

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA**

<p>IN RE:  DARIN BECK PROPERTIES, LTD.,  Debtor.</p>	<p>Chapter 11  Bankruptcy No. 17-01188  MOTION TO SELL REAL ESTATE FREE AND CLEAR OF LIENS AND ENCUMBRANCES</p>
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COMES NOW the Debtor, Darin Beck Properties, LTD., through its undersigned counsel, and hereby moves that it be allowed to sell certain real estate to CVP Properties, LLC, stating to the Court the following:

1. Debtor filed its Chapter 11 bankruptcy on September 15, 2017.
2. Pursuant to 11 U.S.C. §363, the Debtors respectfully request that they be authorized to sell the property legally described as:

Parcel "C" of Plat of Survey 325 Misc 711 being that part of Lot 300, Homeway Third Addition to Cedar Falls, Iowa described as follows:

Beginning at the Southwest corner of said Lot 300; thence North 345.00 feet along the West line of said Lot 300; thence deflect right 90°00'00" 251.16 feet; thence deflect right 90°00'00" 91.78 feet; thence deflect right 8°45'35" 285.08 feet to a point on the Southwesterly line of said Lot 300 which is 15.00 feet Southeasterly of the Westerly line of Carlton Drive; thence Westerly 209.70 feet to the point of beginning.

This property will be sold to CVP Properties, LLC ("CVP"), of Cedar Falls, Iowa, for the sum of \$1,430,000.00, and subject to the conditions that are set forth in the attached offer that has been signed by the Debtor as well as CVP, subject to Bankruptcy Court approval. The Offer is attached hereto as Exhibit "A."

3. Black Hawk County enjoys the first lien on the property to be sold as it is owed real estate taxes on parcel 8913-19-126-055 for the tax year ending June 30, 2017 in the amount of \$25,340.00.

4. Lincoln Savings Bank of Waterloo, IA enjoys a first and paramount recorded liens on the property by virtue of its Deed of Trust and Mortgages filed in Black Hawk County Recorder’s Office as set forth below.

<b>Mortgagee</b>	<b>Date Recorded</b>	<b>Doc. Number</b>	<b>Payoff as of</b>
Lincoln Savings Bank	12/16/2002	2003-16751	
Lincoln Savings Bank	6/12/2014	2014-22062	
Lincoln Savings Bank	7/10/2015	2016-00711	
<b>Total Mortgage Liens</b>			\$4,200,521.14

5. In addition, Midtown Development, LLC holds a judgment against Darin Beck Properties, LTD that was entered on October 11, 2016 in the Iowa District Court for Black Hawk County in LACV116989 in the amount of \$1,337,433.05 plus interest at the rate of 2.57% from October 10, 2016 as well as court costs. As of the date of filing, the balance owed to Midtown Development, LLC is \$1,369,450.83.
6. The State of Iowa is owed court costs arising from case no. LACV116989 referred to in the preceding paragraph in the amount of \$290.00.
7. The first and second mortgages to Lincoln Savings Bank are open end real estate mortgages securing \$3,227,000.00 and \$1,250,000.00 respectively.
8. Payments are projected to be made as follows:

Buyers for Tax proration	\$8,539.23
Abstracting and other Title Expenses	2,500.00 est.
Property Taxes (Black Hawk County)	25,340.00
Document Stamps	2,287.20
Recording	250.00 est.
Document Preparation	500.00 est.
Lincoln Savings Bank	<u>1,390,583.57</u> est.
<b>Total Payments</b>	<b>\$1,430,000.00</b>

WHEREFORE Debtor respectfully requests that this Court enter an Order authorizing it to sell the property free and clear of liens on the terms and conditions set forth in the Offer, and granting such other and further relief as is just and equitable given the circumstances.

Dated this 15th day of September, 2017.

Respectfully submitted,

PEIFFER LAW OFFICE, P.C.

/s/ Joseph A. Peiffer  
Joseph A. Peiffer AT0006160  
P.O. Box 11425  
Cedar Rapids, Iowa 52410-1425  
Telephone: (319) 363-1641  
FAX: (319) 200-2059  
E-mail: [joe@peifferlaw.com](mailto:joe@peifferlaw.com)  
ATTORNEY FOR DEBTORS

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of September, 2017, a copy of the foregoing document was filed with the Clerk of Court for the United States Bankruptcy Court for the Northern District of Iowa using the CM/ECF system, and served electronically on those participants that receive service through the CM/ECF System. The undersigned further certifies the foregoing document was sent to persons or representatives via electronic mail or U.S. Mail postage pre-paid as set forth below.

Signed: /s/ Kirsten Nelson

**PURCHASE AND SALE AGREEMENT**

Date: September 5, 2017

CVP PROPERTIES, LLC or assigns ("Buyer") offers to purchase the "Property" described as 6027 UNIVERSITY AVENUE CEDAR FALLS, IOWA, from DARIN BECK PROPERTIES LTD ("Seller") (collectively, the "Parties") upon the terms and conditions set forth in this Agreement ("Agreement"). The "Effective Date" of this Agreement is the date on which the last of the Parties signs this Agreement. Said Property shall include all buildings and improvements and appurtenances and fixtures whether attached or detached, such as heating, ventilating, air conditioning equipment ("HVAC") including attached space heaters; air lines; fire sprinkler systems' security and fire detection systems, plus all locks and keys; electrical systems (including lighting fixtures) telephone distribution systems (lines, jacks and connections only), data cabling and outlets, satellite and other transmission towers and equipment, carpets, window coverings, and wall coverings. The legal description of the property located in Black Hawk County, Iowa to be sold is:

Parcel "C" of Plat of Survey 325 Misc 711 being that part of Lot 300, Homeway Third Addition to Cedar Falls, Iowa described as follows:

Beginning at the Southwest corner of said Lot 300; thence North 345.00 feet along the West line of said Lot 300; thence deflect right 90°00'00" 251.16 feet; thence deflect right 90°00'00" 91.78 feet; thence deflect right 8°45'35" 285.08 feet to a point on the Southwesterly line of said Lot 300 which is 15.00 feet Southeasterly of the Westerly line of Carlton Drive; thence Westerly 209.70 feet to the point of beginning.

**PURCHASE PRICE:** The Purchase Price shall be ONE MILLION FOUR HUNDRED THIRTY THOUSAND (\$1,430,000.00). This Purchase Agreement is contingent upon Buyer obtaining a commitment in writing for a new mortgage no later than (date) October 15, 2017. Buyer agrees to make a good faith effort in obtaining said mortgage commitment and to execute all documents and furnish all information required by the lender. The balance of the Purchase Price, less the proceeds of such mortgage, shall be paid by Buyer in cash.

**POSSESSION AND CLOSING:** Closing shall be on October 31, 2017 although parties may mutually agree on another date but no later than November 15, 2017. Possession to be given at time of closing.

**PRO-RATION OF EXPENSES AND PAYMENT OF COSTS:** Seller and Buyer agree that all utilities and operating expenses shall be prorated as of the date of possession. Seller shall pay deed stamps, other conveyance fees or taxes, the cost of the Abstract of Title referenced below, recording fees for documents needed to cure title defects, and one-half of the closing/settlement fee, and Buyer shall pay recording costs for financing documents and the deed, costs of any attorney title opinion survey, and one-half of the closing/settlement fee.

**REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.**

A. Seller shall pay all real estate taxes that are due and payable as of the closing date and which constitute a lien against the Property, including any unpaid real estate taxes for any prior years.

B. Seller shall pay its prorated share, based upon the closing date, of the real estate taxes for the fiscal year in which closing occurs (commencing July 1, 2017, and ending June 30, 2018) due and payable in the subsequent fiscal year (commencing July 1, 2018). Buyer shall be given a credit for such proration at closing based upon the last known actual net real estate taxes payable according to public record; however, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the closing date, such proration shall be based on the current millage rate, the assessed value, legislative tax rollbacks, and real estate tax exemptions that will actually be applicable as shown by the Assessor's Records on the closing date.

C. Buyer shall pay all subsequent real estate taxes.

D. Seller shall pay in full at time of closing all special assessments which are a lien on the Property as of the date of acceptance. Buyer shall pay all other special assessments or installments not payable by Seller. All charges for solid waste removal, sewage, and maintenance that are attributable to Seller's possession, including those for which assessments arise after closing, shall be paid by Seller. Buyer shall pay all other special assessments.

**TITLE:** Seller shall promptly deliver to Buyer, at Seller's cost, an Abstract of Title extended to date, showing marketable title to the real estate. If title to all or part of the Property is unmarketable, as determined by relevant law, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments that are unacceptable to Buyer, then Buyer or Buyer's attorney shall give written notice of such defect to Seller within a reasonable time. Seller agrees to make every reasonable effort to perfect the title. Seller shall have a reasonable time to have such title defects removed or, such defects or exceptions which may be removed by the payment of money may be cured by deduction from the purchase price at time of closing. If Seller is unable to cure title, then Buyer shall have the option to terminate this Agreement, in which case Buyer shall be entitled to a return of any earnest money. If closing is delayed due to Seller's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds this Agreement until making a reasonable effort to produce marketable title in the prescribed time.

**DEED AND OTHER CLOSING DOCUMENTS:** Seller shall convey to Buyer marketable title in fee simple by general warranty deed. Seller shall also deliver other documents such as groundwater hazard, declaration of value, etc. necessary to record the deed. Seller shall also deliver to

Buyer, if applicable, such assignments of leases and contracts, and other similar documents reasonably required to transfer the Property to Buyer pursuant to the terms of this Agreement.

**DEFINITIONS:**

**Intended Use:** Shall mean the use of the Property for the following purpose: office, warehouse and retail space.

**Insertion:** If a number of days other than the pre-printed number is inserted, the inserted number shall apply.

**Days:** Refers to calendar days, not working days.

**Hazardous Substance:** Shall mean any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare.

**PROPERTY CONDITION:** Seller shall maintain the Property, including landscaping and grounds, in its present condition, ordinary wear and tear excepted. Buyer shall be permitted to make a final inspection prior to possession or closing, whichever is sooner, in order to determine that there has been no change in the condition of the property. Seller agrees to remove, at its expense and prior to possession, all personal property not included in this sale, including all trash and miscellaneous items. Any such personal property remaining on the premises shall, unless otherwise agreed, be conclusively presumed to have been abandoned by and of no value to Seller. Seller to be liable for any costs incurred by Buyer for the removal of said personal property.

**PROPERTY INSPECTIONS:** Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its inspection rights and agrees to indemnify and hold Seller harmless from any and all damages, costs, claims and expenses, including all attorneys' fees, and from liability to any person involved in the inspections. In the event this transaction does not close, (1) Buyer shall repair all damages to the Property resulting from the inspections, tests, etc. and return the Property to the condition it was prior to the inspections, and (2) Buyer, at its expense, shall release to Seller all reports and other work generated as a result of the inspections, etc.

**REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS:** All representations, warranties, covenants and agreements made by the parties hereto are true, material and relied upon by the other Party and shall survive the closing and delivery of the Deed.

- a) **Hazardous Substances/Storage Tanks.** Seller has no actual knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.
- b) **Reports/Documents.** Any environmental reports, soil reports, surveys and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.
- c) **Changes in Agreements.** Prior to the Closing, Seller will not violate or modify any existing leases or other agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval.
- d) **Possessory Rights.** Seller has no actual knowledge that anyone, other than Seller pursuant to the Lease attached hereto as Exhibit A, will, at Closing, have any right to possession of the Property. Seller intends to lease back the property from buyer pursuant to the terms of the Lease attached hereto as Exhibit A.
- e) **Personal Property.** Buyer and Seller agree that all personal property on the subject property will remain the property of the Seller after the sale of the property is completed and Seller shall maintain ordinary rights to its personal property.
- f) Buyer understands that Seller is gaining clear title to the subject property through filing chapter 11 bankruptcy due to judgement liens currently existing on the property. Final closing dates and possession dates may ultimately be effected by this process and both Seller and Buyer agree to cooperate in moving dates to accommodate the bankruptcy court.
- g) **Ingress and Egress.** Seller warrants that the Property presently has ingress and egress.
- h) **Material Defects.** Seller and Buyer acknowledge that the Seller has a legal duty to disclose Material Defects in the condition of the real estate or improvements of which Seller has actual knowledge and which a reasonable inspection by Buyer would not reveal.
- i) **Seller Knowledge.** Seller has no actual knowledge of: (1) notice of city, county, state, federal, building, zoning, fire or health codes, regulations or ordinances filed or contemplated against the Property, (2) current pending lawsuit(s), investigation(s) inquiry(ies), action(s), or other proceeding(s) affecting the right to use and occupy the Property, (3) unsatisfied construction liens, (4) [left blank intentionally], or (5) condemnation, eminent domain, changes in grade of public streets affecting the Property or similar proceedings affecting the Property or (6) of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

**INSURANCE:** Sellers shall bear the risk of loss or damage to the property prior to possession or closing, whichever first occurs. Sellers agree to maintain the existing insurance on this property. If Buyers' do not consider the existing insurance adequate, they may procure additional insurance at their own expense to protect their interest. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and

void, unless otherwise agreed by the Parties. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date. Provided, however, Buyers shall have the right to complete the closing and receive insurance proceeds regardless of the extent of the damages.

**APPROVAL OF COURT:** If this property is an asset of any estate, reorganization, trust or guardianship, this Agreement shall be subject to court approval.

**CONSTRUCTION:** Seller and Buyer acknowledge that each party has reviewed this Agreement and that the normal rule of construction which provides for ambiguities to be resolved against the drafting party shall not apply to the interpretation of this Agreement. It shall be construed neither for nor against Seller or Buyer, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

**TAX-DEFERRED EXCHANGE:** In the event Buyer or Seller or both desires to effect a tax-deferred exchange under Section 1031 in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange, including execution of necessary documents, provided: 1) Neither party shall be obligated to delay the closing beyond the time provided for in this Agreement, 2) a non-exchanging party shall not assume any additional liability or costs with respect to the exchange, and will be held harmless, 3) Buyer and Seller understand that this property may be acquired by a qualified intermediary to exchange to Buyer.

**ATTORNEYS' FEES AND COSTS.** In any claim or controversy arising out of or relating to this Agreement, the prevailing party will be awarded reasonable attorneys' fees, costs and expenses.

**REMEDIES OF THE PARTIES:** If the Seller breaches this Agreement, all payments shall be returned to Buyer, but such return shall not affect any other remedies at law or in equity available to Buyer for such breach. Seller agrees to pay costs and reasonable attorney fees, and a receiver may be appointed. If the Buyer breaches this Agreement, all payments made shall be forfeited, or the Seller may proceed by an action at law or in equity. The Buyer agrees to pay costs and reasonable attorney fees.

**MISCELLANEOUS:** This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property and any Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller. Signatures, initials, documents referenced in this Agreement, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. If any provision of this Agreement is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Agreement will be construed under the laws of the state in which the Property is located. Delivery of any written notice to any party's agent will be deemed delivery to that party.

**AUTHORITY TO EXECUTE:** Buyer and Seller represent that the person executing this Agreement on their behalf is fully authorized to do so and bind the respective Parties to the terms herein.

**SUCCESSORS IN INTEREST:** When accepted, this Agreement shall apply to and bind the heirs, executors, administrators, assigns and successors in interest of both parties. In case of the assignment of this Agreement by either party, prompt written notice shall be given to the other party. The liability of the buyer under this Agreement shall not cease or be terminated, even though the Agreement be assigned by the Buyer, unless this liability is specifically released in writing by the Seller.

**CONTINGENCIES:** Buyer's obligation to complete this purchase is subject to satisfaction of the following conditions/contingencies by the date(s) specified:

**DUE DILIGENCE:** Within fifteen (15) days from the Effective Date ("Inspection Period"), Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours (subject to tenants rights), shall have the right to enter upon the Property to perform inspections, examinations, surveys and tests (structural, engineering, environmental, etc.) to determine, in Buyer's sole discretion, if the Property is suitable for Buyer's Intended Use. Said determination may also include examination of all, zoning and zoning restrictions, flood zone restrictions, subdivision regulations, condition of soils, availability of access to public roads and utilities, consistency with comprehensive land use plans and overlay districts, availability of permits, governmental approvals and licenses, compliance with ADA and other inspections. If, prior to the end of the Inspection Period, Buyer in its sole discretion determines that the property is unsuitable and provides written notice to the Seller, then this Agreement shall terminate and all earnest money returned to Buyer with no further signatures required.

**LEASE:** Closing is contingent on buyer and seller executing the Lease attached hereto as Exhibit A, and Seller obtaining any court approval necessary to authorize its performance under said Lease.

**EASEMENTS:** Property is subject to various easement agreements. Closing is subject to the Buyer's review and approval of all such easement agreements to Buyer's satisfaction.

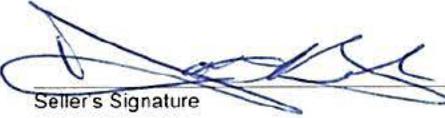
THIS DOCUMENT IS A LEGAL DOCUMENT. EXECUTION OF THIS DOCUMENT HAS LEGAL CONSEQUENCES THAT COULD BE ENFORCEABLE IN A COURT OF LAW. BUYER MAKES NO REPRESENTATIONS CONCERNING THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION TO WHICH IT RELATES. IF YOU DO NOT FEEL THIS DOCUMENT MEETS YOUR NEEDS, YOU MAY WISH TO CONSULT YOUR ATTORNEY.

This offer to purchase is made of my own free will and shall be good and binding upon the undersigned if accepted on or before September 5, 2017 by (time) 5 P.M.

AGREED:

 9/15/17  
Buyer's Signature Date

Jeff Hassman, Manager, CVP Properties, LLC  
Buyer's Legal Name (printed)

 9/15/17  
Seller's Signature Date

Darin Beck Properties, LTD, by Darin Beck, Pres.  
Seller's Legal Name (printed)