

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**IN RE:** : **Case No. 17-30905**  
: **BCC Sandusky Permanent, LLC,** : **Chapter 11 Proceeding**  
: **Debtor.** : **Judge Mary Ann Whipple**

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**CHAPTER 11 TRUSTEE’S MOTION FOR AN ORDER PURSUANT TO SECTIONS  
105, 362, 363, 365, AND 1106 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES  
2002 AND 6004 (A) AUTHORIZING THE SALE OF ALL PARCELS OF THE DEBTOR’S  
REAL PROPERTY AND RELATED ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS  
AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN UNEXPIRED LEASES, (C) SCHEDULING A HEARING TO APPROVE THE SALE,  
(D) AUTHORIZING PAYMENT OF BROKER’S COMMISSION AND RELATED COSTS OF  
SALE AND (E) GRANTING RELATED RELIEF**

(The Real Property Includes: 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 And 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002)

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**NOW COMES** Richard D. Nelson, the duly appointed chapter 11 trustee (the “Trustee”) in the above-captioned case of BCC Sandusky Permanent, LLC (the “Debtor”), by and through his attorneys of record, who moves this Court for the entry of an order (a) authorizing the sale of all parcels of the Debtor’s real property commonly known as part of the “Crossings of Sandusky”<sup>1</sup> and as further describe on Exhibit A attached hereto and incorporated herein by reference (the “Property”) and related assets, free and clear of all liens, claims and encumbrances, (b) authorizing the assumption and assignment of certain unexpired leases, (c) scheduling a hearing to approve

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<sup>1</sup> The Property includes 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 and 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002.

the sale, (d) authorizing payment of Broker's commission and related costs of sale and (e) granting related relief (the "Motion"). In support of this Motion, Trustee respectfully represents as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and this motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are §§ 105(a), 362, 363(b), 363(f), 365, 502, 507 and 1106 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and by Rules 2002(a)(2), 1106, 6004, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **RELIEF REQUESTED**

3. By this Motion, the Trustee seeks entry of an order (the "Sale Order"): (a) authorizing the sale of the Property and related assets to the Property including as set forth in the APA at ¶ 1 (defined below) (i) all personal property, construction materials, supplies, fixtures, equipment and other personal property of every kind, character and description owned by Trustee located on, attached to, and used in connection with the Property, but excluding any personal property that is leased (the "Personal Property"), (ii) all cash or cash proceeds being held by Trustee or its agents and representatives, to include any property managers managing the Property, (iii) all roads, streets, alleys, water privileges, association rights and easements belonging or appurtenant to the Property; (iv) all buildings, fixtures, mechanical systems and other improvements located on the Property; all Trustee's interest, as landlord, in the written leases and tenancies granting any leasehold interest in the Property (including all amendments, supplements, guaranties) if any, together with all security deposits and letters of credit in Trustee's or Trustee's representatives' possession or control due to the tenants at the Property, if any, all general ledger(s), accounting records and tenant files in Seller's possession or control, with respect to or relating to the Property

or the Personal Property, (v) the rights of Trustee, if any, to the name "Crossings of Sandusky" currently used for the Property; (vi) all licenses, permits, approvals, variances and similar documents, plans, drawings, specifications and surveys in Trustee's or Trustee's representatives' possession or control with respect to the Property, to the extent assignable without expense to Trustee subject to the provisions of applicable legal requirements; and (vii) all assignable service and maintenance contracts and equipment leases relating to the Property that are in Seller's or Seller's representatives' possession (collectively the "Related Assets" and with the Property, the "Assets") to The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company, National Association), As Trustee for Morgan Stanley Capital Inc., Commercial Mortgage Pass-Through Certificates, Series 2007 IQ14 (the "Lender" or "Prevailing Purchaser") in accordance with terms of the asset purchase agreement attached hereto and incorporated herein as Exhibit B (the "APA"), (b) authorizing the assumption and assignment of certain unexpired leases, (c) scheduling a hearing to approve the sale, (d) authorizing payment of broker's commission and related costs of sale and (e) granting any related relief.

### **BACKGROUND**

4. On March 30, 2017, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Petition Date").

5. Debtor owns the Property which is commercial real estate in Sandusky, Ohio and the Related Assets. By Order of the Hamilton County Court of Common Pleas (Case No. A1201593), George W. Fells ("Fels") was given managerial and voting authority of the membership interest of Timothy S. Baird in the Debtor which represent 41.25 % of the membership interests in the Debtor. Thus, Fels and Matthew Daniels ("Daniels") were co-managers of Debtor. Fels and Daniels each respectively hold/have authority over a 41.25% interest in the Debtor. Daniels is the manager and sole employee of L.A.D. Holdings, LLC which is owned by his wife's trust, the Lori Ann Daniels Irrevocable Trust. There are six additional members holding minority interests in Debtor. Debtor's

business operations involve leasing the structures and the land to the various retail business establishments that operate at the Property, including national retailers such as Home Depot, Jo-Ann Fabrics, and Petco. There are currently thirteen tenants that lease space at the Property from Debtor and who occupy 92.17% of the total space available for lease. Trustee recently leased one space consisting of approximately 13,500 square feet, on a short term seasonal basis, to Party City Retail Group which will end on November 22, 2017. There is currently only one space, consisting of 1,940 square feet, vacant.

6. On April 10, 2017, the Office of the U.S. Trustee filed a motion to dismiss this case. (Doc. No. 28). Likewise, on April 13, 2017, Lender filed a motion to dismiss this case. (Doc. No. 37). On June 7, 2017, the Court entered its Memorandum and Decision and Order Regarding Motion to Dismiss (Doc. No. 79) and in doing so, denied both motions.

7. On June 22, 2017, the Office of the United States Trustee filed its motion to appoint a chapter 11 trustee. (Doc. No. 99).

8. On July 14, 2017, by Order of the Court, Trustee was appointed as Chapter 11 Trustee for the Debtor. (Doc. No. 149).

#### **FACTS SPECIFIC TO THE INSTANT MOTION**

9. The assets owned by Debtor on the Petition Date included ownership of the Assets for which Trustee seeks an entry of an Order approving the sale of the Assets, free and clear of all liens claims and encumbrances to the Prevailing Purchaser.

10. The Property may be encumbered by the following known alleged mortgages and/or encumbrances (collectively, the "Encumbrances":<sup>2</sup>

- (a) Open End Mortgage and Security Agreement dated March 22, 2007 of the Lender premised on Note dated March 22, 2007. (See Doc. No. 164, Exhibit B and C).

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<sup>2</sup> Nothing contained herein is, or should be deemed to be, an acknowledgment by the Trustee that any Mortgages or claims asserted against the Property other than that of the Lender is valid and/or enforceable. Trustee specifically reserves the right to challenge any such Mortgages and/or claims on the Property, other than that of Lender, on any applicable legal ground at a later date if required.

- (b) Assignment of Leases and Rents dated March 22, 2017 in favor of Lender. (See Doc. No. 164, Exhibit D).
- (c) U.C.C. Financing Statement in favor of Lender encumbering interest in substantially all personal property, tangible and intangible, pursuant to financing statement filed in State of Ohio Doc. No. 200708600870 (See Doc. No. 164, Exhibit E).
- (d) Randall J. Goodman, 2533 Cedar Road, Suite 305, Lyndhurst, Ohio 44214 may claim an interest in the Property.
- (e) Goodman Real Estate Services Group, LLC, 2533 Cedar Road, Suite 305, Lyndhurst, Ohio 44214 may claim an interest in the Property.
- (f) Any applicable real property taxing authority; namely, Pam Ferrell, Treasurer Erie County, Ohio, 247 Columbus Avenue, Suite 115, Sandusky, Ohio 44870.

11. In addition, prior to the Petition Date on February 19, 2016, the Lender commenced a suit in foreclosure against the Debtor with respect to the Property. This case was commenced in the United States District Court for the Northern District of Ohio, and is assigned Case Number 3:16cv00393. In this suit, the Lender sought the appointment of a receiver to manage the Property, and then have the receiver sell the Property at a Public Auction. ("District Court Case").

12. While the District Court Case was pending, on or about April 20, 2016, Debtor, by and through its manager Daniels, executed a Declaration of Easement (the "2016 Declaration") in favor of one of Daniels other companies, Meridian Realty Capital, LLC (the "Meridian"). A copy of the recorded 2016 Declaration to Meridian is attached hereto as Exhibit C and incorporated herein by reference. The filing of the 2016 Declaration was a clear violation of Ohio's *Lis Pendens* doctrine. See O.R.C. § 2703.26: "When a complaint is filed, the action is pending so as to charge a third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title." Lender filed a Notice of *Lis Pendens* with the Court Recorder on February 25, 2016, well prior to the grant of the 2016 Declaration. A copy of

the Notice of *Lis Pendens* is attached hereto and incorporated herein as Exhibit D. For the reasons set forth herein, the Property can be sold free and clear of the 2016 Declaration.<sup>3</sup>

13. By Order of this Court, Trustee retained Cushman & Wakefield U.S., Inc. ("Broker"), as his sole real estate broker for the purposes of marketing and selling the Property. (See Doc. No. 207).

14. Trustee previously filed a Motion to establish bidding procedures for the sale of the Property. (Doc. No. 185). After an extensive in-person hearing held on September 20, 2017, which included testimony of both the Broker and Trustee, the Court entered an order denying the bid procedures motion without prejudice after voicing concern over the *nunc pro tunc* nature of the motion (the "Initial Sale Hearing"). (Doc. No. 208). Notwithstanding, at the Initial Sale Hearing the Court indicated it would be receptive to a motion for direct sale of the Property premised on the marketing procedures which has already been undertaken.

### **ARGUMENT IN SUPPORT OF SALE OF THE PROPERTY**

#### **I. Marketing And Sale Procedures Utilized To Establish Highest And Best Offer For The Property**

15. Trustee, in an exercise of his business judgment, initiated the following steps to obtain the highest and best offer for the Property (the "Sale Process").

##### **A. The Marketing Process**

16. In order to allow any person that wished to participate in the bid process (each a "Potential Bidder" and collectively, the "Potential Bidders") had the opportunity to submit a bid on the Property and ensure that the Trustee had the opportunity to consider all reasonable offers and select the highest or best of such offers for the Property, Trustee, with assistance of the Broker, conducted the marketing procedures set forth below (the "Marketing Procedures").

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<sup>3</sup> Notwithstanding, Trustee reserves the right to assert any Chapter Five causes of action permissible under the Bankruptcy Code (11 U.S.C. § 501 *et seq.*) or any other applicable law against any party associated in any way with the 2016 Declaration.

17. Broker aggressively marketed the Property by utilizing a four pronged marketing approach to maximize exposure and ensure the greatest amount of competition during the bidding process. First, the marketing process was digital via direct email to over 5,000 contacts. What Broker finds to be the most effective of the digital platforms are email campaigns that are distributed through Real Capital Markets which includes not only their list of qualified investors but also our team's list of investors that have been gathered over the last 35 plus years. This approach resulted in the Property landing in the inbox of the greatest amount of qualified buyers. Second, the Property was posted on all of the online websites that specialize in exposing properties to the market. These websites include CREXi, Costar, Loopnet and Xceligent. Although it was more likely that a qualified investor will surface from the targeted email campaign, Broker has advised that these websites will ensure maximum exposure. Third, Broker printed a high quality Offering Memorandum of the Property and mailed them to the top 100 prospects. As more and more brokers continue to focus on digital marketing, Broker believes a high quality Offering Memorandum mailed to potential investors is an effective method to separate the property from the other opportunities an investor is likely considering and less likely to be accidentally deleted. Fourth, once the first email blast and hard copy Offering Memorandum were sent to potential buyers, Broker aggressively reaching out to all buyers who have visited the websites or have been sent packages. Furthermore, Broker also directly contacted owners in the area as well as any others that own similar properties throughout the Midwest.

18. Each Potential Bidder wishing to obtain confidential financial information about the Property was required to execute a confidentially agreement (each a "Confidentially Agreement" and collectively, the "Confidentially Agreements"). As a result of the Marketing Procedures, **Broker received 63 executed confidentially agreements.**

## **B. The Sale And Bidding Process**

19. To participate in the bidding process (the "Bidding Procedures"), Potential Bidders were required submit to the Broker a proposal (each and "Initial Bidder" and collectively, the "Initial Bidders") to purchase the Property (each an "Initial Bid" and collectively, the "Initial Bids") by no later than September 19, 2017 at 6:00 p.m. (prevailing Eastern Time) (the "Initial Bid Deadline"). Each Initial Bid was required to be on a form letter of intent substantially similar to the one attached hereto and incorporated herein by reference as Exhibit E (the "LOI"). In addition, each Initial Bidder was required to include with the Initial Bid sufficient financial information that would establish the ability of the respective Initial Bidder to close on the purchase of the Property.

20. In accordance with LBR 6004-1, no professional person appointed in this case by order of the Court, no employees or affiliates of the professionals, and no member of the professional's immediate family were permitted, directly or indirectly, to place an Initial Bid or otherwise was permitted to bid or purchase or acquire any interest in the Property.

### ***Qualification Of Initial Bidders As Qualifying Bidders***

21. Immediately following the Initial Bid Deadline, Trustee reviewed the Initial Bids and the financial information accompanied therewith and, in his sole discretion in consultation with Broker, determined whether each respective Initial Bidder with an Initial Bid has presented a valid offer capable of being consummated. Each Initial Bidder with an Initial Bid satisfying this requirement was deemed by Trustee to be a "Qualifying Bidder" and such bid being deemed a "Qualified Bid." Once Bidders are determined to be Qualifying Bidders, they were entitled to participate in the final round of bidding. Lender was automatically deemed a Qualifying Bidder and any bid made by the Lender a Qualified Bid.

22. Trustee received a total of eleven (11) Qualified Bids ranging from \$12,000,000 to \$19,800,000 (excluding the Lender's Credit Bid) as set forth below in descending order:



<b>RANK</b>	<b>BID</b>
1 <sup>st</sup>	\$19,800,000
2 <sup>nd</sup>	\$19,400,000
3 <sup>rd</sup>	\$18,250,000
4 <sup>th</sup>	\$18,000,000
5 <sup>th</sup>	\$17,500,000
6 <sup>th</sup>	\$17,500,000
7 <sup>th</sup>	\$17,250,000
8 <sup>th</sup>	\$17,000,000
9 <sup>th</sup>	\$16,200,000
10 <sup>th</sup>	\$13,750,000
11 <sup>th</sup>	\$12,000,000

**Final Round Of Competitive Bidding – Right Of Lender To Credit Bid**

23. Trustee caused the top Qualifying Bidders with Qualified Bids to be advised (i) that they have been selected to participate in the final round of bidding for the Property and (ii) the amount of the then existing highest Qualified Bid.

24. Qualifying Bidders participating in the final round of bidding had until September 22, 2017 at 6:00 p.m. (prevailing Eastern Time) (the “Final Bid Deadline”) to submit to Broker their proposed final highest and best offer for the Property on an amended LOI (each a “Final Bid” and collectively, the “Final Bids”). Failure of a Qualifying Bidder to submit a Final Offer by the Final Bid Deadline will result in the original Qualifying Bid to be disregarded from further consideration. Notwithstanding, Trustee, in his sole direction, had the ability to extend the Final Bid Deadline and did so on two occasions.

25. In accordance with § 363(k), Lender, as a Qualified Bidder, was entitled to submit as a Final Offer, a credit bid up to the amount of its agreed upon encumbrance (the “Credit Bid”) after all final bids had been received on condition that if the Lender is selected as the Prevailing Purchaser (defined below) and the Credit Bid is selected as the Prevailing Bid (defined below), Lender would be required to pay in cash at the closing of the sale of the Property to Lender, the Commission and Sale Costs (each defined below).

**C. Evaluation Of Final Offers And Selection Of Highest And Best Offer, The Sale Hearing, Encumbrances On Property, Broker's Commission And Costs Of Sale**

26. Trustee reviewed the Final Offers and in consultation with Broker, to determine which Final Bid of a Qualifying Bidder is the highest and best offer.

27. The amounts of all Final Bids received, which includes Lender's Credit Bid, are set forth below in descending order:

<b>RANK</b>	<b>BID</b>
<b>1<sup>st</sup></b>	<b>\$20,100,001</b>
<b>2<sup>nd</sup></b>	<b>\$20,100,000</b>
<b>3<sup>rd</sup></b>	<b>\$18,575,000</b>
<b>4<sup>th</sup></b>	<b>\$18,000,000</b>

28. The highest bid received was made by the Lender thus making the Lender the "Prevailing Purchaser" with its Credit Bid in the amount of \$20,100,001.00 becoming the highest and best offer (the "Prevailing Bid"). Notwithstanding the Prevailing Bid, Prevailing Purchaser reserved the right to increase its Prevailing Bid up to the amount of its allowed proof of claim (the "Claim") (Claim No. 3-1). The Claim is undisputed in the amount of \$23,985,451.96 with the balance of same being currently discussed.

***The Sale Hearing***

29. The sale of the Property to the Prevailing Purchaser holding the Prevailing Bid will be subject to approval of the Bankruptcy Court. The hearing to approve the sale of the Property to the Prevailing Purchaser in the amount of the Prevailing Bid is requested to take place **on or before November 29, 2017 at 9:30 a.m.** (prevailing Eastern Time) (the "Sale Hearing").

***Encumbrances On The Property***

30. As Prevailing Purchaser is the Lender and the Credit Bid is the Prevailing Bid, there will be no proceeds to which the Encumbrances would attach as the Prevailing Bid does not exceed the undisputed amount of the Claim.

### ***Broker's Commission And Related Costs Of Sale***

31. Pursuant to the terms of the sale and the approved Broker's Agreement with Broker, Broker shall be entitled to be paid a flat fee of \$75,000 (the "Commission") (Doc. No. 207). Trustee seeks authority at the closing of the Property to remit the Commission to Broker which is to be paid by the Prevailing Purchaser.

32. Likewise, Trustee seeks authority to pay at the closing of the sale of the Property any customary costs of sale in closing the transaction such as pro-rated taxes due, deed, title work, recording costs, transfer fees etc. which is also to be paid by Prevailing Purchaser at the closing (the "Sale Costs").

#### **D. Previous Evidence Of The Sale Process At The Initial Hearing**

33. As noted, at the Initial Sale Hearing, this Court heard evidence in support of the Sale Process from both Broker and Trustee, both of which were subject to rigorous cross examination. On September 29, 2017, the transcript of the Initial Sale Hearing was filed with the Court (the "Transcript") (Doc. No. 213). In further support of the proposed sale, Trustee incorporates herein by reference the evidence that was submitted into the record at the Initial Sale Hearing including but not limited to, the Transcript.

#### **II. Assumption And Assignment Of Unexpired Real Property Leases**

34. In connection with the sale of the Assets to the Prevailing Purchaser, Trustee seeks authority to assume and assign certain unexpired real property leases set forth on Exhibit F attached hereto and incorporated herein by reference (each an "Assumed Lease" and collectively, the "Assumed Leases") with each counterparty thereto being a "Counterparty" and collectively the "Counterparties."

35. The assumption and assignment of the Assumed Leases is integral to the proposed sale and is in the best interests of the Debtor's estate, creditors, and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Trustee.

36. Trustee believes there are no cure amounts required to be paid for any of the Assumed Leases under 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A); thus, making the cure amounts related thereto zero (each a "Cure Amount" and collectively, the "Cure Amounts").

37. If a Counterparty to an Assumed Lease objects to (i) the Cure Amount for its Assumed Lease or (ii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Trustee and the Prevailing Purchaser a timely written objection (a "Lease Objection") to the Motion.

38. At the Sale Hearing, Trustee will seek approval of his assumption and assignment to the Prevailing Purchaser of the Assumed Leases. If no Lease Objection is timely received with respect to any Assumed Lease: (i) the Counterparty to such Assumed Lease shall be deemed to have consented to the assumption by the Trustee and the assignment to the Prevailing Purchaser and be forever barred from asserting any objection with regard to such assumption and assignment (including without limitation, with respect to adequate assurance of future performance by the Prevailing Purchaser; (ii) any and all defaults under such Assumed Lease and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Assumed Lease shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assumed Lease against the Trustee, the Debtor and its estate or the Prevailing Purchaser that existed prior to the entry of the Sale Order.

39. To the extent that the parties are unable to consensually resolve any Lease Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a "Cure Dispute"), such Lease

Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Trustee or fixed by the Court; provided, however, that if the Lease Objection relates solely to a Cure Dispute, the Assumed Lease in question may be assumed by the Trustee and assigned to the Prevailing Purchaser, provided that the cure amount that the counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Trustee or the Prevailing Purchaser pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

40. Simultaneously with the filing and service of the instant Motion and notice, Trustee has also served the "Notice of Assumption and Assignment and Cure Amount With Respect To Unexpired Leases of the Debtor" attached hereto as Exhibit G and incorporated herein by reference upon all Counterparties (the "Assumption and Assignment Notice").

#### **LEGAL BASIS FOR RELIEF REQUESTED**

##### **A. The Sale Procedures Utilized Were Fair And Designed To Maximize The Value Received For The Property**

41. The Sale Procedures outlined herein were designed to maximize the value received for the Property and Related Assets by facilitating a competitive bid process in which all Potential Bidders are encouraged to participate and submit competing bids. The Bid Procedures provided Potential Bidders with sufficient notice and an opportunity to acquire the information necessary to submit a timely and informed bid. At the same time, the Bid Procedures provided the Trustee with the opportunity to consider all competing offers and to ensure the he selected the highest and/or best offer for the Property. Accordingly, Trustee and all parties in interest can be assured that the consideration paid for the Debtor's Property by the Prevailing Bid was a true representation of the current value of the Property as dictated by the market, fair, reasonable, and in the best interest of the estate and its creditors.

**B. Sufficient Business Justification Exists For Consummation Of The Sale Under Sections 105(a) And 363(b) Of The Bankruptcy Code**

42. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this District and elsewhere have required that such use, sale or lease be based upon sound business judgment. See, e.g., *In re Eagle Picher Holdings, Inc.*, 2005 Bankr. LEXIS 2894, at ¶ 3 (Bankr. S.D. Ohio 2005); *In re Decora Indus., Inc.*, 2002 WL 32332749, \*2 (D.Del. 2002); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983).

43. The business judgment rule shields such a decision from judicial second-guessing. See *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor's management decisions”). Once Trustee articulates a valid business justification, “[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

44. Thus, if a trustee's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1). When applying the 'business judgment' standard, courts show great deference to a trustee's business decisions. See *In re First Wellington Canyon Assocs.*, 1989 U.S. Dist. LEXIS 10687 at \*8-9 (N.D. Ill. 1989) (“Under this test, the debtor's business judgment . . . must be accorded deference unless shown that the bankruptcy's decision

was taken in bad faith or in gross abuse of the bankrupt's retained discretion.”); *In re Trans World Airlines.*, 2001 Bankr. LEXIS 267 at \*45-50 (Bankr. D. Del. 2001) (describing business judgment rule as “very deferential standard”).

45. Here, Trustee has amply demonstrated his sound business judgment in selling the Assets to the Prevailing Purchaser. The fairness and reasonableness of the Prevailing Bid for the Assets by the Prevailing Purchaser has been conclusively demonstrated by the exposure of the opportunity to the marketplace pursuant to the Marketing Procedures. The Trustee conducted a fair and open process for achieving the objective of obtaining the highest or best offer and sale of the Assets for the benefit of the estate and its respective creditors.

46. Thus, Trustee submits that his decision to consummate the sale represents a reasonable exercise of the Trustee’s business judgment and, accordingly, the sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. Furthermore, Fed. R. Bankr. P. 6004(f)(1) specifically permits the sale of the Assets in the manner proposed herein. Thus, the decision to sell the Assets pursuant to the terms herein and under § 363 of the Bankruptcy Code is an exercise of sound business judgment by the Trustee under the circumstances and should be approved by this Court.

**C. The Sale Of The Assets Free And Clear Of Liens, Claims, Interests And Encumbrances Is Authorized Under Bankruptcy Code Section 363(f)**

**Application of Section 363(f)**

47. Trustee respectfully submits that it is appropriate to sell the Assets to Prevailing Purchaser free and clear of all interests, pursuant to section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of liens, claims, interests, and encumbrances if:

- A. applicable non-bankruptcy law permits sale of such property free and clear of such interests;
- B. such entity consents;

- C. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- D. such interest is in bona fide dispute; or
- E. such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by § 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

48. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets free and clear of the interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, \*12 (Bankr. S.D.N.Y. 1992) (Section 363(f) is in the disjunctive, such that the sale free of interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Wolverine Radio Co.*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale 'free and clear' provided at least one of the subsections of section 363(f) is met).

49. The Trustee submits that, in the interest of attracting the best offers, it is appropriate to sell the Assets on a final “as is” basis, free and clear of any and all Encumbrances (except as otherwise expressly set forth in the Sale Order and the APA) in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to the sale of the Assets pursuant to the proposed Sale Order, a copy of which is attached hereto. In particular, Trustee believes that §§ 363(f)(2) and 363(f)(5) will be satisfied.

50. Moreover, with respect to any other party asserting a lien, claim, or encumbrance against the Assets, the Trustee anticipates that he will be able to satisfy one or more of the conditions set forth in section 363(f). In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to



the Sale should be deemed to have consented. See *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); *Hargrave v. Twp. Of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same).

### **Application of Section 363(f) To The 2016 Declaration**

51. The 2016 Declaration was an improper transfer under Ohio law and was not disclosed to this Court in the Debtor’s Statement of Financial Affairs. (See Doc. No. 55). While many of the 363(f) criteria may ultimately be met in this instance, it is clear that Ohio state law permits sale of the Property free and clear of the 2016 Declaration as well. As previously, noted, the filing of the 2016 Declaration was a clear violation of Ohio’s *Lis Pendens* doctrine rendering same ineffective. See O.R.C. § 2703.26: “When a complaint is filed, the action is pending so as to charge a third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff’s title.” (emphasis added).

52. Notwithstanding, “[t]he general rule in Ohio is that ‘liens are extinguished when a foreclosure sale of the underlying real property is completed and confirmed.’” *Smith v. Vista Hill Partners, LLC (In re Smith)*, 510 B.R. 164, 169 (Bankr. S.D. Ohio 2014). The District Court for the Northern District of Ohio recently applied this same logic to deed restrictions, holding that a deed restriction was extinguished when the prior recorded mortgage was foreclosed upon. *Wells Fargo, N.A. v. Centro Richland, LLC*, 2015 U.S. Dist. LEXIS 72382, at \*7 (“A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified under applicable law.”) (quoting

Restatement (3d) of Property (Mortgages), § 7.1 (1997). Thus, Ohio law unambiguously provides that an easement, deed restriction, or other interest may be eliminated through a foreclosure sale.

53. Under those circumstances, Section 363(f)(1)<sup>4</sup> of the Bankruptcy Code permits the Property to be sold free and clear of the 2016 Declaration. Several cases stand for the proposition that property may be sold free and clear of easements if one or more conditions set forth in Section 363(f) are present. See *In re Metroplex on the Atl., LLC*, 545 B.R. 786 (Bankr. E.D.N.Y. 2016); *In re Dulgerian*, 2008 Bankr. LEXIS 248 (Bankr. E.D. Pa. 2008) (holding that property could be sold free and clear of easement where applicable foreclosure law would permit sale of the property of the easement in a foreclosure proceeding). *Dulgerian* is particularly similar to this case. As in this case, the relevant foreclosure law in *Dulgerian* provided that foreclosure eliminated all interests, including easements, recorded after the mortgage being foreclosed. The Court in *Dulgerian* easily concluded that, given the relevant non-bankruptcy law, Section 363(f)(1) of the Bankruptcy Code allowed for the sale of the property free and clear of the easement. *Id.* at \*13-\*15. The Court should reach the same result here. As in *Dulgerian*, the 2016 Declaration was recorded well after the recording of the mortgage as well as violating Ohio's *Lis Pendens* doctrine

54. Accordingly, the sale in this case extinguishes the 2016 Declaration when title passes to the Prevailing Purchaser.<sup>5</sup>

**D. The Assumption And Assignment Of The Assumed Leases In Connection With The Sale Satisfies Section 365 Of The Bankruptcy Code**

55. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “The purpose behind allowing the assumption

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<sup>4</sup> It is possible that other subsections of Section 363 may ultimately permit the sale free and clear of the 2016 Declaration. For example, the holder of the Declaration may consent to its extinguishment. Trustee and Prevailing Purchaser reserve the right to argue that additional conditions under Section 363(f) are applicable.

<sup>5</sup> Again, Trustee reserves the right to assert any Chapter Five causes of action permissible under the Bankruptcy Code (11 U.S.C. § 501 *et seq.* ) or any other applicable law against any party associated in any way with the 2016 Declaration.

or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY ¶ 365.01[1] (15th ed. 1993)).

56. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the "business judgment" standard. See *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor's decision to assume or reject an executory contract will stand so long as "a reasonable business person would make a similar decision under similar circumstances."); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor's decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). As described above, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.'" *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 48 A.2d at 872).

57. The business judgment rule is crucial in chapter 11 cases and shields the Trustee's management from judicial second-guessing. See *id.*; see also *Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

58. Generally, courts defer to a Trustee's business judgment to assume or reject an executory contract or lease. See *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (stating that the business judgment test "requires only that the trustee demonstrate that [assumption or] rejection of the executory contract will benefit the estate."); see also *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S.

513, 523 (1984); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 42-43 (2d Cir. 1979); *In re Riodizio, Inc.*, 204 B.R. 417, 424-25 (Bankr. S.D.N.Y. 1997).

59. In the instant case, Trustee has exercised his sound business judgment in determining that assumption and assignment of the Assumed Leases is in the best interests of the Debtor, its estate and creditors, and, accordingly, the Court should approve the proposed assumption under section 365(a) of the Bankruptcy Code. See, e.g., *In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

60. The assumption, assignment and sale of the Assumed Leases is necessary for Trustee to obtain the benefits of the APA. In addition, under section 365(k) of the Bankruptcy Code, the assignment by the Trustee to an entity of a contract or lease "relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment." 11 U.S.C. § 365(k). As a result, following an assignment to the Prevailing Purchaser of the Assumed Leases, the Debtor's estate will be relieved from any liability for any subsequent breach associated therewith.

61. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Leases must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The instant Motion will be served on each Counterparty to an Assumed Contract, which clearly indicates the proposed Cure Amount, if any, for each such contract. As such, each Counterparty will have the opportunity to object to the

proposed assumption and assignment to the Prevailing Purchaser and to the proposed Cure Amount, if any. Moreover, the payment or reserve of the applicable Cure Amount, as provided for herein, will be a condition to the Prevailing Purchaser's assumption and assignment of the Assumed Leases.

62. Further, section 365(f)(2) of the Bankruptcy Code provides that a trustee may assign an executory contract or unexpired lease of nonresidential real property if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The words "adequate assurance of future performance" must be given a "practical, pragmatic construction" in light of the facts and circumstances of the proposed assumption. See *In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); see also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.").

63. In particular, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid). Here, Prevailing Purchaser has provided adequate assurance of future performance with respect to the Assumed Leases. In fact, by approving of NAI Daus as property manager and utilizing its cash collateral to pay for such services, Prevailing Purchaser has already provided strong evidence supporting its

ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code.

64. Therefore, Trustee respectfully request that the Court (a) approve the proposed assumption and assignment of the Assumed Leases, and (b) find that all assignment provisions of such leases, to the extent they exists, to be unenforceable under section 365(f) of Bankruptcy Code.

**E. The Sale Should Be Subject To The Protections Of Section 363(m) Of The Bankruptcy Code.**

65. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. See 11 U.S.C. § 363(m). In approving the sale free and clear of liens, claims encumbrances, interests, encumbrances, the Encumbrances and 2016 Declaration, the Trustee request that the Court find and hold that Prevailing Purchaser is entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that the selection of the Prevailing Purchaser was the result of a competitive bidding process and arm's-length, goodfaith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. See *Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

**REQUEST FOR WAIVER OF STAY UNDER BANKRUPTCY RULES 6004(h) AND 6006(d)**

66. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Furthermore, Bankruptcy Rule

6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

67. As set forth throughout this Motion, any delay in the Trustee’s ability to consummate the sale would be detrimental to the Debtor, its creditors and estate, and would impair the Trustee’s ability to take advantage of the substantial cost-savings that can be achieved by an expeditious closing of the sale. For this reason and those set forth above, the Trustee submits that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h) and 6006(d), to the extent applicable.

#### **NOTICE**

68. A copy of the Motion was served upon the following parties via regular First Class United States mail, postage pre-paid, pursuant to Bankruptcy Rule 4001: (i) all parties requesting notice in this case, (ii) the Office of the United States Trustee, (iii) all creditors of the Debtor required to receive notice pursuant to Fed. R. Bankr. P. 2002(a)(2), (iv) any party claiming an interest in the Property and (iv) all parties to the Assumed Leases. Further, the Assumption and Assignment Notice was also serve on all counterparties to the Assumed Leases on Exhibit F. In light of the nature of the relief requested herein, Trustee submits that no other or further notice is required.

#### **NO PRIOR REQUEST**

69. No previous motion for the relief requested herein has been made to this or any other court.

#### **CONCLUSION**

**WHEREFORE**, Trustee respectfully requests that the Court issue an Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: October 25, 2017  
Cincinnati, Ohio

**COHEN, TODD, KITE & STANFORD, LLC**

/s/ Donald W. Mallory

Richard D. Nelson (OH 0003943)

Donald W. Mallory (OH 0070875)

250 East Fifth Street, Suite 2350

Cincinnati, Ohio 45202

Phone: (513) 421-4020

Fax: (513) 241-4490

Email: ricknelson@ctks.com

Email: dmallory@ctks.com

Counsel for Chapter 11 Trustee,  
Richard D. Nelson



**EXHIBITS "A-E" ATTACHED SEPARATELY**

**EXHIBIT F**

**PREVAILING PURCHASER ASSUMED LEASES**

**ASSUMED & ASSIGNED REAL PROPERTY LEASES AND CURE AMOUNTS, IF ANY:**

<b><u>TENNANT</u></b>	<b><u>LANDLORD</u></b>	<b><u>NOTICE PARTIES</u></b>	<b><u>CURE AMOUNT</u></b>
ABC Appliance, Inc.	BCC Sandusky Permanent, LLC	ABC Appliance, LLC c/o Paul Black One W Silverdome Industrial Park Pontiac, MI 48343  Harold Wolkind, Esq. Wolkind Law, PLLC 2550 South Telegraph RD. St. 108 Bloomfield, Hills, MI 48302  ABC Appliance, LLC c/o Billie Jo White 784 Crossings Rd Sandusky, OH 44870	\$0.00
RAMB CO., LLC	BCC Sandusky Permanent, LLC	RAMB Co., LLC Attn: Richard Andrews 2095 Ravenna Street Hudson, OH 44236  Mathew F. Kadish, Esq. Kadish Hinkel & Welbel 1717 East Ninth Street # 2112 Cleveland, OH 44114  Buffalo Wild Wings c/o Kirk Collins 814 Crossings Road Sandusky, OH 44870	\$0.00
Tolfin Corp. dba Crane's Mattress Superstore	BCC Sandusky Permanent, LLC	Tolfin Corp. dba Crane's Mattress Superstore 1922 Tiffin Ave. Findlay, OH 45840	\$0.00

		Rakestraw & Rakestraw, LLC 11595 C.R. 40 Findlay, OH 45840	
Dollar Tree Stores, Inc.	BCC Sandusky Permanent, LLC	Dollar Tree Stores, Inc. Attn: Lease Administration 500 Volvo Parkway Chesapeake, VA 23320  Dollar Tree Stores, Inc. Department 300 500 Volvo Parkway Chesapeake, VA 23320  Dollar Tree Stores, Inc. Property Mgmt. Dept. Store # 775 500 Volvo Parkway Chesapeake, VA 23320	\$0.00
French Nails & Spa, LLC	BCC Sandusky Permanent, LLC	French Nails & Spa, LLC 762 Crossings Road Sandusky, OH 44870  French Nails & Spa, LLC 808 Crossings Road Sandusky, OH 44870	\$0.00

Zamp Enterprises, Inc.	BCC Sandusky Permanent, LLC	<p>Zamp Enterprises, Inc. c/o Maureen Harris Store No. 2958 2298 Wellington Circle Hudson, OH 44236</p> <p>Great Clips c/o Maureen Harris 810 Crossings Rd. 44870 Sandusky, OH 44870</p>	
Home Depot U.S.A., Inc.	BCC Sandusky Permanent, LLC	<p>Home Depot U.S.A., Inc. Attn: Vic President – Real Estate Law Group, Store No. 3866 2455 Paces Ferry Road Northwest Building C, 20<sup>th</sup> Floor Atlanta, GA 30339-4024</p> <p>Home Depot U.S.A., Inc. Attn: Corporate Counsel – Real Estate Store No. 3866 1400 West Dundee Road Arlington Heights, IL 60004</p> <p>The Home Depot Attn: Store Manager 715 Crossings Rd. Sandusky, OH 44870</p>	\$0.00
Jo-Ann Stores, LLC	BCC Sandusky Permanent, LLC	<p>Jo-Ann Stores, LLC Attn: Vice President of Real Estate 5555 Darrow Rd. Hudson, OH 44326</p> <p>Jo-Ann Stores, LLC Attn: Senior Legal Counsel 5555 Darrow Rd. Hudson, OH 44326</p> <p>Jo-Ann Stores, LLC Attn:</p>	\$0.00

		Store Manager 756 Crossings Rd. Sandusky, OH 44870	
Maurices Incorporated	BCC Sandusky Permanent, LLC	Maurices Incorporated Attn: Real Estate 105 W. Superior Street Duluth, Minnesota 55802  Maurices Attn: Store Manger 778 Crossings Rd. Sandusky, OH 44870	\$0.00
GMRI, Inc.	BCC Sandusky Permanent, LLC	GMRI, Inc. Attn: General Counsel Store No. 1654 5900 Lake Ellenor Drive Orlando, FL 32809  GMRI, Inc. c/o Olive Garden Attn: Store Manager 5205 Milan Rd. Sandusky, OH 44870	\$0.00
Panera, LLC	BCC Sandusky Permanent, LLC	Panera LLC Attn: Lease Accounting 3630 South Geyer Rd. St. Louis, MO 63127  Panera LLC Attn: Development Counsel Three Charles River Place 63 Kendrick Street Needham, MA 02494  Panera Bread Attn: Store Mgr. 5203 Milan Rd. Sandusky, OH 44870	\$0.00
Petco Animal Supply Stores, Inc.	BCC Sandusky Permanent, LLC	Petco Animal Supply Stores, Inc. c/o Property Manger 654 Richland Hills Drive	\$0.00

		<p>San Antonio, TX 78245</p> <p>Petco Animal Supply Stores, Inc. c/o Vice President – Real Estate 654 Richland Hills Drive San Antonio, TX 78245</p> <p>Petco Animal Supply Stores, Inc. c/o Vice President – Law 9125 Rehco Road Sad Diego, CA 92121-2270</p> <p>Corporation Agents, Inc. c/o Ray &amp; Glick LLC Attn: Steven J. Marcus or Sidney A. Glick 611 S. Milwaukee Avenue Libertyville, Illinois 60048</p>	
Sally Beauty Company, Inc.	BCC Sandusky Permanent, LLC	<p>Sally Beauty Company, Inc. Attn: Real Estate #3431 3001 Colorado Blvd. Denton, TX 76210</p> <p>Sally Beauty Company, Inc. Attn: Store Manager 772 Crossings Rd. Sandusky, OH 44870</p>	\$0.00
Party City Corporation	Trustee/ BCC Sandusky Permanent, LLC	<p>Party City Corporation 41100 Plymouth Road Suite 101 Plymouth, Michigan, 48170</p> <p>Party City Retail Group Attn: Adam Eichberg 41100 Plymouth Road Suite 101 Plymouth, Michigan, 48170</p>	\$0.00

**EXHIBIT G**

**FORM ASSUMPTION AND ASSIGNMENT NOTICE (EXHIBIT F WILL BE ATTACHED AT MAILING AS EXHIBIT 1 HERETO)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>IN RE:</b>	:	<b>Case No. 17-30905</b>
	:	
<b>BCC Sandusky Permanent, LLC,</b>	:	<b>Chapter 11 Proceeding</b>
	:	
<b>Debtor.</b>	:	<b>Judge Mary Ann Whipple</b>

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**NOTICE OF ASSUMPTION AND ASSIGNMENT AND CURE AMOUNTS WITH  
RESPECT TO UNEXPIRED LEASES OF THE DEBTOR**

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The above-captioned debtor (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), on March 30, 2017, in the United States Bankruptcy Court for the Southern District of Ohio (the "Bankruptcy Court"). On July 14, 2017, by Order of the Bankruptcy Court, Richard D. Nelson ("Trustee") was appointed as Chapter 11 Trustee for the Debtor. (Doc. No. 149).

The Trustee is seeking to assume and assign certain of the Debtor's unexpired leases in connection with the sale (the "Sale") of all parcels of the Debtor's real property commonly known as part of the "Crossings of Sandusky"<sup>6</sup> (the "Property") and Related Assets (as defined in the Motion) to The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company, National Association), As Trustee for Morgan Stanley Capital Inc., Commercial Mortgage Pass-Through Certificates, Series 2007 IQ14 ("Prevailing Purchaser"). The Trustee is seeking Court approval of such Sale and assumptions and assignments pursuant to his motion for the entry of an order (a) authorizing the sale of all parcels of the Property, free and clear of all liens, claims and encumbrances, (b) authorizing the assumption and assignment of certain unexpired leases, (c) scheduling a hearing to approve the sale, (d) authorizing payment of Broker's commission and related costs of sale and (e) granting related relief (the "Motion").

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE A PARTY TO AN UNEXPIRED LEASE THAT IS TO BE ASSUMED AND ASSIGNED (COLLECTIVELY, THE "LEASES"), IN CONNECTION WITH SUCH SALE. A LIST OF THE LEASES IS ATTACHED HERETO AS EXHIBIT 1.**

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<sup>6</sup> The Property includes 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 and 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002.

The Trustee has determined the current amounts owing (the “**Cure Amounts**”) under each Contract, and has listed the applicable Cure Amounts, if any, on Exhibit A attached hereto. The Cure Amounts, if any, are the only amounts proposed to be paid upon any assumption and assignment of the Leases, in full satisfaction of all amounts outstanding under the Leases.

To the extent that a non-Debtor party to a Contract objects to (i) the assumption and assignment of such party’s Contract, (ii) the applicable Cure Amount (if any), or (iii) the provision of adequate assurance of future performance, the Counterparty must file and serve an objection (a “Lease Objection”). Any Lease Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Bankruptcy Court, United States Bankruptcy Court, 1716 Spielbusch Avenue, Toledo, Ohio 43604, together with proof of service, on or before 21 days of the date of this notice (the “Lease Objection Deadline”); (iv) be served, so as to be actually received on or before the Lease Objection Deadline, upon the Trustee and his counsel; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

If no objection is timely received with respect to Cure Amount, (i) a non-Debtor party to a Contract shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract, (ii) the Cure Amount set forth on Exhibit A, if any, attached hereto shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to a Contract shall be deemed to have consented to the Cure Amount, and (iii) the non-Debtor party to a Contract shall be forever barred and estopped from asserting any other claims related to such Contract against the Debtor or the applicable transferee, or the property of any of them.

If no objection is received by the Lease Objection Deadline to the Prevailing Purchaser’s adequate assurance of future performance with respect to a Contract, a non-Debtor party to such Contract shall be deemed to have consented to the assumption, assignment, and/or transfer of the applicable Contract to the Prevailing Purchaser, and shall be forever barred and estopped from asserting or claiming that any conditions to such assumption, assignment, and/or transfer must be satisfied under such applicable Contract or that any related right or benefit under such applicable Contract cannot or will not be available to the Prevailing Purchaser.

The Trustee will seek to assume and assign the Leases at a hearing before the Honorable Judge Mary Ann Whipple, in the United States Bankruptcy Court for the Northern District of Ohio, 1716 Spielbusch Avenue, Toledo, Ohio 43604 (a “Sale Hearing”) on **November 29, 2017 at 9:30 a.m.** (prevailing Eastern Time), or such other date as determined by the Bankruptcy Court. To the extent that the parties are unable to consensually resolve any Lease Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the Cure Amount (any such dispute, a “Cure Dispute”), such Lease Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Trustee or fixed by the Bankruptcy Court; provided, however, that if the Lease Objection relates solely to a Cure Dispute, the Assumed Contract may be assumed by the Trustee and assigned to the Prevailing Purchaser, provided that the cure amount that the non-Debtor party to a Contract



asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Trustee or the Prevailing Purchaser, pending the Bankruptcy Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

Dated: October 25, 2017  
Cincinnati, Ohio

**COHEN, TODD, KITE & STANFORD, LLC**

/s/ Donald W. Mallory

Richard D. Nelson (OH 0003943)

Donald W. Mallory (OH 0070875)

250 East Fifth Street, Suite 2350

Cincinnati, Ohio 45202

Phone: (513) 421-4020

Fax: (513) 241-4490

Email: ricknelson@ctks.com

Email: dmallory@ctks.com

Counsel for Chapter 11 Trustee,  
Richard D. Nelson

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**IN RE:** : Case No. 17-30905  
: :  
**BCC Sandusky Permanent, LLC,** : Chapter 11 Proceeding  
: :  
**Debtor.** : Judge Mary Ann Whipple

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**NOTICE OF FILING CHAPTER 11 TRUSTEE’S MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 362, 363, 365, AND 1106 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002 AND 6004 (A) AUTHORIZING THE SALE OF ALL PARCELS OF THE DEBTOR’S REAL PROPERTY AND RELATED ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES, (C) SCHEDULING A HEARING TO APPROVE THE SALE, (D) AUTHORIZING PAYMENT OF BROKER’S COMMISSION AND RELATED COSTS OF SALE AND (E) GRANTING RELATED RELIEF**

(The Real Property Includes: 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 And 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002)

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**PLEASE TAKE NOTICE THAT** Richard D. Nelson, the duly appointed Chapter 11 Trustee in the above captioned case, has filed papers with the Court seeking entry of an Order, entry of an order (a) authorizing the sale of all parcels of the Debtor’s real property commonly known as part of the “Crossings of Sandusky”<sup>7</sup> and related assets, free and clear of all liens, claims and encumbrances, (b) authorizing the assumption and assignment of certain unexpired leases, (c) scheduling a hearing to approve the sale, (d) authorizing payment of Broker’s commission and related costs of sale and (e) granting related relief (the “Motion”).

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

If you do not want the Court to grant the relief sought in the Application, **then on or before twenty-one (21) days from the date set forth in the certificate of service for the Motion**, you must file with the Court a response explaining your position by regular U.S. Mail at:

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<sup>7</sup> The Property includes 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 and 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002.

Clerk of Courts  
United States Bankruptcy Court  
1716 Spielbusch Avenue  
Toledo, Ohio 43604

The Court must **receive** your response on or before the date stated above.

You must also send a copy of your response either by 1) the Court's ECF System or by 2) regular U.S. Mail to the undersigned counsel and to all parties on the attached service list.

**A hearing on the Motion has been scheduled for November 29, 2017 at 9:30 A.M. (prevailing Eastern Time) before the Honorable Marry Ann Whipple, United States Bankruptcy Court, 1716 Spielbusch Avenue, Toledo, Ohio 43604 (the "Hearing").**

**If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Application and may enter an Order granting the relief without further notice or conducting the Hearing.**

Dated: October 25, 2017  
Cincinnati, Ohio

Respectfully submitted

/s/ Donald W. Mallory

Donald W. Mallory (OH 0070875)  
Richard D. Nelson (OH 0003943)  
Cohen, Todd, Kite & Stanford, LLC  
250 East Fifth Street, Suite 2350  
Cincinnati, Ohio 45202  
Phone: (513) 333-5255  
Fax: (513) 241-4490  
Email: dmallory@ctks.com  
ricknelson@ctks.com

Counsel for Chapter 11 Trustee, Richard D. Nelson

**PROPOSED ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>IN RE:</b>	:	<b>Case No. 17-30905</b>
	:	
<b>BCC Sandusky Permanent, LLC,</b>	:	<b>Chapter 11 Proceeding</b>
	:	
<b>Debtor.</b>	:	<b>Judge Mary Ann Whipple</b>

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**ORDER GRANTING CHAPTER 11 TRUSTEE’S MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 362, 363, 365, AND 1106 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002 AND 6004 (A) AUTHORIZING THE SALE OF ALL PARCELS OF THE DEBTOR’S REAL PROPERTY AND RELATED ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES, (C) SCHEDULING A HEARING TO APPROVE THE SALE, (D) AUTHORIZING PAYMENT OF BROKER’S COMMISSION AND RELATED COSTS OF SALE AND (E) GRANTING RELATED RELIEF (DOC. NO. \_\_\_\_)**

(The Real Property Includes: 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 And 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002)

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Upon Consideration of the Motion of Richard D. Nelson, the duly appointed chapter 11 trustee (the “Trustee”) in the above-captioned case (the “Debtor”), by and through his attorneys of record, who moves this Court for the entry of an order (the “Sale Order”) (a) authorizing the sale of all parcels of the Debtor’s real property commonly known as part of the “Crossings of Sandusky”<sup>8</sup> and as further describe on Exhibit A attached to the Motion (the “Property”) and Related Assets,

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<sup>8</sup> The Property includes 712 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-02006.004; 715 Crossing, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.007; 5203 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.003 and 5205 Milan, Perkins Township, Sandusky, Ohio - Parcel No. 32-03439.002.

free and clear of all liens, claims and encumbrances, (b) approving procedures for the sale, (c) scheduling a hearing to approve the sale to the highest bidder, (d) authorizing payment of Broker's commission buyer's premium and related costs of sale and (e) granting related relief (the "Motion"); and the Court having considered the Motion and objections thereto, if any; and it appearing that the relief requested in the Motion is in the best interests of Debtor's estate and its creditors and all other interested parties; and after due deliberation thereon, and good cause appearing therefore,

**THE COURT HEREBY FINDS THAT:**

A. The findings and conclusions set forth herein constitute the Court's finding of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this chapter 11 case pursuant to Bankruptcy Rule 9014.

B. To the extent that any of the following findings of fact constitutes conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or the APA.

D. This Court has jurisdiction over the Motion and over the property of the Debtor, including the Assets sought to be sold, transferred and conveyed pursuant to the APA pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The statutory predicates for the relief requested in this Motion are sections 105, 362, 363, 365, 503, 507 and 1106 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rules 2002(a)(2), 6004(a), (b), (c), (e) and (f), 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

F. This Sale Order constitutes a final order within the meaning of 28 U.S.C. 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under

Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court finds that there is no just reason for delay in the implementation of this Sale and Order and directs entry of judgment as set forth herein.

G. The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on March 30, 2017 (the "Petition Date"). On July 14, 2017, by Order of the Court, Trustee was appointed as Chapter 11 Trustee for the Debtor. (Doc. No. 149).

H. The Assets constitute property of the Debtor's bankruptcy estate and title thereto is vested in the Debtor's bankruptcy estate within the meaning of § 541(a) of the Bankruptcy Code.

I. Trustee has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion and provided for herein.

J. Notice of the Sale Hearing and the Motion has been served on all creditors and parties in interest. Such notice is appropriate, adequate and sufficient for all purposes as required by the Bankruptcy Code, Bankruptcy Rules and the Local Rules of this Court. No other or further notice is required.

K. The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company, National Association), As Trustee for Morgan Stanley Capital Inc., Commercial Mortgage Pass-Through Certificates, Series 2007 IQ14 (the "Lender" or "Prevailing Purchaser") has a perfected first security interest in the Property premised on a mortgage, certain U.C.C. filings and an Assignment of Rents executed by the Debtor in 2007 and which Lender claims an interest by assignment (the "Security Interest"). (See Doc. No. 164, Exhibit B and C).

L. Trustee has reviewed the Security Interest in the Property and has determined same to be valid, enforceable and properly perfected under Ohio law.

M. In light of Lender's valid, enforceable and properly perfected Security Interest in the Property, and its timely filed proof of claim the "Claim") (Claim No. 3-1), Lender is entitled to Credit Bid on the Assets pursuant to § 363(k) of the Bankruptcy Code up to its allowed Claim.

N. Trustee has reviewed the Claim and determined in his judgment that the Claim is undisputed in the amount of no less than \$23,985,451.96.

O. Trustee aggressively marketed the Property in accordance with the Marketing Procedures through his broker Cushman & Wakefield U.S., Inc. ("Broker") whose retention was approved by this Court (See Doc. No. 207).

P. The Marketing Procedures and efforts undertaken therewith provided a fair and reasonable opportunity for interested parties to participate in the Sale Process. All parties who executed a Confidentiality Agreement or otherwise expressed any interest in acquiring the Property received adequate opportunity to submit a competing bid. The selection of the Prevailing Purchaser was made after solicitation of higher and better offers pursuant to the Marketing Procedures and in accordance with the Sale Process.

Q. The disclosures made by the Trustee in the Motion, the notice to the Motion, the Assumption and Assignment Notice filed with the Court concerning the APA were good, complete and adequate.

R. The Marketing Procedures, Sale Process and the Bidding Procedures were non-collusive, proposed and executed in good faith as a result of arm's -length negotiations, and were substantively and procedurally fair to all parties.

S. Trustee conducted the Sale Process in accordance with, and otherwise complied in all respects with the Marketing Procedures and the Bid Procedures. The Sale Process in its entirety afforded a full, fair and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Assets.

T. The Prevailing Bid made by the Prevailing Purchaser for the sale of the Assets as set forth in the APA was the highest and best offer for the Assets. A true copy of the APA is attached to the Motion as Exhibit A. The APA provides for the sale of the Assets to Prevailing Purchaser including the Trustee's assumption and assignment of the Assumed Leases identified in the Motion as Exhibit F thereto (collectively, the "Sale").

U. The terms contained in the APA constitute the highest and best offer for the Assets and provided for the greatest recovery on the Assets under the circumstances of this case. The Trustee's determination that the APA constitutes the highest and best offer of the Assets and constitutes a valid and sound exercise of Trustee's business judgment.

V. The APA and Sale contemplated thereby represents a fair and reasonable offer to purchase the Assets under the circumstances of this chapter 11 case. No other entity or group of entities has presented a higher or otherwise better offer to Trustee to purchase the Assets for greater economic value to this bankruptcy estate than the Prevailing Purchaser.

W. Approval of the Motion, the APA and the Sale as a whole, is in the best interests of the Debtor, its creditors and estate and other parties in interest in this chapter 11 case.

X. The objection period set forth in the Motion and notice thereto afforded a full, fair and reasonable opportunity to any entity to make a higher or better offer or contest the validity of the offer by the Prevailing Purchaser as the highest and best offer for the Assets.

Y. The objection period set forth in the Assumption and Assignment Notice afforded Counterparties a full, fair and reasonable opportunity to contest the assumption and assignment of the Assumed Leases and the Cure Amounts, if any, with respect thereto.

Z. The Trustee has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Assets including the assumption and assignment of the Assumed Leases because among other reasons, (i) the APA constitutes the highest and best offer for the Assets (ii) the APA and the closing thereon present the best opportunity to realize the value of the Assets and (iii) any other transaction would not have yielded a more favorable economic result.

AA. The Prevailing Purchaser has acted in good faith at all times and in all respects relating to the Sale of the Assets pursuant to the APA, which was negotiated and entered into by the parties in good faith and from arm's length bargaining positions. The Prevailing Purchaser is therefore a good faith purchaser within the meaning of 11 U.S.C. § 363(m) is not an "insider" (as



defined in § 101(31) of the Bankruptcy Code) of the Debtor, and therefore, is entitled to the full protections of that provision, and otherwise has proceeded in good faith in all respects in connection with this chapter 11 case in that: (i) Prevailing Purchaser recognized that Trustee was free to deal with any other party interested in acquiring the Assets; (ii) Prevailing Purchaser complied with the Bid Procedures; (iii) Prevailing Purchaser agreed to subject its bid to the competitive bidding process set forth in the Bid Procedures; (iv) all payments to be made by the Prevailing Purchaser and other agreements or arrangements entered into by Prevailing Purchaser in connection with the Sale have been disclosed; (v) Prevailing Purchaser has not violated § 363(n) of the Bankruptcy Code by any action or inaction; and (vi) the negotiation and execution of the APA, including the Sale contemplated thereby, were at arms'-length and in good faith.

BB. The APA and the Sale contemplated thereby cannot be avoided under § 363(n) of the Bankruptcy Code. The Trustee and the Prevailing Purchaser, and their representatives and affiliates have not engaged in any conduct that would cause or permit the APA or the consummation of the Sale contemplated thereby to be avoided, or costs or damages to be imposed, under § 363(n) of the Bankruptcy Code.

CC. The consideration provided by Prevailing Purchaser by its Credit Bid pursuant to the APA: (i) is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act); (ii) is fair consideration under the Uniform Fraudulent Transfer Act; (iii) is reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory, or possession thereof, or the District of Columbia; and (iv) will provide a greater benefit for the Debtor's creditors than would be provided by any other reasonably practicable available alternative.

DD. By consummating the Sale, Prevailing Purchaser is not a mere continuation of the Debtor or the Debtor's bankruptcy estate, and there is no continuity, no common identity, and no

continuity of enterprise between Prevailing Purchaser and any Debtor. Prevailing Purchaser is not holding itself out to the public as a continuation of any Debtor. Prevailing Purchaser is not a successor to the Debtor or the Debtor's estate by reason of any theory of law or equity, and the Sale does not amount to a consolidation, merger, or de facto merger of Prevailing Purchaser or the Debtor. Neither Prevailing Purchaser nor any of its agents, representatives or affiliates shall assume or in any way be responsible for any obligation or liability of the Debtor (or any affiliates thereof) and/or any Debtor's estate except as expressly provided in this Sale Order or the APA.

EE. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtor. The Sale does not constitute a *sub rosa* plan.

FF. The Debtor, acting by and through the Trustee, has full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, and the Trustee requires no further consents or approvals to consummate the Sale contemplated by the APA, except as otherwise set forth in the APA.

GG. The transfer of the Assets and Assumed Leases to Prevailing Purchaser will be as of the Closing Date (defined in the APA) a legal, valid, and effective transfer of such Assets, and vests or will vest Prevailing Purchaser with all right, title, and interest of the Debtor and the Trustee to the Assets free and clear of all Interests or Claims (as defined below) accruing, arising or relating thereto any time prior to the Closing Date, unless otherwise assumed in, or permitted by, the APA.

HH. Trustee may sell the Assets to Prevailing Purchaser free and clear of all Interests or Claims (defined herein) against the Debtor, its bankruptcy estate, or the Assets (unless otherwise assumed in, or permitted by, the APA) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests or Claims against Debtor, its bankruptcy estate, or Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests or Claims who did object fall

within one or more of the other subsections of section 363(f) and are adequately protected by having their Interests or Claims, if any, in each instance against the Debtor, its bankruptcy estate, or the Assets, attach to the cash proceeds of the Sale, if any, ultimately attributable to the Assets and in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses that Debtor may possess with respect thereto.

II. The Trustee has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale of the Assets, including, without limitation, approval of the Marketing Procedures and Bid Procedures under the circumstances described herein.

JJ. If the Sale were not free and clear of all Interests or Claims (except as otherwise assumed in, or permitted by, the APA), or if Prevailing Purchaser would, or in the future could, be liable for any of the Interests or Claims (except as otherwise assumed in, or permitted by, the APA), Prevailing Purchaser would not have entered into the APA and would not consummate the Sale, thus adversely affecting the Debtor and its bankruptcy estates and creditors.

KK. Trustee has demonstrated that it is an exercise of his sound business judgment for Trustee to assume and assign the Assumed Leases to Prevailing Purchaser pursuant to the terms of this Sale Order and the APA, in each case in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Leases is in the best interests of the Debtor, the bankruptcy estate and creditors, and other parties in interest. The Assumed Leases being assigned to Prevailing Purchaser under the APA are an integral part of the APA and the Sale and, accordingly, such assumptions and assignments are reasonable and enhance the value of the Debtor's bankruptcy estate. Any non-Debtor counterparty to any Assumed Contract that has not actually filed with the Court an objection to such assumption as of the date hereof is deemed to have consented to such assumption and assignment.

LL. Trustee and Prevailing Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), 365(b)(1)(B),

and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Assumed Leases to the extent provided under this Sale Order and the APA and have: (i) cured any default existing prior to the date hereof, if any, under any of the Assumed Leases, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Leases, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and Prevailing Purchaser has provided adequate assurance of future performance with respect to the Assumed Leases, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Assumed Leases are assignable notwithstanding any provisions contained therein to the contrary.

MM. The APA and the Sale must be approved and the closing of same must occur promptly to preserve the value of the Assets and the Debtor's bankruptcy estate.

NN. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 362, 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale.

OO. The filing of the 2016 Declaration was a clear violation of Ohio's *Lis Pendens* doctrine (See O.R.C. § 2703.26) as well as properly avoidable as a post-mortgage attachment under Ohio law and therefore may and should be, extinguished pursuant to §363(f) of the Bankruptcy Code by this Sale Order.

PP. The Court reviewed and considered the record of this case, including but not limited to the evidence submitted at the Initial Sale Hearing and the arguments of counsel any evidence submitted at the Sale Hearing on the Motion conducted on November \_\_\_\_, 2017.

QQ. Given all of the circumstances of this chapter 11 case and the adequacy and fair value of the consideration provided by Prevailing Purchaser under the APA, the Sale constitutes a reasonable and sound exercise of Trustee's business judgment, is in the best interests of Debtor, its

bankruptcy estate and creditors, and other parties in interest in this chapter 11 case, and should be approved.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion shall be and hereby is, GRANTED.
2. All objections to the Motion or the relief requested in the Motion, if any, that have not been withdrawn, waived or settled, and all reservation of rights in such objections, if any, shall be and hereby are, OVERRULED in all respects on the merits and denied.
3. Notice of the Motion, the Sale Hearing, and the Sale was fair and equitable under the circumstances, and complied in all respects with §102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

**Approval of the Sale of the Assets**

4. The APA, including all other ancillary documents, and all of the terms and conditions thereof, and the Sale contemplated thereby, are hereby approved in all respects.
5. Pursuant to section 363(b) of the Bankruptcy Code, the Trustee on behalf of the Debtor, acting by and through his existing agents, representatives and officers, are authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the Sale pursuant to and in accordance with the terms and conditions of this Sale Order and the APA; (b) transfer and assign all right, title, and interest to the Assets and rights to be conveyed in accordance with the terms and conditions of this Sale Order and the APA; and (c) execute and deliver, perform under, consummate, and implement this Sale Order and the APA and all additional instruments and documents that may be reasonably necessary or desirable to implement this Sale Order, the APA and the Sale, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by this Sale Order, the APA and any such other ancillary documents.
6. This Sale Order shall be binding in all respects upon the Trustee, Debtor, its bankruptcy estate, all creditors, all holders of equity interests in the Debtor, all holders of any

Interests or Claims (whether known or unknown) against the Debtor, any holders of Interests or Claims against or on all or any portion of the Assets, all counterparties to any executory contract or unexpired lease of the Debtor, Prevailing Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of Prevailing Purchaser, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of the Debtor's chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's case. The terms and provisions of the APA and this Sale Order shall inure to the benefit of the Trustee, Debtor, its bankruptcy estate and creditors, Prevailing Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of Prevailing Purchaser, and any other affected third parties, including all persons asserting any Interests or Claims in the Assets to be sold to Prevailing Purchaser pursuant to the APA, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding.

#### **Sale and Transfer of Assets**

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, upon the Closing Date and pursuant to and except as otherwise set forth in the APA, the Assets shall be transferred to Prevailing Purchaser free and clear of all encumbrances, including but not limited to the Encumbrances, the 2016 Declaration, claims, interests, and liens, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity,

or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any liabilities related to the Internal Revenue Code, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of this chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, the "Interests or Claims"), with all such Interests or Claims to attach to the cash proceeds, if any, of the Sale in the order of their priority, with the same validity, force, and effect that they now have as against the Assets, subject to any claims and defenses the Debtor and its bankruptcy estate may possess with respect thereto. For avoidance of doubt, the Property is being sold to Prevailing Purchaser free and clear of the 2016 Declaration. Notwithstanding, nothing contained in this Sale Order shall be deemed a waiver of the right of the Trustee to assert any Chapter Five causes of action permissible under the Bankruptcy Code (11 U.S.C. § 501 *et seq.* ) or any other applicable law against any party associated in any way with the 2016 Declaration same being specifically reserved.

8. Subject to the terms and conditions of this Sale Order, the transfer of the Assets to Prevailing Purchaser pursuant to the APA and the consummation of the Sale and any related actions contemplated thereby do not require any consents other than as specifically provided for in this Sale Order and the APA, constitute a legal, valid, and effective transfer of the Assets, and shall vest Prevailing Purchaser with right, title, and interest of the Trustee and/or Debtor in and to the Assets as set forth in this Sale Order and the APA, as applicable, free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the APA).

9. Prevailing Purchaser, to the extent provided by this Sale Order or the APA, shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of Debtor relating to the Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Prevailing Purchaser as of the Closing Date as provided by this Sale Order and the APA. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Assets sold, transferred, assigned, or conveyed to Prevailing Purchaser on account of the filing or pendency of this chapter 11 case or the consummation of the Sale. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale.

10. All entities that are presently, or on the Closing may be, in possession of some or all of the Assets to be sold, transferred, or conveyed (wherever located) to Prevailing Purchaser pursuant to this Sale Order and the APA are hereby directed to surrender possession of same to Prevailing Purchaser on the Closing Date.

11. Upon consummation of the Sale, if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests or Claims against or in the Assets shall not have delivered to Trustee prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Assets (unless otherwise assumed in, or permitted by, the APA), or otherwise, then (a) the Trustee is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to same and (b) Prevailing Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute



conclusive evidence of the release of all Interests or Claims in the Assets of any kind or nature (except as otherwise assumed in, or permitted by, the APA); provided that, notwithstanding anything in this Sale Order or the APA to the contrary, the provisions of this Sale Order shall be self-executing, and neither Trustee nor Prevailing Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order. For the avoidance of doubt, upon consummation of the Sale, Prevailing Purchaser is authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings or financing statements recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Sale Order under section 363 of the Bankruptcy Code and the related provisions of the Bankruptcy Code.

12. Except to the extent required to enforce the APA, all entities, including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, parties to unexpired leases, customers, employees and former employees, dealers and sale representatives, and trade or other creditors holding Interests or Claims of any kind or nature whatsoever against or in the Debtor and its bankruptcy estate or the Assets arising under or out of, in connection with, or in any way relating to, the Assets or the transfer of the Assets to Prevailing Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting any Interests or Claims of any kind or nature whatsoever against Prevailing Purchaser and its permitted successors, designees, and assigns, or property, or the assets conveyed in accordance with the APA.

13. As of and after the Closing: (a) each of the Debtor's creditors is hereby authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests or Claims in the Assets (if any) as such Interests or Claims may have been recorded or may otherwise exist; and (b) the Assets that may be subject to a statutory or mechanic's lien shall be turned over and such liens shall attach to the proceeds of the Sale, if any,

in the same priority they currently enjoy with respect to the Assets.

**UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED**

14. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, Trustee's assumption and assignment to Prevailing Purchaser, and Prevailing Purchaser's assumption, on the terms set forth in this Sale Order and the APA of the Assumed Leases, is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

15. Trustee is hereby authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign to Prevailing Purchaser, effective upon the Closing Date, the Assumed Leases free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the APA) and execute and deliver to Prevailing Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Leases to Prevailing Purchaser.

16. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Prevailing Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Assumed Contract. Trustee shall cooperate with, and take all actions reasonably requested by, Prevailing Purchaser to effectuate the foregoing, as further provided in this Sale Order and the APA.

17. The Assumed Leases shall be transferred to, and remain in full force and effect for the benefit of, Prevailing Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract that is assumed and assigned to Prevailing Purchaser pursuant to the APA (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

18. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, at the closing, Prevailing Purchaser shall pay to the respective counterparty the Cure Amounts, if any, relating to

any Assumed Contract.

19. Except as otherwise agreed in writing between the Trustee and the non-Debtor parties to the Assumed Leases or stated on the record of the Sale Hearing, the Cure Amounts for the Assumed Leases are hereby fixed at the amounts set forth on **Exhibit 1** attached to this Sale Order, and the non-Debtor parties to such Assumed Leases are forever bound by such Cure Amounts and, upon payment of such Cure Amounts, are hereby enjoined from taking any action against the Trustee, Debtor and the bankruptcy estate, Prevailing Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of Prevailing Purchaser, or the Assets with respect to any claim for cure under any Assumed Contract.

20. The payment of the applicable Cure Amounts (if any) shall effect a cure of all defaults existing as of the date that such unexpired leases are assumed and compensate for any actual pecuniary loss to such non-Debtor party resulting from such default.

21. Prevailing Purchaser shall have assumed the Assumed Leases, and pursuant to section 365(f) of the Bankruptcy Code, the assignment by Trustee of such Assumed Leases shall not be a default thereunder. After the payment of the relevant Cure Amounts by Prevailing Purchaser (if any), neither the Trustee, Debtor and the bankruptcy estate nor Prevailing Purchaser shall have any further liabilities to the non- Debtor counterparties to the Assumed Leases, other than Prevailing Purchaser's obligations under the Assumed Leases that accrue or become due and payable on or after the date that such Assumed Leases are assumed.

22. Any provisions in any Assumed Leases that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by Trustee and assignment to Prevailing Purchaser of the Assumed Leases have been satisfied.

23. Any party having the right to consent to the assumption or assignment of any Assumed Contract that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

24. Prevailing Purchaser shall be deemed to be substituted for Debtor/Trustee as a party to the applicable Assumed Leases and the Trustee, Debtor and its estate shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Leases.

25. Prevailing Purchaser has provided adequate assurance of future performance under the relevant Assumed Leases within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

26. There shall be no assignment fees, increases, rent-acceleration, or any other fees charged to Prevailing Purchaser or the Trustee, Debtor and its estate as a result of the assumption and assignment of the Assumed Leases.

27. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Assumed Leases are forever barred and permanently enjoined from raising or asserting against the Trustee, Debtor and its estate or Prevailing Purchaser any assignment fee, default, breach, claim, pecuniary loss, or condition to assignment, arising under or related to the Assumed Leases, existing as of the date that such Assumed Leases are assumed or arising by reason of the Closing.

28. Neither Prevailing Purchaser nor any successor of Prevailing Purchaser shall be responsible for or have any Interests or Claims or obligations arising out of any of the contracts, agreements, or understandings that are not Assumed Leases after the Closing Date (except as specifically provided by the APA).

### **Additional Provisions**

29. Pursuant to the Order authorizing the retention of Broker, Broker is authorized to be paid by Prevailing Purchaser at closing, a lump sum of \$75,000. (See Doc. No. 207).

30. Trustee, his successors, agents or representatives, including but not limited to property manager NAI Daus, are directed to forward any rents received by them after the Closing to Prevailing Purchaser or its designee as same will no longer be property of the estate after the Closing.

31. Following the Closing, no holder of an Interest or Claim in or against the Debtor and their bankruptcy estates or the Assets shall interfere with Prevailing Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest or Claim or any actions that the Trustee, Debtor and its bankruptcy estate may take in this chapter 11 case or any successor case.

32. The Trustee is hereby authorized to execute such documents and do such acts as are necessary or desirable to carry out the transactions contemplated by the terms and conditions of the APA, the Sale and this Sale Order. The Trustee shall be, and they hereby is, authorized to take all such actions as may be necessary to effectuate the terms of this Sale Order and the relief granted pursuant to this Sale Order.

33. The Sale is undertaken by Prevailing Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Leases by Prevailing Purchaser, if any, and the sale free and clear of all Interests or Claims (unless otherwise assumed in, or permitted by, the APA), unless such authorization and consummation of such Sale are duly stayed pending such appeal. Prevailing Purchaser is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

34. As a good-faith purchaser of the Assets, Prevailing Purchaser has not colluded with

any of the other bidders, potential bidders, or any other parties interested in the Assets, and therefore the sale of the Assets may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

35. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in this chapter 11 case, any subsequent chapter 7 or chapter 11 case of the Debtor, or any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the terms of this Sale Order or the APA.

36. The failure specifically to include any particular provisions of the APA including any of the documents, agreements, or instruments executed in connection therewith in this Sale Order shall not diminish or impair the efficacy of such provision, document, agreement, or instrument, it being the intent of this Court that the APA and each document, agreement or instrument be authorized and approved in its entirety.

37. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

38. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in this chapter 11 case, the terms of this Sale Order shall govern.

39. To the extent there are any inconsistencies between the terms of this Sale Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

40. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

41. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not

apply.

42. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the APA and the provisions of this Sale Order.

43. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Trustee to Prevailing Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

**IT IS SO ORDERED.**

###

**CERTIFICATE OF SERVICE**

I, Donald W. Mallory, hereby certify that the foregoing **CHAPTER 11 TRUSTEE'S MOTION FOR ORDER PURSUANT TO SECTIONS 105, 362, 363, 365, AND 1106 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002 AND 6004 (A) AUTHORIZING THE SALE OF ALL PARCELS OF THE DEBTOR'S REAL PROPERTY AND RELATED ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES, (C) SCHEDULING A HEARING TO APPROVE THE SALE, (D) AUTHORIZING PAYMENT OF BROKER'S COMMISSION AND RELATED COSTS OF SALE AND (E) GRANTING RELATED RELIEF** was electronically transmitted on October 25, 2017, via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice List, including:

- Raymond L. Beebe: RLBCT@buckeye-express.com
- Richard Boydston: rboydston@bgdlegal.com, rboydston@bgdlegal.com
- Patrick D. Burns: patrick.burns@dinsmore.com, lisa.geeding@dinsmore.com
- John Michael Debbeler: mdebbeler@graydon.law
- Steven L. Diller: steven@drlawllc.com, kim@drlawllc.com;eric@drlawllc.com;r50765@notify.bestcase.com
- Paige L. Ellerman: pellerman@fbtlaw.com, pellerman@ecf.inforuptcy.com
- Ronald E. Gold: rgold@fbtlaw.com, pellerman@fbtlaw.com;awebb@fbtlaw.com
- Kim Martin Lewis: kim.lewis@dinsmore.com, lisa.geeding@dinsmore.com
- Donald W. Mallory: dmallory@ctks.com, ddcass@ctks.com
- Richard D. Nelson: ricknelson@ctks.com
- Eric R. Neuman eric@drlawllc.com,kim@drlawllc.com;r50765@notify.bestcase.com
- United States Trustee: (Registered address)@usdoj.gov
- Scott R. Belhorn ust35: Scott.R.Belhorn@usdoj.gov

And on the following by **ordinary U.S. Mail**, addressed to:

BCC Sandusky Permanent LLC  
9380 Montgomery Rd # 202  
Cincinnati, OH 45242-7756

ABC Appliance, Inc.  
One Silverdome Industrial Park  
Pontiac MI 48342-2994

NAI Daus  
23240 Chagrin Blvd., Suite 250  
Cleveland, OH 44122-5482

AM Capital Holding LLC  
9380 Montgomery Road, Suite 202  
Cincinnati OH 45242-7756

United States Bankruptcy Court  
1716 Spielbusch Ave, Room 411  
Toledo, OH 43604-5384

American Capital Partners Mgmt., LLC  
9380 Montgomery Rd, Suite 202  
Cincinnati, OH 45242-7756

Randal J Goodman and  
Goodman Real Estate Services Group  
25333 Cedar Road, Suite 305  
Lyndhurst OH 44124-3788

Raymond L. Beebe  
Raymond L Beebe Co LPA  
1107 Adams Street  
Toledo, OH 43604-5508

The Bank of New York Trust Company  
400 S. Hope Street  
Los Angeles CA 90071-2801

C-III Management  
522 1 N. O'Connor Blvd, Suite 600  
Irving TX 75039-4414



Darden  
1000 Darden Center Drive  
PO Box 695016  
Orlando FL 32869-5016

Dollar Tree Stores, Inc.  
500 Wolvo Parkway  
Chesapeake VA 23320-0000

Eric R. Neuman  
1105-1107 Adams St.  
Toledo, OH 43604

Erie County Auditor  
247 Columbus Ave, Rm 210  
Sandusky, OH 44870-2635

Erie County Treasurer  
323 Columbus Ave  
Sandusky OH 44870-2602

French Nails Spa, LLC  
808 Crossings Rd  
Sandusky, OH 44870-8904

GMRI, Inc. d/b/a Olive Garden  
PO Box 695012  
Orlando, FL 32869-5012

George W Fels  
Court Appointee for Timothy S Baird  
9050 Plainfield Rd, Suite 3  
Cincinnati, OH 45236-1200

Home Depot  
2455 Paces Ferry Road NW  
Atlanta GA 30339-4024

Jo-Ann Stores, LLC  
5555Darrow Road  
Hudson OH 44236-4054

Joseph C Krella, Esq.  
Fifth Third Center  
1 South Main St, Suite 1300  
Dayton OH 45402-2058

LAD Holdings  
9380 Montgomery Rd, Suite 202  
Cincinnati, OH 45242

Mark Zelnik  
500 Trillium Drive  
Galloway OH 43119-8397

Marshall & Melhorn, LLC  
c/o Benjamin Z. Heywood, Esq.  
Four Seagate, 8th Floor  
Toledo, OH 43604-2608

Maurices Incorporated  
425 West Superior Street  
Duluth MN 55802

Nichole Chimento Harris  
5097 Shattuc Ave  
Cincinnati, OH 45208-4267

Nicole Chimento Harris  
2145 Easthill Avenue  
Cincinnati OH 45208-2615

Ohio Department of Taxation  
Bankruptcy Division  
PO Box 530  
Columbus, OH 43216-0530

Panera, LLC  
Three Charles River Place  
63 Kendrick Street  
Needham Heights MA 02494-2708

Petco Animal Supplies Stores, Inc.  
654 Richland Hills Drive  
San Antonio TX 78245-2149

RAMB CO Sandusky, LLC  
2095 Ravenna Street  
Hudson OH 44236-3459

Sally Beauty Supply, LLC  
3001 Colorado Blvd  
Denton TX 76210-6802

Sandy Bradshaw  
483 Conestoga Drive  
Columbus OH 43213-2610

Steven L. Diller  
124 East Main Street  
Van Wert, OH 45891-1725  
Timothy S. Baird

6301 Augusta Lane  
Cincinnati OH 45243-2305

Tina Heink Schmidt  
3946 Mariah Dr.  
Eagle River, AK 99577-9752

Tina Schmidt  
3700 Mount Carmel Road  
Cincinnati OH 45244-1618

Tolfin Corporation  
DBA Crane s Mattress Superstore  
1922 Tiffin Avenue  
Findlay OH 45840-6753

William Tippman  
7533 Pinehurst Dr.  
Cincinnati, OH 45244-3279

Zamp Enterprises, Inc.  
2208 Wellington Circle  
Hudson OH 44236-0000

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

The Bank of New York Trust Co.  
As Trustee  
Attn: Special Servicing  
c/o C-III Management  
522 1 N. O'Connor Blvd, Suite 600  
Irving TX 75039-4414

Daniel M. McDermott,  
United States Trustee  
United States Department of Justice  
Office of the United States Trustee  
Howard M. Metzenbaum U.S. Courthouse  
201 Superior Avenue E, Suite 441  
Cleveland, OH 44114-1234

Pam Ferrell, Treasurer  
Erie County Treasurer's Office  
247 Columbus Avenue, Suite 115  
Sandusky, Ohio 44870

Randall J. Goodman  
2533 Cedar Road, Suite 305  
Lyndhurst, Ohio 44124

Goodman real Estate Services  
Group, LLC  
2533 Cedar Road, Suite 305  
Lyndhurst, Ohio 44124

Meridian Realty Capital, LLC  
9380 Montgomery Road  
Suite 202  
Cincinnati, Ohio 45242

Meridian Realty Capital, LLC  
c/o Christopher Wiest, Statutory Agent  
9380 Montgomery Road  
Suite 202  
Cincinnati, Ohio 45242

Ohio Department of Taxation  
Attn: bankruptcy Division  
PO Box 530  
Columbus, Ohio 43216-0530

**ASSUMED AND ASSIGNED LEASE NON-DEBTOR PARTIES:**

Served the Motion with a separate Exhibit G Assumption And Assignment Notice (with Exhibit F attached as Exhibit 1 thereto)

ABC Appliance, LLC  
c/o Paul Black  
One W Silverdome Industrial Park  
Pontiac, MI 48343

ABC Appliance, LLC  
c/o Billie Jo White  
784 Crossings Rd  
Sandusky, OH 44870

Harold Wolkind, Esq.  
Wolkind Law, PLLC  
2550 South Telegraph RD. St. 108  
Bloomfield, Hills, MI 48302

RAMB Co., LLC  
ATTN: Richard Andrews  
2095 Ravenna St.  
Hudson, OH 44236

Matthew F. Kadish, Esq.  
Kadish Hinkel & Welbel  
1717 E. Ninth St., #2112  
Cleveland, OH 44114  
Buffalo Wild Wings  
c/o Kirk Collins  
814 Crossings Rd.  
Sandusky, OH 44870

Tolfin Corp. dba  
Craine's Mattress Superstore  
1922 Tiffin Ave.  
Findlay, OH 45840

Rakestraw & Rakestraw, LLC  
11595 C.R. 40  
Findlay, OH 45840

Dollar Tree Stores, Inc.  
ATTN: Lease Administration  
500 Volvo Pkwy  
Chesapeake, VA 23320

Dollar Tree Stores, Inc.  
Dept. 300  
500 Volvo Parkway  
Chesapeake, VA 23320

Dollar Tree Stores, Inc.  
Property Mgmt.  
Dept. Store #775  
500 Volvo Parkway  
Chesapeake, VA 23320

French Nails & Spa, LLC  
762 Crossings Road  
Sandusky, OH 44870

French Nails & Spa, LLC  
808 Crossings Road  
Sandusky, OH 44870

Zamp Enterprises, Inc.  
c/o Maureen Harris  
Store No. 2958  
2298 Wellington Circle  
Hudson, OH 44236

Great Clips  
c/o Maureen Harris  
810 Crossings Road  
Sandusky, OH 44870

Home Depot U.S.A., Inc.  
ATTN: Vice President -  
Real Estate Law Group  
Store No. 3866  
2455 Paces Ferry Road NW  
Building C, 20<sup>th</sup> Floor  
Atlanta, GA 30339-4024

Home Depot U.S.A., Inc.  
ATTN: Corporate Counsel -  
Real Estate Store No. 3866  
1400 W. Dundee Road  
Arlington Heights, IL 60004

The Home Depot  
ATTN: Store Manager  
715 Crossings Road  
Sandusky, OH 44870

Jo-Ann Stores, LLC  
ATTN: Vice President of  
Real Estate  
5555 Darrow Road  
Hudson, OH 44326

Jo-Ann Stores, LLC  
ATTN: Senior Legal Counsel  
5555 Darrow Road  
Hudson, OH 44326

Jo-Ann Stores, LLC  
ATTN: Manager  
756 Crossings Road  
Sandusky, OH 44870

Maurices Incorporated  
ATTN: Real Estate  
105 W. Superior St.  
Duluth, Minnesota 55802

Maurices  
ATTN: Store Manager  
778 Crossings Road  
Sandusky, OH 44870

GMRI, Inc.  
ATTN: General Counsel  
Store No. 1654  
5900 Lake Ellenor Drive  
Orlando, FL 32809

GMRI, Inc. c/o Olive Garden  
ATTN: Store Manager  
5205 Milan Road  
Sandusky, OH 44870

Panera LLC  
ATTN: Lease Accounting  
3630 South Geyer Road  
St. Louis, MO 63127

Panera LLC  
ATTN: Development Counsel  
Three Charles River Place  
63 Kendrick Street  
Needham, MA 02494

Panera Bread  
ATTN: Store Mgr.  
5203 Milan Rd.  
Sandusky, OH 44870

Petco Animal Supply Stores, Inc.  
c/o Property Manager  
654 Richland Hills Drive  
San Antonio, TX 78245

Petco Animal Supply Stores, Inc.  
c/o Vice President – Real Estate  
654 Richland Hills Drive  
San Antonio, TX 78245

Party City Corporation  
41100 Plymouth Road  
Suite 101  
Plymouth, Michigan, 48170

Party City Retail Group  
Attn: Adam Eichberg  
41100 Plymouth Road  
Suite 101  
Plymouth, Michigan, 48170

Petco Animal Supply Stores, Inc.  
c/o Vice President – Law  
9125 Rehco Road  
San Diego, CA 92121-2270

Corporation Agents, Inc.  
c/o Ray & Glick LLC  
ATTN: Steven J. Marcus or  
Sidney A. Glick  
611 S. Milwaukee Avenue  
Libertyville, IL 60048

Sally Beauty Co., Inc.  
ATTN: Real Estate #3431  
3001 Colorado Blvd.  
Denton, TX 76210

Sally Beauty Co., Inc.  
ATTN: Store Manager  
772 Crossings Road  
Sandusky, OH 44870

/s/ Donald W. Mallory  
Donald W. Mallory (OH 0070875)  
Richard D. Nelson (OH 0003943)  
Cohen, Todd, Kite & Stanford, LLC  
250 East Fifth Street, Suite 2350  
Cincinnati, Ohio 45202  
Phone: (513) 333-5255  
Fax: (513) 241-4490  
Email: dmallory@ctks.com  
ricknelson@ctks.com

Counsel For Chapter 11 Trustee,  
Richard D. Nelson

# EXHIBIT A

**Exhibit A**  
**755707**

Legal Description  
For  
BCC Sandusky, LLC  
Panera Bread Parcel (1.0002 Acres)

Being a parcel of land located in part of Lot 4, Hallam Tract, Section 2, Perkins Township, Erie County, Ohio and being more particularly described as follows;

Beginning at the most westerly corner of Fun Drive, as recorded in Plat Volume 38, Page 69 of the Erie County Plat Records, said point being on the southeasterly line of said Lot 4, thence South 50° 56' 24" West along the southeasterly line of Lot 4, a distance of 63.58 feet to a point, thence northeasterly along an arc of a curve to the left, having a central angle of 61° 19' 52", a radius of 120.00 feet, a chord of 122.41 feet, bearing North 20° 16' 25" East, an arc distance of 128.46 feet to a point, thence North 10° 23' 35" West, a distance of 392.54 feet to a point, thence northeasterly along an arc of a curve to the right having a central angle of 31° 20' 36" East, a radius of 180.00 feet, a chord of 97.24 feet, bearing North 05° 16' 43" East, an arc distance of 98.47 feet to a 5/8" iron pin set at the principal place of beginning for this description;

1. Thence North 69° 02' 59" West, a distance of 60.74 feet to a 5/8" iron pin set;
2. Thence North 38° 59' 18" West, a distance of 135.14 feet to a 5/8" iron pin set on the southeasterly line of lands now or formerly owned by Doris E, Deehr, as recorded in Volume 442, Page 268 of the Erie County Deed Records;
3. Thence North 51° 00' 43" East along the southeasterly line of said Deehr's land, a distance of 264.58 feet to a point on the southwesterly right of way line of Milan Road (U. S. Route 250), said point being witnessed by a 1/2" iron pin found 0.29 feet north and 0.58 feet west of the true corner;
4. Thence South 39° 02' 47" East along the southwesterly right of way line of Milan Road (U. S. Route 250), a distance of 123.41 feet to a 5/8" iron pin set;
5. Thence southerly along the arc of a curve to right having a central angle of 90° 01' 48", a radius of 40.00 feet, a chord of 56.58 feet, bearing South 05° 58' 07" West, an arc distance of 62.85 feet to a 5/8" iron pin set;
6. Thence South 50° 59' 01" West, a distance of 104.22 feet to a 5/8" iron pin set;

(Exhibit A continued on next page)

7. Thence southwesterly along an arc of a curve to the left having a central angle of  $30^{\circ} 02' 00''$ , a radius of 180.00 feet, a chord of 93.28 feet, bearing South  $35^{\circ} 58' 01''$  West, an arc distance of 94.35 feet to the principal place of beginning and containing 1.0002 acres of land;

Bearings are assumed and used to indicate angles only.

This description was prepared by Baharoglu and Associates, Inc. Consulting Engineers and Surveyors, Norwalk, Ohio June 28, 2004 per Ronald A. Morehouse, Registered Surveyor No. 5340.

(Exhibit A continued on next page)

Legal Description  
For  
Olive Garden.

Being a parcel of land located in part of Lot 4, Hallam Tract, Section 2, Perkins Township, Erie County, Ohio and being more particularly described as follows;

Beginning at the most westerly corner of Fun Drive, as recorded in Plat Volume 38, Page 69 of the Erie County Plat Records, said point being on the southeasterly line of said Lot 4, thence North 50° 56' 24" East along the southeasterly line of said Lot 4, a distance of 116.21 feet to a point, thence North 39° 05' 00" West, a distance of 73.56 feet to a point, thence North 10° 23' 35" West, a distance of 117.05 feet to 5/8" iron pin set at the principal place of beginning for this description;

1. Thence continuing North 10° 23' 35" West, a distance of 230.00 feet to a 5/8" iron pin set;
2. Thence northeasterly along an arc of a curve to the right, having a central angle of 61° 22' 36", a radius of 120.00 feet, a chord of 122.49 feet, bearing North 20° 17' 43" East, an arc distance of 128.55 feet to a 5/8" iron pin set;
3. Thence North 50° 59' 01" East, a distance of 104.29 feet to a 5/8" iron pin set;
4. Thence easterly along an arc of a curve to the right, having a central angle of 89° 58' 12", a radius of 40.00 feet, a chord of 56.55 feet, bearing South 84° 01' 53" East, an arc distance of 62.81 feet to a 5/8" iron pin set on the southwesterly right of way line of Milan Road (U. S. Route 250);
5. Thence South 39° 02' 47" East along the southwesterly right of way of Milan Road (U. S. Route 250), a distance of 200.29 feet to a 5/8" iron pin set on the northwesterly line of lands now or formerly owned by Philip G. Steinle Jr., as recorded in RN 9911706 of the Erie County Deed Records;
6. Thence South 50° 56' 13" West along the northwesterly line of said Steinle's land, a distance of 155.00 feet to the most westerly corner of said Steinle's land;
7. Thence South 39° 02' 47" East along the southwesterly line of said Steinle's land, a distance of 47.64 feet to a 5/8" iron pin set;
8. Thence South 50° 57' 13" West, a distance of 161.49 feet to a 5/8" iron pin set;
9. Thence South 79° 37' 20" West, a distance of 49.50 feet to the principal place of beginning and containing 1.7333 acres of land, but subject to all legal highways, easements and restrictions of record.

Bearings are assumed and used to indicate angles only.

(Exhibit A continued on next page)



This description was prepared by Baharoglu and Associates, Inc. Consulting Engineers and Surveyors, Norwalk, Ohio in February, 2004 from an actual survey of the premises dated, February, 2004, by Baharoglu & Associates, Inc. Consulting Engineers and Surveyors, Norwalk, Ohio per Ronald A. Morehouse, Registered Surveyor No. 5340.

(Exhibit A continued on next page)

Legal Description  
For  
BBC Sandusky, LLC  
Parcel No. 5

Being a parcel of land located in part of Lots 4 and 11, Hallam Tract, Section 2, Perkins Township, Erie County, Ohio and being more particularly described as follows;

Beginning at a 5/8" iron pin set by others at the most westerly corner of Fun Drive, as recorded in Plat Volume 38, Page 69 of the Erie County Plat Records, said point being on the southeasterly line of said Lot 4, thence South 50° 56' 24" West along the southeasterly line of said Lot 4, a distance of 414.73 feet to a point at the principal place of beginning for this description;

8. Thence North 39° 22' 39" West, a distance of 665.03 feet to a point on the southeasterly line of lands now or formerly owned by Doris E. Deehr, as recorded in Volume 442, Page 268 of the Erie County Deed Records;
9. Thence South 51° 00' 43" West along the southeasterly line of said Deehr's land, a distance of 720.91 feet to a point;
10. Thence South 38° 58' 07" East, a distance of 347.33 feet to a point;
11. Thence South 50° 59' 13" West, a distance of 41.05 feet to a point;
12. Thence South 39° 05' 47" East, a distance of 318.63 feet to a point on the southeasterly line of Lot 11;
13. Thence North 50° 56' 24" East along the southeasterly line of Lot 11 and Lot 4, a distance of 765.99 feet to the principal place of beginning and containing 11.3473 acres of land, but subject to all legal highways, easement and restrictions of record.

Bearings are assumed and used to indicate angles only.

This description was prepared by Baharoglu and Associates, Inc. Consulting Engineers and Surveyors, Norwalk, Ohio per Ronald A. Morehouse, Registered Surveyor No. 5340, in November, 2003.

(Exhibit A continued on next page)

Township of Perkins  
County of Erie, State of Ohio  
Sam's Club, Sandusky, OH  
Wal-Mart Stores, Inc.  
Atwell Project #05000005

September 26, 2005

LEGAL DESCRIPTION OF  
PARCEL C

Being a parcel of land located in part of Lot 2 and Lot 10, Hallam Tract, Section 2,  
Perkins Township, Erie County, Ohio and being more particularly described as follows:

Commencing at a found 5/8" Iron pin with a Hull Cap at the most Southerly corner of  
Crossing Road, as recorded in Plat Volume 44, Page 100 of the Erie County Plat Records,  
thence North 50°56'24" East along the Southeasterly right-of-way line of said Crossing  
Road, a distance of 60.00 feet to a found 5/8" Iron pin and the PLACE OF BEGINNING;

1. Thence continuing North 50°56'24" East along the Southeasterly right-of-way  
line of said Crossing Road, a distance of 1120.68 feet to a point;
2. Thence Easterly along an arc of a curve to the right having a central angle of  
89°58'12", a radius of 25.00 feet, a chord of 35.34 feet, bearing South 84°04'06"  
East, an arc distance of 39.25 feet to a point on the Southwesterly right-of-way  
line of Fun Drive, as recorded in Plat Volume 38, Page 69 of the Erie county Plat  
Records;
3. Thence South 39°05'00" East along the Southwesterly right-of-way line of said  
Fun Drive, a distance of 81.17 feet to a point;
4. Thence Easterly along an arc of a curve to the left having a central angle of  
89°58'36", a radius of 130.00 feet, a chord of 183.81 feet, bearing South  
84°04'18" East, an arc distance of 204.15 feet to a point on the Southeasterly  
right-of-way line of said Fun Drive;
5. Thence North 50°56'24" East along the Southeasterly right-of-way of Fun Drive,  
a distance of 17.42 feet to a found Iron pin at the most Westerly corner of lands  
now or formerly owned by MVP Properties, as recorded in Volume 384, Page 717  
of the Erie County Deed Records;

(Exhibit A continued on next page)

6. Thence South  $39^{\circ}03'36''$  East, along the Southwesterly line of said MVP Properties lands, a distance of 127.85 feet to a found  $5/8''$  Iron pin on the Northwesterly line of lands now or formerly owned by Goodnight Inn Inc., as recorded in Volume 365, Page 408 of the Erie County Deed Records;
7. Thence South  $50^{\circ}36'45''$  West along said Northwesterly line of Goodnight Inn Inc. lands, a distance of 995.00 feet to a point;
8. Thence South  $39^{\circ}21'26''$  East along the Southwesterly line of said Goodnight Inn Inc. lands, a distance of 298.60 feet (Recorded as 300.00 feet) to a found  $5/8''$  Iron pin on the Northwesterly line of lands now or formerly owned by DSC Ltd., as recorded in Volume 271, Page 291 of the Erie County Deed Records;
9. Thence South  $51^{\circ}05'24''$  West along said Northwesterly line of DSC Ltd. lands, a distance of 112.49 feet to a set iron pipe;
10. Thence North  $39^{\circ}22'42''$  West, a distance of 345.42 feet to a set iron pipe;
11. Thence Northwesterly along an arc of a curve to the left having a central angle of  $55^{\circ}21'24''$ , a radius of 180.00 feet, a chord of 167.22 feet, bearing North  $67^{\circ}03'24''$  West, an arc distance of 173.91 feet to a set iron pipe;
12. Thence South  $85^{\circ}15'54''$  West, a distance of 65.93 feet to a set iron pipe;
13. Thence Northwesterly along an arc of a curve to the right having a central angle of  $55^{\circ}39'26''$ , a radius of 120.00 feet, a chord of 112.04 feet, bearing North  $66^{\circ}54'23''$  West, an arc distance of 116.57 feet to a set iron pipe;
14. Thence North  $39^{\circ}04'40''$  West, a distance of 38.63 feet to the Place of Beginning and containing 10.1081 acres of land, of which 10.0204 acres are in Lot 2 and 0.0877 acres (3819 square feet) are in Lot 10.

Bearings are based on the Southeasterly right-of-way line of Crossing Road as recorded in Plat Volume 44, Page 100 of the Erie County Plat Records.

This description was based on a survey and corresponding legal descriptions performed by Baharoglu and Associates, Inc. consulting Engineers and Surveyors, Norwalk, Ohio per Ronald A. Morehouse, Registered Surveyor No. 5340, July, 2005.

(Exhibit A continued on next page)

The foregoing four parcels are conveyed together with easement rights as contained in the following documents:

- A. Reciprocal Easement and Operation Agreement as set forth in RN200310311 as re-recorded in RN200311528 as amended by the First Amendment thereto as set forth in RN200502742 and the Second Amendment thereto as set forth in RN200515306.
- B. Sign Easement Agreement as set forth in RN200512497.
- C. Temporary Ingress and Egress Easement as set forth in RN200515302.
- D. Storm Sewer Easement Agreement as set forth in RN200515305.

# EXHIBIT B

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("**Agreement**") is made and entered into as of the Effective Date (as hereinafter defined) between Richard D. Nelson, in his capacity as Chapter 11 Trustee and not in his individual capacity ("**Seller**") and The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company, National Association), as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2007 IQ14 ("**Purchaser**").

In consideration of the mutual covenants, undertakings and agreements contained below, Seller and Purchaser covenant, undertake and agree as follows:

1. **Agreement to Sell.** Seller hereby agrees to sell to Purchaser or its nominee or assignee, and Purchaser hereby agrees to purchase from Seller, for the Purchase Price (as hereinafter defined) on and subject to the terms and conditions set forth in this Agreement, all of Seller's right, title and interest in and to the following:

A. The real property ("**Real Property**") located at 715 Crossings Road, Sandusky, OH and commonly known as the Crossings of Sandusky, more particularly described on **Exhibit "A"** attached hereto and made a part hereof, together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements and appurtenances pertaining thereto, including all of Seller's right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores;

B. All personal property, construction materials, supplies, fixtures, equipment and other personal property of every kind, character and description owned by Seller located on, attached to, and used in connection with the Real Property, but excluding any personal property that is leased (the "**Personal Property**");

C. All cash or cash proceeds being held by Seller or its agents and representatives, to include any property managers managing the Real Property;

D. All roads, streets, alleys, water privileges, association rights and easements belonging or appurtenant to the Real Property;

E. All buildings, fixtures, mechanical systems and other improvements ("**Improvements**") located on the Real Property;

F. All of Seller's interest, as landlord, in the written leases and tenancies granting any leasehold interest in the Real Property (including all amendments, supplements, guaranties) if any (collectively, the "**Leases**"), together with all security deposits and letters of credit in Seller's or Seller's representatives' possession or control due to the tenants at the Real Property, if any ("**Security Deposits**"), all general ledger(s), accounting records and tenant files in Seller's possession or control, with respect to or relating to the Real Property or the Personal Property (the "**Records**");

G. The rights of Seller, if any, to the name "Crossings of Sandusky" ("**Name**") currently used for the Real Property;

H. All licenses, permits, approvals, variances and similar documents, plans, drawings, specifications and surveys in Seller's or Seller's representatives' possession or control with respect to the Real Property, to the extent assignable without expense to Seller (the "**Permits**"), subject to the provisions of applicable legal requirements; and

I. All assignable service and maintenance contracts and equipment leases relating to the Real Property that are in Seller's or Seller's representatives' possession ("**Contracts**").

All of the above-described property interests are collectively referred to herein as the "**Property**". Notwithstanding anything contained herein to the contrary, the Property does not include, and Seller will not convey to Purchaser (and may expressly exclude from any conveyance document) the following: (i) any appraisals, budgets or economic evaluations of, or projections with respect to, all or any portion of the Property, and (ii) any documents, materials or information that are subject to attorney/client work product or similar privilege, that constitute attorney communications with respect to the Property and/or Seller, or that are subject to a confidentiality agreement (collectively, the "**Excluded Assets**").

## **Section 2. Purchase Price and Escrow Agent.**

A. The aggregate purchase price ("**Purchase Price**") to be paid by Purchaser to Seller for the Property is Twenty Million One Hundred Thousand and One Dollar and 00/100 (\$20,100,001.00), which is to be paid in its entirety in the form of the exercise of credit bid rights pursuant to Section 363(k) of the Bankruptcy Code with respect to a portion of the aggregate obligations then outstanding to Purchaser. Purchaser reserves the right to increase its Purchase Price in the event of increased offers or bids, if any, for the Property, at any time before the Court, as that term is defined in Section 4 below, issues the Orders and/or Approvals, as those terms are defined in Section 4 below. Purchaser has filed a Proof of Claim in the Bankruptcy, as that term is defined below, and Purchaser reserves its claims against the bankrupt estate over and above the Purchase Price.

B. The Escrow Agent for purposes of the transactions contemplated by this Agreement shall be First American Title Insurance Company, 333 Earle Ovington Boulevard, Suite 608, Uniondale NY 11553 ("**Escrow Agent**"), attention: Matthew Darrah, Transaction Manager, Phone: (516) 832-3277; Email: mdarrah@firstami.com.

## **Section 3. Title.**

A. Title shall be marketable title and title to the Property shall pass from Seller to Purchaser free and clear of all claims, liens and encumbrances. For avoidance of doubt, title shall pass free and clear of, by way of illustration and not by limitation, the lien of that certain Declaration of Easement given by Debtor and dated as of April 20, 2016 and recorded on April 21, 2016 with the Erie County Recorder as Reception No. 201603248 (the "**Declaration**").

B. During the term of this Agreement, Seller shall not cause title to the Real Property to differ materially from the condition of title as approved by Purchaser pursuant to the foregoing. If, after the Effective Date and through the Closing, the Title Company issues an updated Title Commitment that contains any bona fide new exception to title of the Real Property which is not otherwise a Permitted Encumbrance ("**New Encumbrance**"), then



Purchaser shall have three (3) business days after its receipt of such updated Title Commitment to object to such New Encumbrance by delivering written notice thereof to Seller ("**New Encumbrance Objection Letter**"). If Purchaser timely delivers a New Encumbrance Objection Letter to Seller, Seller shall, within three (3) business days after its receipt of same, notify Purchaser if Seller has elected to cure or cause to be cured (including through a Bankruptcy Court order) such New Encumbrance before Closing. Failure of Seller to timely provide such notice shall be deemed confirmation that Seller has elected not to cure such New Encumbrance. If Seller chooses not to cure any New Encumbrance specified in the New Encumbrance Objection Letter, then Purchaser shall have the option, to be exercised within two (2) business days following Purchaser's receipt of the Seller's notice (or deemed notice), of either (i) terminating this Agreement by giving a written termination notice to Seller, and the parties shall have no further rights or obligations hereunder except as otherwise expressly provided herein, or (ii) waiving the uncured objections by proceeding to Closing, and the New Encumbrance shall thereafter be a "Permitted Encumbrance".

#### **Section 4. Closing.**

A. The Closing ("**Closing**") of the sale of the Property by Seller to Purchaser shall occur in the office of the counsel for the Purchaser no later than November 30, 2017, unless such date is changed in writing signed by Seller and Purchaser (such date, as the same may be so changed being referred to herein as the "**Closing Date**").

B. At the Closing, all of the following shall occur, all of which shall be deemed concurrent conditions:

1. Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

a. A Trustee Deed ("**Deed**"), in substantially the form attached hereto as **Exhibit "D"** and made a part hereof, fully executed and acknowledged by Seller, conveying to Purchaser title to the Real Property, subject to any municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the herein-described Property and the Permitted Encumbrances, as defined in **Section 6** hereof;

b. An Assignment and Assumption of Leases and Contracts affecting the Property, in substantially the form attached hereto as **Exhibit "E"** and made a part hereof (the "**Assignment and Assumption**") duly executed by Seller;

c. A Bill of Sale and Assignment for the Personal Property (without warranties or representations), the Permits, and the Name in substantially the form attached hereto as **Exhibit "F"** and made a part hereof (the "**Bill of Sale**") duly executed by Seller;

d. A Tenant Notification Letter (the "**Tenant Notice Letter**") in the form attached hereto as **Exhibit "G"** and made a part hereof to be sent by Purchaser to each tenant under the Leases promptly upon Closing and notifying such tenants of the change in ownership and instructing such tenants to perform all future obligations to Purchaser, in form satisfactory to Purchaser and Seller;

e. Evidence reasonably satisfactory to the Title Company that the person executing the closing documents on behalf of Seller has full right, power, and authority to do so;

f. The Rent Roll provided by Seller's property manager (the "**Rent Roll**");

g. A proper affidavit by Seller, providing Seller's U.S. taxpayer identification number and stating that Seller is not a "foreign person" as defined in 26 U.S.C. Section 1445;

h. A Seller's Affidavit in substantially the form of **Exhibit "H"** attached hereto and incorporated herein (the "**Title Affidavit**") duly executed by Seller;

i. Such information as Escrow Agent may reasonably require in order to prepare a closing statement showing the Purchase Price and any adjustments thereto (the "**Settlement Statement**"); and

j. All cash being held by Seller not subject to accrued expenses permitted to be paid by Seller under the cash collateral budget (the "**Budget**") approved in the Bankruptcy, as that term is defined in Section 5, below.

2. Purchaser, at Purchaser's sole cost and expense, shall deliver or cause to be delivered to Escrow Agent the following:

a. A wire transfer, payable to the order of the Escrow Agent in an amount of money equal to the costs due to be paid by Purchaser, if any, on account of the transactions which are the subject of this Agreement;

b. Evidence reasonably satisfactory to Seller and the Title Company that the person executing the closing documents on behalf of Purchaser has full right, power, and authority to do so;

c. The Assignment and Assumption, the Bill of Sale, and the Tenant Notice Letter all duly executed by Purchaser;

d. Such information as Escrow Agent may reasonably require in order to prepare the Settlement Statement; and

e. Such other documents and agreements as may be reasonably required to consummate the transaction contemplated hereby.

3. Seller and Purchaser shall each pay their respective attorneys' fees. Purchaser shall pay any escrow fees incurred or charged by Escrow Agent. Purchaser shall pay for the base premium of the Owner Policy in the amount of the Purchase Price (excluding the cost of any endorsements or survey deletion) if it elects to purchase an Owner Policy. Purchaser shall pay all recording fees, transfer taxes or documentary stamps associated with the recordation of the Deed, tax certificates and the premiums for endorsements to the Owner Policy and/or extended coverage required by Purchaser, if any.

C. All prorations for the Settlement Statement shall be calculated as of the Closing Date (with Seller's portion covering the period through the day immediately prior to the Closing Date and Purchaser's portion commencing on and including the Closing Date), except as Seller and Purchaser may otherwise agree in writing (which agreement may take the form of Seller's and Purchaser's written approval of the Settlement Statement), on payments and invoices

received as of the Closing Date, as hereinafter defined. Rentals and invoices that are subsequently received, and that cover periods both before and after Closing with respect to items to be prorated hereunder, will be apportioned and paid to the appropriate recipient after Closing as provided herein. Any funds remaining in the possession or under the control of Seller after Closing will, after payment of outstanding property operating expenses, if any, be paid to Purchaser.

D. In the event that an application for a real estate tax abatement or reduction is not filed by Seller prior to the Closing for the tax year in which Closing occurs, then Purchaser shall have the exclusive right, following Closing, to file and prosecute such application with respect to the year in which Closing occurs. If such application has been filed by Seller prior to Closing, Purchaser shall also have the exclusive right to continue the prosecution of said application. The amount of any abatement or reduction actually obtained, less the actual, reasonable third party costs of obtaining the same (including reasonable attorney's fees) (the "**Tax Abatement Amount**"), shall be due and payable to Purchaser, in its entirety.

E. All rentals and other cash, including amounts paid in respect of common area maintenance costs and other operating expenses of the Property in accordance with the Budget, actually received by Seller for the month in which the Closing occurs shall, after payment of said maintenance costs and operating expenses, if any, be paid to Purchaser at Closing.

a. To the extent actually received by Seller prior to the Closing Date, Seller shall deliver to Purchaser at the Closing all advance payments or rentals that are due for a period that is subsequent to the month in which the Closing occurs.

b. All rentals and other sums due during the month in which the Closing occurs or otherwise that are received by either party after the Closing Date shall, after payment of operating costs and Trustee costs consistent with the Budget, be paid to Purchaser not later than forty-five (45) days after Closing.

c. All prorations of rentals, including amounts paid in respect of common area maintenance costs and other operating expenses of the Property, shall be final at Closing and shall not be subject to post-Closing reconciliation or correction except as specifically provided herein.

F. Amounts owing, prepaid or received by Seller on all (i) Contracts expressly assumed by Purchaser and assigned to Purchaser hereunder, and (ii) contacts and service agreements which provide services to the Purchaser and/or Property post-Closing, shall be apportioned as of the Closing.

G. Charges for utilities serving the Property shall be determined as of the Closing Date. Purchaser shall be responsible for all utility charges for the period on or after the Closing Date. Seller shall be responsible for all utility charges for the period through and including the day preceding the Closing Date.

H. All utility deposits for the benefit of Seller (power, water, sewer, etc.), if any, be paid to the Purchaser upon the Closing (or within a reasonable time thereafter), or, at the election of the Purchaser, shall become the property of the Purchaser after Closing and remain on deposit with the utility providers, for the benefit of the Purchaser.

I. Upon Closing, Seller shall deliver to Purchaser at the Real Property (i) exclusive possession of the Property (including all keys to the Property in Seller's possession or control), free and clear of all liens, claims and encumbrances except for the Permitted Encumbrances, as that term is defined below, and the Leases; (ii) all original Leases and amendments thereto to the extent they are in Seller's or Seller's representatives' possession; and (iii) all original Contracts and amendments thereto to the extent they are in Seller's or Seller's representatives' possession, and (iv) all documents comprising the Records that are in Seller's possession.

J. Upon Closing, Seller shall transfer to Purchaser all Security Deposits (including all letters of credit) to the extent they are held by Seller or Seller's representatives and have not been applied by Seller prior to Closing, which shall include all such monies held under any Lease entered into during Seller's ownership of the Property (whether refundable or non-refundable).

K. In the event of mathematical error on the Settlement Statement or in the calculation of pro rations within the Settlement Statement, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed, provided that on the forty-fifth (45<sup>th</sup>) day after Closing, such amounts shall be considered final except as otherwise specifically set forth herein.

L. This Section 4 shall survive Closing.

#### **Section 5. Conditions to Performance.**

A. Purchaser's and Seller's obligation to consummate the transaction contemplated herein shall be contingent and specifically conditioned upon the entry of orders (collectively, the "**Bankruptcy Court Orders**") acceptable to Purchaser and Seller by the United States Bankruptcy Court for the Northern District of Ohio (the "**Bankruptcy Court**") in Case Number 17-30905 (the "**Bankruptcy**") approving (collectively, the "**Approvals**"), among other things, the sale of the Property by Seller to Purchaser free and clear of all liens, claims and encumbrances, the terms and conditions of this Agreement and of the Assumption and Assignment of Leases and Contracts and of the transactions contemplated hereby.

B. Purchaser's obligation to consummate the transaction contemplated hereunder is expressly subject to the satisfaction (or written waiver by Purchaser) of the following conditions as of the Closing Date ("**Purchaser's Closing Conditions**"):

1. Seller's representations and warranties set forth herein continue to be true and accurate in all material respects;
2. There is no material breach of Seller's covenants as set forth herein that has not been cured prior to Closing;
3. There is no material change in the matters reflected any Title Commitment obtained by Purchaser after the Effective Date of this Agreement;
4. Seller has materially performed all of its obligations hereunder, including, but not limited to, the closing documents/deliveries described in Section 4.B.1; and
5. Purchaser must be permitted to have credit bid, pursuant to Section 363(k) of the Bankruptcy Code, all of the Purchase Price as set forth in Section 2, supra.

C. Notwithstanding Purchaser's Closing Conditions above, Seller's obligation to consummate the transaction contemplated hereunder is expressly subject to the satisfaction by Purchaser (or waiver by Seller) of the following conditions as of Closing ("**Seller's Closing Conditions**"):

1. Purchaser has materially performed all of its obligations hereunder, including, but not limited to, the closing documents/deliveries described in Section 4.B.2.

The above conditions precedent may be waived only by the party in whose favor they run, which waiver may be granted or withheld by such party in its sole discretion. If any condition precedent under this Agreement has not been satisfied as of the date of Closing or waived by the party in whose favor the condition precedent runs, such party shall be entitled, in its sole discretion, to terminate this Agreement by giving the other party and the Escrow Agent written notice to such effect. Upon a termination pursuant to the immediately preceding sentence, the parties shall have no further rights or liabilities under this Agreement except with respect to the Surviving Obligations.

#### **Section 6. AS IS Sale.**

A. Purchaser expressly acknowledges that, except as expressly provided herein, the Property is being sold and accepted **AS IS, WHERE-IS, WITH ALL FAULTS**, and Seller makes no representations or warranties, express or implied, with respect to the physical condition or any other aspect of the Real Property, including, without limitation, (i) the structural integrity of any improvements on the Property, (ii) the manner, construction, condition, and state of repair or lack of repair of any of such improvements, (iii) the conformity of the improvements to any plans or specifications for the Property, including but not limited to any plans and specifications that may have been or which may be provided to Purchaser, (iv) the conformity of the Property or its intended use to past, current or future applicable zoning or building code requirements or restrictive covenants, or the compliance with any other laws, rules, ordinances, or regulations of any government or other body, (v) the financial earning capacity or history or expense history of the operation of the Property, (vi) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, restriction, condition, or otherwise, (vii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of undershoring, sufficiency of drainage, (viii) whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (ix) the existence or non-existence of asbestos, underground or above ground storage tanks, hazardous waste or other toxic or hazardous materials of any kind or any other environmental condition or whether the Property is in compliance with applicable laws, rules and regulations, (x) the Property's investment potential or resale at any future date, at a profit or otherwise, (xi) any tax consequences of ownership of the Property or (xii) any other matter whatsoever affecting the stability, integrity, fitness for use or other condition or status of the land or any buildings or improvements situated on all or part of the Property or any other aspect of the Property or any part thereof (collectively, the "**Property Conditions**"), and except for warranties and representations expressly provided herein.

B. If and to the extent that Seller delivers or makes available documents, reports (including any environmental reports) or other writings concerning the Property (the "**Review Items**") to Purchaser, all such Review Items shall be delivered or made available without any representation or warranty as to the completeness or accuracy of the data or information contained therein, and all such Review Items are furnished to Purchaser solely as a courtesy, and neither Seller [nor Lender] have verified the accuracy of any statements or other information



therein contained, the method used to compile such information nor the qualifications of the persons preparing such information. Without Seller's prior written consent, Purchaser: (i) shall not divulge to any third party any of the Review Items and shall not use the Review Items in Purchaser's business prior to the Closing, except in connection with the evaluation of the acquisition of the Property; (ii) shall ensure that the Review Items are disclosed only to such of Purchaser's officers, directors, employees, consultants, investors and lenders, as have actual need for the information in evaluating the Property and that prior to Closing all such parties shall treat the Review Items as confidential and proprietary to Seller [or Lender]; (iii) shall act diligently to prevent any further disclosure of the information; and (iv) shall, if the Closing does not occur for any reason, promptly return to Seller (without keeping copies) all Review Items. In addition to Purchaser's obligation to return the Review Items as required by the foregoing subsection (iv), if for any reason the transaction contemplated by this Agreement fails to be consummated, Purchaser shall promptly deliver to Seller (a) a copy of any and all completed plans, renderings, market studies, reports, soil tests, plats, engineering work product and other studies or work product prepared by or on behalf of Purchaser in connection with the Property, excepting (1) internal memoranda or reports prepared by Purchaser in connection with such materials, (2) any financial projections, budgets or appraisals prepared by or on behalf of Purchaser in connection with the Property, and (3) any other confidential, proprietary or privileged information prepared by or on behalf of Purchaser in connection with the Property, free and clear of any outstanding claim for payment thereon, and (b) to the extent the same are assignable, an assignment of all rights with respect to the Property, including, but not limited to, all applications that have been filed with any governmental entity with respect to the Property; provided that Purchaser's obligation to deliver to Seller such reports and materials shall be limited to any such items that are in Purchaser's possession, custody or control and Seller agrees with respect to any such reports or materials delivered to Seller, as follows: any item so delivered shall be delivered "AS-IS" and without warranty or representation by Purchaser, and in no event shall Purchaser be liable for any use of or reliance upon such items by Seller or any other party. This Section 8.B. shall survive the termination of this Agreement.

C. Except as expressly represented by Seller herein, Purchaser will rely solely on its own investigation of the Property and not on any information provided by Seller, its agents, or its contractors. Seller will not be liable or bound in any way by any oral or written statements, representations or information about the Property or its operation furnished by any party purporting to act on Seller's behalf. Purchaser further acknowledges and agrees that the compensation to be paid to Seller for the Property has been decreased to take into account the Property is being sold subject to the disclaimers and waivers contained in this Agreement.

D. Purchaser acknowledges that the Property may not be in compliance with all regulations, rules, laws and ordinances that may apply to the Property or any part thereof and to the continued ownership, maintenance, management and repair of the Property ("**Requirements**"). After the Closing, Purchaser shall be solely responsible for any and all Requirements, Property Conditions, and all other aspects of the Property, whether the same shall be existing as of the Closing Date or not. Except as expressly provided herein, to the fullest extent permitted by law, Purchaser hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it by virtue of any applicable state, federal, or local law, rule, or regulation as a result of any alleged inaccuracy or incompleteness of the information or the purchase of the Property, including, without limitation, (iii) any environmental law, rule, or regulation whether federal, state or local, including, without limitation, the Comprehensive Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986, and any analogous federal or state laws. With respect to Purchaser's waiver of the above and the other

waivers by Purchaser contained in this Agreement, the Purchaser represents and warrants to Seller that: (a) Purchaser is not in a significantly disparate bargaining position; (b) Purchaser is represented by legal counsel in connection with the sale contemplated by this Agreement and (c) Purchaser is knowledgeable and experienced in the purchase, operation, ownership, refurbishing and sale of commercial real estate, and is fully able to evaluate the merits and risks of this transaction. As part of the provisions of this Section 8.D., but not as a limitation thereon, Purchaser hereby agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed. In this connection, to the extent permitted by law, Purchaser hereby agrees, represents, and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Purchaser further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Purchaser nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in this Section 8.D. above.

E. The foregoing waivers and releases will be given full force and effect according to each of their express terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action and strict liability claims. The foregoing waivers and releases include claims of which Purchaser is presently unaware or which Purchaser does not presently suspect to exist which, if known by Purchaser, would materially affect Purchaser's waiver or release to Seller.

F. Notwithstanding anything herein to the contrary, all of the terms and provisions of this Section 7 shall survive the Closing or a termination of this Agreement.

**Section 7. Purchaser's Inspection.**

A. During the term of this Agreement, upon reasonable prior notice to Seller and subject to the provisions herein, Purchaser shall have the right to diligently and thoroughly inspect the Property, and to hire such experts as Purchaser may deem necessary to thoroughly evaluate and analyze the Property and Property Conditions, including contractors, engineers, soils analysts, pest control specialists and the like, all at Purchaser's expense so long as such activities do not unreasonably interfere with Seller's or any tenant's use of the Property.

B. During the Review Period and thereafter during the term of this Agreement, upon reasonable prior notice to Seller and subject to the provisions herein, Purchaser and its agents and employees, at Purchaser's sole risk and expense, shall have the right to enter upon the Property during normal business hours for testing, surveying, engineering and other reasonable inspection purposes ("Tests"). All such activities shall be conducted in such a fashion so as not to unreasonably interfere with the rights or property of any tenants or others with any possessory interest in any part of any portion of the Property. Purchaser will cooperate with and adhere to all tenant notice requirements that affect the timing of all such activities. Without the prior written consent of Seller, Purchaser covenants with Seller that Purchaser shall not contact (i) any tenant of space in the Property, (ii) Seller's property manager, or (iii) any leasing agent of Seller with respect to space in the Property. In any event, even after Purchaser receives Seller's consent, any such contact made by Purchaser shall simultaneously include Seller (i.e. simultaneous copy to Seller on emails or other correspondence, joinder of an authorized representative of Seller in any telephone calls and presence of an authorized representative of

Seller at meetings), unless Seller waives such simultaneous contact in writing in advance of any such Purchaser contact. Notwithstanding anything herein to the contrary, Seller may, at any time and at Seller's sole and absolute discretion, withdraw and revoke its previously provided consent should Purchaser fail to strictly adhere to the specifications set forth herein whereupon Purchaser shall have no further right to contact any party at or relating to the Property in any manner whatsoever. Seller reserves the right to accompany Purchaser, or have a representative of Seller accompany Purchaser, prior to entering upon the Property in connection with any test or inspection; provided, however, Purchaser may not enter into any space leased by any tenant without being accompanied by Seller's manager for the Property or another designated representative of Seller. Seller agrees to make its manager or other representative reasonably available during normal business hours. Purchaser will not alter the physical condition of the Property without notifying Seller of its requested tests, and obtaining the written consent of Seller to any physical alteration of the Property, including, without limitation, borings, drillings or other invasive testing. Purchaser will promptly restore the Property to its original condition if damaged or changed due to the tests and inspections performed by Purchaser, free of any mechanics' or materialmen's liens or other encumbrances arising out of any of the inspections or tests, and will provide Seller, at no cost to Seller, with a copy of the results of any tests and inspections made by Purchaser, excluding any market and economic feasibility studies.

**Section 8. Notices.**

A. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given when (i) delivered in person to the address set forth hereinbelow for the party to whom the notice is given, (ii) placed in the United States mail, certified and return receipt requested, addressed to such party at the address hereinafter specified, (iii) deposited into the custody of FedEx Corporation to be sent by FedEx Overnight Delivery or other reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter specified, or (iv) telecopied by facsimile transmission to such party at the telecopy number listed below, provided that such transmission is electronically confirmed on the date of such transmission. In addition, notice may be given by email at the email address set forth hereinbelow for the party to whom notice is given, and such notice shall be deemed given and served upon transmission so long as such notice is also given on the same day via a method provided for in (i) through (iv) above.

B. The address of Seller for all purposes under this Agreement and for all notices hereunder shall be:

Richard D. Nelson  
Cohen, Todd, Kite & Stanford, LLC  
250 East Fifth Street, Suite 2350  
Cincinnati, OH 45202  
Phone: 513-333-5255  
Fax: 513-241-4495  
E mail: ricknelson@ctks.com

with a copy to:

Cohen, Todd, Kite & Stanford, LLC  
250 East Fifth Street, Suite 2350  
Cincinnati, OH 45202



Attention: Donald W. Mallory, Esquire  
Phone: 513-333-5233  
Fax: 513-241-4495  
E mail: dmallory@ctks.com

G. The address of Purchaser for all purposes under this Agreement and for all notices hereunder shall be:

The Bank of New York Mellon Trust Company, National Association, as Trustee  
c/o C-III Asset Management LLC  
5221 N. O'Connor Boulevard, Suite 600  
Irving, TX 75039  
Attention: Matthew Furay  
Phone: 972-868-5638  
Email: mfuray@c3cp.com

with a copy to:

Dinsmore and Shohl LLP  
1200 Liberty Ridge Drive, Suite 310  
Wayne, PA 19087  
Attention: Richard A. O'Halloran, Esquire  
Phone: 610-408-6035  
Email: richard.ohalloran@dinsmore.com

C. From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Agreement by giving the other party not less than thirty (30) days' advance written notice of such change of address in accordance with the provisions hereof.

**Section 9. Entire Agreement.** This Agreement (including the exhibits hereto) contains the entire agreement between Seller and Purchaser and fully supersedes all prior agreements and understandings between the parties. No oral statements or prior written matter not specifically incorporated herein shall be of any force and effect. No variation, modification, or changes hereof shall be binding on either party hereto unless set forth in a document executed by such parties or a duly authorized agent, officer or representative thereof.

**Section 10. Representations.**

A. Seller hereby warrants and represents to Purchaser that this Agreement and all documents to be executed and delivered by Seller at Closing are and at the Closing will be duly authorized, executed, and delivered, and are and at the Closing will be legal, valid, and binding obligations of Seller, and do not and at the Closing will not violate any provisions of any agreement to which Seller is a party or to which Seller is subject.

B. Seller makes the following representations and warranties to Purchaser, which representations and warranties shall be deemed to be repeated by Seller as of the Closing Date, but shall not survive the Closing:

1. To Seller's current actual knowledge, there are no parties in possession of any portion of the Real Property, except tenants pursuant to the Leases, if any, as shown on the Rent Roll delivered to Purchaser pursuant to this Agreement and persons or entities claiming by, through or under such tenants. To the extent in Seller's or Seller's representatives' actual physical possession, Seller has, or will, allow Purchaser to inspect and, if desired, to obtain a true and correct copy of each written Lease, if any, which is in existence as of the Effective Date and which may be executed between the Effective Date and the Closing Date;

2. Subject to Bankruptcy Court approval, Seller has full power to enter into and perform this Agreement and perform its obligations hereunder;

3. Seller has been duly organized and is validly existing and in good standing. Subject to Bankruptcy Court approval, the execution, delivery and performance of this Agreement by Seller has been duly and validly authorized by all necessary action and proceedings and no further action or authorization is necessary on the part of Seller in order to consummate the transaction contemplated herein; and

4. Seller has full right, power and authority to own the Property, to execute and deliver this Agreement, to consummate the transactions, to comply with and fulfill the terms and conditions hereof and to sell the Property to Purchaser.

As used in this Agreement, the words "Seller's current actual knowledge" (or any other words regarding the knowledge or awareness of Seller) mean and refer to the current actual knowledge of Alec Pacella, not in his individual or personal capacity but solely in his capacity as representative of NAI Daus, the manager of the Property, limited to his current consciousness, without any due diligence, inquiry or investigation of any kind or duty of inquiry or investigation by him and do not include any constructive, imputed or implied knowledge.

If, prior to Closing, Purchaser shall obtain knowledge of any information that is contradictory to, and would constitute the basis of a breach of, any representation or warranty or failure to satisfy any condition to Purchaser's obligation to close then Purchaser acknowledges that once Closing occurs, such representation, warranty or condition will not be deemed breached and Purchaser shall not be entitled to bring any action after the Closing Date based on such representation, warranty or condition.

By executing and delivering the documents listed in Section 4, Seller shall be deemed to have made all of the foregoing representations and warranties as of Closing. Should any of the foregoing representations and warranties be found to be incorrect in any material respect prior to Closing, Seller may cure same by Closing. If Seller is unable or otherwise does not cure same by Closing, Purchaser shall be entitled either to (i) waive same and close this transaction in accordance with the terms of this Agreement without adjustment of the Purchase Price by reason of such breach, or (ii) terminate this Agreement by written notice to Seller.

C. Purchaser makes the following representations and warranties to Seller, which representations and warranties shall be deemed to be repeated by Purchaser as of the Closing Date and which shall survive the Closing for a period of six (6) months:

1. This Agreement is, and all documents to be executed and delivered by Purchaser at the Closing are or at the Closing will be, (i) duly authorized, executed, and delivered, and (ii) the legal, valid, and binding obligations of Purchaser, and do not and at the Closing will not violate any provisions of any agreement to which Purchaser is a party or to which Purchaser is subject;

2. Purchaser has full right, power and authority to execute and deliver this Agreement, to consummate the transactions contemplated herein, to comply with and fulfill the terms and conditions hereof and to purchase the Property from Seller, and no further action or authorization is necessary on the part of Purchaser in order to consummate the transaction contemplated herein;

3. Neither Purchaser nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents (collectively, a "**Purchaser Party**") is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities;

**Section 11. Seller's Covenants.** Seller covenants and agrees with Purchaser that between the Effective Date and the Closing Date:

A. As soon as reasonably possible after Seller's receipt of written notice from any governmental authority of the institution of any proceedings for the condemnation of the Real Property, or any portion thereof, or any other proceedings arising out of injury or damage to the Real Property, or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings.

B. At Purchaser's written request Seller will assume and assign such leases and contracts pursuant to the Orders and will reject any remaining leases.

C. If Seller intends to enter into any new Lease or Lease modification (collectively the "**Lease Transaction(s)**") prior to the expiration of the Review Period, and whether or not the terms of such Lease Transaction(s) provide for Seller to perform, pay or contract for any tenant improvement work or additional landlord work required pursuant to such Lease Transaction(s), or to pay or contract for any leasing commissions or to grant any free rent period or other financial concessions (collectively the "**Lease Costs**"), then at least two (2) business days prior to the execution by Seller of any document(s) concerning such Lease Transaction(s), Seller shall provide to Purchaser for review and comment (but not approval), a copy of the proposed agreement of lease or Lease modification as well as a statement as to the amount of the applicable leasing commissions; provided, however, that Purchaser shall provide any such comments which Purchaser may elect to provide to Seller (which comments shall not be binding on Seller) within two (2) business days after receipt of such agreement of lease or Lease modification. If Purchaser does not terminate this Agreement before the end of the Review Period, then following the expiration of the Review Period and until the Closing Date, Seller shall not, without Purchaser's prior written consent, which consent shall not unreasonably be

withheld, delayed or conditioned: (1) amend or modify any Lease; (2) terminate any Lease, or enter into any other Leases; provided, however, that Purchaser shall deliver written notice to Seller of Purchaser's consent or withholding of consent within three (3) business days after receipt of such proposed amendment, modification, notice of termination or new Lease. Seller shall receive a credit at Closing for all Lease Costs paid by Seller after the Effective Date of this Agreement and prior to Closing, and Purchaser agrees to assume full liability for the timely payment and performance of all outstanding Lease Costs in accordance with the terms thereof. Purchaser's obligations under the preceding sentence shall survive Closing, and shall control over any provision in the Assignment and Assumption to the contrary.

D. Purchaser expressly acknowledges and agrees that Seller has no obligations with respect to the Property that survive Closing except as specifically set forth herein. The provisions of this Section 14.D. shall survive Closing.

**Section 12. Assignment of Agreement; Assigns.** Purchaser shall be permitted to assign this Agreement one time without Seller's consent. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors, and permitted assigns. Any assignment of this Agreement beyond the one time assignment referenced herein shall require the prior written consent of Seller, which may be granted or denied in Seller's reasonable discretion.

**Section 13. Effective Date.** The date on which this Agreement is executed by the last to sign of Seller and Purchaser shall be the "Effective Date" of this Agreement.

**Section 14. Time of the Essence.** Time is of the essence of this Agreement.

**Section 15. Destruction, Damage, or Taking Prior to Closing.** If, after the Effective Date, the Property or any portion thereof is damaged or destroyed by fire or other casualty or by a partial taking under the provisions of eminent domain prior to the Closing and the Property is not substantially restored by the Closing Date:

A. If the cost of repair or value of the taking does not exceed \$500,000.00, Seller shall assign to Purchaser at Closing all of Seller's Property insurance or condemnation proceeds, and Purchaser shall close this transaction as provided herein except that Purchaser shall receive a credit against the Purchase Price for any deductible applicable under any such insurance policy. Seller agrees that its existing fire insurance policy covering the Property shall remain in effect until Closing unless replaced by comparable insurance coverage.

B. If the cost of repair or value of the taking exceeds \$500,000.00 Purchaser shall have the option of: (i) closing this transaction as provided herein, except that (x) Seller shall assign to Purchaser at Closing all of Seller's Property insurance or condemnation proceeds, and (y) Purchaser shall receive a credit against the Purchase Price for any deductible applicable under any such insurance policy, less any amounts reasonably and actually expended by Seller to collect any such insurance proceeds or to remedy any unsafe conditions at the Property or to repair or restore any damages, in no event to exceed the amount of the loss. In the event such amount spent by Seller shall exceed the amount of the deductible on such casualty insurance policy, then Purchaser shall deliver such excess amount to Seller, within five (5) business days of its receipt of any casualty insurance proceeds received on account of such casualty; or (ii) terminating this Agreement, in which event this Agreement shall be deemed null and void and the parties hereto shall have no further obligations to or recourse against each other either under this Agreement or otherwise.

**Section 16. Termination, Default and Remedies.**

A. If Seller fails or refuses to consummate the sale of the Property pursuant to this Agreement at the Closing or following two (2) business days written notice from Purchaser, fails to perform any of Seller's other obligations hereunder either prior to or at the Closing for any reason other than the termination of this Agreement by Seller pursuant to a right so to terminate expressly set forth in this Agreement or the failure of a condition expressly set forth in this Agreement, Purchaser shall be entitled to seek specific performance of Seller's obligations hereunder.

**Section 17. Terminology.** The captions beside the section numbers of this Agreement are for reference only and shall not modify or affect this Agreement in any manner whatsoever. Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular.

**Section 18. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE REAL PROPERTY IS LOCATED.

**Section 19. Performance of Contract.** The obligations under the terms of the Agreement are performable in Erie County, OH, and any and all payments under the terms of the Agreement are to be made in Erie County, OH.

**Section 20. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**Section 21. Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**Section 22. Attorney's Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

**Section 23. Business Days.** References to "business days" herein shall mean any day except Saturday, Sunday or day on which commercial banks located in New York, New York, are authorized or required by law to be closed for business. If the Closing Date or the day for performance of any act required under this Agreement falls on day which is not a business day, then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day.

**Section 24. Counterparts.** This Agreement may be executed in multiple counterparts and via facsimile and/or PDF signature, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.



**Section 25. Waiver.** The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

**Section 26. No Joint Venture.** Purchaser acknowledges and agrees that Seller is not a venture, co-venturer, insurer, guarantor or partner of Purchaser in Purchaser's development of, construction upon or resale of the Property, and that Seller shall bear no liability whatsoever resulting from or arising out of Purchaser's ownership, development of, construction upon and/or sale of the Property. The provisions of this Section 33 shall survive Closing.

**Section 27. Modifications.** This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

**Section 28. Exhibits.** The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

**Section 29. Further Assurances.** Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property.

**Section 30. No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**Section 31. No Memorandum.** Purchaser will not record either this Agreement, any memorandum hereof, or any affidavit pertaining hereto. Any such recordation by Purchaser will constitute a default hereunder by Purchaser. In addition to any other remedies of Seller, Purchaser will be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit. Purchaser's obligations pursuant to this Section 38 will survive any termination of this Agreement.

**Section 32. Escrow Agent.** Seller and Purchaser covenant and agree that in performing any of its duties under this Agreement, Escrow Agent shall not be liable for any loss, costs or damage which it may incur as a result of serving as escrow agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence. Accordingly, Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to its escrow duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons

and to conform with the provisions of this Agreement. In the event of a dispute between any of the parties hereto sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Agreement, together with such legal pleading as it deems appropriate, and thereupon Escrow Agent will be discharged from any claims relating to the right of ownership or possession by any party as to such interpleaded money or property.

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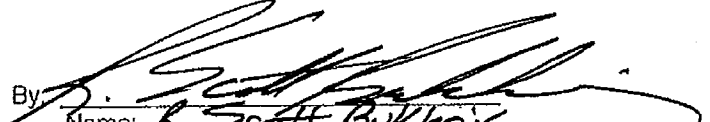
IN WITNESS WHEREOF, this Agreement is hereby executed as of the Effective Date.

**PURCHASER:**

Date: October 25, 2017

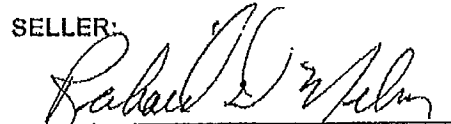
The Bank of New York Mellon Trust Company, National Association (f/k/a The Bank of New York Trust Company, National Association) as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-IQ14

By: C-III Asset Management LLC, a Delaware limited liability company, in its capacity as special servicer pursuant to that certain Pooling and Servicing Agreement dated June 27, 2012

By:   
Name: R. Scott Bukhair  
Title: Servicing Officer

**SELLER:**

Date: October 25, 2017

  
Name: Richard D. Nelson  
Title: Chapter 11 Trustee



**ESCROW AGENT JOINDER PAGE**

By its execution below, the Escrow Agent acknowledges and joins in the foregoing Agreement. d agrees to hold and deliver the same and perform its other duties pursuant to the provisions of this Agreement.

**ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Wire transfer instructions for Escrow Agent:

Bank:

City and State of Bank:

ABA No.:

Account Name:

Account No.:

Reference/Further Credit to:

**EXHIBIT "A"**  
**LAND DESCRIPTION**

**EXHIBIT "B"**

**REVIEW ITEMS**

To the extent that the following are in the custody or control of Seller or Seller's representatives, and subject to the limitations set forth in Section 8.B. of the Agreement, Seller shall deliver the following Review Items related to the Real Property to Purchaser (for the avoidance of doubt, Seller will provide all such Review Items in Seller's or Seller's representatives' possession as of the Effective Date and should any such items and/or information be delivered after the initial provision of the Review Items in Seller's or Seller's representatives' possession as of the Effective Date, such supplemental delivery shall not extend any review periods specified in the Agreement):

**EXHIBIT "C"**

**INTENTIONALLY DELETED**

EXHIBIT "D"

TRUSTEE'S DEED

Richard D. Nelson, in his capacity as Chapter 11 Trustee ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration to it paid by The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company), as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 20071Q14 ("**Grantee**"), whose mailing address is/c/o C-III Asset Management LLC, 5221 N. O'Connor Boulevard, Suite 600, Irving TX 75029, attention: Special Servicing, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto the Grantee that certain tract of land ("**Land**") described on **Exhibit A** attached hereto and incorporated herein, together with all improvements thereon and all rights and appurtenances appertaining thereto (herein collectively called the "**Property**").

Grantee, by its acceptance hereof, agrees to assume and be solely responsible for payment of all ad valorem taxes pertaining to the Property for the calendar year 2017 and subsequent years; there having been a proper proration of same between Grantor and Grantee.

TO HAVE AND TO HOLD the Property and all improvements located thereon, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its legal representatives, successors, and assigns forever; and Grantor does hereby bind itself, its legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Encumbrances, unto Grantee, its legal representatives, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor, but not otherwise.

OTHER THAN THE SPECIAL WARRANTY OF TITLE SET FORTH IN THIS DEED AND AS EXPRESSLY STATED IN THE AGREEMENT OF PURCHASE AND SALE WHEREBY GRANTEE AGREED TO PURCHASE FROM GRANTOR (THE "**AGREEMENT**"), AND GRANTOR AGREED TO SELL TO GRANTEE, THE PROPERTY, GRANTOR CONVEYS THE PROPERTY TO GRANTEE AND BY ACCEPTING THIS DEED, GRANTEE ACCEPTS THE PROPERTY **AS-IS, WHERE-IS, WITH ALL FAULTS** AND GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE STRUCTURAL INTEGRITY OF ANY IMPROVEMENTS ON THE PROPERTY, (II) THE MANNER, CONSTRUCTION, CONDITION, AND STATE OF REPAIR OR LACK OF REPAIR OF ANY OF SUCH IMPROVEMENTS, (III) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR WHICH MAY BE PROVIDED TO GRANTEE, (IV) THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING CODE REQUIREMENTS OR THE COMPLIANCE WITH ANY OTHER LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY, (V) THE FINANCIAL EARNING CAPACITY OR HISTORY OR EXPENSE HISTORY OF THE OPERATION OF THE PROPERTY, (VI) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION,

CONDITION, OR OTHERWISE, (VII) THE EXISTENCE OF SOIL INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, SUSCEPTIBILITY TO LANDSLIDES, SUFFICIENCY OF UNDERSHORING, SUFFICIENCY OF DRAINAGE, (VIII) WHETHER THE PROPERTY IS LOCATED WHOLLY OR PARTIALLY IN A FLOOD PLAIN OR A FLOOD HAZARD BOUNDARY OR SIMILAR AREA, (IX) THE EXISTENCE OR NON-EXISTENCE OF ASBESTOS, UNDERGROUND OR ABOVE GROUND STORAGE TANKS, HAZARDOUS WASTE OR OTHER TOXIC OR HAZARDOUS MATERIALS OF ANY KIND OR ANY OTHER ENVIRONMENTAL CONDITION OR WHETHER THE PROPERTY IS IN COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS, (X) THE PROPERTY'S INVESTMENT POTENTIAL OR RESALE POTENTIAL AT ANY FUTURE DATE, AT A PROFIT OR OTHERWISE, (XI) ANY TAX CONSEQUENCES OF OWNERSHIP OF THE PROPERTY OR (XII) ANY OTHER MATTER WHATSOEVER AFFECTING THE STABILITY, INTEGRITY, FITNESS FOR USE OR OTHER CONDITION OR STATUS OF THE LAND OR ANY BUILDINGS OR IMPROVEMENTS SITUATED ON ALL OR PART OF THE PROPERTY (COLLECTIVELY, THE "PROPERTY CONDITIONS"), AND BY ACCEPTING THIS DEED, GRANTEE HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS GRANTEE MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE PROPERTY, ITS IMPROVEMENTS OR THE PROPERTY CONDITIONS, SUCH WAIVER BEING ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE AGREEMENT.

*[Signature Page Follows]*

WITNESS THE EXECUTION HEREOF as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**GRANTOR:**

\_\_\_\_\_  
Richard D. Nelson, Chapter 11 Trustee

STATE OF                    )  
                                  ) ss.  
COUNTY OF                )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_, by Richard D. Nelson, in his capacity as Chapter 11 Trustee.

[seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**LAND DESCRIPTION**





EXHIBIT "E"

**ASSIGNMENT AND ASSUMPTION OF  
LEASES AND CONTRACTS**

THIS ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS ("**Assignment**") is made by and between Richard D. Nelson, Chapter 11 Trustee ("**Assignor**") and The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company), as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 20071Q14 ("**Assignee**").

**RECITALS**

1. Concurrently with the execution and delivery of this Assignment, Assignor is conveying to Assignee, by Special Warranty Deed ("**Deed**") that certain tract of land ("**Real Property**") more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, together with the improvements located thereon ("**Improvements**") and the personal property owned by Assignor upon the Real Property or within the Improvements ("**Personal Property**").

2. Assignor desires to assign, transfer and convey to Assignee, and Assignee desires to obtain, all of Assignor's right, title and interest in and to the Leases and Contracts (as hereinafter defined), subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the receipt of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Assignor in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby SELL, ASSIGN, CONVEY, TRANSFER, SET OVER, and DELIVER unto Assignee all of Assignor's right, title and interest, if any, in and to the following:

(a) all oral or written agreements pursuant to which any portion of the Real Property or Improvements is used or occupied by anyone other than Assignor (collectively, "**Leases**"); provided, however, that Assignor reserves and retains for itself all claims and causes of action accruing to Assignor with respect to the Leases prior to the effective date hereof; and

(b) all assignable contracts and agreements relating to the upkeep, repair, maintenance or operation of the Real Property, Improvements or Personal Property, including specifically, without limitation, all assignable equipment leases (collectively, "**Contracts**"); provided, however, that Assignor makes no representation or warranty with respect to the assignability of any of the Leases and Contracts.

By execution of this Assignment, Assignee assumes and agrees to perform all of the covenants, agreements and obligations under the Leases and Contracts binding on Assignor or the Real Property, Improvements, or Personal Property (such covenants, agreements and obligations being herein collectively referred to as the "**Contractual Obligations**"), as such Contractual Obligations shall arise or accrue from and after the date of this Assignment. Without limiting the generality of the preceding sentence, Assignee acknowledges the responsibility for all security deposits described in the Leases and agrees to apply same in

accordance with the terms of the Leases. Assignee hereby agrees to indemnify, hold harmless and defend Assignor from and against any and all third party obligations, liabilities, costs and claims (including reasonable attorney's fees) arising as a result of or with respect to any of the Contractual Obligations that are attributable to the period of time from and after the date of this Assignment.

This Assignment may be executed in multiple counterparts and by electronic (PDF) transmission, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument.

ASSIGNEE ACKNOWLEDGES THAT IT HAS INSPECTED THE LEASES AND CONTRACTS AND THAT THIS ASSIGNMENT IS MADE BY ASSIGNOR AND ACCEPTED BY ASSIGNEE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, AND WITHOUT RECOURSE AGAINST ASSIGNOR, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

*[Signatures Page Follows]*

EXECUTED to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**ASSIGNOR:**

\_\_\_\_\_  
Name: Richard D. Nelson  
Title:

**ASSIGNEE:**

The Bank of New York Mellon Trust  
Company, National Association (f/k/a The Bank of  
New York Trust Company, National Association) as  
Trustee for Morgan Stanley Capital I Inc.,  
Commercial Mortgage Pass-Through Certificates,  
Series 2007-IQ14

By: C-III Asset Management LLC, a  
Delaware limited liability company, in its  
capacity as special servicer pursuant to that  
certain Pooling and Servicing Agreement  
dated June 27, 2012

By: \_\_\_\_\_  
Name:  
Title: Servicing Officer

**EXHIBIT A**  
**LAND DESCRIPTION**

EXHIBIT "F"

**BILL OF SALE AND ASSIGNMENT**

THIS BILL OF SALE AND ASSIGNMENT ("**Bill of Sale**") is made from Richard D. Nelson, Chapter 11 Trustee ("**Assignor**") to The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company), as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 20071Q14 ("**Assignee**").

**RECITALS**

1. Concurrently with the execution and delivery of this Bill of Sale, Assignor is conveying to Assignee, by Special Warranty Deed ("**Deed**") that certain tract of land ("**Real Property**") more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, together with the improvements located thereon ("**Improvements**").

2. Assignor desires to assign, transfer and convey to Assignee, and Assignee desires to obtain the Assigned Properties (as hereafter defined), subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the receipt of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor does hereby ASSIGN, TRANSFER, SET OVER, and DELIVER to Assignee all of Assignor's right, title and interest, if any, in and to the following (collectively, "**Assigned Properties**"):

(a) All of Assignor's right, title and interest in the personal property upon the Real Property or within the Improvements, including specifically, without limitation, heating, ventilation and air conditioning systems and equipment, appliances, furniture, carpeting, tools and supplies, and other items of personal property (excluding leased personal property, cash and the Excluded Assets, as defined in the Agreement) used in connection with the operation of the Real Property and the Improvements (collectively, "**Personal Property**") and the Permits (as defined in the Agreement of Purchase and Sale dated \_\_\_\_\_, 2017 relating to the Real Property (the "**Agreement**"));

(b) All of Assignor's right, title and interest in and to all warranties and guaranties (express or implied) issued in connection with the Improvements or the Personal Property to the extent assignable without cost to Assignor (collectively, "**Warranties**"); provided, however, that Assignor makes no representation or warranty with respect to the existence, availability or assignability of any Warranties;

(c) To the extent assignable, all of Assignor's right, title and interest in the name " \_\_\_\_\_ ", provided, however, that Assignor makes no representation or warranty with respect to the existence, availability or assignability of such name.

ASSIGNOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN RESPECT OF THE PERSONAL PROPERTY, AND THE SAME IS SOLD IN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. BY EXECUTION OF THIS

BILL OF SALE, ASSIGNEE AFFIRMS THAT IT HAS NOT RELIED ON ASSIGNOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PERSONAL PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT ASSIGNOR MAKES NO WARRANTY THAT THE PERSONAL PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE, AND THAT THE PERSONAL PROPERTY IS BEING SOLD TO ASSIGNEE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY.

This Bill of Sale may be executed in multiple counterparts and by electronic (PDF) transmission, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument.

This Bill of Sale is made by Assignor and accepted by Assignee subject to the "Permitted Encumbrances" described in the Deed, to the extent that same are validly existing and affect the Assigned Properties.

*[Signature Page Follows]*

EXECUTED to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**ASSIGNOR:**

\_\_\_\_\_  
Name: Richard D. Nelson  
Title:

**ASSIGNEE:**

The Bank of New York Mellon Trust  
Company, National Association (f/k/a The Bank of  
New York Trust Company, National Association) as  
Trustee for Morgan Stanley Capital I Inc.,  
Commercial Mortgage Pass-Through Certificates,  
Series 2007-IQ14

By: C-III Asset Management LLC, a  
Delaware limited liability company, in its  
capacity as special servicer pursuant to that  
certain Pooling and Servicing Agreement  
dated June 27, 2012

By: \_\_\_\_\_  
Name:  
Title: Servicing Officer



**EXHIBIT A**  
**LAND DESCRIPTION**

**EXHIBIT "G"**

**TENANT NOTIFICATION LETTER**

\_\_\_\_\_, 2017

**[Name and Address of Tenant]**

Re: Sale of [Insert Property Name], located at [Insert Property Address].

Ladies and Gentlemen:

Please be advised that The Bank of New York Mellon Trust Company National Association (f/k/a The Bank of New York Trust Company), as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 20071Q14 ("**Purchaser**") has purchased the captioned property, in which you occupy space as a tenant pursuant to a lease (the "**Lease**") from [INSERT SELLER LEGAL NAME] ("**Seller**"), the previous owner thereof. In connection with such purchase, Seller has assigned its interest as landlord in the Lease to Purchaser and, to the extent in Seller's possession or control, has transferred the security deposit set forth in your lease (the "**Security Deposit**") to Purchaser. Purchaser specifically acknowledges responsibility for the Security Deposit, the intent of Purchaser and Seller being to relieve Seller of any liability for the return of the Security Deposit, whether or not the same was transferred to Purchaser.

All rental and other payments that become due subsequent to the date hereof should be payable to \_\_\_\_\_ and should be addressed as follows until otherwise notified in writing by Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition, all notices from you to the landlord concerning any matter relating to your tenancy should be sent to \_\_\_\_\_ at the address above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Very truly yours,

**SELLER:**

\_\_\_\_\_  
Name: Richard D. Nelson

Title:

**PURCHASER:**

The Bank of New York Mellon Trust  
Company, National Association (f/k/a The Bank of  
New York Trust Company, National Association) as  
Trustee for Morgan Stanley Capital I Inc.,  
Commercial Mortgage Pass-Through Certificates,  
Series 2007-IQ14

By: C-III Asset Management LLC, a  
Delaware limited liability company, in its  
capacity as special servicer pursuant to that  
certain Pooling and Servicing Agreement  
dated June 27, 2012

By: \_\_\_\_\_

Name:

Title: Servicing Officer

**EXHIBIT "H"**

**SELLER'S AFFIDAVIT**

The undersigned affiant, Richard D. Nelson, Chapter 11 Trustee, (hereinafter referred to as the "**Seller**"), after being duly sworn, hereby certifies as follows:

1) That to the actual knowledge of the undersigned, no work has been done or services or materials provided to the subject property at the instance of the Seller or others claiming by, through or under Seller for which payment will not be made, and to the

actual knowledge of the undersigned, there are no existing or pending mechanic's and/or material-men's liens against the subject property, nor does the Seller have actual notice with respect to any lien of any nature being filed or intended to be filed on the subject property, by any party claiming by, through or under Seller.

2) To the actual knowledge of the undersigned, Seller as of this date has not (a) transferred, assigned or conveyed its interest in the subject property by deed, contract, or otherwise to any other party, and (b) executed, or permitted anyone on its behalf, to execute any conveyance, option, mortgage, lien, security agreement, financing statement or encumbrance of or upon the subject property or any fixtures attached thereto which is now outstanding or enforceable against the subject property except as may be set forth in the Commitment.

3) That to the actual knowledge of the undersigned, the Seller has made no contract to sell all or any part of the subject property to any person or party, and the Seller has not given to any other person or party an option to purchase all or any part of the subject property which is enforceable or exercisable now or at any time in the future except to \_\_\_\_\_ **[insert name of Purchaser]** and assigns.

4) That to the actual knowledge of the undersigned, there are no parties in possession of the subject property except those tenants/licenses set forth in the rent roll attached hereto as **Exhibit A**.

5) That to the actual knowledge of the undersigned, except as specifically disclosed in the rent roll or as otherwise disclosed to the Title Company, no unrecorded Leases contain provisions for options to purchase and/or rights of first refusal to purchase the subject property or any portion thereof, except as follows: None

6) That the undersigned makes the foregoing certifications with the understanding that the Title Company shall rely upon such certifications.

As used herein, "actual knowledge" shall refer only to the current actual knowledge of the Seller in his capacity as the Chapter 11 Trustee for the Debtor appointed by the United States Bankruptcy Court for the Northern District of Ohio, Western Division, in case number 17-30905

and shall not be construed to refer to the knowledge of any other officer, agent or employee of Seller or C-III or any affiliate thereof, and shall not be construed to include any constructive, imputed or implied knowledge.

*[Signature Page Follows]*

Executed this \_\_ day of \_\_\_\_\_, 201\_\_.

**SELLER:**

\_\_\_\_\_  
Name: Richard D. Nelson

Title:

STATE OF            )  
                          ) ss.  
COUNTY OF        )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_, by Richard D. Nelson in his capacity as Seller.

[seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

# EXHIBIT E

September 7, 2017

VIA FACSIMILE TO 513.421.1215  
VIA EMAIL TO HANK.DAVIS@CUSHWAKE.COM

Hank Davis  
Cushman & Wakefield  
201 East Fifth Street  
Suite 1800  
Cincinnati, OH 45202

**RE: Letter of Intent to Purchase certain parcels of property that is part of the Crossings of Sandusky (Parcel Numbers 32-03439.007, 32-03439.003, 32-03439.002 and 32-02006.004 in Erie County, OH)<sup>1</sup>**

**Please let this letter serve as our Letter of Intent ("LOI") to purchase the above referenced property and sets forth the basic business terms and conditions upon which we agree to purchase the Property.**

- 1. Property:** The property is commonly known as part of the "Crossings of Sandusky"
- 2. Purchaser:** **Please List all Principals involved with purchasing entity**
- 3. Purchase Price:** \$ \_\_\_\_\_
- 4. Earnest Money Deposit:** Upon mutual signing of an agreed upon Purchase and Sale Agreement, Purchaser agrees to deposit 2% of the Purchase Price to be held by Richard D. Nelson, the Chapter 11 Trustee in a segregated account approved by the Office of the United States Trustee. The deposit shall become non-refundable upon the expiration of the Inspection Period, and shall be immediately released to seller, should Purchaser fail to close.
- 5. Documentation of Ability to Close:** Purchaser shall provide with this LOI evidence of Purchaser's background credit capability to close the transaction.
- 6. Inspection Period:** Purchaser shall have an Inspection Period of \_\_\_ Days from the date of acceptance and execution of a mutually acceptable Purchase and Sale Agreement.
- 7. Closing:** Closing shall occur \_\_\_ Days following expiration of the Inspection Period.
- 8. Purchase Contract:** Purchaser and Seller shall promptly prepare and execute a form of purchase contract, which shall embody each of the terms and conditions of this letter on Intent. Said purchase contract is to be provided within ten days (10 Days) of mutual execution of this letter.
- 9. Representation:** Purchaser and Seller acknowledge that Cushman & Wakefield are representing the Seller and is the only brokerage firm participating in this

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<sup>1</sup> The property is being administered as part of the Chapter 11 bankruptcy case of *In re BCC Sandusky Permanent, LLC* pending before the U.S. Bankruptcy Court, N.D. Ohio, Case No. 17-30905.



transaction. Brokerage fees from this deal shall only be payable to Cushman & Wakefield. Any third-party broker must seek compensation, if any, from their client.

- 10. Property Condition Inspection:** It is Purchaser's obligation to conduct all necessary studies, including but not limited to environmental, construction, market feasibility, title, & zoning reports.
- 10. Title Insurance:** Buyer to pay for Title Insurance.
- 11. Financing** If Buyer plans to obtain financing, please identify expected lender, and anticipated terms of the loan.
- 12. Legal Fees and Costs:** Each party to this transaction shall pay its own legal fees.
- 13. Non-Binding:** This letter sets forth the basic terms for negotiation of a purchase and sale agreement and is not a contract. Or option. **This letter does not provide Purchaser with rights in the Property or against seller or its affiliates.** Neither party shall be bound to the other party until a Purchase Contract is executed by both parties.
- 14. Acceptable Date:** If this letter accurately sets forth your understanding of the basic business terms relating to this proposed transaction, please execute and return an original of this letter to the undersigned on or before 6:00 PM EST on September 22, 2017.
- 15. Bankruptcy Court Approval:** The ability to sell the Property to Purchaser is subject to final approval by the U.S. Bankruptcy Court, N.D. Ohio, Case No. 17-30905. Bidding for the Property shall be governed and subject to the Bidding Procedures Order to be entered by the Bankruptcy Court.

Sincerely,

SEEN AND AGREED

PURCHASER: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Copy to: Richard D. Nelson, Chapter 11 Trustee.

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