

LAW FIRM OF BRIAN W. HOFMEISTER, LLC  
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Attorneys for Barry W. Frost, Chapter 11 Trustee

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In the Matter of: ) UNITED STATES BANKRUPTCY  
COURT  
)  
BARBARA MAGNUSSON, )  
) FOR THE DISTRICT OF NEW JERSEY  
)  
) CHAPTER 11  
)  
Debtor. ) CASE NO. 13-31122 (CMG)  
)  
)

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**NOTICE OF MOTION SEEKING ENTRY OF AN ORDER APPROVING THE SALE OF THE ESTATE’S INTEREST IN CERTAIN REAL PROPERTY LOCATED AT 14 NEWARK AVENUE, SPRING LAKE, NEW JERSEY 07762, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105(a), 323(a), AND 363(b), (f), (h) and (m) and 541(a); FIXING THE DISTRIBUTION TO THE FIRST AND SECOND MORTGAGE HOLDERS; WAIVING THE FOURTEEN (14) DAY STAY PROVIDED BY FED. R. BANKR. P. 6004; AND GRANTING RELATED RELIEF**

Jeffrey Sponder, Esq.  
United States Trustee’s Office  
One Newark Center  
Suite 2100  
Newark, NJ 07102

Tax Collector of Spring Lake  
423 Warren Ave.  
Spring Lake, NJ 07762

George E Veitengruber, III, Esq.  
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Wall, NJ 07727  
(Counsel for Debtor)

Bunce Atkinson, Esq.  
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The Galleria  
PO Box 8415  
Red Bank, NJ 07701

Barbara Magnusson  
14 Newark Ave.  
Spring Lake, NJ 07762  
(Debtor)

Ocwen Loan Servicing, LLC  
ATTN: Cashiering Department  
Worthington Rd., Suite 100  
West Palm Beach, FL 33409  
(First Mortgage Holder)

Audrey J. Dixon, Esq.  
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(Attorney for First Mortgage Holder)

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208 Main St.  
Asbury Park, NJ 07712  
(Attorney for Second Mortgage Holder)

14 Newark Ave - SL, LLC  
c/o V. David Shaheen, Esq.  
160 White Road, Suite 204  
Little Silver, NJ 07739  
(Second Mortgage Holder)

Robert Repsha  
Orrico Realty  
415 Route 34  
Colts Neck, NJ 07722  
(Realtor)

Diane Turton, Realtors  
Colleen Tobin  
1216 Third Avenue  
Spring Lake, NJ 07762  
(Realtor)

**PLEASE TAKE NOTICE** that the undersigned, attorneys for Barry W. Frost, Chapter 11 Trustee for the Debtor Estate of Barbara Magnusson ("Trustee") herein, shall appear before the Honorable Christine M. Gravelle, Judge, United States Bankruptcy Court, 402 East State Street, Trenton, New Jersey, on the 25th day of October, 2016 at 10:00 in the forenoon, or as soon thereafter as counsel may be heard and shall apply for an Order Approving the Sale of the Estate's Interest in Certain Real Property located at 14 Newark Avenue, Spring Lake, New Jersey 07762, Free

and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 323(a), and 363(b), (f), (h) and (m) and 541(a); Fixing the Distribution to the First and Second Mortgage Holders; Waiving the Fourteen (14) Day Stay Provided by Fed. R. Bankr. P. 6004; and Granting Related Relief.

**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).

**PLEASE TAKE FURTHER NOTICE** that, if you do not want the Court to enter an Order, or if you want the Court to consider your views on this Motion, then on or before October 18, 2016, you or your attorney must:

File, with the Court, a written objection to this Motion, explaining your position to the Clerk, United States Bankruptcy Court, 402 East State Street, Trenton, New Jersey 08608;

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before October 18, 2016. You must also serve a copy upon Brian W. Hofmeister, Esq., Law Firm of Brian W. Hofmeister, LLC, 691 State Highway 33, Trenton, New Jersey 08619; and

You must attend the hearing scheduled to be held on October 25, 2016 at 10:00 a.m. at 402 East State Street, Trenton, New Jersey.

**PLEASE TAKE FURTHER NOTICE** that if you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in this Motion and may enter an order granting the relief requested.

**PLEASE TAKE FURTHER NOTICE** that the undersigned shall rely upon the annexed Application. In addition, if objections are submitted, the undersigned will be appearing for oral

argument at the hearing.

**PLEASE TAKE FURTHER NOTICE** that the within Motion requests that the Court enter an Order Approving the Sale of the Estate's Interest in Certain Real Property located at 14 Newark Avenue, Spring Lake, New Jersey 07762, Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 323(a), and 363(b), (f), (h) and (m) and 541(a); Fixing the Distribution to the First and Second Mortgage Holders; Waiving the Fourteen (14) Day Stay Provided by Fed. R. Bankr. P. 6004; and Granting Related Relief, and said Motion is based largely on the facts as outlined in the Application in support of the within Motion and the Application submitted herewith.

LAW FIRM OF BRIAN W. HOFMEISTER, LLC  
Attorneys for Barry W. Frost, Chapter 11 Trustee  
for the Debtor Estate of Barbara Magnusson

BY: /s/Brian W. Hofmeister  
Brian W. Hofmeister

Dated: September 26, 2016

STATEWIDE NEW JERSEY REALTORS® STANDARD FORM OF REAL ESTATE SALES CONTRACT



©2015 New Jersey REALTORS®, Inc.  
 THIS FORM MAY BE USED ONLY IN THE SALE OF A ONE TO FOUR-FAMILY RESIDENTIAL PROPERTY OR VACANT ONE-FAMILY LOTS. THIS FORM IS SUITABLE FOR USE ONLY WHERE THE SELLER HAS PREVIOUSLY EXECUTED A WRITTEN LISTING AGREEMENT.

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

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1. PARTIES AND PROPERTY DESCRIPTION:

Joseph Bilotta Donna Gierek, ("Buyer"),  
 whose address is 160 Overlook Avenue, Unit 6E2, Hackensack, NJ 07601

AGREES TO PURCHASE FROM

\_\_\_\_\_, ("Seller"),  
 whose address is 14 Newark Ave, Spring Lake, NJ 07762-1417

THROUGH THE BROKER(S) NAMED IN THIS CONTRACT AT THE PRICE AND TERMS STATED BELOW, THE FOLLOWING PROPERTY:

Property Address: 14 Newark Ave, Spring Lake, NJ 07762-1417

shown on the municipal tax map of Spring Lake County Monmouth

as Lot 18 Block 95 (the "Property").

THE WORDS "BUYER" AND "SELLER" INCLUDE ALL BUYERS AND SELLERS LISTED ABOVE.

2. PURCHASE PRICE:

TOTAL PURCHASE PRICE .....	\$	<u>2,550,000.00</u>
INITIAL DEPOSIT .....	\$	<u>1,000.00</u>
ADDITIONAL DEPOSIT .....	\$	<u>127,000.00</u>
MORTGAGE .....	\$	_____
BALANCE OF PURCHASE PRICE .....	\$	<u>2,422,000.00</u>

Buyer's Initials: JB DG Seller's Initials: \_\_\_\_\_



51 **3. MANNER OF PAYMENT:**

52 (A) **INITIAL DEPOSIT** to be paid by Buyer to  Listing Broker  Participating Broker  Buyer's Attorney  Title Company  
53  Other Seller's Attorney, on or before August 8, 2016 (date).

54  
55 (B) **ADDITIONAL DEPOSIT** to be paid by Buyer to the party who will be responsible for holding the escrow who is identified below  
56 on or before 10 days aftr u/c (date).

57  
58 (C) **ESCROW: All initial and additional deposit monies paid by Buyer shall be held in escrow in the NON-INTEREST**  
59 **BEARING TRUST ACCOUNT of Seller's Attorney, ("Escrowee"), until the Closing, at which time all**  
60 **monies shall be paid over to Seller.** The deposit monies shall not be paid over to Seller prior to the Closing, unless otherwise agreed  
61 in writing by both Buyer and Seller. If Buyer and Seller cannot agree on the disbursement of these escrow monies, the Escrowee may  
62 place the deposit monies in Court requesting the Court to resolve the dispute.

63  
64 (D) **IF PERFORMANCE BY BUYER IS CONTINGENT UPON OBTAINING A MORTGAGE:**

65 If payment of the purchase price requires a mortgage loan other than by Seller or other than assumption of Seller's mortgage,  
66 Buyer shall apply for the loan through any lending institution of Buyer's choice in writing on lender's standard form within ten  
67 (10) calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in  
68 the attorney-review section of this Contract, then within ten (10) calendar days after the parties agree to the terms of this Contract, and  
69 use best efforts to obtain it. Buyer shall supply all necessary information and fees required by the proposed lender and shall authorize the  
70 lender to communicate with the real estate brokers(s) and involved attorney(s). Buyer shall obtain a written commitment from the lending  
71 institution to make a loan on the property under the following terms:

72  
73 Principal Amount \$ \_\_\_\_\_ Type of Mortgage:  VA  FHA  Conventional  Other \_\_\_\_\_  
74 Term of Mortgage: \_\_\_\_\_ years, with monthly payments based on a \_\_\_\_\_ year payment schedule.

75  
76 The written mortgage commitment must be delivered to Seller's agent, who is the Listing Broker identified in Section 33, and Seller's  
77 attorney, if applicable, no later than \_\_\_\_\_ (date)(the "commitment date"). If Buyer requires additional  
78 time to obtain the written mortgage commitment, Buyer shall notify Seller's Broker and Seller's attorney, if applicable, and the commitment  
79 date shall automatically be extended for a period not to exceed \_\_\_\_\_ calendar days. If such extension causes the commitment date  
80 to extend beyond the closing date specified below, then the closing date shall be extended for \_\_\_\_\_ calendar days after the revised  
81 commitment date, or any extended date permitted by Seller. Thereafter, if Buyer has not obtained the commitment, this Contract shall  
82 be deemed null and void unless otherwise agreed in writing by Buyer and Seller. In that event, the deposit monies paid by Buyer shall be  
83 returned to Buyer notwithstanding any other provision in this Contract. If Seller alleges in writing to Escrowee within seven (7) calendar  
84 days of the commitment date or any extension of the commitment date, whichever is later, that the failure to obtain the mortgage  
85 commitment is the result of Buyer's bad faith, negligence, intentional conduct or failure to diligently pursue the mortgage application,  
86 then Escrowee shall not return the deposit monies to Buyer without the written authorization of Seller.

87  
88 (E) **BALANCE OF PURCHASE PRICE:** The balance of the purchase price shall be paid by Buyer in cash, or by certified check or  
89 trust account check.

90  
91 Payment of the balance of the purchase price by Buyer shall be made at the closing, which will take place on September 2, 2016  
92 \_\_\_\_\_ (date) at the office of Buyer's closing agent or such other place as Seller  
93 and Buyer may agree ("the Closing").

94  
95 (F) **FHA/VA LOANS:**  Applicable  Not Applicable  
96 If Buyer is applying for a VA guaranteed or an FHA insured loan, then the FHA/VA Amendatory Clause and Certificate is attached.

97  
98 **4. SUFFICIENT ASSETS:**

99 Buyer represents that Buyer has or will have as of the Closing, all necessary cash assets, together with the mortgage loan proceeds, to  
100 complete the Closing. Should Buyer not have sufficient cash assets at the Closing, Buyer will be in breach of this Contract and Seller shall  
101 be entitled to any remedies as provided by law.

102  
103 **5. BUYER'S PROPERTY SALE CONTINGENCY:**  Applicable  Not Applicable

104 This Contract is contingent upon the sale of Buyer's property (or properties) located at \_\_\_\_\_  
105 \_\_\_\_\_ on or before \_\_\_\_\_ (date)  
106 ("Buyer's Property"). If Buyer's Property presently is the subject of a contract of sale, Buyer agrees to provide a copy of the contract  
107 of sale to Brokers and to Seller at the time of signing of this Contract or after the contract of sale has been signed, as applicable and to  
108 notify Brokers and Seller of any material change in the status of the contract of sale and, if a closing date is set, within three (3) business  
109 days of setting the date for the closing.

111 If Buyer's Property is not the subject of a contract of sale, Buyer represents that Buyer's Property is or will be listed for sale with a licensed  
112 real estate broker within five (5) business days after the attorney-review period is completed or, if this Contract is timely disapproved by an  
113 attorney as provided in the attorney-review section of this Contract, then within five (5) business days after the parties agree to the terms  
114 of this Contract. A copy of the executed Listing Agreement will be provided to Brokers and Seller within three (3) business days of its  
115 execution. Buyer agrees to use best efforts to cause the property to be sold, including but not limited to listing the property at a reasonable  
116 price and on reasonable terms and submitting it to a prominent multiple listing service serving the community in which Buyer's Property  
117 is located. If Buyer enters into a contract of sale for Buyer's Property, Buyer shall provide the contract of sale to Brokers and Seller within  
118 three (3) business days of delivery of the fully executed Contract of Sale to Buyer and to notify Brokers and Seller of any material change  
119 in the status of the contract of sale and, if a closing date is set, the date of the closing within three (3) business days of setting the date for  
120 closing. If the contract of sale for Buyer's Property is terminated for any reason that is beyond Buyer's control and through no fault of  
121 Buyer, then this Contract shall become null and void unless otherwise agreed to in writing by Buyer and Seller. If Buyer does not enter  
122 into such a contract of sale on or before \_\_\_\_\_ (date), this  
123 Contract shall be null and void unless Buyer has delivered to Brokers and Seller a written waiver of this contingency, which shall include  
124 written financial information clearly evidencing Buyer's financial ability to close this transaction, or Seller agrees, in Seller's sole discretion,  
125 in writing to extend the time period(s) set forth in this contingency.

126  
127 Seller shall have the right to continue to market the Property for sale to another buyer until such time as Buyer provides a contract of sale  
128 to Brokers and Seller for the sale of Buyer's Property. If Seller receives an acceptable offer to purchase the Property prior to receiving  
129 from Buyer a contract of sale for the purchase of Buyer's Property, then Seller shall notify Buyer of the offer and Buyer will have two (2)  
130 business days to deliver to Brokers and Seller a written waiver of this contingency, which shall include written financial information clearly  
131 evidencing Buyer's financial ability to close this transaction. If such a waiver and financial information is not timely provided, then Seller,  
132 in Seller's sole discretion, may declare this Contract null and void, in which case all deposit monies shall be returned to Buyer and Seller  
133 shall have no further liability to Buyer.

134  
135 If the closing on the sale of Buyer's Property has to be delayed either because a lender does not timely provide documents through no  
136 fault of Buyer or for three (3) business days because of the change of terms as required by the Consumer Financial Protection Bureau, the  
137 Closing with Seller shall be delayed to allow Buyer to close on Buyer's Property before the Closing  
138

139 **6. ACCURATE DISCLOSURE OF SELLING PRICE:**

140 Buyer and Seller certify that this Contract accurately reflects the gross sale price as indicated in Section 2 of this Contract. Buyer and  
141 Seller understand and agree that this information shall be disclosed to the Internal Revenue Service and other government agencies as  
142 required by law.  
143

144 **7. ITEMS INCLUDED IN SALE:**

145 The Property includes all fixtures permanently attached to the building(s), and all shrubbery, plantings and fencing, gas and electric  
146 fixtures, cooking ranges and ovens, hot water heaters, flooring, screens, storm sashes, shades, blinds, awnings, radiator covers, heating  
147 apparatus and sump pumps, if any, except where owned by tenants, are included in this sale. All of the appliances shall be in working  
148 order as of the Closing. Seller does not guarantee the condition of the appliances after the Deed and affidavit of title have been delivered  
149 to Buyer at the Closing. The following items are also specifically included:  
150 Per MLS 21609823...Blinds/Shades; Ceiling Fan(s); Counter Top Range; Dishwasher;  
151 Double Oven; Outdoor Lighting; Refrigerator; Stove Hood; Swing Set; Window  
152 Treatments  
153  
154  
155  
156

157 **8. ITEMS EXCLUDED FROM SALE:**

158 Per MLS 21609823...6 Chandeliers, 2 Wall Sconces, Washer and Dryer  
159  
160  
161  
162  
163  
164

165 **9. DATES AND TIMES FOR PERFORMANCE:**

166 Seller and Buyer agree that all dates and times included in this Contract are of the essence. This means that Seller and Buyer must satisfy  
167 the terms of this Contract within the time limits that are set in this Contract or will be in default, except as otherwise provided in this  
168 Contract or required by applicable law, including but not limited to if the Closing has to be delayed either because a lender does not timely  
169 provide documents through no fault of Buyer or Seller or for three (3) business days because of the change of terms as required by the  
170 Consumer Financial Protection Bureau.

Buyer's \_\_\_\_\_ Seller's \_\_\_\_\_  
Initials: JB DG Initials: \_\_\_\_\_

171 **10. CERTIFICATE OF OCCUPANCY AND ZONING COMPLIANCE:**

172 Seller makes no representations concerning existing zoning ordinances, except that Seller's use of the Property is not presently in violation  
173 of any zoning ordinances.

174  
175 Some municipalities may require a Certificate of Occupancy or Housing Code Letter to be issued. If any is required for this Property,  
176 Seller shall obtain it at Seller's expense and shall be responsible to make and pay for any repairs required in order to obtain the Certificate  
177 or Letter. However, if this expense exceeds \$ 500.00 to Seller, then Seller may terminate this Contract and refund to Buyer all  
178 deposit monies plus Buyer's reasonable expenses, if any, in connection with this transaction unless Buyer elects to make repairs in excess of  
179 said amount at Buyer's expense, in which event Seller shall not have the right to terminate this Contract. In addition, Seller shall comply  
180 with all New Jersey laws, and local ordinances, including but not limited to smoke detectors, carbon monoxide detectors, fire extinguishers  
181 and indoor sprinkler, the cost of which shall not be considered as a repair cost.

182  
183 **11. CONDOMINIUM/HOMEOWNERS' ASSOCIATIONS:**  Applicable  Not Applicable

184 **(A) Documents.**

185 If the Property is a condominium or is subject to a homeowners' association, Seller shall, prior to or at the time of the signing of this  
186 Contract, provide Buyer with a copy of the current rules, regulations and by-laws of the condominium and/or homeowners' association.  
187 The name(s), address(es) and telephone number(s) of the association(s) is/are: \_\_\_\_\_  
188 \_\_\_\_\_  
189 \_\_\_\_\_

190  
191 **(B) Approval.**

192 Seller, if required, shall provide Buyer with written approval by the condominium or homeowners' association for Buyer's purchase of  
193 Property. Prior to closing, Seller shall provide a "Status of Account" letter and Certificate of Insurance for the association.

194  
195 **(C) Fees.**

196 Seller represents that the current annual association fee is \$ \_\_\_\_\_. Buyer acknowledges that associations commonly  
197 require a one-time non-refundable capital contribution or start-up fee, which shall be the responsibility of Buyer to pay.

198  
199 **(D) Assessments:**  Applicable  Not Applicable

200 Seller represents that, to the best of Seller's knowledge, the association has imposed or may be imposing an assesment payable after  
201 Closing by Buyer in the amount of \$ \_\_\_\_\_ for the following purpose: \_\_\_\_\_  
202 \_\_\_\_\_

203 which assesment includes but is not limited to any lawsuit or major capital improvement project of which Seller is aware.  
204

205 **12. MUNICIPAL ASSESSMENTS:**

206 Title shall be free and clear of all assessments for municipal improvements, including but not limited to municipal liens, as well as  
207 assessments and liabilities for future assessments for improvements constructed and completed. All confirmed assessments and all  
208 unconfirmed assessments that have been or may be imposed by the municipality for improvements that have been completed as of the  
209 Closing are to be paid in full by Seller or credited to Buyer at the Closing. A confirmed assessment is a lien against the Property. An  
210 unconfirmed assessment is a potential lien that, when approved by the appropriate governmental entity, will become a legal claim against  
211 the Property. Seller represents that Seller  has  has not been notified of any such assessments.  
212

213 **13. QUALITY AND INSURABILITY OF TITLE:**

214 At the Closing, Seller shall deliver a duly executed Bargain and Sale Deed with Covenant as to Grantor's Acts or other Deed satisfactory to  
215 Buyer. Title to the Property will be free from all claims or rights of others, except as described in Sections 12, 13 and 14 of this Contract.  
216 The Deed shall contain the full legal description of the Property.  
217

218 This sale will be subject to utility and other easements and restrictions of record, if any, and such state of facts as an accurate survey  
219 might disclose, provided such easement or restriction does not unreasonably limit the use of the Property. Generally, an easement is a  
220 right of a person other than the owner of property to use a portion of the property for a special purpose. A restriction is a recorded  
221 limitation on the manner in which a property owner may use the property. Buyer does not have to complete the purchase, however,  
222 if any easement, restriction or facts disclosed by an accurate survey would substantially interfere with the use of the Property for  
223 residential purposes. A violation of any restriction shall not be a reason for Buyer refusing to complete the Closing as long as the title  
224 company insures Buyer against loss at regular rates. The sale also will be made subject to applicable zoning ordinances, provided that  
225 the ordinances do not render title unmarketable.  
226

227 Title to the Property shall be good, marketable and insurable, at regular rates, by any title insurance company licensed to do business  
228 in New Jersey, subject only to the claims and rights described in this section and Section 14. Buyer agrees to order a title insurance  
229 commitment (title search) and survey, if required by Buyer's lender, title company or the municipality where the Property is located,  
230 and to furnish copies to Seller. If Seller's title contains any exceptions other than as set forth in this section, Buyer shall notify Seller

Buyer's Seller's  
Initials: JB DG Initials: \_\_\_\_\_



231 and Seller shall have thirty (30) calendar days within which to eliminate those exceptions. Seller represents, to the best of Seller's  
 232 knowledge, that there are no restrictions in any conveyance or plans of record that will prohibit use and/or occupancy of the Property  
 233 as a single family residential dwelling. Seller represents that all buildings and other improvements on the Property are  
 234 within its boundary lines and that no improvements on adjoining properties extend across boundary lines of the Property.  
 235 If Seller is unable to transfer the quality of title required and Buyer and Seller are unable to agree upon a reduction of the purchase  
 236 price, Buyer shall have the option to either void this Contract, in which case the monies paid by Buyer toward the purchase price shall  
 237 be returned to Buyer, together with the actual costs of the title search and the survey and the mortgage application fees in preparing for  
 238 the Closing without further liability to Seller, or to proceed with the Closing without any reduction of the purchase price.  
 239

240 **14. POSSESSION, OCCUPANCY AND TENANCIES:**

241 **(A) Possession and Occupancy.**

242 Possession and occupancy will be given to Buyer at the Closing. Buyer shall be entitled to possession of the Property, and any rents or  
 243 profits from the Property, immediately upon the delivery of the Deed and the Closing. Seller shall pay off any person with a claim or right  
 244 affecting the Property from the proceeds of this sale at or before the Closing.  
 245

246 **(B) Tenancies.**  Applicable  Not Applicable

247 Occupancy will be subject to the tenancies listed below as of Closing. Seller represents that the tenancies are not in violation of any  
 248 existing Municipal, County, State or Federal rules, regulations or laws. Seller agrees to transfer all security deposits to Buyer at Closing  
 249 and to provide to Brokers and Buyer a copy of all leases concerning the tenancies, if any, along with this Contract when it is signed by  
 250 Seller. Seller represents that such leases can be assigned and that Seller will assign said leases, and Buyer agrees to accept title subject to  
 251 these leases.  
 252

TENANT'S NAME	LOCATION	RENT	SECURITY DEPOSIT	TERM
_____				
_____				

259 **15. NEW JERSEY HOTEL AND MULTIPLE DWELLING HEALTH AND SAFETY ACT: (Applies only to (3) or more units.)**

260 If the New Jersey Hotel and Multiple Dwelling Health and Safety Act applies to the Property, Seller represents that the Property complies  
 261 with the requirements of the Act and Seller shall supply to Buyer a validated Certificate of Registration and a certificate of inspection  
 262 issued by the New Jersey Department of Community Affairs.  
 263

264 **16. LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARD: (This section is applicable only to all dwellings  
 265 built prior to 1978.)**  Applicable  Not Applicable

266 **(A) Document Acknowledgement.**

267 Buyer acknowledges receipt of the EPA pamphlet entitled "Protect Your Family From Lead In Your Home." Moreover, a copy of a  
 268 document entitled "Disclosure of Information and Acknowledgement Lead-Based Paint and Lead-Based Paint Hazards" has been fully  
 269 completed and signed by Buyer, Seller and Broker(s) and is appended to this Contract as Addendum "A" and is part of this Contract.  
 270

271 **(B) Lead Warning Statement.**

272 Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such  
 273 property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead  
 274 poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient,  
 275 behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest  
 276 in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or  
 277 inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for  
 278 possible lead-based paint hazards is recommended prior to purchase.  
 279

280 **(C) Inspection.**

281 The law requires that, unless Buyer and Seller agree to a longer or shorter period, Seller must allow Buyer a ten (10) day period within  
 282 which to complete an inspection and/or risk assessment of the Property as set forth in the next paragraph. Buyer, however, has the right  
 283 to waive this requirement in its entirety.  
 284

285 This Contract is contingent upon an inspection and/or risk assessment (the "Inspection") of the Property by a certified inspector/risk  
 286 assessor for the presence of lead-based paint and/or lead-based paint hazards. The Inspection shall be ordered and obtained by Buyer at  
 287 Buyer's expense within ten (10) calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an  
 288 attorney as provided in the attorney-review section of this Contract, then within ten (10) days after the parties agree to the terms in this  
 289 Contract ("Completion Date"). If the Inspection indicates that no lead-based paint or lead-based paint hazard is present at the Property,  
 290 this contingency clause shall be deemed null and void. If the Inspection indicates that lead-based paint or lead-based paint hazard is

Buyer's \_\_\_\_\_ Seller's \_\_\_\_\_  
 Initials: JB DG Initials: \_\_\_\_\_

291 present at the Property, this contingency clause will terminate at the time set forth above unless, within five (5) days from the Completion  
292 Date, Buyer delivers a copy of the inspection and/or risk assessment report to Seller and Brokers and (a) advises Seller and Brokers, in  
293 writing that Buyer is voiding this Contract; or (b) delivers to Seller and Brokers a written amendment (the "Amendment") to this Contract  
294 listing the specific existing deficiencies and corrections required by Buyer. The Amendment shall provide that Seller agrees to (a) correct  
295 the deficiencies; and (b) furnish Buyer with a certification from a certified inspector/risk assessor that the deficiencies have been corrected,  
296 before the Closing. Seller shall have 7 days after receipt of the Amendment to sign and return it to Buyer or send a written  
297 counter-proposal to Buyer. If Seller does not sign and return the Amendment or fails to offer a counter-proposal, this Contract shall be  
298 null and void. If Seller offers a counter-proposal, Buyer shall have 7 days after receipt of the counter-proposal to accept it.  
299 If Buyer fails to accept the counter-proposal within the time limit provided, this Contract shall be null and void.

300  
301 **17. NOTICE TO SELLER CONCERNING PRIVATE WELL TESTING AND CESSPOOLS:**  
302 (A) Private Well Testing.  Applicable  Not Applicable  
303 (This section is applicable if the Property's potable water supply is provided by a private well located on the Property  
304 (or the potable water supply is a well that has less than 15 service connections or does not regularly serve an average of  
305 at least 25 individuals daily at least 60 days a year).)

306  
307 Pursuant to the Private Well Testing Act, N.J.S.A. 58:12A-26 to 37, and regulations, N.J.A.C. 7:9E - 3.1 to 5.1, if this Contract is for the  
308 sale of real property whose potable water supply is provided from a private well and the analytical results of prior water tests no longer are  
309 valid, a test on the water supply must be performed by a laboratory certified by NJDEP. Seller shall order the new test or, if applicable,  
310 provide Buyer with the valid prior water test within seven (7) calendar days after the attorney-review period is completed or, if this  
311 Contract is timely disapproved by an attorney as provided in the attorney-review section of this Contract, then within seven (7) calendar  
312 days after the parties agree to the terms of this Contract. Seller agrees to procure the test, at Seller's sole cost and expense, and to provide  
313 a copy of the test results to Buyer within seven (7) calendar days after receiving the report(s). The test shall cover the parameters set forth in  
314 the Act and regulations. As required in the Act, prior to the Closing, Seller and Buyer shall each certify in writing that they have received  
315 and read a copy of the water test results.

316  
317 If any of the water tests do not meet applicable standards at the time Seller provides the water test results to Buyer, Seller shall notify Buyer,  
318 in writing, that Seller agrees to cure or correct said conditions in the water test results. If Seller fails to notify Buyer of Seller's agreement  
319 to cure or correct, such failure to so notify shall be deemed to be a refusal by Seller to cure or correct. If Seller shall fail to agree to cure  
320 or correct any of the conditions set forth in the water test results within seven (7) calendar days or if the condition is incurable and is of  
321 such significance as to unreasonably endanger the health of Buyer, Buyer shall then have the right to void this Contract by notifying Seller  
322 in writing within seven (7) calendar days thereafter. If Buyer fails to void this Contract within the seven (7) day period, Buyer shall have  
323 waived Buyer's right to cancel this Contract and this Contract shall remain in full force, and Seller shall be under no obligation to correct  
324 or cure any of the conditions set forth in the water test results. If Seller agrees to correct or cure such conditions, all such remediation shall  
325 be completed by Seller prior to the Closing.

326  
327 (B) Point-of-Entry Treatment (POET) Systems.  Applicable  Not Applicable  
328 Pursuant to N.J.A.C. 7:1J-2.5 (c), the seller of a property with a POET system that was installed and maintained at the expense of the  
329 Spill Fund must notify the Department of Environmental Protection within thirty (30) days of executing a binding contract that the  
330 Property is to be sold.

331  
332 (C) Cesspool Requirements.  Applicable  Not Applicable  
333 (This section is applicable if the Property has a cesspool, except in certain limited circumstances set forth in N.J.A.C.  
334 7:9A-3.16.) Pursuant to New Jersey's Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A (the "Standards"),  
335 if this Contract is for the sale of real property at which any cesspool, privy, outhouse, latrine or pit toilet (collectively "Cesspool") is  
336 located, the Cesspool must be abandoned and replaced with an individual subsurface sewage disposal system at or before the time of  
337 the real property transfer, except in limited circumstances.

338  
339 (i) Seller represents to Buyer that  no Cesspool is located at or on the Property, or  one or more Cesspools are located at or on the  
340 Property. [If there are one or more Cesspools, then also check EITHER Box 1 or 2 below.]

341  
342 1.  Seller agrees that, prior to the Closing and at its sole cost and expense, Seller shall abandon and replace any and all Cesspools  
343 located at or on the Property and replace such Cesspools with an individual subsurface sewage disposal system ("System") meeting all  
344 the requirements of the Standards. At or prior to the Closing, Seller shall deliver to Buyer a certificate of compliance ("Certificate of  
345 Compliance") issued by the administrative authority ("Administrative Authority") (as those terms are defined in N.J.A.C. 7:9A-2.1) with  
346 respect to the System. Notwithstanding the foregoing, if the Administrative Authority determines that a fully compliant system cannot  
347 be installed at the Property, then Seller shall notify Buyer in writing within three (3) calendar days of its receipt of the Administrative  
348 Authority's determination of its intent to install either a nonconforming System or a permanent holding tank, as determined by the  
349 Administrative Authority ("Alternate System"), and Buyer shall then have the right to void this Contract by notifying Seller in writing  
350 within seven (7) calendar days of receipt of the notice from Seller. If Buyer fails to timely void this Contract, Buyer shall have waived its

Buyer's Initials: FR DG Seller's Initials: \_\_\_\_\_

351 right to cancel this Contract under this paragraph, and Seller shall install the Alternate System and, at or prior to the Closing, deliver  
352 to Buyer such Certificate of Compliance or other evidence of approval of the Alternate System as may be issued by the Administrative  
353 Authority. The delivery of said Certificate of Compliance or other evidence of approval shall be a condition precedent to the Closing; or  
354

355 2.  Buyer agrees that, at its sole cost and expense, Buyer shall take all actions necessary to abandon and replace any and all Cesspools  
356 located at or on the Property and replace such Cesspools with a System meeting all the requirements of the Standards or an Alternate  
357 System. Buyer shall indemnify and hold Seller harmless for any and all costs, damages, claims, fines, penalties and assessments (including  
358 but not limited to reasonable attorneys' and experts' fees) arising from Buyer's violation of this paragraph. This paragraph shall survive  
359 the Closing.  
360

361 (ii) If prior to the Closing, either Buyer or Seller becomes aware of any Cesspool at or on the Property that was not disclosed by Seller  
362 at or prior to execution of this Contract, the party with knowledge of the newly identified Cesspool shall promptly, but in no event later  
363 than three (3) calendar days after receipt of such knowledge, advise the other party of the newly identified Cesspool in writing. In such  
364 event, the parties in good faith shall agree, no later than seven (7) calendar days after sending or receiving the written notice of the newly  
365 identified Cesspool, or the day preceding the scheduled Closing, whichever is sooner, to proceed pursuant to subsection (C) (i)1 or 2 above  
366 or such other agreement as satisfies the Standards, or either party may terminate this Contract.  
367

368 **18. INSPECTION CONTINGENCY CLAUSE:**

369 **(A) Responsibilities of Home Ownership.**

370 Buyer and Seller acknowledge and agree that, because the purchase of a home is one of the most significant investments a person can  
371 make in a lifetime, all aspects of this transaction require considerable analysis and investigation by Buyer before closing title to the  
372 Property. While Brokers and salespersons who are involved in this transaction are trained as licensees under the New Jersey License  
373 Law, they readily acknowledge that they have had no special training or experience with respect to the complexities pertaining to the  
374 multitude of structural, topographical and environmental components of this Property. For example, and not by way of limitation,  
375 Brokers and salespersons have no special training, knowledge or experience with regard to discovering and/or evaluating physical  
376 defects, including structural defects, roof, basement, mechanical equipment, such as heating, air conditioning, and electrical systems,  
377 sewage, plumbing, exterior drainage, termite, and other types of insect infestation or damage caused by such infestation. Moreover,  
378 Brokers and salespersons similarly have no special training, knowledge or experience with regard to evaluation of possible environmental  
379 conditions which might affect the Property pertaining to the dwelling, such as the existence of radon gas, formaldehyde gas, airborne  
380 asbestos fibers, toxic chemicals, underground storage tanks, lead, mold or other pollutants in the soil, air or water.  
381

382 **(B) Radon Testing, Reports and Mitigation.**

383 **(Radon is a radioactive gas which results from the natural breakdown of uranium in soil, rock and water. It has been**  
384 **found in homes all over the United States and is a carcinogen. For more information on radon, go to [www.epa.gov/](http://www.epa.gov/radon/pubs/citguide.html)**  
385 **[radon/pubs/citguide.html](http://radon/pubs/citguide.html) and [www.nj.gov/dep/rpp/radon](http://www.nj.gov/dep/rpp/radon) or call the NJ Radon Hot Line at 800-648-0394 or 609-984-**  
386 **5425.)**  
387

388 If the Property has been tested for radon prior to the date of this Contract, Seller agrees to provide to Buyer, at the time of the  
389 execution of this Contract, a copy of the result of the radon test(s) and evidence of any subsequent radon mitigation or treatment of the  
390 Property. In any event, Buyer shall have the right to conduct a radon inspection/test as provided and subject to the conditions set forth  
391 in paragraph (D) below. If any test results furnished or obtained by Buyer indicate a concentration level of 4 picocuries per liter (4.0  
392 pCi/L) or more in the subject dwelling, Buyer shall then have the right to void this Contract by notifying Seller in writing within seven  
393 (7) calendar days of the receipt of any such report. For the purposes of this Section 18, Seller and Buyer agree that, in the event a radon  
394 gas concentration level in the subject dwelling is determined to be less than 4 picocuries per liter (4.0 pCi/L) without any remediation,  
395 such level of radon gas concentration shall be deemed to be an acceptable level ("Acceptable Level") for the purposes of this Contract.  
396 Under those circumstances, Seller shall be under no obligation to remediate, and this contingency clause as it relates to radon shall be  
397 deemed fully satisfied.  
398

399 If Buyer's qualified inspector reports that the radon gas concentration level in the subject dwelling is four picocuries per liter (4.0 pCi/L)  
400 or more, Seller shall have a seven (7) calendar day period after receipt of such report to notify Buyer in writing that Seller agrees to  
401 remediate the gas concentration to an Acceptable Level (unless Buyer has voided this Contract as provided in the preceding paragraph).  
402 Upon such remediation, the contingency in this Contract which relates to radon shall be deemed fully satisfied. If Seller fails to notify  
403 Buyer of Seller's agreement to so remediate, such failure to so notify shall be deemed to be a refusal by Seller to remediate the radon  
404 level to an Acceptable Level, and Buyer shall then have the right to void this Contract by notifying Seller in writing within seven (7)  
405 calendar days thereafter. If Buyer fails to void this Contract within the seven (7) day period, Buyer shall have waived Buyer's right to  
406 cancel this Contract and this Contract shall remain in full force and effect, and Seller shall be under no obligation to remediate the  
407 radon gas concentration. If Seller agrees to remediate the radon to an Acceptable Level, such remediation and associated testing shall  
408 be completed by Seller prior to the Closing.  
409  
410

411 **(C) Infestation and/or Damage By Wood Boring Insects.**

412 Buyer, at Buyer's own expense, shall have the right to have the Property inspected by a licensed exterminating company of Buyer's choice,  
413 for the purpose of determining if the Property is free from infestation and damage from termites or other wood destroying insects. If  
414 Buyer chooses to make this inspection, the inspection must be completed and written reports must be furnished to Seller and Broker(s)  
415 within fourteen (14) calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney  
416 as provided in the attorney-review section of this Contract, then within fourteen (14) calendar days after the parties agree to the terms of  
417 this Contract. This report shall state the full cost of treatment and repairs if there is any indication of infestation or damage. If the cost to  
418 cure infestation and/or repairs and treatment exceed 1% of the purchase price of the Property, then either party may void this Contract  
419 provided they do so within seven (7) calendar days after the report has been delivered to Seller and Brokers. If Buyer and Seller are unable  
420 to agree upon who will pay for the cost to cure and neither party timely voids this Contract, then Buyer will be deemed to have waived its  
421 right to terminate this Contract and will bear the cost to cure.

422  
423 **(D) Buyer's Right to Inspections.**

424 Buyer acknowledges that the Property is being sold in an "as is" condition and that this Contract is entered into based upon the knowledge  
425 of Buyer as to the value of the land and whatever buildings are upon the Property, and not on any representation made by Seller, Brokers  
426 or their agents as to character or quality of the Property. Therefore, Buyer, at Buyer's sole cost and expense, is granted the right to have  
427 the dwelling and all other aspects of the Property, inspected and evaluated by "qualified inspectors" (as the term is defined in paragraph G  
428 below) for the purpose of determining the existence of any physical defects or environmental conditions such as outlined above. If Buyer  
429 chooses to make inspections referred to in this paragraph, such inspections must be completed, and written reports must be furnished to  
430 Seller and Brokers of this Contract within fourteen (14) calendar days after the attorney-review period is completed or, if this Contract  
431 is timely disapproved by an attorney as provided in the attorney-review section of this Contract, then within fourteen (14) calendar days  
432 after the parties agree to the terms of this Contract. If Buyer fails to furnish such written reports to Seller and Brokers within the fourteen  
433 (14) calendar days specified in this paragraph, this contingency clause shall be deemed waived by Buyer, and the Property shall be deemed  
434 acceptable by Buyer. The time period for furnishing the inspection reports is referred to as the "Inspection Time Period." Seller shall have  
435 all utilities in service for inspections.

436  
437 **(E) Responsibility to Cure.**

438 If any physical defects or environmental conditions (other than radon or woodboring insects) are reported by the qualified inspectors  
439 to Seller within the Inspection Time Period, Seller shall then have seven (7) calendar days after the receipt of such reports to notify  
440 Buyer in writing that Seller shall correct or cure any of the defects set forth in such reports. If Seller fails to notify Buyer of Seller's  
441 agreement to so cure and correct, such failure to so notify shall be deemed to be a refusal by Seller to cure or correct such defects.  
442 If Seller fails to agree to cure or correct such defects within the seven (7) calendar day period, or if any part of the dwelling is found  
443 to be located within a flood hazard area, or if the environmental condition at the Property (other than radon) is incurable and  
444 is of such significance as to unreasonably endanger the health of Buyer, Buyer shall then have the right to void this Contract by  
445 notifying Seller in writing within seven (7) calendar days thereafter. If Buyer fails to void this Contract within the seven (7) calendar  
446 day period, Buyer shall have waived Buyer's right to cancel this Contract and this Contract shall remain in full force, and Seller  
447 shall be under no obligation to correct or cure any of the defects set forth in the inspections. If Seller agrees to correct or cure such  
448 defects, all such repair work shall be completed by Seller prior to the closing of title. Radon at the Property shall be governed by  
449 the provisions of Paragraph (B), above.

450  
451 **(F) Flood Hazard Area (if applicable).**

452 The federal and state governments have designated certain areas as flood areas. If the Property is located in a flood area, the use of  
453 the Property may be limited. If Buyer's inquiry reveals that the Property is in a flood area, Buyer may cancel this Contract within  
454 ten (10) business days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as  
455 provided in the attorney-review section of this Contract, then within fourteen (14) calendar days after the parties agree to the terms  
456 of this Contract. If the mortgage lender requires flood insurance, then Buyer shall be responsible for obtaining such insurance on  
457 the Property. For a flood policy to be in effect immediately, there must be a loan closing. There is a 30-day wait for flood policies to  
458 be in effect for cash transactions. Therefore, cash buyers are advised to make application and make advance payment for a flood  
459 policy at least thirty (30) days in advance of closing if they want coverage to be in effect upon transfer of title.

460  
461 Buyer's mortgage lender may require Buyer to purchase flood insurance in connection with Buyer's purchase of this Property. The  
462 National Flood Insurance Program ("NFIP") provides for the availability of flood insurance but also establishes flood insurance  
463 policy premiums based on the risk of flooding in the area where properties are located. Due to amendments to federal law governing  
464 the NFIP, those premiums are increasing and, in some cases, will rise by a substantial amount over the premiums previously charged  
465 for flood insurance for the Property. As a result, Buyer should not rely on the premiums paid for flood insurance on this Property  
466 previously as an indication of the premiums that will apply after Buyer completes the purchase. In considering Buyer's purchase of  
467 this Property, Buyer is therefore urged to consult with one or more carriers of flood insurance for a better understanding of flood  
468 insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about  
469 how those premiums may increase in the future.

470

471 **(G) Qualifications of Inspectors.**

472 Where the term "qualified inspectors" is used in this Contract, it is intended to refer to persons or businesses that are licensed or  
 473 certified by the State of New Jersey for such purpose.

474  
 475 **19. MEGAN'S LAW STATEMENT:**

476 Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders  
 477 in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law  
 478 and are unable to obtain such information for you. Upon closing, the county prosecutor may be contacted for such further information  
 479 as may be disclosable to you.

480  
 481 **20. MEGAN'S LAW REGISTRY:**

482 Buyer is notified that New Jersey law establishes an Internet Registry of Sex Offenders that may be accessed at www.njsp.org. Neither  
 483 Seller or any real estate broker or salesperson make any representation as to the accuracy of the registry.

484  
 485 **21. NOTIFICATION REGARDING OFF-SITE CONDITIONS: (Applicable to all resale transactions.)**

486 Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-1, et. seq, the clerks of municipalities in  
 487 New Jersey maintains lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site condition.  
 488 Buyers may examine the lists and are encouraged to independently investigate the area surrounding this property in order to become  
 489 familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the border of a  
 490 municipality, buyers may wish to also examine the list maintained by the neighboring municipality.

491  
 492 **22. NEW CONSTRUCTION RIDER:**

493 Unless Seller has Seller's own form of contract, if the property being sold consists of a lot and a detached single-family home to be  
 494 constructed upon the lot by Seller, the "Rider To Real Estate Sales Contract For New Construction" has been signed by Buyer and Seller  
 495 and is appended to and made a part of this Contract.

496  
 497 **23. AIR SAFETY AND ZONING NOTICE:**

498 Any person who sells or transfers a property that is in an airport safety zone as set forth in the New Jersey Air Safety and Zoning Act  
 499 of 1983, N.J.S.A. 6:1-80, et seq., and appearing on a municipal map used for tax purposes shall provide notice to a prospective buyer  
 500 that the property is located in an airport safety zone prior to the signing of the contract of sale. The Air Safety and Zoning Act also  
 501 requires that each municipality in an airport safety zone enact an ordinance or ordinances incorporating the standards promulgated  
 502 under the Act and providing for their enforcement within the delineated areas in the municipality. Buyer and Seller acknowledge that  
 503 the following list of airports and the municipalities that may be affected by them under the Air Safety and Zoning Act is provided for  
 504 information only, that they are not relying on this list, which they understand may not be complete or accurate, and that a real estate  
 505 licensee's obligation to provide information about the Air Safety and Zoning Act is satisfied by the inclusion of Section 21 in this  
 506 Contract concerning off-site conditions:

<u>Municipality</u>	<u>Airport(s)</u>	<u>Municipality</u>	<u>Airport(s)</u>
507 Alexandria Tp.	Alexandria & Sky Manor	Manalapan Tp. (Monmouth Cty.)	Old Bridge
508 Andover Tp.	Aeroflex-Andover & Newton	Mansfield Tp.	Hackettstown
509 Bedminster Tp.	Somerset	Manville Bor.	Central Jersey Regional
510 Berkeley Tp.	Ocean County	Medford Tp.	Flying W
511 Berlin Bor.	Camden County	Middle Tp.	Cape May County
512 Blairstown Tp.	Blairstown	Millville	Millville Municipal
513 Branchburg Tp.	Somerset	Monroe Tp. (Gloucester Cty.)	Cross Keys & Southern Cross
514 Buena Bor. (Atlantic Cty.)	Vineland-Downtown	Monroe Tp. (Middlesex Cty.)	Old Bridge
515 Dennis Tp.	Woodbine Municipal	Montgomery Tp.	Princeton
516 Eagleswood Tp.	Eagles Nest	Ocean City	Ocean City
517 Ewing Tp.	Trenton-Mercer County	Old Bridge Tp.	Old Bridge
518 E. Hanover Tp.	Morristown Municipal	Oldsman Tp.	Oldmans
519 Florham Park Bor.	Morristown Municipal	Pemberton Tp.	Pemberton
520 Franklin Tp. (Gloucester Cty.)	Southern Cross & Vineland Downtown	Pequanock Tp.	Lincoln Park
521 Franklin Tp. (Hunterdon Cty.)	Sky Manor	Readington Tp.	Solberg-Hunterdon
522 Franklin Tp. (Somerset Cty.)	Central Jersey Regional	Rocky Hill Boro.	Princeton
523 Green Tp.	Trinca	Southampton Tp.	Red Lion
524 Hammonton Bor.	Hammonton Municipal	Springfield Tp.	Red Wing
525 Hanover Tp.	Morristown Municipal	Upper Deerfield Tp.	Bucks
526 Hillsborough Tp.	Central Jersey Regional	Vineland City	Kroelinger & Vineland Downtown
527 Hopewell Tp. (Mercer Cty.)	Trenton-Mercer County	Wall Tp.	Monmouth Executive
528 Howell Tp.	Monmouth Executive	Wantage Tp.	Sussex
529 Lacey Tp.	Ocean County	Robbinsville	Trenton-Robbinsville

531	Lakewood Tp.	Lakewood	West Milford Tp.	Greenwood Lake
532	Lincoln Park Bor.	Lincoln Park	Winslow Tp.	Camden County
533	Lower Tp.	Cape May County	Woodbine Bor.	Woodbine Municipal
534	Lumberton Tp.	Flying W & South Jersey Regional		

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**24. BULK SALES:**

The New Jersey Bulk Sales Law, N.J.S.A. 54:50-38, (the "Law") applies to the sale of certain residential property. Under the Law, Buyer may be liable for taxes owed by Seller if the Law applies and Buyer does not deliver to the Director of the New Jersey Division of Taxation (the "Division") a copy of this Contract and a notice on a form required by the Division (the "Tax Form") at least ten (10) business days prior to the Closing. If Buyer decides to deliver the Tax Form to the Division, Seller shall cooperate with Buyer by promptly providing Buyer with any information that Buyer needs to complete and deliver the Tax Form in a timely manner. Buyer promptly shall deliver to Seller a copy of any notice that Buyer receives from the Division in response to the Tax Form.

The Law does not apply to the sale of a simple dwelling house, or the sale or lease of a seasonal rental property, if Seller is an individual, estate or trust. A simple dwelling house is a one or two family residential building, or a cooperative or condominium unit used as a residential dwelling, none of which has any commercial property. A seasonal rental property is a time share, or a dwelling unit that is rented for residential purposes for a term of not more than 125 consecutive days, by an owner that has a permanent residence elsewhere.

If, prior to the Closing, the Division notifies Buyer to withhold an amount (the "Tax Amount") from the purchase price proceeds for possible unpaid tax liabilities of Seller, Buyer's attorney or Buyer's title insurance company (the "Escrow Agent") shall withhold the Tax Amount from the closing proceeds and place that amount in escrow (the "Tax Escrow"). If the Tax Amount exceeds the amount of available closing proceeds, Seller shall bring the deficiency to the Closing and the deficiency shall be added to the Tax Escrow. If the Division directs the Escrow Agent or Buyer to remit funds from the Tax Escrow to the Division or some other entity, the Escrow Agent or Buyer shall do so. The Escrow Agent or Buyer shall only release the Tax Escrow, or the remaining balance thereof, to Seller (or as otherwise directed by the Division) upon receipt of written notice from the Division that it can be released, and that no liability will be asserted under the Law against Buyer.

**25. NOTICE TO BUYER CONCERNING INSURANCE:**

Buyer should obtain appropriate casualty and liability insurance for the Property. Buyer's mortgage lender will require that such insurance be in place at Closing. Occasionally, there are issues and delays in obtaining insurance. Be advised that a "binder" is only a temporary commitment to provide insurance coverage and is not an insurance policy. Buyer is therefore urged to contact a licensed insurance agent or broker to assist Buyer in satisfying Buyer's insurance requirements.

**26. MAINTENANCE AND CONDITION OF PROPERTY:**

Seller agrees to maintain the grounds, buildings and improvements, in good condition, subject to ordinary wear and tear. The premises shall be in "broom clean" condition and free of debris as of the Closing. Seller represents that all electrical, plumbing, heating and air conditioning systems (if applicable), together with all fixtures included within the terms of the Contract now work and shall be in proper working order at the Closing. Seller further states, that to the best of Seller's knowledge, there are currently no leaks or seepage in the roof, walls or basement. Seller does not guarantee the continuing condition of the premises as set forth in this Section after the Closing.

**27. RISK OF LOSS:**

The risk of loss or damage to the Property by fire or otherwise, except ordinary wear and tear, is the responsibility of Seller until the Closing.

**28. INITIAL AND FINAL WALK-THROUGHS:**

In addition to the inspections set forth elsewhere in this Contract, Seller agrees to permit Buyer or Buyer's duly authorized representative to conduct an initial and a final walk-through inspection of the interior and exterior of the Property at any reasonable time before the Closing. Seller shall have all utilities in service for the inspections.

**29. ADJUSTMENTS AT CLOSING:**

Seller shall pay for the preparation of the Deed, realty transfer fee, lien discharge fees, if any, and one-half of the title company charges for disbursements and attendance allowed by the Commissioner of Insurance; but all searches, title insurance premium and other conveyancing expenses are to be paid for by Buyer.

Seller and Buyer shall make prorated adjustments at Closing for items which have been paid by Seller or are due from Seller, such as real estate taxes, water and sewer charges that could be claims against the Property, rental and security deposits, association and condominium dues, and fuel in Seller's tank. Adjustments of fuel shall be based upon physical inventory and pricing by Seller's supplier. Such determination shall be conclusive.

591 If Buyer is assuming Seller's mortgage loan, Buyer shall credit Seller for all monies, such as real estate taxes and insurance premiums paid  
 592 in advance or on deposit with Seller's mortgage lender. Buyer shall receive a credit for monies, which Seller owes to Seller's Mortgage  
 593 lender, such as current interest or a deficit in the mortgage escrow account. There shall be no adjustment on any Homestead Rebate due  
 594 or to become due.  
 595

596 **30. FAILURE OF BUYER OR SELLER TO CLOSE:**

597 If Seller fails to close title to the Property in accordance with this Contract, Buyer then may commence any legal or equitable action  
 598 to which Buyer may be entitled. If Buyer fails to close title in accordance with this Contract, Seller then may commence an action  
 599 for damages it has suffered, and, in such case, the deposit monies paid on account of the purchase price shall be applied against such  
 600 damages. If Buyer or Seller breach this Contract, the breaching party will nevertheless be liable to Brokers for the commissions in the  
 601 amount set forth in this Contract, as well as reasonable attorneys' fees, costs and such other damages as are determined by the Court.  
 602

603 **31. CONSUMER INFORMATION STATEMENT ACKNOWLEDGMENT:**

604 By signing below, Seller and Buyer acknowledge they received the Consumer Information Statement on New Jersey Real Estate  
 605 Relationships from the Brokers prior to the first showing of the Property.  
 606

607 **32. DECLARATION OF LICENSEE BUSINESS RELATIONSHIP(S):**

608 (A) Diane Turton, Realtors, (name of firm) and its authorize representative  
 609 Colleen Tobin (name of salesperson)

610 ARE OPERATING IN THIS TRANSACTION AS A (indicate one of the following)

611  SELLER'S AGENT  BUYER'S AGENT  DISCLOSED DUAL AGENT  TRANSACTION BROKER.  
 612

613 (B) INFORMATION SUPPLIED BY Orrico Realty (name of other firm)

614 HAS INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (indicate one of the following)

615  SELLER'S AGENT  BUYER'S AGENT  TRANSACTION BROKER.  
 616

617 **33. BROKERS' INFORMATION AND COMMISSION:**

618 The commission, in accord with the previously executed listing agreement, shall be due and payable at the Closing and payment by Buyer  
 619 of the purchase consideration for the Property. Seller hereby authorizes and instructs whomever is the disbursing agent to pay the full  
 620 commission as set forth below to the below-mentioned Brokerage Firm(s) out of the proceeds of sale prior to the payment of any such  
 621 funds to Seller. Buyer consents to the disbursing agent making said disbursements. The commission shall be paid upon the purchase price  
 622 set forth in Section 2 and shall include any amounts allocated to, among other things, furniture and fixtures.  
 623

624 1221184  
 Listing Firm REC License ID

625 Robert Repsha 1324679  
 Listing Agent REC License ID

626 415 Route 34, Colts Neck, NJ 07722  
 627 Address

628 (732) 303-0050 (732) 303-9333 (732) 259-2139  
 629 Office Telephone Fax Agent Cell Phone

630 rrepsha@aol.com  
 631 E-mail

632 Diane Turton, Realtors 8729110  
 633 Participating Firm REC License ID

634 Colleen Tobin 9805207  
 635 Participating Agent REC License ID

636 1216 Third Avenue, Spring Lake, NJ 07762  
 637 Address

638 (732) 449-4441 (732) 449-1567 (732) 213-5166  
 639 Office Telephone Fax Agent Cell Phone

640 ctobin@dianeturton.com  
 641 E-mail

642 2%  
 643 Commission due Participating Firm

651 **34. DISCLOSURE THAT BUYER OR SELLER IS A REAL ESTATE LICENSEE:**  Applicable  Not Applicable  
652 A real estate licensee in New Jersey who has an interest as a buyer or seller of real property is required to disclose in the sales contract  
653 that the person is a licensee. \_\_\_\_\_ therefore discloses that he/she is licensed in New Jersey as  
654 a real estate  broker  broker-salesperson  salesperson  referral agent.  
655

656 **35. BROKERS TO RECEIVE CLOSING DISCLOSURE DOCUMENTS:**  
657 Buyer and Seller agree that Brokers involved in this transaction will be provided with the Closing Disclosure documents and any  
658 amendments to those documents in the same time and manner as the Consumer Financial Protection Bureau requires that those  
659 documents be provided to Buyer and Seller.  
660

661 **36. PROFESSIONAL REFERRALS:**  
662 Seller and Buyer may request the names of attorneys, inspectors, engineers, tradespeople or other professionals from Brokers and/or  
663 salespersons involved in the transaction. Any names provided by Brokers and/or salespersons shall not be deemed to be a recommendation  
664 or testimony of competency of the person or persons referred. Seller and Buyer shall assume full responsibility for their selection(s) and  
665 hold Brokers and/or salespersons harmless for any claim or actions resulting from the work or duties performed by these professionals.  
666

667 **37. ATTORNEY-REVIEW CLAUSE:**  
668 **(1) Study by Attorney**  
669 Buyer or Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her  
670 review of the Contract within a three-day period. This Contract will be legally binding at the end of this three-day period unless an  
671 attorney for Buyer or Seller reviews and disapproves of the Contract.  
672

673 **(2) Counting the Time**  
674 You count the three days from the date of delivery of the signed Contract to Buyer and Seller. You do not count Saturdays, Sundays or  
675 legal holidays. Buyer and Seller may agree in writing to extend the three-day period for attorney review.  
676

677 **(3) Notice of Disapproval**  
678 If an attorney for Buyer or Seller reviews and disapproves of this Contract, the attorney must notify the Broker(s) and the other party  
679 named in this Contract within the three-day period. Otherwise this Contract will be legally binding as written. The attorney must send  
680 the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will  
681 be effective upon sending. The personal delivery will be effective upon delivery to the Broker(s) office. The attorney may also, but need  
682 not, inform the Broker(s) of any suggested revision(s) in the Contract that would make it satisfactory.  
683

684 **38. NOTICES:**  
685 All notices shall be by certified mail, fax, e-mail, recognized overnight courier or electronic signatures (except for notices under the  
686 Attorney-Review Clause Section) or by delivering it personally. The certified letter, e-mail, reputable overnight carrier, fax or electronic  
687 signatures will be effective upon sending. Notices to Seller and Buyer shall be addressed to the addresses in Section 1, unless otherwise  
688 specified in writing by the respective party.  
689

690 **39. NO ASSIGNMENT:**  
691 This Contract shall not be assigned without the written consent of Seller. This means that Buyer may not transfer to anyone else Buyer's  
692 rights under this Contract to purchase the Property.  
693

694 **40. ELECTRONIC SIGNATURES AND DOCUMENTS:**  
695 Buyer and Seller agree that the New Jersey Uniform Electronic Transaction Act, N.J.S.A. 12A:12-1 to 26, applies to this transaction,  
696 including but not limited to the parties and their representatives having the right to use electronic signatures and electronic documents that  
697 are created, generated, sent, communicated, received or stored in connection with this transaction. Since Section 11 of the Act provides  
698 that acknowledging an electronic signature is not necessary for the signature of such a person where all other information required to  
699 be included is attached to or logically associated with the signature or record, such electronic signatures, including but not limited to an  
700 electronic signature of one of the parties to this Contract, do not have to be witnessed.  
701

702 **41. CORPORATE RESOLUTIONS:**  
703 If Buyer or Seller is a corporate or other entity, the person signing below on behalf of the entity represents that all required corporate  
704 resolutions have been duly approved and the person has the authority to sign on behalf of the entity.  
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Buyer's Initials: JB DG Seller's Initials: \_\_\_\_\_



711 42. ADDITIONAL CONTRACTUAL PROVISIONS:

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IN THE PRESENCE OF:

_____	Date	<u>Joseph Bilotta</u>	 08/03/2016 22:04:54	(L.S.)
		BUYER Joseph Bilotta		
_____	Date	<u>Donna Gierak</u>	 08/03/2016 22:19:09	(L.S.)
		BUYER Donna Gierak		
_____	Date	SELLER		(L.S.)
_____	Date	SELLER		(L.S.)

LAW FIRM OF BRIAN W. HOFMEISTER, LLC  
By: Brian W. Hofmeister, Esq.  
691 State Highway 33  
Trenton, New Jersey 08619  
(609) 890-1500  
(609) 890-6961 - facsimile  
bwh@hofmeisterfirm.com  
Attorneys for Barry W. Frost, Chapter 11 Trustee

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In the Matter of:	) UNITED STATES BANKRUPTCY COURT
	) FOR THE DISTRICT OF NEW JERSEY
BARBARA MAGNUSSON,	)
	) CHAPTER 11
	)
Debtor.	) CASE NO. 13-31122 (CMG)
	)
	)

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**APPLICATION IN SUPPORT OF MOTION SEEKING ENTRY OF AN ORDER APPROVING THE SALE OF THE ESTATE’S INTEREST IN CERTAIN REAL PROPERTY LOCATED AT 14 NEWARK AVENUE, SPRING LAKE, NEW JERSEY 07762, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105(a), 323(a), AND 363(b), (f), (h) and (m) and 541(a); FIXING THE DISTRIBUTION TO THE FIRST AND SECOND MORTGAGE HOLDERS; WAIVING THE FOURTEEN (14) DAY STAY PROVIDED BY FED. R. BANKR. P. 6004; AND GRANTING RELATED RELIEF**

TO: THE HONORABLE CHRISTINE M. GRAVELLE  
UNITED STATES BANKRUPTCY JUDGE

Barry W Frost, Chapter 11 Trustee (the “Trustee”) for the estate of Barbara Magnusson (the “Debtor”), by and through his counsel, Law Firm of Brian W. Hofmeister, LLC, hereby files this Application (the “Application”) in support of his Motion (the “Motion”) for entry of an Order Approving the Sale of the Estate’s Interest in Certain Real Property located at 14 Newark Avenue, Spring Lake, New Jersey 07762, Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 323(a), and 363(b), (f), (h) and (m) and 541(a); Fixing the Distribution to the First and Second Mortgage Holders; Waiving the Fourteen (14) Day Stay Provided by Fed. R. Bankr. P. 6004; and Granting Related Relief. In support of the Motion, the Trustee respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding under 28 U.S.C. §157(b).

2. Venue of this case and the Motion in this judicial District is proper under 28 U.S.C. §§1408 and 1409.

3. The statutory bases for the relief sought by the Motion are Sections 105(a), 323(a), 363(b), (f), (h) and (m) and 541(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

### **BACKGROUND**

4. On September 27, 2013 (the “Petition Date”), the Debtor, Barbara Magnusson (“Debtor”) filed a Chapter 11 proceeding pursuant to Chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”).

5. By Order, dated February 2, 2015, Barry W. Frost was appointed as the Chapter 11 Trustee of the Debtor Estate.

#### **The Property**

6. On Schedule A of the Debtor’s Petition, the Debtor lists an ownership interest in real property located at 14 Newark Avenue, Spring Lake, New Jersey 07762(the “Property”).

7. The Debtor does claim an exemption on the Property on Schedule C of her Petition in the amount of \$19,600.00.

#### **The Sale Process**

8. On July 2, 2015, this Court entered an Order authorizing the retention of Orrico Realty to assist the Trustee in marketing and selling the estate’ interest in the Property.

9. After marketing the Property, the Trustee garnered an offer from a Buyer to purchase the estate’s interest in the Property.

10. The Trustee engaged in arms length negotiations with the Buyer pursuant to which the

Trustee agreed to sell the Property to the Buyer for \$2,550,000.00 pursuant to the terms of the proposed Agreement of Sale (the "Agreement of Sale"). A true and correct copy of the Agreement of Sale is attached hereto as Exhibit "A".

11. After carefully evaluating the Buyer's offer and the potential for additional offers, the Trustee has determined that the price offered by the Buyer is the highest and best price the Trustee can obtain for the estate's interest in the Property under the circumstances.

### **Agreement of Sale**

12. The salient terms of the Agreement of Sale can be summarized as follows:<sup>1</sup>

- **The Parties:** The seller under the Agreement of Sale is the Trustee, not individually or personally but on behalf of the Debtor's bankruptcy estate and ownership interest in the Property. The purchasers are Joseph Bilotta and Donna Gierek.
- **The Property:** The land together with the buildings, structures and improvements thereon and the appurtenances thereto, situated at Lot 18, Block 95 and more commonly known as 14 Newark Avenue, Spring Lake, New Jersey 07762 with all rights and title pertaining thereto.
- **The Purchase Price:** The total consideration for the sale of the Property is \$2,550,000.00.
- **The Deposit:** The sum of \$128,000.00 is to be paid by the Buyer, which shall be held by the Buyer's attorney.
- **"As Is, Where Is":** The Buyer agrees to accept the Property in its "as is" condition. The Trustee makes no representations or warranties whatsoever.
- **Bankruptcy Court Approval:** The sale of the estate's interest in the Property is subject to Bankruptcy Court approval.
- **Existing Mortgage Lien:** The sale shall be free and clear of all liens, claims encumbrances with the exception of the first mortgage of Ocwen Loan Servicing, LLC as servicer for U.S. Bank National Association, as Trustee for GSR Mortgage Loan Trust 2006-ARI, mortgage pass-through certificates series 2006-AR1 ("Ocwen") and the second mortgage of 14 Newark Ave - SL, LLC ("14 Newark")

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<sup>1</sup>This summary is qualified in its entirety by the Agreement of Sale and is intended solely to give the Bankruptcy Court and interested parties a brief overview of the significant terms of the Agreement of Sale. Interested parties should refer to the Agreement of Sale for the complete and detailed terms thereof.

which are to receive a fixed distribution from the proceeds of sale.

### **Breakdown of Sale Proceeds**

13. Based upon the above reductions, the breakdown of sale proceeds will be as follows:

(a)	Sale Price	\$2,550,000.00
(b)	Ocwen First Mortgage	\$2,000,000.00
(c)	14 Newark Second Mortgage	\$ 300,000.00
(d)	Broker's Commission	<u>\$ 127,500.00</u>

Net Proceeds to the Estate: \$122,500.00<sup>2</sup>

### **Notice of Sale**

14. A notice of the private sale is being sent by the Clerk of the Bankruptcy Court, as to generate a court notice to all creditors. In addition, service will be effectuated on persons knowingly expressing an interest in the Property to the broker or who have filed a notice of appearance, in anticipation of receiving the highest and best offer.

### **Higher and Better Offers**

15. The Trustee will accept all higher and better offers on the estate's interest in the Property up to and including the hearing date. All bidders must have \$10,000.00 in certified funds on the hearing date in order to bid.

### **RELIEF REQUESTED AND REASONS THEREFOR**

16. The Trustee is seeking this Court's approval solely to sell the estate's interest in the Property to the Buyer, free and clear of any liens, claims, interests and encumbrances (the "Sale") pursuant to Sections 105(a) and 363(b), (f), (h) and (m) of the Bankruptcy Code.

#### **I. The Sale of the Estate's Interest in the Property is in Good Faith and is a Proper Exercise of the Trustee's Business Judgment**

17. Section 363(b)(1) of the Bankruptcy Code provides that a Trustee "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . ."

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<sup>2</sup>If there are any real estate taxes due and owing, they will be paid out of the sale proceeds.

11 U.S.C. §363(b)(1); See also Fed. R. Bankr. P. 604(f)(1) (authorizing sales outside the ordinary course of business to be conducted privately or by public auction).

18. Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets. However, courts in the Third Circuit have found that a sale of an estate's assets should be authorized pursuant to Section 363 of the Bankruptcy Code if a sound business judgment exists for such a sale. See Myers v. Martin (In re Martin), 91 F. 3d 389, 395 (3<sup>rd</sup> Cir. 1996); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1990); In re Del. & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (applying the "sound business purpose test" set forth in Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F. 2d 1063, 1071 (2<sup>nd</sup> Cir. 1983)).

19. Courts typically consider the following four factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business judgment justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. In re Weatherly Frozen Food Group, Inc., 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); Del & Hudson Ry, 124 B.R. 176; In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

20. In this case, all of those factors have been met.

**A. Sound Business Justification for the Sale**

21. Courts have made clear that a trustee's showing of a sound business justification does not have to be unduly exhaustive. Rather, a debtor or trustee is "simply required to justify the proposed disposition with sound business reason . . . ." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. See In re Food Barn Stores, Inc., 107 F.3d at 564-65 (8<sup>th</sup> Cir. 1997)

(stating that in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); In re Integrated Res., Inc., 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is well-established principle of bankruptcy law that the . . . [debtors’] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

22. There is more than adequate business justification to sell the estate’s interest in the Property. Based upon an analysis of the Trustee’s professionals, the sale of the estate’s interest in the Property to the Buyer, pursuant to the terms and conditions set forth in the Agreement of Sale, is in the best interest of the estate.

23. Without any other potential buyers, it is unlikely the estate would receive any benefit from further attempts to market and sell the Property.

24. Accordingly, as set forth herein, the proposed sale is supported by sound business judgment.

**B. The Trustee is Providing Adequate Notice of the Sale**

25. In accordance with Bankruptcy Rule 6004, sales of property outside the ordinary course of business may be by private sale or public auction. Fed. R. Bankr. P. 6004(f)(1). Bankruptcy Rule 6004 further provides that “[n]otice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i) and (k) and, if applicable, in accordance with [section] 363(b)(2) of the Code.” Fed. R. Bankr. P. 6004(a).

26. In this case, the notice provision has been met because all parties in interest in the Debtor’s bankruptcy case are receiving notice of the proposed sale. Additionally, a notice of the sale is being sent by the Clerk of the Bankruptcy Court so as to provide notice to creditors. In addition, service will be sent to those parties who have expressed an interest in the Property or who have filed a notice of appearance.

**C. The Property is Being Sold for Fair Value**

27. The Trustee is receiving the best possible price for the estate’s interest in the Property,

because the sale price is the highest offer that the Trustee has received on the Property. The proposed sale of the estate's interest in the Property is also subject to higher and better offers and any potential bidders are invited to attend the hearing on the Motion.

**D. Good Faith Buyer Requirement**

28. Finally, the parties here are acting in good faith and, therefore, the protections of Section 363(m) of the Bankruptcy Code should apply to the Buyers.

29. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property 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.

11. U.S.C. §363(m). While the Bankruptcy Code does not define "good faith," the Third Circuit has construed the "good faith buyer" standard to mean one who purchases "in good faith" and for "value". Court has indicated that a party must show fraud or collusion between the purchaser and the debtor or trustee in order to demonstrate a lack of good faith. Abbotts Dairies, 788 F. 2d at 147.

30. Here, there has been no collusion between the Buyer and the Trustee. Additionally, through and until the hearing on this Motion, the Trustee will consider all higher and better offers for the estate's interest in the Property.

31. In light of the open sale process, nothing here suggest any fraud or collusion. Accordingly, the Trustee respectfully requests that this Court make a finding that the Buyer is a "good faith purchaser" pursuant to Section 363(m) of the Bankruptcy Code.

**11. The Trustee Should be Able to Sell the Estate's Interest in the Property "Free and Clear" Pursuant to Subsection 363(f)**

32. The Trustee should be able to sell the estate's interest in the Property free and clear of all liens, claims, interest and encumbrances because the requirements of Section 363(f) of the Bankruptcy



Code have been satisfied. In accordance with Section 363(f) of the Bankruptcy Code, a trustee may sell property under Section 363(b) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in *bona fide* dispute; and
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f). Because Section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of the Property. Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV, 209 F. 3d 252, 257 (3<sup>rd</sup> Cir. 2000) (discussing how Section 363(f) of the Bankruptcy Code authorizes the sale of a debtor’s assets free and clear of all liens, claims and interests if “any one of [the] five prescribed conditions” is met); In re Kelistrom Indus., Inc., 282 B.R. 787,793 (Bankr. D. Del. 2002) (stating that a court may approve a sale “free and clear” provided at least one of the subsections of Section 363(f) is met); see also DVI, Inc., 306 B.R. 496, 503 (Bankr. D. Del. 2004).

33. A distribution on the mortgage of the first mortgage holder, Ocwen Loan Servicing, LLC as servicer for U.S. Bank National Association, as Trustee for GSR Mortgage Loan Trust 2006-ARI, mortgage pass-through certificates series 2006-AR1 (“Ocwen”) shall be made in the fixed sum of \$2,000,000.00.

34. A distribution on the mortgage of the second mortgage holder, 14 Newark Ave - SL, LLC (“14 Newark”) shall be made in the fixed sum of \$300,000.00.

35. Here, the requirements of subsection 363(f) have been satisfied and the sale of the estate’s

interest in the Property free and clear of all liens, claims and interests, with all valid liens, claims and interests, if any, to attach to the proceeds of the sale.

36. Based upon the foregoing, the Trustee requests this Court permit the sale process to move forward.

**III. Pursuant to Section 105 of the Bankruptcy Code the Equities Weigh in Favor of Approving the Terms of the Agreement**

37. The relief sought herein is also appropriate pursuant to this Court's equitable powers under Section 105(a) of the Bankruptcy Code. It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the administration of bankruptcy proceedings. See In re Official Comm. of Unsecured Creditors of Cybergenics Corp., 330 F. 3d 548, 567 (3<sup>rd</sup> Cir. 2003); Pepper v. Litton, 308 U.S. 295, 304 (1939); In re Carlton, 72 B.R. 543, 547 (Bankr. E.D.N.Y. 1987) (Duberstein, Former Ch. J.). Section 105(a) states 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); See also Law v. Siegel, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014) ("Section 105(a) confers authority to 'carry out' the provisions of the [Bankruptcy] Code . . .").

38. As courts commonly acknowledge, Section 105 of the Bankruptcy Code confers broad powers on bankruptcy courts:

[Section] 105 [is] an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of [section ] 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of is jurisdiction . . . .

Davis v. Davis (In re Davis), 170 F. 3d 475, 492 (5<sup>th</sup> Cir. 1999) (internal citations and quotations omitted); see also In re Kaiser Aluminum Corp., 456 F. 3d 328, 340 (3<sup>rd</sup> Cir. 2006). Under Section 105(a) of the Bankruptcy Code, this Court has expansive power to fashion any order or decree that is in the interest of preserving or protecting the value of the debtor's estate. See Coie v. Sadkin, (In re Sadkin), 36 F. 3d 473, 478 (5<sup>th</sup> Cir. 1994).

39. Here, the sale of the estate's interest in the Property has been judicially secured by the efforts of the Trustee and his professionals and will allow the Trustee to fulfill his duties under the Bankruptcy Code, specifically under Section 704. See 11 U.S.C. §704(a).

**WAIVER OF OF FOURTEEN DAY STAY UNDER BANKRUPTCY RULE 6004(h)**

40. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to Section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of such order, "unless the court orders otherwise." See Fed. R. Bankr. P. 6004(h).

41. Waiving the fourteen day stay under Bankruptcy Rule 6004(h) is necessary to permit the Trustee to minimize these costs by closing the proposed Sale Transaction as soon as possible after the entry of the Sale Order.

**NOTICE**

42. Notice of the Motion has been given to: (1) the United States Trustee for the District of New Jersey; (2) counsel for the Debtor; (3) counsel for the Buyer; (4) all parties that timely have requested notice in this case; and (5) any parties that have knowing expressed interest in the Property. In addition, the Trustee filed a Notice of Private Sale, which helped to generate further notice by the Clerk of the Bankruptcy Court.

**NO PRIOR REQUEST**

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

**WAIVER OF BRIEF**

44. As no novel issue of law is raised and the relevant authorities relied upon by the Trustee are set forth herein, the Trustee respectfully requests that the requirements of D.N.J. LBR 9013-2 of filing a brief be waived.

**CONCLUSION**

WHEREFORE, the Trustee respectfully requests that this Court enter an order directing granting the relief sought herein; and grant such other, further and different relief as this Court deems just, proper and equitable.

LAW FIRM OF BRIAN W. HOFMEISTER, LLC  
Attorneys for Barry W. Frost, Chapter 11 Trustee

By: */s/Brian W. Hofmeister*  
Brian W. Hofmeister

Dated: September 26, 2016