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

*In re:*

**MICHAEL KALFUS**

**-AND-**

**ROBIN KALFUS**

Debtors.

Case No. 18-13396 (VFP)

Chapter 11

Hon. Judge: Vincent F. Papalia

Hearing Date and Time:

March 27, 2018 at 10:00 a.m.

*Oral Argument Requested*

**NOTICE OF MOTION FOR AN ORDER AUTHORIZING AND APPROVING (I) THE SALE OF REAL PROPERTY, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES (SUBJECT TO HIGHER OR BETTER OFFERS); (II) PAYMENT OF PROFESSIONAL FEES FROM SALE PROCEEDS; (III) WAIVING THE FOURTEEN-DAY STAY PURSUANT TO FED. R. BANKR. P. 6004(h); AND (IV) GRANTING OTHER AND RELATED RELIEF**

**TO: All Parties-in-Interest**

**PLEASE TAKE NOTICE** that Michael and Robin Kalfus (the “Debtors”) will move before the Honorable Vincent F. Papalia on March 27, 2018 at 10:00 a.m. at the United States Bankruptcy Court, 50 Walnut Street, Newark, New Jersey, for entry of an order for the entry of orders (a) authorizing the sale of real property free and clear of interests, claims liens and encumbrances, subject to higher or better offers (the “Sale”); and (b) authorizing compensation to retained professionals for approved fees and costs from sale proceeds; (c) and waiving the fourteen-day stay; and (d) further relief as this Court deems just and appropriate (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that along with the Motion a proposed form of order has been submitted which collectively sets forth the relevant factual and legal bases upon which the relief requested should be granted.

**PLEASE TAKE FURTHER NOTICE** that unless objections are timely presented, the Motion shall be deemed uncontested and the relief requested may be granted without a hearing.

**PLEASE TAKE FURTHER NOTICE** that the undersigned requests oral argument on the return date of the Motion, if opposition is filed.

**SCURA, WIGFIELD, HEYER,  
STEVENS & CAMMAROTA, LLP**  
Attorneys for Debtor

Dated: March 2, 2018

/s/ Guillermo J. Gonzalez  
Guillermo J. Gonzalez

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Michael and Robin Kalfus, the debtor herein (the “Debtors”), by and through the undersigned counsel, Scura, Wigfield, Heyer, Stevens & Cammarota, LLP., respectfully represents as follows:

**INTRODUCTION**

This motion is submitted pursuant to sections 105(a), 363(b), (f), (h), (m), 541(a), and 544(a)(3) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy

Rules”) and .N.J. L.B.R. 6004-1: for the entry of orders (a) authorizing the sale of real property, AS IS, WHERE IS, and free and clear of interests, claims liens and encumbrances, subject to higher or better offers (the “Sale”); and (b) authorizing compensation to retained professionals for approved fees and costs from sale proceeds; and (c) waiving the fourteen-day stay (the “Motion”); and respectfully states as follows:

### **BACKGROUND**

On February 22, 2018 (the “Petition Date”), the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtors have remained in possession of their assets and continues the management of their bankruptcy estate as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

The Debtors’ case was commenced on the eve of a foreclosure sale concerning real property owned jointly located at 68 Hillcrest Road, Boonton Township, New Jersey (the “Property”).

Prior to the Petition Date, the Debtors’ listed the Property for sale and retained Keller Williams-Metropolitan (“Keller Williams”) to assist with the sale of the Property. *See* Cert. of Peter Lorenzo (the “Realtor”). The Property is a single family contemporary home and was marketed on more than two-hundred websites. *Id.* The Property was originally listed for \$1.1 million with a previous realtor, but was subsequently reduced to \$889,000.00 following the retention of Keller Williams in September 2017. *Id.* Since September 2017, the listing price was lowered once, and the realtor held five public open houses and one realtor broker open house. *Id.* The Property was shown to approximately 25 qualified buyers. *Id.* Following a three-month period, I received three offers. *Id.* The first offer was for \$820,000.00 which was contingent on

the sale of another property. *Id.* The second offer was for \$820,000.00 which was contingent on the sale of another property. *Id.* The second, which is the current offer, was for \$849,000.00. *Id.* Subject to Court authorization, the Debtors have entered into a Purchase Agreement of sale for real estate (the “Purchase Agreement”) to purchase the Property for a purchase price of \$849,000.00. The proposed buyers are John and Margaret Cortese (the “Purchaser”). The Purchase Agreement is annexed to the Certification of Michael Kalfus as Exhibit A. The Purchase Agreement and the sale to the Purchaser is contingent upon and subject to this Court’s approval.

### **LIENS ON THE PROPERTY**

The Property may be encumbered by certain other liens as set forth in detail in the title report. An Abstract of Title and Judgment Search is annexed hereto as **Exhibit “A”**. Liens that may encumber the Property include:

- a. Any and all unpaid property taxes in amount of \$4,103.88;
- b. Mortgage lien owed to Haven Savings Bank<sup>1</sup> (“Haven”) in the amount of \$655,862.06;
- c. Mortgage lien owed to First Constitution Bank<sup>2</sup> (“First Constitution”) in the amount of \$32,907.00;
- d. Internal Revenue Service (“IRS”) secured lien, in the amount \$86,112.82.
- e. Judgments docketed with the Superior Court of New Jersey ( collectively the “Judgment Creditors”):
  - i. Lakeland Bank – Judgment No.: J-001873-2017-\$23,478.07
  - ii. Division of Taxation – Judgment No.: DJ-05891-2017-\$47,360.81
  - iii. Albert Kenney – Judgment No.: DJ-104305-2017-\$50,000.00
  - iv. Dixon Bros – Judgment No.: DJ-135900-2017-\$7,770.68
  - v. Albert Kenney – Judgment No.: CV-001059-2012-\$50,000.00

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<sup>1</sup> Haven Savings Bank retains the first mortgage by assignment from 1<sup>st</sup> Constitution Bank dated November 17, 2011 and recorded on February 1, 2012 in Assignment Book OR 21962 Page 998. The payoff also excludes Sheriff Commission in the sum of \$13,461.24 as a result of there being no Sheriff Sale. The Debtor disputes the principal balance to the extent it includes the Sheriff Commission.

<sup>2</sup> 1<sup>st</sup> Constitution Bank retains the second mortgage dated November 17, 2011 and recorded on March 1, 2013 in Assignment Book OR 22266 Pge 953. The second mortgage company has agreed to a payoff of \$22,500.00.

**TERMS OF THE SALE AGREEMENT**

The pertinent terms of the Purchase Agreement are as follows:

- a. The Purchase Agreement provides for a \$849,000.00 purchase price with no initial deposit and an additional deposit of \$30,000 due two weeks from the contract date.
- b. The closing is anticipated to occur within 30 days of Bankruptcy Court approval.
- c. The performance of Purchaser is contingent on obtaining of a mortgage commitment in the amount of \$676,720.00. The balance of the purchase shall be due at closing.
- d. All representations made by the Seller in the Purchase Agreement, any riders or addenda to the Purchase Agreement, and any attorney review letters, including this letter, or any disclosures made by the Seller, are made to the best of the Seller's knowledge, information and belief and shall not survive closing of title. Seller specifically makes no representations regarding the Property which pertain to any time prior to Seller's ownership of the Property. Any statement contained in a Seller's Disclosure Statement or similar document delivered by the Seller to the Buyer or the real estate broker in this transaction, if any, shall control over a more general statement or representation in the Purchase Agreement or any amendments to the Purchase Agreement, including any attorney review letters.
- e. The Seller assumes risk of loss or damage to the subject premises by fire or

otherwise until closing. In case the premises should suffer damage beyond normal wear and tear, Seller shall repair or agree to provide at closing an agreed upon amount of a credit for said damage prior to closing. In the case where the cost of repairs exceeds 10% of the purchase price, the parties may attempt to negotiate a resolution and if one cannot be made, either party may cancel the Purchase Agreement and all deposit monies shall be returned.

- f. All waivers must be in writing. Any deposit monies paid by or on behalf of Buyer will be refunded in full to Buyer should either party declare the Purchase Agreement null and void in conformity with the Purchase Agreement. In the event one of the parties to this agreement shall default, the other party shall have such remedies as may be provided by law and equity.
- g. The Purchase Agreement will be construed, interpreted and enforced pursuant to the laws of the State of New Jersey.

**REQUEST FOR RELIEF AND BASIS THEREOF**

**A. The Debtor Should be Authorized to Sell the Property in Accordance with Sections 105(a), 363(b)(1), 363(m), and 541 of the Bankruptcy Code.**

The Debtors' interest in the Property constitutes property of the bankruptcy estate pursuant to Bankruptcy Code Section 541. 11 U.S.C. § 541. The Debtor-in-Possession may sell property of the estate pursuant to Bankruptcy Code section 363(b)(1) and section 1107. *See also* Fed. R. Bankr. P. 6004(f)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction). A debtor-in-possession is given these rights by section 1107(a) of the Bankruptcy Code. Additionally, Bankruptcy Code Section 105(a) allows the Court to "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).

**i. The Purchaser is a Good Faith Purchaser in Accordance with 11 U.S.C. §363(m)**

Although the Bankruptcy Code does not provide guidance regarding circumstances under which a sale of assets can be approved (other than the requirement to provide notice and a hearing), the United States Court of Appeals for the Third Circuit in the seminal case of *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986), interpreted Section 363(b) to require a finding by the Bankruptcy Court that the purchaser of a debtor's assets is a good faith buyer. The Third Circuit construed the "good faith buyer" standard to mean one who purchases in "good faith" and for "value." *Abbotts Dairies*, 788 F.2d at 147. Moreover,

Neither the Bankruptcy Code nor the Bankruptcy Rules define 'good faith.' In construing this phrase, courts have therefore borrowed from traditional equitable principles, holding the concept of 'good faith' speaks to the integrity of a party's conduct in the course of the bankruptcy sale proceedings. A purchaser's good faith status at a bankruptcy sale would be destroyed by misconduct involving 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*In re Tempo Technology Corp.*, 202 B.R. 363, 367 (Bankr. Del. 1996).

The *Abbotts Dairies* court then compared a Section 363(b) purchaser to a buyer at a judicial sale:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*Abbotts Dairies*, 788 F.2d at 147 (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

Finally, the Court noted that "courts have held that '[f]air and valuable consideration is given in a bankruptcy sale when the purchaser pays 75% of the appraised value of the assets'."



*Abbotts Dairies*, 788 F.2d at 149 (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d at 1197 n1; *In re Karpe*, 84 B.R. 926, 933 (Bankr. M.D. Pa. 1988).

Here, the proposed sale satisfies the “good faith” prong of the *Abbotts Dairies* test. First, the proposed purchase price of \$849,500.00 is fair, was negotiated in good faith, and it exceeds 75%<sup>3</sup> of the value of the Property, thereby satisfying the *Abbotts Dairies* test. The realtor recites the marketing efforts in his certification and attaches a Comparative Market Analysis. After first listing the Property for \$889,000, the listing price was reduced to attract more interest. *See* Cert. of Peter Lorenzo. The Property was marketed at five public open houses and one realtor open house. *Id.* It was also marketed on more than two-hundred websites including Realtor.com, Zillow, Trulia, and several Facebook pages. The Property was shown to approximately to 25 qualified buyers. *Id.* Following a three-month period, I received two offers. *Id.* The first offer was for \$820,000.00 which was contingent on the sale of another property. *Id.* The second, which is the current offer, was for \$849,000.00. The highest and best written offer was received from the Purchaser.

Second, the Debtors have fully disclosed and requested the Court’s approval of the terms and conditions of the proposed sale, and provided notice of the sale to the Court for authorization. *See In re Colony Hill Assoc.*, 111 F.3d 269 (2d Cir. 1997) (determination of “good faith” is based on traditional equitable principles, including whether there has been full disclosure to the Bankruptcy Court). Accordingly, notice will also be provided to all other potential bidders, and all parties-in-interest in the Debtors’ bankruptcy case.

Third, this transaction was negotiated at arm’s length and there have been no allegations that there was any misconduct by the parties related to the Purchase Agreement.

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<sup>3</sup> Pursuant to the Certification of Peter Lorenzo the value of the Property is \$869,000.00.

Finally, the parties here are acting in good faith because the Motion and all facts in support of proposed sale will be served on all interested parties and approved by the Court. Accordingly, the successful Purchaser should be deemed a “good faith purchaser” and the Debtors submit that the sale process has been proposed in good faith pursuant to 11 U.S.C. § 363(m).

**ii. The Sale is for a Sound Business Purpose**

The Third Circuit appears to have adopted the “sound business purpose” test when examining the reason for an asset sale first articulated in *Official Comm. Of Unsecured Creditors v. Lionel Corp.*, 722 F.2d 1063, 1067 (2d Cir. 1983); see *In re Indus. Valley Ref. & Air Cond. Supplies, Inc.*, 77 B.R. 15, 20 (Bankr. E.D. Pa. 1987).

In *Lionel*, the Second Circuit held that:

There must be some articulated business justification . . . for using, selling, or leasing property out of the ordinary course of business before the bankruptcy judge may order such disposition under [s]ection 363(b) . . . The rule we adopt requires that a judge determining a [section] 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application. *Lionel*, 722 F.2d at 1070-71.

In *Summit Glob. Logistics, Inc.*, the Third Circuit held that:

In accordance with *Lionel* and subsequent precedent within the Third Circuit, [d]ebtors must prove the following: (1) a sound business purpose for the sale; (2) the proposed sale price is fair; (3) the debtor has provided adequate and reasonable notices; and (4) the buyer has acted in good faith.

*In re Summit Glob. Logistics, Inc.*, 2008 WL 819934, at \*9 (Bankr. D.N.J. Mar. 26, 2008).

The proposed sale meets the Third Circuit’s requirement for a sale of the Debtors’ Property. A sound business reason exists because the sale of the Property will yield proceeds to the creditor body, including allowed secured and priority claims in accordance with section 507(a) of the Bankruptcy Code, and potentially the unsecured body following approval of the Motion. If not for

the Debtor's efforts to sell the property would be sold at foreclosure for less than market value, and would likely not benefit the Debtors' creditor body as greatly. Secondly, the Debtors have provided adequate notice to all parties entitled to receive notice of the proposed sale. Moreover, the Property was marketed to the public for several months and the Property is being sold for more than 75% of its value. Third, there is no evidence of bad faith with regard to the sale of the Property and therefore, the Debtors' business judgment should be taken at face value. Lastly, and as demonstrated above, the Purchaser is a good faith purchaser and has negotiated the purchase price at arm's length. The Purchaser was unknown to the Debtors until the introduction through the Realtor. There are no agreements between the Debtor and the Purchaser other than the agreed to in the Purchase Agreement and the sale transaction has been made transparent to the Court and parties in interest. Thus, the Debtor respectfully submits that the Purchaser's offer meets the "sound business purpose" test articulated in *Lionel*. Consideration of the above factors in this case weighs in favor of approval of the proposed sale.

**B. The Debtor Should be Authorized to Sell the Property Free and Clear of Liens in Accordance with Sections 363(f) and 544(a)(3) of the Bankruptcy Code.**

**i. The Court Should Interpret "Value" in Section 363(1)(3) as Economic Value, Not Face Value.**

Pursuant to Section 363(f), a debtor's property may be sold free and clear of any and all liens, claims or interests in such property if:

- (1) such a sale is permitted under applicable non-bankruptcy law;
- (2) the party asserting such a lien, claim or interest consents to such sale;
- (3) the interest is a lien and the purchase price for the property is greater than the aggregate value of all liens on the property;
- (4) the interest is the subject of a bona fide dispute; or

(5) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

*See* 11 U.S.C. § 363(f); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

Section 363(f) is written in the disjunctive; the court may approve a sale “free and clear” provided at least one of the subsections is met. The Debtor submits that the Property is being sold for an amount greater than the aggregate value of all liens on such property.

There is a split of authority over the proper interpretation of the "greater than the aggregate value of all liens on such property" language set forth in section 363(f)(3). *Compare Criimi Mae Services Ltd. P'ship v. WDH Howell, LLC (In re: WDH Howell, LLC) ("Howell")*, 298 B.R. 527, 531 n.9 (D.N.J. 2003) (holding that to approve a sale under section 363(f)(3), the value received must be greater than the aggregate “face value” of all liens on a property) with *In re Beker Ind.*, 63 B.R. 474, 475 (Bankr. S.D.N.Y. 1986), *rev'd on other grounds*, 89 B.R. 336 (Bankr. S.D.N.Y. 1988) (holding that "§ 363(f)(3) is to be interpreted to mean what it says: the price must be equal to or greater than the aggregate value of the liens asserted against it, not their amount"); *In re Hatfield Homes, Inc.*, 30 B.R. 353, 355 (Bankr. E.D. Pa. 1983) (stating that "if the proposed sale price is the best price obtainable under the circumstances of a particular case, then the fact that junior lienholders may receive little or nothing from the proceeds of the sale would not, standing alone, constitute reason for disapproving the proposed sale). *Collier on Bankruptcy* agrees with the latter approach, stating that the “focus of this requirement has been held to be the value of the liens under the terms of the proposed sale.” 3-363 *Collier on Bankruptcy* P 363.06 (16th 2016).

When interpreting statutory language, it is well settled that "terms of particular meaning to the subject matter of the statute are to be interpreted in line with that meaning ... and in light of other provisions of the statute." *Beker*, 63 B.R. at 475 (internal citations omitted). This supports a

finding that "value" of a security interest is used in the same context in section 506(a) of the Bankruptcy Code as in section 363(f)(3). *Id.* at 476. Section 506(a) of the Bankruptcy Code provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a).

Thus, "value" when used in terms of the interest of a secured creditor, as in section 506(a), means the value determined by the Court as opposed to the amount of the lien. *Beker*, 63 B.R. at 476. In addition, section 506(a) requires "determination of value upon disposition of an asset standing as collateral." *Id.* Given that section 363(f)(3) also involves the disposition of collateral, this further supports the conclusion that the meaning of terms used in section 363(f)(3) should be interpreted in the same light as they are in section 506(a).

Furthermore, sections 361 to 364 all speak to how secured claims are to be treated in a bankruptcy case. *In re Terrace Gardens Park P'ship*, 96 B.R. 707, 713 (Bankr. W.D. Tex. 1989). All of these sections refer to adequate protection as the "touchstone for whether a debtor's proposed action should be approved." *Id.* Accordingly, a debtor seeking approval of a sale under 363(f)(3), as in the instant case, would need to show that the secured creditors had been adequately protected. Whether adequate protection exists is determined by the "value of the collateral securing the claim." *Id.* This further supports the assertion that section 363(f)(3) would not require the value to be greater than the actual value of the liens, but instead would look to the economic value of the claims.

In the instant case, the Property was presented to the public and the value of \$869,000.00 has been determined by the real estate market. The Debtor was able to obtain an offer of \$849,000.00 following several motions of marketing of the Property. The sale of the Property will yield proceeds to the creditor body, including allowed secured and priority claims, and potentially the unsecured body following approval of the Motion. Thus, asserted liens should be equal to the value of the Property.

**ii. That secured creditors do not receive the full value of their claims is not dispositive, and the circumstances of this case favor approval of the sale.**

As noted above, "[i]f the proposed sales price is the best price obtainable under the circumstances of a particular case, then the fact that junior lienholders may receive little or nothing from the proceeds of the sale would not, standing alone, constitute reason for disapproving the proposed sale." *Hatfield Homes*, 30 B.R. at 355. In fact, a secured creditor that opposes a sale because it will amount to less than the value of its lien and also will not take the property for itself, places the burden on the debtor and general creditors to continue to finance an insolvent entity. *Terrence Beker*, 63 B.R. at 478. Simply stated, a junior lien-holder should not be able to frustrate a sale that other interested parties agree to, when it is clear that there is simply no available value to satisfy the junior lien. "Focusing solely on the amount of the debt securing the liens ... ignores the Code's focus on protecting the *value* of collateral, thereby allowing an undersecured creditor to obstinately block an otherwise sensible sale." *Terrence Gardens*, 96 B.R. at 712.

In the instant case, requiring the Debtors to obtain a sale price in excess of the face value of all of the liens would essentially deprive the estate of a valuable asset. Facing this reality, and unable to pay its post-petition obligations, the Debtors went into the market and obtained the best possible price given the current market conditions.

Additionally, valid liens that have been asserted against the property, to the extent they are

valid and enforceable liens, will be satisfied from the proceeds of the sale. Any liens, claims, interests and encumbrances may attach to the proceeds of the sale in the order of their priority, with the same validity, force and effect that they now have as against the Debtors' Property, subject to the rights, claims, defenses and objection of the Debtors and all interested parties with respect to such liens and claims all of which are expressly reserved.

Moreover, pursuant to the Debtors' proposed order, if there are no objections to Debtors' Motion, creditors will have been deemed to consent to the sale of the Property free and clear of liens, interests, and encumbrances. Therefore, the Court should permit the Debtors to sell the Property free and clear of liens, claims, interest and encumbrances.

**iii. The Sale of the Property Should be Sold Free and Clear of the Judgment Liens Because the Judgment Liens are Subject to the Debtor's Avoidance Powers Pursuant to Section 544(a)(3) and Thus Subject to a Bona Fide Dispute Pursuant to Section 363(f)(4)**

**a. The Judgment Liens are Subject to the Trustee's Avoidance Powers Pursuant to 544(a)(3)**

Pursuant to section 544(a)(3), "The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by...(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists." 11 U.S.C. § 544(a)(3).

Thus, the trustee is given the rights and power of a bona-fide purchaser of real property if, at the commencement of a bankruptcy case, a hypothetical buyer could have obtained bona fide purchaser status and can avoid any liens or conveyances that a bona fide purchaser could avoid.

*Owens-Ames-Kimball Co. v. Michigan Lithographing Co. (In re Michigan Lithographing Co.)*, 997 F.2d 1158, 1159 (6th Cir. 1993); *see, Gaffney v. U.S. Dep't of Transportation*, 303 B.R. 295,298 (Bankr. W.D.N.Y. 2003) (the Court holding that the trustee does not have to prove his bona-fides and is presumed to hold the status of a bona fide purchaser of real property from the debtor, and against whom applicable law permits such transfer to be perfected).

State law governs who may be a bona fide purchaser and the rights of such a purchaser. *Crane v. Richardson*, a, 706 (7th Cir. 2013); *see, In re Michigan Lithographing Co.*, 997 F.2d at 1159 *citing McCannon v. Marston*, 679 F.2d 13, 15-17 (3d Cir. 1982); *see also In re Eight Bulls, LP*, 439 B.R. 370, 375 (Bankr. D.N.J. 2010) (Court finding that the trustee obtained status of a bona-fide purchaser without notice, pursuant to state law that perfected as of the petition date).

Under New Jersey's race-notice recording statute:

“A deed or other conveyance of an interest in real property shall be of no effect against subsequent judgment creditors without notice, and against subsequent bona fide purchaser and mortgagees for valuable consideration without notice and whose conveyance or mortgage is recorded, unless that conveyance is evidenced by a document that is first recorded.”

N.J. Stat. § 46:26A-12.

As a bona-fide hypothetical purchaser, the Trustee is deemed to have conducted a title search, paid value for the real property and perfected its interest as a legal title holder as of the date of the commencement of the case. *Midlantic Nat'l Bank v. Bridge (In re Bridge)*, 18 F.3d 195, 204 (3d Cir. 1994). The Trustee can exercise rights as a bona-fide purchaser at the time of the commencement of the case regardless of actual knowledge. *Dobin v Sheehan (In re Eight Bulls, LP)*, 439 B.R. 370, 375 (Bankr. D.N.J. 2010) *citing Ridings at Brandywine Assocs., LP v. Citizens Bank*, Case No. 08-2788 (RMB), 2008 U.S. Dist. LEXIS 66568 (Bankr. D.N.J. Aug. 29, 2008) (Court holding that trustee's actual knowledge be disregarded for the purposes of determining



whether the trustee qualifies as a bona-fide purchaser. *See also, McCannon v. Marston*, 679 F.2d at 16 (Court relying on legislative history indicating history that the trustee's status as a hypothetical lien creditor should not be affected by knowledge which he, or other creditors may have).

If a creditor fails to properly perfect under applicable state law, its claim is deemed unperfected under the Bankruptcy Code and the creditor's unperfected lien will not stand against trustee's avoidance power pursuant to Section 544(a)(3). *Knopfler v. Addison Bldg. Material Co.*, 149 B.R. 522, 528-529 (Bankr. N.D. Ill. 1993) (The Court found that a mechanic's lien properly executed prepetition and in accordance with state law could not be voided by the trustee's strong-arm powers pursuant to section 544(a)(3)). However, if a creditor perfects its lien by complying with all the requirements of state law, the trustee's strong-arm powers under Section 544(a) will not have priority over said lien. *Id.*

Under New Jersey law, “[p]riority among judgment creditors is determined by the order of their liens of execution.”...But [e]xecution is accomplished only after the creditor delivers the writ to the sheriff and the sheriff actually levies upon the debtor's property.” *Party Parrot, Inc. v. Birthdays & Holidays, Inc.*, 289 N.J. Super. 167, 175 (N.J. App. Div. 1996) quoting *In re Silverman*, 2 B.R. 326, 330 (Bankr. D.N.J. 1980); *In re Silverman*, 6 B.R. 991, 995 (D.N.J. 1980).

Several courts addressing the sequence of execution issue in New Jersey have suggested in dicta that the requirements for a proper levy on real estate are two-fold. Not only must the levying judgment creditor make a good faith attempt to locate personalty owned by the debtor prior to the levy on the debtor's real property, but the sheriff must also search for personalty prior to execution against the debtor's real estate. *Silverman*, 6 B.R.; see also *In re Mariano*, 339 B.R. 344, (Bankr. D.N.J. 2006).

In the instant case, the following judgments (the “Judgment Liens”) were docketed against the Debtors in the Superior Court of New Jersey:

- i. Lakeland Bank – Judgment No.: J-001873-2017-\$23,478.07
- ii. Division of Taxation – Judgment No.: DJ-05891-2017-\$47,360.81
- iii. Albert Kenney – Judgment No.: DJ-104305-2017-\$50,000.00
- iv. Dixon Bros – Judgment No.: DJ-135900-2017-\$7,770.68
- v. Albert Kenney – Judgment No.: CV-001059-2012-\$50,000.00

Here, there is no evidence demonstrating that any of the Judgment Liens were ever properly perfected under New Jersey’s recording law. There is no evidence that the Judgment Creditors delivered a writ of execution to the sheriff nor that the sheriff levied upon the Property. *See* Cert. of Debtor M. Kalfus. In fact, there is no evidence that the Judgment Creditors attempted to levy on the Debtor’s personal property. *Id.* Since there is no evidence that any of the Judgment Liens were enforced by levies on the Property, the Judgment Liens were never perfected under New Jersey recording law. Therefore, the Judgment Liens are subject to the avoidance powers pursuant to Section 544(a)(3), and the Court should permit the Debtors to sell the Property free and clear of the Judgment Liens.

**b. The Judgment Liens are Subject to the Trustee Avoidance Powers Pursuant to Section 544(a)(3) and Thus Subject to a Bona Fide Dispute Pursuant to Section 363(f)(4)**

As explained above, the Debtors, as of the Petition Date, had the rights of a bona fide purchaser, having paid consideration, and taking without notice of any of the Judgment Liens. Any lien that is not perfected as of the Petition Date is subject to the trustee’s avoidance powers pursuant to section 544(a)(3) of the Bankruptcy Code. *Knopfler* at 528-529.

Pursuant to Section 363(f)(4), a debtor’s property may be sold free and clear of any and all liens, claims or interests in such property if ... the interest is the subject of a bona fide dispute. *See* 11 U.S.C. § 363(f)(4). The Bankruptcy Code does not define the phrase “bona fide dispute,” but Courts interpret § 363(f)(4) to mean that there is an “objective basis for either a factual or legal

dispute as to the validity of the asserted interest.” *In re Bella Vista Assoc., LLC*, 2007 Bankr. LEXIS 4348, \*11 (Bankr. D.N.J. Dec. 18, 2007). The court does not have to resolve the dispute prior to the sale; it need only determine that such a dispute exists. *In re Gaylord Grain L.L.C.*, 306 B.R. at 627.

Here, there is no evidence demonstrating that any of the Judgment Liens were properly perfected under New Jersey’s recording law, and there is no evidence that the Judgment Creditors delivered a writ of execution to the sheriff and levied upon the Property or any of the Debtors’ personal property. Therefore, as in *Knopfler*, the Debtors contend that the Judgment Creditors did not perfect the Judgment Liens as of the Petition Date, and are thus subject to the Debtors’ avoidance powers pursuant to section 544(a)(3).

As such, and as in *In re Bella Vista Assoc. and In re Gaylord*, the Debtors can demonstrate that a bona-fide dispute exists between themselves and the judgment creditors as to whether the Judgment Liens were properly perfected and are subject to the Debtor’s avoidance powers of section 544(a)(3). Therefore, the Debtor satisfies Section 363(f)(4) because they can demonstrate a bona-fide dispute against the Judgment Creditors. Thus, the Court should permit the Debtors to sell the Property free and clear of the Judgment Liens.

### **C. Professional Fees Should be Paid from Sale Proceeds**

Section 506(c) of the Bankruptcy Code allows a claimant to “recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.” 11 U.S.C. § 506(c). “Section 506(c) is designed to allow a claimant who has expended funds to preserve or dispose of secured collateral to recover those funds from the secured creditor who directly benefitted from them, thus preventing a windfall to the secured creditor at the expense of the

claimant.” *In re Towne, Inc.*, 536 F. App'x 265, 268 (3d Cir. 2013). “To recover expenses under § 506, a claimant must demonstrate that (1) the expenditures are reasonable and the necessary to the preservation or disposal of the property; and (2) the expenditures provide a direct benefit to the secured creditors.” *In re Towne, Inc.*, 536 F. App'x at 268.

Here, the net sales proceeds are being realized only because of the Debtors’ efforts to bring the sale and with the assistance of professionals retained by order of the Court, and for fees approved by the Court. Significant time was invested in bringing the sale to realization and the real estate professionals have incurred actual costs in marketing the Property. But for the efforts of Debtors’ counsel, real estate counsel, and the real estate professionals, the secured creditors would not have realized any sale proceeds until the eventual foreclosure sale and would not have benefited from the marketing campaign performed by the Realtor. Thus, the Debtor respectfully requests that the Realtor and real estate counsel be paid from the proceeds without separate application, and further requests that Debtors’ counsel reserve in escrow \$25,000.00 from the sale proceeds, subject to approval of counsel’s fee application.

**WAIVER OF 14 DAY STAY**

Pursuant to Fed. R. Bankr. P. 6004(h), unless the Court orders otherwise, orders authorizing the sale of the assets pursuant to Section 363 of the Bankruptcy Code are automatically stayed for fourteen (14) days after entry of the order. The purpose of Rule 6004(h) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to *Fed. R. Bankr. P.* 6004(g) (redesignated as subsection “h” by the 2005 Bankruptcy Reform Act).

Although Bankruptcy Rules 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay, bankruptcy

commentators have suggested that the period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See* 10 Collier on Bankruptcy ¶ 6004.09 (15th ed. rev. 2003).

The Debtors assert that given the goal by the parties in this case to sell the Property and bring this case to conclusion in the short term, there is cause to waive the stay and the Debtors request that upon approval of the sale, the fourteen (14) day period pursuant to Rule 6004(h) be waived by the Court.

### **NOTICE**

Notice of this Motion has been given to (a) the United States Trustee for the District of New Jersey; the Internal Revenue Service; the Attorney General of the State of New Jersey; the State of New Jersey, Division of Taxation (b) all secured creditors; (c) all unsecured creditors; (d) all parties that have requested notice in this case; and (e) all entities known to the Debtors to have expressed a *bona fide* interest in acquiring the Property; (f) all persons or entities purporting to have a lien or judgment, through their counsel, if represented, which may be an encumbrance on the Property; and (g) any and all persons know to have an ownership interest in the Property. The Debtor submits that no other or further notice is required. No previous motion for the relief sought herein has been made to this or to any other court.

### **CONCLUSION**

It is respectfully submitted that sufficient ground exists in law and equity for the Property to be sold free and clear of any liens, claims, interests and encumbrances. The “economic value” analysis the purchase price for the Property is greater than the aggregate value of all liens on the Property and it is certain that the sale proceeds are sufficient to satisfy the mortgages held by Haven Saving Bank and First Constitution Bank, minus Sheriff Commission. The purported

Judgement Liens are subordinate to the estate's perfected interest and may be voided by the debtor-in-possession powers granted by sections 1107 and 544(a)(3) of the Bankruptcy Code. Any valid and provable liens, claim, interests or encumbrances may attach to the proceeds of the sale in the order of their priority, with the same validity, force and effect that they now have as against the Debtor's assets.

WHEREFORE, the Debtor respectfully requests the entry of an order effective immediately: (1) approving the sale of the Property in accordance with the Purchase Agreement entered into by the Debtors and Purchaser, free and clear of all liens, claims, interests, and encumbrances (subject to higher or better offers); (2) waiving the fourteen-day stay; (3) allowing payment of professional fees from sale proceeds; and (4) granting such other and further relief, as this court deems just and proper.

Respectfully submitted,

**SCURA, WIGFIELD, HEYER,  
STEVENS & CAMMAROTA, LLP**  
Attorneys for Debtor

Dated: March 2, 2018

/s/ Guillermo J. Gonzalez  
Guillermo J. Gonzalez

# Exhibit B

## NOTICE TO BUYER AND SELLER READ THIS NOTICE BEFORE SIGNING THE CONTRACT

The Law requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. The purpose is to help you in this purchase or sale.

1) As a real estate broker, I represent:  the seller, not the buyer;  the buyer, not the seller;  
 both the seller and the buyer;  neither the seller nor the buyer.  
The title company does not represent either the seller or the buyer.

2) You will not get any legal advice unless you have your own lawyer. Neither I nor anyone from the title company can give legal advice to either the buyer or the seller. If you do not hire a lawyer, no one will represent you in legal matters now or at the closing. Neither I nor the title company will represent you in those matters.

3) The contract is the most important part of the transaction. It determines your rights, risks, and obligations. Signing the contract is a big step. A lawyer would review the contract, help you to understand it, and to negotiate its terms.

4) The contract becomes final and binding unless your lawyer cancels it within the following three business days. If you do not have a lawyer, you cannot change or cancel the contract unless the other party agrees. Neither can the real estate broker nor the title insurance company change the contract.

5) Another important service of a lawyer is to order a survey, title report, or other important reports. The lawyer will review them and help to resolve any questions that may arise about the ownership and condition of the property. These reports and survey can cost you a lot of money. A lawyer will also prepare the documents needed to close title and represent you at the closing.

6) A buyer without a lawyer runs special risks. Only a lawyer can advise a buyer about what to do if problems arise concerning the purchase of this property. The problems may be about the seller's title, the size and shape of the property, or other matters that may affect the value of the property. If either the broker or the title company knows about the problems, they should tell you. But they may not recognize the problem, see it from your point of view, or know what to do. Ordinarily, the broker and the title company have an interest in seeing that the sale is completed, because only then do they usually receive their commissions. So, their interests may differ from yours.

7) Whether you retain a lawyer is up to you. It is your decision. The purpose of this notice is to make sure that you have the information needed to make your decision.

DocuSigned by: <i>Michael &amp; Robin Kalfus</i>	11/27/2017
SELLER	DATE
SELLER	DATE
SELLER	DATE
SELLER	DATE
DocuSigned by: <i>Peter Lorenz</i>	11/27/2017
Listing Broker	

<i>John Cortese</i>	do:looo verified 11/26/17 7:32PM EST 165V-FONL-OSKU-IC29
BUYER	DATE
<i>Margaret Cortese</i>	do:looo verified 11/26/17 7:29PM EST 0DY0-JCB-VIGNS-D4ZV
BUYER	DATE
BUYER	DATE
<i>Meghan Russo</i>	do:looo verified 11/26/17 8:14PM EST 0HRI-LIZN-SVZM-YBH
Selling Broker	

Prepared by: Meghan Russo  
Name of Real Estate Licensee



OF REAL ESTATE SALES CONTRACT



©2016 New Jersey REALTORS®, Inc.  
 THIS FORM MAY BE USED ONLY IN THE SALE OF A ONE TO FOUR-FAMILY RESIDENTIAL PROPERTY OR VACANT ONE-FAMILY LOTS. THIS FORM IS SUITABLE FOR USE ONLY WHERE THE SELLER HAS PREVIOUSLY EXECUTED A WRITTEN LISTING AGREEMENT.

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

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		43. ADDITIONAL CONTRACTUAL PROVISIONS

1. PARTIES AND PROPERTY DESCRIPTION:

Margaret Cortese ("Buyer"), John Cortese ("Buyer"),  
 ("Buyer"), ("Buyer"),  
 whose address is/are \_\_\_\_\_  
 28 Comley Pl, Bloomfield, NJ 07003

AGREES TO PURCHASE FROM

Robin Kalfus ("Seller"), Michael Kalfus ("Seller"),  
 ("Seller"), ("Seller"),  
 whose address is/are \_\_\_\_\_  
 68 Hillcrest Road, Boonton Twp., NJ 07005

THROUGH THE BROKER(S) NAMED IN THIS CONTRACT AT THE PRICE AND TERMS STATED BELOW, THE FOLLOWING PROPERTY:

Property Address: \_\_\_\_\_  
 68 Hillcrest Road, Boonton Twp., NJ 07005  
 shown on the municipal tax map of \_\_\_\_\_ Boonton Twp. \_\_\_\_\_ County \_\_\_\_\_ Morris  
 as Block \_\_\_\_\_ 21301 \_\_\_\_\_ Lot \_\_\_\_\_ 10 \_\_\_\_\_ (the "Property").

THE WORDS "BUYER" AND "SELLER" INCLUDE ALL BUYERS AND SELLERS LISTED ABOVE.

2. PURCHASE PRICE:

TOTAL PURCHASE PRICE	..... \$	849,000
INITIAL DEPOSIT	..... \$	na
ADDITIONAL DEPOSIT	..... \$	30,000
MORTGAGE	..... \$	676,720
BALANCE OF PURCHASE PRICE	..... \$	142,280

Buyer's Initials: MB 11/26/17 7:29PM EST  
 Seller's Initials: MSK 11/26/17 7:32PM EST



3. MANNER OF PAYMENT:

(A) INITIAL DEPOSIT to be paid by Buyer to  Listing Broker  Participating Broker  Buyer's Attorney  Title Company  
 Other n/a, on or before \_\_\_\_\_ (date) (if left blank, then within five (5)  
business days after the fully signed Contract has been delivered to both the Buyer and the Seller).

(B) ADDITIONAL DEPOSIT to be paid by Buyer to the party who will be responsible for holding the escrow who is identified below  
on or before 2 weeks from contract (date) (if left blank, then within ten (10) calendar days after the fully signed Contract has been  
delivered to both the Buyer and the Seller).

(C) ESCROW: All initial and additional deposit monies paid by Buyer shall be held in escrow in the NON-INTEREST  
BEARING TRUST ACCOUNT of \_\_\_\_\_ buyers attorney \_\_\_\_\_, ("Escrowee"), until the Closing, at which time all  
monies shall be paid over to Seller. The deposit monies shall not be paid over to Seller prior to the Closing, unless otherwise agreed  
in writing by both Buyer and Seller. If Buyer and Seller cannot agree on the disbursement of these escrow monies, the Escrowee may  
place the deposit monies in Court requesting the Court to resolve the dispute.

(D) IF PERFORMANCE BY BUYER IS CONTINGENT UPON OBTAINING A MORTGAGE:

If payment of the purchase price requires a mortgage loan other than by Seller or other than assumption of Seller's mortgage,  
Buyer shall apply for the loan through any lending institution of Buyer's choice in writing on lender's standard form within ten (10)  
calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the  
Attorney-Review Clause Section of this Contract, then within ten (10) calendar days after the parties agree to the terms of this Contract,  
and use best efforts to obtain it. Buyer shall supply all necessary information and fees required by the proposed lender and shall authorize  
the lender to communicate with the real estate brokers(s) and involved attorney(s). Buyer shall obtain a written commitment from the  
lending institution to make a loan on the property under the following terms:

Principal Amount \$ 676,720 Type of Mortgage:  VA  FHA  Conventional  Other \_\_\_\_\_  
Term of Mortgage: 30 years, with monthly payments based on a 30 year payment schedule.

The written mortgage commitment must be delivered to Seller's agent, who is the Listing Broker identified in Section 30, and Seller's  
attorney, if applicable, no later than 12/15/2017 (date) (if left blank, then within thirty (30) calendar days after  
the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the Attorney-Review  
Clause Section of this Contract, then within thirty (30) calendar days after the parties agree to the terms of this Contract). Thereafter,  
if Buyer has not obtained the commitment, then either Buyer or Seller may void this Contract by written notice to the other party and  
Broker(s) within ten (10) calendar days of the commitment date or any extension of the commitment date, whichever is later. If this  
Contract is voided, the deposit monies paid by Buyer shall be returned to Buyer notwithstanding any other provision in this Contract,  
provided, however, if Seller alleges in writing to Escrowee within said ten (10) calendar days of the commitment date or any extension of  
the commitment date, whichever is later, that the failure to obtain the mortgage commitment is the result of Buyer's bad faith, negligence,  
intentional conduct or failure to diligently pursue the mortgage application, then Escrowee shall not return the deposit monies to Buyer  
without the written authorization of Seller.

(E) BALANCE OF PURCHASE PRICE: The balance of the purchase price shall be paid by Buyer in cash, or by certified, cashier's  
or trust account check.

Payment of the balance of the purchase price by Buyer shall be made at the closing, which will take place on \_\_\_\_\_  
01/15/2018 (date) at the office of Buyer's closing agent or such other place as Seller  
and Buyer may agree ("the Closing").

4. SUFFICIENT ASSETS:

Buyer represents that Buyer has or will have as of the Closing, all necessary cash assets, together with the mortgage loan proceeds, to  
complete the Closing. Should Buyer not have sufficient cash assets at the Closing, Buyer will be in breach of this Contract and Seller shall  
be entitled to any remedies as provided by law.

5. ACCURATE DISCLOSURE OF SELLING PRICE:

Buyer and Seller certify that this Contract accurately reflects the gross sale price as indicated in Section 2 of this Contract. Buyer and  
Seller understand and agree that this information shall be disclosed to the Internal Revenue Service and other government agencies as  
required by law.

6. ITEMS INCLUDED IN SALE:

The Property includes all fixtures permanently attached to the building(s), and all shrubbery, plantings and fencing, gas and electric  
fixtures, cooking ranges and ovens, hot water heaters, flooring, screens, storm sashes, shades, blinds, awnings, radiator covers, heating  
apparatus and sump pumps, if any, except where owned by tenants, are included in this sale. All of the appliances shall be in working

Buyer's Initials: MB 11/06/17 7:29PM EST  
Seller's Initials: MBK 11/06/17 7:32PM EST

111 order as of the Closing. Seller does not guarantee the condition of the appliances after the Deed and affidavit of title have been delivered  
112 to Buyer at the Closing. The following items are also specifically included (If reference is made to the MLS Sheet and/or any other  
113 document, then the document(s) referenced should be attached.):  
114 surround sound system/speakers, bar stools in kitchen, all fridges, dishwasher, oven/range, washer/dryer,  
115 office built in desk/cabinets, projector system, children's play set in yard,  
116

117  
118 **7. ITEMS EXCLUDED FROM SALE:** (If reference is made to the MLS Sheet and/or any other document, then the document(s)  
119 referenced should be attached.):  
120 ALL chandeliers throughout the home  
121  
122

123  
124 **8. DATES AND TIMES FOR PERFORMANCE:**  
125 Seller and Buyer agree that all dates and times included in this Contract are of the essence. This means that Seller and Buyer must satisfy  
126 the terms of this Contract within the time limits that are set in this Contract or will be in default, except as otherwise provided in this  
127 Contract or required by applicable law, including but not limited to if the Closing has to be delayed either because a lender does not timely  
128 provide documents through no fault of Buyer or Seller or for three (3) business days because of the change of terms as required by the  
129 Consumer Financial Protection Bureau.  
130

131 **(A) Additional documents from lenders or other property owners:**  
132 If a lender or other property owner requires that any addendum or other document be signed for a property it owns in connection with  
133 this Contract, "final execution date," "acknowledgement date," or similar language that sets the time period for the completion of any  
134 conditions or contingencies, including but not limited to inspections and financing, shall mean that the time will begin to run after the  
135 attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the Attorney-Review Clause  
136 Section of this Contract, then from the date the parties agree to the terms of this Contract.  
137

138 **9. CERTIFICATE OF OCCUPANCY AND ZONING COMPLIANCE:**  
139 Seller makes no representations concerning existing zoning ordinances, except that Seller's use of the Property is not presently in violation  
140 of any zoning ordinances.  
141  
142 Some municipalities may require a Certificate of Occupancy or Housing Code Letter to be issued. If any is required for this Property,  
143 Seller shall obtain it at Seller's expense and provide to Buyer prior to Closing and shall be responsible to make and pay for any repairs  
144 required in order to obtain the Certificate or Letter. However, if this expense exceeds \$\_\_\_\_\_ (if left blank, then 1.5% of the  
145 purchase price) to Seller, then Seller may terminate this Contract and refund to Buyer all deposit monies plus Buyer's reasonable expenses,  
146 if any, in connection with this transaction unless Buyer elects to make repairs in excess of said amount at Buyer's expense, in which event  
147 Seller shall not have the right to terminate this Contract. In addition, Seller shall comply with all New Jersey laws, and local ordinances,  
148 including but not limited to smoke detectors, carbon monoxide detectors, fire extinguishers and indoor sprinklers, the cost of which shall  
149 be paid by Seller and not be considered as a repair cost.  
150

151 **10. MUNICIPAL ASSESSMENTS:** (Seller represents that Seller  has  has not been notified of any such municipal assessments as  
152 explained in this Section.)  
153

154 Title shall be free and clear of all assessments for municipal improvements, including but not limited to municipal liens, as well as  
155 assessments and liabilities for future assessments for improvements constructed and completed. All confirmed assessments and all  
156 unconfirmed assessments that have been or may be imposed by the municipality for improvements that have been completed as of the  
157 Closing are to be paid in full by Seller or credited to Buyer at the Closing. A confirmed assessment is a lien against the Property. An  
158 unconfirmed assessment is a potential lien that, when approved by the appropriate governmental entity, will become a legal claim against  
159 the Property.  
160

161 **11. QUALITY AND INSURABILITY OF TITLE:**  
162 At the Closing, Seller shall deliver a duly executed Bargain and Sale Deed with Covenant as to Grantor's Acts or other Deed satisfactory  
163 to Buyer. Title to the Property will be free from all claims or rights of others, except as described in this Section and Section 12 of this  
164 Contract. The Deed shall contain the full legal description of the Property.  
165

166 This sale will be subject to utility and other easements and restrictions of record, if any, and such state of facts as an accurate survey  
167 might disclose, provided such easement or restriction does not unreasonably limit the use of the Property. Generally, an easement is a  
168 right of a person other than the owner of property to use a portion of the property for a special purpose. A restriction is a recorded  
169 limitation on the manner in which a property owner may use the property. Buyer does not have to complete the purchase, however,  
170 if any easement, restriction or facts disclosed by an accurate survey would substantially interfere with the use of the Property for

Buyer's	<i>MB</i>	Seller's	<i>MB</i>
Initials:	11/25/17	Initials:	11/26/17
	7:29PM EST		7:32PM EST

171 residential purposes. A violation of any restriction shall not be a reason for Buyer refusing to complete the Closing as long as the title  
 172 company insures Buyer against loss at regular rates. The sale also will be made subject to applicable zoning ordinances, provided that  
 173 the ordinances do not render title unmarketable.

174  
 175 Title to the Property shall be good, marketable and insurable, at regular rates, by any title insurance company licensed to do business  
 176 in New Jersey, subject only to the claims and rights described in this Section and Section 12. Buyer agrees to order a title insurance  
 177 commitment (title search) and survey, if required by Buyer's lender, title company or the municipality where the Property is located,  
 178 and to furnish copies to Seller. If Seller's title contains any exceptions other than as set forth in this Section, Buyer shall notify Seller  
 179 and Seller shall have thirty (30) calendar days within which to eliminate those exceptions. Seller represents, to the best of Seller's  
 180 knowledge, that there are no restrictions in any conveyance or plans of record that will prohibit use and/or occupancy of the Property  
 181 as a single family residential dwelling. Seller represents that all buildings and other improvements on the Property are  
 182 within its boundary lines and that no improvements on adjoining properties extend across boundary lines of the Property.

183  
 184 If Seller is unable to transfer the quality of title required and Buyer and Seller are unable to agree upon a reduction of the purchase  
 185 price, Buyer shall have the option to either void this Contract, in which case the monies paid by Buyer toward the purchase price shall  
 186 be returned to Buyer, together with the actual costs of the title search and the survey and the mortgage application fees in preparing for  
 187 the Closing without further liability to Seller, or to proceed with the Closing without any reduction of the purchase price.

188  
 189 **12. POSSESSION, OCCUPANCY AND TENANCIES:**

190 **(A) Possession and Occupancy.**

191 Possession and occupancy will be given to Buyer at the Closing. Buyer shall be entitled to possession of the Property, and any rents or  
 192 profits from the Property, immediately upon the delivery of the Deed and the Closing. Seller shall pay off any person with a claim or right  
 193 affecting the Property from the proceeds of this sale at or before the Closing.

194  
 195 **(B) Tenancies.**  Applicable  Not Applicable

196 Occupancy will be subject to the tenancies listed below as of the Closing. Seller represents that the tenancies are not in violation of any  
 197 existing Municipal, County, State or Federal rules, regulations or laws. Seller agrees to transfer all security deposits to Buyer at the Closing  
 198 and to provide to Brokers and Buyer a copy of all leases concerning the tenancies, if any, along with this Contract when it is signed by  
 199 Seller. Seller represents that such leases can be assigned and that Seller will assign said leases, and Buyer agrees to accept title subject to  
 200 these leases.

201

TENANT'S NAME	LOCATION	RENT	SECURITY DEPOSIT	TERM

202  
 203  
 204  
 205  
 206  
 207  
 208 **13. LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARD: (This section is applicable only to all dwellings**  
 209 **built prior to 1978.)**  Applicable  Not Applicable

210 **(A) Document Acknowledgement.**

211 Buyer acknowledges receipt of the EPA pamphlet entitled "Protect Your Family From Lead In Your Home." Moreover, a copy of a  
 212 document entitled "Disclosure of Information and Acknowledgement Lead-Based Paint and Lead-Based Paint Hazards" has been fully  
 213 completed and signed by Buyer, Seller and Broker(s) and is appended to and made a part of this Contract.

214  
 215 **(B) Lead Warning Statement.**

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

223  
 224 **(C) Inspection.**

225 The law requires that, unless Buyer and Seller agree to a longer or shorter period, Seller must allow Buyer a ten (10) calendar day period  
 226 within which to complete an inspection and/or risk assessment of the Property as set forth in the next paragraph. Buyer, however, has the  
 227 right to waive this requirement in its entirety.

228  
 229 This Contract is contingent upon an inspection and/or risk assessment (the "Inspection") of the Property by a certified inspector/risk  
 230 assessor for the presence of lead-based paint and/or lead-based paint hazards. The Inspection shall be ordered and obtained by Buyer at

231 Buyer's expense within ten (10) calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an  
232 attorney as provided in the Attorney-Review Clause Section of this Contract, then within ten (10) calendar days after the parties agree to  
233 the terms in this Contract ("Completion Date"). If the Inspection indicates that no lead-based paint or lead-based paint hazard is present  
234 at the Property, this contingency clause shall be deemed null and void. If the Inspection indicates that lead-based paint or lead-based paint  
235 hazard is present at the Property, this contingency clause will terminate at the time set forth above unless, within five (5) business days from  
236 the Completion Date, Buyer delivers a copy of the inspection and/or risk assessment report to Seller and Brokers and (1) advises Seller  
237 and Brokers, in writing that Buyer is voiding this Contract; or (2) delivers to Seller and Brokers a written amendment (the "Amendment")  
238 to this Contract listing the specific existing deficiencies and corrections required by Buyer. The Amendment shall provide that Seller  
239 agrees to (a) correct the deficiencies; and (b) furnish Buyer with a certification from a certified inspector/risk assessor that the deficiencies  
240 have been corrected, before the Closing. Seller shall have 5 (if left blank, then 3) business days after receipt of the Amendment  
241 to sign and return it to Buyer or send a written counter-proposal to Buyer. If Seller does not sign and return the Amendment or fails to  
242 offer a counter-proposal, this Contract shall be null and void. If Seller offers a counter-proposal, Buyer shall have 5 (if left  
243 blank, then 3) business days after receipt of the counter-proposal to accept it. If Buyer fails to accept the counter-proposal within the time  
244 limit provided, this Contract shall be null and void.  
245

246 **14. POINT-OF-ENTRY TREATMENT ("POET") SYSTEMS:**  Applicable  Not Applicable  
247 A point-of-entry treatment ("POET") system is a type of water treatment system used to remove contaminants from the water entering a  
248 structure from a potable well, usually through a filtration process. Seller represents that a POET system has been installed to an existing  
249 well on the Property and the POET system was installed and/or maintained using funds received from the New Jersey Spill Compensation  
250 Fund Claims Program, N.J.S.A. 58:10-23.11, et seq. The Buyer understands that Buyer will not be eligible to receive any such funds for the  
251 continued maintenance of the POET system. Pursuant to N.J.A.C. 7:1J-2.5(c), Seller agrees to notify the Department of Environmental  
252 Protection within thirty (30) calendar days of executing this Contract that the Property is to be sold.  
253

254 **15. CESSPOOL REQUIREMENTS:**  Applicable  Not Applicable  
255 (This section is applicable if the Property has a cesspool, except in certain limited circumstances set forth in N.J.A.C.  
256 7:9A-3.16.) Pursuant to New Jersey's Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A (the "Standards"), if  
257 this Contract is for the sale of real property at which any cesspool, privy, outhouse, latrine or pit toilet (collectively "Cesspool") is located,  
258 the Cesspool must be abandoned and replaced with an individual subsurface sewage disposal system at or before the time of the real  
259 property transfer, except in limited circumstances.  
260

261 (A) Seller represents to Buyer that  no Cesspool is located at or on the Property, or  one or more Cesspools are located at or on the  
262 Property. [If there are one or more Cesspools, then also check EITHER Box 1 or 2 below.]  
263

264 1.  Seller agrees that, prior to the Closing and at its sole cost and expense, Seller shall abandon and replace any and all Cesspools  
265 located at or on the Property and replace such Cesspools with an individual subsurface sewage disposal system ("System") meeting all  
266 the requirements of the Standards. At or prior to the Closing, Seller shall deliver to Buyer a certificate of compliance ("Certificate of  
267 Compliance") issued by the administrative authority ("Administrative Authority") (as those terms are defined in N.J.A.C. 7:9A-2.1) with  
268 respect to the System. Notwithstanding the foregoing, if the Administrative Authority determines that a fully compliant system cannot  
269 be installed at the Property, then Seller shall notify Buyer in writing within three (3) business days of its receipt of the Administrative  
270 Authority's determination of its intent to install either a nonconforming System or a permanent holding tank, as determined by the  
271 Administrative Authority ("Alternate System"), and Buyer shall then have the right to void this Contract by notifying Seller in writing  
272 within seven (7) business days of receipt of the notice from Seller. If Buyer fails to timely void this Contract, Buyer shall have waived its  
273 right to cancel this Contract under this paragraph, and Seller shall install the Alternate System and, at or prior to the Closing, deliver  
274 to Buyer such Certificate of Compliance or other evidence of approval of the Alternate System as may be issued by the Administrative  
275 Authority. The delivery of said Certificate of Compliance or other evidence of approval shall be a condition precedent to the Closing; or  
276

277 2.  Buyer agrees that, at its sole cost and expense, Buyer shall take all actions necessary to abandon and replace any and all Cesspools  
278 located at or on the Property and replace such Cesspools with a System meeting all the requirements of the Standards or an Alternate  
279 System. Buyer shall indemnify and hold Seller harmless for any and all costs, damages, claims, fines, penalties and assessments (including  
280 but not limited to reasonable attorneys' and experts' fees) arising from Buyer's violation of this paragraph. This paragraph shall survive  
281 the Closing.  
282

283 (B) If prior to the Closing, either Buyer or Seller becomes aware of any Cesspool at or on the Property that was not disclosed by Seller  
284 at or prior to execution of this Contract, the party with knowledge of the newly identified Cesspool shall promptly, but in no event later  
285 than three (3) business days after receipt of such knowledge, advise the other party of the newly identified Cesspool in writing. In such  
286 event, the parties in good faith shall agree, no later than seven (7) business days after sending or receiving the written notice of the newly  
287 identified Cesspool, or the day preceding the scheduled Closing, whichever is sooner, to proceed pursuant to subsection (A) 1 or 2 above  
288 or such other agreement as satisfies the Standards, or either party may terminate this Contract.  
289  
290

Buyer's Initials: 

MB	SO
11/25/17 7:29PM EST	11/25/17 7:32PM EST

 Seller's Initials: 

DS	MBRS
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16. INSPECTION CONTINGENCY CLAUSE:

(A) Responsibilities of Home Ownership.

Buyer and Seller acknowledge and agree that, because the purchase of a home is one of the most significant investments a person can make in a lifetime, all aspects of this transaction require considerable analysis and investigation by Buyer before closing title to the Property. While Brokers and salespersons who are involved in this transaction are trained as licensees under the New Jersey Licensing Act they readily acknowledge that they have had no special training or experience with respect to the complexities pertaining to the multitude of structural, topographical and environmental components of this Property. For example, and not by way of limitation, Brokers and salespersons have no special training, knowledge or experience with regard to discovering and/or evaluating physical defects, including structural defects, roof, basement, mechanical equipment, such as heating, air conditioning, and electrical systems, sewage, plumbing, exterior drainage, termite, and other types of insect infestation or damage caused by such infestation. Moreover, Brokers and salespersons similarly have no special training, knowledge or experience with regard to evaluation of possible environmental conditions which might affect the Property pertaining to the dwelling, such as the existence of radon gas, formaldehyde gas, airborne asbestos fibers, toxic chemicals, underground storage tanks, lead, mold or other pollutants in the soil, air or water.

(B) Radon Testing, Reports and Mitigation.

(Radon is a radioactive gas which results from the natural breakdown of uranium in soil, rock and water. It has been found in homes all over the United States and is a carcinogen. For more information on radon, go to [www.epa.gov/radon/pubs/citguide.html](http://www.epa.gov/radon/pubs/citguide.html) and [www.nj.gov/dep/rpp/radon](http://www.nj.gov/dep/rpp/radon) or call the NJ Radon Hot Line at 800-648-0394 or 609-984-5425.)

If the Property has been tested for radon prior to the date of this Contract, Seller agrees to provide to Buyer, at the time of the execution of this Contract, a copy of the result of the radon test(s) and evidence of any subsequent radon mitigation or treatment of the Property. In any event, Buyer shall have the right to conduct a radon inspection/test as provided and subject to the conditions set forth in paragraph (D) below. If any test results furnished or obtained by Buyer indicate a concentration level of 4 picocuries per liter (4.0 pCi/L) or more in the subject dwelling, Buyer shall then have the right to void this Contract by notifying Seller in writing within seven (7) business days of the receipt of any such report. For the purposes of this Section 16, Seller and Buyer agree that, in the event a radon gas concentration level in the subject dwelling is determined to be less than 4 picocuries per liter (4.0 pCi/L) without any remediation, such level of radon gas concentration shall be deemed to be an acceptable level ("Acceptable Level") for the purposes of this Contract. Under those circumstances, Seller shall be under no obligation to remediate, and this contingency clause as it relates to radon shall be deemed fully satisfied.

If Buyer's qualified inspector reports that the radon gas concentration level in the subject dwelling is four picocuries per liter (4.0 pCi/L) or more, Seller shall have a seven (7) business day period after receipt of such report to notify Buyer in writing that Seller agrees to remediate the gas concentration to an Acceptable Level (unless Buyer has voided this Contract as provided in the preceding paragraph). Upon such remediation, the contingency in this Contract which relates to radon shall be deemed fully satisfied. If Seller fails to notify Buyer of Seller's agreement to so remediate, such failure to so notify shall be deemed to be a refusal by Seller to remediate the radon level to an Acceptable Level, and Buyer shall then have the right to void this Contract by notifying Seller in writing within seven (7) calendar days thereafter. If Buyer fails to void this Contract within the seven (7) business day period, Buyer shall have waived Buyer's right to cancel this Contract and this Contract shall remain in full force and effect, and Seller shall be under no obligation to remediate the radon gas concentration. If Seller agrees to remediate the radon to an Acceptable Level, such remediation and associated testing shall be completed by Seller prior to the Closing.

(C) Infestation and/or Damage By Wood Boring Insects.

Buyer shall have the right to have the Property inspected by a licensed exterminating company of Buyer's choice, for the purpose of determining if the Property is free from infestation and damage from termites or other wood destroying insects. If Buyer chooses to make this inspection, Buyer shall pay for the inspection unless Buyer's lender prohibits Buyer from paying, in which case Seller shall pay. The inspection must be completed and written reports must be furnished to Seller and Broker(s) within 55 (if left blank, then 14) calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the Attorney-Review Clause Section of this Contract, then within 5 (if left blank, then 14) calendar days after the parties agree to the terms of this Contract. This report shall state the nature and extent of any infestation and/or damage and the full cost of treatment for any infestation. Seller agrees to treat any infestation and cure any damage at Seller's expense prior to Closing, provided, however, if the cost to cure exceeds 1% of the purchase price of the Property, then either party may void this Contract provided they do so within 5 (if left blank, then 7) business days after the report has been delivered to Seller and Brokers. If Buyer and Seller are unable to agree upon who will pay for the cost to cure and neither party timely voids this Contract, then Buyer will be deemed to have waived its right to terminate this Contract and will bear the cost to cure that is over 1% of the purchase price, with Seller bearing the cost that is under 1% of the purchase price.

(D) Buyer's Right to Inspections.

Buyer acknowledges that the Property is being sold in an "as is" condition and that this Contract is entered into based upon the knowledge of Buyer as to the value of the land and whatever buildings are upon the Property, and not on any representation made by Seller, Brokers or their agents as to character or quality of the Property. Therefore, Buyer, at Buyer's sole cost and expense, is granted the right to have the dwelling and all other aspects of the Property, inspected and evaluated by "qualified inspectors" (as the term is defined in subsection G below) for the purpose of determining the existence of any physical defects or environmental conditions such as outlined above. If Buyer

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351 chooses to make inspections referred to in this paragraph, such inspections must be completed, and written reports including a list of  
352 repairs Buyer is requesting must be furnished to Seller and Brokers within 5 (if left blank, then 14) calendar days after the attorney-  
353 review period is completed or, if this Contract is timely disapproved by an attorney as provided in the Attorney-Review Clause Section  
354 of this Contract, then within 5 (if left blank, then 14) calendar days after the parties agree to the terms of this Contract. If Buyer fails  
355 to furnish such written reports to Seller and Brokers within the 5 (if left blank, then 14) calendar days specified in this paragraph,  
356 this contingency clause shall be deemed waived by Buyer, and the Property shall be deemed acceptable by Buyer. The time period for  
357 furnishing the inspection reports is referred to as the "Inspection Time Period." Seller shall have all utilities in service for inspections.  
358

359 **(E) Responsibility to Cure.**

360 If any physical defects or environmental conditions (other than radon or woodboring insects) are reported by the qualified inspectors to  
361 Seller within the Inspection Time Period, Seller shall then have seven (7) business days after the receipt of such reports to notify Buyer  
362 in writing that Seller shall correct or cure any of the defects set forth in such reports. If Seller fails to notify Buyer of Seller's agreement  
363 to so cure and correct, such failure to so notify shall be deemed to be a refusal by Seller to cure or correct such defects. If Seller fails to  
364 agree to cure or correct such defects within the seven (7) business day period, or if the environmental condition at the Property (other  
365 than radon) is incurable and is of such significance as to unreasonably endanger the health of Buyer, Buyer shall then have the right to  
366 void this Contract by notifying Seller in writing within seven (7) business days thereafter. If Buyer fails to void this Contract within the  
367 seven (7) business day period, Buyer shall have waived Buyer's right to cancel this Contract and this Contract shall remain in full force,  
368 and Seller shall be under no obligation to correct or cure any of the defects set forth in the inspections. If Seller agrees to correct or cure  
369 such defects, all such repair work shall be completed by Seller prior to the closing of title. Radon at the Property shall be governed by  
370 the provisions of subsection (B), above.  
371

372 **(F) Flood Hazard Area (if applicable).**

373 The federal and state governments have designated certain areas as flood areas. If the Property is located in a flood area, the use of the  
374 Property may be limited. If Buyer's inquiry reveals that the Property is in a flood area, Buyer may cancel this Contract within ten (10)  
375 calendar days after the attorney-review period is completed or, if this Contract is timely disapproved by an attorney as provided in the  
376 Attorney-Review Clause Section of this Contract, then within ten (10) calendar days after the parties agree to the terms of this Contract.  
377 If the mortgage lender requires flood insurance, then Buyer shall be responsible for obtaining such insurance on the Property. For a flood  
378 policy to be in effect immediately, there must be a loan closing. There is a thirty (30) calendar day wait for flood policies to be in effect for  
379 cash transactions. Therefore, cash buyers are advised to make application and make advance payment for a flood policy at least thirty  
380 (30) calendar days in advance of closing if they want coverage to be in effect upon transfer of title.  
381

382 Buyer's mortgage lender may require Buyer to purchase flood insurance in connection with Buyer's purchase of this Property. The  
383 National Flood Insurance Program ("NFIP") provides for the availability of flood insurance but also establishes flood insurance policy  
384 premiums based on the risk of flooding in the area where properties are located. Due to amendments to federal law governing the  
385 NFIP, those premiums are increasing and, in some cases, will rise by a substantial amount over the premiums previously charged for  
386 flood insurance for the Property. As a result, Buyer should not rely on the premiums paid for flood insurance on this Property previously  
387 as an indication of the premiums that will apply after Buyer completes the purchase. In considering Buyer's purchase of this Property,  
388 Buyer is therefore urged to consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage,  
389 the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may  
390 increase in the future.  
391

392 **(G) Qualifications of Inspectors.**

393 Where the term "qualified inspectors" is used in this Contract, it is intended to refer to persons or businesses that are licensed or certified  
394 by the State of New Jersey for such purpose.  
395

396 **17. MEGAN'S LAW STATEMENT:**

397 Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders  
398 in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law  
399 and are unable to obtain such information for you. Upon closing, the county prosecutor may be contacted for such further information  
400 as may be disclosable to you.  
401

402 **18. MEGAN'S LAW REGISTRY:**

403 Buyer is notified that New Jersey law establishes an Internet Registry of Sex Offenders that may be accessed at [www.njsp.org](http://www.njsp.org). Neither  
404 Seller nor any real estate broker nor salesperson make any representation as to the accuracy of the registry.  
405

406 **19. NOTIFICATION REGARDING OFF-SITE CONDITIONS: (Applicable to all resale transactions.)**

407 Pursuant to the New Residential Construction Off-Site Conditions Disclosure Act, N.J.S.A. 46:3C-1, et. seq, the clerks of municipalities  
408 in New Jersey maintain lists of off-site conditions which may affect the value of residential properties in the vicinity of the off-site  
409 condition. Buyers may examine the lists and are encouraged to independently investigate the area surrounding this property in order  
410

411 to become familiar with any off-site conditions which may affect the value of the property. In cases where a property is located near the  
 412 border of a municipality, buyers may wish to also examine the list maintained by the neighboring municipality.  
 413

414 **20. AIR SAFETY AND ZONING NOTICE:**

415 Any person who sells or transfers a property that is in an airport safety zone as set forth in the New Jersey Air Safety and Zoning Act of  
 416 1983, N.J.S.A. 6:1-80, et seq., and appearing on a municipal map used for tax purposes, as well as Seller's agent, shall provide notice to  
 417 a prospective buyer that the property is located in an airport safety zone prior to the signing of the contract of sale. The Air Safety and  
 418 Zoning Act also requires that each municipality in an airport safety zone enact an ordinance or ordinances incorporating the standards  
 419 promulgated under the Act and providing for their enforcement within the delineated areas in the municipality. Buyer acknowledges  
 420 receipt of the following list of airports and the municipalities that may be affected by them and that Buyer has the responsibility to  
 421 contact the municipal clerk of any affected municipality concerning any ordinance that may affect the Property.

Municipality	Airport(s)	Municipality	Airport(s)
Alexandria Tp.	Alexandria & Sky Manor	Manalapan Tp. (Monmouth Cty.)	Old Bridge
Andover Tp.	Aeroflex-Andover & Newton	Mansfield Tp.	Hackettstown
Bedminster Tp.	Somerset	Manville Bor.	Central Jersey Regional
Berkeley Tp.	Ocean County	Medford Tp.	Flying W
Berlin Bor.	Camden County	Middle Tp.	Cape May County
Blairstown Tp.	Blairstown	Millville	Millville Municipal
Branchburg Tp.	Somerset	Monroe Tp. (Gloucester Cty.)	Cross Keys & Southern Cross
Buena Bor. (Atlantic Cty.)	Vineland-Downtown	Monroe Tp. (Middlesex Cty.)	Old Bridge
Dennis Tp.	Woodbine Municipal	Montgomery Tp.	Princeton
Eagleswood Tp.	Eagles Nest	Ocean City	Ocean City
Ewing Tp.	Trenton-Mercer County	Old Bridge Tp.	Old Bridge
E. Hanover Tp.	Morristown Municipal	Oldsman Tp.	Oldmans
Florence Park Bor.	Morristown Municipal	Pemberton Tp.	Pemberton
Franklin Tp. (Gloucester Cty.)	Southern Cross & Vineland Downtown	Pequannock Tp.	Lincoln Park
Franklin Tp. (Hunterdon Cty.)	Sky Manor	Readington Tp.	Solberg-Hunterdon
Franklin Tp. (Somerset Cty.)	Central Jersey Regional	Rocky Hill Boro.	Princeton
Green Tp.	Tinca	Southampton Tp.	Red Lion
Hanmouton Bor.	Hanmouton Municipal	Springfield Tp.	Red Wing
Hanover Tp.	Morristown Municipal	Upper Deerfield Tp.	Bucks
Hillsborough Tp.	Central Jersey Regional	Vineland City	Kroelinger & Vineland Downtown
Hopewell Tp. (Mercer Cty.)	Trenton-Mercer County	Wall Tp.	Monmouth Executive
Howell Tp.	Monmouth Executive	Wantage Tp.	Sussex
Lacey Tp.	Ocean County	Robbinsville	Trenton-Robbinsville
Lakewood Tp.	Lakewood	West Milford Tp.	Greenwood Lake
Lincoln Park Bor.	Lincoln Park	Winslow Tp.	Camden County
Lower Tp.	Cape May County	Woodbine Bor.	Woodbine Municipal
Lumberton Tp.	Flying W & South Jersey Regional		

451  
 452 The following airports are not subject to the Airport Safety and Zoning Act because they are subject to federal regulation or within the  
 453 jurisdiction of the Port of Authority of New York and New Jersey and therefore are not regulated by New Jersey: Essex County Airport,  
 454 Linden Airport, Newark Liberty Airport, Teterboro Airport, Little Ferry Seaplane Base, Atlantic City International Airport, and  
 455 Maguire Airforce Base and NAEC Lakehurst.  
 456

457 **21. BULK SALES:**

458 The New Jersey Bulk Sales Law, N.J.S.A. 54:50-38, (the "Law") applies to the sale of certain residential property. Under the Law,  
 459 Buyer may be liable for taxes owed by Seller if the Law applies and Buyer does not deliver to the Director of the New Jersey Division  
 460 of Taxation (the "Division") a copy of this Contract and a notice on a form required by the Division (the "Tax Form") at least ten  
 461 (10) business days prior to the Closing. If Buyer decides to deliver the Tax Form to the Division, Seller shall cooperate with Buyer by  
 462 promptly providing Buyer with any information that Buyer needs to complete and deliver the Tax Form in a timely manner. Buyer  
 463 promptly shall deliver to Seller a copy of any notice that Buyer receives from the Division in response to the Tax Form.  
 464

465 The Law does not apply to the sale of a simple dwelling house, or the sale or lease of a seasonal rental property, if Seller is an  
 466 individual, estate or trust. A simple dwelling house is a one or two family residential building, or a cooperative or condominium unit  
 467 used as a residential dwelling, none of which has any commercial property. A seasonal rental property is a time share, or a dwelling unit  
 468 that is rented for residential purposes for a term of not more than 125 consecutive days, by an owner that has a permanent residence  
 469 elsewhere.  
 470

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471 If, prior to the Closing, the Division notifies Buyer to withhold an amount (the "Tax Amount") from the purchase price proceeds for  
472 possible unpaid tax liabilities of Seller, Buyer's attorney or Buyer's title insurance company (the "Escrow Agent") shall withhold the Tax  
473 Amount from the closing proceeds and place that amount in escrow (the "Tax Escrow"). If the Tax Amount exceeds the amount of  
474 available closing proceeds, Seller shall bring the deficiency to the Closing and the deficiency shall be added to the Tax Escrow. If the  
475 Division directs the Escrow Agent or Buyer to remit funds from the Tax Escrow to the Division or some other entity, the Escrow Agent  
476 or Buyer shall do so. The Escrow Agent or Buyer shall only release the Tax Escrow, or the remaining balance thereof, to Seller (or as  
477 otherwise directed by the Division) upon receipt of written notice from the Division that it can be released, and that no liability will be  
478 asserted under the Law against Buyer.

479  
480 **22. NOTICE TO BUYER CONCERNING INSURANCE:**

481 Buyer should obtain appropriate casualty and liability insurance for the Property. Buyer's mortgage lender will require that such insurance  
482 be in place at Closing. Occasionally, there are issues and delays in obtaining insurance. Be advised that a "binder" is only a temporary  
483 commitment to provide insurance coverage and is not an insurance policy. Buyer is therefore urged to contact a licensed insurance agent  
484 or broker to assist Buyer in satisfying Buyer's insurance requirements.

485  
486 **23. MAINTENANCE AND CONDITION OF PROPERTY:**

487 Seller agrees to maintain the grounds, buildings and improvements, in good condition, subject to ordinary wear and tear. The premises  
488 shall be in "broom clean" condition and free of debris as of the Closing. Seller represents that all electrical, plumbing, heating and air  
489 conditioning systems (if applicable), together with all fixtures included within the terms of the Contract now work and shall be in proper  
490 working order at the Closing. Seller further states, that to the best of Seller's knowledge, there are currently no leaks or seepage in the  
491 roof, walls or basement. Seller does not guarantee the continuing condition of the premises as set forth in this Section after the Closing.

492  
493 **24. RISK OF LOSS:**

494 The risk of loss or damage to the Property by fire or otherwise, except ordinary wear and tear, is the responsibility of Seller until  
495 the Closing.

496  
497 **25. INITIAL AND FINAL WALK-THROUGHS:**

498 In addition to the inspections set forth elsewhere in this Contract, Seller agrees to permit Buyer or Buyer's duly authorized  
499 representative to conduct an initial and a final walk-through inspection of the interior and exterior of the Property at any reasonable  
500 time before the Closing. Seller shall have all utilities in service for the inspections.

501  
502 **26. ADJUSTMENTS AT CLOSING:**

503 Seller shall pay for the preparation of the Deed, realty transfer fee, lien discharge fees, if any, and one-half of the title company charges  
504 for disbursements and attendance allowed by the Commissioner of Insurance; but all searches, title insurance premium and other  
505 conveyancing expenses are to be paid for by Buyer.

506  
507 Seller and Buyer shall make prorated adjustments at Closing for items which have been paid by Seller or are due from Seller, such as real  
508 estate taxes, water and sewer charges that could be claims against the Property, rental and security deposits, association and condominium  
509 dues, and fuel in Seller's tank. Adjustments of fuel shall be based upon physical inventory and pricing by Seller's supplier. Such determi-  
510 nation shall be conclusive.

511  
512 If Buyer is assuming Seller's mortgage loan, Buyer shall credit Seller for all monies, such as real estate taxes and insurance premiums paid  
513 in advance or on deposit with Seller's mortgage lender. Buyer shall receive a credit for monies, which Seller owes to Seller's Mortgage  
514 lender, such as current interest or a deficit in the mortgage escrow account.

515  
516 If the Property is used or enjoyed by not more than four families and the purchase price exceeds \$1,000,000, then pursuant to N.J.S.A.  
517 46:15-7.2, Buyer will be solely responsible for payment of the fee due for the transfer of the Property, which is the so-called "Mansion  
518 Tax", in the amount of one (1%) percent of the purchase price.

519  
520 Unless an exemption applies, non-resident individuals, estates, or trusts that sell or transfer real property in New Jersey are required to  
521 make an estimated gross income tax payment to the State of New Jersey on the gain from a transfer/sale of real property (the so-called  
522 "Exit Tax,") as a condition of the recording of the deed.

523  
524 If Seller is a foreign person (an individual, corporation or entity that is a non-US resident) under the Foreign Investment in Real  
525 Property Tax Act of 1980, as amended ("FIRPTA"), then with a few exceptions, a portion of the proceeds of sale may need to be  
526 withheld from Seller and paid to the Internal Revenue Service as an advance payment against Seller's tax liability.

527  
528 Seller agrees that, if applicable, Seller will (a) be solely responsible for payment of any state or federal income tax withholding amount(s)  
529 required by law to be paid by Seller (which Buyer may deduct from the purchase price and pay at the Closing); and (b) execute  
530 and deliver to Buyer at the Closing any and all forms, affidavits or certifications required under state and federal law to be filed in

531 connection with the amount(s) withheld.  
 532 There shall be no adjustment on any Homestead Rebate due or to become due.  
 533

534 **27. FAILURE OF BUYER OR SELLER TO CLOSE:**

535 If Seller fails to close title to the Property in accordance with this Contract, Buyer then may commence any legal or equitable action  
 536 to which Buyer may be entitled. If Buyer fails to close title in accordance with this Contract, Seller then may commence an action  
 537 for damages it has suffered, and, in such case, the deposit monies paid on account of the purchase price shall be applied against such  
 538 damages. If Buyer or Seller breach this Contract, the breaching party will nevertheless be liable to Brokers for the commissions in the  
 539 amount set forth in this Contract, as well as reasonable attorneys' fees, costs and such other damages as are determined by the Court.  
 540

541 **28. CONSUMER INFORMATION STATEMENT ACKNOWLEDGMENT:**

542 By signing below, Seller and Buyer acknowledge they received the Consumer Information Statement on New Jersey Real Estate  
 543 Relationships from the Broker(s) prior to the first showing of the Property.  
 544

545 **29. DECLARATION OF BROKER(S)'S BUSINESS RELATIONSHIP(S):**

546 (A) RE/MAX Village Square, (name of firm) and its authorized  
 547 representative(s) Meghan Russo  
 548 \_\_\_\_\_  
 549 (name(s) of licensee(s))  
 550

551 ARE OPERATING IN THIS TRANSACTION AS A (indicate one of the following)  
 552  SELLER'S AGENT  BUYER'S AGENT  DISCLOSED DUAL AGENT  TRANSACTION BROKER.  
 553

554 (B) (If more than one firm is participating, provide the following.) INFORMATION SUPPLIED BY \_\_\_\_\_  
 555 KELLER WILLIAMS METROPOLITAN (name of other firm.) HAS INDICATED THAT IT IS  
 556 OPERATING IN THIS TRANSACTION AS A (indicate one of the following)  
 557  SELLER'S AGENT  BUYER'S AGENT  TRANSACTION BROKER.  
 558

559 **30. BROKERS' INFORMATION AND COMMISSION:**

560 The commission, in accord with the previously executed listing agreement, shall be due and payable at the Closing and payment by Buyer  
 561 of the purchase consideration for the Property. Seller hereby authorizes and instructs whomever is the disbursing agent to pay the full  
 562 commission as set forth below to the below-mentioned Brokerage Firm(s) out of the proceeds of sale prior to the payment of any such  
 563 funds to Seller. Buyer consents to the disbursing agent making said disbursements. The commission shall be paid upon the purchase price  
 564 set forth in Section 2 and shall include any amounts allocated to, among other things, furniture and fixtures.  
 565

566 KELLER WILLIAMS METROPOLITAN 247049  
 567 Listing Firm REC License ID  
 568 Peter Lorenzo & Gordon Crawford 291703 & 211117  
 569 Listing Agent REC License ID  
 570 55 Madison Ave., Morristown, NJ 07960  
 571 Address  
 572 973-539-1120 973-255-9337  
 573 Office Telephone Fax Agent Cell Phone  
 574 perterglorenzo@kw.com (Per Listing Agreement)  
 575 E-mail **Commission due Listing Firm**  
 576 RE/MAX Village Square 9592426  
 577 Participating Firm REC License ID  
 578 Meghan Russo 1325629  
 579 Participating Agent REC License ID  
 580 516 Valley Road, Upper Montclair, NJ 07043  
 581 Address  
 582 9734202341  
 583 Office Telephone Fax Agent Cell Phone  
 584 meghan.russo@gmail.com 2.5-75  
 585 E-mail **Commission due Participating Firm**  
 586  
 587  
 588  
 589  
 590

591 **31. EQUITABLE LIEN:**

592 Under New Jersey law, brokers who bring the parties together in a real estate transaction are entitled to an equitable lien in the amount  
593 of their commission. This lien attaches to the property being sold from when the contract of sale is signed until the closing and then to  
594 the funds due to seller at closing, and is not contingent upon the notice provided in this Section. As a result of this lien, the party who  
595 disburses the funds at the Closing in this transaction should not release any portion of the commission to any party other than Broker(s)  
596 and, if there is a dispute with regard to the commission to be paid, should hold the disputed amount in escrow until the dispute with  
597 Broker(s) is resolved and written authorization to release the funds is provided by Broker(s).

598  
599 **32. DISCLOSURE THAT BUYER OR SELLER IS A REAL ESTATE LICENSEE:**  Applicable  Not Applicable

600 A real estate licensee in New Jersey who has an interest as a buyer or seller of real property is required to disclose in the sales contract  
601 that the person is a licensee. \_\_\_\_\_ therefore discloses that he/she is licensed in New Jersey as  
602 a real estate  broker  broker-salesperson  salesperson  referral agent.

603  
604 **33. BROKERS TO RECEIVE CLOSING DISCLOSURE AND OTHER DOCUMENTS:**

605 Buyer and Seller agree that Broker(s) involved in this transaction will be provided with the Closing Disclosure documents and any  
606 amendments to those documents in the same time and manner as the Consumer Financial Protection Bureau requires that those  
607 documents be provided to Buyer and Seller. In addition, Buyer and Seller agree that, if one or both of them hire an attorney who  
608 disapproves this Contract as provided in the Attorney-Review Clause Section, then the attorney(s) will notify the Broker(s) in writing when  
609 either this Contract is finalized or the parties decide not to proceed with the transaction.

610  
611 **34. PROFESSIONAL REFERRALS:**

612 Seller and Buyer may request the names of attorneys, inspectors, engineers, tradespeople or other professionals from their Brokers  
613 involved in the transaction. Any names provided by Broker(s) shall not be deemed to be a recommendation or testimony of competency of  
614 the person or persons referred. Seller and Buyer shall assume full responsibility for their selection(s) and hold Brokers and/or salespersons  
615 harmless for any claim or actions resulting from the work or duties performed by these professionals.

616  
617 **35. ATTORNEY-REVIEW CLAUSE:**

618 **(1) Study by Attorney.**

619 Buyer or Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her  
620 review of the Contract within a three-day period. This Contract will be legally binding at the end of this three-day period unless an  
621 attorney for Buyer or Seller reviews and disapproves of the Contract.

622  
623 **(2) Counting the Time.**

624 You count the three days from the date of delivery of the signed Contract to Buyer and Seller. You do not count Saturdays, Sundays or  
625 legal holidays. Buyer and Seller may agree in writing to extend the three-day period for attorney review.

626  
627 **(3) Notice of Disapproval.**

628 If an attorney for the Buyer or Seller reviews and disapproves of this Contract, the attorney must notify the Broker(s) and the other party  
629 named in this Contract within the three-day period. Otherwise this Contract will be legally binding as written. The attorney must send  
630 the notice of disapproval to the Broker(s) by fax, email, personal delivery, or overnight mail with proof of delivery. Notice by overnight  
631 mail will be effective upon mailing. The personal delivery will be effective upon delivery to the Broker's office. The attorney may also,  
632 but need not, inform the Broker(s) of any suggested revision(s) in the Contract that would make it satisfactory.

633  
634 **36. NOTICES:**

635 All notices shall be by certified mail, fax, email, recognized overnight courier or electronic document (except for notices under the  
636 Attorney-Review Clause Section) or by delivering it personally. The certified letter, email, reputable overnight carrier, fax or electronic  
637 document will be effective upon sending. Notices to Seller and Buyer shall be addressed to the addresses in Section 1, unless otherwise  
638 specified in writing by the respective party.

639  
640 **37. NO ASSIGNMENT:**

641 This Contract shall not be assigned without the written consent of Seller. This means that Buyer may not transfer to anyone else Buyer's  
642 rights under this Contract to purchase the Property.

643  
644 **38. ELECTRONIC SIGNATURES AND DOCUMENTS:**

645 Buyer and Seller agree that the New Jersey Uniform Electronic Transaction Act, N.J.S.A. 12A:12-1 to 26, applies to this transaction,  
646 including but not limited to the parties and their representatives having the right to use electronic signatures and electronic documents that  
647 are created, generated, sent, communicated, received or stored in connection with this transaction. Since Section 11 of the Act provides  
648 that acknowledging an electronic signature is not necessary for the signature of such a person where all other information required to  
649 be included is attached to or logically associated with the signature or record, such electronic signatures, including but not limited to an  
650 electronic signature of one of the parties to this Contract, do not have to be witnessed.

651 **39. CORPORATE RESOLUTIONS:**

652 If Buyer or Seller is a corporate or other entity, the person signing below on behalf of the entity represents that all required corporate  
 653 resolutions have been duly approved and the person has the authority to sign on behalf of the entity.  
 654

655 **40. ENTIRE AGREEMENT; PARTIES LIABLE:**

656 This Contract contains the entire agreement of the parties. No representations have been made by any of the parties, the Broker(s) or its  
 657 salespersons, except as set forth in this Contract. This Contract is binding upon all parties who sign it and all who succeed to their rights  
 658 and responsibilities and only may be amended by an agreement in writing signed by Buyer and Seller.  
 659

660 **41. APPLICABLE LAWS:**

661 This Contract shall be governed by and construed in accordance with the laws of the State of New Jersey and any lawsuit relating to  
 662 this Contract or the underlying transaction shall be venued in the State of New Jersey.  
 663

664 **42. ADDENDA:**

665 The following additional terms are included in the attached adenda or riders and incorporated into this Contract (check if applicable):

- 666  Buyer's Property Sale Contingency  Private Well Testing  
 667  Condominium/Homeowner's Associations  Properties With Three (3) or More Units  
 668  FHA/VA Loans  Seller Concession  
 669  Lead Based Paint Disclosure (Pre-1978)  Short Sale  
 670  New Construction  Underground Fuel Tank(s)  
 671  Private Sewage Disposal (Other than Cesspool)  
 672

673 **43. ADDITIONAL CONTRACTUAL PROVISIONS:**

674 \_\_\_\_\_  
 675 \_\_\_\_\_  
 676 \_\_\_\_\_  
 677 \_\_\_\_\_  
 678 \_\_\_\_\_  
 679 \_\_\_\_\_  
 680 \_\_\_\_\_  
 681 \_\_\_\_\_  
 682 \_\_\_\_\_  
 683 \_\_\_\_\_

684 **WITNESS:**

685		<i>Margaret Cortese</i>	DocuSigned by: 11/26/17 7:29PM EST M7AR-313-1HDY-IRW4
686		BUYER	Date
687			
688		<i>John Cortese</i>	DocuSigned by: 11/26/17 7:32PM EST M6FN-V60F-F0KQ-7UZP
689		BUYER	Date
690			
691			
692		BUYER	Date
693			
694			
695		BUYER	Date
696			
697		DocuSigned by: <i>Michael &amp; Robin Kalfus</i>	11/27/2017
698		SELLER	Date
699			
700			
701		SELLER	Date
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703			
704		SELLER	Date
705			
706			
707		SELLER	Date
708			
709			
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