

**THE KELLY FIRM, P.C.**  
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Spring Lake, New Jersey 07762  
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Attorneys for Debtor

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

In Re:	:	Chapter 11
	:	
	:	Case No. 17013370/SLM
BERGEN PLAZA FAIRVIEW, LLC,	:	
Debtor.	:	NOTICE OF MOTION TO SELL ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, AND RELATED RELIEF
	:	
	:	Hearing Date: April 4, 2017 11:00 a.m.
	:	
	:	Oral Argument Requested

TO: ALL PARTIES ON THE ATTACHED SERVICE LIST

SIR/MADAM:

PLEASE TAKE NOTICE, that on April 4, 2017 at 11:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorneys for Bergen Plaza Fairview, LLC, the above-named Chapter 11 Debtor-in-Possession, will move before the Honorable Stacey L. Meisel, United States Bankruptcy Judge, at the United States Bankruptcy Court, 50 Walnut Street, Newark, New Jersey 07102 for an Order approving the purchase and sale of a certain

commercial property located at 501-503 Fairview Avenue, Fairview, NJ 07024 to Fred A. Daibes for the allocated sum of \$3,600,000.00 pursuant to 11 U.S.C. §§ 363(b) and (f), and 1106 and 1107 free and clear of all liens, claims and encumbrances, with valid liens to attach to proceeds of sale, and allowing disbursement of the sale proceeds.

PLEASE TAKE FURTHER NOTICE that, in support of the Motion, the undersigned will rely upon the Certification of Aron Taub.

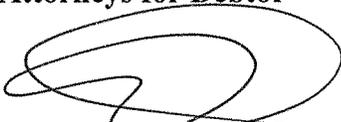
PLEASE TAKE FURTHER NOTICE that, in accordance with D.N.J. L.B.R. 9013-1(e), no brief is necessary in support of this Motion in as much as no difficult or novel issues are raised. In the event such issues are raised, Debtor reserves the right to file an appropriate brief within any time period set by the Court.

PLEASE TAKE FURTHER NOTICE that, pursuant to D.N.J. L.B.R. 9013-1(f), oral argument is requested.

PLEASE TAKE FURTHER NOTICE that, objections to Debtor's Motion, if any, shall be filed with the Clerk of the United States Bankruptcy Court, 50 Walnut Street, Newark, New Jersey 08608 and simultaneously served upon: The Kelly Firm, P.C., 1011 Highway 71, Suite 200, Spring Lake, New Jersey 07762 (Attention: Andrew J. Kelly, Esq.) within the time permitted under applicable Rule or otherwise as fixed by the Court.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is annexed hereto.

**THE KELLY FIRM, P.C.**  
**Attorneys for Debtor**

  
By           *Andrew J. Kelly*            
**ANDREW J. KELLY, ESQ.**

Dated: February 28, 2017

**SERVICE LIST**

Bergen Plaza, LLC  
c/o 501-503 Fairview Avenue  
Fairview, New Jersey 07024  
Debtor

United States Trustee's Office  
One Newark Center, Suite 2100  
Newark, New Jersey 07102

Diabes Enterprises  
c/o Fred Diabes  
1000 Portside Drive  
Edgewater, New Jersey 07020  
Prospective Purchaser

Alexander Dingerpotadre  
501-503 Fairview Avenue  
Fairview, New Jersey 07024  
Secured Creditor

John L. Schettino, Esq.  
Law Offices of John Schettino, LLC  
800 Main Street  
Hackensack, NJ 07601  
Attorneys for Alexander Dingertopadre

**THE KELLY FIRM, P.C.**

Andrew J. Kelly, Esq.  
1011 Highway 71, Suite 200  
Spring Lake, New Jersey 07762  
(732) 449-0525  
[akelly@kbtlaw.com](mailto:akelly@kbtlaw.com)  
Attorneys for Debtor

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

_____	:	_____
In Re:	:	Chapter 11
	:	
	:	Case No. 17-13370/SLM
BERGEN PLAZA FAIRVIEW, LLC,	:	
	:	CERTIFICATION OF ARON TAUB IN
Debtor.	:	SUPPORT OF MOTION TO SELL
	:	ASSETS FREE AND CLEAR OF
	:	LIENS, CLAIMS AND
	:	ENCUMBRANCES, AND RELATED
	:	RELIEF
	:	
	:	
	:	Hearing Date: April 4, 2017
	:	11:00 a.m.
	:	
	:	
_____	:	Oral Argument Requested
	:	_____

ARON TAUB, of full age, does hereby certify as follows:

1. I am the Manager and authorized representative of Bergen Plaza Fairview, LLC, f/k/a Bergen Plaza, LLC (“Debtor” or “Bergen Plaza”), the Debtor in the above-captioned Chapter 11 bankruptcy proceeding. I make this Certification in support of the Debtor’s Motion for entry of an order authorizing Bergen Plaza to sell the commercial property located at 501-503 Fairview Avenue, Fairview, NJ 07024 (“Subject Property”) and related relief.

2. Debtor filed a Petition under 11 U.S.C. §1101 et seq. of the United States Bankruptcy Code on February 22, 2017 (“Petition Date”). Since that date, Debtor has been managing the estate’s affairs as a Debtor-in-Possession pursuant to 11 U.S.C. §§1106 and 1107.

3. The Debtor is a New Jersey Limited Liability Company, formed and doing business since June of 2007. Bergen Plaza owns the Subject Property.

4. Bergen Plaza entered into a contract to sell the Subject Property (“Contract of Sale”) with Fred A. Daibes (“Daibes”) for the total sum of \$3,600,000.00. A copy of the Contract of Sale is annexed hereto as **Exhibit “A”**. Neither Daibes nor any of its principals are related to or connected with the Debtor, and after consummation of the sale, the Debtor will retain no ownership interest in the Subject Property.

5. Because of the Debtor’s record interest in the Subject Property, it is necessary to apply for an Order authorizing conveyance of the Debtor’s interest in the Subject Property free and clear of liens. The aforesaid property is encumbered by one (1) mortgage and a tenant as described herein:

a. A Mortgage dated September 7, 2007 (as modified several times, most recently in a Fourth Mortgage Modification dated November 9, 2015) between Bergen Plaza and Alexander Dingertopadre in the approximate amount of \$1,285,738.56 (inclusive of principal, interest, late fees and other charges)<sup>1</sup> recorded on September 12, 2007 in the Bergen County Clerk’s Office in Mortgage Book 16978, Page 136 (“Dingerpotadre Mortgage”).

b. Pursuant to the Fourth Mortgage Modification referenced herein in Paragraph 5.a., Alexander Dingerpotadre is authorized to occupy the Subject property rent free until the Dingerpotadre Mortgage is paid in full.

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<sup>1</sup> Estimated mortgage pay off as of December 5, 2016.

6. Daibes is a purchaser for “value”. The proffered purchase price for the Subject Property is \$3,600,000.00 which is a fair offer. Under the terms of sale, Daibes is paying cash at closing sufficient to satisfy the Dingerpotadre Mortgage plus ordinary closing costs, and executing a promissory note and mortgage in favor of the Debtor for the balance of the \$3,600,000.00 purchase price.

7. The Debtor believes the sale price of \$3,600,000.00 is a fair offer based on a number of factors. First, the Subject Property has been marketed for sale since 2015 and the offer from Daibes is the only offer received that was not contingent on future municipal approvals.<sup>2</sup> Second, Daibes is prepared to close immediately, has completed his due diligence, and has already placed the sum of \$1,300,000.00 in its attorney’s trust account as proof of the available funds to pay off the Dingerpotadre Mortgage.

8. Daibes is a “good-faith” purchaser under the criteria set forth in In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3<sup>rd</sup> Cir. 1986), as he is not related to or connected with the Debtor and, after the consummation of the sale, the Debtor will retain no ownership interest in the Subject Property. The Debtor has no arrangement with Daibes and will derive no benefit from the transaction except as has been disclosed herein. Accordingly, Daibes satisfies the criteria of a “good-faith” purchaser promulgated in Abbotts Dairies.

9. It is in the best interest of the estate to sell the Subject Property because the Subject Property represents Debtor’s only asset, and its sale will result in the immediate satisfaction of the Debtor’s secured liability and closing costs.

10. At the closing, the proceeds of the sale allocated to Bergan Plaza (\$3,600,000.00) will be utilized to pay off the Dingerpotadre Mortgage and ordinary closing costs, including, but

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<sup>2</sup> In 2015 the Debtor received an offer sheet for \$4,200,000.00 contingent on due diligence and approvals, and in 2016 the Debtor received an offer for \$3,000,000.00 also contingent on due diligence and approvals. Neither potential purchaser went to contract.

not limited to, any applicable broker's commission (if any) as allowed by the Court. The balance of sale proceeds remaining after payment of the Dingerpotadre Mortgage and the costs at closing (if any) will be deposited into trust with The Kelly Firm, P.C. (the "Escrow Agent"), with any remaining valid liens, claims and encumbrances to attach to the net proceeds of sale. The funds shall thereafter be disbursed by the Escrow Agent in accordance with any Plan of Reorganization approved by the Bankruptcy Court or any other order subsequently entered by the Bankruptcy Court approving further disbursement of the proceeds.

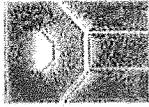
12. In light of the foregoing, Debtor respectfully requests that the Court authorize the sale of the Subject Property to Daibes (or to such other purchaser who submits a higher and better offer as determined by the Court) free and clear of all liens, claims and encumbrances, with liens, if any, to attach to the proceeds of sale, free and clear of any tenant rights of Alexander Dingerpotadre, and to further authorize the disbursement of the closing proceeds in accordance with the terms set forth above in Paragraph 11.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
ARON TAUB

Dated: February 28, 2017

# **EXHIBIT “A”**



**DAIBES ENTERPRISES**

November 10, 2016

**AGREEMENT**

As agreed to the following previously negotiated agreement:

The PURCHASER, FRED A DAIBES agrees to buy and the seller, Bergen Plaza LLC agrees to sell for the price of \$ 3,600,000.00 PURCHASER PRICE.

AGREEMENT OF SALE (this "Agreement"), dated as of November 10, 2016, between **BERGEN PLAZA, LLC**, a New Jersey limited liability company having an office at 66 Witherspoon Street, Suite 156, Princeton, New Jersey 08542 ("Seller") and **FRED A. DAIBES**, an individual, who will form an limited liability company to be called 503 Fairview Avenue Associates, LLC, to assume the responsibilities below, having a mailing address of 1000 Portside Drive, Edgewater, NJ 07020 ("Purchaser").

**Preliminary Statement**

Seller is the owner in fee simple of approximately 25,000+ square feet of land and the improvements located thereon situated in the Borough of Fairview County of Bergen, State of New Jersey, more particularly described as Lot 4, Block 605 as shown on the official Tax Map of the Borough of Fairview (the "Property"). The Property consists of land improved with a non-residential building, in the B2 zone, previously approved in 2005, and 2007, for a residential building containing 120 two-bedroom dwelling units. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase and acquire the Property from Seller, subject to and in accordance with the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the Property, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged by each party hereto, Seller and Purchaser hereby agree as follows:

The Parties have agreed to the following modifications on this date as to the unsigned Contract of Sale which is attached hereto:

1. The Purchaser has agreed to deposit with the Seller's attorney an amount sufficient to pay off the existing first mortgage, a copy of which is attached hereto, not to exceed One Million Three Hundred Thousand (\$1,300,000.00) Dollars (the "Mortgage Payment") The Seller's Attorney shall obtain the pay-off amount of said mortgage and make payment to the Mortgage Holder in exchange for all necessary documentation so as to remove any Mortgage, Lis Pendens, etc. as required so as to enable a transfer of the property to the Purchaser free and clear of all liens relative to the mortgage. Purchaser agrees to pay Seller's costs at closing which shall be deducted from the Mortgage Note amount Purchaser issues to Seller.
2. The Seller and Purchaser have agreed that Purchaser will complete the ongoing environmental studies and in the event, such reveals the necessity of remediation of an existing environmental condition.
3. The Purchaser agrees to pay for the first \$50,000.00 of costs attributable to such.
4. In the event the costs are in excess of such amount; the Seller agrees to be responsible for such cost after Purchaser has paid the first \$50,000.
5. In the event the costs are in excess of \$200,000.00 and purchaser declines to be responsible for such costs, the Seller shall repay Purchaser for the HALF the Mortgage Payment for the *present exiting mortgage*, (Dingertopadre) and Purchaser shall deliver duly executed Deed for the property to Seller.
6. The Purchaser shall execute a Note and Mortgage for the balance of the Purchase Price (approximately \$2,300,000.00)
7. The term of the Mortgage Note (the "Note") will have an expiration date May 18, 2017. In the event the Note is not paid in full on such date, May 18, 2017, if no environmental work is required, the Seller shall have the option, in addition to statutory rights to foreclose, to repurchase the property for \$600,000.00.
8. In the event, environmental work is required the payoff date of the mortgage shall be extended for eight months from the start date of Dingertopadre's vacation of the property, expected to be March 1, 2017. Purchaser agrees to move expeditiously and continuously with environmental investigation and remediation.
9. In the event that Purchaser requires additional time for remediation, Purchaser must in writing request two weeks prior to the date 8 months after property vacation, the "start date", to request an additional 90 day period to complete the remediation, such extension not to be unreasonably withheld. Should the Mortgage Note not be paid at the end of either the eight months referred to in paragraph 8, or at the end of the

additional ninety days if paragraph #9 applies, the Seller shall have the option. In addition to statutory rights to foreclose, or to repurchase the property for \$600,000.00.

10. The Parties agree to close on Friday, November 18, 2016 at 11:00 AM, or at such time to be arranged, but no later than December 1, 2016.
11. Purchaser agrees to pay the seller closing costs, and realty transfer tax and mansion tax at closing. The realty transfer tax amount, and seller's costs paid by Purchaser will be deducted from the Mortgage Note amount due. Seller shall pay the mansion tax.
12. Seller's agree that they shall not market the property to others in any manner, so long as Purchaser has not defaulted under the terms above.

The Parties hereby agree to these terms and conditions and set forth their signatures below:

Exhibit A, an unsigned Contract, is attached herein. Any terms not discussed herein that are in Exhibit A, Exhibit A will control. Any conflict with Exhibit A, This Letter will control.

Agreed to on November 10, 2016



FRED A. DAIBES, Purchaser



ARON TAUB

MANAGING MEMBER BERGEN PLAZA, LLC Seller

AGENT.

## AGREEMENT OF SALE

AGREEMENT OF SALE (this “Agreement”), dated as of October , 2016, between **BERGEN PLAZA, LLC**, a New Jersey limited liability company having an office at 66 Witherspoon Street, Suite 156, Princeton, New Jersey 08542 (“Seller”) and **FRED A. DAIBES**, an individual, who will form an limited liability company to be called 503 Fairview Avenue Associates, LLC, to assume the responsibilities below, having a mailing address of 1000 Portside Drive, Edgewater, NJ 07020 (“Purchaser”).

### Preliminary Statement

Seller is the owner in fee simple of approximately 25,000+ square feet of land and the improvements located thereon situated in the Borough of Fairview County of Bergen, State of New Jersey, more particularly described as Lot 4, Block 605 as shown on the official Tax Map of the Borough of Fairview (the “Property”). The Property consists of land improved with a non residential building, in the B2 zone, previously approved in 2005, and 2007, for a residential building containing 120 two-bedroom dwelling units. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase and acquire the Property from Seller, subject to and in accordance with the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the Property, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, Seller and Purchaser hereby agree as follows:

### ARTICLE 1

#### Definitions; Construction

1.1 Definitions. As used in this Agreement, the following terms have the following respective meanings:

- (a) “Borough” means the Borough of Fairview and all agencies and instrumentality’s thereof.
- (b) “Closing Date” shall have the meaning specified in Section 8.1.
- (c) “DEP” means the Department of Environmental Protection of the State of New Jersey.

- (d) “Deposit” has the meaning specified in subsection 3.2(a)
  
- (e) “Legal Requirements” means all laws, statutes, codes, ordinances, orders, regulations and requirements of all federal, state, county and municipal governments, departments, boards, authorities, agencies, officials and officers.
  
- (f) “Ordinance” means Zoning Ordinance of the Borough, as amended.
  
- (g) “Permitted Exceptions” has the meaning specified in Section 2.2.
  
- (h) “Property” has the meaning specified in the Preliminary Statement.
  
- (i) “Purchase Price” has the meaning specified in Section 3.1.
  
- (j) “Purchaser” means Fred A. Daibes, and any permitted assignee of the vendee’s right, title and interest under this Agreement.
  
- (k) “Purchaser’s Statement” has the meaning specified in Section 2.4.
  
- (l) “Seller” means Bergen Plaza, LLC.
  
- (m) “Title Insurer” means a title insurance company authorized to do business in the State of New Jersey selected by Purchaser.

1.2 Drafting Ambiguities; Interpretation. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Agreement, each party recognizing that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same. Unless otherwise specified (a) whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; (b) the words “consent” or “approve” or words of similar import, mean the prior written consent or approval of Seller or Purchaser, (c) the words “include” and “including”, and words of similar import, shall be deemed to be followed by the words “without limitation” and (d) the Exhibits to this Agreement are incorporated herein by reference.

## ARTICLE 2

### Sale of Property; Title; Defects

2.1 Sale of Property. Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase and acquire from Seller, fee simple title to the Property, including all

easements, privileges and appurtenances thereto. Included in this sale, by way of assignment, is the Seller's right, title and interest in and to the Development Approvals. The Property shall be conveyed to Purchaser with all the buildings and improvements remaining thereon and Purchaser shall assume the obligation to remove same after closing. The Closing of the entire Property will occur on the Closing Date.

2.2 Title to Property. Title to the Property shall be good, marketable and insurable at regular rates by the Title Insurer subject only to (a) the exceptions set forth on Exhibit A annexed hereto, (b) those exceptions to which Purchaser does not object pursuant to Section 2.4 hereof and (c) any exceptions created or to be created pursuant to the provisions of the Development Approvals (collectively, the "Permitted Exceptions"). In addition thereto, Purchaser shall have the right to enter upon the property so as to perform environmental examinations (Phase I and if necessary, Phase II) examinations and in the event any environmental condition arises, Purchaser shall notify Seller of such and it shall be Seller's obligation to take any and all necessary action to correct such in accordance with local, county, State and Federal laws and regulations.

2.3 Right to Pay Off Monetary Encumbrances. Seller shall have the right to pay off any monetary encumbrances against the Property being conveyed on the Closing Date from the cash then payable, provided recordable instruments of release or discharge of such encumbrances in form and substance reasonably satisfactory to Purchaser's counsel and the Title Insurer are then delivered to Purchaser and the Title Insurer agrees to delete such encumbrance from the fee policy issued to Purchaser and the loan policy issued or to be issued to its lender. Seller shall pay the cost of canceling or discharging all such monetary encumbrances.

2.4 Title Defects. Purchaser shall furnish to Seller no later than forty-five (45) calendar days after the date hereof, a copy of a title commitment with respect to the Property prepared by the Title Insurer together with a statement specifying any defects in title which are not Permitted Exceptions ("Purchaser's Statement"). Seller shall notify Purchaser no later than fifteen (15) calendar days after receipt of Purchaser's Statement whether Seller will remedy such defects. Seller shall be obligated to correct the title defects. If Seller does not agree to remove such defects no later than fifteen (15) calendar days after receipt of Purchaser's Statement, Purchaser shall have the right, upon notice to Seller and the Escrow Agent, given within ten (10) calendar days after receipt of Seller's Notice, either to (a) waive the defect and close title without abatement or reduction of the Purchase Price, or (b) terminate this Agreement and obtain a refund of the Deposit, and upon such refund, except as provided herein, this Agreement and all rights and obligations of the respective parties hereunder shall be null and void. If Purchaser does not advise Seller and the Escrow Agent of its election to terminate this Agreement within such period, Purchaser shall conclusively be deemed to have waived such right of termination on account of such defect.

2.5 Grant of Easements to Third Parties. Each party agrees to grant and convey to any governmental authority, quasi-governmental authority or utility company perpetual and non-exclusive easements in, upon, over, under, across and through their respective lands for the purpose of the installing, maintaining, repairing and replacing of sewer, water, power, gas and telephone lines, pipes, mains, conduits, wires, poles, transformers, meters, cable television systems and all other equipment or machinery necessary or incidental to the proper functioning

of any utility system serving the Property or any improvements to be constructed on the lands retained by Seller, provided such easements are consistent with the Development Approvals and the Concept Plan. The provisions of this Section 2.6 shall survive the title closing. This Agreement is specifically contingent upon Seller granting an easement to Thomas Ippolito, the owner of the adjacent property to the east that borders the Point Pleasant Canal, more particularly described as Lot \_\_\_\_, Block \_\_\_\_ at least thirty (30) days prior to the Closing Date. The purpose of the Easement is to allow the adjacent property owner pedestrian and vehicular ingress and egress across and over a portion of the Property to access his property.

### ARTICLE 3

#### Purchase Price, Payment Terms, Escrow

3.1 Purchase Price. The aggregate purchase price (the "Purchase Price") for the Property shall be THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000.00)

3.2 Payment of Purchase Price. The Purchase Price shall be payable as follows:

(a) Upon execution of this agreement by both parties Purchaser shall deliver to the Purchasers Title Company a deposit to be held in escrow until closing in accordance with the terms and conditions as set forth herein.

(b) At the Closing, Purchaser shall deliver to Seller the balance of the purchase price, with a deduction for the deposit payment in the form of a certified, cashier's or attorneys' trust account check or by wire transfer of immediately available federal funds, as the Purchaser may choose in its sole discretion. Seller shall transfer good and marketable title to the Property to Purchaser at this time.

3.3 Federal Tax Identification Numbers. Seller represents that its federal tax identification number is 0600301265. Purchaser represents that its federal tax identification number is \_\_\_\_\_.

### ARTICLE 4

#### Termination Rights: Due Diligence, etc.

4.1 Right of Entry. Seller shall permit Purchaser and its agents and consultants access to the Property from time to time for the purpose of preparing surveys and undertaking engineering, environmental, soils, wetlands and other similar tests and studies, provided Purchaser promptly repairs any damage to the Property caused by such entry and restores the Property to the condition that existed prior to such entry. Purchaser shall hold and save Seller harmless from and against any and all loss, cost, damage, injury or expense arising out of or in

any way related to the acts or omissions of Purchaser, its agents and consultants, relating to any such entry, and such obligation shall survive the termination of this Agreement.

4.2 Availability of Documents and Inquiries. Seller has furnished to Purchaser copies of prior Development Approvals and all conceptual plans, subdivision plans, maps, engineering data, drawings, specifications, traffic studies, soils investigations, Phase I environmental studies, wetlands investigations and delineations, wetlands resource classifications, consultant's reports, development agreements, utility agreements, correspondence, memoranda, financial data, environmental information and other materials and information relating to the Property or to the application for any of the Development Approvals .

## ARTICLE 5

### Other Covenants and Agreements

5.1 Payment of Taxes and Impositions. Seller shall pay and discharge, or cause to be paid and discharged, before they become delinquent, all real estate taxes, assessments and water and sewer charges levied upon or assessed against the Property. Nothing herein shall require Purchaser to pay any such assessments levied or assessed against any portion of the Property after the conveyance of same to Purchaser

5.2 No Liens or Encumbrances. Seller agrees that it will not create or suffer or permit to be created, and that it will promptly remove or discharge, any and all liens or encumbrances, including but not limited to liens and notices filed pursuant to the New Jersey Construction Lien Law, N.J.S.A. 2A:44A-1, against the Property existing prior to or arising subsequent to the date of this Agreement.

## ARTICLE 6

### Representations and Warranties

6.1 Seller's Representations and Warranties. As an inducement to Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that:

(a) Seller is a limited liability company duly organized, in good standing and validly existing under the laws of the State of New Jersey, has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by Seller of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Seller is a party or by which it or the Property is bound;

(b) the execution, delivery and performance of this Agreement by Seller and the consummation of the transaction contemplated hereby in the manner contemplated herein will not violate any provision of any Legal Requirement to which Seller or the Property is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to Seller or the Property;

(c) all proceedings required to be taken by or on behalf of Seller to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, including a resolution of its board of directors, and this Agreement is the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(d) except for the existing Development Approvals, no consent, authorization, license, permit, registration or approval of, or exemption or other action by, any governmental or public body, commission or authority is required in connection with the execution, delivery and performance by Seller of this Agreement;

(e) to the best of Seller's knowledge, there are no proceedings at law or in equity before any court, grand jury; administrative agency or other investigative body, or governmental department, commission, board, agency, bureau or instrumentality of any kind pending or, to the best of Seller's knowledge, threatened, against or affecting Seller or the Property that (i) involve the validity or enforceability of this Agreement or any other instrument or document to be delivered by Seller pursuant hereto.

(f) there are no existing or pending contracts of sale, options to purchase or rights of first refusal or first offer with respect to the Property, or any part thereof, recorded or unrecorded, and there are no tenancies relating to the Property.

(g) except as otherwise specified herein, there are no management, service, maintenance, or other agreements with respect to or affecting the Property, recorded or unrecorded, which will survive the closing of title;

(h) to the best of Seller's knowledge, no portion of the Property is assessed as farmland under the Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq.;

(i) Seller is not in the hands of a receiver nor is an application for the appointment of a receiver pending; Seller has not made an assignment for the benefit of creditors, nor has Seller filed, or had filed against it, any petition in bankruptcy;

6.3 Purchaser's Representations and Warranties. As an inducement to Seller to enter into this Agreement, Purchaser represents and warrants that:

(a) Purchaser is a limited partnership duly organized, in good standing and validly existing under the laws of the State of New Jersey, and has the power and authority to

enter into this Agreement and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by Purchaser of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Purchaser is a party or by which it is bound;

(b) the execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provisions of any Legal Requirement which Purchaser is subject, or violate any judgement, order, writ, injunction or decree of any court applicable to Purchaser; and

(c) no consent, authorization, license, permit, registration or approval of, or exemption or other action by any governmental or public body, commission or authority is required in connection with the execution and delivery by Purchaser of this Agreement.

6.4 Survival of Purchaser's Representations and Warranties. The representations and warranties contained in Section 6.3 are true, accurate and complete and not misleading in any material respect as of the date hereof and shall be deemed to be repeated at and as of the Closing Date and shall be true, accurate and complete and not misleading in any material respect as of such date. The representations, warranties and covenants set forth in Section 6.3 as applicable at the Closing Date, shall survive the closing for a period of one (1) year.

## ARTICLE 7

### Risk of Loss; Condemnation

7.1 Risk of Loss. The risk of loss with regard to the Property shall be the responsibility of the Seller until the Closing.

7.2 Condemnation. In the event any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain of the Property or any portion thereof, Seller shall promptly notify Purchaser thereof, describing the nature and extent thereof. If Purchaser determines in good faith that such taking of the Property will materially affect the economics of the Project or delay or hinder Purchaser's ability to develop, operate or market the Property in a timely manner, then Purchaser at its election, may within thirty (30) calendar days after receipt of notice of such taking, terminate this Agreement by written notice to Seller and Escrow Agent, whereupon the Deposit, shall be refunded by the Escrow Agent to Purchaser, and, except as provided herein, neither party shall have any further rights against the other hereunder. In the event this Agreement is not so terminated, then the sale of the Property shall be consummated as herein provided and the Purchase Price shall be based solely upon the number of Units approved. Purchaser shall be entitled to all awards payable by reason of such taking once it has taken title to the Property. However, if only a portion of the Property are condemned and the condemnation proceedings are finalized prior to the conveyance of title to the Purchaser and the condemnation does not materially effect the economics of the Property or delay or hinder

Purchaser's ability to develop, operate or market the Property in a timely manner and the Purchaser is proceeding toward closing, Seller shall be entitled to the entire condemnation award. Seller represents, that to the best of its knowledge, no condemnation proceedings have been instituted or are contemplated to be instituted against the Property.

## ARTICLE 8

### Closing Date; Adjournment of Closing; Delivery of Documents

8.1 Closing Date. The closing of title to the Property shall occur within thirty (30) calendar days after the Seller is notified by the Purchaser that the Seller has completed the Due Diligence Period and is fully satisfied with such and has no objections.

At the time of closing, Seller shall transfer to Purchaser unencumbered fee simple title to the Property. The closing shall occur at the offices of the Purchaser or at such other place as the parties shall elect.

8.2 Deliveries by Seller. On the Closing Date, Seller shall deliver to Purchaser the following:

- (a) duly executed Deed of Bargain and Sale with Covenant Against Grantor's Acts in proper statutory form for recordation;
- (b) duly executed Affidavit of Title in form annexed hereto as Exhibit C.
- (c) duly executed FIRPTA Affidavit of Seller.
- (d) original tax bill;
- (e) such other documents and instruments as Purchaser or its Title Insurer may reasonably request in order to perfect title in Purchaser or otherwise to carry out the purposes of this Agreement.

## ARTICLE 9

### Closing Adjustments

9.1 Adjustment Time. All apportionments and adjustments shall be made as of 12:00 midnight on the closing date.

9.2 Description of Items to be Adjusted. The following apportionments and adjustments shall be made:

- (a) real estate taxes assessed against the Property based upon the calendar year assessed;

(b) the amount of the real estate transfer tax payable in connection with the conveyance of the Property shall be paid by Purchaser directly to the taxing authority at closing;

(c) if there are any confirmed or unconfirmed special assessments against the Property, Seller shall pay same if the work giving rise to the assessment was completed prior to the date of this Agreement, but if the work giving rise to the assessment was not completed prior to the date of this Agreement, same shall be paid or assumed by Purchaser; and

9.3 Final Adjustment of Real Estate Taxes. If on the Closing Date, final real estate tax bills for the calendar year in which the closing occurs are not available and the real estate tax adjustment is based upon preliminary tax bills, a final tax adjustment shall be made within ten (10) days after the final tax bill is issued, and Seller or Purchaser, as the case may be, shall make an appropriate payment to the other based upon such re-adjustment. Purchaser shall be responsible for all roll back taxes when they become due and payable with respect to the Property.

9.4 Errors in Closing Adjustments. If after the closing, the parties discover any errors in adjustments and apportionments, same shall be corrected as soon after their discovery as possible. The provisions of this Section 9.4 shall survive the closing, except that no adjustments shall be made later than six (6) months after the Closing Date unless prior to such date the party seeking the adjustment shall have delivered a written notice to the other specifying the nature and basis for such claim.

## ARTICLE 10 Default; Remedies

10.1 Default by Purchaser. Seller may terminate this Agreement by notice to Purchaser at any time prior to the Closing Date in the event of a material default by Purchaser under this Agreement (which remains uncured for thirty (30) days after Seller's notice to Purchaser thereof except if that date falls on a Saturday, Sunday or holiday, in which case the time will expire on the next business day, unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period, in which case Purchaser shall have such longer period as shall be necessary to cure such default, so long as Purchaser proceeds promptly to cure such default within such thirty (30) day period, prosecutes such cure to completion with due diligence and advises Seller of the actions which Purchaser is taking and the progress being made) or a material breach of any representation or warranty by Purchaser expressly set forth in this Agreement.

10.2 Default by Seller. Purchaser may terminate this Agreement by notice to Seller at any time prior to the Closing Date in the event of a material default by Seller under this Agreement (which remains uncured for thirty (30) days after Purchaser's notice to Seller thereof except if that date falls on a Saturday, Sunday or holiday, in which case the time will expire on the next business day, unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period, in which case Seller shall

have such longer period as shall be necessary to cure default within such thirty (30) day period, prosecutes such cure to completion with due diligence and advises Purchaser of the actions which Seller is taking and the progress being made) or a material breach of any representation or warranty by Seller expressly set forth in this Agreement.

10.3 Remedies.

(a) By Purchaser. If Seller fulfills its obligations hereunder but Purchaser materially defaults under this Agreement beyond any applicable cure period, or materially breaches any representation or warranty contained herein, Seller shall, as its sole and exclusive remedies hereunder, have the right to terminate this Agreement and receive the Deposit from the Escrow Agent and such payment when received by Seller shall constitute and be liquidated and agreed damages, whereupon this Agreement shall terminate and the parties hereto shall be relieved of any further liability or obligation to each other, it being expressly understood that the payment of such sums to Seller as aforesaid shall be the sole and exclusive right and remedy of Seller, and constitutes a fair and reasonable amount for the damage sustained by Seller by reason of Purchaser's breach of this Agreement. Seller hereby waives and releases any right to seek specific performance against Purchaser.

(b) By Seller. If Purchaser fulfills its obligations hereunder, but Seller defaults under this Agreement beyond any applicable cure period, or materially breaches any representation or warranty contained herein, Purchaser shall be entitled, as its sole and to terminate this Agreement and recover the Deposit and any and all reasonable costs incurred for title searches, surveys, investigation reports and attorney fees, obtained during the Due Diligence Period, which shall constitute and be liquidated and agreed damages, whereupon this Agreement shall terminate and the parties hereto shall be relieved of any further liability to each other, it being expressly understood that such remedies shall be the sole and exclusive rights and remedies of Purchaser, and constitutes fair and reasonable remedies for the damage sustained by Purchaser by reason of Seller's breach of this Agreement.

ARTICLE 11

Miscellaneous

11.1 Brokerage Commission and Finder's Fee. The parties agree that they have dealt with no real estate broker, investment banker, person, firm or entity who would, by reason of such dealings be able to claim a real estate brokerage, business opportunity brokerage or finder's fee as the procuring cause of this transaction. Each of the parties agrees to indemnify the other and hold the other harmless of and from any and all loss, cost, damage, injury or expense arising out of, or in any way related to, assertions, by any other person, firm or entity, of a claim to real estate brokerage, business opportunity brokerage or finder's fee based on alleged contacts between the claiming party and the indemnifying party which have resulted in allegedly

providing a broker or finder with the right to claim such commission or finder's fee. The provisions of this Section 11.1 shall survive the closing of title.

11.2 Assignment. Seller and Purchaser shall have the right to assign this Agreement or any rights hereunder without the prior written consent of the other party. In the event of any permitted assignment, the assignee of this Agreement shall personally assume all of Assignor's obligations hereunder in a writing delivered to the other party, and the Assignor shall have no further obligations or rights under this Agreement.

11.3 Notices. All notices or other communications required or permitted to be given hereunder shall be given in writing and delivered personally or mailed, by certified or registered mail, postage prepaid, or by a reputable priority delivery service such as Federal Express, addressed as follows:

To Seller:  
Aron Taub

with copies to:  
The Law Offices of Elaine Berkenwald  
275 Hawk Ridge  
Mountainside, New Jersey 07092

To Purchaser:  
Fred A. Daibes  
1000 Portside Drive  
Edgewater, New Jersey

with copies to:

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if by a priority delivery service, on the first business day after transmittal, or, if delivered personally, on the date of such delivery.

11.4 Attorneys' Fees. In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, without limitation, the obligation to pay costs of defense in the form of court costs and attorneys' and paralegal fees and disbursements.

11.5 Successors and Assigns. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11.6 No Joint Venture. Nothing contained herein shall be construed as making Seller and Purchaser the partner, Joint Venturer or agent of the other and neither party shall have the power or authority to bind the other. The parties have no relationship to each other except as vendor and vendee of the Property.

11.7 Recordation. A short form Memorandum of Agreement, in the form attached hereto as Exhibit F, without reference to the Purchase Price, shall be recorded by the Purchaser promptly after the expiration of the Due Diligence Period, provided the Agreement has not been terminated by the Purchaser in accordance with the terms of Section 4.1. Seller agrees to execute the short form Memorandum of Agreement for this purpose.

11.8 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey. All law suits shall be filed in the courts of the State of New Jersey.

11.9 Incorporation of Prior Agreements. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

11.10 Modification of Agreement. This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

11.11 Further Assurances. After the Closing Date, Seller shall execute, acknowledge and deliver, for no further consideration all such assignments, transfers, consents and other documents as Purchaser may reasonably request to vest in Purchaser, and protect Purchaser's right, title and interest in the Property.

11.12 Interpretation. This Agreement shall be construed reasonably to carry out its intent without presumption against or in favor of either party. If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The captions and paragraph headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of, or aid in interpretation of any of the provisions hereof.

11.13 Counterparts. This Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

11.14 Publicity. The parties hereto shall coordinate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement and/or the performance by either of them of their

respective obligations hereunder. No public statement or press release shall be made with respect to this transaction without the prior written approval of both parties. The provisions of this Section 11.14 shall not prohibit Purchaser from disclosing that it is the contract vendee of the Property to any governmental authority which may have jurisdiction over the Property, nor shall either party be prohibited from making any disclosures required by applicable law or regulation.

11.15 Cooperation. Purchaser and Seller agree to cooperate, as required, to carry out the intent of this Agreement. Purchaser and Seller agree that prior to Closing, governmental applications shall be made by Seller and Seller shall execute such applications and documents and attend such hearings or other meetings with city, county, state or federal officials as may be necessary to diligently prosecute same. Additionally, Seller and Purchaser shall cooperate so as to facilitate the conveyance of such easements, on mutually agreed terms, over and across any lands adjacent to or contiguous with the Property which are owned by Seller as Purchaser may deem necessary for the Project. Purchaser and Seller shall otherwise join the other, as requested, in executing such necessary consents, maps, applications for governmental approvals and permits and other documents as may be required for the granting of easements, grading, installation of utilities and other incidental matters in connection with the Project and to fulfill the purposes and intent of this Agreement. In addition, Seller shall provide to Purchaser copies of such documents and correspondence received, submitted or prepared by Seller in connection with the Project.

11.16 Sales/Construction Trailers. Seller agrees to allow the Purchaser to place a Sales and /or construction trailers on the Property prior to Closing. Purchaser agrees to coordinate with the Seller on the location of the trailers and to cause as little disturbance as possible to the Property. Purchaser also agrees to indemnify and hold Seller harmless from any and all claims or damage that Seller might incur as a direct result of the placement of the trailers on the Property and the activities carried on therein.

11.17 Force Majeure. In the event either party is prevented from fulfilling any of its obligations in this Agreement, or in the event the Project is impeded, threatened or prevented, by reason beyond the reasonable control of such party, including but not limited to an Act of God, extraordinary weather, building or other governmental moratorium or if Seller is in litigation or under threat of litigation, then the time of such performance by either party, including the time for payment of any sums due hereunder, shall be extended by a time equal to the amount of such delay, provided that neither party shall be entitled to claim such delay unless it has notified the other party in writing of such delay and the cause thereof.

11.18 Demolition Adjustment To Purchase Price. (a) Purchaser agrees to close title to the Property with the buildings, improvements and personal property remaining thereon.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

WITNESS

**BERGEN PLAZA LLC**

a New Jersey limited liability company

\_\_\_\_\_

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

ARON TAUB, Principal

ATTEST

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

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

FRED A. DAIBES,

