

Christian H. Dribusch (507021)
1001 Glaz Street
Eat Greenbush, New York 12061
(518) 729-4331

Date: December 21, 2016
Time: 10:30 a.m.
Place: James T. Foley Courthouse
445 Broadway, 3rd Floor
Albany, NY 12207

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

-----X

In re:

GREEN OAK STOCKADE VIEW
APARTMENTS, LLC.

Chapter 11

Case No. 16-12162

Debtor

-----X

MOTION (I) AUTHORIZING DEBTOR'S SALE OF ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS PURSUANT TO 11 U.S.C. §363; (II) CONFIRMING BIDDING PROCEDURES; AND (III) AUTHORIZING BREAK-UP FEE

TO: HON. ROBERT E. LITTLEFIELD, UNITED STATES BANKRUPTCY JUDGE

Green Oak Stockade View Apartments, LLC. a New York limited liability company, debtor-in-possession herein (the "Debtor"), by and through its undersigned counsel, hereby moves this Court for entry of an order authorizing the Debtor to sell certain assets outside the ordinary course of business and enter a sale agreement and assign certain agreements (the "Motion").

The proposed sale agreement ("Agreement") is attached hereto as Exhibit A.

In support of the Motion, the Debtor alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. On November 30, 2016 (the “Petition Date”), the Debtor filed in this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. The Debtor has continued to operate and manage its business as debtor-in-possession pursuant to Bankruptcy Code § 1107(a) and § 1108.

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and § 1334.

4. Venue is proper in this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. § 1408 and § 1409.

5. The predicate for the relief sought is Bankruptcy Code § 363, § 105, and Federal Rules of Bankruptcy Procedure Rules 2002, 6004, and 9007.

BACKGROUND

6. The Debtor owns a 5 story apartment building consisting of approximately 56 units (29 – 1 bedroom; 37 – 2 bedroom) together with 2 commercial storefronts on the first floor.

7. The Debtor owns an apartment complex with 2 retail stores located on the first floor. The Debtor defaulted on its mortgage to the National Bank of Coxsackie which commenced a foreclosure proceeding requesting the appointment of a receiver. Conor Brownell, Esq. was appointed receiver by the Supreme Court, Schenectady County.

8. The Debtor’s real estate is subject to the following liens in the approximate sums:

a. Coxsackie Bank \$3,240,390.00

b. NYS Depart. of Labor	5,400.00
c. NYS Dept. of Tax and Finance	3,100.00
d. NYS Workers Compensation	<u>19,000.00</u>
Total	\$3,267,890.00

9. The Debtor has approximately \$63,324.00 of alleged unsecured debt as more particularly set forth in its Petition.

10. Based upon the secured and unsecured claims, the allocation of the purchase price will be approximately as follows:

Contract Price		\$4,000,000.00
Secured Debts	\$3,267,890.00	
Closing Costs (including Broker commission)	140,000.00	
Unsecured Creditors	<u>63,324.00</u>	<u>\$3,471,214.00</u>
Surplus		\$528,786.00

11. The sale by the Debtor should generate sufficient funds to pay secured creditors as required under Bankruptcy Code § 363(f).

12. It is essential that the sale of the Debtor's assets and business be consummated as soon as possible because the claims of the creditors are increasing thus diminishing the amounts available to equity. Since creditors are being paid in full, many of the reasons for the protections of distribution through a confirmation of a plan are not present under the circumstances of this case.

13. Accordingly, it is the Debtor's business judgment that the sale of the real estate outside the ordinary course of business serves all the parties in interest.

BIDDING PROCEDURES AT SALE HEARING

14. To maximize the sale proceeds, the Debtor requests that the Court conduct an open auction at the Sale Hearing on the following terms and conditions:

- (a) All initial competing bids must equal or exceed \$4,050,000.00;
- (b) All subsequent bids shall be in increments of \$2,500.00;
- (c) Competing bid requires a good faith deposit in the amount of \$200,000 by certified or cashier's check payable to counsel for the Debtor which shall be forfeited if the buyer fails to close or to execute the Agreement, modified *only* as to the identity of the buyer and price, or such other terms that are more favorable to the Debtor than the terms set forth in the Agreement. If requested by the Debtor, the buyer must demonstrate satisfactory proof of its ability to consummate the sale before being permitted to either bid or purchase the assets;
- (d) All counterbids cannot be subject to any conditions including, but not limited to, any condition based upon the competing bidder's ability to obtain financing, except for those conditions set forth in the Agreement;
- (e) The Debtor reserves the right to: (i) impose, at or prior to the Sale Hearing, additional term and conditions; and (ii) extend deadlines or adjourn the Sale Hearing in open court without further notice.

15. The Debtor seeks an order authorizing it to enter the Agreement pursuant to Bankruptcy Code §363(b) and (f), and §105.

SALE TO SUCCESSFUL BIDDER

16. By this Motion, the Debtor requests an Order pursuant to Bankruptcy Code § 363 and § 365 authorizing the sale of the Assets and assignment of targeted agreements, free and clear of all liens and other interests, to MCK 27 ENTERPRISES, LLC or the successful bidder (“Purchaser”), according to terms set forth in the Agreement, subject to higher and better offers made on the return date of the Motion.

17. Under the Agreement, a copy of which is annexed as Exhibit A, Purchaser has agreed to acquire Debtor's real estate and related assets for \$4,000,000.00.

18. The Agreement is subject to Court approval and such higher and better offers that may be made at the hearing on the sale (the “Sale Hearing”) in an amount at least \$50,000.00 greater (the “Overbid Amount”) than the amount payable under the Agreement.

19. The Agreement also provides that the sale is to be free and clear of all liens, claims, security interests and encumbrances of every kind and nature and other interests, with all such liens, claims, pledges, security interests, encumbrances and interests attaching to the proceeds of sale to the same extent and in the same order of priority of any existing liens, claims, security interests, encumbrances and interests of record, or as may be determined by the Court.

20. The Agreement was negotiated with MCK 27 Enterprises, LLC at arm's length. Accordingly, the Debtor believes that PMCK 27 Enterprises, LLC is a good faith purchaser and is entitled to the protections of Bankruptcy Code § 363(m) should it be the successful bidder. The Debtor requests that the Court so find at the Sale Hearing.

21. If the Court approves a higher or better offer which is at least \$50,000 greater than the consideration provided for under the proposal by MCK 27 Enterprises, LLC under the Agreement and the Purchaser is not in default of any of its obligations, then, subject to the

consummation of the proposed alternative transaction or any other subsequent sale by the Debtor which gives rise to such termination, the Debtor shall pay to MCK 27 Enterprises, LLC, simultaneously with the consummation of such alternative transaction, the sum of \$25,000 as consideration for MCK 27 Enterprises, LLC time, expense and forgone opportunities. MCK 27 Enterprises, LLC right to the break-up fee shall constitute MCK 27 Enterprises, LLC sole and exclusive remedy arising out of the termination of the Agreement if the Debtor accepts a higher or better offer.

AUTHORITY FOR MOTION

Bankruptcy Code § 363(b) and (f) Sale.

22. Bankruptcy Code § 363(b)(1) authorizes the trustee (or a debtor in possession, who has the rights and powers of a trustee) to use, sell or lease property of the estate other than in the ordinary course of business.

23. The Debtor may sell free and clear of an interest (including a lien) of an entity other than the estate only if:

(1) Applicable nonbankruptcy law would permit a sale of such property free of the interest;

(2) The other entity consents;

(3) The interest is a lien and the sale price is greater than the aggregate value of all liens on such property;

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

(5) The entity could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest.

24. Bankruptcy courts have substantial discretion when deciding whether to approve the sale of substantially all of the Debtor's assets outside of a plan of reorganization,

especially when there is an articulated business justification. See *Official Committee of Unsecured Creditors of the LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 975 F.2d 141, 144 (2d Cir. 1992); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983)

25. In determining whether to approve a proposed sale under Bankruptcy Code § 363, courts generally apply standards that, although stated variously ways, represent essentially a business judgment test. See, *Committee of Security Holders v. Lionel Corp*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

26. Once the Debtor has articulated a rational business justification, a presumption attaches that the decision was made on an informed basis, in good faith and in the honest belief that the action is in the best interest of the Debtor. See, *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.*, 147 B.R. 650, 656 (SDNY 1992).

27. In addition, when there are exigent circumstances and the assets are subject to rapid deterioration, the courts have approved significant asset sales prior to the confirmation of a plan. See *In re Chateaugay Corp.*, 973 F.2d 141 (delay in sale risked a lower price in the future); *In re Pure Penn Petroleum Co.*, 188 F.2d 851 (2d Cir. 1951); *In re Solar Mfg. Corp.*, 176 F.2d 493 (3d Cir. 1949); *In re V. Loewer's Gambrinus Brewery Co.*, 141 F.2d 747 (2d Cir. 1944); *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480 (Bankr. N.D. Ohio 1992) (sale approved because debtor did not have funds to repair or maintain manufacturing equipment to meet inspections).

28. In this case, ample justification exists for the approval of the sale. The Debtor's assets are subject to decline in value unless the Debtor can consummate a sale with a third party to preserve the value of the business. Unless a sale is approved, it is highly unlikely that the

Debtor will be able to maintain the loyalty of its tenants. Thus, a prompt sale advances the interests of the estate and maximizes the value of the assets.

29. The Debtor respectfully submits that the sale should be approved free and clear of liens and encumbrances and that the Debtor be authorized to pay the secured claims together with other customary closing costs from the proceeds at closing.

Break-up Fee

30. The Debtor has agreed to pay Purchaser a break-up fee in the amount of \$25,000.00 as liquidated damages for Purchaser's time, expenses and lost opportunities in the event the Debtor accepts a *bona fide* offer for the assets in an amount that is at least \$50,000.00 greater than a consideration provided for in the Agreement, provided, however, that Purchaser is not in default and the Debtor consummates the alternative transaction. The Debtor believes that a break-up fee of about .625% of the aggregate purchase price is fair and reasonable especially taking into account the significant time, effort and expense of Purchaser in conducting its due diligence of the business and negotiating the definitive terms of the Agreement. *See In re Integrated Resources, Inc.*, 147 B.R. 650 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (break-up fee between \$500,000 and \$6,000,000 or approximately 3.2% of bidder's cash investment approved, reasoning that the break-up fee would enhance the bidding process and was reasonable in relation to the bidder's efforts and the magnitude and significance of the transaction); *In re 995 Fifth Avenue Assocs., L.P.*, 96 B.R. 24 (Bankr. S.D.N.Y. 1989). *See also* Paul B. Lackey, *An Empirical Survey and Proposed Bankruptcy Code Section Concerning the Propriety of Bidding Incentives in a Bankruptcy Sale of Assets*, 93 Colum. L. Rev. 720, 732 (1993) (bankruptcy courts have allowed break-up fees ranging from .66% to approximately 2% of the purchase price). Further, because the break-up fee is payable only if

the Debtor consummates an alternative transaction, which must be at least \$50,000.00 more than the amount called for under the Agreement, there is no prejudice to the Debtor by payment of the break-up fee.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order pursuant to 11 U.S.C. § 363(b) and (f), §105 authorizing the sale of the assets free and clear of all liens and other interests, such lien, and other interests to attach to the proceeds of sale, pursuant to the terms and conditions set forth in this Motion and the annexed Agreement, together with such other and further relief as to this Court may seem just and proper.

Dated this 1st day of December, 2016

By: /s/ Christian H. Dribusch
Christian H. Dribusch

Reviewed and approved:

/s/ William A. Eichengrun
William A. Eichengrun, Managing Member
Green Oak Stockade View Apartments, LLC

THIS AGREEMENT made by and between **GREEN OAKS STOCKADE VIEW APARTMENTS, LLC**, a New York Limited Liability Company with its principal place of business at 134-136 State Street, Schenectady, New York 12309 (hereinafter referred to as “Seller”) and **MCK 27 ENTERPRISES, LLC**, a Limited Liability Company with its principal place of business at P.O. Box 9174, Schenectady, New York 12309 (hereinafter referred to as “Purchaser”).

The Effective Date of this Purchase Agreement (the “Effective Date”) will be the date when both parties execute this Agreement, as indicated on the signature page below.

1. PREMISES TO BE SOLD: Seller will sell to Purchaser and Purchaser shall purchase from Seller the real property and the improvements and appurtenances situate at 134-136 State Street (Premises) and as further set forth on the attached Exhibit A. All appliances installed in the apartments as of the date this Agreement is executed shall be included as part of the Premises.

The purchase includes all easements, rights of way, privileges, appurtenances and other rights and all right, title and interest, if any of the Seller in and to any land lying in the bed of any street, road or avenue opened or proposed, public or private, in front of or adjoining the Premises, and the Seller will execute and deliver to the Purchaser, on the delivery of the Deed and the consummation of the transaction (the “Closing”), all proper instruments for the conveyance of the title to the Premises.

As soon as reasonably practicable after the execution of this Agreement, Seller shall provide copies of the written leases for the Premises, a certified rent roll and accounting of all Tenant Security Deposits.

2. PURCHASE PRICE: The Purchase Price to be paid by Purchaser to Seller for the Premises to be sold hereunder is FOUR MILLION and 00/100 DOLLARS (\$4,000,000.00). The Purchase Price will be payable as follows:

A. Deposit. - A \$25,000.00 deposit shall be due and payable to Seller upon the execution of this Agreement by both parties. The Deposit shall be held as set forth in paragraph 15 below.

B. Cash at Closing- The remaining sum of the Purchase Price (\$3,960,000.00) shall be due and payable at the Closing in the form of cash, bank, or cashier’s check.

3. CONTINGENCIES OF CONTRACT & DUE DILIGENCE: Purchaser’s obligation to purchase the Property pursuant to the Agreement is contingent upon Purchaser obtaining satisfaction of all Due Diligence matters listed below. Purchaser will have twenty-one (21) days to complete the Examination of Premises (as defined below) and sixty (60) days for the Mortgage Contingency and Marketable Title Contingency) its Due Diligence of the Property. (Said periods hereinafter referred to as the “Due Diligence Period”). The Due

Diligence period shall commence upon the Effective Date of this Agreement.

With regard to each of the foregoing contingencies, each Party agrees to exert all necessary efforts on its behalf or assist in the accomplishment of each of the Contingencies, each Party will use its best efforts to assist in the satisfaction of the Contingencies and each Party agrees to do nothing which would be detrimental to the satisfaction of the Contingencies. All tests, inspections, and expenses incurred by Purchaser to satisfy said contingencies shall be the sole expense of Purchaser.

A Examination of Premises Contingency: This Agreement is contingent upon Purchaser determining the Premises is free from any structural, mechanical and/or environmental defect the cost to repair, replace or remediate exceeds a combined value of \$50,000.00 The parties agree that for purposes of this Premises Contingency, the following items will not be included in calculating the \$50,000 threshold has been obtained:

- i. Roof repairs up to \$100,000. (any required roof repair costs in excess of \$100,000 may be counted towards the \$5,000 threshold);
- ii. Costs to repair or replace the electrical breaker boxes in the apartment units up to \$30,000 (any required repairs to electrical breaker boxes in excess of \$30,000 may be counted towards the \$5,000 threshold);
- iii. Costs to repair or replace defective window on the Premises up to \$65,000 (any required repairs to the windows in excess of 65,000 may be counted towards the \$5,000 threshold);

The Purchaser will promptly repair and restore any damage or injury to the Premises caused by such investigations, studies, and tests for Purchaser's agents, employees or representatives entering upon the Premises to test, study, investigate or inspect the Premises. Purchaser will not permit any liens or encumbrances to arise against the Premises in connection with or because of such inspections, tests, studies, or investigations.

B. Mortgage Contingency: The obligations of the Purchaser are conditioned upon issuance of a written commitment from any Institutional Lender pursuant to which such Institutional Lender agrees to make a loan, other than a VA, FHA or other governmentally insured loan to Purchaser, at Purchaser's sole cost and expense, at an amount of \$3,200,000.00 or such lesser sum as Purchaser will be willing to accept, at the prevailing fixed rate of interest not to exceed market rates or initial adjustment rate of interest not to exceed market rates for a term of at least 25 years and on other customary commitment terms. Purchaser will (a) make prompt application to an Institutional Lender for such mortgage loan, (b) furnish accurate and complete information on Purchaser as required, (c) pay all fees, points and charges required in connection with such application and loan, (d) pursue such application with due diligence, (e) cooperate in good faith with such Institutional Lender to the end of securing such first mortgage loan and (f) promptly give Notice to Seller of the name and address of each

Institutional Lender to which Purchaser has made such application. Purchaser will comply with all requirements of such commitment (or of any commitment accepted by Purchaser) and will furnish Seller with a copy of the commitment promptly after receipt.

C. Marketable Title Contingency: Purchaser will prepare a title report for the Premises, and if title to the Premises is uninsurable, in the reasonable opinion of Purchaser's attorney or Purchaser's title company, Purchaser will send written notice of the defect to Seller. This contingency is deemed properly made if the Written Notice is sent within the Due Diligence Period. Seller will have thirty (30) days after receipt of the written notice of the purported defects within which to cure said defects. If the defects are not cured, the Purchaser will have the option to, within Purchaser's sole discretion: (i) accept title to the Premises with the purported defects; or (ii) cancel the Contract. This Contingency will survive the exercise of the Option, is not waived, and must be satisfied up to the date of Closing.

D. Leases, Rent Rolls and Rental Certificates: This Agreement is also contingent upon Seller providing the following with twenty days of the execution of the Agreement:

i: All existing written Leases for the Premises

ii: Certified Rent Rolls and accounting of all Tenant security deposits.

iii: Up to date rental certificates as issued by the City of Schenectady for each rental unit that is currently occupied by a Tenant.

E. Waiver of Contingencies: The Contingencies set forth in A through D above will be deemed waived unless Purchaser will notify Seller in writing, by certified or registered mail, return receipt requested, postmarked no later than the termination date of the Due Diligence Period of the inability to secure any of the forgoing contingency matters as set forth herein. If the Purchaser so notifies, than this entire Contract will be deemed canceled, null and void and all deposits made hereunder will be returned to the Purchaser. However, if Purchaser does not provide Seller with the written Notice before the end of the Due Diligence Period all contingencies shall be deemed waived and this Agreement will continue in full force and effect.

4. TRANSFER OF TITLE / POSSESSION: A. Seller agrees to furnish to Purchaser a Warranty Deed in standard form ("Deed") and to convey marketable title to the Premises, subject only to "Permitted Exceptions", being those created by or assumed by Purchaser; zoning ordinances; legal highways; real estate taxes and assessments, both general and special, which are a lien but not yet due and payable; covenants, restrictions, easement, or conditions of record, provided they do not (i) interfere with the present and intended use of the Premises (residential apartment building), (ii) render title unmarketable, or (iii) render title uninsurable. Any existing liens or encumbrances upon the Premises which may be removed by the payment of money and which Seller elects to remove under this Agreement may be paid and discharged with Seller's proceeds from the Purchase Price at Closing.

B. Seller's Warranty Deed will include all right, title and interest of Seller in and to the Premises and the following if any: (i) Easements, rights of way, privileges, appurtenances and rights to the same, belonging to or inuring to the benefit of the Premises; and (ii) All right; title and interest of the Seller in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Premises.

C. Purchaser will update the Abstract of Title. Purchaser will order a Title Report within 14 days of receipt of the Mortgage Commitment as indicated below. The purpose of the Title report is to convey marketable title to the property free and clear of all liens and encumbrances.

D. "Time of the essence" is not applicable to this contract, although either party may make "time of the essence" pursuant to applicable case law.

5. PERMITTED EXCEPTIONS: The following are "Permitted Exceptions":

A. Title to the Premises will not only be good and marketable, but also be insurable by Purchasers Title Insurance Corporation at its regular rates, without exceptions or reservations of any kind, except (i) the standard printed exceptions other than those which can be removed by the payment of an additional premium or charge or by appropriate documentation or (ii) other permitted exceptions.

B. Any state of fact an inspection and/or survey would disclose, provided such state of facts does not render title to the Premises unmarketable.

C. Recorded easements and rights of way for water, sewer, gas and electrical lines.

D. Zoning regulations and ordinances (and any variances therefrom) of the municipality in which the Premises are situate, unless this violates Purchasers intended use.

6. REPRESENTATIONS OF PARTIES:

(I) Representations of Seller: The Seller represents, warrants and agrees that the time of transfer:

A. The Seller owns legal and marketable title to the Premises, free and clear of all liens and encumbrances except for the Permitted Exceptions, or any existing liens or encumbrances upon the Premises that may be removed by the payment of money can be properly discharged with Seller's proceeds from the Purchase Price at Closing.

B. Except as provided in Exhibit B, the Premises have no other existing leases or tenancies and that none will be entered into following this contract without the written consent of the Purchaser. C. The tax bills as presented to the Purchaser are true and correct copies of the tax bills for the Premises.

D. To the best of Seller's knowledge, the Premises and the present use and conditions thereof do not violate any applicable deed restriction or other covenant, restriction or agreement, site plan approval, zoning or subdivision regulation or urban plans applicable to the Premises, as modified by any duly issued variances;

E. Seller has no knowledge or notice of any the violation of any Federal, State or local laws, regulations, codes or ordinances.

F. Seller has no notice of any object, thing or substance of an environmental nature which could constitute a violation of Federal, State or local law, regulation, code or ordinance located on the property, and no actions have been instituted concerning such violations;

G. All utilities required by the needs of occupants of the Property for the operation of the Improvements including, but not limited to, water, sewer, gas and electric, enter the Land through adjoining public streets or if they pass through adjoining private land, do so in accordance with valid public or private easements which will inure to the benefit of Purchaser. Appropriate connections to the Improvements and any tenant spaces therein have been installed and are operating, pursuant to valid permits, and there are no unpaid fees or assessments for the installation of these services or charges for making the connections.

H. All roads bounding the Premises are public roads and the deed is the only instrument necessary to convey to the Purchaser full access to and the right to the roads freely as well as all rights' appurtenant to the Premises in the roads;

I. To Seller's knowledge, the Property is not in violation of any federal, state, local, or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Material ("Environmental Laws"). For the purposes hereof, "Hazardous Material" shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law, as well as any formaldehyde, urea, polychlorinated biphenyl, petroleum, petroleum product or by product, crude oil, natural gas, natural gas liquid, liquefied natural gas, or synthetic gas useable for fuel mixture thereof, radon, asbestos and "source", "special nuclear" and "by product".

J. Except for the foreclosure action pending against the Property, there are no actions, suits, proceedings, or investigations pending or to the knowledge of the Seller threatened against or affecting the Seller, in law or in equity. If any such matter is not known, the likelihood of any judgment or liability not fully covered by insurance is improbable.

(II). Representations of Purchaser: The Purchaser represents, warrants and agrees that at the time of transfer:

A. All statements made and information given by Purchaser in this Agreement, including any related Schedules and Exhibits, are true and accurate in every material respect, and no material fact has been withheld from Seller and that Purchaser is a limited liability company duly formed and validly existing under the laws of the State of New York.

B. Purchaser has no knowledge or information of any facts, circumstances, or conditions which do or would in any way adversely affect the transaction, the proposed mortgage on the property and improvements,

or the successful operation of the Property except as specifically stated in this Agreement or any related Schedules and Exhibits.

C. Purchaser represents, warrants and agrees that (i) neither Seller nor any of the agents or attorneys of Seller have made any verbal or written representations, warranties, promises or guarantees whatsoever to Purchaser, whether express or implied, and, in particular, that no such representations, warranties, promises or guarantees have been made with respect to the physical condition of the property and premises, and (ii) Purchaser has not relied upon any representations, warranties, promises or guarantees and has entered into this Agreement after having made and relied solely on its own independent investigation, inspection analysis, appraisal, examination and evaluation of the facts and circumstances affecting and related to the transaction.

D. The execution and delivery of this Agreement and the performance of Purchaser's obligations hereunder have been or will be duly authorized by all necessary action on part of the Purchaser.

7. DEED: Seller will transfer the Property to Purchaser by means of a Warranty Deed, with Lien Covenant, furnished by the Seller. The deed and real property transfer gains tax affidavit will be properly prepared by the Seller and signed so that it will be acceptable for recording by the County Clerk in the County in which the Property is located. Seller will pay any and all state, county, and local transfer and recording fees pursuant to the New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return (TP-584) plus any other transfer related tax or fee. All other costs and expenses attendant to settlement, including title company charges, shall be at the cost of the party that incurred same, at or prior to the Closing.

8. TITLE INSURANCE: The title insurance policy, will be obtained at the expense of the Purchaser. The Seller will provide any available survey, abstract of title or title insurance policy information. In the event that the Seller is unable to convey title in accordance with the terms of this contract due to a defect in title, the sole liability of the Seller will be to refund to the Purchaser all deposits and to pay the net cost of examining the title, and upon such refund and payment being made this contract will be considered canceled.

9. WAIVERS: Delivery to and acceptance of this Agreement by the Purchaser will constitute delivery to and acceptance by the Purchaser of the Property described herein and will constitute an acknowledgment by the Purchaser that it has inspected and examined the Property and is satisfied with its condition and Purchaser waives and releases forever any rights or claims against the Seller for performance by Seller of any further work upon the said premises, subject, however, to the contingencies, representations and warranties contained herein, which will survive the delivery and execution of this Agreement.

10. FILING: Any and all expenses in connection with filing fees borne by the Purchaser and Seller will be as set forth by statute or custom in New York.

11. ASSIGNMENT: The Purchaser will not assign, sublet, sell by contract, lease or otherwise, transfer this Agreement without first having obtained the written consent of the Seller. However Purchaser reserves the

right to assign this contract or take title to the Property in the name of another entity owned or controlled by Purchaser without the consent of Seller. Purchaser shall notify Seller of any such assignment. Seller reserves the right at any time prior to the Closing to include this transaction as part of an IRC, Section 1031 tax deferred exchange for the benefit of Seller, at no cost, expense or liability to Purchaser. Purchaser agrees to execute any and all documents (subject to the reasonable approval of Purchaser's counsel) as are reasonably necessary in connection therewith, provided that the closing of this transaction for the conveyance of Seller's property shall not be contingent upon or subject to the completion of such exchange. Purchaser further agrees to the assignment by Seller of Seller's rights, title and interest, but not Seller's obligations, under the Contract on or before closing to Seller's qualified exchange Intermediary. Seller agrees to defend, indemnify and hold Purchaser free and harmless from any cost, expense or liability, including reasonable attorney's fees, resulting from Purchaser's participation in such exchange. This provision shall survive the closing of the title to the Premises.

12. RIGHTS: Failure or delay of the parties to enforce any right or to exercise any purchase hereunder available because of any default will not operate as a waiver of the right of the parties to thereafter enforce such right, or to exercise such purchases, or any other right or purchase for the same or any subsequent default.

13. UCC 5-1311: The parties agree that the provisions of the Uniform Vendor and Purchaser Risk Act (General Obligations Law Section 5-1311(b)) will govern the risk of loss in the event the premises are destroyed or taken for public use.

14. TAX AND OTHER ADJUSTMENTS: The following, if any, will be apportioned as of the date of transfer of title:

A. That the Purchaser will pay all real estate taxes, special assessments, water rents, water district taxes, and all other charges from the date of possession, prorated from said date. If the date of possession is earlier than the closing date, the possession date will control all tax adjustments.

B. Municipal assessment yearly installments.

C. Rents and security deposits. At the Closing, Seller shall assign to Purchaser all written leases and security deposit affecting the Premises

15. DEPOSITS: The Deposits made by the Purchaser is to be deposited with the Seller's Counsel as part of the purchase price and shall be held by Counsel in a non-interest bearing Escrow Account. At the Closing, the Deposit shall be paid over to the Purchaser as part of the Purchaser Price. If the Agreement is terminated as a result of one of the contingencies herein not being satisfied, all Deposits will be returned to Purchaser as set forth in paragraph 3 above.

16. RIGHT OF INSPECTION AND ACCESS: Purchaser and a representative will be given access to the Property for any tests or inspections required by the Contingency provisions of paragraph 3 upon

reasonable notice to the Seller or a representative. Purchaser, or a representative, or both, will have the right of inspection of the property, at a reasonable time, within 24 hours prior to transfer of title.

It is understood and agreed that entry on the property of the Sellers is done at the risk of the Purchaser or representative. Sellers make no representations or warranties as to the condition of the real property and advise Purchaser to enter at their own risk. Purchaser agrees to execute all documents necessary to waive liability for damage or injury to person or property as to the lands' condition.

17. MATTERS AFFECTING THE PREMISES UNTIL CLOSING: Seller agrees, between the date of this Agreement and the Closing Date, to (i) maintain the Premises in accordance with the current practices of Seller, and (ii) to make no alterations, additions or improvements thereto (except as may be required to protect life or safety of persons or property, to properly secure the Premises), except as otherwise specifically provided in this Agreement. (iii) maintain all insurance customarily maintained by Seller on the Premises in full force and effect, (iv) Seller shall not without the prior written consent of Purchaser enter into any new Other Agreements including Lease Agreements for the Premises except those which can be canceled prior to Closing.

Seller shall notify Purchaser of any of the following matters which occur between the date of this Agreement and the Closing Date: (i) notices of Violations affecting the Premises received by Seller, (ii) litigation commenced by Seller, or litigation of which Seller has received notice commenced against Seller, in either case with respect to the Premises, (iii) notices of condemnation proceedings against all or any portion of the Premises received by Seller, and (iv) casualty losses to the Premises. Seller agrees to cure, prior to Closing, any Violation of which notice is first issued between the date hereof and the Closing Date the existence of which prevents or would prevent issuance of a building permit.

18. NOTICES: All notices under this contract must be in writing, postmarked no later than the required date, or by personal service by such date. Notices will be sent to the following addresses:

To Seller: GREEN OAKS STOCKADE VIEW APARTMENTS, LLC, C/O YOUNG/SOMMER, LLC 5
Palisades Drive, Albany, New York 12205

To Purchaser: MCK 27 ENTERPRISES, LLC, P.O. BOX 9174 Schenectady, New York 12309

19. CLOSING DATE AND PLACE: The transfer of title to the Property from Seller to Purchaser will take place at the office of the lender's attorney if the Purchaser obtains a mortgage loan from a lending institution. Otherwise, the Closing will be at the office of the attorney for the Seller. The Closing will be no more than thirty (30) days following Purchaser's removal/waiver of all contingencies as set forth in paragraph 3 above. Possession will be granted upon transfer of title.

20. BROKER: The Purchaser and Seller agree that Philip Wagner of Realty USA and John DiGesualdo of Realty USA brought about the sale, and Seller agrees to pay the Brokers' commission to Realty USA as agreed to per separate agreement.

21. **GOVERNING LAW:** This agreement is governed by the law of the State of New York

23. **PARTIAL INVALIDITY:** If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder to this Agreement, or the application to the terms or provision to persons other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

24. **BINDING EFFECT:** The covenants in this Agreement contained herein will be binding upon and inure to the benefit of the respective parties, their heirs, executors, administrators, successors and assigns.

25. **SURVIVAL OF WARRANTIES AND REPRESENTATIONS:** All warranties and representations of both parties to this contract will survive, and not be merged, in the transfer of title. This will include all conditions of the contract that run with the land, as well as those that require performance at a future date.

26. **TOTAL UNDERSTANDING:** This Agreement represents the total understanding between the parties hereto and no changes or amendments will be made to this Agreement unless the same is in writing and subscribed by the parties hereto. Both parties agree that the other is not relying upon any statement or representation not embodied in this contract.

27. **COUNTERPARTS.** This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement. Electronic signatures shall be binding on the parties.


[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

GREEN OAKS STOCKADE VIEW APARTMENTS, LLC

MCK 27 ENTERPRISES, LLC

BY _____
WILLIAM EICHENGRUN

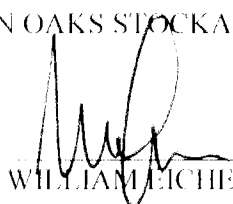
By:  _____
MARK CLARK

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

GREEN OAKS STOCKADE VIEW APARTMENTS, LLC

MCK 27 ENTERPRISES, LLC

By:


.....
WILLIAM EICHENGRUN

By:

.....
MARK CLARK

X
SCHEDULE A DESCRIPTION

All that certain tract, piece or parcel of land, situate, lying and being in the City of Schenectady, Schenectady County, New York lying generally northwesterly of South Ferry Street and southerly of State Street and being more particularly bounded and described as follows:

Beginning at the point of intersection of the common line between the lands now or formerly of Edkin Service Corporation as described in Book 899 of Deeds at Page 631 on the west and the lands herein described on the east with the southerly margin of State Street and runs thence from said point of beginning along said southerly margin the following two courses:

- 1) South 68 deg. 05' 20" East, a distance of 30.00 feet to a point, and;
- 2) South 69 deg. 59' 30" East, a distance of 60.90 feet to a point;

Thence along the common line between the lands now or formerly of Saal Automotive Distributors, Inc. as described in Book 900 of Deeds at Page 175 on the east, and the lands herein described on the west, South 19 deg. 40' 50" West, a distance of 107.31 feet to a point on the northerly margin of Mill Lane;

Thence along said northerly margin, North 67 deg. 24' 50" West, a distance of 8.96 feet to a point;

Thence across and through Mill Lane, South 21 deg. 42' 20" West, a distance of 30.05 feet to a point on the southerly margin of Mill Lane;

Thence along said southerly margin South 67 deg. 52' 40" East, a distance of 57.68 feet to a point on the northwesterly margin of South Ferry Street;

Thence along said northwesterly margin, South 25 deg. 31' 40" West, a distance of 110.00 feet to a point;

Thence through the lands now or formerly of Mangine, North 64 deg. 37' 50" West, a distance of 57.00 feet to a point;

Thence continuing through the Lands of Mangine in part and through the Lands of Gene Black and Ira W. Blake as described in Book 971 of Deeds at Page 838 and Book 971 of Deeds at Page 849 in part, South 25 deg. 31' 40" West, a distance of 80.61 feet to a point;

Continued

TI 11-0005
Schedule A - Description Continued

Thence through the aforementioned Lands of Blake and Black the following three courses:

- 1) North 63 deg. 45' 50" West, a distance of 108.84 feet to a point;
- 2) North 9 deg. 14' 20" East, a distance of 33.00 feet to a point; and
- 3) North 80 deg. 18' 30" West, a distance of 124.17 feet to a point on the easterly margin of South Church Street;

The along said easterly margin North 9 deg. 41' 30" East, a distance of 66.00 feet to a point;

Thence along the common line between the lands now or formerly of Glen G. and Eloise Davis as described in Book 683 of Deeds at Page 565 on the north and the lands herein described on the south, South 80 deg. 32' 20" East, a distance of 126.22 feet to a point;

Thence along the northeasterly line of said Davis, North 61 deg. 19' 20" West, a distance of 7.20 feet to a point;

Thence along the easterly line of Davis, North 17 deg. 19' 50" East, a distance of 7.86 feet to a point;

Thence along the common line between the lands now or formerly of Leamon on the northwest and the lands herein described on the southeast, North 37 deg. 54' 20" East, a distance of 77.87 feet to a point on the southwesterly margin of Mill Lane;

Thence along said southwesterly margin, South 52 deg. 05' 40" East, a distance of 34.90 feet to a point on the southerly margin of Mill Lane;

Thence along said southerly margin, the following two courses:

- 1) South 71 deg. 01' 10" East, a distance of 30.89 feet to a point; and
- 2) South 72 deg. 21' 20" East, a distance of 3.53 feet to a point;

Thence through and across Mill Lane, North 22 deg. 39' 40" East, a distance of 36.13 feet to a point on the northerly margin of Mill Lane;

Thence along said northerly margin, North 69 deg. 10' 00" West, a distance of 30.22 feet to a point;

Thence along the first herein mentioned common line between Edkin Service Corporation and the lands herein described, North 22 deg. 28' 40" East, a distance of 105.00 feet to the point or place of beginning.

HORT Book 4205 Page 804
Doc No DB4732

