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*Chapter 11 Trustee*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:	Case No. 13-31122 (CMG)
BARBARA MAGNUSSON,	Honorable Christine M. Gravelle
Debtor.	Chapter 11

**CHAPTER 11 TRUSTEE’S MOTION SEEKING ENTRY OF AN ORDER APPROVING THE SALE OF THE ESTATE’S INTEREST IN CERTAIN REAL PROPERTY 14 NEWARK AVENUE, SPRING LAKE, NJ 07762 TO 14 NEWARK AVENUE ENTERPRISES, LLC, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO 11 U.S.C. §§ 105(a), 323(a) AND 363(b), (f) AND (m), AND 541; WAIVING THE FOURTEEN DAY STAY PROVIDED BY F.R.B.P. 6004; AND GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on **October 31, 2017 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, McDonnell Crowley, LLC, counsel for Barry W. Frost, the chapter 11 trustee (the “Trustee”) for the estate of Barbara Magnusson, the chapter 11 debtor (the “Debtor”), shall move before the Honorable Christine M. Gravelle, United States Bankruptcy Judge, at the United States Bankruptcy Court, U.S. Courthouse, 402 East State Street, Trenton, New Jersey, for entry of an order (i) authorizing the sale of the estate’s interest in certain real property located at 14 Newark Avenue, Spring Lake, New Jersey 07762 (the “Spring Lake Property”) to 14 Newark Avenue Enterprises, LLC (the “Buyer”), free and clear of all liens, claims, interests, and encumbrances, of the estate’s interest in the Spring Lake Property, (ii)

granting related relief all pursuant to sections 105(a), 323(a), 363(b), (f) and (m), and 541(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and (iii) granting related relief (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that in support of the Trustee’s motion, the undersigned shall rely upon the Application in support of the Motion and the proposed form of Order filed herewith. The nature of the relief requested does not require that briefs be submitted as required pursuant to D.N.J. LBR 9013-1.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the relief requested in the Motion shall: (i) be in writing; (ii) state with particularity the basis of the objection; and (iii) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002 (the “General Order”) and the Commentary Supplementing Administrative Procedures dated as of March 2004 (the “Supplemental Commentary”) (the General Order, the Supplemental Commentary, and the User’s Manual for the Electronic Case Filing System can be found at [www.njb.uscourts.gov](http://www.njb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties-in-interest, on CD-ROM in Portable Document Format (PDF), and shall be served in accordance with the General Order, the Supplemental Commentary, and D.N.J. LBR 9013-2, as amended August 1, 2015, so as to be received no later than seven (7) days before the return date of the Motion.



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*Special Counsel to Barry Frost,*

*Chapter 7 Trustee*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:

BARBARA MAGNUSSON,

Debtor.

Case No. 13-31122 (CMG)

Honorable Christine M. Gravelle

Chapter 11

**VERIFIED APPLICATION IN SUPPORT OF CHAPTER 11 TRUSTEE'S  
MOTION SEEKING ENTRY OF AN ORDER APPROVING THE SALE  
OF THE ESTATE'S INTEREST IN CERTAIN REAL PROPERTY AT 14  
NEWARK AVENUE, SPRING LAKE, NJ 07762 TO 14 NEWARK  
AVENUE ENTERPRISES, LLC, FREE AND CLEAR OF ALL LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO 11  
U.S.C. §§ 105(a), 323(a) AND 363(b), (f) AND (m), AND 541; WAIVING  
THE FOURTEEN DAY STAY PROVIDED BY F.R.B.P. 6004; AND  
GRANTING RELATED RELIEF**

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

Barry Frost, the chapter 11 trustee (the "Trustee") for the estate of Barbara Magnusson, the chapter 11 debtor (the "Debtor"), by and through his special real estate counsel, McDonnell Crowley, LLC, hereby files this verified application (the "Application") in support of his motion (the "Motion") for entry of an order (i) authorizing the sale of the estate's interest in certain real property located at 14 Newark Avenue, Spring Lake, New Jersey 07762 (the "Spring Lake Property") to 14 Newark Avenue Enterprises, LLC (the "Buyer"), free and clear of all liens, claims, interests, and encumbrances, of the estate's interest in the Spring Lake Property, (ii) granting related relief all pursuant to sections 105(a), 323(a), 363(b), (f) and (m), and 541(a) of title

11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and (iii) granting related relief. Based upon information and belief, and 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) and (m), and 541(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

### **PRELIMINARY STATEMENT**

4. The proposed within sale is the final chapter of a contentious case and lengthy sale process and a bankruptcy case that has spanned five (5) years.

5. As this Court is aware, the Trustee faced significant obstacles in securing even the ability to properly market and sell the Spring Lake Property, as he dealt with a recalcitrant Debtor who would not provide reasonable access to the property and/or initially adhere to orders of this Court to even vacate the property.

6. Indeed, after approximately four (4) years of living rent free at the Spring Lake Property while frustrating the Trustee’s initial efforts to market the property - the Debtor’s machinations eventually left the estate administratively insolvent, and left the interest accruing as to the first and second lien mortgage holders on the Spring Lake Property to the point where there was not apparent equity in the property.

7. Despite the long and difficult history of this case, in less than six (6) months of the retention of McDonnell Crowley and a new realtor, the proposed sale was timely secured.

8. The proposed sale not only required the obtaining of an offer for the Spring Lake Property, but also working with the administrative claimants and the secured creditors to agree to a proposed sale.

9. The Trustee is in the process of finalizing his negotiations with the secured creditors in securing their consent to the sale in advance of the hearing on the sale.

10. Here, the proposed sale is projected to provide for most administrative claims to be paid the vast amount they are owed, approximately 70% and further pay 85% of the amounts owed to the secured creditors.

11. The proposed sale to a third party was secured after arms length negotiations. Additionally, the sale process also invites further offers with notice of this sale being sent to all parties who have expressed an interest in the Spring Lake Property with the hope of forthcoming bids with an auction resulting from additional offers.

12. Accordingly, the Trustee respectfully submits that the proposed sale is reasonable, and should be approved.

### **BACKGROUND**

13. On September 27, 2013 (the "Petition Date"), the Debtor filed her voluntary petition (the "Petition") for relief under chapter 11 of the Bankruptcy Code. *See* Docket No. 1.

14. The 341(a) meeting (the "341 Meeting") of creditors was held on November 7, 2013. *See* Docket *generally*.

15. On February 5, 2015, Barry Frost, Esq. was appointed the Trustee for the Debtor and is acting in that capacity. *See* Docket No. 176.

### **The Spring Lake Property**

16. On Schedule “A/B” of her Petition, the Debtor lists an ownership interest in the Spring Lake Property with a value of \$2,700,000 for the Spring Lake Property. *See* Docket No. 1.

17. On Schedule “C” of her Petition, the Debtor asserted an exemption in the amount of \$19,600, pursuant to section 522(d)(5) of the Bankruptcy Code. *See* Docket No. 1.

18. The Debtor lists on Schedule “D,” US Bank National Assoc. as holding a mortgage on the Spring Lake Property in the amount of \$1,900,000 (the “First Mortgage”). *See* Docket No. 1.

19. Based upon information and belief, the current holder of the First Mortgage is 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 (the “First Mortgage Holder”). Based upon further information and belief, the First Mortgage Holder asserts the current balance of the First Mortgage is approximately \$2,550,000.

20. The Debtor also lists on Schedule “D,” Amboy Bank holding a “second lien” on the Spring Lake Property in the amount of \$270,871.35 (the “Second Mortgage”). *See* Docket No. 1.

21. Based upon information and belief, the current holder of the Second Mortgage is 14 Newark Ave - SL, LLC (the “Second Mortgage Holder”). Based upon further information and belief, the Second Mortgage Holder asserts the current balance of the Second Mortgage is approximately \$340,000.

22. Based upon further information and belief, the Trustee is in the process of finalizing

his negotiations with the secured creditors which is projected to allow for a 15% discount on their respective loans so approximately \$2,167,500 would be projected to be paid to the First Mortgage Holder and approximately \$289,000 would be projected to be to the Second Mortgage Holder at the closing on the Spring Lake Property.

### **Chapter 11 Administrative Fees**

23. As this Court is aware, this case involved various issues that increased the cost of the administration of the estate to the point where it is insolvent.

24. Based upon information and belief, the total projected amounts owed administrative creditors is approximately \$488,200.

25. Based upon further information and belief, the administrative creditors have agreed to voluntarily accept a discount of approximately 30% on the amounts they are due and owed.<sup>1</sup>

### **The Sale Process**

26. As this Court is aware the Trustee faced significant issues in his initially attempts to market and sell the property due to the Debtor's interference.

27. On March 8, 2017, the Trustee filed his *Motion re entry of an Order to Compel the Debtor, Barbara Magnusson, to Vacate the Property at 14 Newark Avenue, Spring Lake, New Jersey 07762; Application for Writ of Execution; Directing the Payment of Attorneys Fees and Costs; and Granting Related Relief* (the "Trustee's Motion to Vacate"). The Trustee's Motion to Vacate sought among other things, an order of this Court to compel the Debtor to vacate the Spring Lake Property. *See* Docket No. 312.

28. The Trustee's Motion to Vacate noted the following:

- The Debtor will not comply with this Court's express directives and orders, despite the facts that she has voluntarily come to this Court for relief and has

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<sup>1</sup> Real estate professionals, Ruggeri and the allowed administrative claims of Christian and Maggie Wall are projected to be paid in full. *See* Docket No. 223.



resided at the [Spring Lake Property] without paying rent, taxes or upkeep for approximately four (4) years.

- Despite all the extended time and consideration this Court has given the Debtor, she remains defiant of this Court's power to compel her to vacate the [Spring Lake Property].
- The Debtor remains at the [Spring Lake Property] and continues to thwart the diligent work of the Trustee and his professionals and frustrate the Trustee's attempts to market the [Spring Lake Property] for sale and/or rent. The Debtor's conduct can only be described as a last ditch effort to undermine the bankruptcy system, abuse her position, and drive away any hope of recovery for the estate's creditors, all while driving up administrative expenses for an estate that is already spread thin.
- To date, the Trustee's realtor is continuing to market the [Spring Lake Property]. However, the Debtor is refusing to cooperate with the Trustee's realtor in showing the [Spring Lake Property] by failing to respond to telephone calls, refusing to answer the door and allowing her dog to roam free in the house deterring the Trustee's realtor from entering the [Spring Lake Property] in order to show the [Spring Lake Property] to prospective buyers.

*See* Docket No. 312.

29. On April 5, 2017, this Court entered an order granting the relief sought in the Trustee's Motion to Vacate and ordered the Debtor to vacate the Spring Lake Property on or before May 1, 2017. *See* Docket No. 314.

30. On April 6, 2017, the Trustee filed an application to employ McDonnell Crowley, LLC, as special real estate counsel to the Trustee, and on April 18, 2017, this Court entered an order approving the retention of McDonnell Crowley as counsel to the Trustee. *See* Docket Nos. 315 and 319 respectively.

31. On May 22, 2017, the Trustee filed his application to retain Ruggeri Realty, LLC ("Ruggeri"), as his real estate broker to market and sell the estate's interest in the Spring Lake Property. On May 31, 2017, this Court entered an order granting the retention of Ruggeri. *See* Docket Nos. 327 and 329.

32. With further effort by the Trustee the Debtor eventually vacated the Spring Lake

Property.

33. The Trustee and McDonnell Crowley have sought to secure and aggressively market and sell the Spring Lake Property after a long process of securing the Debtor's removal from the property. The Debtor left the house in despair, with clothes and discarded personal property littered throughout the Spring Lake Property. The Trustee oversaw the process of cleaning the Spring Lake Property, changed the locks, aggressively marketed the property, holding various open houses, securing several offers and eventually the within best offer.

34. The Trustee has reviewed the proposed sale and consulted with his realtor, and believes the sale price of \$2,850,000 for the Spring Lake Property, to the Buyer, is reasonable and the most judicious way to sell the Spring Lake Property for the benefit of creditors.

35. The Trustee further engaged in arms length negotiations with the Buyer, pursuant to which they agreed to sell the Spring Lake Property to the Buyer based upon the terms of the proposed agreement of sale and related documents (the "Agreement of Sale"). A true and correct copy of the Agreement of Sale is attached hereto as **Exhibit "A."**

36. The Buyer has been the only party to be forthcoming with a firm offer of at least the proposed amount.

37. After carefully evaluating the Buyer's offer and the potential for additional offers, the Trustee, in his business judgment, 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 Spring Lake Property under the circumstances.

38. Based upon information and belief, the sale of the Spring Lake Property, the largest and only remaining asset of the estate, should help allow for moving this case towards closure.

## Agreement of Sale

39. The salient terms of the Agreement of Sale can be summarized as follows:<sup>2</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 the Buyer is 14 Newark Avenue Enterprises, LLC.
- The Property: The land, together with the buildings, structures, and improvements thereon and the appurtenances thereto, situated at Block 95, Lot 18 on the tax map for County of Monmouth and State of New Jersey and more commonly known as 14 Newark Avenue, Spring Lake, New Jersey 07762.
- The Purchase Price: The total consideration for the sale of the Spring Lake Property is \$2,850,000.
- The Deposit: Initial deposit of \$1,000 and an additional deposit of \$50,000. The deposited funds are to be held in Trust by counsel for the Buyer
- "As Is, Where Is": The Buyer agrees to accept the Spring Lake Property in its "as is" condition. The Trustee makes no representations and or warranties whatsoever.
- Bankruptcy Court Approval: The sale of the estate's interest in the Spring Lake Property is subject to Bankruptcy Court approval.

## Notice of Sale

40. 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 Spring Lake 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

41. The Trustee will consider all higher and better offers on the estate's interest in the Spring Lake Property up to and including the hearing date. All bidders must have \$285,000 in

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<sup>2</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.

certified funds on the hearing date in order to bid.

**RELIEF REQUESTED AND REASONS THEREFOR**

42. The Trustee is seeking this Court's approval solely to sell the estate's interest in the Spring Lake Property to the Buyer, free and clear of any liens, claims, interests, and encumbrances (the "Sale"), pursuant to sections 105(a), 323, and 363(b), (f), (h), and (m) of the Bankruptcy Code.

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

43. 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. . . ." 11 U.S.C. § 363(b)(1); *see also* Fed. R. Bankr. P. 6004(f)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction).

44. 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 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *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 (2d Cir. 1983)).

45. Courts typically consider the following four (4) factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business 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. at 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).

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

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

47. 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 (8th 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 a 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))).

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

49. Without any other potential buyers it is unlikely the estate would receive any

benefit from further attempts to market and sell the Spring Lake Property.

50. Indeed, the estate is already administratively insolvent and the property has no apparent equity. The Trustee is working to secure the consent of the secured creditors to voluntary take a reduction in the amounts they are owed, which should allow for administrative creditors to be paid the majority of their claims. However, the secured creditors may not agree to a reduction in another sale if the current proposed sale is not successful. Moreover, another attempt to further market the Spring Lake Property would require an administratively insolvent estate to incur further expenses with no likely benefit to any party.

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

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

52. 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).

53. 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 Spring Lake Property or who have filed a notice of appearances.

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

54. The Trustee is receiving the best possible price for the estate's interest in the Spring Lake 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 Spring Lake 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**

55. The parties here are acting in good faith, and therefore, the protections of section 363(m) of the Bankruptcy Code should apply to the Buyer.

56. 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." Courts have indicated that a party must show fraud or collusion between a purchaser and the debtor or trustee in order to demonstrate a lack of good faith. *Abbotts Dairies*, 788 F.2d at 147.

57. 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 Spring Lake Property.

58. Indeed, in light of the open sale process, nothing here suggests any fraud or collusion. Accordingly, the Trustee respectfully requests that this Court make a finding that the

Buyer is a “good faith purchaser(s)” pursuant to section 363(m) of the Bankruptcy Code.

**II. The Trustee Should be Able to Sell the Estate’s Interest in the Spring Lake Property “Free and Clear” Pursuant to Subsection 363(f)**

59. The Trustee should be able to sell the estate’s interest in the Spring Lake Property free and clear of all liens, claims, interests, 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; or
- (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 Spring Lake Property. *Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 257(3d. 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).

60. Here, the Trustee is working to finalize the consent of First Mortgage Holder and the Second Mortgage Holder to the proposed sale, which he believes will occur prior to the hearing on the sale. As such, the requirements of subsection 363(f) would be satisfied and the sale of the estate's interest in the Spring Lake Property can occur 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.

61. 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**

62. 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 (3d 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).

63. 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 its jurisdiction . . . .

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

64. Here, the sale of the estate's interest in the Spring Lake Property has been judiciously secured by the efforts of the Trustee and his professionals. Moreover, the sale of the Spring Lake Property, the largest potential current known asset of the estate.

65. Indeed, the estate is already administratively insolvent and the property has no apparent equity. The Trustee is working to secure the consent of the secured creditors to voluntary take a reduction in the amounts they are owed which should allow for administrative creditors to be paid the majority of their claims. However, assuming the secured creditors agree to this sale, the secured creditors may not further agree to a reduction in another sale if the current proposed sale is not successful. Moreover, another attempt to further market the Spring Lake Property would require an administratively insolvent estate to incur further expenses with no likely benefit to any party. Thus, a failure to secure a sale of the estate's interest in the Spring Lake Property would jeopardize a potential distribution to the administrative creditors and the Second Mortgage Holder.

66. Accordingly, the Trustee respectfully requests that the relief sought herein is in the best interest of all the estate's stakeholders.

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

67. 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).

68. 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**

69. Notice of this Motion has been given to: (1) the United States Trustee for the District of New Jersey; (2) counsel for the Debtor; (3) the Debtor; (4) the Buyer; (5) all parties that timely have requested notice in this case (6) the Holdover Tenant; and (7) any parties that have knowing expressed interest in the Spring Lake Property.

70. 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**

71. Except as noted herein, no previous motion for the relief sought herein has been made to this or to any other court.

**WAIVER OF BRIEF**

72. 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 requirement of D.N.J. LBR 9013-1 of filing a brief be waived

**CONCLUSION**

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

**McDonnell Crowley, LLC**  
*Special Counsel to Barry Frost,*  
*Chapter 7 Trustee*

By: /s/ Brian T. Crowley  
BRIAN T. CROWLEY

Dated: October 3, 2017

**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I, **BARRY FROST**, hereby verify that the foregoing statements are true and correct to  
the best of my knowledge and belief.

*/s/ Barry Frost*

\_\_\_\_\_  
BARRY FROST, Chapter 7 Trustee

Dated: October 3, 2017

# **EXHIBIT A**



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

©2016 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:

18 Brad Adams ("Buyer"), \_\_\_\_\_, ("Buyer"),  
 19  
 20 \_\_\_\_\_ ("Buyer"), \_\_\_\_\_, ("Buyer"),  
 21  
 22 whose address is/are 411 Spring Ave, Ridgewood, NJ 07450-4525

25 ~~AGREES TO PURCHASE FROM~~  
 26 Barbara Magnusson, Chapter 11 Trustee for the Estate of Barbara Magnusson  
 27 Barbara Magnusson ("Seller"), \_\_\_\_\_, ("Seller"),  
 28  
 29 \_\_\_\_\_ ("Seller"), \_\_\_\_\_, ("Seller"),  
 30  
 31 whose address is/are 14 Newark Ave, Spring Lake, NJ 07762-1417

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

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

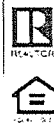
38 shown on the municipal tax map of Spring Lake County Monmouth

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

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

43 2. PURCHASE PRICE:

44	TOTAL PURCHASE PRICE .....	\$ 2,850,000.00
45	INITIAL DEPOSIT .....	\$ 1,000.00
46	ADDITIONAL DEPOSIT .....	\$ 50,000.00
47	MORTGAGE .....	\$ 2,137,500.00
48	BALANCE OF PURCHASE PRICE .....	\$ 661,500.00



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 \_\_\_\_\_, on or before August 25, 2017 (date) (if left blank, then within five (5)  
54 business days after the fully signed Contract has been delivered to both Buyer and the Seller).

55  
56 (B) ADDITIONAL DEPOSIT to be paid by Buyer to the party who will be responsible for holding the escrow who is identified below  
57 on or before 3 days after attorney review (date) (if left blank, then within ten (10) calendar days after the fully signed Contract has been  
58 delivered to both the Buyer and the Seller).

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

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

74  
75 Principal Amount \$ 2,137,500.00 Type of Mortgage:  VA  FHA  Conventional  Other \_\_\_\_\_  
76 Term of Mortgage: 30 years, with monthly payments based on a 30 year payment schedule.

77  
78 The written mortgage commitment must be delivered to Seller's agent, who is the Listing Broker identified in Section 30, and Seller's  
79 attorney, if applicable, no later than 30 Days after attorney review (date)(if left blank, then within thirty (30) calendar days after  
80 the attorney-review period is completed, or if this Contract is timely disapproved by an attorney as provided in the Attorney-Review  
81 Clause Section of this Contract, then within thirty (30) calendar days after the parties agree to the terms of this Contract). Thereafter,  
82 if Buyer has not obtained the commitment, then either Buyer or Seller may void this Contract by written notice to the other party and  
83 Broker(s) within ten (10) calendar days of the commitment date or any extension of the commitment date, whichever is later. If this  
84 Contract is voided, the deposit monies paid by Buyer shall be returned to Buyer notwithstanding any other provision in this Contract,  
85 provided, however, if Seller alleges in writing to Escrowee within said ten (10) calendar days of the commitment date or any extension of  
86 the commitment date, whichever is later, that the failure to obtain the mortgage commitment is the result of Buyer's bad faith, negligence,  
87 intentional conduct or failure to diligently pursue the mortgage application, then Escrowee shall not return the deposit monies to Buyer  
88 without the written authorization of Seller.

89  
90 (E) BALANCE OF PURCHASE PRICE: The balance of the purchase price shall be paid by Buyer in cash, or by certified, cashier's  
91 check or trust account check.

92  
93 Payment of the balance of the purchase price by Buyer shall be made at the closing, which will take place on on or before October 15, 2017  
94 \_\_\_\_\_ (date) at the office of Buyer's closing agent or such other place as Seller  
95 and Buyer may agree ("the Closing").

96  
97 4. SUFFICIENT ASSETS:

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

101  
102 5. ACCURATE DISCLOSURE OF SELLING PRICE:

103 Buyer and Seller certify that this Contract accurately reflects the gross sale price as indicated in Section 2 of this Contract. Buyer and  
104 Seller understand and agree that this information shall be disclosed to the Internal Revenue Service and other governmental agencies as  
105 required by law.

106  
107 6. ITEMS INCLUDED IN SALE:

108 The Property includes all fixtures permanently attached to the building(s), and all shrubbery, plantings and fencing, gas and electric  
109 fixtures, cooking ranges and ovens, hot water heaters, flooring, screens, storm sashes, shades, blinds, awnings, radiator covers, heating  
110 apparatus and sump pumps, if any, except where owned by tenants, are included in this sale. All of the appliances shall be in working



111 order as of the Closing. Seller does not guarantee the condition of the appliances after the Deed and affidavit of title have been delivered  
112 to Buyer at the Closing. The following items are also specifically included (If reference is made to the MLS Sheet and/or any other  
113 document, then the document(s) referenced should be attached.):  
114 AS PER MLS 21720088

115  
116  
117  
118 7. ITEMS EXCLUDED FROM SALE: (If reference is made to the MLS Sheet and/or any other document, then the document(s)  
119 referenced should be attached.):  
120 AS PER MLS 21720088

121  
122  
123  
124 8. DATES AND TIMES FOR PERFORMANCE:  
125 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  
126 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  
127 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  
128 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  
129 Consumer Financial Protection Bureau.

130  
131 9. CERTIFICATE OF OCCUPANCY AND ZONING COMPLIANCE:  
132 Seller makes no representations concerning existing zoning ordinances, except that Seller's use of the Property is not presently in violation  
133 of any zoning ordinances.

134  
135 Some municipalities may require a Certificate of Occupancy or Housing Code Letter to be issued. If any is required for this Property,  
136 Seller shall obtain it at Seller's expense and provide to Buyer prior to Closing and shall be responsible to make and pay for any repairs  
137 required in order to obtain the Certificate or Letter. However, if this expense exceeds \$ 1,000.00 (if left blank, then 1.5% of the  
138 purchase price) to Seller, then Seller may terminate this Contract and refund to Buyer all deposit monies plus Buyer's reasonable expenses,  
139 if any, in connection with this transaction unless Buyer elects to make repairs in excess of said amount at Buyer's expense, in which event  
140 Seller shall not have the right to terminate this Contract. In addition, Seller shall comply with all New Jersey laws, and local ordinances,  
141 including but not limited to smoke detectors, carbon monoxide detectors, fire extinguishers and indoor sprinklers, the cost of which shall  
142 be paid by Seller and not be considered as a repair cost.

143  
144 10. MUNICIPAL ASSESSMENTS: (Seller represents that Seller  has  has not been notified of any such municipal assessments as  
145 explained in this Section.)

146  
147 Title shall be free and clear of all assessments for municipal improvements, including but not limited to municipal liens, as well as  
148 assessments and liabilities for future assessments for improvements constructed and completed. All confirmed assessments and all  
149 unconfirmed assessments that have been or may be imposed by the municipality for improvements that have been completed as of the  
150 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  
151 unconfirmed assessment is a potential lien that, when approved by the appropriate governmental entity, will become a legal claim against  
152 the Property.

153  
154 11. QUALITY AND INSURABILITY OF TITLE:  
155 At the Closing, Seller shall deliver a duly executed Bargain and Sale Deed with Covenant as to Grantor's Acts or other Deed satisfactory  
156 to Buyer. Title to the Property will be free from all claims or rights of others, except as described in this Section and Section 12, of this  
157 Contract. The Deed shall contain the full legal description of the Property.

158  
159 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  
160 might disclose, provided such easement or restriction does not unreasonably limit the use of the Property. Generally, an easement is a  
161 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  
162 limitation on the manner in which a property owner may use the property. Buyer does not have to complete the purchase, however,  
163 if any easement, restriction or facts disclosed by an accurate survey would substantially interfere with the use of the Property for  
164 residential purposes. A violation of any restriction shall not be a reason for Buyer refusing to complete the Closing as long as the title  
165 company insures Buyer against loss at regular rates. The sale also will be made subject to applicable zoning ordinances, provided that  
166 the ordinances do not render title unmarketable.

167  
168 Title to the Property shall be good, marketable and insurable, at regular rates, by any title insurance company licensed to do business  
169 in New Jersey, subject only to the claims and rights described in this section and Section 12. Buyer agrees to order a title insurance  
170 commitment (title search) and survey, if required by Buyer's lender, title company or the municipality where the Property is located.

Buyer's  
Initials:                     

Seller's  
Initials:                       
127 Union Ave

171 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  
 172 and Seller shall have thirty (30) calendar days within which to eliminate those exceptions. Seller represents, to the best of Seller's  
 173 knowledge, that there are no restrictions in any conveyance or plans of record that will prohibit use and/or occupancy of the Property  
 174 as a Single family residential dwelling. Seller represents that all buildings and other improvements on the Property are  
 175 within its boundary lines and that no improvements on adjoining properties extend across boundary lines of the Property.  
 176

177 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  
 178 price, Buyer shall have the option to either void this Contract, in which case the monies paid by Buyer toward the purchase price shall  
 179 be returned to Buyer, together with the actual costs of the title search and the survey and the mortgage application fees in preparing for  
 180 the Closing without further liability to Seller, or to proceed with the Closing without any reduction of the purchase price.  
 181

182 **12. POSSESSION, OCCUPANCY AND TENANCIES:**

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

184 Possession and occupancy will be given to Buyer at the Closing. Buyer shall be entitled to possession of the Property, and any rents or  
 185 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  
 186 affecting the Property from the proceeds of this sale at or before the Closing.  
 187

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

189 Occupancy will be subject to the tenancies listed below as of Closing. Seller represents that the tenancies are not in violation of any  
 190 existing Municipal, County, State or Federal rules, regulations or laws. Seller agrees to transfer all security deposits to Buyer at the Closing  
 191 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  
 192 Seller. Seller represents that such leases can be assigned and that Seller will assign said leases, and Buyer agrees to accept title subject to  
 193 these leases.  
 194

TENANT'S NAME	LOCATION	RENT	SECURITY DEPOSIT	TERM

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

203 **(A) Document Acknowledgement.**

204 Buyer acknowledges receipt of the EPA pamphlet entitled "Protect Your Family From Lead In Your Home." Moreover, a copy of a  
 205 document entitled "Disclosure of Information and Acknowledgement Lead-Based Paint and Lead-Based Paint Hazards" has been fully  
 206 completed and signed by Buyer, Seller and Broker(s) and is appended to" and made a part of this Contract.  
 207

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

209 Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such  
 210 property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead  
 211 poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient,  
 212 behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest  
 213 in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or  
 214 inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for  
 215 possible lead-based paint hazards is recommended prior to purchase.  
 216

217 **(C) Inspection.**

218 The law requires that, unless Buyer and Seller agree to a longer or shorter period, Seller must allow Buyer a ten (10) day period  
 219 within which to complete an inspection and/or risk assessment of the Property as set forth in the next paragraph. Buyer, however, has the  
 220 right to waive this requirement in its entirety.  
 221

222 This Contract is contingent upon an inspection and/or risk assessment (the "Inspection") of the Property by a certified inspector/risk  
 223 assessor for the presence of lead-based paint and/or lead-based paint hazards. The Inspection shall be ordered and obtained by Buyer at  
 224 Buyer's expense within ten (10) calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an  
 225 attorney as provided in the Attorney-Review Clause Section of this Contract, then within ten (10) days after the parties agree to  
 226 the terms in this Contract ("Completion Date"). If the Inspection indicates that no lead-based paint or lead-based paint hazard is present  
 227 at the Property, this contingency clause shall be deemed null and void. If the Inspection indicates that lead-based paint or lead-based paint  
 228 hazard is present at the Property, this contingency clause will terminate at the time set forth above unless, within five (5) business days from  
 229 the Completion Date, Buyer delivers a copy of the inspection and/or risk assessment report to Seller and Brokers and (1) advises Seller  
 230 and Brokers, in writing that Buyer is voiding this Contract; or (2) delivers to Seller and Brokers a written amendment (the "Amendment")

231 to this Contract listing the specific existing deficiencies and corrections required by Buyer. The Amendment shall provide that Seller  
232 agrees to (a) correct the deficiencies; and (b) furnish Buyer with a certification from a certified inspector/risk assessor that the deficiencies  
233 have been corrected, before the Closing. Seller shall have 3 (if left blank, then 3) business days after receipt of the Amendment  
234 to sign and return it to Buyer or send a written counter-proposal to Buyer. If Seller does not sign and return the Amendment or fails to  
235 offer a counter-proposal, this Contract shall be null and void. If Seller offers a counter-proposal, Buyer shall have 3 (if left  
236 blank, then 3) business days after receipt of the counter-proposal to accept it. If Buyer fails to accept the counter-proposal within the time  
237 limit provided, this Contract shall be null and void.  
238

239 14. POINT-OF-ENTRY TREATMENT ("POET") SYSTEMS:  Applicable  Not Applicable  
240 A point-of-entry treatment ("POET") system is a type of water treatment system used to remove contaminants from the water entering a  
241 structure from a potable well, usually through a filtration process. Seller represents that a POET system has been installed to an existing  
242 well on the Property and the POET system was installed and/or maintained using funds received from the New Jersey Spill Compensation  
243 Fund Claims Program, N.J.S.A. 58:10-23.11, et seq. The Buyer understands that Buyer will not be eligible to receive any such funds for the  
244 continued maintenance of the POET system. Pursuant to N.J.A.C. 7:1J-2.5(c), Seller agrees to notify the Department of Environmental  
245 Protection within thirty (30) calendar days of executing this Contract that the Property is to be sold.  
246

247 15. CESSPOOL REQUIREMENTS:  Applicable  Not Applicable  
248 (This section is applicable if the Property has a cesspool, except in certain limited circumstances set forth in N.J.A.C.  
249 7:9A-3.16.) Pursuant to New Jersey's Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A (the "Standards"), if  
250 this Contract is for the sale of real property at which any cesspool, privy, outhouse, latrine or pit toilet (collectively "Cesspool") is located,  
251 the Cesspool must be abandoned and replaced with an individual subsurface sewage disposal system at or before the time of the real  
252 property transfer, except in limited circumstances.  
253

254 (A) 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  
255 Property. [If there are one or more Cesspools, then also check EITHER Box 1 or 2 below.]  
256

257 1.  Seller agrees that, prior to the Closing and at its sole cost and expense, Seller shall abandon and replace any and all Cesspools  
258 located at or on the Property and replace such Cesspools with an individual subsurface sewage disposal system ("System") meeting all  
259 the requirements of the Standards. At or prior to the Closing, Seller shall deliver to Buyer a certificate of compliance ("Certificate of  
260 Compliance") issued by the administrative authority ("Administrative Authority") (as those terms are defined in N.J.A.C. 7:9A-2.1) with  
261 respect to the System. Notwithstanding the foregoing, if the Administrative Authority determines that a fully compliant system cannot  
262 be installed at the Property, then Seller shall notify Buyer in writing within three (3) business days of its receipt of the Administrative  
263 Authority's determination of its intent to install either a nonconforming System or a permanent holding tank, as determined by the  
264 Administrative Authority ("Alternate System"), and Buyer shall then have the right to void this Contract by notifying Seller in writing  
265 within seven (7) business days of receipt of the notice from Seller. If Buyer fails to timely void this Contract, Buyer shall have waived its  
266 right to cancel this Contract under this paragraph, and Seller shall install the Alternate System and, at or prior to the Closing, deliver  
267 to Buyer such Certificate of Compliance or other evidence of approval of the Alternate System as may be issued by the Administrative  
268 Authority. The delivery of said Certificate of Compliance or other evidence of approval shall be a condition precedent to the Closing; or  
269

270 2.  Buyer agrees that, at its sole cost and expense, Buyer shall take all actions necessary to abandon and replace any and all Cesspools  
271 located at or on the Property and replace such Cesspools with a System meeting all the requirements of the Standards or an Alternate  
272 System. Buyer shall indemnify and hold Seller harmless for any and all costs, damages, claims, fines, penalties and assessments (including  
273 but not limited to reasonable attorneys' and experts' fees) arising from Buyer's violation of this paragraph. This paragraph shall survive  
274 the Closing.  
275

276 (B) 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  
277 at or prior to execution of this Contract, the party with knowledge of the newly identified Cesspool shall promptly, but in no event later  
278 than three (3) business days after receipt of such knowledge, advise the other party of the newly identified Cesspool in writing. In such  
279 event, the parties in good faith shall agree, no later than seven (7) business days after sending or receiving the written notice of the newly  
280 identified Cesspool, or the day preceding the scheduled Closing, whichever is sooner, to proceed pursuant to subsection (A) 1 or 2 above  
281 or such other agreement as satisfies the Standards, or either party may terminate this Contract.  
282

283 16. INSPECTION CONTINGENCY CLAUSE:

284 (A) Responsibilities of Home Ownership.  
285 Buyer and Seller acknowledge and agree that, because the purchase of a home is one of the most significant investments a person can  
286 make in a lifetime, all aspects of this transaction require considerable analysis and investigation by Buyer before closing title to the  
287 Property. While Brokers and salespersons who are involved in this transaction are trained as licensees under the New Jersey Licensing Act  
288 they readily acknowledge that they have had no special training or experience with respect to the complexities pertaining to the multitude  
289 of structural, topographical and environmental components of this Property. For example, and not by way of limitation, Brokers and  
290 salespersons have no special training, knowledge or experience with regard to discovering and/or evaluating physical defects, including

291 structural defects, roof, basement, mechanical equipment, such as heating, air conditioning, and electrical systems, sewage, plumbing,  
292 exterior drainage, termite, and other types of insect infestation or damage caused by such infestation. Moreover, Brokers and salespersons  
293 similarly have no special training, knowledge or experience with regard to evaluation of possible environmental conditions which might  
294 affect the Property pertaining to the dwelling, such as the existence of radon gas, formaldehyde gas, airborne asbestos fibers, toxic  
295 chemicals, underground storage tanks, lead, mold or other pollutants in the soil, air or water.

296  
297 **(B) Radon Testing, Reports and Mitigation.**

298 (Radon is a radioactive gas which results from the natural breakdown of uranium in soil, rock and water. It has been  
299 found in homes all over the United States and is a carcinogen. For more information on radon, go to [www.epa.gov/  
300 radon/pubs/citguide.html](http://www.epa.gov/radon/pubs/citguide.html) and [www.nj.gov/dep/rpp/radon](http://www.nj.gov/dep/rpp/radon) or call the N.J Radon Hot Line at 800-648-0394 or 609-984-5425.)  
301

302 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 execution  
303 of this Contract, a copy of the result of the radon test(s) and evidence of any subsequent radon mitigation or treatment of the Property.  
304 In any event, Buyer shall have the right to conduct a radon inspection/test as provided and subject to the conditions set forth in paragraph  
305 (D) below. If any test results furnished or obtained by Buyer indicate a concentration level of 4 picocuries per liter (4.0 pCi/L) or more in  
306 the subject dwelling, Buyer shall then have the right to void this Contract by notifying Seller in writing within seven (7) business days of the  
307 receipt of any such report. For the purposes of this Section 16, Seller and Buyer agree that, in the event a radon gas concentration level  
308 in the subject dwelling is determined to be less than 4 picocuries per liter (4.0 pCi/L) without any remediation, such level of radon gas  
309 concentration shall be deemed to be an acceptable level ("Acceptable Level") for the purposes of this Contract. Under those circumstances,  
310 Seller shall be under no obligation to remediate, and this contingency clause as it relates to radon shall be deemed fully satisfied.  
311

312 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)  
313 or more, Seller shall have a seven (7) business day period after receipt of such report to notify Buyer in writing that Seller agrees to  
314 remediate the gas concentration to an Acceptable Level (unless Buyer has voided this Contract as provided in the preceding paragraph).  
315 Upon such remediation, the contingency in this Contract which relates to radon shall be deemed fully satisfied. If Seller fails to notify  
316 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 level  
317 to an Acceptable Level, and Buyer shall then have the right to void this Contract by notifying Seller in writing within seven (7) calendar  
318 days thereafter. If Buyer fails to void this Contract within the seven (7) day period, Buyer shall have waived Buyer's right to cancel  
319 this Contract and this Contract shall remain in full force and effect, and Seller shall be under no obligation to remediate the radon gas  
320 concentration. If Seller agrees to remediate the radon to an Acceptable Level, such remediation and associated testing shall be completed  
321 by Seller prior to the Closing.  
322

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

324 Buyer, shall have the right to have the Property inspected by a licensed exterminating company of Buyer's choice, for the purpose of  
325 determining if the Property is free from infestation and damage from termites or other wood destroying insects. If Buyer chooses to make  
326 this inspection, Buyer shall pay for the inspection unless Buyer's lender prohibits Buyer from paying, in which case Seller shall pay. The  
327 inspection must be completed and written reports must be furnished to Seller and Broker(s) within 14 (if left blank, then 14) calendar  
328 days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the Attorney-  
329 Review Clause Section of this Contract, then within 14 (if left blank, then 14) calendar days after the parties agree to the terms of this  
330 Contract. This report shall state the nature and extent of any infestation and/or damage and the full cost of treatment for any infestation.  
331 Seller agrees to treat any infestation and cure any damage at Seller's expense prior to Closing, provided however, if the cost to cure exceeds  
332 1% of the purchase price of the Property, then either party may void this Contract provided they do so within 7 (if left blank, then 7)  
333 business days after the report has been delivered to Seller and Brokers. If Buyer and Seller are unable to agree upon who will pay for the  
334 cost to cure and neither party timely voids this Contract, then Buyer will be deemed to have waived its right to terminate this Contract  
335 and will bear the cost to cure that is over 1% of the purchase price, with Seller bearing the cost that is under 1% of the purchase price.  
336

337 **(D) Buyer's Right to Inspections.**

338 Buyer acknowledges that the Property is being sold in an "as is" condition and that this Contract is entered into based upon the knowledge  
339 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  
340 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  
341 the dwelling and all other aspects of the Property, inspected and evaluated by "qualified inspectors" (as the term is defined in subsection  
342 G below) for the purpose of determining the existence of any physical defects or environmental conditions such as outlined above. If  
343 Buyer chooses to make inspections referred to in this paragraph, such inspections must be completed, and written reports including a list  
344 of repairs Buyer is requesting must be furnished to Seller and Brokers within 7 (if left blank, then 14) calendar days after the attorney-  
345 review period is completed or, if this Contract is timely disapproved by an attorney as provided in the Attorney-Review Clause Section  
346 of this Contract, then within 7 (if left blank, then 14) calendar days after the parties agree to the terms of this Contract. If Buyer fails  
347 to furnish such written reports to Seller and Brokers within the 7 (if left blank, then 14) calendar days specified in this paragraph,  
348 this contingency clause shall be deemed waived by Buyer, and the Property shall be deemed acceptable by Buyer. The time period for  
349 furnishing the inspection reports is referred to as the "Inspection Time Period." Seller shall have all utilities in service for inspections.  
350

351 (E) Responsibility to Cure.  
352 If any physical defects or environmental conditions (other than radon or woodboring insects) are reported by the qualified inspectors to  
353 Seller within the Inspection Time Period, Seller shall then have seven (7) business days after the receipt of such reports to notify Buyer  
354 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 agreement  
355 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. If Seller fails to  
356 agree to cure or correct such defects within the seven (7) business day period, or if the environmental condition at the Property (other  
357 than radon) is incurable and is of such significance as to unreasonably endanger the health of Buyer, Buyer shall then have the right to  
358 void this Contract by notifying Seller in writing within seven (7) business days thereafter. If Buyer fails to void this Contract within the  
359 seven (7) business day period, Buyer shall have waived Buyer's right to cancel this Contract and this Contract shall remain in full force,  
360 and Seller 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  
361 such defects, all such repair work shall be completed by Seller prior to the closing of title. Radon at the Property shall be governed by  
362 the provisions of Paragraph (B), above.

363  
364 (F) Flood Hazard Area (if applicable).  
365 The federal and state governments have designated certain areas as flood areas. If the Property is located in a flood area, the use of the  
366 Property may be limited. If Buyer's inquiry reveals that the Property is in a flood area, Buyer may cancel this Contract within ten (10)  
367 calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the  
368 Attorney-Review Clause Section of this Contract, then within ten (10) calendar days after the parties agree to the terms of this Contract.  
369 If the mortgage lender requires flood insurance, then Buyer shall be responsible for obtaining such insurance on the Property. For a flood  
370 policy to be in effect immediately, there must be a loan closing. There is a (30) calendar day wait for flood policies to be in effect for  
371 cash transactions. Therefore, cash buyers are advised to make application and make advance payment for a flood policy at least thirty  
372 (30) calendar days in advance of closing if they want coverage to be in effect upon transfer of title.

373  
374 Buyer's mortgage lender may require Buyer to purchase flood insurance in connection with Buyer's purchase of this Property. The  
375 National Flood Insurance Program ("NFIP") provides for the availability of flood insurance but also establishes flood insurance policy  
376 premiums based on the risk of flooding in the area where properties are located. Due to amendments to federal law governing the  
377 NFIP, those premiums are increasing and, in some cases, will rise by a substantial amount over the premiums previously charged for  
378 flood insurance for the Property. As a result, Buyer should not rely on the premiums paid for flood insurance on this Property previously  
379 as an indication of the premiums that will apply after Buyer completes the purchase. In considering Buyer's purchase of this Property,  
380 Buyer is therefore urged to consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage,  
381 the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may  
382 increase in the future.

383  
384 (G) Qualifications of Inspectors.  
385 Where the term "qualified inspectors" is used in this Contract, it is intended to refer to persons or businesses that are licensed or certified  
386 by the State of New Jersey for such purpose.

387  
388 **17. MEGAN'S LAW STATEMENT:**  
389 Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders  
390 in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law  
391 and are unable to obtain such information for you. Upon closing, the county prosecutor may be contacted for such further information  
392 as may be disclosable to you.

393  
394 **18. MEGAN'S LAW REGISTRY:**  
395 Buyer is notified that New Jersey law establishes an Internet Registry of Sex Offenders that may be accessed at [www.njsp.org](http://www.njsp.org). Neither  
396 Seller or any real estate broker or salesperson make any representation as to the accuracy of the registry.

397  
398 **19. NOTIFICATION REGARDING OFF-SITE CONDITIONS: (Applicable to all resale transactions.)**  
399 Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-1, et. seq, the clerks of municipalities  
400 in New Jersey maintains lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site  
401 condition. Buyers may examine the lists and are encouraged to independently investigate the area surrounding this property in order  
402 to become familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the  
403 border of a municipality, buyers may wish to also examine the list maintained by the neighboring municipality.

404  
405 **20 AIR SAFETY AND ZONING NOTICE:**  
406 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 of  
407 1983, N.J.S.A. 6:1-80, et seq., and appearing on a municipal map used for tax purposes as well as Seller's agent, shall provide notice to  
408 a prospective buyer that the property is located in an airport safety zone prior to the signing of the contract of sale. The Air Safety and  
409 Zoning Act also requires that each municipality in an airport safety zone enact an ordinance or ordinances incorporating the standards  
410 promulgated under the Act and providing for their enforcement within the delineated areas in the municipality. Buyer acknowledges

411 receipt of the following list of airports and the municipalities that may be affected by them and that Buyer has the responsibility to  
 412 contact the municipal clerk of any affected municipality concerning any ordinance that may affect the Property.

Municipality	Airport(s)	Municipality	Airport(s)
414 Alexandria Tp.	Alexandria & Sky Manor	Manalapan Tp. (Monmouth Cty.)	Old Bridge
415 Andover Tp.	Aeroflex-Andover & Newton	Mansfield Tp.	Hackettstown
416 Bedminster Tp.	Somerset	Manville Bor.	Central Jersey Regional
417 Berkeley Tp.	Ocean County	Medford Tp.	Flying W
418 Berlin Bor.	Camden County	Middle Tp.	Cape May County
419 Blairstown Tp.	Blairstown	Millville	Millville Municipal
420 Branchburg Tp.	Somerset	Monroe Tp. (Gloucester Cty.)	Cross Keys & Southern Cross
421 Buena Bor. (Atlantic Cty.)	Vineland-Downtown	Monroe Tp. (Middlesex Cty.)	Old Bridge
422 Dennis Tp.	Woodbine Municipal	Montgomery Tp.	Princeton
423 Eagleswood Tp.	Eagles Nest	Ocean City	Ocean City
424 Ewing Tp.	Trenton-Mercer County	Old Bridge Tp.	Old Bridge
425 E. Hanover Tp.	Morristown Municipal	Oldsman Tp.	Oldmans
426 Florham Park Bor.	Morristown Municipal	Pemberton Tp.	Pemberton
427 Franklin Tp. (Gloucester Cty.)	Southern Cross & Vineland Downtown	Pequannock Tp.	Lincoln Park
428 Franklin Tp. (Hunterdon Cty.)	Sky Manor	Readington Tp.	Solberg-Hunterdon
429 Franklin Tp. (Somerset Cty.)	Central Jersey Regional	Rocky Hill Boro.	Princeton
430 Green Tp.	Trinca	Southampton Tp.	Red Lion
431 Hammonton Bor.	Hammonton Municipal	Springfield Tp.	Red Wing
432 Hanover Tp.	Morristown Municipal	Upper Deerfield Tp.	Bucks
433 Hillsborough Tp.	Central Jersey Regional	Vineland City	Kroelinger & Vineland Downtown
434 Hopewell Tp. (Mercer Cty.)	Trenton-Mercer County	Wall Tp.	Monmouth Executive
435 Howell Tp.	Monmouth Executive	Wantage Tp.	Sussex
436 Lacey Tp.	Ocean County	Robbinsville	Trenton-Robbinsville
437 Lakewood Tp.	Lakewood	West Milford Tp.	Greenwood Lake
438 Lincoln Park Bor.	Lincoln Park	Winslow Tp.	Camden County
439 Lower Tp.	Cape May County	Woodbine Bor.	Woodbine Municipal
440 Lumberton Tp.	Flying W & South Jersey Regional		

442  
 443 The following airports are not subject to the Airport Safety and Zoning Act because they are subject to federal regulation or within the  
 444 jurisdiction of the Port of Authority of New York and New Jersey and therefore are not regulated by New Jersey: Essex County Airport,  
 445 Linden Airport, Newark Liberty Airport, Teterboro Airport, Little Ferry Seaplane Base, Atlantic City International Airport, and  
 446 Maguire Airforce Base and NAEK Lakehurst.

447  
 448 **21. BULK SALES:**

449 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,  
 450 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  
 451 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  
 452 (10) business days prior to the Closing. If Buyer decides to deliver the Tax Form to the Division, Seller shall cooperate with Buyer by  
 453 promptly providing Buyer with any information that Buyer needs to complete and deliver the Tax Form in a timely manner. Buyer  
 454 promptly shall deliver to Seller a copy of any notice that Buyer receives from the Division in response to the Tax Form.

455  
 456 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  
 457 individual, estate or trust. A simple dwelling house is a one or two family residential building, or a cooperative or condominium unit  
 458 used as a residential dwelling, none of which has any commercial property. A seasonal rental property is a time share, or a dwelling unit  
 459 that is rented for residential purposes for a term of not more than 125 consecutive days, by an owner that has a permanent residence  
 460 elsewhere.

461  
 462 If, prior to the Closing, the Division notifies Buyer to withhold an amount (the "Tax Amount") from the purchase price proceeds for  
 463 possible unpaid tax liabilities of Seller, Buyer's attorney or Buyer's title insurance company (the "Escrow Agent") shall withhold the Tax  
 464 Amount from the closing proceeds and place that amount in escrow (the "Tax Escrow"). If the Tax Amount exceeds the amount of  
 465 available closing proceeds, Seller shall bring the deficiency to the Closing and the deficiency shall be added to the Tax Escrow. If the  
 466 Division directs the Escrow Agent or Buyer to remit funds from the Tax Escrow to the Division or some other entity, the Escrow Agent  
 467 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  
 468 otherwise directed by the Division) upon receipt of written notice from the Division that it can be released, and that no liability will be  
 469 asserted under the Law against Buyer.

Buyer's

Initials: ST

Seller's  
 Initials:

127 Union Ave

471 **22. NOTICE TO BUYER CONCERNING INSURANCE:**

472 Buyer should obtain appropriate casualty and liability insurance for the Property. Buyer's mortgage lender will require that such insurance  
473 be in place at Closing. Occasionally, there are issues and delays in obtaining insurance. Be advised that a "binder" is only a temporary  
474 commitment to provide insurance coverage and is not an insurance policy. Buyer is therefore urged to contact a licensed insurance agent  
475 or broker to assist Buyer in satisfying Buyer's insurance requirements.  
476

477 **23. MAINTENANCE AND CONDITION OF PROPERTY:**

478 Seller agrees to maintain the grounds, buildings and improvements, in good condition, subject to ordinary wear and tear. The premises  
479 shall be in "broom clean" condition and free of debris as of the Closing. Seller represents that all electrical, plumbing, heating and air  
480 conditioning systems (if applicable), together with all fixtures included within the terms of the Contract now work and shall be in proper  
481 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  
482 roof, walls or basement. Seller does not guarantee the continuing condition of the premises as set forth in this Section after the Closing.  
483

484 **24. RISK OF LOSS:**

485 The risk of loss or damage to the Property by fire or otherwise, except ordinary wear and tear, is the responsibility of Seller until  
486 the Closing.  
487

488 **25. INITIAL AND FINAL WALK-THROUGHS:**

489 In addition to the inspections set forth elsewhere in this Contract, Seller agrees to permit Buyer or Buyer's duly authorized  
490 representative to conduct an initial and a final walk-through inspection of the interior and exterior of the Property at any reasonable  
491 time before the Closing. Seller shall have all utilities in service for the inspections.  
492

493 **26. ADJUSTMENTS AT CLOSING:**

494 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  
495 for disbursements and attendance allowed by the Commissioner of Insurance; but all searches, title insurance premium and other  
496 conveyancing expenses are to be paid for by Buyer.  
497

498 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  
499 estate taxes, water and sewer charges that could be claims against the Property, rental and security deposits, association and condominium  
500 dues, and fuel in Seller's tank. Adjustments of fuel shall be based upon physical inventory and pricing by Seller's supplier. Such determi-  
501 nation shall be conclusive.  
502

503 If Buyer is assuming Seller's mortgage loan, Buyer shall credit Seller for all monies, such as real estate taxes and insurance premiums paid  
504 in advance or on deposit with Seller's mortgage lender. Buyer shall receive a credit for monies, which Seller owes to Seller's Mortgage  
505 lender, such as current interest or a deficit in the mortgage escrow account.  
506

507 If the Property is used or enjoyed by not more than four families and the purchase price exceeds \$1,000,000, then pursuant to N.J.S.A.  
508 46:15-7.2, Buyer will be solely responsible for payment of the fee due for the transfer of the Property, which is the so-called "Mansion  
509 Tax, in the amount of one (1%) percent of the purchase price.  
510

511 Unless an exemption applies, non-resident individuals, estates, or trusts that sell or transfer real property in New Jersey are required to  
512 make an estimated gross income tax payment to the State of New Jersey on the gain from a transfer/sale of real property (the so-called  
513 "Exit Tax.") as a condition of the recording of the deed.  
514

515 If Seller is a foreign person (an individual, corporation or entity that is a non-US resident) under the Foreign Investment in Real  
516 Property Tax Act of 1980, as amended ("FIRPTA"), then with a few exceptions, a portion of the proceeds of sale may need to be  
517 withheld from Seller and paid to the Internal Revenue Service as an advance payment against Seller's tax liability.  
518

519 Seller agrees that, if applicable, Seller will (a) be solely responsible for payment of any state or federal income tax withholding amount(s)  
520 required by law to be paid by Seller (which Buyer may deduct from the purchase price and pay at the Closing); and (b) execute  
521 and deliver to Buyer at the Closing any and all forms, affidavits or certifications required under state and federal law to be filed in  
522 connection with the amount(s) withheld.  
523

524 There shall be no adjustment on any Homestead Rebate due or to become due.  
525

526 **27. FAILURE OF BUYER OR SELLER TO CLOSE:**

527 If Seller fails to close title to the Property in accordance with this Contract, Buyer then may commence any legal or equitable action  
528 to which Buyer may be entitled. If Buyer fails to close title in accordance with this Contract, Seller then may commence an action  
529 for damages it has suffered, and, in such case, the deposit monies paid on account of the purchase price shall be applied against such  
530 damages. If Buyer or Seller breach this Contract, the breaching party will nevertheless be liable to Brokers for the commissions in the

531 amount set forth in this Contract, as well as reasonable attorneys' fees, costs and such other damages as are determined by the Court.

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28. CONSUMER INFORMATION STATEMENT ACKNOWLEDGMENT:

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

29. DECLARATION OF BROKER(S)'S BUSINESS RELATIONSHIP(S):

(A) Berkshire Hathaway Home Services Zack Shore, (name of firm) and its authorized representative (s) Gregory DeTommaso

(name(s) of licensee(s))

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

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

(B) (If more than one firm is participating, provide the following.) INFORMATION SUPPLIED BY Ruggeri Realty LLC.

(name of other firm) HAS INDICATED THAT IT IS

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

SELLER'S AGENT  BUYER'S AGENT  TRANSACTION BROKER.

30. BROKERS' INFORMATION AND COMMISSION:

The commission, in accord with the previously executed listing agreement, shall be due and payable at the Closing and payment by Buyer of the purchase consideration for the Property. Seller hereby authorizes and instructs whomever is the disbursing agent to pay the full 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 funds to Seller. Buyer consents to the disbursing agent making said disbursements. The commission shall be paid upon the purchase price set forth in Section 2 and shall include any amounts allocated to, among other things, furniture and fixtures.

Ruggeri Realty LLC. 1325847  
Listing Firm REC License ID

Vivian Ruggeri 784596  
Listing Agent REC License ID

1801 Boulevard, Seaside Park, NJ 08752  
Address  
(732)375-3133 (732)575-8310  
Office Telephone Fax (Per Listing Agreement) Agent Cell Phone

vivian@ruggerirealty.com  
E-mail

Berkshire Hathaway Home Services Zack Shore 1111921  
Participating Firm REC License ID

Gregory DeTommaso 1326829  
Participating Agent REC License ID

161 Ocean Ave, Point Pleasant, NJ 08742  
Address  
(732)899-2181 (908)209-1188  
Office Telephone Fax Agent Cell Phone

greg.detommaso@gmail.com 2%  
E-mail Commission due Participating Firm

31. EQUITABLE LIEN:

Under New Jersey law, brokers who bring the parties together in a real estate transaction are entitled to an equitable lien in the amount of their commission. This lien attaches to the property being sold from when the contract of sale is signed until the closing and then to the funds due to seller at closing, and is not contingent upon the notice provided in this Section. As a result of this lien, the party who disburses the funds at the Closing in this transaction should not release any portion of the commission to any party other than Broker(s) and, if there is a dispute with regard to the commission to be paid, should hold the disputed amount in escrow until the dispute with Broker(s) is resolved and written authorization to release the funds is provided by Broker(s).



591 32. DISCLOSURE THAT BUYER OR SELLER IS A REAL ESTATE LICENSEE:  Applicable  Not Applicable  
592 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  
593 that the person is a licensee. \_\_\_\_\_ therefore discloses that he/she is licensed in New Jersey as  
594 a real estate  broker  broker-salesperson  salesperson  referral agent.  
595

596 33. BROKERS TO RECEIVE CLOSING DISCLOSURE AND OTHER DOCUMENTS:  
597 Buyer and Seller agree that Broker(s) involved in this transaction will be provided with the Closing Disclosure documents and any  
598 amendments to those documents in the same time and manner as the Consumer Financial Protection Bureau requires that those  
599 documents be provided to Buyer and Seller. In addition, Buyer and Seller agree that, if one or both of them hire an attorney who  
600 disapproves this Contract as provided in the Attorney-Review Clause Section, then the attorney(s) will notify the Broker(s) in writing when  
601 either this Contract is finalized or the parties decide not to proceed with the transaction.  
602

603 34. PROFESSIONAL REFERRALS:  
604 Seller and Buyer may request the names of attorneys, inspectors, engineers, tradespeople or other professionals from their Brokers  
605 involved in the transaction. Any names provided by Broker(s) shall not be deemed to be a recommendation or testimony of competency of  
606 the person or persons referred. Seller and Buyer shall assume full responsibility for their selection(s) and hold Brokers and/or salespersons  
607 harmless for any claim or actions resulting from the work or duties performed by these professionals.  
608

609 35. ATTORNEY-REVIEW CLAUSE:  
610 (1) Study by Attorney  
611 Buyer or Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her  
612 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  
613 attorney for Buyer or Seller reviews and disapproves of the Contract.  
614

615 (2) Counting the Time  
616 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  
617 legal holidays. Buyer and Seller may agree in writing to extend the three-day period for attorney review.  
618

619 (3) Notice of Disapproval  
620 If an attorney for Buyer or Seller reviews and disapproves of this Contract, the attorney must notify the Broker(s) and the other party  
621 named in this Contract within the three-day period. Otherwise this Contract will be legally binding as written. The attorney must send  
622 the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will  
623 be effective upon sending. The personal delivery will be effective upon delivery to the Broker(s) office. The attorney may also, but need  
624 not, inform the Broker(s) of any suggested revision(s) in the Contract that would make it satisfactory.  
625

626 36. NOTICES:  
627 All notices shall be by certified mail, fax, e-mail, recognized overnight courier or electronic document (except for notices under the  
628 Attorney-Review Clause Section) or by delivering it personally. The certified letter, e-mail, reputable overnight carrier, fax or electronic  
629 document will be effective upon sending. Notices to Seller and Buyer shall be addressed to the addresses in Section 1, unless otherwise  
630 specified in writing by the respective party.  
631

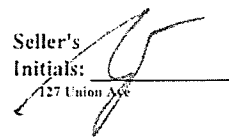
632 37. NO ASSIGNMENT:  
633 This Contract shall not be assigned without the written consent of Seller. This means that Buyer may not transfer to anyone else Buyer's  
634 rights under this Contract to purchase the Property.  
635

636 38. ELECTRONIC SIGNATURES AND DOCUMENTS:  
637 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,  
638 including but not limited to the parties and their representatives having the right to use electronic signatures and electronic documents that  
639 are created, generated, sent, communicated, received or stored in connection with this transaction. Since Section 11 of the Act provides  
640 that acknowledging an electronic signature is not necessary for the signature of such a person where all other information required to  
641 be included is attached to or logically associated with the signature or record, such electronic signatures, including but not limited to an  
642 electronic signature of one of the parties to this Contract, do not have to be witnessed.  
643

644 39. CORPORATE RESOLUTIONS:  
645 If Buyer or Seller is a corporate or other entity, the person signing below on behalf of the entity represents that all required corporate  
646 resolutions have been duly approved and the person has the authority to sign on behalf of the entity.  
647

648 40. ENTIRE AGREEMENT; PARTIES LIABLE:  
649 This Contract contains the entire agreement of the parties. No representations have been made by any of the parties, the Broker(s) or its  
650

Buyer's  
Initials:                     

Seller's  
Initials:                       


651 salespersons, except as set forth in this Contract. This Contract is binding upon all parties who sign it and all who succeed to their rights  
 652 and responsibilities and only may be amended by an agreement in writing signed by Buyer and Seller.

653  
 654 **41. APPLICABLE LAWS:**

655 This Contract shall be governed by and construed in accordance with the laws of the State of New Jersey and any lawsuit relating to  
 656 this Contract or the underlying transaction shall be venued in the State of New Jersey.

657  
 658 **42. ADDENDA:**

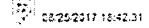
659 The following additional terms are included in the attached addenda or riders and incorporated into this Contract (check if applicable):

- |  |  |
|--|--|
| <input type="checkbox"/> Buyer's Property Sale Contingency             | <input type="checkbox"/> Private Well Testing                    |
| <input type="checkbox"/> Condominium/Homeowner's Associations          | <input type="checkbox"/> Properties With Three (3) or More Units |
| <input type="checkbox"/> FHA/VA Loans                                  | <input type="checkbox"/> Seller Concession                       |
| <input type="checkbox"/> Lead Based Paint Disclosure (Pre-1978)        | <input type="checkbox"/> Short Sale                              |
| <input type="checkbox"/> New Construction                              | <input type="checkbox"/> Underground Fuel Tank(s)                |
| <input type="checkbox"/> Private Sewage Disposal (Other than Cesspool) |  |

666  
 667 **43. ADDITIONAL CONTRACTUAL PROVISIONS:**

- 668 • The Property is being "Sold AS and where IS".  
 669  
 670 • The property is being sold contingent  
 671 upon Bankruptcy COURT Approval.  
 672  
 673 • The Trustee/Seller makes no representation  
 674 as to the condition of property.  
 675  
 676  
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 681

682 **WITNESS:**

683 _____	<i>RL</i>	 08/25/2017 16:42:31	August 25, 2017
684 Gregory DeTommaso	BUYER Brad Adams		Date
685 _____	BUYER		Date
686 _____	BUYER		Date
687 _____	BUYER		Date
688 _____	BUYER		Date
689 _____	SELLER <del>Barbara Magnusson</del>		Date
690 _____	<i>Happy Feast Chapter 11 Trustee for the Estate of BARBARA Magnusson</i>		Date
691 _____	SELLER		Date
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710 _____	SELLER		Date

**Law Office of  
Jacqueline F. McGowan, LLC**

2022 Hwy. 71, Suite 201  
Spring Lake Heights, NJ 07762  
(732) 449-5100  
Fax: (732) 449-5109

mcgowan@jfmcgowanlaw.com

September 5, 2017

Via Email  
jmcdonnell@mchfirm.com

John M. McDonnell  
McDonnell Crowley LLC  
115 Maple Ave., Ste. 201  
Red Bank, NJ 07701

Re: Adams from Frost, Chapter 11 Trustee  
14 Newark Avenue, Spring Lake, NJ

Dear Mr. McDonnell:

Please be advised that I represent Brad Adams in his purchase of the above real property from your client, Barry Frost, Chapter 11 Trustee for the Estate of Barbara Magnusson. I have reviewed the Contract of Sale with my client, and the same is approved subject to the following amendments and modifications; otherwise, it is disapproved:

- 1) Paragraph 1, Line 18. Revise name of Buyer to "14 Newark Avenue Enterprises LLC".
- 2) Paragraph 3(B), Line 57. Replace "3 days after attorney review" with "ten (10) days after the end of attorney review" as the timing for payment of the additional deposit.
- 3) Paragraph 3(E), Line 93. Replace "on or before October 15, 2017" with "within 14 days of bankruptcy court approval of the sale".
- 4) Paragraph 8. Replace with, "Any provision within the Contract purporting to make time of the essence is deleted. In addition, there shall be no automatic waiver under any of the clauses, terms, or conditions set forth in the Contract, unless written notice with reasonable opportunity to cure or satisfy is provided to the other party."
- 5) Paragraph 16. Add, "Buyer understands that Seller will neither undertake remedial actions nor offer a credit on the basis of inspection

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findings. Buyer intends to conduct a tank sweep, a soil boring, and environmental/regulatory investigation, to be done within ten (10) days of the end of attorney review.”

- 6) Paragraph 24. Add, “In case the premises shall suffer injury beyond the ordinary wear and tear, and the cost of replacement damage is in excess of 10% of the purchase price, either Party shall have the option to void the agreement.”
- 7) Paragraph 27. Replace with, “In the event of a breach of contract, the parties are left to their remedies at law and equity, and any deposit monies will be held pending resolution of the dispute.”
- 8) Paragraph 31. Delete.
- 9) Paragraph 36. Add, “Notwithstanding any provision to the contrary, notice to the Seller is effective if sent to Seller’s attorney, and notice to Buyer is effective if sent to Buyer’s attorney.”
- 10) Paragraph 43. Seller agrees that Buyer may assign this Contract to a single-member LLC, if Buyer’s lender is so amenable.
- 11) Seller represents to Buyer, to the best of Seller’s knowledge:
  - a. Seller has received no notifications from the Local, State or Federal government regarding any pending or threatened Superfund or New Jersey Spill Act liability; and
  - b. Seller has received no notifications from the Local, State or Federal government regarding any land development applications within 200’ of the Property.

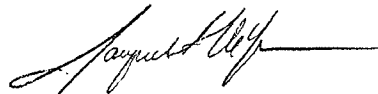
Seller agrees to advise of any changes to the above representation during pendency of this transaction.

- 12) All time periods stated in the Contract of Sale shall begin to run upon the conclusion of attorney review.
- 13) Should any of the above provisions conflict with the provisions of the Contract of Sale, the terms of this Rider shall prevail.

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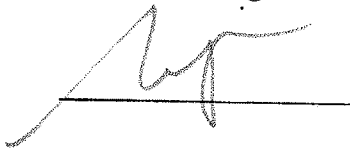
Please confirm the conclusion of attorney review by returning a signed copy of this letter. If you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,



Jacqueline F. McGowan

Accepted and Agreed:



cc: Adams  
DeTommaso, BHHS Zack Shore (via Email, [greg.dtommaso@gmail.com](mailto:greg.dtommaso@gmail.com))  
Ruggeri, Ruggeri Realty LLC (via Email, [vivian@ruggierirealty.com](mailto:vivian@ruggierirealty.com))

**NOTICE  
TO BUYER AND SELLER  
READ THIS NOTICE BEFORE SIGNING THE CONTRACT**

The Law requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. The purpose is to help you in this purchase or sale.

- 1) As a real estate broker, I represent:  the seller, not the buyer;  the buyer, not the seller;  
 both the seller and the buyer;  neither the seller nor the buyer.  
 The title company does not represent either the seller or the buyer.

2) You will not get any legal advice unless you have your own lawyer. Neither I nor anyone from the title company can give legal advice to either the buyer or the seller. If you do not hire a lawyer, no one will represent you in legal matters now or at the closing. Neither I nor the title company will represent you in those matters.

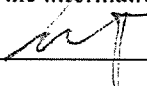
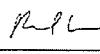


3) The contract is the most important part of the transaction. It determines your rights, risks, and obligations. Signing the contract is a big step. A lawyer would review the contract, help you to understand it, and to negotiate its terms.

4) The contract becomes final and binding unless your lawyer cancels it within the following three business days. If you do not have a lawyer, you cannot change or cancel the contract unless the other party agrees. Neither can the real estate broker nor the title insurance company change the contract.

5) Another important service of a lawyer is to order a survey, title report, or other important reports. The lawyer will review them and help to resolve any questions that may arise about the ownership and condition of the property. These reports and survey can cost you a lot of money. A lawyer will also prepare the documents needed to close title and represent you at the closing.

6) A buyer without a lawyer runs special risks. Only a lawyer can advise a buyer about what to do if problems arise concerning the purchase of this property. The problems may be about the seller's title, the size and shape of the property, or other matters that may affect the value of the property. If either the broker or the title company knows about the problems, they should tell you. But they may not recognize the problem, see it from your point of view, or know what to do. Ordinarily, the broker and the title company have an interest in seeing that the sale is completed, because only then do they usually receive their commissions. So, their interests may differ from yours.

7) Whether you retain a lawyer is up to you. It is your decision. The purpose of this notice is to make sure that you have the information needed to make your decision.

 SELLER	08/25/2017 DATE	 BUYER	08/25/2017 18:42:31 DATE
<del>Barbara Magnusson</del> HARRY FRIST Chapter 11 TRUSTEE FOR THE ESTATE OF BARBARA MAGNUSSON	SELLER	BUYER	DATE
SELLER	DATE	BUYER	DATE
SELLER	DATE	BUYER	DATE
 Listing Broker Vivian Ruggeri	DATE	 Selling Broker Gregory DeTommaso	08/25/2017 16:54:40 DATE

Prepared by: Gregory DeTommaso  
Name of Real Estate Licensee