

free and clear of all liens, claims, encumbrances, and interests; (b) approving the assumption and assignment of the Contracts, Permits, and Leases (as defined below) in accordance with the Purchase Agreement; and (c) granting related relief. A copy of the Purchase Agreement is attached hereto as Exhibit B.

In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to hear this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The venue of the Debtor's chapter 11 case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On August 23, 2016 (the "Petition Date"), certain unsecured creditors filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Code against the Debtor. On September 20, 2016 (the "Relief Order Date"), the Debtor consented to the entry of an order for relief and converted the chapter 7 case to a chapter 11 case. Since the Relief Order Date, the Debtor has remained in possession of its assets and has continued to manage its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. To date, no official committee of unsecured creditors has been appointed, but an informal ad hoc committee of unsecured creditors (the "Ad Hoc Committee") was formed prior to the Petition Date.

3. In May 2016, the Debtor engaged Conway MacKenzie Management Services, LLC (“CM”) to assist it with cash flow issues and the Debtor soon thereafter advised its lenders, J.P. Morgan Chase Bank, N.A. and Comerica Bank, that the Debtor was in default under the terms of its Credit Agreement.

4. On June 2, 2016, the Debtor appointed Jeffrey Tischler of CM as its Chief Restructuring Officer (“CRO”) and commenced a wind-down of its operations.

5. Detailed facts about the Debtor and the reasons for the commencement of its chapter 11 case are set forth in the *Affidavit and Statement of Jeffrey K. Tischler in Support of Chapter 11 Petition and First Day Motions*, filed contemporaneously herewith (the “Tischler Affidavit”).¹

FACTS RELEVANT TO THIS MOTION

6. In connection with its wind-down, the Debtor, in consultation with its advisors, desired to sell its real property located at 43155, 43157, and 43159 West Nine Mile Road, Novi, Michigan 48376 (the “Real Property”), as more fully in the Purchase Agreement.

7. On or about June 6, 2016, the Debtor and Signature Associates entered into the Exclusive Listing Agreement for Sale (the “Listing Agreement”), attached hereto as Exhibit C, authorizing Signature Associates to act as a broker to

¹ Capitalized but undefined terms shall have the meanings set forth in the Tischler Affidavit.

sell the Real Property. Pursuant to the Listing Agreement, the Debtor agreed to grant to Signature Associates the exclusive right to sell the Real Property until December 31, 2016, and to pay Signature Associates a commission of five percent of the aggregate sale price upon the closing of sale of the Real Property.

8. In accordance with the Listing Agreement, the Debtor and Signature Associates solicited offers for the purchase of the Real Property in the summer of 2016. During the marketing process, the Debtor received three competing offers for the purchase of the Real Property; eventually, however, the Debtor accepted the terms of the offer it received from RosDev Group on July 5, 2016, which offered a purchase price of \$10,100,000. The Debtor determined that this offer was the highest and best offer it had received for the Real Property. RosDev Group, which formed Novi Nine Mile as its purchasing entity, was also willing and able to close quickly and with the fewest conditions as compared to other offers the Debtor received. Furthermore, RosDev Group demonstrated the capacity to close and its offer did not contain any financing contingencies.

9. In accordance with this offer, the Debtor and Novi Nine Mile executed the Purchase Agreement, detailing the terms and conditions of the sale of the Real Property. The material terms of the Purchase Agreement include, but are not limited to:

- a. Novi Nine Mile will purchase the Real Property for \$10,100,000;

- b. The Debtor will transfer and assign to Novi Nine Mile all of the leases related to the Real Property (the “Leases”);
- c. The Debtor will transfer and assign to Novi Nine Mile all of the Debtor’s right, title, and interest in all governmental license and permits, building, architectural, engineering, mechanical, electrical, and landscaping surveys, plans, and specifications, and all transferable warranties and guaranties from manufacturers relating to the Real Property (the “Permits”);
- d. The Debtor will transfer and assign to Novi Nine Mile all of the Debtor’s right in service, utility, supply, maintenance, and concession contracts, agreements, or other agreements affecting the operating, maintenance, and repair of the Real Property which Novi Nine Mile elects to assume (the “Contracts”);

10. On August 3, 2016, the Debtor and Novi Nine Mile executed the Escrow Agreement with First American Title Insurance Company (“First American”), attached hereto as Exhibit D (the “Escrow Agreement”). Pursuant to the Escrow Agreement and in accordance with the Purchase Agreement, Novi Nine Mile made a \$100,000 purchase price deposit with First American.

11. On August 22, 2016, the Debtor and Novi Nine Mile executed the First Amendment to Purchase and Sale Agreement (the “First Amendment”), changing the closing date to September 26, 2016, and changing the purchase price from \$10,100,000 to \$9,825,000, among other changes. A copy of the First Amendment is attached hereto as Exhibit E.

12. On September 15, 2016, the Debtor and Novi Nine Mile executed the Second Amendment to Purchase and Sale Agreement (the “Second Amendment”), which, among other things: (i) noted the involuntary bankruptcy filed against the

Debtor on August 23, 2016; (ii) required an order from this Court approving the sale of the Real Property prior to the closing of the sale, and acknowledged Novi Nine Mile's right to terminate the Purchase Agreement if such an order is not entered; and (iii) waived of the due diligence contingencies contained in the Purchase Agreement. A copy of the Second Amendment is attached hereto as Exhibit F.

13. Pursuant to terms of the Purchase Agreement, the Debtor desires Court approval to close and finalize the sale of the Real Property.

RELIEF REQUESTED

14. The Debtor respectfully requests that the Court: (a) authorize the Debtor to sell the Real Property to Novi Nine Mile pursuant to the Purchase Agreement, free and clear of all liens, claims, encumbrances, or other interests pursuant to sections 363(b), (f), and (m) and 365 of the Bankruptcy Code, with such liens, claims, rights, interests, and encumbrances to attach to the sale proceeds of the Real Property with the same validity, priority, extent, and perfection as existed immediately prior to such sale; (b) approve the assumption and assignment of the Leases, Contracts, and Permits pursuant to section 365 of the Bankruptcy Code, subject to, and at the time of, closing of the sale; and (c) grant related relief.

BASIS FOR RELIEF

A. The Sale Was Negotiated in Good Faith and Made for Sound Business Reasons; the Purchase Price Is Fair and Reasonable

15. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

16. In approving the sale of assets outside the ordinary course of business and outside of a chapter 11 plan pursuant to section 363 of the Bankruptcy Code, courts, including those in the Sixth Circuit, have adopted the “sound business reason” test established by the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Nicole Energy Servs., Inc.*, 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008); *In re Jillian’s Entm’t Holdings*, 327 B.R. 616, 617 (Bankr. W.D. Ky. 2005) (stating that the *Lionel* standard has been adopted by the vast majority of courts); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr. D. Del. 1991) (holding that transactions should be approved under section 363(b)(1) when: (a) they are supported by the sound business judgment of a debtor’s management;

(b) interested parties are provided with adequate and reasonable notice; (c) the sale price is fair and reasonable; and (d) the purchaser is acting in good faith).

17. A debtor's showing of sound business justification need not be unduly exhaustive; instead the debtor or trustee is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a sale depends upon the facts and circumstances of each case. *See Lionel*, 722 F.2d at 1071. Bankruptcy courts are given substantial discretion in deciding whether to authorize a sale of a debtor's assets outside of the ordinary course of business. *See In re Chateaugay Corp.*, 973 F.2d 141, 144 (2d Cir. 1992).

18. In the instant case, the sale of the Real Property serves a sound business purpose. The sale is designed to preserve and enhance the value of the Real Property as a whole, and to ensure that the Leases, Permits, and Contracts are assigned while they have their highest value and prior to any risk of a premature termination. The proceeds from sale of the Real Property will also add significant value to the Debtor's estate, and is therefore in the best interest of creditors. Such a sale will return a greater benefit to the Debtor's estate than any of the alternatives, including a sale of the Real Property at a future date, or the continued maintenance of the Real Property by the Debtor.

19. The Purchase Agreement is the product of good faith and arm's length negotiations and is on commercially reasonable terms. The Debtor and Novi Nine Mile, with the assistance of their professional advisors, negotiated the terms of the Purchase Agreement. Novi Nine Mile provided substantial value to the estate in providing a viable offer for the Real Property.

20. The fairness and reasonableness of the consideration to be paid by Novi Nine Mile is demonstrated by the marketing efforts that the Debtor and Signature Associates engaged in over the past few months. Ultimately, the Debtor chose to move forward with the offer it received from Novi Nine Mile, which also allowed the Debtor the opportunity to close in a reasonable amount of time that aligned with its restructuring plans. Each of these efforts by the Debtor demonstrates that the purchase price obtained, after completion of the marketing process, is fair and reasonable and supported by sound business reasons.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, and Interests

21. Section 363(f) of the Bankruptcy Code authorizes the sale of estate property free and clear of interests in such property held by an entity if:

- (1) applicable nonbankruptcy law permits a 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); *see generally In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996); *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002). The “interests” in property that assets may be sold “free of” include liens, claims, encumbrances, and other interests. *See Leckie Smokeless*, 99 F.3d at 581-582 (scope of section 363(f) not limited to in rem interests); *In re Aneco Elect. Const., Inc.*, 377 B.R. 338 (Bankr. M.D. Fla. 2006); *see also In re Appalachia Fuels, LLC*, 503 F.3d 538 (6th Cir. 2007) (approving a sale free and clear of “claims” arising as coal commission sales).

22. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Real Property “free and clear” of all liens, claims, encumbrances, and interests. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988).

23. The Debtor submits that any such lien or encumbrance will be adequately protected by either being paid in full at the time of closing, or attaching to the proceeds of the sale, subject to any claims and defenses the Debtor may possess with respect thereto. The Debtor accordingly requests authority to convey

the Real Property to Novi Nine Mile, free and clear of all liens and encumbrances except any assumed liabilities under the express terms of the Purchase Agreement, with such liens and encumbrances to attach to the proceeds from the sale of the Real Property, with the same validity, extent, priority, and perfection as existed immediately prior to the sale.

24. Lastly, the Debtor submits that the sale should not expose Novi Nine Mile to any liability as a successor of the Debtor or its estate. Courts have also consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free and clear from successor liability relating to the debtor's business. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *In re Leckie Smokeless Coal Co.*, 99 F.3d at 585 (affirming the sale of debtors' assets free and clear of certain taxes); *In re Insilco Techs., Inc.*, 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based on a successor liability theory); *see also In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (“[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.”).

25. Accordingly, the Court should approve the sale of the Real Property to Novi Nine Mile free and clear of liens and encumbrances under section 363(f) of the Bankruptcy Code, and all potential claimants should be compelled to look exclusively to the proceeds of the sale for satisfaction of their claims.

C. **Novi Nine Mile Constitutes a Good Faith Purchaser Subject to the Protections of Section 363(m) of the Bankruptcy Code**

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

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders at the sale. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbott's Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *See also In re Made In Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005) (following the *Abbotts Dairies* standard).

27. As explained above, the Purchase Agreement is the product of good faith and free from self-dealing. The Debtor intends to establish at a hearing on this matter that such Asset Purchase Agreement was a negotiated, arm's length transaction, in which Novi Nine Mile has acted in good faith, without collusion or fraud of any kind, and in compliance with the *Abbotts Dairies* standard. The evidence will further establish that neither the Debtor nor Novi Nine Mile has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or allow the Debtor to avoid the sale pursuant to section 363(n) of the Bankruptcy Code with respect to the consummation of the sale transaction or the transfer of the Real Property and the assignment of the Leases, Permits, and Contracts to Novi Nine Mile.

28. In light of the foregoing, the Debtor requests that the Court find that Novi Nine Mile has purchased the Real Property in good faith within the meaning of section 363(m) of the Bankruptcy Code, and is entitled to the protections of section 363(m) of the Bankruptcy Code.

D. The Court Should Authorize the Assumption and Assignment of Executory Contracts and Unexpired Leases

29. The Debtor further requests that the order approving the sale provide that the Contracts, Permits, and Leases will be assigned to, and remain in full force and effect for the benefit of Novi Nine Mile, notwithstanding any provisions in the

Contracts, Permits, and Leases, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment.

30. Under Section 365(a) of the Bankruptcy Code, a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365(b)(1), in turn, clarifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default [];

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

31. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that the trustee may assign an executory contract or unexpired lease of the Debtor only if:

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f).

32. Courts generally apply the “business judgment” and “benefit to the estate” test to determine whether or not to authorize a debtor assume an executory contract.” *In re Greektown Holdings, L.L.C.*, No. 08-53104, 2009 WL 1653461, at *1 (Bankr. E.D. Mich. May 13, 2009) (citation omitted); *see also In re Structurelite Plastics Corp.*, 86 B.R. 922 (Bankr. S.D. Ohio 1988). A debtor satisfies the “business judgment” test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. Under this test, courts routinely approve motions to assume or reject executory contracts or unexpired leases upon a showing that the debtor’s decision is an exercise of sound business judgment and will benefit the debtor’s estate. *See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code “permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject.”); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523

(1984) (stating that the traditional standard applied by courts under section 365 is that of “business judgment”); *Edwin C. Levy Co. v. McLouth Steel Corp. (In re McLouth Steel Corp.)*, 20 B.R. 688, 692 (Bankr. E.D. Mich. 1982) (“In determining whether a certain contract should be assumed or rejected, the decision should rest on the business judgment of the debtor.”).

33. Courts will generally not second guess a debtor’s business judgment concerning the assumption or rejection of an executory contract or unexpired lease. *See In re Riodizio, Inc.*, 204 B.R. 417, 424 (Bankr. S.D.N.Y.) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”); *accord Phar-Mor, Inc. v. Strouss Bldg. Assocs.*, 204 B.R. 948, 951-52 (Bankr. N.D. Ohio 1997) (“Whether an executory contract is ‘favorable’ or ‘unfavorable’ is left to the sound business judgment of the debtor Courts should generally defer to a debtor’s decision whether to reject an executory contract.”). The business judgment test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor. *See In re Greektown Holdings, L.L.C.*, 2009 WL 1653461 at *1.

34. The assumption and assignment of the Contracts, Permits, and Leases is integral to the Purchase Agreement and is in the best interests of the Debtor, its estate, its creditors, and other parties in interest, and represents the exercise of

sound and prudent business judgment by the Debtor.² The Debtor submits that Novi Nine Mile will not be able to effectively utilize the Real Property without the right to retain the benefits of the Contracts, Permits, and Leases. Therefore, if the Debtor does not assign the Contracts, Permits, and Leases to Novi Nine Mile, the Debtor has reason to believe that Novi Nine Mile would either significantly reduce its purchase price or completely withdraw its offer to purchase the Real Property.

35. Upon information and belief, the Debtor does not owe any amount under any current Contract, Permit, or Lease that may be assigned to Novi Nine Mile. Except to the extent otherwise provided in the Purchase Agreement, the Debtor requests that Novi Nine Mile not be subject to any liability to a counterparty to any of the Contracts, Permits, and Leases that accrued or arose before the closing of the sale of the Real Property, and that the Debtor be relieved of all liability accruing or arising thereafter pursuant to section 365(k) of the Bankruptcy Code.

WAIVER OF RULES 6004 AND 6006

36. Notwithstanding the possible applicability of 6004 and 6006 of the Bankruptcy Rules or otherwise, the Debtor requests the relief sought by this

² The inclusion of any agreement a Contract, Permit, or Lease does not constitute an admission by the Debtor that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtor expressly reserves the right to challenge the status of any agreement included as a Contract, Permit, or Lease.

Motion be immediately effective and enforceable upon entry of the order requested hereby. In order to allow the immediate realization of value for the Real Property, the Debtor requests that any order granting this Motion is effective immediately and not subject to the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

37. No trustee, examiner or official committee has been appointed in this chapter 11 case. Notice of this Motion has been served on the following parties or, in lieu thereof, to their counsel, if known: (i) the United States Trustee for the Eastern District of Michigan; (ii) those creditors listed on the Debtor's List of Creditors Holding 20 Largest Unsecured Claims; (iii) the Debtor's prepetition secured lenders; (iv) the Debtor's state, local, and federal taxing authorities; and (v) the Ad Hoc Committee. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice need be given.

NO PRIOR REQUEST

38. No prior request for the relief sought herein has been made to this Court or any other court.

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WHEREFORE, the Debtor requests that the Court enter an order: (i) approving the Purchase Agreement and authorizing the sale of the Real Property to Novi Nine Mile pursuant to the terms of such Purchase Agreement free and clear of all liens, claims, encumbrances, and interests; (ii) approving the assumption and assignment of the Contracts, Permits, and Leases in accordance with the Purchase Agreement; and (iii) granting such other and further relief as is just and proper.

September 26, 2016

Respectfully submitted,

/s/ Jayson B. Ruff

Stephen M. Gross (P35410)

Jayson B. Ruff (P69893)

McDONALD HOPKINS PLC

39533 Woodward Avenue

Suite 318

Bloomfield Hills, MI 48304

Telephone: (248) 646-5070

Facsimile: (248) 646-5075

E-mail: sgross@mcdonaldhopkins.com

jruff@mcdonaldhopkins.com

PROPOSED COUNSEL FOR DEBTOR
AND DEBTOR IN POSSESSION

EXHIBIT A

Proposed Order

U.S.C. § 157(b)(2); (c) venue of the Debtor's chapter 11 case and the Motion is proper under 28 U.S.C. §§ 1408 and 1409; (d) service and notice of the Motion was sufficient under the circumstances; and (e) the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Findings and Conclusions.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Statutory Predicates.** The statutory predicates for the relief requested in the Motion are sections 105, 362, and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rule 6004-1.

C. **Opportunity to Object.** A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities.

D. **Title to the Real Property.** The Real Property constitutes property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code.

E. **Business Justification.** The Debtor has demonstrated a sufficient basis and compelling reasons for entering into the Purchase Agreement and selling the Real Property under section 363 of the Bankruptcy Code. Such action is an appropriate exercise of the Debtor's business judgment and in the best interests of the Debtor, its estate, its creditors, and all other parties in interest. Such business reasons include, but are not limited to, the fact that (i) the Purchase Agreement with Novi Nine Mile constitutes the highest or otherwise best offer for the Real Property; (ii) the Sale will present the best opportunity to realize the value of the Debtor's interest in the Real Property; (iii) unless the Sale is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, potential creditor recoveries may be substantially diminished. Entry of an order approving the Purchase Agreement and all provisions thereof is a necessary condition precedent to closing the Sale.

F. **Opportunity to Purchase.** The Debtor and Signature Associates marketed the Real Property and conducted a marketing and sale process to solicit the highest and best offer for the Real Property. Such a process afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to

purchase the Real Property. Based upon the record of these proceedings, creditors and other parties in interest have been afforded a reasonable and fair opportunity to purchase the Real Property.

G. Novi Nine Mile submitted the highest or otherwise best offer for the Real Property.

H. **Highest or Otherwise Best Offer.** The total consideration provided by Novi Nine Mile for the Real Property is the highest or otherwise best offer received by the Debtor.

I. **Good Faith Purchaser.** The Purchase Agreement with Novi Nine Mile and the Sale contemplated thereby have been negotiated by the Debtor and Novi Nine Mile in good faith, at arm's length, and without collusion or fraud. The terms and conditions of the Purchase Agreement and the Sale, including the total consideration to be realized by the Debtor pursuant to the Purchase Agreement, are fair and reasonable, and the Sale is in the best interest of the Debtor, its creditors, and its estate. Novi Nine Mile is a "good faith purchaser" of the Real Property, entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code with respect to the Sale and transfer of the Real Property. The terms defined in the Purchase Agreement are incorporated by reference in this Order.

J. The Purchase Agreement was not controlled by an agreement between potential or actual bidders within the meaning of section 363(n) of the Bankruptcy

Code. The Debtor and Novi Nine Mile have not engaged in any conduct that would cause or permit the Purchase Agreement to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. Novi Nine Mile is entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code.

K. Novi Nine Mile will be acting in good faith in consummating the Sale at any time on or after entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d). Novi Nine Mile is not an “insider” as that term is defined in section 101(31) of the Bankruptcy Code.

L. **Corporate Power and Authority**. Subject to entry of this Order, the Debtor and Novi Nine Mile have full corporate power and authority to execute and deliver the Purchase Agreement and to perform all of their respective obligations thereunder, and the Sale and transfer of the Real Property has been duly and validly authorized by all corporate authority necessary to consummate the Sale. No consents or approvals, other than as expressly provided for in the Purchase Agreement and the entry of this Order, are required by the Debtor to consummate the Sale.

M. **Free and Clear**. The Sale and the transfer of the Real Property to Novi Nine Mile will be, as of the closing of the Sale (“Closing”), a legal, valid, and

effective transfer of such assets, and each such transfer vests or will vest Novi Nine Mile with all right, title, and interest of the Debtor to Novi Nine Mile free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), interests, and encumbrances (other than any liabilities expressly assumed by Novi Nine Mile pursuant to the Purchase Agreement and liens expressly permitted pursuant as provided in the Purchase Agreement) (collectively, “Liens, Claims, and Encumbrances”) with any Liens, Claims, and Encumbrances to attach to the consideration to be received by the Debtor in the same priority and subject to the same defenses and avoidability, if any, as of the Closing. Without limiting the foregoing, “Liens, Claims and Encumbrances” shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to: (1) any employee benefit plans (including Liens, Claims and Encumbrances related to unpaid contributions); (2) the Worker Adjustment and Retraining Notification Act of 1988; or (3) any of the Debtor’s current and former employees. Novi Nine Mile would not enter into the Purchase Agreement to acquire the Real Property if the Sale of the Real Property was not free and clear of all Liens, Claims, and Encumbrances, or if Novi Nine Mile would, or in the future could, be liable for any such Liens, Claims, and Encumbrances. A sale of the Real Property, other than one free and clear of all Liens, Claims, and Encumbrances, would adversely impact the Debtor’s estate, and would likely yield substantially

less value for the Debtor's estate, with less certainty than the Sale. Therefore, the Sale contemplated by the Purchase Agreement is in the best interests of the Debtor, its estate and creditors, and all other parties in interest.

N. **Satisfaction of 363(f) Standards.** The Debtor may sell the Real Property free and clear of all Liens, Claims, and Encumbrances, because, with respect to each creditor asserting a Lien, Claim, and Encumbrance, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens, Claims, and Encumbrances who did not object or who withdrew their objections to the Motion are deemed to have consented to the Motion and Sale of the Real Property to Novi Nine Mile pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens, Claims, and Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims, and Encumbrances, if any, attach to the proceeds of the Sale ultimately attributable to the Real Property in which such holders allege a Lien, Claim, and Encumbrance, in the same order of priority, with the same validity, force and effect that such holder had prior to the Sale, and subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

O. The Sale contemplated under the Purchase Agreement does not amount to a consolidation, merger, or de facto merger of Novi Nine Mile and the

Debtor and/or the Debtor's estate; there is not substantial continuity between Novi Nine Mile and the Debtor; there is no common identity between the Debtor and Novi Nine Mile; there is no continuity of enterprise between the Debtor and Novi Nine Mile; Novi Nine Mile is not a mere continuation of the Debtor or its estate; and Novi Nine Mile does not constitute a successor to the Debtor or its estate. Except as provided by the terms of the Purchase Agreement, Novi Nine Mile and its affiliates and their respective successors, assigns, members, partners, principals, and shareholders (or equivalent) shall have no obligations with respect to any liabilities of the Debtor, subject to the terms of the Purchase Agreement.

P. **No Fraudulent Transfer.** The Sale is not for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the Debtor nor Novi Nine Mile are or will be entering into the Purchase Agreement fraudulently.

Q. **Fair Consideration.** The consideration for the Sale constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Purchase Agreement represents a fair

and reasonable offer to purchase the Real Property and assume or acquire liabilities under the circumstances of the Debtor's case. Approval of the Purchase Agreement and the consummation of the Sale are in the best interests of the Debtor, its estate, its creditors, and all other parties in interest.

R. **Assumption and Assignment of Contracts, Permits, and Leases.**

The Debtor and Novi Nine Mile have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), (B), and 365(f), in connection with the sale and the assumption and assignment of the Contracts, Permits, and Leases. Novi Nine Mile has demonstrated adequate assurance of future performance with respect to all assigned Contracts, Permits, and Leases pursuant to section 365(b)(1)(C) of the Bankruptcy Code. The assumption and assignment of the Contracts, Permits, and Leases pursuant to the terms of this Order is integral to the Purchase Agreement and is in the best interests of the Debtor, its estates, its creditors, and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtor.

S. **Compliance with Bankruptcy Code.** The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code and all of the applicable

requirements of such sections have been or will be complied with in respect of the Sale as of the Closing.

T. **Sale Not a Sub Rosa Plan.** The Sale of the Real Property outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale does not constitute a *sub rosa* chapter 11 plan.

U. **Time is of the Essence.** Time is of the essence in consummating the Sale. In order to maximize the value of the Debtor's assets, it is essential that the Sale occur within the time constraints set forth in the Purchase Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

V. The Sale contemplated by the Purchase Agreement is in the best interests of the Debtor and its estate, creditors, interest holders and all other parties in interest herein; and

IT IS HEREBY ORDERED THAT:

1. **Relief Granted.** The Motion shall be, and hereby is, GRANTED in its entirety, subject to the terms of this Order.

2. **Objections Overruled.** All objections and responses to the Motion, this Order, the Sale or the relief granted herein that have not been overruled,

withdrawn, waived, settled, or otherwise resolved, are hereby overruled and denied on the merits with prejudice.

3. **Approval.** The Purchase Agreement and the Sale are hereby approved and authorized in all respects, and the Debtor is hereby authorized and empowered, pursuant to sections 363 and 365 of the Bankruptcy Code, to enter into, and to perform its obligations under, the Purchase Agreement and to execute and perform such agreements or documents, and take such other actions as are necessary or desirable to effectuate the terms of the Purchase Agreement.

4. **Good Faith Purchaser.** Novi Nine Mile is a good faith purchaser of the Real Property and is hereby granted and is entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of the Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer, or assignment under the Purchase Agreement or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal), and notwithstanding any reversal, modification, or vacatur, any sale, transfer, or assignment shall be governed in all respects by the original provisions of this Order or the Purchase Agreement, as the case may be.

5. **Section 363(n) of the Bankruptcy Code.** The Sale approved by this Order is not subject to avoidance or any recovery or damages pursuant to section 363(n) of the Bankruptcy Code.

6. **Authorization of Performance by the Debtor.** The Debtor and its managers, officers, employees, agents, and representatives are authorized to fully perform under, consummate, and implement the terms of the Purchase Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Purchase Agreement, this Order, and the Sale, including, without limitation, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by Novi Nine Mile for the purpose of assigning, transferring, granting, conveying, and conferring to Novi Nine Mile, or reducing to possession any or all of the Real Property, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Purchase Agreement, without any further corporate action or orders of the Court.

7. Novi Nine Mile and the Debtor shall have no obligation to proceed with the Closing until all conditions precedent to their respective obligations to do so have been met, satisfied, or waived as set forth on the Purchase Agreement.

8. **Valid Transfer.** Effective as of the Closing, the sale of the Real Property by the Debtor to Novi Nine Mile shall constitute a legal, valid, and

effective transfer of the Real Property notwithstanding any requirement for approval or consent by any person and vests Novi Nine Mile with all right, title, and interest of the Debtor in and to the Real Property, free and clear of all Liens, Claims, and Encumbrances, pursuant to section 363(f) of the Bankruptcy Code.

9. **Free and Clear.** Upon the Closing, the Debtor shall be, and hereby is, authorized and empowered, pursuant to sections 105, 363(b), and 363(f) of the Bankruptcy Code, to sell the Real Property to Novi Nine Mile. The Sale of the Real Property to Novi Nine Mile vests Novi Nine Mile with all right, title, and interest of the Debtor to the Real Property free and clear of any and all Liens, Claims, and Encumbrances, with all such Liens, Claims, and Encumbrances to attach only to the proceeds of the Real Property with the same priority, validity, force, and effect as they now have in or against the Real Property. The Motion shall be deemed to provide sufficient notice as to the sale and assignment of the Real Property free and clear of all Liens, Claims, and Encumbrances in accordance with Local Rule 6004-1. Following the Closing, no holder of any Lien, Claim, and Encumbrance on the Real Property may interfere with Novi Nine Mile's use and enjoyment of the Real Property based on or related to such Lien, Claim, and Encumbrance, and no interested party may take any action to prevent, interfere with, or otherwise enjoin consummation of the Sale.

10. The provisions of this Order authorizing the Sale of the Real Property free and clear of Liens, Claims, and Encumbrances shall be self-executing, and neither the Debtor nor Novi Nine Mile shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. In addition, Novi Nine Mile is authorized, in its sole discretion, to attach the real property legal description from the Purchase Agreement to this Order and record this Order in the local land records to provide record notice of the transfer of the Real Property free and clear of any and all Liens, Claims, and Encumbrances.

11. **Direction to Creditors.** On the date of the Closing (the “Closing Date”), each of the Debtor’s creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Liens, Claims, and Encumbrances in the Real Property, if any, as such Liens, Claims, and Encumbrances may otherwise exist.

12. **Direction to Surrender Possession or Control.** All persons or entities, currently or on or after the Closing Date, in possession or control of some or all of the Real Property are directed to surrender possession or control of the Real Property to Novi Nine Mile on the Closing Date or at such time thereafter as Novi Nine Mile may request.

13. **Transfer of Title and Interests.** All of the Debtor's interests in the Real Property to be acquired by Novi Nine Mile under the Purchase Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in Novi Nine Mile. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Real Property acquired by Novi Nine Mile under the Purchase Agreement and/or a bill of sale or assignment transferring indefeasible title and interest in the Real Property to Novi Nine Mile.

14. This Order (a) is effective as a determination that, as of the Closing, all Liens, Claims and Encumbrances, other than liabilities expressly assumed by Novi Nile Mile, have been unconditionally released, discharged and terminated as to Novi Nine Mile and the Real Property, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing

persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

15. Without limiting the effect or scope of the foregoing, except as otherwise in the Purchase Agreement, as of the Closing Date, Novi Nine Mile and its affiliates and their respective successors, assigns, members, partners, principals, and shareholders (or equivalent) shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtor or any obligations of the Debtor arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the Real Property prior to the Closing.

16. Nothing in this Order or the Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any environmental liability to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Nothing in this Order or the Purchase Agreement authorizes the transfer or assignment to Novi Nine Mile of any license,

permit, registration, authorization, or approval of or with respect to a governmental unit without Novi Nine Mile's complying with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments.

17. **Injunction**. Except to the extent expressly intended to enforce the Purchase Agreement, all persons and entities, including, but not limited to, the Debtor, employees, former employees, all debt security holders, administrative agencies, governmental tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, bidders, lessors, warehousemen, customs brokers, freight forwarders, carriers, and other parties in possession of any of the Real Property at any time, trade creditors and all other creditors, holding Liens, Claims, and Encumbrances of any kind or nature whatsoever against or in the Debtor or in the Debtor's interests in the Real Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Real Property, the Sale, or the transfer of the Real Property to Novi Nine Mile, shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, commencing, continuing, or otherwise pursuing such Lien, Claim, and Encumbrance, in any manner, in any action, claim, or other proceeding of any kind, directly or indirectly, against Novi Nine Mile, or

any affiliates, successors or assigns thereof, their property or the Real Property on account of the purchase of the Real Property. Following the Closing Date, no holder of a Lien, Claim, and Encumbrance shall interfere with Novi Nine Mile's title to or use and enjoyment of the Real Property based on or related to such Lien, Claim, and Encumbrance. For the avoidance of doubt, none of the foregoing shall prevent the Debtor, its estate, and its successors or assigns from pursuing claims, if any, against Novi Nine Mile and/or its successors and assigns for any breach of the Purchase Agreement to the extent permitted thereby.

18. Except as provided in the Purchase Agreement, Novi Nine Mile has not assumed and is not otherwise obligated for any of the Debtor's liabilities. Consequently, all persons, Governmental Units (as defined in section 101(27) of the Bankruptcy Code) and all holders of Liens, Claims, and Encumbrances, based upon or arising out of liabilities retained by the Debtor, are hereby enjoined from taking any action against Novi Nine Mile or the Real Property, including asserting any setoff, right of subrogation, or recoupment of any kind, to recover any Liens, Claims, and Encumbrances or on account of any liabilities of the Debtor. All persons holding or asserting any Lien, Claim, and Encumbrance on the Real Property on account of liabilities of the Debtor are hereby enjoined from asserting or prosecuting such Liens, Claims, and Encumbrances or cause of action against Novi Nine Mile or the Real Property for any such liability.

19. **No Bulk Sales.** No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Real Property.

20. **Assumption and Assignment of Contracts, Permits, and Leases .**
Subject to the terms of the Purchase Agreement and the occurrence of the Closing Date thereunder, and pursuant to sections 365(a), (b), (c), and (f) of the Bankruptcy Code, the Debtor is hereby authorized to assume the Contracts, Permits, and Leases and assign such Contracts, Permits, and Leases to Novi Nine Mile; provided, however, that there shall be no assumption of any such Contract, Permit, and Lease absent simultaneous assignment thereof to Novi Nine Mile. The Contracts, Permits, and Leases identified as to be assumed and assigned in the Purchase Agreement are deemed assumed by the Debtor and assigned to Novi Nine Mile effective as of the Closing Date. Pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall have no liabilities for any claims arising or relating to or accruing post-Closing under any of the Contracts, Permits, and Leases.

21. The Debtor has: (a) cured, or has provided adequate assurance of cure, of any default existing prior to the date hereof and the Closing under any of the Contracts, Permits and Leases, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (b) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting

from a default prior to the date hereof or the Closing under any of the Contracts, Permits and Leases, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Buyer has provided adequate assurance of its future performance of and under the Contracts, Permits and Leases, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code, to all counterparties to the Contracts, Permits and Leases.

22. In accordance with sections 365(b)(2) and (f) of the Bankruptcy Code, upon assignment of the Contracts, Permits, and Leases to Novi Nine Mile, (i) Novi Nine Mile shall have all of the rights of the Debtor thereunder and each provision of such Contract, Permit, and Lease shall remain in full force and effect for the benefit of Novi Nine Mile notwithstanding any provision in any such Contract, Permit, and Lease or in applicable law that prohibits, restricts, or limits in any way such assignment or transfer, and (ii) no Contract, Permit, and Lease may be terminated, or the rights of any party modified in any respect, including pursuant to any “change of control” clause, by any other party thereto as a result of the consummation of the transactions contemplated by the Purchase Agreement.

23. The failure of the Debtor or Novi Nine Mile to enforce at any time one or more terms or conditions of any Contract, Permit, and Lease shall not be a waiver of such terms or conditions, or of the Debtor’s and Novi Nine Mile’s rights to enforce every term and condition of the Contract, Permit, and Lease.

24. **Amendments.** Subject to the terms of the Purchase Agreement, the Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtor and Novi Nine Mile, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the Purchase Agreement and any related agreements. Any material modification, amendment, or supplement to the Purchase Agreement must be approved by Order of the Court following a motion on notice to all interested parties.

25. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Purchase Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtor, and Novi Nine Mile that the Purchase Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

26. **Binding Order.** This Order and the Purchase Agreement shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtor and Novi Nine Mile, their respective successors and

permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if the Debtor's case is converted from chapter 11 to a chapter 7 proceeding, all creditors of the Debtor (whether known or unknown), all non-Debtor parties to any contracts, filing agents, filing officers, title agents, recording agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Real Property. The Purchase Agreement and Sale shall not be subject to rejection or avoidance under any circumstances. This Order and the Purchase Agreement shall inure to the benefit of the Debtor, its estate, its creditors, Novi Nine Mile and their respective successors and assigns.

27. **No Stay of Order**. Notwithstanding Bankruptcy Rules 6004 and 6006, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Time is of the essence in closing the Sale referenced herein, and the Debtor and Novi Nine Mile intend to close the Sale as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

28. **Lift of Automatic Stay.** If and to the extent that section 362 may be applicable to a particular action in connection with the Purchase Agreement and Sale, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Court, to allow Novi Nine Mile to deliver any notice provided for in the Purchase Agreement and allow Novi Nine Mile to take any and all actions permitted under the Purchase Agreement in accordance with the terms and conditions thereof.

29. **Retention of Jurisdiction.** The Court shall retain jurisdiction to (a) interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, in all respects, (b) to decide any disputes concerning this Order and the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Real Property, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, Claims, and Encumbrances.

30. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtor's chapter 11 case or any order confirming any such plan or any other order in the chapter 11 case of the Debtor (including any order entered after any conversion of the Debtor's case into a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with or derogate from, the provisions of the Purchase Agreement or this Order.

31. **Further Assurances.** From time to time, as and when requested by any party to the Purchase Agreement, and subject to the terms of such Purchase Agreement, each such party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in Novi Nine Mile its right, title, and interest in and to the Real Property.

32. **Governing Terms.** To the extent this Order is inconsistent with any prior order or pleading in the chapter 11 case, the terms of this Order shall govern. To the extent there is any inconsistency with between the terms of this Order and the terms of the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of the Order shall govern.

EXHIBIT B

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is made by and between by FRANK W. KERR COMPANY, a Michigan corporation (“**Seller**”), and Novi Nine Mile Associates LLC, a Michigan limited liability company (“**Buyer**”), and shall have an effective date of July 30, 2016 (“**Effective Date**”).

RECITALS:

A. Seller is the owner of that certain parcel of real property, with a building and other improvements thereon, located in the City of Novi, Oakland County, Michigan, with street addresses of 43155, 43157 and 43159 West Nine Mile Road, Novi, Michigan 48376, and as legally described on Exhibit A attached hereto and made a part hereof (“**Real Property**”);

B. The Real Property is also depicted in approximate dimensions on Exhibit B attached hereto and made a part hereof;

C. Seller is also the owner of certain personal property used and located at the Real Property and which personal property is identified on Exhibit C attached hereto and made a part hereof (“**Personal Property**”). If no Personal Property is identified on Exhibit C, then no Personal Property will be transferred to Buyer;

D. The Real Property is subject to those certain leases set forth on Exhibit D attached hereto and made a part hereof (collectively, “**Leases,**” and each a “**Lease**”);

E. All of the Seller’s right, title and interest, if any, and without warranty, in and to (i) all governmental licenses and permits issued for the operation, occupancy and use of the Land and Improvements (the “**Licenses**”), to the extent transfer is permitted under applicable law or regulation; (ii) all building, architectural, engineering, mechanical, electrical and landscaping surveys, plans and specifications (the “**Plans**”); and (iii) all transferable warranties and guaranties from manufacturers, contractors, subcontractors, suppliers and installers relating to the Real Property;

F. All of the Seller’s right, title and interest in and to all assignable, service, utility, supply, maintenance and concession contracts, agreements and other continuing contractual obligations affecting the operation, maintenance and repair of the Real Property which shall extend beyond the date of Closing and which the Buyer elects to assume (the “**Property Contracts**”); and

G. Upon the terms and conditions set forth below, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Real Property, the Leases, the Plans and the Property Contracts (collectively, the “**Property**”).

NOW THEREFORE, in consideration of the mutual covenants and agreements of each party to the other and other valuable consideration, the receipt, adequacy and sufficiency of

which are acknowledged, the parties, intending to be bound by this Agreement, do mutually covenant and agree as follows:

ARTICLE 1 INCORPORATION BY REFERENCE

Section 1.1. Incorporation by Reference. The Preamble and the Recitals set forth above and the Exhibits referred to in this Agreement are incorporated into this Agreement as though they were fully set forth in this Agreement.

ARTICLE 2 PURCHASE AND SALE

Section 2.1. Purchase and Sale; Effective Date. Seller agrees to sell, grant, convey, transfer and assign the Property to Buyer, and Buyer agrees to purchase and receive the Property from Seller, including the hereditaments and appurtenances thereto, subject to and pursuant to the provisions set forth in this Agreement.

Section 2.2. Covenant Deed. The Real Property shall be sold, granted, conveyed, transferred and assigned by Seller to Buyer by a Covenant Deed (“**Deed**”) in the form attached hereto as Exhibit E and made a part hereof. The Deed shall convey title to the Real Property, free and clear of all liens, adverse claims, encumbrances, reservations, restrictions, charges, equities, rights-of-way and exceptions, except for the Permitted Encumbrances (as defined in **Section 4.2**).

Section 2.3. Bill of Sale. [INTENTIONALLY OMITTED]

Section 2.4. Assignment and Assumption of Leases. The Leases shall be sold, transferred and assigned by Seller to, and assumed by, Buyer pursuant to an Assignment and Assumption of Leases (“**Assignment and Assumption of Leases**”) in the form attached hereto as Exhibit F and made a part hereof.

ARTICLE 3 PURCHASE PRICE

Section 3.1. Purchase Price. The purchase price for the Property to be sold by Seller and purchased by Buyer under this Agreement shall be Ten Million One Hundred Thousand Dollars (\$10,100,000.00) (“**Purchase Price**”).

Section 3.2. Payment of Purchase Price. The Purchase Price shall be payable by Buyer to Seller as follows:

A. Within three (3) business days of full execution of this Agreement, Buyer shall deliver to First American Title Insurance Company, located at 100 Bloomfield Hills Parkway, Suite 195, Bloomfield Hills, Michigan 48304; Attn: Pat Flinchum (direct: 248-433-7658, fax: 866-550-1079, main: 248-540-4102, email: pflinchum@firstam.com) (“**Title**”).

Company”), a deposit in the amount of One Hundred Thousand Dollars (\$100,000.00) (“**Deposit**”). The Deposit shall be made via cashiers check payable to Title Company or shall be made via wire transfer. The Deposit shall be placed in an interest-bearing escrow account, under the Title Company’s escrow agreement reasonably acceptable to Seller and Buyer. The Deposit and the earnings, if any, thereon (collectively, the “**Escrow Funds**”) shall be released by Title Company as provided in this Agreement.

B. The remaining balance of the Purchase Price shall be payable by Buyer to Seller and delivered to the Title Company by wire transfer on the Closing Date (as defined in **Section 10.1**) to be received by and available to Title Company prior to the Closing. At Closing, Title Company shall disburse to Seller, by wire transfer, the balance of the Purchase Price and any and all other funds due Seller.

ARTICLE 4 DUE DILIGENCE

Section 4.1. Due Diligence Period. Buyer shall have thirty (30) days after the Effective Date (“**Due Diligence Period**”) to conduct, at Buyer’s sole cost and expense, any and all non-invasive due diligence regarding the Property and to either accept the results or waive any such items, including without limitation: (i) Buyer shall have been satisfied in all respects with the Title Commitment and Survey as described in **Section 4.2** within the time frames set forth in **Section 4.2**; (ii) Buyer shall have been satisfied in all respects with the results of any environmental site assessments of the Property as described in **Section 4.3** within the time frames set forth in **Section 4.3**; and (iii) Buyer shall have satisfied itself in all respects with the physical condition of the Property, the financial condition of the Property and with the Property Information. Buyer shall not perform any invasive testing without Seller’s consent, which consent shall not be unreasonably withheld, conditioned or delayed.

In the event Buyer is not satisfied with the results of its due diligence, Buyer shall have the right to terminate this Agreement prior to the expiration of the Due Diligence Period and to receive a refund of the Escrow Funds only by giving written notice to Seller and Title Company of Buyer’s decision to terminate this Agreement prior to the expiration of the Due Diligence Period (“**Due Diligence Termination Notice**”). Promptly following termination, Purchaser shall deliver to Seller copies of the Survey and Phase I and, if applicable Phase II (each as defined below), without representation or warranty. Upon timely delivery of the Due Diligence Termination Notice, if at all, the Title Company shall release the Escrow Funds to Buyer without the consent or approval of Buyer being necessary.

In the event Buyer does not timely deliver the Due Diligence Termination Notice to Seller and Title Company, provided that Seller does not default under this Agreement, the Escrow Funds will be unconditionally non-refundable to Buyer and the property of Seller, and Seller will be entitled upon the scheduled Closing Date or upon Buyer’s default under this Agreement to instruct Title Company to then release the Escrow Funds to Seller and Title Company will be authorized to release the Escrow Funds to Seller. In the event Buyer (i) does not timely deliver the Due Diligence Termination Notice, and (ii) thereafter, does not complete its purchase as provided in this Agreement for any reason whatsoever, then the Escrow Funds shall be paid by the Title Company to Seller as liquidated damages and as Seller’s sole remedy,

all other remedies being hereby waived by Seller. In the event the sale described in this Agreement is consummated, the Escrow Funds shall be applied towards the Purchase Price.

Buyer assumes full responsibility and liability for and agrees to indemnify, defend and hold Seller harmless from any and all claims, fees, costs or expenses (including without limitation, reasonable attorneys' fees) of any kind whatsoever, arising out of any injury to any person (whether employees or agents of Buyer or otherwise) and to any damages to any property, real or personal, arising from or related to any or all of Buyer's inspections of the Property or other access to the Property prior to Closing. Buyer shall not disclose the results of any inspections, tests or audits to any third party (other than to Buyer's employees, lenders, investors, attorneys or other advisors who agree to maintain such information as Confidential Information as required herein) or, except as required by applicable legal requirements, governmental authority without the express written consent of Seller and such information shall be deemed to be Confidential Information as defined in **Section 13.1** hereof.

Section 4.2. Title Matters. Upon the parties' execution of this Agreement, Seller shall promptly order a commitment ("**Title Commitment**") to issue an owner's title insurance policy for the Real Property from Title Company. Seller acknowledges and agrees to use commercially reasonable efforts to cause Title Company to complete the Title Commitment within five (5) business days of the Effective Date. Title Company shall simultaneously deliver copies of the Title Commitment, the vesting deed(s), and all documents referenced therein, to Seller and Buyer. In addition, Buyer shall, at its sole expense, have the right to obtain an ALTA/NSPS survey ("**Survey**") of the Real Property in form and substance satisfactory to Buyer and prepared by a surveyor acceptable to Buyer, provided that Buyer orders the Survey within three (3) business days of the Effective Date. The Title Commitment and the Survey are subject to review and approval by Buyer within ten (10) days after Buyer's receipt of the Title Commitment and the Survey (if ordered by Buyer). If Buyer objects to any such title exceptions or survey matters ("**Unpermitted Encumbrances**"), Buyer must deliver written notice of any such objection to Seller ("**Objection Notice**") on or before the earlier of such ten (10) day period or the expiration of the Due Diligence Period ("**Objection Notice Period**"). Any and each such title exception or survey matter to which Buyer does not object in writing to Seller within the Objection Notice Period shall thereafter constitute a "**Permitted Encumbrance**". In addition, the following shall be deemed to be Permitted Encumbrances: (1) real property taxes, to the extent not yet due and payable; (2) liens, exceptions or restrictions or other matters caused or created by Buyer, its affiliates, agents, employees or contractors; (3) any state of facts shown on the Survey if not objected to by Buyer (as provided for herein), or if no Survey is obtained by Buyer, any state of facts which would have been shown on a current ALTA/NSPS survey of the Property with all Table A items included; (4) laws, regulations, ordinances, (including, without limitation, zoning regulations), and any violations thereof (provided that Seller's representations and warranties remain effective with respect to any such violations); and (6) the Leases but without any right or option to purchase the Property or any part thereof. Upon Seller's timely receipt of the Objection Notice, Seller shall then have a five (5) day period in which to cause (at Seller's option, not its obligation) the removal or correction of the Unpermitted Encumbrances (it being understood that Seller may, but shall not be required to, remove any Unpermitted Encumbrance). If Seller elects not to cause the removal or correction of the Unpermitted Encumbrances within said five (5) day period, Buyer may elect, upon written notice to Seller to be received by Seller

within five (5) days after the expiration of such five (5) day period, to accept title as it then is, in which event all exceptions in Schedule B of the Title Commitment, including without limitation, the Unpermitted Encumbrances set forth in the Objection Notice and not removed or corrected by Seller, shall become Permitted Encumbrances. In all events, and without regard to whether the same are identified in the Objection Notice, Seller shall be obligated to pay all real estate taxes which are due and payable as of the date of Closing and all liens and encumbrances of a definite or ascertainable amount, which taxes, liens and encumbrances may be paid from Seller's proceeds at Closing. Further, and without regard to whether the same are identified in the Objection Notice, the Seller shall be obligated to satisfy those requirements or conditions to the issuance of the policy of title insurance in the Title Commitment which relate to Seller's organization and authority as well as such affidavits which the Title Company requires to delete the so-called standard exceptions (excepting only those standard exceptions which can only be eliminated with a current survey, agreeing that if Seller has an existing ALTA survey the Seller will execute and deliver such affidavits of no change (to the extent applicable) which the Title Insurance Company may require and accept as a condition to deleting survey exceptions if the Title Insurance Company will rely upon a survey which is not current or has not been updated). If Buyer does not elect within such five (5) day period to accept all such Unpermitted Encumbrances in accordance with the foregoing provisions, this Agreement shall terminate (as Buyer's sole remedy for Seller's election to not remove or correct such Unpermitted Encumbrances), Title Company shall return the Escrow Funds to Buyer and, except as otherwise expressly provided in this Agreement, neither party shall have any further rights or obligations under this Agreement. The cost of the title work, the issuance of the Title Commitment and the cost of the owner's title insurance policy shall be paid by Seller, provided that such cost does not exceed the cost of a basic ALTA 2006 owner's policy of title insurance without standard exceptions. Seller's obligation to obtain such a policy without standard exceptions shall be limited to Seller's execution of the Title Company's Owner's Affidavit, in a form reasonably acceptable to Seller. Seller shall not be obligated to remove any standard exceptions which cannot be removed without the receipt of the Survey, but if Seller has an existing survey, shall be obligated to deliver a no change affidavit (to the extent applicable) if such exceptions can be removed with reliance upon a survey which is not a current survey. Buyer shall pay and be solely responsible for any extended or additional coverages or endorsements desired by Buyer, or required by Buyer's lender, if any.

Section 4.3. Environmental Matters. Buyer, at its sole cost and expense, shall have the right to cause a Phase I Environmental Site Assessment (“**Phase I**”) to be performed on the Real Property during the Due Diligence Period. If the Phase I recommends a Phase II Environmental Site Assessment (“**Phase II**”), then Buyer, at Buyer's sole cost and expense, shall have the right to cause a Phase II to be performed on the Real Property, subject to Seller's approval as to the scope of such Phase II and the location of any invasive testing, such approval not to be unreasonably withheld or delayed, and the Due Diligence Period shall be extended (with respect to environmental matters only) to a period expiring 5 days after delivery of the Phase II, if required, to enable the Buyer to complete its review of such or Phase II, but in any event, the Due Diligence Period shall not be extended beyond an additional fifteen (15) days. In the event the Phase I recommends a Phase II and Buyer has not terminated this Agreement, Buyer shall proceed as expeditiously as possible and use commercially good faith efforts to obtain the Phase II as quickly as possible.

ARTICLE 5
DOCUMENTS TO BE MADE AVAILABLE BY SELLER

Section 5.1. Property Documents. Within five (5) business days from the Effective Date, Seller shall provide access to copies to Buyer for review in connection with Buyer's due diligence pursuant to **Article 4**, all documents to Seller's Knowledge (as hereinafter defined below) prepared by third parties, regarding the physical condition of the Property (which shall not include information deemed to be confidential or proprietary by Seller), provided that Seller has the documents in its possession, which are listed on **Exhibit H** attached hereto and made a part hereof (collectively, "**Property Information**"). In addition, Seller shall have the right to accompany Buyer during visits to the Property. All Property Information and other materials relating to any inspections, investigation, interviews of employees or agents of Seller's regarding the Property or other due diligence performed at the Property shall be deemed Confidential Information that is subject to Buyer's obligations regarding Confidential Information pursuant to **Section 13.1** hereof. Any reliance upon the Property Information shall be at Buyer's sole risk. Seller does not warrant the accuracy of any of the Property Information. As used in this Agreement, "to the knowledge of Seller," "to Seller's actual knowledge," "Seller's knowledge," and words or phrases of similar import shall mean the current actual knowledge of Nathan Rosen, and shall be deemed to have been stated and made without inquiry, due diligence or investigation, and without imputation to such person any knowledge, facts, information or other matters otherwise within the personal knowledge of any other persons or parties. Buyer acknowledges and agrees that the individuals named above are named solely for the purpose of defining and narrowing the scope of Seller's knowledge, and the representations and warranties contained in this Agreement are intended to be solely the representations and warranties of Seller and not of the aforementioned individuals or any member, partner, officer, employee, affiliate or shareholder of Seller. Seller represents and warrants that the individual named above is the individual who in the ordinary course of performing its role for or on behalf of the Seller would have knowledge of the matters with respect to which representations and warranties are being given. Seller shall have no duty to conduct any further inquiry in making any such representations and warranties.

Section 5.2. Property Contracts. On or before the expiration of the Due Diligence Period, the Buyer may deliver written notice to the Seller (the "Property Contracts Notice") specifying any Property Contracts that the Buyer desires to have terminated by the Seller as of the Closing Date (the "Terminated Contracts"). Such Terminated Contracts shall not be assigned to, or assumed by, the Buyer at the Closing, nor shall any other Property Contract be assigned to, or assumed by, the Buyer, to the extent that Seller has elected to terminate such Property Contract. To the extent that any Terminated Contract (or any Property Contract otherwise terminated by Seller) requires payment of a penalty or premium for cancellation, the Seller shall be solely responsible for the payment of any such cancellation fees or penalties. The foregoing notwithstanding, Seller and Buyer may mutually agree to the assumption by Buyer of any Property Contracts at the Closing.

ARTICLE 6 COSTS

Section 6.1. Title Costs. Seller shall be responsible for all of the costs and expenses related to the title exam, Title Commitment and the cost of the owner's title insurance policy as set forth above in **Article 4**. Subject to the provisions of **Section 4.2**, Seller shall be responsible for all matters of Seller's title clearance including Seller's investigation and payment of delinquent taxes, special assessments and the clearance of tax or other liens of record.

Section 6.2. Other Costs. The cost of any state and county transfer taxes shall be paid by Seller. All recording fees and expenses related to the filing of the Deed shall be paid by Seller and all recording fees and expenses related to the filing of the mortgage and other lender documents or requirements by Buyer or its lender which are in addition to Seller's obligations herein shall be paid by Buyer. The escrow fee (including any document preparation or closing fee), if any, charged by Title Company shall be split equally between Buyer and Seller. The cost of the Survey shall be paid by Buyer.

ARTICLE 7 POSSESSION

Section 7.1. Possession. Seller shall deliver exclusive possession of the Property to Buyer at Closing, which possession shall be subject only to the Leases and the Permitted Encumbrances. Buyer does, however, grant Seller a license to remain in possession of its current premises at the Property, consisting of the space currently occupied by Frank W. Kerr Company, ("Licensed Premises"). The license shall be without charge except that the Seller shall be required to pay the cost of all utilities incurred at the Licensed Premises. The license shall terminate and the Seller shall surrender possession of the Licensed Premises no later than ninety (90) days after Closing ("License Term"). During the Term, Buyer shall have the right to show the Licensed Premises to prospective tenants and, upon the execution of a binding lease with a tenant, may enter upon the Licensed Premises for the purpose of commencing construction of tenant improvements required by such lease, provided such construction does not materially disrupt or interfere with Seller's operations in, or access to, the Licensed Premises. The Seller agrees that the execution of this Agreement constitutes its acknowledgement of the receipt of a notice of termination of tenancy as required by applicable statutes and court rules and Buyer may file an action to evict and take whatever other action it deems necessary or appropriate if Seller does not leave the Licensed Premises in a timely fashion without providing any additional notice. The Seller shall indemnify the Buyer for loss or damage incurred at or as a result of its occupancy of the Licensed Premises. Seller shall deliver the Licensed Premises broom clean, subject to reasonable wear and tear and any damage existing as of the Effective Date, and free of all of its personal property and equipment. Seller shall be responsible for Buyer's costs incurred in obtaining possession of the Licensed Premises.

**ARTICLE 8
REPRESENTATIONS, WARRANTIES
AND COVENANTS OF SELLER AND BUYER**

Section 8.1. Seller's Representations and Warranties. Seller hereby represents, warrants and covenants to Buyer that as of the date of this Agreement and as of the Closing Date, and to Seller's actual knowledge (as defined in Section 5.1):

A. Title to the Real Property shall be delivered by Seller to Buyer free and clear of any and all liens, claims, charges and encumbrances (collectively "**Liens**"), except for any Permitted Encumbrances and the Leases (provided that Seller has fully performed all obligations under the Leases up to the Closing Date) and except for building and zoning laws and ordinances and state and federal statutes and regulations and current real estate taxes on the Real Property that are not yet due and payable.

B. Seller is a corporation validly existing and in good standing under the laws of the State of Michigan and has all requisite power and authority to own and sell the Property.

C. The execution and delivery and performance of this Agreement by Seller has been duly and validly authorized in accordance with its governance documents, and this Agreement is (and, to the extent applicable, each document to be delivered at Closing will be) a valid and binding obligation of Seller, enforceable according to its terms. The transaction contemplated hereby will not result in a breach of, or constitute a default or permit acceleration and maturity under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which the Seller or the Property is subject or by which the Seller or the Property is bound. Neither this Agreement nor anything provided to be done herein by the Seller as herein contemplated, violates or will violate any contract, agreement or instrument to which the Seller is a party or bound or which affects the Property, or any governmental statute, law, ordinance, rule, regulation, order, judgment or directive. Any secured lender holding a lien or encumbrance against the Property has consented to the transaction provided for herein and has agreed to provide a full termination of its lien and security interest against the Property upon payment of the Purchase Price provided for herein.

D. The Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by the Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of the Seller's assets, or (iv) suffered the attachment or other judicial seizure of all, or substantially all, of the Seller's assets.

E. None of the Seller or any of its officers, directors, or shareholders or any constituent entity holding an interest in any of the foregoing is a person or entity that: (1) is listed in the Annex to, or otherwise subject to the provisions of Executive Order No. 13224 dated September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (2) is named as a "Specially Designated National and Blocked Person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official

website, <http://www.treas.gov/ofac/tllsdn.pdf>; (3) is owned or controlled by, or acting for or on behalf of, any person listed in the Annex to, or otherwise subject to the provisions of, the Executive Order; or (4) is (i) making or receiving any contribution of funds, goods or services to or for the benefit of any person listed in the Annex to, or otherwise subject to the provisions of, the Executive Order, (ii) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order.

F. EXCEPT AS PROVIDED IN THIS AGREEMENT (AND DOCUMENTS TO BE DELIVERED AT CLOSING) TO THE CONTRARY, POSSESSION OF THE REAL PROPERTY SHALL BE DELIVERED BY SELLER TO BUYER IN ITS "AS IS" CONDITION. EXCEPT AS PROVIDED IN THIS AGREEMENT (AND DOCUMENTS TO BE DELIVERED AT CLOSING) TO THE CONTRARY, POSSESSION OF THE PERSONAL PROPERTY, IF ANY, SHALL BE DELIVERED BY SELLER TO BUYER IN ITS "AS IS," "WHERE IS" CONDITION AND WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY SELLER. SELLER HAS NOT MADE AND DOES NOT MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND DOCUMENTS TO BE DELIVERED AT CLOSING) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, ITS CONDITION (INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING QUALITY OF CONSTRUCTION, STATE OF REPAIR, WORKMANSHIP, MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS SQUARE FOOTAGE, ITS COMPLIANCE WITH HAZARDOUS SUBSTANCE LAWS (as hereinafter defined) OR OTHER LAWS, ITS ENVIRONMENTAL CONDITION, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, THE OBLIGATIONS, RESPONSIBILITIES OR LIABILITIES OF THE OWNER THEREOF, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, AND SELLER HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. IN ADDITION, BUYER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT SELLER IS NOT REPRESENTING OR WARRANTING THAT ANYTHING CAN BE ACCOMPLISHED THROUGH BUYER'S OR SELLER'S EFFORTS WITH REGARD TO THE PLANNING, PLATTING OR ZONING PROCESS OF THE CITY OR COUNTY IN WHICH THE PROPERTY IS LOCATED, OR ANY OTHER GOVERNMENTAL OR MUNICIPAL AUTHORITIES, BOARDS OR ENTITIES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND DOCUMENTS TO BE DELIVERED AT CLOSING) SELLER HAS NOT WARRANTED, AND DOES NOT HEREBY WARRANT, THAT THE PROPERTY NOW OR IN THE FUTURE WILL MEET OR COMPLY WITH THE REQUIREMENTS OF ANY ORDINANCE, SAFETY CODE OR REGULATION OF THE STATE, COUNTY, CITY OR TOWNSHIP IN WHICH THE PROPERTY IS LOCATED, OR ANY OTHER AUTHORITY OR JURISDICTION.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR OTHER SIMILAR DAMAGES) RESULTING OR ARISING FROM OR RELATING TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR, OR OPERATION OF THE PROPERTY. BUYER ACKNOWLEDGES THAT (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND DOCUMENTS TO BE DELIVERED AT CLOSING) BUYER HAS INSPECTED, AND WILL INSPECT FURTHER, THE PROPERTY AND ACCEPTS THE PROPERTY "AS IS", "WHERE IS" AND "WITH ALL FAULTS". BUYER ACKNOWLEDGES AND AGREES THAT (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND DOCUMENTS TO BE DELIVERED AT CLOSING) SELLER DOES NOT AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES (as hereinafter defined) ON, UNDER OR ABOUT THE PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE PROPERTY WITH ANY HAZARDOUS SUBSTANCE LAWS (as hereinafter defined).

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT AND DOCUMENTS TO BE DELIVERED AT CLOSING, BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY SELLER OR ANY REPRESENTATIVE OF SELLER OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY, BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY.

G. Seller shall maintain the Real Property in its present condition (ordinary wear and tear, casualty, condemnation and damages caused by Buyer excepted) and comply with all the terms of the Leases, and except to the extent that the tenant has the unilateral right to terminate, extend or otherwise amend its lease, Seller shall not, subsequent to the expiration of the Due Diligence Period, terminate, extend or otherwise amend any Lease or enter into any new Lease without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Seller shall not make any material alterations to the Real Property prior to Closing without obtaining Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer's consent hereunder shall be deemed granted in the event that Buyer fails to respond to Seller's written request for such consent within three (3) business days of the date of Buyer's receipt of such written request.

H. On the Closing Date, there will be no leases, options, purchase agreements, tenancies, land contracts or other such agreements affecting the Property or any part thereof, except the Leases (without any option to purchase), other Permitted Encumbrances and the Seller's occupancy of the Licensed Premises. There will be no management agreements, maintenance or service contracts, non-governmental use restrictions or other agreements relating to the Property which are unrecorded and which would be binding on the

Property or the Purchaser except for the Permitted Encumbrances and Property Contracts which Buyer and Seller have mutually agreed to be assumed by Buyer.

I. A complete, true and correct copy of each written Lease, including any amendments thereto and any guaranty thereof, will be provided to Buyer pursuant to **Section 5.1**. Except to the extent that tenants have the unilateral right to terminate their lease or a lease expires by its terms, as of the date of this Agreement and on the Closing Date, the Leases and Property Contracts shall be in full force and effect; and Seller and the applicable tenant under each Lease, or other party under each Property Contract, shall not be in default or breach under any of the Leases or Property Contract, as appropriate, without any offset against Seller or Buyer. There are no unpaid leasing commissions or fees pursuant to or required in connection with the Leases that remain unpaid and all tenant improvements or any allowances for any tenant improvements pursuant to the Leases which are required to be performed by and/or paid by landlord under the Leases have been completed and/or paid in full, as applicable.

J. Seller has not received written notice of any kind from any Governmental Authority alleging that, and Seller has no knowledge that, Seller has failed to comply with any applicable law, ordinance, regulation, statute, rule or restriction pertaining to or affecting the condition of the Property, which failure has not been previously cured. As used herein, the term “**Governmental Authority**” shall mean and include every department, agency, commission, board, bureau or instrumentality of the United States, the State of Michigan, the County of Oakland, or the City of Novi, having jurisdiction over the Property. Seller will promptly notify Buyer if Seller receives written notice or knowledge of the foregoing, between the date of this Agreement and the Closing Date, of any such noncompliance.

K. Seller has received no written notice of, and Seller has no knowledge of, any default or breach by Seller of any covenants, conditions, restrictions, rights-of-way, or easements which affect the Property or any portion of the Property, and no such default or breach now exists.

L. Seller has not received any written notice of, and Seller has no knowledge of, any condemnation proceeding or other proceedings in the nature of eminent domain in connection with the Property.

M. There is no proceeding or action pending or, to the knowledge of Seller, threatened by any person or any Governmental Authority regarding Hazardous Substances on the Property. The foregoing notwithstanding, the parties acknowledge and agree that under MCL §324.20116(1), Seller must disclose to Buyer whether the Property is a “facility.” Seller hereby discloses to Buyer that Seller has no knowledge as to whether the Property is or may be a “facility” as defined by Part 201 of Michigan's Natural Resources and Environmental Protection Act, MCL §324.20101 et seq. In the event that Seller or Buyer shall obtain a new Phase I or Phase II environmental site assessment of the Property prior to Closing, Seller's disclosure herein will be deemed modified by the contents of such Phase I and/or Phase II.

N. To Seller's Knowledge and without inquiry or investigation, the Seller has not, and prior to the Closing Date the Seller will not have (and to Seller's Knowledge no other party has), discharged, released, generated, treated, stored, disposed of or deposited in, on or

under the Property in violation of any Environmental Laws (as defined below), and to Seller's Knowledge and without inquiry or investigation, the Property is free of and does not contain, any "toxic or hazardous substance", asbestos, urea formaldehyde insulation, PCBs, radioactive material, flammable explosives, underground storage tanks, or any other hazardous or contaminated substance (collectively, "Contaminants") prohibited, limited or regulated under the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, or under any other applicable federal, state or local statutes, regulations or ordinances (collectively the "Environmental Laws").

O. Seller is not a "nonresident alien," "foreign corporation," "foreign partnership," "foreign trust" or "foreign estate" within the meaning of the Internal Revenue Code and Income Tax Regulations.

Section 8.2. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that, as of the date of this Agreement and as of the Closing Date:

(A) Buyer is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Michigan, and has all requisite power and authority to own its property and to carry on its business as they are now being conducted.

(B) The execution, delivery and performance of this Agreement by Buyer has been duly and validly authorized in the manner required by its organizational documents, and this Agreement is a valid and binding obligation of Buyer, enforceable according to its terms.

Section 8.3. Survival. Seller's and Buyer's representations, warranties and covenants set forth in this Agreement shall survive the Closing and the tender of the Deed for a period of one year from the date of Closing.

Section 8.4. Breach of Seller's and/or Buyer's Representations, Warranties and Covenants.

(A) If Buyer breaches any of its representations, warranties or covenants contained in **Section 8.2**, then, not less than ten (10) days after Seller's written notice to Buyer detailing the alleged breach, and provided that Buyer has not cured said breach within such ten (10) day period, Seller may elect to terminate this Agreement and retain the Deposit as its sole recourse or remedy, in which event Buyer and Seller shall have no further obligations hereunder, except those expressly stated to survive, provided however, that if the breach of such representation, warranty or covenant is also due to a default by Buyer, the foregoing shall not preclude any right of Seller to pursue any remedies that Seller may be entitled to, as set forth in **Section 12.12** of this Agreement.

(B) If Seller breaches any of its representations, warranties or covenants contained in **Section 8.1**, then, not less than ten (10) days after Buyer's written notice to Seller detailing the alleged breach, and provided that Seller has not cured said breach within such ten (10) day period, Buyer may elect to terminate this Agreement and receive the Deposit as its sole

recourse or remedy, in which event Buyer and Seller shall have no further obligations hereunder, except those expressly stated to survive, provided however, that if the breach of such representation, warrantee or covenant is also due to a default by Seller, the foregoing shall not preclude any right of Buyer to pursue any remedies that Buyer may be entitled to, as set forth in **Section 12.12** of this Agreement.

ARTICLE 9 ENVIRONMENTAL MATTERS.

Section 9.1 Environmental Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

A. **“Hazardous Substance Laws”** shall mean all present and future federal, state and local laws, regulations and ordinances and principles of common law relating to the protection of the environment, public health or public safety including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. § 9601, et seq., as amended), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq., as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq., as amended), the Clean Water Act (33 U.S.C. § 7401, et seq. as amended), the Safe Drinking Water Act (42 U.S.C. § 300f, et seq., as amended) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq. as amended), the Federal Water Pollution Control Act, the Federal Insecticide, Rodenticide and Fungicide Act, the Clean Air Act, any so-called, Federal, State or Local “Superfund” or “Superlien” statute, or any other Federal, State or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability) or standards of conduct concerning any Hazardous Substance Laws.

B. **“Hazardous Substances”** shall mean and include those elements or compounds which are contained on the list of hazardous substances adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws.

ARTICLE 10 CLOSING AND PRORATION

Section 10.1. Closing. As used in this Agreement, the **“Closing Date”** shall be ten (10) days after the date on which the Due Diligence Period ends as the same may be extended as necessary to obtain a Phase II or Survey. The closing (**“Closing”**) of this Agreement shall take place at the offices of Title Company, provided, that either party may elect to deposit monies and documents with the Title Company in escrow in lieu of actual physical attendance at the Closing.

Section 10.2. Conditions Precedent To Closing. The Parties’ obligation to consummate the transaction contemplated by this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

A. All of the documents and instruments required to be delivered by the Seller to the Buyer or the Title Company, as the case may be, at the Closing pursuant to the terms and conditions hereof shall have been delivered.

B. Each of the representations and warranties of the Seller and Buyer contained herein shall be true in all material respects as of the Closing Date.

C. The Seller and Buyer shall each have complied with, fulfilled and performed in all material respects each of the covenants, terms and conditions to be complied with, fulfilled or performed hereunder.

D. No Tenant or Tenants occupying in the aggregate a demised premises of more than 20,000 square feet of the Property shall (i) be in monetary default of their obligations under their Lease; (ii) have ceased to operate in the ordinary course of business; or (iii) have declared or become subject to an action in bankruptcy or reorganization, or had a creditors' committee or receiver appointed over all, or substantially all, of its assets.

E.

(i) No later than ten days prior to the Closing Date, Seller shall use commercially reasonable efforts (which shall not include the expenditure of funds or initiation of litigation) to secure and deliver to Buyer estoppel certificates dated no earlier than thirty (30) days prior to the Closing Date for all Tenant Leases consistent with the information in the Rent Roll and the Tenant Leases and substantially in the form attached hereto as Exhibit G or such form as may be attached as an exhibit to the applicable Leases. Buyer may terminate this Agreement if, no less than ten (10) days prior to the Closing Date, (a) Seller fails to deliver to Buyer estoppel certificates substantially in the form attached hereto as Exhibit G ("Tenant Estoppel Certificates"), executed by (X) tenants under Leases covering at least eighty-five percent (85%) of the rentable floor area of the Real Property, and (Y) all Major Tenants; or (b) if any of the Tenant Estoppel Certificates delivered by Seller to Buyer discloses a default, a material discrepancy with a Tenant Lease or the updated Rent Roll, or a material deviation from the form attached hereto as Exhibit G, or a bankruptcy or abandonment (or intent to do any of the foregoing). If Buyer terminates this Agreement in accordance with the terms of this Section 10.2 E., the Deposit and all interest accrued thereon shall be immediately returned to Buyer and neither party shall have any further obligations hereunder other than those that expressly survive the Closing or earlier termination of this Agreement. For purposes hereof "Major Tenants" shall mean any Tenant occupying more the 5,000 square feet of office or warehouse area. Notwithstanding any provision in this Agreement to the contrary, and subject to Buyer's right to terminate this Agreement as set forth in this Subsection E (i), any failure of Seller to obtain any Tenant Estoppel Certificates required herein shall not be a breach or event of default of this Agreement by Seller.

(ii) Seller is currently negotiating a lease with Novixus, LLC ("Novixus") for the space currently occupied by Novixus, plus additional space ("Novixus Space Lease"). Buyer may terminate this Agreement if, no less than ten (10) days prior to the Closing Date, Seller fails to deliver to Buyer a waiver or release from Ryan Industries Inc. ("Ryan") as to any right of first refusal it may have with regard to the Novixus Space Lease under section 18.9 of

Seller's lease with Ryan (the "ROFR Release"). The ROFR Release shall be reasonably acceptable to counsel for Seller and Buyer, and it shall be acceptable for the ROFR Release to be made part of any Tenant Estoppel Certificate obtained from Ryan (the "Ryan TEC"). Notwithstanding any provision in this Agreement to the contrary, and subject to Buyer's right to terminate this Agreement as set forth in this Section 10.2 E (ii), if an ROFR Release reasonably satisfactory to counsel for Seller and Buyer is not delivered to Buyer as required herein, any such failure of Seller shall not be a breach or event of default of this Agreement by Seller.

F. Seller shall use commercially reasonable efforts (which shall not require the expenditure of funds or initiation of litigation) to secure and deliver to Buyer ten (10) days prior to the Closing Date a subordination, non-disturbance and attornment agreement ("SNDA") executed by each tenant under the Tenant Leases in form and content reasonably acceptable to Buyer and its lender, if any, or as required under the Leases. The Buyer shall provide Seller with the form of SNDA as soon as reasonably possible after the Effective Date, but in no event later than the expiration of the Inspection Period. Buyer may terminate this Agreement if, no less than three (3) business days prior to the Closing Date, Seller fails to deliver to Buyer SNDAs executed by Major Tenants. If Buyer terminates this Agreement in accordance with the terms of this Section 10.2 F., the Deposit and all interest accrued thereon shall be immediately returned to Buyer and neither party shall have any further obligations hereunder other than those that expressly survive the Closing or earlier termination of this Agreement.

H. The Title Company shall have irrevocably agreed to issue to the Buyer a marked-up title commitment or pro forma policy obligating the Title Company to issue the requisite Title Policy pursuant to the Commitment in accordance with the terms of this Agreement.

I. The Seller shall have terminated any management and leasing agreements (except the Leases), and any Property Contract, excepting those that Buyer and Seller have mutually agreed to be assumed by Buyer.

Section 10.3. Failure of Condition Precedent. If any condition precedent is not met or otherwise satisfied prior to the Closing Date (except with respect to Sections 10.2 E and F which will be governed as provided therein), the Buyer may deliver to the Seller a written notice of such failure and thereafter the Seller shall use commercially reasonable efforts (which shall not require the expenditure of funds or initiation of litigation) to satisfy the condition precedent within five (5) business days of the Seller's receipt of the failure notice (the "Condition Precedent Cure Period"). If any condition precedent delineated by the Buyer in its failure notice is not met or satisfied within the Condition Precedent Cure Period the Buyer may (i) waive any of the foregoing conditions and proceed to Closing on the Closing Date with no offset or deduction from the Purchase Price, or (ii) notify Seller of Buyer's election to terminate this Agreement and receive a return of the Deposit, whereupon both parties shall be released from all duties and obligations under this Agreement, except as otherwise specifically provided in this Agreement. Notwithstanding any contrary provision of this Agreement, if Buyer is not otherwise in default under this Agreement and has tendered full performance of Buyer's obligations under this Agreement, should Seller fail or refuse to consummate the sale and purchase of the Property in accordance with this Agreement, Buyer shall, subject to the

limitations of Section 12.13 of this Agreement, have the right to seek specific performance of this Agreement in a court of competent jurisdiction. The Closing Date shall be extended to the extent necessary to allow for the Condition Precedent Cure Period provided in this Section.

Section 10.4. Proration Date. As used in this Agreement, the “**Proration Date**” shall be 12:01 a.m. on the Closing Date and for purposes of prorating income and expenses, Buyer shall be deemed to own the Property on the Closing Date.

Section 10.5. Closing Deliveries. All matters to be performed under this Agreement shall be performed concurrently on the Closing Date and shall consist of the following transactions, all of which shall be deemed as having taken place simultaneously and none of which shall be deemed to occur until all have been completed:

- A. Seller will at Closing deliver or effect the following:
 - (i) Delivery to Buyer of the Deed to the Property;
 - (ii) Delivery to Buyer of a counterpart of the Assignment and Assumption of Leases;
 - (iii) Originals of any Tenant Estoppels or SNDAs required under Section 10.2 F and G, above;
 - (iv) Originals (to the extent in Seller’s possession) of: (A) the Leases, including all amendments thereto and modifications thereof; (B) all architectural plans and specifications and other documents in Seller’s possession pertaining to the Property; (C) and (D) all collection, expense and business records, tenant files and such other documentation reasonably necessary for Purchaser to continue the operation of the Property.
 - (vii) Such affidavits and/or lien waivers from Seller, in form acceptable to Title Company, as may be required by the Title Company to issue the title policy required in accordance with **Section 4.2**, provided that unless expressly set forth herein, Seller shall have no obligation to execute any affidavits, indemnities or other agreements in connection with the issuance of the owner’s title insurance policy, other than affidavits in form reasonably satisfactory to Seller as to authority, the rights of tenants in occupancy, the status of and indemnity of the Title Company with respect to construction liens or mechanics liens, necessary to delete standard exceptions and confirmation of no change to any survey which is not a current survey;
 - (viii) Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of Seller and the authority of

the person or persons who are executing the various documents on behalf of Seller in connection with the sale of the Property; and

- (ix) Such other and additional documents, instruments, deliveries and filings as may be required by law or as in the reasonable opinion of Seller's and Buyer's counsel and the Title Company are reasonably necessary to the proper consummation of this transaction.

B. Buyer will at Closing deliver or effect the following:

- (i) Delivery to Seller of the Purchase Price;
- (ii) Delivery to Seller of a counterpart of the Assignment and Assumption of Leases;
- (iii) Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of Buyer and the authority of the person or persons who are executing the various documents on behalf of Buyer in connection with the purchase of the Property; and
- (iv) Such other and additional documents, instruments, deliveries and filings as may be required by law or as in the reasonable opinion of Seller's and Buyer's counsel and the Title Company are reasonably necessary to the proper consummation of this transaction.

C. Prorations and Other Charges and Apportionments:

- (i) All delinquent taxes and assessments, if any, on the Property shall be paid in full by Seller at Closing. Except as otherwise expressly provided for below regarding taxes and assessments that are paid by the tenants under the Leases, all current real estate taxes consisting of the winter and summer tax bills issued for the Property during the twelve (12) months immediately preceding the Closing, shall be prorated and adjusted as of the Proration Date, in accordance with the "due date" basis of the municipality or taxing unit in which the Property is located on the assumption that such taxes are paid in advance such that the summer tax bill shall be assumed to run from July 1st to the following June 30th and the winter tax bill from December 1st to the following November 30th. Notwithstanding the foregoing, to the extent that the Leases require the tenants to be responsible for real property taxes and/or assessments, there shall be no proration of such portion of the real property taxes and assessments that the tenants are required to pay pursuant to the Leases provided Buyer has received a prorated credit for CAM payments made by such tenants for the month of Closing. Future installments of special and general assessments, if any, shall be paid by Buyer.

- (ii) In general, and except as provided in this Agreement or the closing documents, the Seller shall be entitled to all income, and shall pay all expenses,

relating to the operation of the Property for the period prior to the Closing Date, and the Purchaser shall be entitled to all income, and shall pay all expenses, relating to the operation of the Property for the period commencing on and after the Closing Date. With respect to the month in which the Closing Date occurs, Buyer shall be entitled to a credit for rents for the Closing Date and each subsequent day of such month (and if rent has been prepaid through the date of such prepayment), to the extent such rents have actually been received by Seller from the tenants under the Leases (if not paid, there shall be no proration and Buyer may retain any amounts received from the tenants under the Leases subsequent to the Closing Date. In addition, at Closing, taxes (including real estate taxes and assessments), common area maintenance charges, insurance, utilities and any other charges (collectively “**CAM Charges**”) paid by tenants under the Leases shall be prorated as of the Proration Date. With respect to the month in which the Closing Date occurs, Buyer shall be entitled to a credit for CAM Charges for the Closing Date and each subsequent day of such month, to the extent such amounts have actually been received by Seller from the tenants under the Leases (if not paid, there shall be no proration and Buyer may retain any amounts received from the tenants under the Leases subsequent to the Closing Date).

(iii) Buyer shall be credited with the amount of any security deposits held by Seller pursuant to the Leases, which have not been previously applied against rent (or other charges) in arrears.

(iv) Except to the extent payable directly by the tenants under the Leases, Seller shall be responsible for the cost and expense of water and sewer, municipal garbage, rubbish removal and other utilities serving the Property through and including the date immediately preceding the Closing Date. Buyer shall be responsible for the cost and expense of water and sewer, municipal garbage, rubbish removal and other utilities serving the Property for the period commencing on the Closing Date.

(v) Delinquent rents shall not be prorated, but if any delinquent rents are received after Closing, any payments in excess of the then-current rent and expenses shall be remitted to Seller, to be applied to pre-Closing delinquencies.

ARTICLE 11
CONDEMNATION AND DAMAGE BY CASUALTY

Section 11.1. Condemnation. If all of the Real Property is or is proposed to be taken or condemned by any public authority between the Effective Date and the Closing Date, Seller shall give Buyer written notice thereof within ten (10) days of receipt of same, and this Agreement shall terminate and be null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer. Should less than all of the Real Property be or is proposed to be taken or condemned by any public authority between the date of execution of this Agreement and the Closing Date, Seller shall give Buyer written notice thereof within ten (10) days of receipt of same, and Buyer shall have the option:

- (A) To terminate this Agreement by written notice to Seller, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer; or
- (B) To take title to the remaining portion of the Real Property without abatement of Purchase Price, in which event the proceeds of any condemnation award collected by Seller prior to the Closing Date will be paid or credited to Buyer at Closing, and Seller shall assign to Buyer all of Seller's right, title and interest in and to such award (and any award yet to be made) resulting from such taking or condemnation.

Section 11.2. Casualty. If the Real Property suffers damage, which is reasonably estimated by Seller to cost more than twenty-five percent (25%) of the Purchase Price to repair, as a result of any casualty prior to the Closing Date, Buyer may elect, by written notice delivered to Seller prior to the scheduled Closing Date, to:

- i. To terminate this Agreement by written notice to Seller, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer; or
- ii. To take title to the remaining portion of the Real Property without abatement of Purchase Price, in which event the Buyer shall receive all insurance proceeds (and Seller shall cooperate with Buyer in its pursuit of any insurance claims post-closing) resulting from such casualty and Seller shall pay to Buyer the amount of any deductible.

In the event the damage is reasonably estimated to cost twenty-five percent (25%) or less, then subparagraph (ii) above shall apply. All risks of loss are borne by Seller prior to Closing.

ARTICLE 12
MISCELLANEOUS

Section 12.1. Notices. All notices required or permitted hereunder shall be in writing and deemed given if sent by (i) certified or registered mail, return receipt requested; (ii) by a nationally recognized overnight courier service (provided that a receipt is given); or (iii) by email, and confirmed by delivering a copy of email notice by another permitted means, provided that such notice shall be deemed effective upon transmittal (not upon dispatch or receipt of a copy). All notices required or permitted hereunder shall be addressed as follows:

To Seller: Jeffrey K. Tischler, Managing Director
CONWAY MACKENZIE, INC.
401 S. Old Woodward Ave., Suite 340
Birmingham, Michigan 48009
Email: JTischler@ConwayMacKenzie.com

With copy to: Patrick A. Karbowski, Esq.
MCDONALD HOPKINS, PLC
39533 Woodward Avenue, Suite 318
Bloomfield Hills, Michigan 48304
Email: pkarbowski@mcdonaldhopkins.com

To Buyer: Kenneth J. Clarkson, Esq.
Jaffe, Raitt, Heuer & Weiss, P.C.
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
Email: kclarkson@jaffelaw.com

Section 12.2. Entire Agreement. This Agreement, including the attached Exhibits, shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement and shall supersede all previous negotiations, commitments, writings or agreements of sale.

Section 12.3. Amendment. This Agreement may not be amended, changed or modified in any manner except by an instrument in writing signed by each of the parties hereto or their duly appointed officers or representatives. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be a waiver of such provision or in any way affect the validity of this Agreement or any part of this Agreement or the right of any party thereafter to enforce each and any such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach of this Agreement.

Section 12.4. Headings. The captions and headings appearing in this Agreement are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

Section 12.5. Brokers. Seller shall pay any commission due to Steve Gordon of Signature Associates pursuant to a separate written agreement between Seller and Signature Associates. Except as provided in this **Section 12.5**, each party represents and warrants to the other party that neither party, nor anyone acting on the behalf of either party, has incurred any liability to any broker or finder in connection with the transaction contemplated by this Agreement and each party agrees to defend and indemnify the other party against claims of any such broker or anyone claiming by, through or under such party. These representations, warranties and indemnities shall survive Closing and/or termination of this Agreement for any reason.

Section 12.6. Computation of Time Period. Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days, provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

Section 12.7. Counterparts. This Agreement may be executed in multiple counterparts, in original or by fax or by delivery of a scanned counterpart in portable document format (PDF) by e-mail (which shall be deemed received if delivered in accordance with the Michigan Uniform Electronic Transactions Act, MCL §450.831 *et seq.*) and, when taken together, shall be considered an original. On such delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart had been delivered to the other party in person.

Section 12.8. Binding. This Agreement shall be binding upon the parties, and their respective successors and permitted assigns. Seller agrees that Buyer may assign this Agreement and its rights under this Agreement (provided, however, that Buyer shall not be released from liability as a result of such assignment and that such entity is controlled by or affiliated with Buyer and further provided that Buyer notifies Seller at least ten (10) business days prior to the Closing Date as to which entity will take title to the Property).

Section 12.9. Exchange of Property. Seller agrees, if requested by Buyer, to cooperate with Buyer to permit Buyer to consummate an exchange of property pursuant to IRC Section 1031, including but not limited to the execution of those documents necessary to effectuate such exchange. Seller shall not be responsible for any tax or economic consequences associated with any IRC Section 1031 exchange by Buyer hereunder. Further, Buyer agrees to pay all costs relative to the preparation of documents and expenses related to the closing of said exchange,

and reimburse Seller for any costs incurred by Seller relative to same, including without limitation, reasonable attorney's fees.

Section 12.10. Severability. If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 12.11. Governing Law/Waiver of Jury Trial. This Agreement shall be construed in accordance with the internal laws of the State in which the Real Property is located. In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, Seller and Buyer hereby agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Agreement or which in any way relates, directly or indirectly, to this Agreement or any event, transaction, or occurrence arising out of or in any way connected with this Agreement or the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.

Section 12.12. Failure to Comply. **Section 12.12. Failure to Comply.** If Seller defaults under this Agreement, Buyer may, not less than ten (10) days after Buyer's written notice to Seller detailing the alleged default, and provided that Seller has not cured said default within such ten (10) day period, elect, as Buyer's sole remedy, to either: (a) terminate this Agreement, in which event Buyer shall be entitled to the return by the Title Company of the Escrow Funds or (b) bring a suit for specific performance, provided that such suit for specific performance is filed and served upon Seller within the earlier to occur of (i) ten (10) days from the Closing Date or (ii) thirty (30) days from the date of Seller's default, Buyer waiving the right to bring suit at any later date. In the event of a default by Buyer of this Agreement, Seller, not less than ten (10) days after Seller's written notice to Buyer detailing the alleged default, and provided that Buyer has not cured said default within such ten (10) day period, shall be entitled to the Escrow Funds as liquidated damages, which liquidated damages shall be Seller's sole and exclusive remedy. Provided however that if specific performance is defeated by the conveyance or encumbrance of the Property, Buyer shall be entitled to liquidated damages equal to \$100,000.

Section 12.13. Limitation on Liability. Notwithstanding anything to the contrary contained in this Agreement, Buyer agrees that, except for matters of: fraud; breach of representations and warranties in Sections 8.1 A., B., C., D, and E.; in the event Buyer's claim for specific performance is defeated due to Seller's conveyance or encumbrance of the Property, its recourse against Seller under this Agreement or under any other agreement, document, certificate or instrument delivered by Seller to Buyer, or under any law applicable to the Property or this transaction, shall be strictly limited to Seller's interest in the Property (or upon consummation of the transaction contemplated hereunder, to the net proceeds of the sale thereof actually received by Seller), but in no event shall Buyer seek or obtain any recovery or judgment against any of Seller's other assets (if any) or against any of Seller's members, partners, or

shareholders, as the case may be (or their constituent members, partners, or shareholders, as the case may be) or any director, officer, employee or shareholder of any of the foregoing. Buyer agrees that Seller shall have no liability to Buyer unless it makes a written claim prior to the expiration of the survival period set forth in Section 8.3 above. Additionally and notwithstanding anything in this Agreement to the contrary, (i) in no event shall Buyer have the right to bring a cause of action for any post-Closing claims until the amount of all of Buyer's post-Closing claims exceeds Fifty Thousand and No/100 Dollars (\$50,000.00) in the aggregate (and then the claim shall be for the entire amount) and (ii) in no event shall the total amount of any and all of Buyer's post-Closing claims for Seller's default exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00) in the aggregate. Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this Section 12.13. The provisions of this Section 12.13 shall survive the Closing or any termination of this Agreement indefinitely.

Section 12.14. Public Announcements. Neither party hereto shall make any public announcements or press release concerning this Agreement, the parties' names or the transactions contemplated herein except as may be mutually agreed upon by the parties in writing, except as required for a party to comply with its express obligations hereunder or as required by applicable law or regulation. Buyer shall be permitted to discuss transaction with potential tenants, partners, buyers and/or lenders of the Property and Buyer's employees, investors, attorneys and other advisors (collectively, "**Interested Parties**") during the escrow period, provided that such parties agree to comply with the terms of this **Section 12.14**. Notwithstanding anything to the contrary contained herein, neither Buyer nor any of the Interested Parties shall use Seller's or its affiliates names publically, including, without limitation, in any press releases, publicity or sales or marketing materials, without the prior consent of Seller, except as required to complete the transactions that are contemplated by this Agreement, such as in communications with the Title Company. The provisions of this **Section 12.14** shall survive Closing or the earlier termination of this Agreement.

Section 12.15. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) principal and agent; (ii) a partnership; or (iii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of seller and purchaser.

Section 12.16 Prevailing Party. In the event of a judicial or administrative proceeding or action by one party against the other party with respect to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable costs and expenses including reasonable attorneys' fees and expenses, whether at the investigative, pretrial, trial or appellate level. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments or position prevailed.

Section 12.17 IRS Real Estate Sales Reporting. Buyer and Seller hereby agree that the Title Company shall act as "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to Section 6045(e) of the Code and shall prepare and file all

informational returns, including IRS Form 1099-S, and shall otherwise comply with the provisions of Section 6045(e) of the Code.

Section 12.18 Time of the Essence. Time is of the essence of this Agreement and all covenants and deadlines hereunder. Without limiting the foregoing, Buyer and Seller hereby confirm their intention and agreement that time shall be of the essence of each and every provision of this Agreement, notwithstanding any subsequent modification or extension of any date or time period that is provided for under this Agreement. The agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement shall not be waived or modified by any conduct of the parties, and the agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement may only be modified or waived by the express written agreement of Buyer and Seller that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

Section 12.19 Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely because it may have been prepared primarily by legal counsel for one of the parties, it being recognized that both Buyer and Seller and their legal counsel have contributed substantially and materially to the preparation of this Agreement.

ARTICLE 13 CONFIDENTIALITY AND NON-DISCLOSURE

Section 13.1. Confidentiality and Non-Disclosure. Except as otherwise required by law, Buyer and Seller each acknowledges that the existence of this Agreement, and any and all of the documents, materials, information, and/or findings provided to or obtained by Buyer regarding the Property (“**Confidential Information**”) are proprietary and confidential in nature. Except as otherwise provided herein, Buyer agrees not to disclose the Confidential Information to any party outside of Buyer's, Seller's, Buyer's affiliates', or Seller's affiliates' organizations except to Buyer's and Seller's respective agents, attorneys, accountants, lenders, or advisors (collectively, “**Permitted Outside Parties**”). Buyer further agrees that the Confidential Information shall be disclosed and exhibited only to those persons within Buyer's organization, or to the Permitted Outside Parties who have been made aware of the confidentiality of such information as required herein. Seller agrees that the existence of this Agreement shall be disclosed and exhibited only to those persons within Seller's organization, or to the Permitted Outside Parties who have been made aware of the confidentiality of such information as required herein. Notwithstanding anything to the contrary contained in this Agreement (or in any document or instrument related to this Agreement), at any time after the Effective Date, Buyer, Seller, and/or the Permitted Outside Parties shall be permitted to disclose any Confidential Information as may be requested by governmental inquiry, or required by subpoena, court order, or as otherwise may be required by law or regulation. Notwithstanding anything contained herein to the contrary “**Confidential Information**” shall not include information that (i) was, is or becomes publicly available through the acts of a Party other than the Party alleged to have disclosed the Confidential Information in violation of this Section, or (ii) was provided to Buyer, Seller, or any Permitted Outside Parties by a third party on a non-confidential basis. The non-

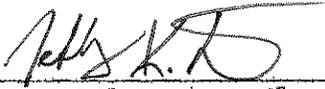
disclosure and confidentiality requirements set forth in this **Section 13.1** shall terminate at Closing but shall survive any termination of this Agreement. In addition to any other remedies available to Seller, Seller shall have the right to seek equitable relief, including, without limitation, injunctive relief or specific performance, against the Buyer in order to enforce the provisions of this **Section 13.1**.

[Signatures are on the following page]

ACCORDINGLY, the parties have executed this Agreement on the day and in the year indicated below, to be effective on the Effective Date.

"Seller":

FRANK W. KERR COMPANY,
a Michigan corporation

By: 
Name: JEFFREY K. TISCHLER
Title: CHIEF RESTRUCTURING OFFICER
Dated: July 30, 2016

"Buyer":

NOVI NINE MILE ASSOCIATES LLC,
a Michigan limited liability company

By: 
Name: William E. Sider
Title: Authorized Agent
Dated: July 25, 2016

[Signature Page to Purchase and Sale Agreement]

EXHIBIT A

Legal Description of Real Property

EXHIBIT C
(Personal Property)

NONE.

Buyer acknowledges that no Personal Property will be sold and transferred to Buyer as part of the Agreement.

EXHIBIT D
(the Leases)
[to be attached]

EXHIBIT E

(form of Covenant Deed)

COVENANT DEED

THE GRANTOR: Frank W. Kerr Company, a Michigan corporation
WHOSE ADDRESS IS: 43155, West Nine Mile Road, Novi, Michigan 48376

CONVEYS AND COVENANTS
TO THE GRANTEE: Novi Nine Mile Associates LLC, a Michigan limited liability
company

WHOSE ADDRESS IS:

the land situated in the City of Novi, Oakland County, Michigan, more fully described on Exhibit A attached to this Deed, together all improvements thereon and all rights and appurtenances pertaining thereto, including, but not limited to, any right, title and interest of Grantor in and to adjacent roads, alleys, rights-of-way, and easements ("**Property**"), subject to existing building and use restrictions and easements, of record, and zoning ordinances, if any, and taxes and assessments not yet due and payable.

The Grantor covenants and agrees that Grantor has not done, committed, or willingly or willfully suffered to be done or committed, any act matter or thing whatsoever, whereby the Property conveyed, or any part thereof, is or shall or may be charged or encumbered in title or estate, and Grantor shall defend title to the Property from and against all lawful claims and demands of all persons claiming by, through, or under the Grantor, but against no other persons.

This Deed is given for the consideration set forth in the Real Estate Transfer Tax Valuation Affidavit filed with this Deed.

[The Grantor grants to the Grantee the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended ("**Act**"). The Grantors make no representation or warranty regarding the number, extent or nature of the division rights owned or transferred by the Grantor to the Grantee.

This Property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.]

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Exhibit E

Effective as of _____, 2016.

FRANK W. KERR COMPANY
a Michigan corporation

By: _____

Name: _____ *

Its: _____

STATE OF MICHIGAN }
COUNTY OF OAKLAND }

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by _____, the _____ of Frank W. Kerr Company, a Michigan corporation, who is personally known by me, or who provided sufficient evidence of identification to me.

*Notary Public

_____ County, Michigan

My Commission Expires: _____

DRAFTED BY:

WHEN RECORDED, RETURN AND SEND
SUBSEQUENT TAX BILLS TO:

PATRICK A. KARBOWSKI, ESQ.
MCDONALD HOPKINS, PLC
39533 WOODWARD AVENUE, SUITE 318
BLOOMFIELD HILLS, MI 48304

*Type or print name in black ink beneath signature

{6213061:9}
22104917.2
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Exhibit E

EXHIBIT A
(LEGAL DESCRIPTION)
[to be attached]

EXHIBIT B

“PERMITTED EXCEPTIONS”

EXHIBIT F

(form of Assignment and Assumption of Leases)

ASSIGNMENT AND ASSUMPTION OF LEASES

This Assignment and Assumption of Leases (the "Assignment") dated as of _____, 2016 (the "Effective Date"), is made by and between FRANK W. KERR COMPANY, a Michigan corporation, as assignor ("Assignor") and NOVI NINE MILE ASSOCIATES LLC, as assignee ("Assignee").

RECITALS

WHEREAS, Assignor and Assignee entered into that certain Purchase Agreement dated _____, 2016 (the "Purchase Agreement") regarding the purchase and sale of 43155, 43157 and 43159 West Nine Mile Road, Novi, Michigan 48376 and certain other assets (collectively, the "Property"); and

WHEREAS, Assignor is the landlord under certain lease agreements (collectively, the "Leases") identified on Exhibit A attached hereto and made a part hereof regarding Assignor's leases of the property to certain tenants;

WHEREAS, the Purchase Agreement requires the Assignor and Assignee to execute and deliver this Assignment.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

A. Assignor hereby assigns and transfers unto Assignee all of Assignor's right, title and interest in and to the Leases and delegates unto Assignee all of Assignor's duties and obligations under the Leases; TO HAVE AND TO HOLD the same for the unexpired term of the Lease.

B. Assignee acknowledges that it has examined and is familiar with all of the terms and provisions of the Leases, Assignee hereby assumes each and every obligation in the Lease to be performed by Assignor, after the Effective Date. Assignee shall not assume any of Assignor's obligations or liabilities under the Leases that accrued or matured prior to the Effective Date.

C. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims, causes of action, damages, losses, costs of attorneys' fees suffered or incurred by Assignee relating to liabilities and obligations of Assignor under, in respect of or related to the Leases, or any act or omission of Assignor in connection with the Leases, arising, accruing or occurring prior to the Effective Date. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims, causes of action, damages,

{6213061:9}

Exhibit F

losses, costs of attorneys' fees suffered or incurred by Assignor relating to liabilities and obligations of Assignee under, in respect of or related to the Leases, or any act or omission of Assignee in connection with the Leases, arising, accruing or occurring on or after the Effective Date.

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Exhibit F

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IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

ASSIGNOR:

ASSIGNEE:

FRANK W. KERR COMPANY
a Michigan corporation

NOVI NINE MILE ASSOCIATES LLC
a Michigan limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

{6213061:9}

Exhibit F

EXHIBIT A
(the Leases)
[to be inserted]

{6213061:9}

Exhibit F

EXHIBIT G

(form of Tenant Estoppel Certificate)

TENANT ESTOPPEL CERTIFICATE

This Tenant Estoppel Certificate (the "Certificate") is given to Novi Nine Mile Associates LLC ("**Purchaser**") by [_____] ("**Tenant**"), with the understanding that Purchaser or any lender of Purchaser, will rely on this Certificate regarding the _____ building located at 43155 West Nine Mile Road, Novi, Michigan 48376 (the "**Building**").

Tenant hereby certifies as of the date that Tenant signs this Certificate below as follows:

1) The undersigned is the Tenant under that certain Lease dated _____, 20__ (the "**Original Lease**") executed by Frank W. Kerr Company, a Michigan corporation ("**Landlord**"), as landlord, and Tenant, as tenant, which Original Lease was amended by that certain _____, and together with the Original Lease referred to herein as the "**Lease**"). The Lease is the entire agreement between Landlord and Tenant pertaining to the leased premises. There are no amendments, modifications, supplements, arrangements, side letters or understandings, oral or written, of any sort, of the Lease, except as noted above.

2) Tenant's Lease terms:

(a) Premises: _____ Rentable square feet

(b) Commencement date : _____, 20__

(c) Expiration date : _____, 20__

(d) Current monthly base rent: \$ _____

(e) Current monthly additional rent: \$ _____

(f) Security deposit: _____

3) Base rent has been paid through _____, 2016, and no base rent has been prepaid month than one month in advance.

4) Tenant has no right or option to renew or extend the term of the Lease, or to expand into any additional space, or to terminate the Lease in whole or in part prior to the expiration of the term, or to purchase all or any part of the Property or the Premises, except for the following _____

{6213061:9}

Exhibit G

5) The Lease has been duly executed and delivered by, and is a binding obligation of, Tenant, and the Lease is in full force and effect.

6) Tenant has unconditionally accepted possession of the Premises. Tenant has taken possession and is in occupancy of the Premises.

7) To Tenant's knowledge, Landlord is not in default under the Lease. To Tenant's knowledge, there are no pending or outstanding offsets or defenses that Tenant has against the full enforcement of the Lease by Landlord, and there are no pending free periods of rent, tenant improvements, contributions or other concessions granted to Tenant. There are no unpaid tenant improvement allowances, rent concessions or other sums owed to Tenant under the terms of the Lease.

8) To Tenant's knowledge, Tenant is not in default under the Lease. Tenant has not assigned, transferred or hypothecated the Lease or any interest therein or subleased all or any portion of the Premises. Tenant is not insolvent and is able to pay its debts as they mature. Tenant has not declared bankruptcy or similar insolvency proceeding, and no such proceeding has been commenced against Tenant seeking such relief.

9) The term "Landlord" as used herein includes any successor or assign of the named Landlord. The person executing this Estoppel Certificate is authorized by Tenant to do so.

10) Notwithstanding the foregoing or anything to the contrary contained in this Certificate, nothing herein shall constitute or be deemed to constitute an amendment or modification of any term or condition of the Lease.

Dated: _____, 2016 _____:

By: _____

Name: _____

Title: _____

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Exhibit G

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EXHIBIT H

(Property Information)

- A. Rent Roll
- B. Written Leases, if any
- C. Information on Rent, and on CAM Charges and other expenses passed through to tenants under the Leases, if any.
- D. Service contracts regarding the services provided to the tenants under the Leases, if any.
- E. Survey, if any
- F. Property Contracts, if any

{6213061:9}

Exhibit H

EXHIBIT C



EXCLUSIVE LISTING AGREEMENT FOR SALE

In consideration of your services as broker in offering the following described property for sale, the undersigned hereby grants you the exclusive right, from this day to twelve o'clock noon of December 31, 2016 to find a Purchaser therefore. Thereafter, this Agreement shall be extended, on a month-to-month basis, until either party hereto terminates this Agreement by written notice thereof to the other party.

Land and premises located in the City of Novi, County of Oakland, State of Michigan, described as an industrial building consisting of approximately 315,750 square feet.

The sale price shall be Eleven Million Five Hundred Thousand and no/100 (\$11,500,000.00) Dollars, under terms and conditions acceptable to Owner in its sole discretion.

OWNER AGREES AND REPRESENTS AS FOLLOWS:

1. It is agreed by the Real Estate Broker, Real Estate Salesperson and Owner that as required by law, discrimination because of religion, race, color, national origin, handicap age, sex or marital status on the part of the Real Estate Broker, Real Estate Salesperson or Owner in respect to the lease or sale of the subject property is prohibited.
2. If a Purchaser is obtained by you or by anyone for Owner (including Owner) during said period, at the stated price and terms or upon any other price, terms or exchange to which Owner consents, or if said property is sold by Owner or for Owner within one hundred twenty (120) days after expiration of this Agreement, or if either an Agreement to Sell is entered into or an Option to Purchase is granted within said time period but the transaction is not closed until after the expiration of said time period to a purchaser known to Owner to have been shown the property during said period by Broker and registered in writing with Owner prior to the expiration of this Agreement, the Owner agrees to pay the Broker a commission of five (5%) percent of the aggregate sale price. Such commission shall be due and payable at closing.
3. The undersigned is the Owner of the above-described property and has the right and authority to enter into this Agreement and any Purchase Agreement with respect to said property.



EXCLUSIVE LISTING AGREEMENT FOR SALE - PAGE TWO

43155 W. Nine Mile Road, Novi

4. That Broker may show the property to prospective Purchasers during reasonable hours, erect a "For Sale" sign thereon, remove other "For Sale" signs there from, or cooperate with other brokers. However, Owner shall not be under obligation to pay any commission except as above provided.

Receipt of a copy hereof is hereby acknowledged.

BROKER:

Signature Associates
One Towne Square, Ste. 1200
Southfield, Michigan 48076
(248) 948-9000

By: 
Steven G. Gordon, President

Date: _____

OWNER:

By: 
Jeffrey K. Tischer
Its: Chief Restructuring Officer
Date: 6/6/16

EXHIBIT D

**ESCROW AGREEMENT
(Earnest Money Deposit)**

File Number: 751257
Date: August 03, 2016
Property Address: 43155 Nine Mile Road, Novi, MI 48375

Deposited with First American Title Insurance Company, as Escrowee, is a check in the amount of **\$100,000.00** (the "Funds"), representing the earnest money deposit of Purchaser under a purchase agreement with the seller covering the referenced property. This Escrow Agreement shall be null and void if the check presented to Escrowee hereunder is not honored upon deposit.

The funds deposited hereunder are to be held by Escrowee in escrow for delivery under the following terms and conditions:

- 1) upon written direction of Seller and Purchaser, the escrowed funds shall be applied toward the purchase price of the property at closing, or;
- 2) upon written direction of Seller and Purchaser, the escrowed funds shall be disbursed by Escrowee as so directed, and;
- 3) unless written instructions to disburse are furnished to Escrowee on or before then Escrowee shall, at its option, continue to hold such Deposit until written instructions to disburse are received, or it shall initiate an interpleader action in a court of competent jurisdiction and deposit all of the escrowed funds for determination by the court of the proper disposition of such escrowed funds. Upon any such deposit with the court, this escrow shall terminate, and;
- 4) in the event of any dispute regarding this escrow, Escrowee may, at its option, continue to hold such funds until joint written instructions directing the disbursement of the escrowed funds are furnished to Escrowee by Seller and Purchaser, or it may initiate an interpleader action in a court of competent jurisdiction and submit the deposit for determination by the court of a proper disposition. Upon submission of the deposit to such court, this escrow shall terminate and the Escrowee shall be relieved of any further liability hereunder.

Upon making such delivery, and performance of any other services included above, Escrowee will thereupon be released and acquitted from any further liability concerning the deposit, it being expressly understood that such liability in any event is limited by the terms and conditions set forth herein. By acceptance of this deposit, Escrowee is in no way guaranteeing the sufficiency of the deposit, and Escrowee shall incur no liability for the failure of any financial institution used by it as an escrow depository. Escrowee shall not be responsible for the payment of any interest on the escrowed funds unless directions to invest are accepted in writing by Escrowee.

In the event of an interpleader action or other litigation affecting its duties relating to this deposit, Seller and Purchaser jointly and severally agree to reimburse Escrowee for any reasonable expenses incurred, including attorney fees.

In the event that any funds held in escrow remain unclaimed beyond six (6) months after the termination date recited in this Agreement, Escrowee shall be entitled to a reasonable administrative fee to be deducted from the escrow proceeds.

Any change in the terms and conditions hereof may be made only in writing signed by all parties or their duly authorized representatives.

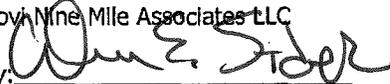
For its services as herein set forth Escrowee is to be paid the sum of **\$N/A** by **Purchaser**.

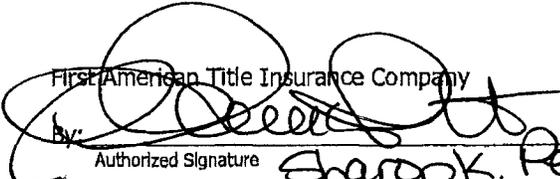
Seller(s):

Frank W. Kerr Company

By: 
Name: Jeffrey K. Tischler
Title: Chief Restructuring Officer

Purchaser(s):

Novi Nine Mile Associates LLC
By: 
Name: William E. Sider
Title: Authorized Agent

First American Title Insurance Company
By: 
Authorized Signature Sharon K. Pettie



First American Title Insurance Company

EC APP-018 (Rev 8/97)

(Attached to and becoming a part of Escrow Agreement dated:)

Seller's Forwarding Address:

501 S. Old Woodward Ave. Suite 401
Birmingham, MI 48009
Phone Number: 248-952-8579

Purchaser's Forwarding Address:

Suite 2500
27777 Franklin Rd SFED MI 48034
Phone Number: 248-351-3000



First American Title Insurance Company

EC APP-018 (Rev 8/97)

EXHIBIT E

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Amendment to that certain Purchase and Sale Agreement having an Effective Date of July 30, 2016 (the "Amendment") is entered into on August 22, 2016, by and between FRANK W. KERR COMPANY, a Michigan corporation ("Seller"), and Novi Nine Mile Associates LLC, a Michigan limited liability company ("Buyer"), on the terms and conditions set forth below.

RECITAL OF FACTS UNDERLYING THE AMENDMENT

A. On July 30, 2016 the parties entered into an Purchase and Sale Agreement ("Agreement") for the purchase of the property commonly known as the Frank W. Kerr Building, located at 43155, 43157 and 43159 West Nine Mile Road, Novi, Michigan 48376 (the "Property").

B. The parties now desire to amend the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, Seller and Buyer, intending to be legally bound, agree to amend the Agreement as follows:

1. Section 3.1 is amended by deleting "Ten Million One Hundred Thousand Dollars (\$10,100,000)", and substituting therefor "Nine Million Eight Hundred Twenty Five Thousand Dollars (\$9,825,000)".

2. Section 4.3 is deleted and the following is substituted in its stead:

The Buyer has elected to obtain, and has contracted for the delivery of, a Phase II Environmental Site Assessment ("Phase II") with respect to the Property, all at its sole cost and expense. The Buyer shall have the right to cause such investigation as may be necessary to complete the Phase II on the Property, subject to Seller's approval as to the location of any invasive testing, such approval not to be unreasonably withheld or delayed. The Buyer shall have until the close of business on September 15, 2016, to receive and review the Phase II, and Buyer shall provide Seller with a copy of the Phase II upon Buyer receiving it. In the event the results of the Phase II are not acceptable to Buyer in its sole discretion, the Buyer may, by written notice to the Seller delivered before the close of business on September 15, 2016, terminate this Agreement and receive a full refund of its Deposit. In such an event, this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except for those which are specifically provided to survive termination. Purchaser hereby agrees that it has waived all other rights it may have to terminate this Agreement by sending a Due Diligence Termination Notice as provided in Section 4.1.

3. Section 10.1 is amended by deleting the first sentence of such Section and substituting the following in its stead:

As used in this Agreement, the "Closing Date" shall be September 26, 2016.

4. Seller represents and warrants that Seller has not taken any actions which would entitle Ryan to exercise the ROFR. As a result, Section 10.2 E. (ii) of the Agreement is deleted.

{6289516;2}
3526834.v3

5. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Amendment. Receipt of an executed signature page to this Amendment by facsimile or other electronic transmission (e.g., pdf) shall constitute effective legal delivery thereof and shall be deemed an original signature hereunder for all purposes.

6. Any capitalized terms not defined herein have the meaning ascribed to them in the Agreement. The Recitals set forth above have the same force and effect as if set forth in the body of this Amendment. To the extent that the specific terms and provisions of this Amendment purport to amend or modify or are in conflict with the specific terms, provisions and exhibits of the Agreement, the terms and provisions of this Amendment shall govern and control; in all other respects, the terms, provision, exhibits of the Agreement shall remain unmodified and in full force and effect. Without limitation and for avoidance of doubt, the indemnity for pre-closing matters in the Assignment of Lease includes any claim Ryan may raise with respect to the ROFR.

SIGNATURES ON FOLLOWING PAGE

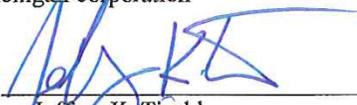
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*SIGNATURE PAGE TO FIRST AMENDMENT
TO KERR-NOVI NINE MILE
PURCHASE AND SALE AGREEMENT*

ACCORDINGLY, Seller and Purchaser have executed this Amendment to be effective as of the day and year first above written.

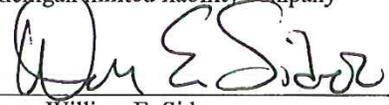
“Seller”:

FRANK W. KERR COMPANY,
a Michigan corporation

By: 
Name: Jeffrey K. Tischler
Title: Chief Restructuring Officer
Dated: August 22, 2016

“Buyer”:

NOVI NINE MILE ASSOCIATES LLC,
a Michigan limited liability company

By: 
Name: William E. Sider
Title: Authorized Agent
Dated: August 22, 2016

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3526834.v3

EXHIBIT F

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Second Amendment to that certain Purchase and Sale Agreement having an Effective Date of September 15, 2016 (the “**Second Amendment**”) is entered into on September 15, 2016, by and between FRANK W. KERR COMPANY, a Michigan corporation (“**Seller**”), and NOVI NINE MILE ASSOCIATES LLC, a Michigan limited liability company (“**Buyer**”), on the terms and conditions set forth below.

RECITAL OF FACTS UNDERLYING THE AMENDMENT

A. On July 30, 2016 the parties entered into an Purchase and Sale Agreement (“**Agreement**”) for the purchase of the property commonly known as the Frank W. Kerr Building, located at 43155, 43157 and 43159 West Nine Mile Road, Novi, Michigan 48376 (the “**Property**”).

B. On or about August 22, 2016 Seller and Buyer entered into a First Amendment (“**First Amendment**”) to the Agreement.

C. On August 23, 2016, a Petition for Involuntary Bankruptcy was filed against Seller in the United States Bankruptcy Court for the Eastern District of Michigan (the “**Court**”), being Case No. 16-51724 (the “**Bankruptcy Case**”).

D. As a result of the Bankruptcy Case, the Title Company added a requirement (“**Requirement**”) for the issuance at Closing of an owner’s policy of title insurance that an Order from the Court be obtained authorizing the purchase and sale of the Property pursuant to the Agreement (the “**Order**”).

E. The parties now desire to amend the Agreement as set forth in this Second Amendment.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, Seller and Buyer, intending to be legally bound, agree to amend the Agreement as follows:

1. Buyer hereby waives its Due Diligence contingencies under Section 4.1 and 4.3 of the Agreement.

2. Buyer and Seller agree that the Bankruptcy Case and the Requirement constitute an Objection under Section 4.2 of the Agreement and, notwithstanding any contrary provision contained in Section 4.2 or in the Agreement, Seller shall have sixty (60) days from the date of this Second Amendment to obtain the Order for the removal of the Requirement. In the event Seller is unable to obtain the Order and the removal of the Requirement within such sixty (60) day period, the Buyer shall have the right to elect to terminate the Agreement in accordance with Section 4.2, including the return of the Escrowed Funds as set forth in Section 4.2.

3. This Second Amendment may be executed in any number of counterparts and by the

different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Receipt of an executed signature page to this Second Amendment by facsimile or other electronic transmission (e.g., pdf) shall constitute effective legal delivery thereof and shall be deemed an original signature hereunder for all purposes.

4. Any capitalized terms not defined herein have the meaning ascribed to them in the Agreement. The Recitals set forth above have the same force and effect as if set forth in the body of the Second Amendment. To the extent that the specific terms and provisions of this Second Amendment purport to amend or modify or are in conflict with the specific terms, provisions and exhibits of the Agreement or the First Amendment, the terms and provisions of this Second Amendment shall govern and control; in all other respects, the terms, provision, exhibits of the Agreement and First Amendment shall remain unmodified and in full force and effect.

SIGNATURES ON FOLLOWING PAGE

*SIGNATURE PAGE TO SECOND AMENDMENT
TO KERR-NOVI NINE MILE
PURCHASE AND SALE AGREEMENT*

ACCORDINGLY, Seller and Purchaser have executed this Second Amendment to be effective as of the day and year first above written.

"Seller":

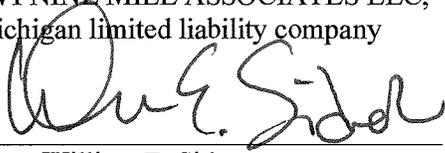
FRANK W. KERR COMPANY,
a Michigan corporation

By: _____

Name: Jeffrey K. Tischler
Title: Chief Restructuring Officer
Dated: September 15, 2016

"Buyer":

NOVI NINE MILE ASSOCIATES LLC,
a Michigan limited liability company

By:  _____

Name: William E. Sider
Title: Authorized Agent
Dated: September 15, 2016

*SIGNATURE PAGE TO SECOND AMENDMENT
TO KERR-NOVI NINE MILE
PURCHASE AND SALE AGREEMENT*

ACCORDINGLY, Seller and Purchaser have executed this Second Amendment to be effective as of the day and year first above written.

Seller:

FRANK W. KERR COMPANY,
a Michigan corporation

By: 

Name: Jeffrey K. Tischler
Title: Chief Restructuring Officer
Dated: September 15, 2016

Buyer:

NOVI NINE MILE ASSOCIATES LLC,
a Michigan limited liability company

By: _____

Name: William E. Sider
Title: Authorized Agent
Dated: September 15, 2016