In re Lil' Things, Inc.*, 220 B.R. 583, 591 (Bankr. N.D. Tex. 1988) (“[Section] 365(f)(1) states the general rule that a trustee or debtor-in-possession may assign an executory contract notwithstanding ‘applicable law’ that prohibits assignment”).

37. In order for the Debtors to offer the Purchaser the highest degree of certainty with regard to the possible acquisition of the Assigned Contracts in the proposed sale, the Debtors request that any non-debtor party to the Assigned Contracts failing to object to the proposed assumption and assignment of its Assigned Contract be deemed to consent to the treatment under Section 365 of the Bankruptcy Code and this Motion including, but not limited to, the cure amounts or lack of defaults or arrearages, and to be bound by the Assigned Contracts, as set forth in the proposed order approving this motion. Moreover, the Debtors request that each non-debtor party thereto be deemed to consent to the assumption and assignment of its Assigned

Contract notwithstanding any anti-alienation provision or other restriction on assignment. *See* 11 U.S.C. § 365(c)(1)(B), (e)(2)(A)(ii) and (f).

38. In addition, pursuant to Section 365(k) of the Bankruptcy Code, the Debtors request that they be relieved from any further liability with respect to the Assigned Contracts after assumption and assignment to the Purchaser. 11 U.S.C. § 365(k).

### **CONCLUSION**

39. The Debtors believe that the proposed sale is in the best interest of the creditors of the bankruptcy estates.

40. In the event the Agreement of Sale does not close, the Debtors, through their broker, intend to continue to market the Subject Properties.

41. Notwithstanding the foregoing, the Debtors will continue to market the Subject Properties and solicit higher and better offers through and until approval of the Purchase Agreement by the Court.

WHEREFORE, Debtors BAIA, LLC and Ridgeville Plaza, Inc. move for the entry of an Order substantially in the form attached hereto:

- A. Approving the Purchase Agreement;
- B. Authorizing the sale of the Property free and clear of all liens, encumbrances, or interests of any party;
- C. Authorizing the Debtors to take any all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said sale of the Property free and clear of all liens, encumbrances, or interests, including without limitation, executing a deed conveying the interests of the Debtors to the Purchaser;

- D. Authorizing the Debtors to assume the assign the Assigned Contracts pursuant to sections 363 and 365 of the Bankruptcy Code;
- E. Authorizing the Debtors to reject the Rejected Contracts;
- F. Finding that the Purchaser is a good faith purchaser and is protected by the provisions of Section 363(m) of the Bankruptcy Code;
- G. Granting such other and further relief as is just and proper.

Respectfully submitted

MCNAMEE HOSEA JERNIGAN KIM  
GREENAN & LYNCH, P.A.

/s/ Steven L. Goldberg

James M. Greenan (Fed Bar No. 08623)

Steven L. Goldberg (Fed Bar No. 28089)

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*Counsel to the Debtors*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 30th day of June, 2017, a true and correct copy of the foregoing Motion (a) Authorizing Sale of Certain Real Property Free and Clear of All Claims, Encumbrances and Other Interests; (b) Authorizing Assumption and Assignment of Certain Executory Contracts in Connection Therewith; and (c) Granting Related Relief has been furnished by first class mail, postage prepaid, or via electronic transmission to:

By Electronic Mail

Office of the United States Trustee (**Katherine.A.Levin@usdoj.gov**)  
Katherine Levin, Esquire  
101 W. Lombard Street  
Baltimore, Maryland 21201

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Arby's  
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Atlanta, Georgia 30338

Global Smart Investment, DBA Paradise  
25013 Johnson Farm Road  
Laytonsville, MD 20882

Mary, LLC d/b/a Subway  
9162 Belvedere Drive  
Frederick, MD 21704

Point to Point Land Surveyors, Inc.  
1010 Pennsylvania Avenue  
McDonough GA 30253

Thrivent Financial  
208 E. Ridgeville Blvd, Suite 201  
Mount Airy, MD 21771

CMT Advisory  
208 E. Ridgeville Blvd, Suite 201  
Mount Airy, MD 21771

Schaefer Construction  
208 E. Ridgeville Blvd, Suite 202  
Mount Airy, MD 21771

Movement Mortgage  
208 E. Ridgeville Blvd, Suite 203  
Mount Airy, MD 21771

Mount Airy Inn, LLC  
P.O. Box 772  
Mount Airy, MD 21771

Chung & Quyen T. Vu Barber Shop  
1401 S. Main Street, Suite B  
Mount Airy, MD 21771

Chung & Quyen T. Vu Barber Shop  
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Monrovia, MD 21770

MKSP LLC  
d/b/a Dunkin Donuts  
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Clarksville, MD 21029

ASG Security  
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Beltsville, MD 20705

Cintas  
P.O. Box 630803  
Cincinnati, OH 45263

Glessner Alarm & Communications  
1216 Sherman Avenue  
Hagerstown, MD 21740-7153

Kone Elevator  
P.O. Box 429  
Moline, IL 61266

Tyco Integrated Security  
10405 Crosspoint Blvd  
Indianapolis, IN 46256

Comcast Business  
P.O. Box 3006  
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Fidelity Engineering  
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Stoner, Preston & Boswell, Chtd.  
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Westminster, Maryland 21158

All parties on the attached mailing matrix and any party who expressed interest in the Subject Properties

/s/ Steven L. Goldberg  
Steven L. Goldberg

**PURCHASE AGREEMENT**

This Purchase Agreement (the "Agreement") is by and between BAIA, LLC, a Maryland Limited Liability Company, and Ridgeville Plaza, Inc. (herein referred to as "Seller"); and Ken Talati and or his assigns to be Formed in State of Maryland (herein referred to as "Buyer" or "Purchaser").

*Shree Properties LLC*

**WITNESSETH:**

1. **Property.** Seller agrees to sell and Buyer agrees to buy at the price and upon the terms and conditions herein set forth that certain parcel of land located at 1401 South Main Street, Mount Airy, Maryland 21771 (Tax Map 0602, Grid 0007, Parcel 1149); 206 and 208 East Ridgeville Blvd (Tax Map 0602, Grid 0014, Parcels 1133 and 1134); 210 East Ridgeville Blvd (Tax Map 0602, Grid 0014, Parcel 1135); and Outlot A, (Tax Map 0602, Grid 0014, Parcel 0150) together with any and all buildings, improvements, appurtenances, rights, privileges, easements and other property interests existing thereon and benefiting, belonging or pertaining thereto, as well as those items of personal property, fixtures and equipment as are used in connection with the real property and are customarily located on or in the real property (herein collectively, referred to as the "Property").
2. **Purchase Price.** The purchase price (the "Purchase Price") for the Property shall be Seven Million Dollars (\$7,000,000.00). The Purchase Price shall be payable as follows:
  - a. The sum of One Hundred Fifty Thousand Dollars (\$150,000) shall be paid by Buyer to Stoner Preston Boswell Chartered (the "Escrow Agent"), by immediately available funds upon the execution of this Agreement by both parties, to be held by Escrow Agent in a federally insured (interest) bearing escrow account in accordance with the terms hereof as an earnest money deposit (the "Deposit"). The Deposit shall be refundable for any reason prior to the expiration of the Due Diligence Period. If Buyer has not terminated this Agreement by written notice prior to 5:00 pm on the final date of the Due Diligence Period, as defined in Section 6 below, the Deposit shall not be refundable except in the event of a default by Seller.
  - b. The balance of the Purchase Price (subject to adjustment for closing expenses and prorations as herein provided) in the sum of Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000.00) shall be paid by Buyer to Seller by immediately available funds at Closing hereunder. Likewise, Escrow Agent shall release to Seller the Deposit at Closing hereunder.
3. **Closing.** The closing of the sale and purchase of the Property (the "Closing") shall be held no later than the date that is thirty (30) days following the expiration of the Due Diligence Period, unless extended to permit Seller to cure the objectionable title exceptions. Seller agrees to deliver title and possession of the Property to Buyer at Closing by Special Warranty deed, free and clear of all liens and encumbrances of any kind or description except the Permitted Title Exceptions (defined below).
4. **Title.**
  - a. Buyer shall examine title to the Property during the Due Diligence Period to determine whether the same is good and marketable and can be insured by a recognized title insurance company of its choice at standard rates for the amount of the Purchase Price,

*[Handwritten signature]*

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subject only to title exceptions that do not materially and adversely affect the Buyer's Intended Use of the Property (the "Permitted Title Exceptions"). Permitted Exceptions shall not include any mechanic's lien or any monetary lien, except for taxes and special assessments not yet due and payable, or any deeds of trust, mortgages, or other loan documents secured by the Property, which Purchaser has not agreed to assume.

- b. Buyer's obligation to close is conditioned on title to the Property at Closing being insurable at standard rates, and subject only to "permitted exceptions" that are mutually agreed upon in good faith by Seller and Buyer as of the end of the Due Diligence Period.
5. **Condemnation.** In the event that at any time prior to Closing all or a portion of the Property is acquired by authority of any governmental agency in the exercise of its power of eminent domain or by private purchase in lieu thereof, Buyer shall have the right to terminate this Agreement by giving written notice to Seller. In such event, Escrow Agent shall forthwith return to Buyer the Deposit and no party shall have any further rights against, or obligation to, any other party except those that expressly survive termination of this Agreement. Seller agrees not to solicit condemnation. If Buyer accepts the Property following a condemnation, Buyer shall pay the Purchase Price to Seller, Seller shall assign to Buyer all of Seller's rights in and to the proceeds of the condemnation, and the Purchase Price shall be reduced only by the amount of any awards or damages owed to or received by Seller.
6. **Due Diligence Period.** Buyer and/or its agents and employees shall have Thirty (30) days commencing on the later of a) the Effective Date or b) receipt of all the Property Documents as defined below to review all materials available and conduct inspections of the Property (the "Due Diligence Period"). The Effective Date of this Agreement shall be the day after the date that this Agreement is signed by Purchaser and Seller as reflected on the signature page. On or before the Effective Date, Seller shall provide Purchaser with copies of all information in its possession or available to it relating to the Property which Purchaser may reasonably request, including but not limited to copy of any ALTA survey and Owner's Title Insurance Policy respecting the Property, copies of all deeds, easements, restrictions, service contracts, any environmental reports, engineering reports, architectural plans or other plans or studies in Seller's possession relating to the Property, all maintenance and repair records maintained by the Seller respecting the buildings within the Property or any portion thereof, all operating expenses, any subordination, non-disturbance and attornment agreements, all rent records, and/or histories documenting payments by tenants under any lease or leases respecting any portion of the Property all of which Seller warrants and represents are freely assignable to Purchaser, collectively referred to as the "Property Documents." During the Due Diligence Period, Buyer may begin its physical review. In the event that any of Buyer's studies indicate that the Property, in Buyer's sole and absolute discretion, is not suitable for its intended use, then Buyer may terminate this Agreement by providing written notice to Seller on or before 5:00 PM on the last day of the Due Diligence Period in which event the Buyer shall also be entitled to the return of the Deposit and no party shall have any further rights against or obligations to any other party.
7. **Physical Review.** Buyer and/or its agents and employees shall have Thirty (30) days from the full ratification of this Agreement to enter the Property with Seller's representative from time to time for the purpose of performing surveys, examinations, environmental assessments, tests and borings as Buyer may determine to be necessary and desirable, so long as such studies do not result in a material change in the present character of the Property or any damage to any improvements

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located on the Property. Any discussions with any tenant or any tenant representative and employees shall be conducted in the presence of Seller's representative. Buyer agrees that it will not perform any physically intrusive tests on the Property without Seller's prior written consent which shall not be withheld, conditioned or delayed. Prior to entry upon the Property, Buyer or Buyer's contractor shall deliver to Seller evidence reasonably satisfactory to Seller that Buyer has obtained commercial general liability insurance in an amount of not less than One million (\$1,000,000) and written on such forms as are reasonably acceptable to Seller, naming Seller as an additional insured, with respect to the Property. Buyer shall indemnify and defend Seller from all claims and liability for personal injury, death and property damage to all or any part of the Property by Buyer or third parties arising from any of the activities described herein, which Indemnity shall specifically survive Closing hereunder or termination of this Agreement. Buyer shall restore the Property to substantially the same condition in which it existed prior to Buyer conducting any such inspections. No inspections of areas deemed to be "critical" or "secured" by the tenant(s) shall be allowed.

If Buyer terminates the Agreement prior to the end of the Due Diligence Period, then in such event, no party shall have any further rights against or obligations to, any other party, except as expressly set forth herein. In such event, Buyer shall furnish to Seller copies of all reports and studies relating to the Property that are not proprietary to Buyer.

8. Risk of Loss; Pro-rations.

- a. The risk of loss or damage by fire or other casualty shall be and remain the responsibility of Seller until Closing. If between the end of the Due Diligence Period and Closing, the Property sustains any damage, either structurally, environmentally or otherwise in an amount to repair not to exceed One Hundred Thousand Dollars (\$100,000) (the "Damage Cap"), then Seller either [1] will repair same before closing or warrant and accomplish said repair as quickly as possible, but no later than thirty (30) days after Closing with written documentation for such work at Closing if required by Buyer and appropriate escrows to be held by the Escrow Agent to ensure that the work is done and paid for, or [2] assign to Buyer the Seller's insurance proceeds (plus pay Buyer the amount of any applicable insurance deductible) and, in that event, Seller shall be relieved of any obligation to repair the Property, and Buyer shall be responsible for repairing such damage. To the extent the damage exceeds the Damage Cap as reasonably determined by the Buyer, then the Buyer shall have the option of terminating the Agreement by so notifying the Seller in writing in which event the Buyer shall also be entitled to the return of the Deposit and no party shall have any further rights against or obligations to any other party.

- b. Taxes, rents and other apportionable items, if any, are to be pro-rated as of the date of Closing. Each party shall be responsible for its own legal fees in connection with the Closing. Seller shall pay the cost of preparation of the deed, for release of any liens on the Property. Buyer and Seller shall pay equally all other costs and fees which may be required relating to the transfer of title taxes and Recordation Taxes including but not limited to, the cost of recording the deed. *If the Property or any part thereof is subject to any zoning tax, roll-back tax, land or agricultural tax, [unclear]*

9. Deliveries at Closing. Seller shall deliver to Buyer at or before Closing the following all of which shall be in a form reasonably acceptable to the Buyer or the Escrow Agent:

- a. A Special Warranty deed;

*Buyer shall be responsible for and pay any such tax unless waived by applicable provisions of the Bankruptcy Code.*

*Subject to any zoning tax, roll-back tax, land or agricultural tax, [unclear]*

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- b. A Bill of Sale conveying all right, title and interest in any equipment or personal property planned to be conveyed with the Property to the Buyer;
- c. An Assignment of Leases conveying all of Seller's interest as Landlord in the lease(s) of the Property, including any security deposits, to Buyer;
- d. Originals, or if unavailable, certified copies of all Leases in full force and effect;
- e. (i) architectural and engineering plans, specifications and reports relating to the Property, (ii) agreements for service and other matters relating to the Property (except for those with entities affiliated with Seller), and (iii) licenses, permits, governmental approvals and similar items relating to the Property (together with the original documents evidencing all of the items referred to in clauses (i), (ii) and (iii));
- f. A Seller's affidavit as to mechanic's liens and possession as required by Buyer's title insurance company;
- g. A non-foreign affidavit;
- h. The information required to file a Form 1099 with the Internal Revenue Service, if one is required;
- i. An owner's affidavit and such other documents customarily required by the Escrow Agent in their capacity as a title company;
- j. The Seller shall also terminate as of the Closing Date any and all service contracts with regard to the Property as so requested by the Purchaser in writing; and

*[Handwritten signature]*

*Land on assignment of Contracts requested by Buyer, as set forth in Schedule 9(c)*

k. A closing settlement statement.  
 l. A sale order shall have been entered by the Bankruptcy Court, and such order shall be final and non-appealable and not subject to any stay.

*[Handwritten signature]*

**10. Seller's Warranties and Environmental Matters.**

Seller warrants as follows:

- a. Seller is validly organized and existing and is currently in good standing with all state, federal and local governing agencies. Seller is the fee simple owner of the Property and the person signing this Agreement has the full and complete power and authority to do so and to bind Seller to the provisions contained herein. That Seller has full right and authority to sell the Property in accordance with the terms of this Agreement;
- b. There is no lease, *(other than those set forth in Schedule 9(c))* outstanding option, or purchase agreement for all or any portion of the underlying Property;
- c. To the best of Seller's knowledge, no underground storage tanks, asbestos containing materials, items or equipment containing polychlorinated biphenyls (PCBs) in excess of 50

*[Handwritten signature]*

*[Handwritten initials]*

parts per million, accumulation of tires, batteries, mining spoil, dry cleaning solutions or solvents, or other hazardous substances as defined by any federal, state and local law ("Hazardous Substances") are present on the Property;

- d. To the best of Seller's knowledge, during the period of Seller's ownership of the Property: (1) there has been no release, discharge or treatment of any Hazardous Substances on the Property; (2) there has been no storage, generation, or disposal of any Hazardous Waste (as defined by any federal, state and local law) or dangerous waste on the Property; (3) no petroleum products have been spilled or leached upon or in the Property; (4) no radon gas has been detected at the Property; (5) the Property has not been the subject of any federal, state or local governmental action or third party claim because of the release, threat of release, discharge, storage, treatment, generation emission or disposal of any substance on, in or from the Property;
- e. To the best of Seller's knowledge, there is no lien for environmental investigation or remediation, citizens suit or other litigation, administrative order or proceeding, investigation or settlement that is in existence, proposed or anticipated, concerning any environmental matter related to the Property;
- f. That Seller has received no notice from any governmental agency or authority of any violation or alleged violation with respect to the Property or any portion thereof;
- g. That there is no litigation pending or to Seller's knowledge threatened with respect to the Property or Seller's right to sell and convey the same in accordance with the terms of this Agreement;
- h. That Seller has no knowledge of any pending or threatened condemnation proceeding affecting all or any portion of the Property;
- i. To the best of Seller's knowledge, the Property is zoned for the improvements now situated on the Property and there are no restrictions affecting the use of the Property that would prohibit the use of the Property for the purposes for which it is presently used and that the uses presently being made of the Property are permitted uses within the zoning classification to which the Property is subject; and
- j. Seller has delivered to Purchaser true and complete copies of all Property Documents in its possession or reasonable control.

#### **11. Buyer's Warranties**

Buyer warrants as follows:

- a. Buyer is validly organized and existing and is currently in good standing with all state, federal and local governing agencies; and
- b. The person signing this Agreement has the full and complete power and authority to do so and to bind Buyer to the provisions contained herein.

- 12. Agency and Commissions.** Marcus and Millichap represents the Seller and is being paid by Seller pursuant to a separate Agreement. Buyer and Seller hereby represent and warrant to the other that it has not dealt with or through any agent other than the agent(s) named in the first sentence of this Section. Buyer and Seller shall indemnify and hold the other party harmless from any and all costs, expenses, claims and liabilities (including reasonable attorneys' fees) resulting from a claim by any agent not named herein. The terms of this Section shall survive closing hereunder. No Fees shall be paid to any Broker by Buyer other than the fee noted above.
- 13. Defaults.** In the event that Buyer shall fail to purchase the Property in violation of the terms and conditions of this Agreement, or otherwise default in the performance of Buyer's obligations pursuant to this Agreement for any reason whatsoever other than Seller's default, and after a Thirty (30) day notice and cured period, then Escrow Agent shall deliver the Deposit to Seller, as liquidated damages as Seller's sole and absolute remedy hereunder. In the event that Seller shall default in the performance of Seller's obligations hereunder for any reason whatsoever other than Buyer's default, then Buyer shall be entitled to exercise any of the following remedies, at Buyer's election, and no others: (i) purchase the Property notwithstanding such default pursuant to the remaining terms and provisions of this Agreement, in which event such default shall be deemed waived; or (ii) sue for specific performance; or (iii) terminate this Agreement and Buyer shall also be entitled to the return of the Deposit and no party shall have any further rights against or obligations to, any other party, except as expressly stated above. In the event of a default hereunder, the defaulting party shall pay the reasonable attorneys' fees and costs incurred by the non-defaulting party in enforcing the terms of this Agreement.
- 14. Notices.** All notices and communications hereunder, including change of address, shall be in writing and shall be deemed to have been duly given when delivered by hand; or deposited at the U.S. Postal Service by certified mail, first class, postage prepaid, return receipt requested; or sent for next day delivery via a recognized overnight courier service such as FedEx or UPS with charges billed to the sender at the address listed on the signature page of this Agreement.
- 15. Successors.** The parties to this Agreement mutually agree that it shall be binding upon them and each of their successors, heirs, personal representatives and assigns. No consent of Seller shall be required for an assignment by Buyer to an entity of which Buyer is a controlling principal. An assignment shall not be deemed to relieve the Buyer of its obligations hereunder. This Agreement contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions, warranties, or representations, oral or written, not herein contained. This Agreement may not be amended except by written agreement between the parties hereto.
- 16. Survival.** It is understood and agreed that any provision of this Agreement which by its nature and effect is required to be kept, observed or performed after the settlement, delivery and recording of the deed conveying title to Buyer as well as any representations or warranties shall survive Closing, delivery and recording of the deed hereunder for a period of twelve (12) months and shall not be merged therein.
- 17. Law Applicable.** This Agreement shall be construed in accordance with the laws of the State of Maryland.

18. **Condition of the Property.** Buyer acknowledges and agrees that, subject to the representations and warranties of Seller set forth in Section 10, upon Closing, Seller will sell and convey to Buyer, and Buyer will accept the Property, "AS IS, WHERE IS," with all faults. Buyer further acknowledges and agrees that, except as otherwise stated herein, there are no oral agreements, warranties or representations, collateral to or affecting the Property, by Seller, any agent of Seller or any third party. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein. Buyer acknowledges that the Purchase Price reflects the "as is, where is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Buyer's obligation to close is conditioned on the condition of the Property being the same at Closing, reasonable wear and tear excepted, as it is at the end of the Due Diligence Inspection Period. From and after the Effective Date, Seller shall not without the prior written consent of Purchaser, enter into any new service or other agreement relating to the Property (unless such other agreement is terminable on not more than thirty (30) days' notice).
19. **Electronic Signatures.** The parties hereby consent that electronic signatures of either or both parties shall be acceptable and equally enforceable as original ones on all documents in this transaction, including, but not limited to, this Agreement, notices and closing documents.
20. **Exchange.** The parties acknowledge that Seller or Buyer may wish to enter into a like kind exchange (either simultaneous or deferred) with respect to the Property (the "Exchanges") pursuant to the applicable provisions of Section 1031 of the Internal Revenue Code of 1986, as amended. Notwithstanding anything to the contrary contained in this Agreement, Seller or Buyer shall have the right to assign its interest under this Contract without the other party's consent for the sole purpose of enabling the assigning party to effectuate the Exchange, including execution of any necessary acknowledgment documents; provided, however, that notwithstanding any such assignment, the exchanging party shall not be released from any of its liabilities, obligations or indemnities under this Contract; the other party shall cooperate in all reasonable respects with the assigning party to effectuate such Exchange.
21. **Other Provisions.**
- a. In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday or legal holiday, the applicable date or period shall be extended to the first business day following such Saturday, Sunday or legal holiday.
  - b. Buyer and Seller agree to provide the Escrow Agent their respective Taxpayer identification numbers upon written request from the Escrow Agent.

**THIS IS A LEGALLY BINDING AGREEMENT. IF ALL TERMS AND PROVISIONS HEREOF ARE NOT FULLY UNDERSTOOD, PLEASE SEEK LEGAL ADVICE.**

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Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and have caused their names to be hereunto subscribed on the day and year written below:

SELLER:

BAIA, LLC <sup>2</sup> Ridgewille Plaza INC.

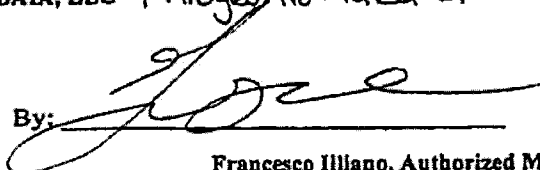
Date:

6/21/17

*corp*

6/30/17

By:



Francesco Illiano, Authorized Member

ADDRESS FOR SELLER NOTICES:

Address: PO Box 772  
Mt. Airy, MD 21771

BUYER:

LLC to be Formed in State of Maryland

Date:

6/21/17

*FR*

6/30/17

By:



Name: Ken Talati  
Title: Managing Member

ADDRESS FOR BUYER NOTICES:

Address: 1721 Reisterstown Road  
Pikesville, MD 21208

Effective Date of Agreement: Date Seller sign the Contract

*FR*  
*6/30/17*

**SCHEDULE 9(C)**

**Assigned Leases/Contracts**

1. All Tenant Leases Identified on the Attached List
2. The Buyer reserves the right to supplement or modify Schedule 9(c) to add one or more executory contracts, subject to notice to the counter-party of such contracts.

**Ridgeville Plaza**

**PNC**

The PNC Financial Services Group, Inc  
300 Fifth Avenue, 22nd Floor  
Mailstop-PT-PTWR-22-1  
Pittsburgh, PA 15222

**ARBY's**

Arby's  
1155 Perimeter Center West, 11th Floor  
Atlanta, GA 30338

**Paradise**

Global Smart Investment, DBA Paradise  
25013 Johnson Farm RD, Laytonsville, MD 20882

**Subway**

MARY LLC  
9162 Belvedere Dr, Frederick MD 21704

**Point-To-Point**

Point to Point Land Surveyors INC  
1010 Pennsylvania AVE, McDonough, GA 30253

<b>Thrivent Financial</b>	208 E.Ridgeville BLVD, Suite 201, Mount Airy, MD 21771
<b>CMT Advisory</b>	208 E.Ridgeville BLVD, Suite 201, Mount Airy, MD 21771
<b>Schaefer Construction</b>	208 E.Ridgeville BLVD, Suite 202, Mount Airy, MD 21771
<b>Movement Mortgage</b>	208 E.Ridgeville BLVD, Suite 203, Mount Airy, MD 21771
<b>BAIA</b>	
<b>Mount Airy INN</b>	Mount Airy Inn LLC PO BOX 772 Mount Airy, MD 21771
<b>Barber Shop</b>	Chung & Quyen T. Vu Barber Shop 1401 S.Main Street, Suite B Mount Airy, MD 21771 AND 11700 Weller Hill RD, Monrovia, MD 21770
<b>Dunkin Donuts</b>	MKSP LLC 12620 Clarksville Pike, Clarksville, MD 21029