

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

CATINA S. KEARES

Debtor.

Chapter 11

Case No. 16-12831 (SR)

**MOTION OF CATINA S. KEARES FOR AN ORDER PURSUANT TO
11 U.S.C. §§ 105(A) AND 363 AND FEDERAL RULES OF BANKRUPTCY
PROCEDURE 2002, 6004(f)(1), AND 9013 (I) AUTHORIZING THE PRIVATE SALE OF
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, (II)
REQUEST FOR WAIVER OF THE STAY PROVISION PURSUANT TO
F.R.B.P 6004(h), AND (III) GRANTING RELATED RELIEF**

Catina S. Keares (the “Debtor”), by and through her undersigned counsel, Bielli & Klauder, LLC, hereby submits this motion for the entry of an order (i) authorizing the private sale of assets, described herein, free and clear of liens, claims, and encumbrances, (ii) waiving the stay provision pursuant to Federal Rules of Bankruptcy Procedure 6004(h), and (iii) granting related relief (the “Motion”), and, in support thereof, respectfully avers as follows:

JURISDICTION

1. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are §§105 and 363 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9013.

BACKGROUND

2. On April 21, 2016 (the “Filing Date”), the Debtor filed a voluntary petition for reorganization pursuant to chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

3. Since the Filing Date, the Debtor has remained in possession of her assets and continued management of her business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. An official committee of unsecured creditors has not yet been appointed.

5. The Debtor owns the real property located at 603 and 605 (units 10 and 11) Jeffers Circle, Exton, Pennsylvania 19341 (the "Property"), which is listed on her Schedule A.

6. The Debtor has secured an interested buyer and an agreement of sale (the "Agreement") with Intermedia Group Inc. (the "Buyer") for the purchase of the Property for a total of \$750,000.00, plus an additional amount not to exceed \$1,500.00 to pay any municipal bills and/or fines issued with respect to the Property and minus the closing costs resulting from the sale of the Property (the "Purchase Price"). A true and correct copy of the Agreement attached hereto as Exhibit A along with an addendum to the Agreement that extends a closing date to August 31, 2016.

7. The Agreement contemplates the sale of the Property to the Buyer for the Purchase Price. The Buyer is unrelated to the Debtor or any of her affiliates, officers, or agents. Closing on the sale is scheduled on or before October 14, 2016.

8. The Property is currently encumbered by a mortgage with First Niagara Bank in the approximate amount of \$250,000.00.

9. The Debtor is currently negotiating with U.S. Bank National Association ("U.S. Bank") to resolve its pending motion to dismiss this bankruptcy case or alternatively motion for relief from the stay. The Debtor expects to net significant proceeds from the sale of this Property, therefore it expects that a large portion of those proceeds will be paid to U.S. Bank conditioned upon an agreement with U.S. Bank to resolve its motion.

10. The Property may also subject to a number of judgments or liens from individuals and/or entities with judgments the Debtor that are recorded in Chester County. Those judgment and/or lien holders will be served with a copy of this Motion.

THE SALE APPROVAL ORDER

11. The Debtor seeks the entry of an order pursuant to section 363 of the Bankruptcy Code, approving the Agreement and the sale of the Property in all respects, free and clear of any and all liens, claims, encumbrances, and interests in or on the Property. The Sale Approval Order reflects the terms of the current Agreement.

12. Pursuant to section 541 of the Bankruptcy Code, the Property to be sold to the Buyer under the Agreement (the “Sale”), is an asset of the Debtor’s bankruptcy estate.

13. In accordance with sections 363, 1107, and 1108 of the Bankruptcy Code, debtors-in-possession are authorized to sell property of the estate and maximize recoveries for their creditors.

14. Section 363(b) of the Bankruptcy Code authorizes a debtor or a trustee to sell her assets outside of the ordinary course of business. See 11 U.S.C. § 363(b)(1).

15. Section 363(f) of the Bankruptcy Code provides, in pertinent part, as follows:

(f) [t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if

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(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) 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;

(4) such interest is in bona fide dispute; or

(5) 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).

16. Generally, a debtor must show that each of the following elements have been met before a section 363(b) sale may be approved: (i) that a sound business reason exists for the proposed transaction; (ii) that the sale has been proposed in good faith; (iii) that the sale price is fair and reasonable; and (iv) that accurate and reasonable notice has been provided of the transaction. See In re WDH Howell, LLC, 298 B.R. 527, 534 (D. N.J. 2003); In re Stroud Ford, Inc., 163 B.R. 730 (Bankr. M.D. Pa. 1993).

17. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. In re Dura Automotive, 2007 Bankr. LEXIS 2764 at *258, (citing Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996)); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of Lionel Corp. and requiring good faith); In re Del. And Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound business judgment" test in the Abbotts Dairies decision); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1991) (same).

18. Courts have made it clear that a debtor's showing of a sound business justification need not be exhaustive, but rather a debtor or trustee is "simply required to justify the proposed disposition with sound business reasons." In re Baldwin-United Com., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

19. Whether or not there are sufficient business reasons to justify a sale depends upon the facts and circumstances of each case. In re Lionel Com., 722 F.2d 1063, 1071 (2d Cir. 1983).

20. In the circumstances of valid business justifications, applicable principles of law attach to a debtor's decision a strong presumption "that in making a business decision[,] the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11), (quotations omitted).

21. Therefore, the Debtor submits that the decision to sell the Property is based upon sound business judgment and should be approved. The Debtor has worked diligently to explore alternatives to the proposed Sale and seek alternative buyers. However, the state of the Property and the Debtor's financial situation resulted in the Debtor's determination that the Sale of the Property is a necessary step towards a successful and meaningful distribution to the Debtor's creditors. The Debtor thus believes that the Sale of the Property will provide the best result for her estate and creditors.

22. Once a court is satisfied that there is a sound business justification for the proposed sale, the court should then determine whether (i) the debtor in possession has provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. In re Del. and Hudson Ry. Co., 124 B.R. at 166; accord In re Decora Indus., Inc., Case No. 00-4459, 2002 WL 32332749, at *3 (Bankr. D. Del. May 20, 2002.).

23. “The requirement that a purchaser act in good faith...speaks to the integrity of his conduct in the course of the sale proceedings.” In Re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 142, 147 (3d Cir. 1986). “Typically, the misconduct that would destroy s purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” Id.

24. Here, the Agreement was negotiated at arm’s length and at a fair market value for the area and condition of the Property.

25. Thus, the Debtor submits that the proposed Sale to Buyer constitutes a sale in good faith and for fair value within meaning of Section 363 of the Bankruptcy Code

26. Although the Bankruptcy Code does not define “good faith,” the Third Circuit has noted that the phrase “encompasses one who purchases in ‘good faith’ and ‘for value.’” In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986). Further, the Third Circuit has recognized that the type of misconduct that would destroy a purchaser’s good faith status involves ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’ Id. (remanding case involving insider transaction back to the bankruptcy court for further consideration of good faith where there was evidence that the sale had been orchestrated between insiders and some of the sale conditions were not disclosed to the debtor’s creditors) (quoting In re Rock Indus. Machine Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.” See, e.g., In re Stroud Ford, Inc., 163 B.R. 730, 732-33 (Bankr. M.D. Pa. 1993); In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Machine Corp., 572 F.2d at 1198).

27. As will be further demonstrated at the Sale Hearing, the Sale of the Property was proposed in good faith as a result of arms' length negotiations between the Debtor and the Buyer. Under such circumstances, the Debtor submits that the Buyer should be afforded the protections that section 363 of the Bankruptcy Code provides to a good faith purchaser.

28. The Debtor believes that the prompt Sale of the Property, as proposed, is in the best interests of the creditors and the estate. The Debtor believes that the Purchase Price is fair and reasonable under the circumstances.

29. In addition, the Debtor believes that it is unlikely that another offer will be higher than the Purchase Price proposed by the Buyer. The Debtor marketed the Property and had contact with other potential purchasers, but no other offers were received on the Property. In addition, the Buyer is a current tenant at the Property who is familiar with the Property.

30. The Sale of the Property should be free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code, with holders of any such liens, claims, and encumbrances being paid from the proceeds of the Sale of the Property and/or being given replacement liens, claims, and encumbrances attaching to the proceeds of the Sale of the Property.

31. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell property of the estate "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:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

32. The Debtor requests that the Court authorize the Sale of the Property free and clear of all liens, claims, encumbrances, and other interests (collectively, the “Liens and Claims”). The Sale of the Property will satisfy section 363(f) of the Bankruptcy Code because any entities holding liens and claims will have received notice of this Motion and the Sale Notice. All parties in interest will be given sufficient opportunity to object to the relief requested herein and any such entity that does not object to the Sale of the Property should be deemed to have consented. See Futuresource LLC v. Reuters Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); Hargrave v. Twp. of Pemberton (In re Tabone, Inc.), 175 B.r. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)). To the extent that no party holding a lien or claim objects to the relief requested in the Sale Order, the Sale of the Property free and clear of all liens and claims satisfies section 363(f)(2) of the Bankruptcy Code. To the extent a party holding a lien or claim objects to the relief requested in the Sale Order, the Sale of the Property free and clear of such liens and claims satisfies one or more of sections 363(f)(1) or (3)-(5), as applicable.

33. Although the phrase "bona fide dispute" is not defined in the Code, courts interpreting § 363(f)(4) generally look to "whether there is an objective basis for either a factual or legal dispute as to the validity of the asserted interest." D'Antonio v. Bella Vista Assocs., LLC (In re Bella Vista Assocs., LLC), 2007 Bankr. LEXIS 4348 (Bankr. D.N.J. Dec. 18, 2007); See also In re NJ Affordable Homes Corp., No. 05-60442, 2006 U.S. Dist. LEXIS 4498, 2006 WL 2128624, *10 (Bankr. D.N.J. June 29, 2006); In re Gaylord Grain L.L.C., 306 B.R. 624, 627 (8th Cir. BAP 2004); In re Durango Georgia Paper Co., 336 B.R. 594, 596 (Bankr. S.D.Ga. 2005); In re Gulf States Steel, Inc. of Ala., 285 B.R. 497, 507 (Bankr. N.D.Ala. 2002); In re Taylor, 198 B.R. 142, 162 (Bankr. D.S.C.1996). Moreover, the court does not have to resolve the dispute prior to the sale; it need only determine that such a dispute exists. Id. citing In re Gaylord Grain L.L.C., 306 B.R. at 627.

34. Since the goal of section 363(f)(4) is to "allow[] the sale of property subject to dispute 'so that liquidation of the estate's assets need not be delayed while such disputes are being litigated,'" the Property in this matter should be sold pending the disputed interest. Id. citing In re Durango Georgia Paper Co., 336 B.R. 594, 597 (Bankr. S.D.Ga. 2005) (quoting In re Gulf States Steel, Inc., 285 B.R. at 507).

35. Additionally, the burden of proof in this instance rests upon the trustee to establish the existence of a bona fide dispute. Id. See also In re Restaurant Assocs., L.L.C., No. 1:06CV53, 2007 U.S. Dist. LEXIS 23308, 2007 WL 951849, *9 (N.D.W.Va. Mar. 28, 2007); In re NJ Affordable Homes Corp., 2006 U.S. Dist. LEXIS 4498, 2006 WL 2128624 at * 10; In re Gulf States Steel, Inc. of Ala., 285 B.R. at 507.

36. Accordingly, the Debtor requests that the Property be transferred to the Buyer free and clear of all Liens and Claims with the same to attach to the net sale proceeds of the Property.

**THE SALE COMPLIES WITH FEDERAL RULE OF
BANKRUPTCY PROCEDURE 6004(f)(1).**

37. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by public auction.

38. The Debtor believes a sale of the Property pursuant through a private sale will maximize the sale proceeds received by the estate. This, of course, is the paramount goal in any proposed sale of property of the estate. In re Dura Automotive Sys., Inc., Case No. 06-11202(KJC), 2007 Bankr. LEXIS 2764, *253 (Bankr. D. Del. Aug. 15, 2007) (“The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.”).

REQUEST FOR WAIVER OF STAY PROVISION

39. The Debtor respectfully requests that the fourteen (14) day stay provision of F.R.B.P. 6004(h) be waived due to the urgency of the matter.

40. As a term of the Agreement, the Sale will need to close on or before October 14, 2016.

41. As such, the Debtor requests that the stay provisions be waived.

WHEREFORE, the Debtor respectfully requests that this Court (i) enter an Order approving the Sale of the Property in a form substantially similar to the attached proposed form of Order, (ii) enter an Order approving the Sale of the Property free and clear of Liens and Claims, (iii) waiving the fourteen (14) day stay provisions, and (iv) grant such other and further relief as this Court deems just and proper.

BIELLI & KLAUDER, LLC

Dated: September 13, 2016

/s/ David M. Klauder

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Counsel to the Debtor

EX. A

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AGREEMENT FOR THE SALE OF COMMERCIAL REAL ESTATE (PA)

THIS AGREEMENT, made this 18th day of August, 2016 is between the following parties listed below in paragraph 1 for the sale of certain commercial real estate as described more fully below in paragraph 2 upon the terms and conditions stated in full below:

1. PRINCIPALS: This Agreement is between:

Steven Keares and Catina Keares husband and wife
with a mailing address of:

211 Downing Rd. Downingtown PA 19335
hereinafter called "Seller" and

Intermedia Group Inc. and or its assigns
with a mailing address of:

605 Jeffers Circle Exton PA 19341
hereinafter called "Buyer".

2. SELLER HEREBY AGREES TO SELL AND CONVEY TO BUYER, WHO AGREES TO PURCHASE all the certain lot or piece of ground along with buildings, fixtures and improvements erected thereon, if any, known as:

603 and 605 (units 10 and 11) Jeffers Circle Exton PA 19341
in the municipality of West Whiteland Twp., and County of Chester, in the Commonwealth of Pennsylvania with the postal Zip Code of 19341, having the Zoning Classification of C65 commercial, having as a Tax Parcel No 41-04-0509 and 0510 and found at Deed Book _____ Page No. _____ (hereinafter the "Property").

(a) INCLUDED in this sale and for the total purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; air conditioning and lighting fixtures; water treatment systems; any remaining heating fuels stored on the Property at the time of settlement; unless otherwise stated. Also included:

N/A

(b) LEASED items (items not owned by Seller):

N/A

(c) EXCLUDED fixtures and items (items to be removed by Seller):

N/A

3. BUYER AGREES TO PURCHASE THE PROPERTY, AND SELLER AGREES TO SELL AND CONVEY THE PROPERTY, UPON THE FOLLOWING TERMS:

(a) Purchase Price \$750,000.00

which the Buyer will pay to the Seller as follows:

(i) Cash or check at the signing of this Agreement \$ _____

(ii) Cash or check to be paid on or before 8/19/2016 to be deposited

(iii) with Manito Title Ins. Co West Chester PA

\$ 7,500.00

(iii) Cash, wire or certified check at time of settlement \$742,500.00

(The payments in paragraphs 3 (a)(i) and (ii) shall represent the Deposit Monies and a ten (10%) percent total is recommended for Seller's acceptance.)

(b) Seller's written approval on or before: August 22, 2016

(c) Seller shall convey the Property by fee simple deed of special warranty.

(d) Transfer taxes will be paid equally between Seller and Buyer unless provided hereafter:

- (e) The following shall be apportioned pro rata as of and at time of settlement: taxes as levied and assessed, rents, interest on mortgage under assumptions, electricity and natural gas fees, water and sewer rents, lienable municipal services, condominium fees and such like fees that relate to usage of the Property that are prepaid and not refundable.
- (f) Settlement to be made on or before: October 14, 2016

4. SPECIAL CLAUSES:

- (a) Buyer and Seller have received the Consumer Notice as well as the Act 112 Notice of Services and Financial Interest Notices prior to signing this Agreement of Sale, which Notices are incorporated herein by reference.
- (b) An addenda is attached to this Agreement of Sale setting forth additional provisions.
- (c) Buyer and Seller acknowledge having received an estimate of Settlement Costs at or before signing of this Agreement.
- (d) The Deposit Monies shall be placed in an interest bearing account by Listing Agent under the See 3 iii _____ name and tax identification number na _____ to earn interest for the benefit of the Buyer.
- (e) This Agreement is subject to a financing contingency as set forth in the attached addenda, otherwise this is a cash transaction.
- (f) This Agreement is part of a 1031 Tax Free Exchange Transaction as set forth in the attached addenda.
- (g) Buyer shall have a period of 45 days from receipt of leases or other requested factual or financial information listed below to review and deliver to Seller or Seller's Agent written notice of termination of this Agreement. Upon receipt of timely notice of termination, the Deposit Monies shall be returned to Buyer without necessity for further authorization from Seller. Information to be provided: all available, but not limited to any discovery by buyer.
- (h) This Agreement is subject to the zoning/land use contingency attached hereto.
- (i) Other Deposit shall be held in escrow by Manito Title Ins. Co. 100 W. Market St. West Chester PA., 2) Seller agrees to assign existing leases and to credit the rent paid and deposit money at final closing to the buyer. 3) Seller agrees to pay all dues and assements to Clover Mill Condo Asso. that are due, billed or past due at or before final closing. 4) Sellers agree to allow and will cooperate completely with the buyer in its endeavor to appeal the real estate taxes on both properties. All costs associated with the appeal will be paid by the buyer.

5. SELLER SHALL CONVEY POSSESSION AT TIME OF SETTLEMENT:

- (a) Should the Property be vacant, by deed, transfer of all keys and granting of physical possession to the Property at day and time of settlement. Any buildings or improvements on the Property shall be free and clear of debris at the day and time of settlement.
- (b) Should the Property be tenant occupied, by deed and assignment of any and all existing leases at the day and time of settlement.
- (c) Formal tender of any executed deed and purchase money is hereby waived.
- (d) Buyer reserves the right to make a pre-settlement inspection of the Property which is for the sole purpose of confirming that the condition of the Property at closing is as required pursuant to this Agreement.

6. TENANT OCCUPIED PROPERTY:

- (a) Seller shall provide to Buyer a full and complete copy of all existing leases currently in effect, as well as memoranda of the terms of oral leases at or prior to acceptance of this Agreement of Sale.
- (b) Seller shall assign all leases and security deposits together with interest, if any, to Buyer at settlement. In cases where the full amount of the security deposit paid by a tenant cannot be

transferred, Seller will supply to Buyer in writing at settlement the tenant's name, the amount of the security deposit, the amounts deducted, the dates and reasons for deduction and the tenant's written notification or acknowledgement of the deduction.

- (c) Other than obligations set forth in any written lease agreement(s), Seller represents that there are no unsatisfied commitments or agreements, whether oral or written, requiring Seller to fulfill any financial or other obligation to any tenant and to the extent available will provide tenant estoppel certificates prior to or at time of settlement.
- (d) Seller will notify all tenants in writing of the change in ownership at time of settlement.
- (e) Seller shall not modify or extend existing leases or enter into new leases affecting the Property after this Agreement of Sale is executed without the express written approval of Buyer, which approval shall not be delayed or unreasonably withheld.

7. ZONING AND LAND USE: Unless provided as a special clause to this Agreement of Sale, the sale and settlement of the Property is not conditioned upon Buyer obtaining any zoning or land use approvals but only that the current use is permissible as zoned, grandfathered, by special decision or permit. All fees and costs for Buyers use and occupancy and all permits, licenses and approvals shall be at Buyer's sole cost and expense. Seller or agents make no representation or assurances regarding future uses or approvals for the Property.

8. STATUS OF WATER AND SEWER: Seller warrants that the Property is served by:

public water well water public sewer septic system other _____

Seller further warrants that these systems are fully paid for and are operable as of this date of this Agreement. Buyer may inspect these systems by reputable inspectors if an inspection condition is added to this Agreement. Seller is making no pre or post closing warranties, representations or assurances and the systems are being sold "as is" at time of settlement.

9. SELLER REPRESENTS AND WARRANTS to the best of Seller's knowledge, except as noted in this Agreement, addenda hereto or factual information given to Buyer in document form:

- (a) That the Property has not been contaminated by any substance in any manner which requires remediation;
- (b) That the Property contains no underground tanks;
- (c) That the Property contains no wet lands, flood plains, or any other environmentally sensitive areas, the development of which is limited or precluded by law;
- (d) That the Property contains no asbestos, lead paint, or polychlorinated biphenyls or any other substance, the disclosure, removal or disposal of which is subject to any law or regulation; and
- (e) That no law has been violated in the handling or disposal of any material or waste on the Property or the discharge of any material from the Property into the soil, air, surface water or ground water.

10. BUYER REPRESENTS AND WARRANTS THAT:

- (a) Buyer is a duly organized entity in good standing and the individual(s) signing this Agreement have authority to act on behalf of Buyer to enter into this transaction;
- (b) Buyer has the financial ability to consummate the transaction and there are no adverse credit, bankruptcy or receivership issues or pending or threatened legal action that will prevent Buyer from consummating this transaction;
- (c) This Agreement is not contingent upon the sale or exchange of any other real estate; and
- (d) Buyer shall at all times act with due diligence and in good faith to perform all obligations and meet any conditions under this Agreement of Sale.

11. SELLER AND BUYER ACKNOWLEDGE THAT AGENT(S):

- (a) Are licensed real estate agents acting through the real estate brokerage company identified hereafter;
- (b) Are not experts in construction, engineering, or environmental matters;
- (c) Have not made and will not make any representations or warranties about nor conduct any investigations into the physical conditions of the improvements, environmental conditions or suitability of the Property or any adjacent property, including those representations made by Seller in Paragraph No. 9;

- (d) Have not made and will not make any representations or warranties about nor conduct any investigations into the compliance of the Property with the requirements of the Americans with Disabilities Acts or any other federal or state law pertaining to the rights of disabled persons to obtain access to buildings;
- (e) Have not made and will not make any representations or warranties about nor conduct any investigations into the dimensions, lot size, current or intended use, or title issues of or on the Property; and agree that
- (f) The provisions of this paragraph shall survive the performance of this Agreement.

12. SELLER AGREES TO INDEMNIFY and to hold Agent(s) harmless from and against all claims, demands or liabilities, including attorneys fees and court costs, which arise from or are related to:

- (a) The environmental condition or suitability of the Property before, during or after the Seller's possession of the Property, including without limitation any:
 - (1) Contamination by any substance in any manner which requires remediation;
 - (2) Presence of any underground tanks;
 - (3) Presence of any wetlands, flood plains, or any other environmentally sensitive areas the development of which is limited or precluded by law;
 - (4) Presence of any asbestos or polychlorinated biphenyls or any other substance the removal or disposal of which is subject to any law or regulation; and
 - (5) Violation of any laws in the handling or disposal of any material or waste on the Property or discharge of any material from into the soil, air, surface water or ground water.
- (b) The compliance of the Property with the requirements of the Americans with Disabilities Acts or any other federal or state law pertaining to the rights of disabled persons to obtain access to buildings;
- (c) Any acts or omissions of the Seller that may give rise to claims of discrimination on the basis of race, ethnicity, gender, sexual orientation, national origin or religious affiliation under any federal or state laws;
- (d) Representations concerning the dimensions of the Property; and it is agreed that
- (e) The provisions of this paragraph shall survive the performance of this Agreement.

13. SELLER REPRESENTS THAT NO PUBLIC IMPROVEMENT OR ASSESSMENTS have been made against the Property as of the date of the acceptance of this Agreement which remain unpaid and that no notice by any government or public authority has been served upon Seller or anyone on the Seller's behalf, including notices relating to violations of zoning, building, safety or fire ordinances which remain uncorrected unless otherwise specified in this Agreement.

- (a) Any notice of improvements or assessments received on or before the date of Sellers acceptance of this Agreement, unless improvements consist of sewer or water lines not in use, shall be the responsibility of the Seller, any notices received thereafter shall be the responsibility of the Buyer;
- (b) If required by law, Seller shall deliver to Buyer on or before settlement a certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, building, safety or fire ordinances;
- (c) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation; and
- (d) Seller has no knowledge of any current or pending condemnation or eminent domain proceedings that would affect the Property. If any portion of the Property should be subject to condemnation or eminent domain proceedings after the signing of this Agreement, Seller shall immediately advise Buyer, in writing, of such proceedings. Buyer shall have the option to terminate this Agreement by providing written notice to Seller within ten (10) days after the date of Seller's written notice of the filing of such proceedings, in which case Seller shall return to Buyer all money paid on account of the purchase price by Buyer. **Buyer's failure to provide notice of termination within the time stated will constitute a WAIVER of this contingency and all other terms of this Agreement of Sale remain in full force and effect at the option of Seller.**

14. TITLE:

- (a) Seller will convey title free and clear of all liens, encumbrances, and easements, with the exception of existing building restrictions, ordinances, easements of roads, easements visible upon the ground and privilege or rights of public service companies. The title to the subject property shall be good and marketable and such as will be insurable by a reputable title insurance company at the regular rates. Buyer shall pay all title charges and fees as are customary including any cancellation charges, recording fees or endorsement fees.
- (b) In the event Seller is unable to give a good and marketable title and such as will be insurable by a reputable title insurance company at the regular rates, as specified in paragraph 14 (a), Buyer will have the option of taking such title as Seller can give without changing the price, or of being repaid all monies paid by Buyer to Seller on account of purchase price, and Seller will reimburse Buyer for any costs incurred by Buyer for those items specified in paragraph 14 (c) and in the later event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.
- (c) Any survey or surveys which may be required by the title insurance company or the abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by the Seller. However, any survey or surveys desired by the Buyer or required by the mortgage lender will be secured and paid for by the Buyer.
- (d) Buyer shall supply Seller with a title commitment from a reputable title insurance company within ten (10) days of the Effective Date of this Agreement and advise Seller of what title objections are requested to be removed. Seller shall then review the title objections and promptly advise Buyer of any title objections that cannot be removed or that they are within the agreed condition of the title specified in paragraph (a). Buyer shall have ten (10) days from date of Seller's notice of objections that cannot be removed to elect in writing to terminate this Agreement. All title objects not to be removed by Seller shall remain at time of closing and shall be the "Permitted Title Objections". This provision shall not modify Seller's obligation to deliver title at time of Settlement free of all monetary liens.

15. DEPOSIT AND RECOVERY FUND:

- (a) Deposits, (regardless of the form of payment, the person designated as payee or delivery to a Buyer's Agent), shall be delivered to Listing Agent who shall retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Buyer and Seller agree that, in the event the Agent and/or Agents are joined in litigation for the return of Deposit Monies, the Agent's and/or Agent's attorney's fees and costs will be paid by the party joining the Agent or Agents.
- (b) Listing Agent may, at his/her or its sole option, hold any uncashed check tendered as deposit or hand monies, pending the acceptance of this offer.
- (c) A Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658 or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

16. MAINTENANCE AND RISK OF LOSS:

- (a) Seller shall maintain the Property, and any personal property specified herein, in its present condition, normal wear and tear excepted until time of settlement.
- (b) Seller shall promptly notify the Buyer, if, at any time prior to the time of settlement, all or any portion of the Property is destroyed or materially damaged as a result of any cause whatsoever.
- (c) Seller shall bear risk of loss from fire or other cause until time of settlement. In the event that damage to any property included in this sale is not repaired or replaced prior to settlement, Buyer shall have the option of rescinding this Agreement and receiving all monies paid on account or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of this Agreement is accepted.

17. **DEFAULT-TIME OF THE ESSENCE:** The time of settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence. Should the Buyer:

- (a) Fail to make any additional payments as specified in paragraph 3; or
- (b) Furnish false or incomplete information to the Seller, the Agents or the mortgage lender concerning the Buyer's legal or financial status, or fail to cooperate in the processing of the mortgage loan application or meeting any contingency herein which acts would result in the failure to obtain the approval of a mortgage loan commitment or approvals required under any other contingency; or
- (c) Violate or fail to fulfill and perform any other terms or conditions of this Agreement, then in such case, all Deposit Monies and other sums paid or to be paid as Deposit Monies by the Buyer on account of the purchase price, may be retained and/or collected by the Seller:
 - (1) On account of the purchase, or
 - (2) As monies to be applied to the Seller's damages; or
 - (3) As liquidated damages for such breach, as the Seller may elect. In the event that the Seller elects to retain or collect the monies as liquidated damages, the parties shall be released from all liabilities or obligations and this Agreement shall be NULL AND VOID and all copies will be returned to the Seller's Agent for cancellation.

18. **AGENT(S):** The Business Relationship between the Agent(s) and Seller and Buyer are as follows, UNLESS a different relationship is checked below.

- (a) The Listing Agent is Agent for Seller.
- (b) The Selling Agent is Agent for Buyer.
- (c) When the Listing Agent and Selling Agent are the same, the Agent is a Dual Agent. Dual Agency applies to all licensees of Agent, UNLESS there is a Designated Agent. If the same Licensee is designated as agent for Seller and Buyer, the Licensee is a Dual Agent of both parties.

A Business Relationship exists that is different from above, as follows:

- The Selling Agent is the Agent/Subagent for Sellers.
- The Selling Agent is a Transaction Licensee.
- The Listing Agent is a Transaction Licensee.
- (d) Agent(s) may perform services to assist parties in complying with the terms of this Agreement and be compensated for those services upon agreement by the parties being assisted.

19. **RECORDING:** This Agreement shall not be recorded in the Office of the Recorder of Deeds or in any other office or place of public record. If Buyer causes or permits this Agreement or any memorandum thereof to be recorded, Seller may elect to treat such act as a breach of this Agreement.

20. **ASSIGNMENT:** This Agreement shall be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto. It is expressly understood, however, that the Buyer shall not transfer or assign this Agreement without the written consent of the Seller. Any consent requested for a Buyer nominee shall not be unreasonably withheld so long as that nominee establishes financial ability to close the transaction as scheduled and such assignment does not release Buyer hereunder.

21. **REPRESENTATIONS:** It is understood that Buyer has inspected the Property, or hereby waives the right to do so, and has agreed to purchase it as a result of such inspection and not because of or in reliance upon any representation made by the Seller or any other officer, partner, or employee of Seller, or by the Agent or Subagent, if any, of the Seller, their salespeople and employees, officers and/or partners. The Buyer has agreed to purchase it in its present condition unless otherwise specified herein. It is further understood that this agreement contains the whole agreement between the Seller and the Buyer and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise, of any kind whatsoever concerning this sale.

22. **ENTIRE AGREEMENT AND EFFECTIVE DATE:** This Agreement sets forth the entire agreement of the parties, and no oral modification of or addition to this agreement exists; furthermore, no amendment of this agreement can be made except by writing signed by both Buyer and Seller. The Effective Date of this Agreement

shall be the date of Seller's acceptance unless modifications, then in such event the date of the last party's approval of those modifications by initials and/or further signatures.

23. BUYER AND SELLER MAY AGREE TO ARBITRATE any dispute between them that cannot be amicably resolved, however arbitration shall not be cause to delay date of settlement unless agreed to by the parties. After written demand for arbitration by either party, each party will select a competent and disinterested arbitrator. The two so selected will select a third. If selection of the third arbitrator cannot be agreed upon within 30 days, either party may request that selection be made by a judge of a court of record in the county in which arbitration is pending. Each party will pay its chosen arbitrator, and bear equally expenses for the third and all other expenses of arbitration. Arbitration shall be conducted in accordance with the provisions of Pennsylvania Common Law Arbitration, 42 Pa. C.S.A. sections 7341, *et seq.* Initial if Arbitration is agreed to be a requirement of this Agreement. Buyer _____ Seller _____

24. THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA shall govern this Agreement of Sale.

25. NOTICES: The Legal Notices attached hereto shall be a part of this Agreement and by signing below, the parties acknowledge having received and reviewed the Notices and accept obligation for the information provided therein.

IN WITNESS WHEREOF, intending to be legally bound, the Buyer has executed this Agreement on the day and year first above written and the Seller on the date specified as their acceptance date. This Agreement may be signed in counterpart and facsimile signatures shall be acceptable as originals.

BUYER'S APPROVAL:

WITNESS

Jane Brackbill BUYER

[Signature]

WITNESS

BUYER

If Seller is a corporation:

The undersigned acknowledges that the undersigned is authorized by the Board of Directors to sign this Agreement on behalf of Seller and that this sale does not constitute a sale, lease, or exchange of all or substantially all of the property and assets of the corporation, as such would require authorization of the shareholders under the law of the state where Seller is incorporated; or if this sale does constitute a sale, lease or exchange of all or substantially all of the property and assets of the corporation, the shareholders have authorized this transaction.

SELLER'S ACCEPTANCE: Seller hereby accepts the above contract this _____ day of _____, _____.

WITNESS

Jane Brackbill SELLER

[Signature]

WITNESS

Jane Brackbill SELLER

[Signature]

PA LICENSED AGENT LISTING AGENT _____ Address _____ _____ _____ DESIGNATED AGENT FOR SELLER (if applicable) _____	PA LICENSED AGENT SELLING AGENT <u>Equitrust Realty Ltd.</u> _____ Address <u>602 Jeffers Circle suite 120</u> <u>Exton PA 19341</u> _____ DESIGNATED AGENT FOR BUYER (if applicable) _____
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INDIVIDUAL AGENT <hr/>	INDIVIDUAL AGENT Frank LaMarr <hr/>
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COMMERCIAL AGREEMENT OF SALE


LEGAL NOTICES

1. FAILURE OF THIS AGREEMENT OF SALE TO HAVE THE ZONING CLASSIFICATION, (except in cases where the Property is zoned solely or primarily to permit single-family dwellings) stated in paragraph number 2 renders this Agreement voidable at the option of Buyer and if voided, any deposits Buyer has tendered shall be returned to Buyer.
2. THE COMMERCIAL REAL ESTATE AGENT LIEN ACT gives Agent the right to place a lien on the Property in the amount of the compensation agreed upon in the Agent's Listing Agreement for the Property upon the fulfillment of the conditions stated in that Agreement. The Agent's lien will become effective if Agent notifies Seller, by certified mail, at least three (3) days before settlement of Agent's intent to claim such a lien. The notice shall state the name of Agent as claimant, the name of the Seller, a description of the Agent, the amount of the lien, and the real estate license number of the Agent. The notice shall be signed and verified by the Agent or a person to sign on Agent's behalf. The Buyer and Seller acknowledge that said lien must be removed should the Buyer default before final settlement and that at settlement the Buyer and Seller may place the amount sufficient to release the claim for lien in an escrow account and Agent will release the claim of lien at the election of the Agent, the amount of disputed commission placed in an escrow account shall be subject to the arbitration procedures set forth in the Agent's Listing Agreement for the Property at Agent's Option.
3. EXPERT ADVICE: Buyer and Seller acknowledge that Agent has advised them to consult and retain experts concerning the legal and tax effects of this Agreement and the completion of the sale, as well as the condition and/or legality of the Property, including but not limited to, the Property's improvements, equipment, soil, tenancies, title and environmental aspects.
4. IN THE CASE OF PROPERTY MEANT FOR THE RESIDENCE of four families or fewer, Buyer acknowledges receipt of Seller's completed disclosure form disclosing any material defects. Seller has provided a completed disclosure form signed and dated substantially in the form required by section 5 of the Real Estate Seller Disclosure Act, Title 28, Chapter 23 of the statutory law of Pennsylvania.
5. IN THE CASE OF PROPERTY MEANT FOR RESIDENCE, including multi-family units, and which was built prior to 1978 and of which is covered under the Residential Lead-Based Paint Hazard Reduction Act, Buyer acknowledges receipt of Seller's completed disclosure and pamphlet titled, "Protect Your Family from Lead in Your Home" and reading the following statement:

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

6. FOREIGN INTEREST: CERTIFICATION OF NON-FOREIGN INTEREST: If Seller is a foreign person, foreign corporation, foreign trust or foreign estate subject to Section 145 of the Internal Revenue Code, the transferee (Buyer) of a U.S. real property interest must withhold tax. If Seller is NOT a foreign person, foreign corporation, foreign trust or foreign estate as defined by the Internal Revenue Code, or is otherwise not subject to the tax withholding requirements of Section 1445 of the Internal Revenue Code, Seller hereby agrees to furnish Buyer, at or before closing, with an affidavit stating, under penalty of perjury the Seller's U.S. taxpayer identification number and that the Seller is not a foreign person or a "qualifying statement," as defined by statute, that tax withholding is not required by Buyer. Seller understands that any documentation provided may be disclosed to the Internal Revenue Service by Buyer, and that any false statements contained therein could result in punishment by fine, imprisonment or both.

Buyer

Buyer

Seller

Seller
CK.

SEWAGE NOTICES

NOTICES PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT

NOTICE 1: THERE IS NO CURRENTLY EXISTING COMMUNITY SEWAGE SYSTEM AVAILABLE FOR THE SUBJECT PROPERTY.

Section 7 of the Pennsylvania Sewage Facilities Act provides that no person shall install, construct, request bid proposals for construction, alter, repair or occupy any building or structure for which an individual sewage system is to be installed, without first obtaining a permit. Buyer is advised by this notice that, before signing this Agreement of Sale, Buyer should contact the local agency charged with administering the Act to determine the procedure and requirements for obtaining a permit for an individual sewage system. The local agency charged with administering the Act will be the municipality where the Property is located or that municipality working cooperatively with others.


NOTICE 2: THIS PROPERTY IS SERVICED BY AN INDIVIDUAL SEWAGE SYSTEM INSTALLED UNDER THE TEN-ACRE PERMIT EXEMPTION PROVISIONS OF SECTION 7 OF THE PENNSYLVANIA SEWAGE FACILITIES ACT. (Section 7 provides that a permit may not be required before installing, constructing, awarding a contract for construction, altering, repairing or connecting to an individual sewage system where a ten-acre parcel or lot is subdivided from a parent tract after January 10, 1987). Buyer is advised that soils and site testing were not conducted and that, should the system malfunction, the owner of the Property or properties serviced by the system at the time of a malfunction may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as a result.

NOTICE 3: THIS PROPERTY IS SERVICED BY A HOLDING TANK (PERMANENT OR TEMPORARY) TO WHICH SEWAGE IS CONVEYED BY A WATER CARRYING SYSTEM AND WHICH IS DESIGNED AND CONSTRUCTED TO FACILITATE ULTIMATE DISPOSAL OF THE SEWAGE AT ANOTHER SITE. Pursuant to the Pennsylvania Sewage Facilities Act, Seller must provide a history of the annual cost of maintaining the tank from the date of its installation or December 14, 1995, whichever is later.


NOTICE 4: AN INDIVIDUAL SEWAGE SYSTEM HAS BEEN INSTALLED AT AN ISOLATION DISTANCE FROM A WELL THAT IS LESS THAN THE DISTANCE SPECIFIED BY REGULATION. The regulations at 25 Pa. Code §73.13 pertaining to minimum horizontal isolation distances provide guidance. Subsection (b) of §73.13 states that the minimum horizontal isolation distance between an individual water supply or water supply system suction line and treatment tanks shall be 50 feet. Subsection (c) of §73.13 states that the horizontal isolation distance between the individual water supply or water supply system suction line and the perimeter of the absorption area shall be 100 feet.

NOTICE 5: THIS LOT IS WITHIN AN AREA IN WHICH PERMIT LIMITATIONS ARE IN EFFECT AND IS SUBJECT TO THOSE LIMITATIONS. SEWAGE FACILITIES ARE NOT AVAILABLE FOR THIS LOT AND CONSTRUCTION OF A STRUCTURE TO BE SERVED BY SEWAGE FACILITIES MAY NOT BEGIN UNTIL THE MUNICIPALITY COMPLETES A MAJOR PLANNING REQUIREMENT PURSUANT TO THE PENNSYLVANIA SEWAGE ACT AND REGULATIONS PROMULGATED THEREUNDER.

NOTICE 6: A REQUIRED REVISION FOR NEW LAND DEVELOPMENT, OR AN EXCEPTION TO THE REQUIREMENT TO REVISE, OR A REQUIRED SUPPLEMENT HAS NOT BEEN APPROVED FOR THIS LOT. SEWAGE FACILITIES ARE NOT AVAILABLE FOR THIS LOT AND SEWAGE FACILITIES WILL NOT BE AVAILABLE, NOR MAY CONSTRUCTION BEGIN UNTIL SEWAGE FACILITIES PLANNING HAS BEEN APPROVED PURSUANT TO THE PENNSYLVANIA SEWAGE FACILITIES ACT AND REGULATIONS PROMULGATED THEREUNDER.

Buyer


Buyer

Seller


CK.



Steve and Catina Keares
633 Jeffers Circle
Exton, PA 19341

Thursday, August 18, 2016

RE: Rent and Invoices

This is an agreement to trade rent due from Intermedia Group Inc. to Steve and Catina Keares for 605 Jeffers circle for the current Invoices due to Intermedia Group Inc. from Keares Electric Inc.

We agree to continue this trade with varying totals as work and rent continue to accrue and then settle the balance on October 15th 2016.

Current Balances

Rent Due to Steve and Catina Keares \$ 11,665.68

Invoices Due to Intermedia Group. \$12,834.53

Agreed and Received:

Steve and Catina Keares:

Print Name STEVEN KEARES

Signature [Handwritten Signature]

Date _____

Print Name CATINA KEARES.

Signature [Handwritten Signature]

Date _____

Intermedia Group Inc:

Print Name John Cucinetta

Signature [Handwritten Signature]

Date 8/18/2016