

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ruby Red Dentata, LLC,

Case No. 17-41184

Chapter 11

Debtor.

**NOTICE OF HEARING AND MOTION TO SELL ASSETS FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

TO: ALL PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3(a)(2).

1. Ruby Red Dentata, LLC (“Debtor”), by and through its undersigned attorneys, moves the Court for the relief requested and gives notice of hearing herewith.

2. The Court will hold a hearing on this Motion at 10:00 a.m. on Tuesday, May 29, 2018, before the Honorable William J. Fisher, Courtroom 2B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101. **THE HEARING MAY BE CONTINUED BY THE COURT AT THE TIME OF THE HEARING WITHOUT ADDITIONAL NOTICE.**

3. Any response to this Motion must be filed and delivered by Thursday, May 24, 2018 which is 5 days before the time set for the hearing (including Saturdays, Sundays, and holidays). **IF OBJECTIONS ARE NOT SERVED AND FILED IN A TIMELY MANNER, THE COURT MAY GRANT THE REQUESTED RELIEF WITHOUT A HEARING IN ACCORDANCE WITH LOCAL RULE 9013-2(f).**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. Venue of this case and the motion are proper in this District pursuant to 28 U.S.C. §§408 and 1409. This is a core proceeding. The petition commencing this Chapter 11 case was filed on April 24, 2017 (the “Petition Date”). The case is now pending in this Court.

5. The motion arises under 11 U.S.C. §§363 and 365, Federal Rules of Bankruptcy Procedure 2002, 6004, 6006, and 9019 and Local Rule 4001-2. The motion is filed under Bankruptcy Rule 9013 and Local Rules 9013-1 through 9013-3.

SUMMARY OF RELIEF REQUESTED

6. Debtor proposes to sell and transfer substantially all of its assets free and clear of liens, claims, encumbrances and interests pursuant to 11 U.S.C. §363(f) to Roman Gadaskin, an individual (the “Buyer”). The Debtor and the Buyer have entered into a Commercial Purchase Agreement (the “Purchase Agreement”), a copy of which is attached to this Motion as **Exhibit 1**. Assets sold and transferred are the Debtor’s primary assets, the two buildings located at 20 and 28 N. 4th Street, Minneapolis, Minnesota and legally described as Lots 10, 11, and 12, Auditors Subd. No. 152 (the “Buildings”).

7. In its business judgment, the Debtor believes that the sale and transfer of the Buildings to the Buyer is the best way to maximize the value and benefit to creditors and all parties in interest. The Debtor believes that the proposed transfer as outlined in this Motion produces a result that is superior to any other options that are currently available.

BACKGROUND

8. On the Petition Date, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota.

9. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

10. An Official Committee of Unsecured Creditors has not been appointed in the Debtor’s Chapter 11 case.

DESCRIPTION AND HISTORY OF THE DEBTOR'S BUSINESS

11. Debtor is in the business of owning, developing, and leasing commercial real estate.
12. The Debtor has been operated by Ms. Toby Brill since August 2007.
13. One of the Buildings is a two-story building with approximately 6,000 square feet above ground and the other is a three-story building with approximately 6,000 feet above ground.
14. The Buildings are located in the Minneapolis North Loop/Warehouse District.
15. The principal creditor is Harvest Bank. Harvest Bank holds the first mortgage on the Buildings.
16. Harvest Bank commenced a foreclosure action and the Debtor filed for Chapter 11 protection to stop the foreclosure process.
17. After the Debtor filed for bankruptcy protection on the Petition Date, it retained Edina Realty, Inc. ("Edina Realty") as its real estate broker to market and sell the Buildings.
18. The Debtor filed its Plan of Reorganization and Disclosure Statement on February 19, 2018.
19. The Debtor filed its Amended Plan of Reorganization and Amended Disclosure Statement on February 26, 2018. A hearing is presently set to be held on May 2, 2018 to consider confirmation of the Debtor's Amended Plan of Reorganization.
20. Pursuant to its Amended Plan of Reorganization, the Debtor intends to sell the Buildings.

ASSETS PROPOSED TO BE SOLD AND TERMS OF THE PROPOSED SALE

21. The Agreement proposes to sell and transfer all of the Debtor's right, title and interest in and to the Debtor's Buildings, as defined in the Purchase Agreement, free and clear of all liens, claims, encumbrances and interests to the full extent permissible under 11 U.S.C.

§363(f). All liens, claims, encumbrance and any interests in the Buildings will attach to the proceeds from the sale.

22. As of January 31, 2018, the Debtor's primary assets consist of cash in the amount of \$3,773 and the Buildings.

23. The total principle balance of the secured claim held by Harvest Bank is approximately \$553,794.43.

24. The secured claim of Hennepin County for owed and unpaid real estate taxes is approximately \$78,100.00

25. The Buyer agrees to purchase the Buildings for \$1,500,000.00.

26. After payment to Harvest Bank, Hennepin County, and closing costs including fees to Edina Realty, the Debtor estimates it will have approximately \$750,000.00 to pay its administrative expenses and to fund payments under its Amended Plan of Reorganization.

27. The Debtor believes the proposed sale and transfer is reasonable and fairly represents the value of the assets being sold under current market rates.

28. The Debtor firmly believes that a prompt transfer of the Debtor's Buildings is in the best interests of creditors because it will maximize the value of the business and provide an increased return to parties in interest.

29. Subject to this Court's approval, the sale of the Debtor's Buildings to the Buyer will be free and clear of any and all claims, liens, encumbrances, judgments and security interests with all the liens, claims, encumbrances and any interests in the Buildings attaching to the proceeds from the sale.

NOTICE

30. Debtor will provide creditors and other parties of interest of the proposed sale pursuant to Rule 2002(a) and (c), Rule 6004 and Rule 6006 of the Federal Rules of Bankruptcy Procedure.

RELIEF REQUESTED

31. By this motion, Debtor requests that the Court enter an order, a proposed form of which is attached hereto, (the “Order”) which approves the following requested relief:

(i) Authorizing Debtor to sell and transfer its rights in the assets specified in the Purchase Agreement to the Buyer, pursuant to 11 USC § 363, free and clear of all liens, claims, encumbrances and interests with all liens, claims, encumbrances and any interests in the Buildings attaching to the proceeds from the sale;

(ii) Authorizing Debtor to execute any additional documentation or to take whatever other action is necessary to effectuate and implement the Purchase Agreement; and

(iii) Granting such other and further relief as this Court may deem just and equitable.

CONCLUSION

32. Debtor reserves the right to file a supplemental memorandum of law or response in reply to objections, if any, that may be lodged with respect to the relief requested in this motion.

33. Pursuant to Local Rule 9013-2(c), Debtor states that should testimony be necessary, Debtor reserves the right to call the following witnesses:

(i) Ms. Toby Brill, owner of the Debtor; and

(ii) Other witnesses as deemed necessary.

34. This motion is accompanied by a memorandum of law, proposed order, and proof of service pursuant to Local Rule 9013-2(a).

WHEREFORE, Debtor respectfully requests that this Court enter an order

(a) substantially in the form of the proposed order attached hereto;

(b) granting such other and additional relief as the Court deems just and appropriate.

STEVEN B. NOSEK, P.A.

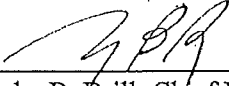
Dated: April 30, 2018.

/e/ Steven B. Nosek
Steven B. Nosek, (#79960)
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ATTORNEYS FOR THE DEBTOR

VERIFICATION

I, Toby B. Brill, Chief Executive Member/Officer of the Debtor named in the foregoing pleading, declare under penalty of perjury that the foregoing pleading is true and correct according to the best of my knowledge, information and belief.

Dated: 4-30-18



Toby B. Brill, Chief Executive
Member/Officer



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COMMERCIAL PURCHASE AGREEMENT

This form approved by the Minnesota Association of REALTORS® and the Minnesota Commercial Association of REALTORS®, which disclaims any liability arising out of use or misuse of this form.
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1. Page 1 Date 03/23/2018

2. BUYER (S): Roman Gadaskin or his assigns
3. _____
4. Buyer's earnest money in the amount of _____
5. Ten Thousand Dollars
6. (\$ 10,000.00) shall be delivered no later than two (2) Business Days after
7. Final Acceptance Date of this Purchase Agreement to be deposited in the trust account of: (Check one.)
8. ☐ Listing broker; or
9. ☒ Title Specialist, Inc St Michael 55376 ,
(Trustee)
10. within three (3) Business Days of receipt of the earnest money or Final Acceptance Date of this Purchase
11. Agreement, whichever is later.
12. Said earnest money is part payment for the purchase of property at _____
13. 20 N 4th Street located in the
14. City/Township of Minneapolis , County of Hennepin ,
15. State of Minnesota, PID # (s) 2202924410105
16. _____
17. and legally described as follows AUDITOR'S SUBD. NO. 152 LOTS 10 11 AND 12
18. _____
19. _____ (collectively the "Property")
20. together with the personal property as described in the attached *Addendum to Commercial Purchase Agreement:*
21. *Personal Property*, if any, all of which property the undersigned has this day sold to Buyer for the sum of:
22. One Million Five Hundred Thousand
23. _____
24. (\$ 1,500,000.00) Dollars ("Purchase Price"), which Buyer agrees to pay in the following manner:
25. 1. CASH of 100 percent (%) of the sale price, or more in Buyer's sole discretion, which includes the earnest
26. money; PLUS
27. 2. FINANCING of 0 percent (%) of the sale price. Buyer shall, at Buyer's sole expense, apply for any
28. financing as required by this Purchase Agreement.
29. Such financing shall be: (Check one.) ☐ a first mortgage; ☐ a contract for deed; or ☐ a first
30. mortgage with subordinate financing, as described in the attached *Addendum to Commercial Purchase Agreement:*
31. ☐ Conventional/SBA/Other ☐ Contract for Deed.
(Check one.)
32. DUE DILIGENCE: This Purchase Agreement ☒ IS ☐ IS NOT subject to a due diligence contingency. (If answer is IS,
33. see attached *Addendum to Commercial Purchase Agreement: Due Diligence.*)
34. CLOSING: The date of closing shall be On or before July 31 , 20 18 .
35. DEED/MARKETABLE TITLE: Subject to performance by Buyer, Seller agrees to execute and deliver a: (Check one.)
36. ☒ Warranty Deed, ☐ Limited Warranty Deed, ☐ Contract for Deed, or
37. ☐ Other: _____ Deed conveying marketable title, subject to:
38. (a) building and zoning laws, ordinances, and state and federal regulations;
39. (b) restrictions relating to use or improvement of the Property without effective forfeiture provisions;
40. (c) reservation of any mineral rights by the State of Minnesota or other government entity;
41. (d) utility and drainage easements which do not interfere with existing improvements; and
42. (e) others (must be specified in writing): _____
43. _____

MNC:PA-1 (8/17)

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COMMERCIAL PURCHASE AGREEMENT

44. Page 2 Date 03/23/2018

Minneapolis MN 55401

45. Property located at 20 N 4th Street
46. **TENANTS/LEASES:** Property ☐ IS ☒ IS NOT subject to rights of tenants (If answer is IS, see attached Addendum
(Check one.)
47. to Commercial Purchase Agreement: Due Diligence).
48. Seller shall not execute leases from the date of this Purchase Agreement to the date of closing, the term of which lease
49. extends beyond the date of closing, without the prior written consent of Buyer. Buyer's consent or denial shall be
50. provided to Seller within _____ days of Seller's written request. Said consent
51. shall not be unreasonably withheld.
52. **REAL ESTATE TAXES:** Real estate taxes due and payable in the year of closing shall be prorated between Seller and
53. Buyer on a calendar year basis to the actual date of closing unless otherwise provided in this Purchase Agreement.
54. Real estate taxes, including penalties, interest, and any associated fees, payable in the years prior to closing shall be
55. paid by Seller. Real estate taxes payable in the years subsequent to closing shall be paid by Buyer.
56. **SPECIAL ASSESSMENTS:**
57. ☐ BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING ☒ SELLER SHALL PAY
(Check one.)
58. on the date of closing all installments of special assessments certified for payment with the real estate taxes due and
59. payable in the year of closing.
60. ☐ BUYER SHALL ASSUME ☒ SELLER SHALL PAY ON DATE OF CLOSING all other special assessments
(Check one.)
61. levied as of the date of this Purchase Agreement.
62. ☐ BUYER SHALL ASSUME ☒ SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as
(Check one.)
63. of the date of this Purchase Agreement for improvements that have been ordered by any assessing authorities. (Seller's
64. provision for payment shall be by payment into escrow of up to two (2) times the estimated amount of the assessments
65. or less, as allowed by Buyer's lender.)
66. Buyer shall pay any unpaid special assessments payable in the year following closing and thereafter, the payment of
67. which is not otherwise here provided.
68. As of the date of this Purchase Agreement, Seller represents that Seller ☐ HAS ☒ HAS NOT received a notice
(Check one.)
69. regarding any new improvement project from any assessing authorities, the costs of which project may be assessed
70. against the Property. Any such notice received by Seller after the date of this Purchase Agreement and before
71. closing shall be provided to Buyer immediately. If such notice is issued after the date of this Purchase Agreement
72. and on or before the date of closing, then the parties may agree in writing, on or before the date of closing, to pay,
73. provide for the payment of, or assume the special assessments. In the absence of such agreement, either party may
74. declare this Purchase Agreement canceled by written notice to the other party, or licensee representing or assisting the
75. other party, in which case this Purchase Agreement is canceled. If either party declares this Purchase Agreement
76. canceled, Buyer and Seller shall immediately sign a written cancellation of Purchase Agreement confirming said
77. cancellation and directing all earnest money paid here to be refunded to Buyer.
78. **POSSESSION:** Seller shall deliver possession of the Property: (Check one.)
79. ☒ IMMEDIATELY AFTER CLOSING; or
80. ☐ OTHER: _____
81. Seller agrees to remove ALL DEBRIS AND ALL PERSONAL PROPERTY NOT INCLUDED HERE from the Property
82. by possession date.
83. **PRORATIONS:** All items customarily prorated and adjusted in connection with the closing of the sale of the Property
84. here including but not limited to rents, operating expenses, interest on any debt assumed by Buyer, shall be prorated
85. as of the date of closing. It shall be assumed that Buyer will own the Property for the entire date of the closing.
86. **RISK OF LOSS:** If there is any loss or damage to the Property between the Final Acceptance Date and the date of
87. closing, for any reason, the risk of loss shall be on Seller. If the Property is destroyed or substantially damaged before
88. the closing, this Purchase Agreement shall be canceled, at Buyer's option, if Buyer gives written notice to Seller, or licensee
89. representing or assisting Seller, of such cancellation within thirty (30) days of the damage. Upon said cancellation,
90. Buyer and Seller shall immediately sign a written cancellation of Purchase Agreement confirming said cancellation and
91. directing all earnest money paid here to be refunded to Buyer.

MNC:PA-2 (8/17)

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COMMERCIAL PURCHASE AGREEMENT

92. Page 3 Date 03/23/2018

93. Property located at 20 N 4th Street Minneapolis MN 55401

94. **EXAMINATION OF TITLE:** Seller shall, at its expense, within 20 days after Final
95. Acceptance of this Purchase Agreement, furnish to Buyer, or licensee representing or assisting Buyer, a commitment
96. for an owner's policy of title insurance from Title Specialist, Inc, St Michael MN, including levied
(Name of Title Company)

97. and pending special assessments. Buyer shall be allowed ten (10) days ("Objection Period") after receipt of the
98. commitment for title insurance to provide Seller, or licensee representing or assisting Seller, with written objections.
99. Buyer shall be deemed to have waived any title objections not made within the Objection Period provided for immediately
100. above and any matters with respect to which title objection is so waived may be excepted from the warranties in the
101. Deed as specified here to be delivered pursuant to this Agreement.

102. **TITLE CORRECTIONS AND REMEDIES:** Seller shall have thirty (30) days ("Cure Period") from receipt of Buyer's
103. written title objections to cure any title objections but shall not be obligated to do so. Upon receipt of Buyer's title
104. objections, Seller shall, within ten (10) days, notify Buyer, or licensee representing or assisting Buyer, in writing whether
105. or not Seller will endeavor to cure such objections within the Cure Period. Liens or encumbrances for liquidated amounts
106. created by instruments executed by Seller and which can be released by payment proceeds of closing shall not delay
107. the closing.

108. If Seller's notice states that Seller will not endeavor to cure one or more specified objections within the Cure Period,
109. Buyer may, as its sole remedy, within ten (10) days of the sending of such notice by Seller, declare this Purchase
110. Agreement canceled by written notice to Seller, or licensee representing or assisting Seller, in which case this Purchase
111. Agreement is canceled. If Buyer declares this Purchase Agreement canceled, Buyer and Seller shall immediately sign a
112. written cancellation of Purchase Agreement confirming said cancellation and directing all earnest money paid here to
113. be refunded to Buyer. If Buyer does not declare this Purchase Agreement canceled as provided immediately above,
114. Buyer shall be bound to proceed with the closing and to purchase the Property subject to the objections Seller has
115. declined to cure without reduction in the Purchase Price.

116. If Seller's notice states that Seller will endeavor to cure all of the specified objections, or if Seller's notice states that
117. Seller will endeavor to cure some, but not all, of the specified objections and Buyer does not declare this Purchase
118. Agreement canceled as provided above, Seller shall use commercially reasonable efforts to cure the specified objections
119. or those Seller has agreed to endeavor to cure and, pending correction of title, all payment required here and the
120. closing shall be postponed.

121. If Seller, within the Cure Period provided above, corrects the specified objections Seller's notice indicated Seller would
122. endeavor to cure, then upon presentation to Buyer, or licensee representing or assisting Buyer, of documentation
123. establishing that such objections have been cured, the closing shall take place within ten (10) days or on the scheduled
124. closing date, whichever is later.

125. If Seller, within the Cure Period provided above, does not cure the specified objections which Seller's notice indicated
126. Seller would endeavor to cure, Buyer may, as its sole remedy, declare this Purchase Agreement canceled by written
127. notice to Seller, or licensee representing or assisting Seller, given within five (5) days after the end of the Cure Period,
128. in which case this Purchase Agreement is canceled. Buyer and Seller shall immediately sign a *Cancellation of Purchase*
129. *Agreement* confirming said cancellation and directing all earnest money paid here to be refunded to Buyer. Neither
130. party shall be liable for damages here to the other. In the alternative, Buyer may elect to waive such objections by
131. providing written notice to Seller, or licensee representing or assisting Seller, within such five (5)-day period and accept
132. title subject to such uncured objections, in which event, Buyer shall be bound to proceed with the closing and to purchase
133. the Property subject to the objections Seller has not cured without reduction in the Purchase Price. If neither notice is
134. given by Buyer within such five (5)-day period, Buyer shall be deemed to have elected to waive the objections and to
135. proceed to closing as provided in the immediately preceding sentence.

136. If title is marketable, or is made marketable as provided here, and Buyer defaults in any of the agreements here,
137. Seller, in addition to any other right or remedy available to Seller here, at law or in equity may cancel this Purchase
138. Agreement as provided by either MN Statute 559.21 or MN Statute 559.217, whichever is applicable, and retain all
139. earnest money paid here as liquidated damages.

140. If title is marketable, or is made marketable as provided here, and Seller defaults in any of the agreements here,
141. Buyer may, in addition to any other right or remedy available to Buyer here, seek specific performance within six
142. (6) months after such right of action arises.



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MNC:PA-3 (8/17)



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COMMERCIAL PURCHASE AGREEMENT

143. Page 4 Date 03/23/2018

144. Property located at 20 N 4th Street Minneapolis MN 55401

145. **REPRESENTATIONS AND WARRANTIES OF SELLER:** The following representations made are to the best
146. of Seller's knowledge.

147. There is no action, litigation, investigation, condemnation, or other proceeding of any kind pending or threatened against
148. Seller or any portion of the Property. In the event Seller becomes aware of any such proceeding prior to closing, Seller
149. will promptly notify Buyer of such proceeding.

150. The Property is in compliance with all applicable provisions of all planning, zoning, and subdivision rules; regulations;
151. and statutes. Seller has obtained all necessary licenses, permits, and approvals necessary for the ownership and
152. operation of the Property.

153. Prior to the closing, payment in full will have been made for all labor, materials, machinery, fixtures, or tools furnished
154. within the 120 days immediately preceding the closing in connection with construction, alteration, or repair of any
155. structure on, or improvement to, the Property.

156. Seller has not received any notice from any governmental authority as to condemnation proceedings, or violation of
157. any law, ordinance, regulation, code, or order affecting the Property. If the Property is subject to restrictive covenants,
158. Seller has not received any notice from any person or authority as to a breach of the covenants. Any such notices
159. received by Seller shall be provided to Buyer immediately.

160. Seller has not executed any options to purchase, rights of first refusal, or any other agreements giving any person or
161. other entity the right to purchase or otherwise acquire any interest in the Property, and Seller is unaware of any options
162. to purchase, rights of first refusal, or other similar rights affecting the Property.

163. The legal description of the real property to be conveyed has been or shall be approved for recording as of the date
164. of closing.

165. If Seller is an organized entity, Seller represents and warrants to Buyer that Seller is duly organized and is in good
166. standing under the laws of the State of Minnesota; that Seller is duly qualified to transact business in the State of
167. Minnesota; that Seller has the requisite organizational power and authority to enter into this Purchase Agreement and
168. the Seller's closing documents signed by it; such documents have been duly authorized by all necessary action on
169. the part of Seller and have been duly executed and delivered; that the execution, delivery, and performance by Seller of
170. such documents do not conflict with or result in a violation of Seller's organizational documents or Bylaws or any judgment,
171. order, or decree of any court or arbiter to which Seller is a party; and that such documents are valid and binding obligations
172. of Seller, and are enforceable in accordance with their terms.

173. Seller will indemnify Buyer, its successors and assigns, against and will hold Buyer, its successors and assigns,
174. harmless from, any expenses or damages, including reasonable attorneys' fees, that Buyer incurs because of the
175. breach of any of the above representations and warranties, whether such breach is discovered before or after the date
176. of closing.

177. See attached *Addendum to Commercial Purchase Agreement: Due Diligence*, if any, for additional representations
178. and warranties.

179. **REPRESENTATIONS AND WARRANTIES OF BUYER:** If Buyer is an organized entity, Buyer represents and warrants
180. to Seller that Buyer is duly organized and is in good standing under the laws of the State of Minnesota; that Buyer is
181. duly qualified to transact business in the State of Minnesota; that Buyer has the requisite organizational power and
182. authority to enter into this Purchase Agreement and the Buyer's closing documents signed by it; such documents
183. have been duly authorized by all necessary action on the part of Buyer and have been duly executed and delivered;
184. that the execution, delivery, and performance by Buyer of such documents do not conflict with or result in a violation
185. of Buyer's organizational documents or Bylaws or any judgment, order, or decree of any court or arbiter to which Buyer
186. is a party; and that such documents are valid and binding obligations of Buyer, and are enforceable in accordance with
187. their terms. Buyer will indemnify Seller, its successors and assigns, against and will hold Seller, its successors and
188. assigns, harmless from, any expenses or damages, including reasonable attorneys' fees, that Seller incurs because
189. of the breach of any of the above representations and warranties, whether such breach is discovered before or after
190. the date of closing.

MNC:PA-4 (8/17)



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COMMERCIAL PURCHASE AGREEMENT

191. Page 5 Date 03/23/2018

192. Property located at 20 N 4th Street Minneapolis MN 55401

193. TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT.

194. **CALCULATION OF DAYS:** Any calculation of days begins on the first day (calendar or Business Days as specified)
195. following the occurrence of the event specified and includes subsequent days (calendar or Business Days as specified)
196. ending at 11:59 P.M. on the last day.

197. **BUSINESS DAYS:** "Business Days" are days which are not Saturdays, Sundays, or state or federal holidays unless
198. stated elsewhere by the parties in writing.

199. **DEFAULT:** If Buyer defaults in any of the agreements here, Seller may cancel this Purchase Agreement, and any
200. payments made here, including earnest money, shall be retained by Seller as liquidated damages and Buyer and Seller
201. shall affirm the same by a written cancellation. In the alternative, Seller may seek all other remedies allowed by law.

202. If Buyer defaults in any of the agreements here, Seller may terminate this Purchase Agreement under the
203. provisions of either MN Statute 559.21 or MN Statute 559.217, whichever is applicable.

204. If this Purchase Agreement is not canceled or terminated as provided here, Buyer or Seller may seek actual damages
205. for breach of this Purchase Agreement or specific performance of this Purchase Agreement; and, as to specific
206. performance, such action must be commenced within six (6) months after such right of action arises.

207. **SUBJECT TO RIGHTS OF TENANTS, IF ANY, BUYER HAS THE RIGHT TO VIEW THE PROPERTY PRIOR TO**
208. **CLOSING TO ESTABLISH THAT THE PROPERTY IS IN SUBSTANTIALLY THE SAME CONDITION AS OF THE**
209. **DATE OF THIS PURCHASE AGREEMENT.**

210. **DISCLOSURE NOTICE:** If this Purchase Agreement includes a structure used or intended to be used as residential
211. property as defined under MN Statute 513.52, Buyer acknowledges Buyer has received a *Disclosure Statement: Seller's*
212. *Property Disclosure Statement* or *Disclosure Statement: Seller's Disclosure Alternatives* form.

213. *(Check appropriate boxes.)*

214. SELLER WARRANTS THAT THE PROPERTY IS EITHER DIRECTLY OR INDIRECTLY CONNECTED TO:

215. CITY SEWER ☒ YES ☐ NO / CITY WATER ☒ YES ☐ NO

216. **SUBSURFACE SEWAGE TREATMENT SYSTEM**

217. SELLER ☐ DOES ☒ DOES NOT KNOW OF A SUBSURFACE SEWAGE TREATMENT SYSTEM ON OR SERVING
(Check one.)

218. THE PROPERTY. (If answer is **DOES**, and the system does not require a state permit, see *Disclosure Statement:*
219. *Subsurface Sewage Treatment System*.)

220. **PRIVATE WELL**

221. SELLER ☐ DOES ☒ DOES NOT KNOW OF A WELL ON OR SERVING THE PROPERTY. (If answer is **DOES** and well
(Check one.)

222. Is located on the Property, see *Disclosure Statement: Well*.)

223. To the best of Seller's knowledge, the Property ☐ IS ☒ IS NOT in a Special Well Construction Area.
(Check one.)

224. THIS PURCHASE AGREEMENT ☐ IS ☒ IS NOT SUBJECT TO AN ADDENDUM TO PURCHASE AGREEMENT:
(Check one.)

225. **SUBSURFACE SEWAGE TREATMENT SYSTEM AND WELL INSPECTION CONTINGENCY.**

226. (If answer is **IS**, see attached *Addendum*.)

227. **IF A WELL OR SUBSURFACE SEWAGE TREATMENT SYSTEM EXISTS ON THE PROPERTY, BUYER HAS**
228. **RECEIVED A DISCLOSURE STATEMENT: WELL AND/OR A DISCLOSURE STATEMENT: SUBSURFACE SEWAGE**
229. **TREATMENT SYSTEM.**

MNC:PA-5 (8/17)



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COMMERCIAL PURCHASE AGREEMENT

230. Page 6 Date 03/23/2018

231. Property located at 20 N 4th Street Minneapolis MN 55401

AGENCY NOTICE

232. Jonathan Spar & Ed Hanlon is ☒ Seller's Agent ☐ Buyer's Agent ☐ Dual Agent ☐ Facilitator.
(Licensee) (Check one.)

234. Edina Realty, Inc.
(Real Estate Company Name)

235. Garfield Clark is ☐ Seller's Agent ☒ Buyer's Agent ☐ Dual Agent ☐ Facilitator.
(Licensee) (Check one.)

236. Garfield Clark Commercial RE
(Real Estate Company Name)

237. **DUAL AGENCY DISCLOSURE:** Dual agency occurs when one broker or salesperson represents both parties to a
238. transaction, or when two salespersons licensed to the same broker each represent a party to the transaction. Dual
239. agency requires the informed consent of all parties, and means that the broker or salesperson owes the same fiduciary
240. duties to both parties to the transaction. This role limits the level of representation the broker and salespersons can
241. provide, and prohibits them from acting exclusively for either party. In dual agency, confidential information about price,
242. terms, and motivation for pursuing a transaction will be kept confidential unless one party instructs the broker or
243. salesperson in writing to disclose specific information about him or her. Other information will be shared. Dual agents
244. may not advocate for one party to the detriment of the other.

CONSENT TO DUAL AGENCY

245. Broker represents both parties involved in the transaction, which creates a dual agency. This means that Broker and
246. its salespersons owe fiduciary duties to both parties. Because the parties may have conflicting interests, Broker and its
247. salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this
248. transaction without the consent of both parties. Both parties acknowledge that

250. (1) confidential information communicated to Broker which regards price, terms, or motivation to buy, sell, or lease will
251. remain confidential unless the parties instruct Broker in writing to disclose this information. Other information will
252. be shared;

253. (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and

254. (3) within the limits of dual agency, Broker and its salesperson will work diligently to facilitate the mechanics of the
255. sale.

256. With the knowledge and understanding of the explanation above, the parties authorize and instruct Broker and its
257. salespersons to act as dual agents in this transaction.

258. SELLER: N A

BUYER: N A

259. By: _____

By: _____

260. Its: _____
(Title)

Its: _____
(Title)

261. _____
(Date)

(Date)

262. SELLER: _____

BUYER: _____

263. By: _____

By: _____

264. Its: _____
(Title)

Its: _____
(Title)

265. _____
(Date)

(Date)



a Berkshire Hathaway affiliate

COMMERCIAL PURCHASE AGREEMENT

266. Page 7 Date 03/23/2018

267. Property located at 20 N 4th Street Minneapolis MN 55401

268. **SUCCESSORS AND ASSIGNS:** All provisions of this Purchase Agreement shall be binding on successors and assigns.

269. **CLOSING COSTS:** Buyer or Seller may be required to pay certain closing costs, which may effectively increase the
270. cash outlay at closing or reduce the proceeds from the sale.

271. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Section 1445 of the Internal Revenue Code
272. provides that a transferee ("Buyer") of a United States real property interest must be notified in writing and must withhold
273. tax if the transferor ("Seller") is a foreign person and no exceptions from FIRPTA withholding apply. Buyer and Seller
274. agree to comply with FIRPTA requirements under Section 1445 of the Internal Revenue Code.

275. Seller shall represent and warrant, under the penalties of perjury, whether Seller is a "foreign person" (as the same
276. is defined within FIRPTA), prior to closing. Any representations made by Seller with respect to this issue shall survive
277. the closing and delivery of the deed.

278. Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement
279. reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer
280. Identification numbers or Social Security numbers.

281. Due to the complexity and potential risks of failing to comply with FIRPTA, including the Buyer's responsibility for
282. withholding the applicable tax, Buyer and Seller should seek appropriate legal and tax advice regarding FIRPTA
283. compliance, as the respective licensees representing or assisting either party will be unable to assure either
284. party whether the transaction is exempt from FIRPTA withholding requirements.

285. **NOTE:** MN Statute 500.21 establishes certain restrictions on the acquisition of title to agricultural land by aliens and
286. non-American corporations. Please seek appropriate legal advice if this Purchase Agreement is for the sale
287. of agricultural land and Buyer is a foreign person.

288. **ACCEPTANCE DEADLINE:** This offer to purchase, unless accepted sooner, shall be withdrawn at 11:59 P.M.,
289. _____, 20_____, and in such event all earnest money shall be returned to Buyer.

290. **CONDEMNATION:** If, prior to the closing date, condemnation proceedings are commenced against all or any part
291. of the Property, Seller or licensee representing or assisting Seller, shall immediately give written notice to Buyer, or
292. licensee representing or assisting Buyer, of such fact and Buyer may, at Buyer's option (to be exercised within thirty (30)
293. days after Seller's notice), declare this Purchase Agreement canceled by written notice to Seller or licensee representing
294. or assisting Seller, in which case this Purchase Agreement is canceled and neither party shall have further obligations
295. under this Purchase Agreement. In the event Buyer declares the Purchase Agreement canceled, Buyer and Seller
296. shall immediately sign a written cancellation confirming such cancellation and directing all earnest money paid
297. here to be refunded to Buyer. If Buyer fails to give such written notice, then Buyer shall be bound to proceed with
298. closing, subject to any other contingencies to this Purchase Agreement. In such event, there shall be no reduction in
299. the purchase price, and Seller shall assign to Buyer at the closing date all of Seller's rights, title, and interest in and to
300. any award made or to be made in the condemnation proceedings. Prior to the closing date, Seller shall not designate
301. counsel, appear in, or otherwise act with respect to, the condemnation proceedings without Buyer's prior written consent.

302. **MUTUAL INDEMNIFICATION:** Seller and Buyer agree to indemnify each other against, and hold each other harmless
303. from, all liabilities (including reasonable attorneys' fees in defending against claims) arising out of the ownership,
304. operation, or maintenance of the Property for their respective periods of ownership. Such rights to indemnification will
305. not arise to the extent that (a) the party seeking indemnification actually receives insurance proceeds or other cash
306. payments directly attributable to the liability in question (net of the cost of collection, including reasonable attorneys'
307. fees); or (b) the claim for indemnification arises out of the act or neglect of the party seeking indemnification. If, and
308. to the extent that, the indemnified party has insurance coverage, or the right to make claim against any third party for
309. any amount to be indemnified against, as set forth above, the indemnified party will, upon full performance by the
310. indemnifying party of its indemnification obligations, assign such rights to the indemnifying party or, if such rights are
311. not assignable, the indemnified party will diligently pursue such rights by appropriate legal action or proceeding and
312. assign the recovery and/or right of recovery to the indemnifying party to the extent of the indemnification payable made
313. by such party.

MNC:PA-7 (8/17)





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COMMERCIAL PURCHASE AGREEMENT

314. Page 8 Date 03/23/2018

315. Property located at 20 N 4th Street Minneapolis MN 55401

316. **ENTIRE AGREEMENT:** This Purchase Agreement and any addenda or amendments signed by the parties shall
317. constitute the entire agreement between Buyer and Seller. Any other written or oral communication between Buyer and
318. Seller, including, but not limited to, e-mails, text messages, or other electronic communications are not part of this
319. Purchase Agreement. This Purchase Agreement can be modified or canceled only in writing signed by Buyer and
320. Seller or by operation of law. All monetary sums are deemed to be United States currency for purposes of this Purchase
321. Agreement.

322. **ELECTRONIC SIGNATURES:** The parties agree the electronic signature of any party on any document related to this
323. transaction constitute valid, binding signatures.

324. **FINAL ACCEPTANCE:** To be binding, this Purchase Agreement must be fully executed by both parties and a copy
325. must be delivered.

326. **SURVIVAL:** All warranties and representations in this Purchase Agreement shall survive the delivery of the deed or
327. contract for deed and be enforceable after the closing.

328. **OTHER:**
329. This agreement is subject to court approval.

330.

331.

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346.

MNC:PA-8 (8/17)





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COMMERCIAL PURCHASE AGREEMENT

347. Page 9 Date 03/23/2018

348. Property located at 20 N 4th Street Minneapolis MN 55401

349. **ADDENDA:** Attached addenda are a part of this Purchase Agreement.

350. ☒ If checked, this Purchase Agreement is subject to
351. attached Addendum to Commercial Purchase
352. Agreement: Counteroffer.

353. **FIRPTA:** Seller represents and warrants, under penalty
354. of perjury, that Seller ☐ IS ☒ IS NOT a foreign person (i.e., a
355. non-resident alien individual, foreign corporation, foreign
356. partnership, foreign trust, or foreign estate for purposes
357. of income taxation. (See lines 271-287.) This representation
358. and warranty shall survive the closing of the transaction
359. and the delivery of the deed.

360. **SELLER**

361. Ruby Red Dentaria, LLC

362. By: [Signature]

363. Its: Chief Executive Member (Title)

364. 4-9-18 (Date)

BUYER

Roman Gadaskin

By: [Signature]

Its: (Title)

3/29-2018 (Date)

365. **SELLER**

366. _____

367. By: _____

368. Its: _____ (Title)

369. _____ (Date)

BUYER

By: _____

Its: _____ (Title)

_____ (Date)

370. **FINAL ACCEPTANCE DATE:** _____ The Final Acceptance Date

371. Is the date on which the fully executed Purchase Agreement is delivered.

372. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S).**
373. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**

374. **THIS MINNESOTA ASSOCIATION OF REALTORS® COMMERCIAL PURCHASE AGREEMENT IS NOT**
375. **DESIGNED TO BE AND IS NOT WARRANTED TO BE INCLUSIVE OF ALL ISSUES SELLER AND BUYER**
376. **MAY WISH TO ADDRESS, AND EITHER PARTY MAY WISH TO MODIFY THIS PURCHASE AGREEMENT**
377. **TO ADDRESS STATUTORY OR CONTRACTUAL MATTERS NOT CONTAINED IN THIS FORM.**
378. **BOTH PARTIES ARE ADVISED TO SEEK THE ADVICE OF AN ATTORNEY TO ENSURE**
379. **THIS CONTRACT ADEQUATELY ADDRESSES THAT PARTY'S RIGHTS.**



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**ADDENDUM TO COMMERCIAL
PURCHASE AGREEMENT:
DUE DILIGENCE**

This form approved by the Minnesota Association of REALTORS®, which disclaims any liability arising out of use or misuse of this form. © 2017 Minnesota Association of REALTORS®, Edina, MN

1. Date 03/23/2018

2. Page 1

3. Addendum to Purchase Agreement between parties, dated March 23rd 20 18,

4. pertaining to the purchase and sale of the Property at 20 N 4th Street

5. Minneapolis MN 55401

6. In the event of a conflict between this Addendum and any other provision of the Purchase Agreement the language in
7. this Addendum shall govern.

8. This Purchase Agreement is contingent upon Buyer's reasonable approval of due diligence matters as agreed to in
9. this Addendum.

10. Title and examination and title corrections and remedies are excluded from this Addendum and shall be handled in
11. accordance with terms specified in the Examination of Title and Title Corrections and Remedies section of this Purchase
12. Agreement.

13. Buyer shall satisfy himself/herself/itself with respect to the physical condition of the Property and the feasibility and
14. suitability of the Property for Buyer's intended purpose within the respective time period(s) specified herein. Buyer
15. acknowledges that any information provided by Seller, a third party, or broker representing or assisting Seller regarding
16. dimensions, square footage, or acreage of land or improvements is approximate. Buyer shall verify the accuracy of
17. information to Buyer's satisfaction, at Buyer's sole cost and expense.

18. Buyer may declare this Purchase Agreement canceled by providing written notice to Seller, or licensee representing
19. or assisting Seller, within the respective time period(s) specified herein, in which case this Purchase Agreement is
20. canceled. Buyer and Seller shall immediately sign a written cancellation confirming said cancellation and directing all
21. earnest money paid hereunder to be refunded to Buyer, unless provided otherwise in this Purchase Agreement.

22. Buyer's failure to give written notice of cancellation of this Purchase Agreement, within the respective time period(s)
23. specified herein shall conclusively be deemed Buyer's election to proceed with the transaction without correction of any
24. disapproved items that Seller has not agreed in writing to correct or remedy.

25. **Buyer's Responsibility Regarding Due Diligence:** Buyer shall keep the Property free and clear of all liens, shall
26. indemnify, defend, and hold Seller harmless from all liability, claims, demands, damages, costs or expenses, incurred
27. by Seller by reason of any physical damage to the Property or injury to persons caused by Buyer or its agents or
28. contractors in exercising its rights under this Addendum, and shall return the Property to the same condition it was in
29. prior to Buyer's testing. Buyer shall not disturb any tenants, employees or occupants of the Property.

30. **Seller's Responsibility Regarding Due Diligence:** Seller agrees to allow reasonable access to the Property for
31. performance of any surveys, due diligence or inspections agreed to herein. Seller understands that the inspections
32. may require that all utilities be on and the Seller is responsible for providing same at Seller's expense. If the Property
33. is occupied by someone other than Owner, Owner shall comply with Minnesota law and existing Owner's lease, if any,
34. to provide tenant with proper notice in advance of any Property showing.

35. **A. ENVIRONMENTAL ASSESSMENTS/INSPECTIONS:**

36. (i) **Phase I:** This Purchase Agreement ☐ IS ☐ IS NOT contingent upon ☐ BUYER ☐ SELLER
(Check one.) (Check one.)

37. obtaining a Phase I environmental site assessment of the Property at ☐ BUYER'S ☐ SELLER'S expense
(Check one.)

38. within _____ days of Final Acceptance Date of this Purchase Agreement.

39. Buyer shall provide reasonable approval of the Phase I environmental site assessment within

40. _____ days of either:

41. (a) Final Acceptance Date of this Purchase Agreement if the Phase I environmental site assessment is
42. obligated to be obtained by Buyer; or

43. (b) receipt of the Phase I environmental site assessment if Seller is obligated to obtain.

MN-ACPA:DD-1 (8/17)

MINNESOTA
REALTORS
InstantFORMS



ADDENDUM TO COMMERCIAL
PURCHASE AGREEMENT:
DUE DILIGENCE

44. Page 2

45. Property located at 20 N 4th Street Minneapolis MN 55401
46. (ii) **Phase II:** This Purchase Agreement ☐ IS ☐ IS NOT contingent upon ☐ BUYER ☐ SELLER
(Check one.) (Check one.)
47. obtaining a Phase II environmental site assessment of the Property at ☐ BUYER ☐ SELLER
(Check one.)
48. expense within _____ days of Final Acceptance Date of this Purchase Agreement.
49. Buyer shall provide reasonable approval of the Phase II environmental site assessment within
50. _____ days of either:
51. (a) Final Acceptance Date of this Purchase Agreement if the Phase II environmental site assessment is
52. obligated to be obtained by Buyer; or
53. (b) receipt of the Phase II environmental site assessment if Seller is obligated to obtain.
54. (iii) **Other Testing:** This Purchase Agreement ☐ IS ☐ IS NOT contingent upon ☐ BUYER ☐ SELLER
(Check one.) (Check one.)
55. obtaining other Intrusive Testing of the Property at ☐ BUYER'S ☐ SELLER'S expense within
(Check one.)
56. _____ days of Final Acceptance Date of this Purchase Agreement.
57. Buyer shall provide reasonable approval of the assessment/inspection within
58. _____ days of either:
59. (a) Final Acceptance Date of this Purchase Agreement if the assessment/inspection is obligated to be obtained
60. by Buyer; or
61. (b) receipt of the assessment/inspection if Seller is obligated to obtain.
62. For purposes of this form, "Intrusive Testing" shall mean any testing, inspection(s) or investigation(s) that
63. changes the Property from its original condition or otherwise damages the Property.
64. Buyer ☐ SHALL ☐ SHALL NOT be required to provide Seller with a copy of any assessment/inspection
(Check one.)
65. reports obtained by Buyer.
66. (iv) **Seller's Representations on Environmental Concerns:** To the best of Seller's knowledge, there are no
67. hazardous substances or underground storage tanks except herein noted:
68. _____
69. _____
70. _____

71. **B. GOVERNMENTAL APPROVAL:** The following items, if applicable, shall be completed within
72. _____ days of Final Acceptance Date of this Purchase Agreement.
73. (i) This Purchase Agreement ☐ IS ☐ IS NOT contingent upon Buyer obtaining approval of governing body of
(Check one.)
74. development or subdivision plans, as described below, at ☐ BUYER ☐ SELLER expense. If IS, Seller shall
(Check one.)
75. cooperate with Buyer to obtain such approval.
76. _____
77. (ii) This Purchase Agreement ☐ IS ☐ IS NOT contingent upon Buyer obtaining approval of governing body for
(Check one.)
78. rezoning or use permits, as described below, at ☐ BUYER ☐ SELLER expense. If IS, Seller shall
(Check one.)
79. cooperate with Buyer to obtain such approval.
80. _____
81. _____



ADDENDUM TO COMMERCIAL
PURCHASE AGREEMENT:
DUE DILIGENCE

82. Page 3

83. Property located at 20 N 4th Street Minneapolis MN 55401.
84. C. OTHER CONTINGENCIES: This Purchase Agreement is contingent upon Buyer's reasonable approval of the
85. following items, if checked. Buyer shall approve the items within _____ days of either:
86. (a) Final Acceptance Date of this Purchase Agreement if Buyer is obligated to obtain the item; or
87. (b) receipt of the item if Seller is obligated to obtain the item.
88. (Select appropriate options I-vi.)
89. ☐ (i) ☐ BUYER ☐ SELLER obtaining a certificate of survey of the Property, at ☐ BUYER ☐ SELLER
_____ (Check one.) _____
90. expense.
91. ☐ (ii) ☐ BUYER ☐ SELLER obtaining soil tests which indicate that the Property may be improved without
_____ (Check one.) _____
92. extraordinary building methods or costs, at ☐ BUYER ☐ SELLER expense.
_____ (Check one.) _____
93. ☐ (iii) ☐ BUYER ☐ SELLER obtaining copies of all covenants, reservations and restrictions affecting the Property,
_____ (Check one.) _____
94. at ☐ BUYER ☐ SELLER expense.
_____ (Check one.) _____
95. ☐ (iv) ☐ BUYER ☐ SELLER obtaining and approving copies of Association documents at ☐ BUYER ☐ SELLER
_____ (Check one.) _____
96. expense.
97. ☒ (v) Buyer obtaining from Seller copies of all documents in Seller's possession or control relating to the rights
98. of tenants, including but not limited to, rent rolls, leases, common area maintenance fees, and estoppel
99. certificates.
100. Seller assigns all right, title, and interest in and to the tenant security deposits and the interest earned, if
101. any, and credited thereon (collectively, the Security Deposits) for the Property at closing. Seller warrants
102. that the Security Deposits being assigned are all of the Security Deposits being held for tenants at the
103. Property. Seller shall, immediately after closing, notify tenant of the Security Deposit transfer and of Buyer's
104. name and address as required under MN Statute 504B.178, Subd. 5. Buyer agrees to hold and apply all
105. of the Security Deposits in accordance with the terms of the leases of the Property pursuant to MN Statute
106. 504B.178 and indemnify and agree to hold and defend Seller, its legal representatives, successors and
107. assigns harmless from and against any and all claims, actions, suits, proceedings, demands, assessments,
108. judgments, liabilities and costs including, without limitation, reasonable attorney's fees and expenses of
109. any kind whatsoever, arising from and after the date of closing asserted by said tenants or any person or
110. persons claiming under any of them with respect to any of the Security Deposits.
111. ☒ (vi) Buyer obtaining from Seller copies of all permits applicable to the Property, operating statements for the
112. last 5 years, vendor contracts, and any other documents in Seller's possession or
113. control and relating to the Property.
114. Buyer acknowledges that Seller makes no representations or warranties by providing any documents to
115. Buyer. Buyer agrees to return all such documents to Seller upon Seller's written request.

MN-ACPA:DD-3 (8/17)





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ADDENDUM TO COMMERCIAL
PURCHASE AGREEMENT:
DUE DILIGENCE

116. Page 4

117. Property located at 20 N 4th Street Minneapolis MN 55401

118. D. BUYER INVESTIGATIONS: This Purchase Agreement ☒ IS ☐ IS NOT contingent upon Buyer's investigations
(Check one.)

119. of the Property for Buyer to satisfy himself/herself/itself with respect to the physical condition of the Property and
120. the feasibility and suitability of the Property for Buyer's intended purpose. Any Buyer investigations shall be

121. completed within 90 days of Final Acceptance Date of this Purchase

122. Agreement. All Buyer investigations shall be at Buyer's sole cost and expense.

123. SELLER

BUYER

124. Ruby Red Dentata, LLC

Roman Gadaskin

125. By: [Signature]

By: Roman Gadaskin

126. Its: Chief Executive Member
(Title)

Its: _____
(Title)

127. 4-9-18
(Date)

3/29-2018
(Date)

128. SELLER

BUYER

129. _____

130. By: _____

By: _____

131. Its: _____
(Title)

Its: _____
(Title)

132. _____
(Date)

_____ (Date)

133. THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S).
134. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

MN-AOPA:DD-4 (8/17)





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**ADDENDUM TO COMMERCIAL
PURCHASE AGREEMENT: COUNTEROFFER**

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which disclaims any liability arising out of use or misuse of this form.
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1. Date 04/26/2018
2. Page 1
3. Addendum to Purchase Agreement between parties, dated March 29th, 20 18, pertaining
4. to the purchase and sale of the Property located at 20 N 4th Street
5. Minneapolis MN 55401
6. ***This Counteroffer does not include the terms or conditions in any previous Counteroffer(s).***
7. The Purchase Agreement is rejected and the following Counteroffer is hereby made. All terms and conditions remain
8. the same, as stated in the Purchase Agreement, except the following:
9. *(Select appropriate changes from original offer.)*
10. ☐ Sale price shall be \$ _____
11. ☒ Earnest money shall be a total of \$ 25,000.00
12. ☐ Closing date shall be on or before _____, 20 _____.
13. ☒ Other:
14. Current year to be prorated to day of Close and all (if any) future Special
Assessments to be assumed by the Buyer. Buyer does not know of any Pending
assessments.
15. After Buyer's Due Diligence and inspections are complete and satisfied the property is
16. sold as-is, where is.
17. Current and immediate prior year operating expenses and records will be provided to
Buyer from Seller within 10 days of Final Acceptance.
18. Close into escrow with the title and bank commitment to be held by Title Specialist,
19. Inc., pending delivery of the property to Buyer (not more than 25 days). As soon as
Seller has vacated the building and is able to give delivery to the Buyer, and Buyer
20. is satisfied with the condition of the property, the Title will be transferred and the
funds disbursed to the Seller et al.
21. Legal description is; "Lots 10,11 & 12, Auditor's subdivision no. 152"
22. No bad debt to accrue to Buyer.
23. Lines 94 to 101; Buyer to review Title to be 10 days.
24. Line 201; Seller is entitled to reasonable attorney fees.
25. Delete lines 173-176.
26. If property is damaged by act of god or other, Seller shall proceed to its insurance
27. claims exclusively, and buyer has no interest in any claim proceeds.
28. Buyer may extend Due Diligence period for an additional 30 days by delivering notice,
29. not later than the 90th day of the original Due Diligence period, making \$10,000 of
the earnest money non-refundable.
30. Due Diligence Addendum; line 121 to remain 90 days.
- 31.

MN:ACPA:C-1 (8/17)

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**ADDENDUM TO COMMERCIAL
PURCHASE AGREEMENT: COUNTEROFFER**

32. Page 2

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33. Property located at 20 N 4th Street Minneapolis MN 55401
34. _____
35. _____
36. _____
37. _____
38. _____
39. _____
40. _____
41. _____
42. _____
43. _____
44. _____
45. _____

46. **SELLER**

Ruby Red Dentata, LLC

47. _____

48. By: DocuSigned by:
Toby Brill
3E5D6BDD4F364C3...

Chief Executive Member

49. Its: _____
(Title)

4/27/2018

50. _____
(Date)

51. **SELLER**

52. _____

53. By: _____

54. Its: _____
(Title)

55. _____
(Date)

BUYER

Rand Gadsden,

By: _____
Its: _____
(Title)

4/30-2018.

(Date)

BUYER

By: _____

Its: _____
(Title)

(Date)

56. **ATTACH ONLY THE FINAL COUNTEROFFER ADDENDUM TO THE PURCHASE AGREEMENT.**

57. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S).**
58. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BKY No.: 17-41184

Ruby Red Dentata, LLC,

Chapter 11

Debtor.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SELL ASSETS FREE AND
CLEAR OF LIENS AND INTERESTS

This Memorandum is submitted in support of Debtor's motion to sell assets free and clear of liens, claims, encumbrances and interests ("Motion"). The facts supporting the relief requested are set forth in the verified Motion.

I. THE PROPOSED SALE IS A REASONABLE EXERCISE OF BUSINESS JUDGMENT AND WARRANTS APPROVAL PURSUANT TO 11 USC § 363

The proposed sale is in the best interests of the estate. Such a sale is governed by 11 U.S.C. §363(b)(1), which provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." In determining whether to authorize the sale of property, courts evaluate whether sound business purpose underlies the proposed sale.¹ When a sound business purpose exists, and the sale is made in good faith, a sale pursuant to §363(b)(1) of the Bankruptcy Code should be approved. The burden of establishing a rational business justification rests with the movant.² However, once

¹ *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). *See also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale); *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *Four B. Com. v. Food Barn Stores, Inc.* (In re Food Barn Stores, Inc.), 107 F.3d 558, 567 n.16 (8th Cir. 1997); *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *In re Crystalin LLC*, 293 B.R. 455, 463-64 (8th Cir. B.A.P. 2003); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991).

² *Lionel*, 722 F.2d at 1070-71.

such a showing is made, a presumption will attach that the decision was made on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company.³

In the instant case, Debtor submits that sound business justification exists which merits judicial approval of the proposed sale by the Court. Therefore, Debtor requests the Court approve the proposed sale as it is fair and reasonable under the circumstances.

II. THE FACTS SUPPORT A SALE FREE AND CLEAR OF LIENS AND INTERESTS

In order to facilitate the sale, a prompt and efficient sale needs to be made free and clear of liens and interests pursuant to §363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, or interests to attach to the sale proceeds thereof. Specifically, §363(f) of the Bankruptcy Code provides:

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

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

To facilitate the proposed sale, Debtor seeks authorization to sell the Buildings, as defined in the Motion, free and clear of any and all liens and interests, with such liens and interests to attach to the net proceeds of such sale with the same rights and priorities therein. A

³ See, e.g., *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.* (In re Integrated Resources, Inc.), 147 B.R. 650,656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

sale under §363(f) only necessitates meeting one of the five conditions of the disjunctively written Bankruptcy Code section.⁴

Under §363(f)(2) of the Bankruptcy Code, a sale free and clear of all liens, claims, encumbrances and interests is permissible if all parties asserting liens on or other interests in the assets to be sold consent. Debtor is providing proper notice of this transaction and giving all interested parties an opportunity to object. Accordingly, the requirements of §363(f)(2) are satisfied with such notice and the absence of objection.⁵ Further, to the extent consent is not obtained, §363(f)(5) permits lien extinguishment if any party asserting an interest in the assets could be compelled to accept monetary satisfaction of such interest in a legal or equitable proceeding without full satisfaction of the debt. Any such claims to the Debtor's assets could be resolved by such means. Accordingly, the proposed sale satisfies the statutory prerequisites of §363(f) of the Bankruptcy Code and should be given such status.

III. BUYER IS ENTITLED TO GOOD FAITH STATUS PURSUANT TO § 363

Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. Section 363(m) provides,

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

Although the Bankruptcy Code does not define "good faith purchaser," the Third Circuit has noted that the phrase "encompasses one who purchases in 'good faith' and 'for value.'"⁶

⁴ 11 U.S.C. §363(f). See *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) ("[Section 363(f)] is written in the disjunctive, not the conjunctive. Therefore, if any of the five conditions of §363(f) are met, the Trustee has the authority to conduct the sale free and clear of all liens.").

⁵ See *Veltman v. Whetzal*, 93 F. 3d 517, 521 (8th Cir. 1986) citing *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988); *In re Shary*, 152 B.R. 724, 725-26 (Bankr. N.D. Ohio 1993).

⁶ *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147.

Further, the recognized type of misconduct that would destroy a purchaser's good faith status involves "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders."⁷ Accordingly, Debtor requests the Court deem the Buyer, as defined in the Motion, to be acting in good faith and entitled to all protections afforded therein.

To successfully implement the foregoing, Debtor seeks a waiver of the fourteen-day stay under Rule 6004.

IV. CONCLUSION

For the foregoing reasons, Debtor respectfully requests the Court enter an order granting the relief sought in the motion.

Respectfully submitted,

STEVEN B. NOSEK, P.A.

Dated: April 30, 2018.

/s/ Steven B. Nosek

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ATTORNEYS FOR THE DEBTOR

⁷ *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BKY No.: 17-41184

Chapter 11

Ruby Red Dentata, LLC,
Debtor.

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, I caused a copy of the **Notice of Hearing and Motion to Sell Assets Free and Clear of Liens, Claims, Encumbrances and Interests; Verification; Exhibit; Memorandum of Law; and Proposed Order** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

US Trustee: ustregion12.mn.ecf@usdoj.gov, ecfbkup@comcast.net

Michael R. Fadlovich: Michael.fadlovich@usdoj.gov

Jeffrey A. Peterson: Jeffrey.peterson@gpmlaw.com, valene.perpich@gpmlaw.com

Andrew J. Steil: Andrew.steil@gpmlaw.com, Sharon.mackereth@gpmlaw.com

Rebecca S. Holschuh: rebecca.holschuh@hennepin.us, suzanne.ryan@hennepin.us;
gina.braaten@hennepin.us

Sara L. Bruggeman: sara.bruggeman@hennepin.us

I further certify that I caused a copy of the **Notice of Hearing and Motion to Sell Assets Free and Clear of Liens, Claims, Encumbrances and Interests; Verification; Exhibit; Memorandum of Law; and Proposed Order** to be faxed and/or emailed and/or mailed by US Mail to the following:

Ruby Red Dentata, LLC 5115 Excelsior Blvd., No. 231 Minneapolis MN 55416-2906 toby.brill@usa.net	MN Dept of Revenue 551 Bankruptcy Sections PO Box 64447 St. Paul MN 55164 Mdor.bkysec@state.mn.us	IRS District Director Room 320 Stop 5700 30 7 th Street E #1222 St. Paul MN 55401
Internal Revenue Service Centralized Insolvency Office PO Box 7346 Philadelphia PA 19101-7346 1-855-235-6787	Best & Flanagan Patrick Hennessy 60 South Sixth St, Suite 2700 Minneapolis MN 55402 phennessy@bestlaw.com	CenterPoint Energy PO Box 4671 Houston TX 77210-4671
City of Minneapolis 250 S. Fourth St. Rm 230 Minneapolis MN 55415-1321	D12 Ventures, LLC c/o Samuel L Stern 2900 Washington Avenue North Minneapolis MN 55411	XCel Energy PO Box 9477 Minneapolis MN 55484-9477
Kingfield Construction Product 20 North 4th Street Suite 300 West Minneapolis MN 55401	Mr. Arthur D. Walsh 329 Geneva Ave N #117 Saint Paul MN 55128	Mitchell E. Spargur c/o Samuel L Stern 2900 Washington Avenue North Minneapolis MN 55411

Plot Brand LLC 4041 3rd Ave So Minneapolis MN 55409	S. Steven Prince 825 Nicollet Mall Suite 1648 Minneapolis MN 55402	Salamh Investment, Inc dba Happy Days Market 7367 Memory Lane Minneapolis MN 55432
Saliterman & Siefferman, P.C. 600 South Hwy 169 Suite 1500 Minneapolis MN 55426	Schafer Richardson, Inc. 900 N. 3rd Street Minneapolis MN 55401	

STEVEN B. NOSEK, P.A.

Dated this 30th day of April, 2018.

/e/ Steven B. Nosek
Steven B. Nosek, #79960
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ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Case No. 17-41184
Chapter 11

Ruby Red Dentata, LLC,

Debtor.

ORDER APPROVING SALE OF ASSETS

This matter came on for hearing on Tuesday, May 29, 2018, on the Debtor's Motion to sell assets free and clear of liens, claims, encumbrances and interests (the "Motion").

Appearances were noted. Counsel was heard.

Now, therefore, based upon the files, records and arguments of counsel,

IT IS HEREBY ORDERED:

1. The Debtor is authorized to sell the Buildings to Roman Gadaskin, as those assets are described in the Commercial Purchase Agreement between the Debtor and Roman Gadaskin located at 20 and 28 N. 4th Street, Minneapolis, Minnesota and legally described as Lots 10, 11, and 12, Auditors Subd. No. 152.

2. The Debtor's assets sold to Roman Gadaskin, pursuant to 11 U.S.C. §363(f), shall be transferred to Roman Gadaskin free and clear of all liens, claims, encumbrances and interests, with such liens, claims, encumbrances, and interests to attach to the proceeds of the sale.

3. Transfer of the Debtor's Buildings to Roman Gadaskin constitutes a legal, valid and effective transfer, assignment, sale and conveyance of the Debtor's Buildings and shall vest Roman Gadaskin with all right, title and interest in such acquired assets.

4. Roman Gadaskin has acted in good faith within the meaning of 11 U.S.C. §363(m) of the Bankruptcy Code. The sale was negotiated, proposed and entered into by the Debtor and Roman Gadaskin without collusion and in good faith.

5. All objections filed in response to the Motion are overruled to the extent not resolved by this Order.

6. The Debtor is authorized to take such other and further steps as may be necessary to implement the terms of this Order.

7. The fourteen-day stay under Rule 6004 is waived.

8. Notice of the proposed Sale and the hearing thereon were proper, fair and equitable and complied with the requirements of the Bankruptcy Code.

9. This Court shall retain jurisdiction over any matters relating to or arising from this Order.

Dated:

William J. Fisher
United States Bankruptcy Judge