

SILLS CUMMIS & GROSS, P.C.
Valerie A. Hamilton, Esq.
600 College Road East
Princeton, New Jersey 08540
Telephone: (609) 227-4600
Telecopy: (609) 227-4646
*Counsel to Valerie A. Hamilton,
Post-Confirmation Trustee*

In re:

SOMERSET THOR BUILDING REALTY
HOLDING, P.C.,

Debtor.

Hon. Michael B. Kaplan

Case No. 13-12660 (MBK)

Chapter 11

Emergent Hearing Requested

POST-CONFIRMATION TRUSTEE’S MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AND FED. R. BANKR. P. 2002, 6004, AND 9014 FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING THE SALE OF CERTAIN REAL AND PERSONAL PROPERTY, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) GRANTING THE PURCHASER THE PROTECTIONS AFFORDED TO A GOOD FAITH PURCHASER, (III) WAIVING STAY PROVIDED BY FED. R. BANKR. P. 6004(h), (IV) APPROVING REAL ESTATE BROKER’S COMMISSION AND (V) GRANTING RELATED RELIEF

Valerie A. Hamilton (the “Trustee”), the post-confirmation trustee for Somerset Thor Building Realty Holding, L.P., the above-captioned debtor (“Debtor”) in this chapter 11 bankruptcy case, by and through her undersigned counsel, pursuant to Sections 105(a) and 363(b) and (f) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002(a), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), moves this Court for the entry of an order (i) authorizing and approving the Trustee’s sale of certain real and personal property to Cynzer Properties-Edison, Inc. (“Cynzer” or the “Purchaser”) pursuant to that certain Asset Purchase Agreement (“APA”) between the Trustee and Cynzer; (ii) granting the Purchaser the protections afforded a good faith purchaser pursuant to Section 363(m) and (iii)

waiving stay afforded by Fed. R. Bankr. P. 6004(h), (iv) approving real estate broker's commission and (v) granting related relief. In support of the Motion, the Trustee represents as follows:

INTRODUCTION

1. By this Motion, the Trustee seeks entry of an order (a) approving and authorizing the Trustee to consummate the private sale of the Debtor's interest in certain parcels of real property commonly known as 3421 Route 22, Branchburg, NJ 08876 and certain personal property located thereon, pursuant to the terms and conditions set forth in that certain APA dated March 9, 2017, a copy of which is attached hereto as Exhibit A,¹ free and clear of all liens, claims, interests, and encumbrances, with the same attaching to the proceeds of the Sale; (b) granting Purchaser the protections to which a good faith purchaser of assets is entitled under sections 363 of the Bankruptcy Code, (c) waiving the stay provided in Fed. R. Bankr. P. 6004(h); (d) approving real estate broker's commission; and (e) granting related relief.

2. The relief requested in this Motion is in accordance with this Court's order dated November 16, 2016, directing the Trustee to sell the Lots (as defined below), necessary and appropriate to carry out the terms of the Settlement Agreement and the Debtor's confirmed Plan, and in the best interests of the Debtor and its creditors.

JURISDICTION

3. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2) (A), (N) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

¹ The Exhibits to the APA are not attached to this Motion, but will be provided upon request.

BACKGROUND

I. Case Background

4. On February 11, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. Upon information and belief, the Debtor is the fee simple owner of (i) vacant land identified on the tax maps for the Township of Branchburg as Block 9, Lot 5.01 ("Lot 5.01"); (ii) vacant land consisting of a parking lot, detention basin and private road way, identified on the tax maps for the Township of Branchburg as Block 9, Lot 3.02 ("Lot 3.02"), and (iii) a lot improved with a 64,000 +/- sq. ft. building (the "Building") and identified on the tax maps for the Township of Branchburg Block 9, Lot 4.01 (the "Building Lot," and together with Lot 5.01 and Lot 3.02, the "Lots"). Collectively, the Lots are commonly known as 3421 Route 22, Branchburg, NJ 08876.

6. By Order dated February 24, 2016 ("Confirmation Order"), the Bankruptcy Court confirmed the Debtor's Fourth Modified Chapter 11 Plan Of Reorganization, as modified (the "Plan"). [Dkt. No. 314].

7. The Debtor, the predecessor-in-interest to the Trustee and Crusader Servicing Corporation entered into a certain Settlement Agreement dated May 13, 2015 (the "Settlement Agreement"), which resolved certain issues between the parties thereto. Among other things, the Settlement Agreement authorized and directed the Trustee to take certain actions (including the sale of the Lots) in the event the Debtor defaulted under the Settlement Agreement.

8. The Settlement Agreement was incorporated into, and made a part of, the Plan and Confirmation Order by reference. (Confirmation Order, ¶ 12).

9. By Order dated November 16, 2016, the Bankruptcy Court determined that the

Debtor had defaulted on its monetary obligations under the Settlement Agreement and the Plan, and that the Debtor had failed to cure such defaults, despite notice and an opportunity to do so.

Accordingly, the Court directed the Trustee to promptly proceed with the sale of the Lots.

10. By Order dated December 22, 2016, the Bankruptcy Court approved the Trustee's motion to retain Zimmel Associates as the Trustee's real estate broker. [Dkt. No. 369]

11. The Trustee has received an offer from Cyzner to purchase the Lots for \$3 million through a private sale, not subject to higher and better offers, pursuant to Section 363 of the Bankruptcy Code.

12. The Trustee seeks to complete a sale of the Lots as soon as practicable in order to comply with the Court's November 16, 2016 Order directing the prompt sale of the Lots, effectuate the terms of the Settlement Agreement and confirmed Plan, and maximize the value of the Lots by limiting the amount of indebtedness owed to Crusader and other tax lien holders against the Lots.

13. The Lots are the subject of several tax and municipal sewer liens that are accruing interest at rates up to 18%. In the absence of a sale, the existing liens against the Lots will continue to increase on a daily basis. Upon information and belief, the Lots are subject to the following estimated liens and interests:²

Block 9, Lot 3.02

- Township of Branchburg: \$541,608.11

² These estimates do not constitute an admission regarding the payoff amounts due for each lien. The Trustee reserves the right, but not the obligation, to dispute the payoff amounts for each lien prior to Closing. All liens, claims, interests and encumbrances shall attach to the proceeds of sale, in the same order and priority as existed in the Lots.

Block 9, Lot 4.01

- U.S. Bank: \$361,954.12
- Crusader: \$1,390,801.89

Block 9, Lot 5.01

- Empire Tax Lien Fund: \$49,181.95
- Stuart Lasher: \$21,470.90
- Stuart Lasher: \$6,880.03

14. In addition to accruing municipal and tax liens, the Trustee learned that the Debtor ceased paying post-confirmation taxes, maintenance and utility bills for the Building. As a result, tax sale certificate holders have paid taxes and added it to the Debtor's indebtedness. All utility service to the Building was terminated due to the Debtor's non-payment. The Debtor owed \$8,895.86 in charges to PSE&G for post-petition gas service and \$11,347.21 to JCP&L for post-petition electricity service.

15. There are no tenants in the Building, meaning that there is no income available to the Trustee to satisfy the Debtor's breaches to the utility providers or to provide basic maintenance on the Building and supporting lots.

16. Using funds advanced by Crusader, the Trustee has reached an agreement with PSE&G to restore gas service to the Building so that a minimum level of heat can be maintained in the Building to prevent damage to the Building's pipes. The Trustee presently has insufficient funds to restore and maintain future electrical service to the Building. In order to minimize these and other administrative costs, the Trustee seeks expedited approval of the private sale of the Lots.

II. Summary of Key Terms of the Proposed Sale Transaction

17. In general, the APA provides for the sale to the Purchaser of the Lots and all personal property located thereon, free and clear of all liens, claims, interests and encumbrances.

18. The Purchaser will purchase the Lots, “as is, where is,” for a purchase price of \$3,000,000 in cash at the Closing. The Closing of the sale transaction is not contingent upon the performance of additional due diligence or financing.

19. Closing on the sale of the Lots will occur within thirty (30) days following the entry of an order approving the sale of the Lots, but is expected to close much sooner.

20. The Purchaser has paid a \$100,000 deposit to the Trustee, which sum is being held by the Trustee’s counsel. Upon the filing of this Motion, the Purchaser is required to increase its deposit to \$200,000. The deposit is non-refundable in the event of the Purchaser’s breach of the APA.

21. In accordance with the terms of the Trustee’s retention order, if the proposed sale of the Lots to the Purchaser is approved, the Trustee's real estate broker will be entitled to a commission equal to three (3%) percent of the sale price, or \$90,000. The Trustee hereby requests approval of the Broker’s commission, with such amount to be paid at closing.

RELIEF REQUESTED

22. The Trustee seeks authorization to sell the Lots to the Purchaser pursuant to the terms of the APA. The Trustee believes that such sale will maximize the value of the estates and benefit all interested parties.

23. In conjunction with the sale, the Trustee seeks (i) authorization to transfer all personal property remaining on the Lots to the Purchaser as set forth in the APA and Sale Order in connection with the sale of the Lots, (ii) protection for the Purchaser under section 363(m) of

the Bankruptcy Code, (iii) waiver of the 14-day stay of the Sale Order pursuant to Bankruptcy Rule 6004(h); and (iv) authority to pay the Broker's commission. A sale of the type contemplated by the Trustee will not generate the best return possible without this relief.

BASIS FOR RELIEF

I. The Trustee Should Be Authorized To Consummate the Private Sale of the Lots to the Purchaser Pursuant to Section 363(b) of the Bankruptcy Code.

24. Approval of the sale of the Lots in accordance with the terms of the APA and pursuant to the provisions of Sections 363 of the Bankruptcy Code is appropriate under the circumstances, is in the best interest of the Debtor's estate and creditors, and should be approved.

25. The relief sought through the Motion is requested pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014.

26. Section 363(b)(1) of the Bankruptcy Code provides that a debtor (or 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 use, sale or lease of property of the estate under this section, courts require the debtor or trustee to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp.* (*In re Montgomery Ward Holding Corp.*), 242 B.R. 147, 153 (D. Del. 1999) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 243 (Bankr. S.D.W. Va. 1996); *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr. D. Del. 1991); *In re Indus. Valley Refrig. & Air Cond. Supplies*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987)).

A. The Trustee Has a Sound Business Purpose for the Sale of the Lots.

27. Where, as here, there is an articulated business justification for selling a debtor's property outside of the ordinary course of business, courts generally permit such a sale. *See In re*

Gucci, 126 F.3d 380, 387 (2d Cir. 1997); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986).

28. A sound business reason justifies the proposed sale of the Lots to the Purchaser, and it should be approved. First, the proposed sale is consistent with the Settlement Agreement, as incorporated into the confirmed Plan, which provides for sale of the Lots in the event that the Debtor failed to cure a monetary obligation under the Settlement Agreement. This Court determined that the Debtor breached a monetary obligation under the Settlement Agreement, which it failed to cure and expressly directed the Trustee to sell the Lots.

29. The proposed sale satisfies this Court's direction in its November 16, 2016 Order to sell the Lots, is necessary and appropriate to carry out the terms of the Settlement Agreement and the Debtor's confirmed Plan and will result in the full satisfaction of all secured claims against the Lots. Moreover, sale of the Lots will prevent the increase of existing liens, as well as the imposition of additional tax liens, against the Lots.

30. In accordance with the Settlement Agreement, the Trustee consulted with the Debtor and Crusader regarding the selection of a real estate broker for the sale of the Lots. At the Debtor's recommendation, the Trustee promptly retained Zimmel and Associates (the "Broker") to market the Lots.

31. The Purchaser presented the Trustee with a \$3 million cash offer for the Lots, with no contingencies for due diligence or financing. The Purchaser has represented to the Trustee that it has the financial wherewithal and motivation to consummate the proposed transaction expeditiously because the Purchaser will obtain important tax benefits from the proposed transaction. The Purchaser has advised that it sold other like-kind property, and it

intends to reinvest the proceeds of the sale in the Lots in order to maximize certain tax advantages available to the Purchaser under the Internal Revenue Code.

32. Because the Internal Revenue Code sets forth certain time deadlines for completion of a “Section 1031 exchange,” the Trustee and the Purchaser must proceed expeditiously with the proposed sale. Accordingly, the Purchaser has required the Trustee to seek approval of the APA as a private sale which must close within thirty (30) days after Court approval of the transaction. The Trustee submits that there is more than sufficient business justification for the proposed sale.

B. Proceeding By Private Sale Reflects an Exercise of the Trustee’s Sound Business Judgment.

33. The Trustee submits that an order granting the relief requested herein is within the discretion of the Court and would be consistent with the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a) (authorizing the court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]”). Provided the bankruptcy court utilizes equitable powers to achieve a result consistent with the Bankruptcy Code, the exercise of its section 105(a) powers is proper. *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *In re Pincus*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002).

34. There is more than ample business justification to sell the Lots through private sale without the need to conduct a further public marketing process. *See In re Ancor Exploration Co.*, 30 B.R. 802, 808 (Bankr. D. Okla. 1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the assets not in the ordinary course of business under § 363(b).”). The bankruptcy court “has ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” *In re WPRV-*

TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992); accord *In re Canyon P'ship*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

35. In this case, the Lots have been actively marketed by a highly-qualified and experienced real estate broker. The Trustee received two offers for the Lots, and the Purchaser's \$3 million purchase price is the highest and best offer received for the Lots. The Purchaser has agreed to accept the Lots "as is" and "where is," without performing additional due diligence. The only other offer received by the Trustee was also for a \$3 million purchase price, but was conditioned upon the satisfactory completion of additional due diligence.

36. After analyzing the two offers, and upon consultation with counsel, Crusader, and the Broker, the Trustee determined that the offer received from the Purchaser was the best offer received and should be pursued.

37. The Trustee's determination was based on the following: (1) the Purchaser's offer was for the highest price (equaling another \$3 million offer); (2) it was not contingent upon due diligence and therefore believed to be more likely to close; (3) did not require the Trustee to expend funds to cure the Debtor's post-confirmation obligations to utilities; and (4) had the fewest conditions to closing.

38. Private sale should be approved because all parties with standing to be heard regarding the sale of the Lots are expected to consent to it. All secured claims against the Lots will be satisfied at closing, and therefore, all lienholders are expected to consent to sale. Furthermore, the Settlement Agreement prohibits the Debtor from opposing, seeking to delay or hinder, or causing any other person or entity to oppose, seek to delay or hinder the sale of the Lots by the Trustee. Settlement Agreement, ¶ 6(b). Therefore, the private sale of the Lots under the terms of the APA is appropriate and should be approved.

C. The Sale Has Been Proposed in Good Faith.

39. Furthermore, the sale has been proposed in good faith. The Trustee has fully disclosed and requested the Court's approval of the APA and all the terms and conditions of the proposed sale. *See, e.g., 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).

40. The inquiry into "good faith" also requires a bankruptcy court to make a finding of good faith with respect to the purchaser. *In re Abbotts Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986). The Bankruptcy Code does not define good faith for this purpose, but courts have held that a good-faith buyer is one who purchases "in good faith" and for "value." *Id.* at 147. Purchasing in good faith under section 363(b) has been analogized to purchasing in good faith 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)).

41. In this case, there has not been and will be no collusion that would render the Purchaser a bad faith purchaser in a judicial sale. The Purchaser is not affiliated with the Debtor or the Trustee. The sale will be the result of arm's length negotiation between the Trustee and the Purchaser, and will be for "value" because it will be the result of an open marketing process.

II. The Sale Should Be Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to Section 363(f) of the Bankruptcy Code.

42. This Court's November 16, 2016 Order directs the Trustee to sell the Lots pursuant to Section 363 of the Bankruptcy Code.

43. The Bankruptcy Code authorizes the sale of property of the estate under section 363(b) free and clear of any interest in the property if:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. 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;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because the language of section 363(f) is in the disjunctive, a sale free and clear of interests can be approved if any one of the aforementioned conditions is satisfied. *In re Heine*, 141 B.R. 185, 189 (Bankr. D.S.D. 1992); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

44. A sale free and clear of liens, claims, interests and encumbrances is necessary to maximize the value of the Lots, as a sale subject to liens, claims, interest and encumbrances will result in a lower purchase price. *See, e.g., WBQ P'ship v. Virginia Dep't of Medical Assistance Servs. (In re WBQ P'ship)*, 189 B.R. 97, 108 (Bankr. E.D. Va. 1995) (holding that the purpose behind the "free and clear" language of section 363(f) is to "maximize the value of the asset" and observing that, without the "free and clear" language, "prospective buyers would be unwilling to pay a fair price for the property subject to the sale; instead, the price would have to be

discounted, perhaps quite substantially, to account for the liabilities that the buyer would face simply as a result of acquiring the asset”).

45. The Trustee has obtained real estate lien searches in connection with all of the Lots and is confident that the aggregate value of all liens on the Lots to be sold is substantially less than the proposed purchase price under the APA. Notice of the proposed sale will be provided to all persons claiming any lien on or interest in any of the Lots.

46. Moreover, it is expected that the Debtor’s secured creditors will consent to the sale of the Lots, but to the extent they do not, section 363(f) is satisfied because each such creditor could be compelled to accept a money satisfaction of its interest.

47. Accordingly, the proposed sale should be free and clear of liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

III. The Trustee Should Be Authorized To Sell Any Personal Property Located on the Lots Pursuant to Section 363 of the Bankruptcy Code in Conjunction with the Sale.

48. The Trustee further seeks authority to sell any personal property remaining on the Lots to the Purchaser in accordance with the APA. Specifically, certain of the offices in the Building contain miscellaneous office furniture, including desks and chairs. The Purchase Price offered by the Purchaser includes the office furniture. Upon information and belief, to the extent that such personal property is not affixed to the real property, the costs of removal of these items is expected to exceed the fair market value of the items.

49. The Trustee does not believe that there exists and lien, claim or encumbrance against such personal property. It is expected that any creditor with a security interest in such personalty will consent to its sale. If not, section 363(f) is satisfied because each such creditor could be compelled to accept a money satisfaction of its interest.

50. For the foregoing reasons, the Trustee respectfully requests that, pursuant to Section 363(f), the Court approve the sale of any personalty remaining on the Lots as part of the sale transaction.

IV. The Purchaser Is Entitled to the Protections of Section 363(m) of the Bankruptcy Code.

51. Section 363(m) of the Bankruptcy Code provides that the reversal or modification on appeal of an authorized sale of property under section 363(b) of the Bankruptcy Code will not affect the validity of such sale to a good faith purchaser. The Purchaser is a good faith purchaser, having negotiated the sale of the Lots with the Trustee at arm's length and for a purchase price that reflects the market value of the Lots. There is no evidence of fraud, collusion or grossly unfair advantage over other potential purchasers of the Lots. Accordingly, the Trustee requests that the Court make an explicit finding that the Purchaser is a good faith purchaser for the purposes of section 363(m).

V. The Waiting Period of Bankruptcy Rules 6004(h) Should Be Waived.

52. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Trustee requests that the Sale Order, once entered, be effective immediately by providing that, to the extent applicable, the 14-day stay under Bankruptcy Rule 6004(h) is waived.

53. Time is of the essence. The Purchase Agreement provides that closing is to occur thirty (30) days after entry of the order approving the sale. The Purchaser has advised that it is interested in the Lots in order to complete a Section 1031 exchange, which is a time-sensitive endeavor. Waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is necessary to ensure the sale can close in sufficient time to satisfy the Purchaser's needs.

54. Finally, the Trustee does not expect that there will be any objection to the proposed sale, since all secured claims against the Lots will be satisfied at closing. In addition, under Section 6(b) of the Settlement Agreement, the Debtor is prohibited from opposing the sale of the Lots by the Trustee, delaying, hindering or causing any other person or entity to oppose, seek to delay or hinder the sale of the Lots by the Trustee.

55. For these reasons, the Trustee respectfully submits that the fourteen-day stay requirement contained in Bankruptcy Rules 6004(h) should be waived.

VI. The Broker's Commission Should Be Approved for Payment at Closing.

56. By Order dated December 14, 2016, this Court approved the terms of retention and payment for the Trustee's real estate broker. Under the terms of the retention agreement, Zimmel Associates is entitled to a commission equal to three (3%) percent of the sale price paid to be paid by the Purchaser, i.e, \$90,000. The Trustee seeks entry of an Order authorizing the Trustee to pay the Broker its commission at the closing on the sale to the Purchaser.

NOTICE

57. In accordance with the requirements of Bankruptcy Rule 6004, the Trustee proposes to serve this Motion upon the following parties via first-class mail, postage prepaid: (a) the Debtor and its counsel; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon the Lots and their counsel, if known; (c) all federal, state and local regulatory or taxing authorities which have a reasonably known interest in the relief requested by the Motion; (d) the Office of the United States Trustee; and (e) all entities requesting notice pursuant to Bankruptcy Rule 2002.

58. The Trustee submits that the described notice satisfies the relevant requirements of Bankruptcy Rules 2002, 6004, 7004, 9007 and 9014 and constitutes good and adequate notice of this Motion, the Sale, the Sale Hearing, and proceedings related thereto.

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests entry of an order (i) authorizing and approving the Trustee's sale of the Lots and the personal property remaining thereon to the Purchaser pursuant to the APA and Section 363(b) and (f) of the Bankruptcy Code, free and clear of all liens, claims, interests and encumbrances; (ii) granting the Purchaser the protections afforded a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code, (iii) waiving the 14-day stay provided by Bankruptcy Rule 6004, and (iv) granting such other and further relief that the Court deems just and proper.

SILLS CUMMIS & GROSS, P.C.

Dated: March 13, 2017

By: /s/ Valerie A. Hamilton
Valerie A. Hamilton

600 College Road East
Princeton, New Jersey 08540
Phone: (609) 227-4600
Fax: (609) 227-4646
vhamilton@sillscummis.com

*Counsel for Valerie A. Hamilton,
Post-Confirmation Trustee*

EXHIBIT A

\$100,000 TO
SELLER ATTORNEY

ASSET PURCHASE AGREEMENT

by and between

CYZNER PROPERTIES-EDISON, INC.
(Purchaser)

and

SOMERSET THOR BUILDING REALTY HOLDINGS, L.P.
(Seller)

Dated as of March 9, 2017

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made as of March 9, 2017, by and between debtor Somerset Thor Building Realty Holdings, L.P. a New Jersey limited partnership (the "Seller"), and Cyzner Properties-Edison, Inc. a New Jersey corporation (the "Purchaser"). Seller and Purchaser are sometimes referred to herein, individually, as a "Party" and, collectively, as the "Parties").

WITNESSETH:

WHEREAS, on February 11, 2013 (the "Petition Date"), a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") was filed by the Seller in the U.S. Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") under case number 13-12660 (MBK) (the "Bankruptcy Case"); and

WHEREAS, the Seller is the owner of (i) certain vacant land identified on the tax maps for the Township of Branchburg as Block 9, Lot 5.01 ("Lot 5.01"); (ii) vacant land consisting of a parking lot, detention basin and private road way, identified on the tax maps for the Township of Branchburg as Block 9, Lot 3.02 ("Lot 3.02"), and (iii) a lot improved with a 64,000 +/- sq. ft. building (the "Building") and identified on the tax maps for the Township of Branchburg Block 9, Lot 4.01 (the "Building Lot," and together with Lot 5.01 and Lot 3.02, the "Lots"), which definition shall include all improvements on each Lot) and commonly known as 3421 Route 22, Branchburg, NJ 08876;

WHEREAS, the Bankruptcy Court confirmed the Fourth Modified Plan of Reorganization (the "Plan") by Order dated February 24, 2016; and

WHEREAS, by Order dated May 16, 2016, the Bankruptcy Court approved the appointment of Valerie A. Hamilton, Esq. as post-confirmation trustee (the "Trustee") for the Seller; and

WHEREAS, by Order dated November 16, 2016, the Bankruptcy Court directed the Trustee to sell the Lots; and

WHEREAS, pursuant to Bankruptcy Code Section 363, Seller desires to sell, convey, assign, transfer and deliver to Purchaser and Purchaser desires to purchase from Seller all of the Seller's right, title and interest in and to the Lots, pursuant to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

PURCHASE AND SALE OF THE LOTS

1.01 Purchase and Sale of the Lots. Subject to the terms, provisions and conditions of this Agreement, at the Closing referred to in Section 2.01 hereof, pursuant to Bankruptcy Code Section 363, Seller shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in the Lots as of the date of Closing on this transaction.

Except as expressly set forth in this Agreement, the Lots are being sold to Purchaser on an "as is" "where is" basis without any representations or warranties of whatever kind or nature. However, the sale shall be, and the Lots shall be delivered to the Purchaser, free and clear of all liens, claims and encumbrances, all of which shall attach to the sale proceeds.

1.02 Method of Conveyance. The sale, transfer, conveyance, assignment and delivery by Seller of the Lots to Purchaser in accordance with Section 1.01 hereof shall be effected on the Closing Date (as defined herein) by Seller's execution and delivery to Purchaser of (i) a quitclaim deed transferring all right, title and interest in the Lots in recordable form, duly executed by Seller and acknowledged and in substantially the same form as set forth in Exhibit "A" attached hereto; and (ii) such other duly executed assignments and other conveyance instruments as shall be reasonably necessary to effectuate the purchase, sale, and transfer of the Lots to Purchaser as contemplated by the terms, provisions and conditions hereof, in each case in form reasonably acceptable to Purchaser and Seller.

1.03 Excluded Liabilities. Purchaser shall not assume, and shall have no responsibility for, the liabilities of Seller as a successor in interest or otherwise identified herein as "Excluded Liabilities." For the avoidance of doubt, the Excluded Liabilities shall include, without limitation:

- (a) any costs, expenses, payments or obligations due, attributable to, incurred, accrued, or required to be made, prior to the Closing Date with respect to the Lots;
- (b) all accounts payable and monetary obligations of Seller accruing, arising or to be performed prior to the Closing, including those to which the Lots are subject; and
- (c) all other judgments or obligations of Seller of any kind or nature whatsoever shown on Purchaser's title commitment and not otherwise a Permitted Encumbrance (hereinafter defined) not related to the Lots.

1.04 Purchase Price. As consideration for the purchase of the Lots, Purchaser shall, subject to the terms and conditions hereof, pay to Seller \$3,000,000 (the "Purchase Price"). The Purchase Price will be paid as follows: (i) Purchaser shall deposit \$100,000 with SELLER ATTORNEY as escrowee (the "Escrowee") pursuant to the provisions of Article VIII at the time of mutual execution of this Agreement, and no later than two (2) business days after the Seller files a motion to approve the sale of the Lots pursuant to this Agreement, an additional \$100,000 for a total deposit of \$200,000 (each a "Deposit" and collectively, the "Deposit"), and (ii) the

remaining balance of the Purchase Price, \$2,800,000 (the "Balance"), subject to prorations as provided in Section 1.11, at Closing.

1.05 No Contingencies. (a) Purchaser acknowledges that it has completed all due diligence with respect to the Lots and that the transaction contemplated by this Agreement is not contingent upon the completion of any due diligence by Purchaser.

(b) Purchaser acknowledges that the transaction contemplated by this Agreement is not contingent upon mortgage or other loan proceeds by Purchaser. Purchaser warrants and represents that it has sufficient cash for its obligations hereunder. No later than two (2) business days prior to the hearing on the motion to approve the private sale of the Lots, Purchaser shall present commercially reasonable evidence of unrestricted immediately available funds to pay the Balance at the Closing.

1.06 Private Sale. Within five (5) days of this execution of this Agreement by both Parties, Seller will apply for, and shall utilize its best efforts to obtain, an Order approving of this Agreement and the private sale of the Lots to Purchaser under Bankruptcy Code Section 363, free and clear of all Liens, with any Liens to attach to the sale proceeds, provided that if within thirty (30) days after the execution of this Agreement such approval has not been obtained, Purchaser may at any time thereafter upon notice to Seller terminate this Agreement and receive a return of the entire Deposit.

1.07 Approval Order. Closing under this Agreement is expressly conditioned on the entry of the Order of the Bankruptcy Court, in form and substance reasonably acceptable to the Parties, approving this Agreement and the sale of the Lots to Purchaser under Bankruptcy Code Section 363, free and clear of all liens, claims and encumbrances, with any such liens, claims and encumbrances to attach to the sale proceeds, granting Purchaser good faith status under Bankruptcy Code Section 363(m), and waiving the fourteen (14) day stay on effectiveness of the Order pursuant to Bankruptcy Rule 6004(h) (the "Approval Order"), in substantially the same form as set forth in Exhibit "B" attached.

1.08 Each Party to bear its own fees. Each Party is responsible for its own costs, fees, charges and other expenses, including but not limited to, legal fees, in connection with this Agreement, the sale and Closing.

1.09 No Allocation of Purchase Price. The Purchase Price is intended by the Purchaser as consideration for all of the Lots, in the aggregate and undivided, and not less than all of the Lots.

1.10 Title and Survey.

(a) Purchaser acknowledges and agrees that prior to entering into this Agreement Seller has not delivered to Purchaser any existing title policies or surveys and Seller agrees that Purchaser may obtain, at its sole cost and expense, a title commitment and a survey of the Lots, including all improvements thereon, and Seller will cooperate with Purchaser in obtaining the same, provided (i) there is no third Party cost to be incurred by Seller, and (ii) except as specifically provided herein, Closing is not contingent upon the results thereof.

(b) At Closing, the conveyance by Seller to Purchaser referenced in Section 1.02 shall be subject to the Permitted Encumbrances. The term "Permitted Encumbrances" as used herein shall be those encumbrances approved by Seller and Purchaser prior to Closing but expressly excluding any Liens to the extent that (i) the Lots are sold free and clear of such Liens pursuant to the Approval Order; or (ii) such Liens were discharged or otherwise released pursuant to an Order of the Bankruptcy Court. Purchaser shall have no right to terminate this Agreement so long as Seller can convey title to the Lots, subject to Permitted Encumbrances, to Purchaser.

1.11 Prorations and Costs.

(a) General real estate taxes for the then current year relating to the Lots shall be prorated as of 11:59 p.m. (Eastern time) on the day prior to the Closing Date (the "Proration Date") so that Purchaser is responsible for such taxes billed, accrued or commencing on and after the Closing Date. If Closing shall occur before the actual taxes for the then current tax year are known, the apportionment of taxes shall be upon the basis of taxes for the Lots as identified in the most recent annual bill, provided that, if the taxes for the current tax year are thereafter determined to be more or less than the annualized taxes based on the existing bill, Seller and Purchaser promptly shall adjust the proration of such taxes and Seller or Purchaser, as the case may be, shall pay to the other any amount required as a result of such adjustment. All special taxes or installments of assessments assessed and due and payable prior to the Closing Date shall be prorated between Purchaser and Seller as of the Closing Date, and those due and payable after the Closing Date shall be paid by Purchaser. The terms of this Section 1.11(a) shall survive Closing.

(b) The utility service on the Lots shall be terminated as of the Closing Date at Seller's cost and expense, and there shall be no proration, but to the extent any Seller delinquencies prevent Purchaser from obtaining utility service at no more than standard rates, Seller shall pay the amounts necessary to allow Purchaser to obtain such services (not including any security deposits required of Purchaser).

(c) Purchaser shall pay all state, city and county transfer taxes and local transfer, sales or conveyance taxes. Purchaser shall also pay for any escrow fee charged by the Escrowee, the fees for the recording of the Deed. Each Party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction which is the subject of this Agreement.

ARTICLE II

CLOSING AND TERMINATION

2.01 Closing Date. The closing of the purchase and sale of the Lots provided for in Article I hereof (the "Closing") shall take place at 10:00 a.m. at the offices of Sills Cummis & Gross, P.C., One Riverfront Plaza, Newark, New Jersey (or at such other place or electronically as the Parties may mutually agree in writing) on a date that is not later than thirty (30) days following the entry of the Approval Order by the Bankruptcy Court. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date."

2.02 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing as follows:

- (a) by mutual written agreement of Seller and Purchaser;
- (b) by Purchaser upon (i) the failure or lack of satisfaction of any of the conditions set forth in Sections 1.06 and 1.07 hereof by the Closing or (ii) a material breach of any representation, warranty, covenant or agreement of Seller set forth in this Agreement such that the conditions set forth in Section 5.04 hereof would be incapable of being satisfied, or (iii) immediately upon a breach of this Agreement by Seller of any material term;
- (c) by Seller upon (i) the failure or lack of satisfaction of any of the conditions set forth in Section 5.05 hereof by the Closing or (ii) a material breach of any representation, warranty, covenant or agreement of Purchaser set forth in this Agreement such that the conditions set forth in Section 5.05 hereof would be incapable of being satisfied;
- (d) by Seller or Purchaser, if Closing has not occurred on or before the thirtieth (30th) calendar day following entry of the Approval Order;
- (e) by Purchaser or Seller, if there shall be any order, writ, injunction or decree of any court or governmental authority binding on Purchaser or Seller that permanently prohibits, restrains or enjoins Purchaser and/or Seller from consummating the transactions contemplated hereby and such order, writ, injunction or decree is final and non-appealable, except if such order, writ, injunction or decree resulted from any action instituted by the Party seeking to terminate this Agreement pursuant to Article II; and
- (f) by Purchaser if the improvements on the Lots are not substantially in the same condition as they were in at the time of execution of this Agreement, including loss by a casualty.

2.03 Procedure upon Termination. In the event of a termination of this Agreement, two (2) business days' written notice thereof shall forthwith be given by the Party or Parties of the termination of the Agreement (the "Termination"). Upon termination, and after compliance with the terms of Article VII, Escrowee shall return the Deposit to Purchaser within three (3) business days of the Termination.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby individually represents and warrants to Purchaser as follows:

3.01 Organization, Good Standing and Due Authorization.

- (a) Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Subject to the entry of the Approval Order, Seller has the full power and authority to transfer and convey the Lots, and to execute, deliver and perform, and to enter into and consummate, all transactions contemplated by this Agreement.

(c) Subject to the entry of the Approval Order, Seller has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement, assuming due authorization, execution and delivery by Seller, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

4.01 Organization, Good Standing and Due Authorization.

(a) Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Purchaser has full power and authority to execute and deliver this Agreement to which it is a Party and to consummate the transaction contemplated hereby.

(c) This Agreement has been duly executed and delivered by Purchaser, and subject to the due authorization, execution and delivery of such agreements by the other parties thereto, this Agreement constitutes, or will constitute, the valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms.

(d) Purchaser shall provide to Seller and the title company all documentation reasonably necessary to evidence this Section 4.01.

4.02 No Violation; Consents and Approvals. Neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby: (a) conflict with or result in a violation of (i) any provision of the organizational documents of Purchaser or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation binding upon Purchaser in any material respect or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under, (A) any note, bond, mortgage, indenture, deed of trust, contract, commitment, arrangement, license, agreement, lease or other instrument or obligation to which Purchaser is a party or by which Purchaser may be bound or to which any of Purchaser's assets may be subject or affected in any material respect and that, in each case, is material to the business of Purchaser, or (B) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Entity.

ARTICLE V

COVENANTS OF THE PARTIES

5.01 Notifications. Purchaser and Seller shall give prompt notice to the other of any representation or warranty made by Purchaser or Seller contained in this Agreement becoming materially untrue or inaccurate or any failure of Purchaser or Seller to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by it under this Agreement.

5.02 Filings and Authorizations. Each Seller and Purchaser, as promptly as practicable, (i) shall make, or cause to be made, all such filings and submissions under Laws, rules and regulations applicable to it, as may be required to consummate the transactions contemplated herein, in accordance with the terms of this Agreement, (ii) shall use all commercially reasonable best efforts to obtain, or cause to be obtained, all authorizations, approvals, consents and waivers from all governmental and non-governmental persons necessary to be obtained by it or its Affiliates, in order to consummate the transactions contemplated herein; provided, however, that neither Purchaser nor Seller shall be obligated to consummate the transactions contemplated by this Agreement absent the prior approval of the Bankruptcy Court and neither Purchaser nor Seller shall be obligated to modify the Agreement in any material respect to satisfy the Bankruptcy Court, and (iii) shall use all commercially reasonable efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfill its obligations hereunder. Seller and Purchaser shall coordinate and cooperate with one another in exchanging such information and supplying such reasonable assistance as may be reasonably requested by each in connection with the foregoing.

5.03 Conduct by Seller Pending the Closing Date. Between the date of execution of this Agreement and the Closing Date, Seller shall not take any action inconsistent with the timely consummation of the transaction contemplated hereby, and Seller covenants and agrees that:

(a) Seller shall maintain, preserve and protect the Lots in substantially the same condition in which they exist on the date hereof;

(b) Seller shall not enter into any lease or grant any right to possession which will survive the Closing without the prior written consent of Purchaser, which consent may be given or withheld in Purchaser's sole discretion;

(c) Seller shall not enter into or amend any contract relating to the Lots which will survive the Closing without the prior written consent of Purchaser, which consent may be given or withheld in Purchaser's sole discretion; and

(d) Seller shall not take any action which will have or reasonably be expected to have, individually or in the aggregate, a material adverse effect on the transaction contemplated by this Agreement or the Lots.

5.04 Conditions to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing of each of the following conditions (any or all of which may be waived in whole or in part by Seller):

(a) Bankruptcy. Seller's obligations under this Agreement are entirely subject to, and contingent upon the entry of the Approval Order approving the sale of the Lots to Purchaser. If the Bankruptcy Court fails to approve the sale of the Lots to Purchaser due to no fault of Purchaser (e.g., Court denies private sale and approves sale to another buyer), (i) this Agreement shall become null and void; (ii) the entire Deposit shall be refunded to Purchaser; and (iii) neither Party will have any further rights or obligations hereunder, except obligations under this Agreement that, by their express terms, survive the termination of this Agreement;

(b) Approval Order Effective. The Approval Order shall have been entered, not subject to a stay, materially modified or amended (without the Parties' reasonable consent), dissolved, revoked or rescinded and shall be in full force and effect on the Closing Date;

(c) Representations and Warranties. The representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date; and

(d) Performance. Purchaser shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed or complied with by Purchaser at or prior to the Closing Date.

5.05 Conditions to Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing Date of each of the following conditions (any or all of which may be waived in whole or in part by Purchaser).

(a) Representations and Warranties. The representations and warranties made by Seller in this Agreement shall be true and correct, in each case, as of the date of this Agreement and as of the Closing Date, except where the failure of such representations and warranties to be true and correct would not result in a material adverse effect on the Lots taken as a whole.

(b) Performance. Seller shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed or complied with by Seller at or prior to the Closing Date.

(c) Delivery of Lots. Seller is ready, willing and able to deliver all of the Lots to Purchaser at Closing.

(d) Bankruptcy Court Approval Order. The Approval Order shall have been entered, not subject to a stay, materially modified or amended (without the Parties' reasonable consent), dissolved, revoked or rescinded and shall be in full force and effect on the Closing Date; and

(e) Material Adverse Change. From the date of this Agreement, no material adverse change or effect upon the Lots shall have occurred.

5.06 Brokers. The Parties recognize that Zimmel and Associates, 1090 King George Post Road, Edison, New Jersey is the sole broker of this transaction ("Broker"). Seller shall be responsible to pay Broker's commissions arising out of the sale of the Lots, based in part on Purchaser's representation and warranty contained in Section 4.04. Purchaser shall indemnify Seller for any costs, claims, liabilities or expenses, including reasonable attorney's fee, in the event Purchaser's representation is false or if any other commission, finder's fee or payment is due hereunder.

ARTICLE VI

MISCELLANEOUS

6.01 Notices. All notices, demands, consents, requests, instructions and other communications to be given or delivered or permitted under or by reason of the provisions of this Agreement or in connection with the transactions contemplated hereby shall be in writing and shall be deemed to be delivered and received by the intended recipient as follows: (i) if personally delivered, on the business day of such delivery (as evidenced by the receipt of the personal delivery service), (ii) if mailed certified or registered mail return receipt requested, five (5) business days after being mailed, (iii) if delivered by overnight courier (with all charges having been prepaid), on the business day of such delivery (as evidenced by the receipt of the overnight courier service of recognized standing), or (iv) if delivered by facsimile transmission, on the business day of such delivery if sent by 5:00 p.m. in the time zone of the recipient, or if sent after that time, on the next succeeding business day (as evidenced by the printed confirmation of delivery generated by the sending party's telecopier machine). If any notice, demand, consent, request, instruction or other communication cannot be delivered because of a changed address of which no notice was given (in accordance with this Section 6.01), or the refusal to accept same, the notice, demand, consent, request, instruction or other communication shall be deemed received on the second business day after the notice is sent (as evidenced by a sworn affidavit of the sender). All such notices, demands, consents, requests, instructions and other communications will be sent to the addresses or facsimile numbers as set forth below or to such other address or facsimile number as a party may have furnished to the other parties in writing in accordance herewith (collectively, the "Notice Parties").

If to Seller to:

Somerset Thor Building Realty Holdings, LLC
c/o Valerie A. Hamilton, Trustee
Sills Cummis & Gross, P.C.
650 College Road East
Princeton, NJ 08540
Email: vhamilton@sillscummis.com

With a copy to:

Sharon Reider Babb, Esq.
Sills Cummis & Gross, P.C.
One Riverfront Plaza
Newark, NJ 07102
Email: sbabb@sillscummis.com

If to Purchaser, to:

Cyzner Properties-Edison, Inc.
Attn: Ira Cyzner, President
192 Route 22
Green Brook, NJ

With a copy to:

Attention: _____
e-mail: _____

6.02 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede any and all prior agreements and understandings, oral and written, among the Parties with respect to the subject matter hereof and thereof.

6.03 Survival. Provided the Closing occurs, the representations and warranties and the covenants required to be performed prior to the Closing Date contained in this Agreement shall terminate as of the Closing Date. All covenants and other obligations required to be performed after the Closing Date shall survive the Closing Date.

6.04 Benefit; Risk of Loss. Upon consummation of the Closing, Purchaser accrues the obligations relating to the Lots, and as of such time, the risk of loss of the Lots shall be deemed transferred from Seller to Purchaser. Seller shall bear all risk of loss or damage with regard to the Lots up to and through the Closing.

6.05 Severability. Should any provision of this Agreement for any reason be declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions shall remain in full force and effect and be enforced to the fullest extent permitted by law.

6.06 Binding Effect; Assignment. This Agreement and all of the provisions hereof shall be binding upon, inure to the benefit and be enforceable by, the Parties hereto and their respective legal representatives, successors and permitted assigns. Neither this Agreement nor

any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, whether voluntarily, involuntarily, by operation of Law or otherwise, by any Party hereto without the prior written consent of the other Party hereto. Notwithstanding the foregoing, Purchaser may, without obtaining Seller's consent, no later than five (5) days prior to the Closing, upon notice to Seller, assign this Agreement to an entity in which Purchaser or its sole member has an economic interest.

6.07 No Third-Party Beneficiaries. This Agreement is not intended, and shall not be deemed, to confer upon or give any Person, except the Parties hereto and their respective legal representatives, successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

6.08 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.09 Construction of Agreement; Interpretation. This Agreement has been negotiated by the respective Parties and their legal counsel and the language hereof will not be construed for or against any Party. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

6.10 Governing Law. This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to the principles of conflicts of law thereof that would defer to or result in the application of the substantive laws of any other jurisdiction. The Parties agree that, during the period from the date hereof until the date on which the Bankruptcy Case is closed or dismissed (the "Bankruptcy Period"), the Bankruptcy Court shall have exclusive jurisdiction to resolve any controversy, claim or dispute arising out of or relating to this Agreement, the Other Agreements or any other agreement entered into in connection herewith, the implementation and enforcement hereof or thereof or the breach hereof or thereof. The Parties further agree that, following the Bankruptcy Period, any action or proceeding with respect to such controversy, claim or dispute may be brought against any of the Parties exclusively in the United States District Court for the District of New Jersey, and each of the Parties hereby consents to the personal jurisdiction of such court and the Bankruptcy Court (and to the appropriate appellate courts) in any such action or proceeding and waives any objection, including, without limitation, any objection to the laying of venue or on the grounds of forum non conveniens, which any of them may now or hereafter have to the bringing of such action or proceeding in such respective jurisdictions. Each Party hereby irrevocably consents to the service of process of any of the aforesaid courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the other parties to such action or proceeding. Each Party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury.

6.11 Amendments and Waivers. This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by each of the Parties; provided, however, that no such amendment, modification or supplement shall be effective until such amendment, modification or supplement is approved by an Order of the Bankruptcy Court. Any failure of Seller to comply with any term or provision of this Agreement may be waived by Purchaser at any time by an instrument in writing signed on behalf of Purchaser and any failure of Purchaser to comply with any term or provision of this Agreement may be waived by Seller at any time by an instrument in writing signed on behalf of Seller, but any such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

6.12 Terms Generally. As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, (b) words of one gender shall be held to include the other genders as the context requires, (c) the terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, (d) references to Article, Section, paragraph, Annex, Exhibits and Schedules are references to the Articles, Sections, paragraphs, Annexes, Exhibits and Schedules to this Agreement, unless otherwise specified, (e) the word “including” and words of similar import when used in this Agreement, shall mean “including, without limitation”, unless otherwise specified, and (f) the word “or” shall not be exclusive.

6.13 Dates. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on Saturday, Sunday or legal holiday under the laws of the State of New Jersey, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

ARTICLE VII

ESCROW INSTRUCTIONS

7.01 Opening of Escrow. As soon as reasonably practicable following the mutual execution of this Agreement, but in no event later than two (2) business days after mutual execution of this Agreement, the Parties shall open an escrow (“Escrow”) with the Escrowee in order to consummate the purchase and sale in accordance with the terms and provisions hereof. This Agreement and all Deposits shall be deposited in the Escrow and the provisions hereof shall constitute joint primary escrow instructions to the Escrowee; provided, however, that the Parties shall execute such additional instructions as requested by the Escrowee to the extent not inconsistent with the provisions hereof. The date as of which the Escrowee shall receive (i) the initial Deposit and (ii) executed counterparts of this Agreement from both Seller and Purchaser shall constitute the “Opening of Escrow.” Upon request of either or both of the Parties, Escrowee shall deliver written confirmation of the date of the Opening of Escrow to the Parties in the manner set forth in Section 12 of this Agreement.

7.02 Documents Delivered to or by Escrow. The following shall be delivered into the Escrow or by Escrow in connection with the transfer of the Lots:

(a) Delivery by Seller in Escrow. By 2:30 P.M. (Eastern time) on the last business day immediately prior to the Closing Date, Seller shall deposit into Escrow:

- (i) the Deed to the Lots;
 - (ii) two (2) originals of a bill of sale for any personal property located on the Lots duly executed by Seller in substantially the same form as set forth in Exhibit "C" attached hereto;
 - (iii) two (2) originals of an affidavit from Seller which satisfies the requirements of Section 1445 of the Internal Revenue Code, as amended, duly executed by Seller;
 - (iv) an owner's title affidavit in form reasonably acceptable to Seller if required by the title company as a condition for issuing a title policy for the Lots and the improvements thereon to Purchaser;
 - (v) appropriate authorizing documents from Seller evidencing that Seller has the authority to enter into this Agreement, carry out the terms of this Agreement and sell the Lots and evidencing that the individual or individuals executing this Agreement and any other documents contemplated hereunder or related hereto have the authority to so execute such documents; and
 - (vi) such other instruments and documents as may be reasonably requested by Escrowee relating to Seller and/or as otherwise required to transfer the Lots to Purchaser pursuant to the terms and conditions of this Agreement.
- (b) Delivery by Purchaser in Escrow. In addition to the Deposits which must be timely delivery to Escrowee pursuant to Section 1.04, by 2:30 P.M. (Eastern time) on the last business day immediately prior to the Closing Date, Purchaser shall deposit into Escrow:
- (i) appropriate authorizing documents evidencing that Purchaser has the authority to enter into this Agreement, carry out the terms of this Agreement and purchase the Lots and evidencing that the individual or individuals executing this Agreement and any other documents contemplated hereunder or related hereto have the authority to so execute such documents;
 - (ii) such other instruments and documents as may be reasonably requested by Escrowee relating to Purchaser and/or as otherwise required to transfer the Lots to Purchaser pursuant to the terms and conditions of this Agreement; and
 - (iii) by wire transfer or other immediately available funds, in the form of cash or a wire transfer of funds in an amount which, when added to the Deposit, shall equal the Purchase Price plus any additional amounts necessary to cover costs and/or prorations of Purchaser under this Agreement.
- (c) Delivery by Escrow. At least three (3) business days prior to Closing, Escrowee shall deliver to Purchaser and Seller a pro forma closing statement which sets forth, in a manner satisfactory to Purchaser and Seller, the prorations and other credits and debits contemplated by this Agreement.

7.03 Conditions to Close.

Escrow shall not close unless and until the following conditions precedent and contingencies have been satisfied or waived in writing by the Party for whose benefit the conditions have been included:

(a) All funds and instruments described in Sections 7.02(a), (b) and (c) have been delivered to the Escrowee.

(b) Purchaser shall have performed, observed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, observed and/or complied with by Purchaser prior to, or as of, the Closing.

(c) Seller shall have performed, observed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, observed and/or complied with by Seller prior to, or as of, the Closing.

(d) The Approval Order shall have been entered by the Bankruptcy Court, the Approval Order shall be in full force and effect and shall not be stayed, modified, amended, reversed or vacated without the consent of Purchaser.

(e) No preliminary or permanent injunction issued by any court of competent jurisdiction restraining or prohibiting the transactions contemplated hereby shall have taken effect after the date of mutual execution of this Agreement and shall still be in effect.

Any condition not otherwise satisfied or waived as of the Closing shall be deemed fully satisfied or waived as of the Closing, by the Party for whose benefit the condition had been included. If any condition is not satisfied by either Party, then the Party for whose benefit the condition runs may terminate this Agreement ten (10) days after giving written notice to the other Party if such condition has not been satisfied or waived within such ten (10) day period and the Closing shall be delayed accordingly. Upon such termination, the refundable portion of the Deposit shall be returned to Purchaser so long as Purchaser is not in breach of any of its covenants or agreements contained herein which are a condition of Closing, but not otherwise.

7.04 Recordation and Transfer. Upon satisfaction of the conditions set forth in Section 5.04 and Section 5.05 above, Escrowee shall transfer the Lots as follows:

(a) Cause the Deed to be recorded in the Recorder's office for Somerset County;

(b) Deliver to the parties entitled thereto any closing documents;

(c) Disburse all funds deposited with Escrowee by Purchaser in payment of the Purchase Price for the Lots as follows:

(i) subject to any applicable withholding requirements, deliver to Seller the Purchase Price pursuant to instructions to be delivered by Seller to Escrowee,

less the amount of all items, costs and prorations chargeable to the account of Seller pursuant to Section 1.11 hereof; and

(ii) disburse the remaining balance of the funds deposited by Purchaser to Purchaser at Closing pursuant to instructions to be delivered by Purchaser to Escrowee, less amounts chargeable to Purchaser pursuant to Section 1.11 hereof.

(iii) Seller shall deliver possession of the Lots to Purchaser as of the Close of Escrow, including all keys in Seller's possession.

7.05 Escrow of Deposit.

(a) Escrowee shall not commingle the Deposit with any other funds.

(b) Escrowee will deliver the Deposit to Seller or to Purchaser, as the case may be, under the following conditions:

(i) The Deposit to Seller upon receipt of written demand therefor ("Seller's Demand for Down Payment") stating that Purchaser has defaulted in the performance of any of Purchaser's obligations under this Agreement and the facts and circumstances underlying such default; provided, however, that Escrowee shall not honor such demand until more than ten (10) days after Escrowee shall have sent a copy of such demand to Purchaser in accordance with the provisions of Section 6.01, nor thereafter if Escrowee shall have received a "Notice of Objection" from Purchaser within such ten (10) day period; or

(ii) The Deposit to Purchaser upon receipt of written demand therefor ("Purchaser's Demand for Down Payment") stating that it is terminating this Agreement in accordance with the provisions hereof, or that Seller has defaulted in the performance of any of Seller's obligations under this Agreement, and the facts and circumstances underlying the same; provided, however, that Escrowee shall not honor such demand until more than ten (10) days after Escrowee shall have sent a copy of such demand to Seller in accordance with the provisions of Section 6.01 nor thereafter, if Escrowee shall have received a Notice of Objection from Seller within such ten (10) day period; or

(iii) The Deposit to Seller, if, as and when the Closing occurs.

(c) Within three (3) business days of the receipt by Escrowee of a Seller's Demand for Down Payment or a Purchaser's Demand for Down Payment, Escrowee shall send a copy thereof to the other party. The other party shall have the right to object to the delivery of the Down Payment by sending written notice (the "Notice of Objection") of such objection to Escrowee in the manner provided in Section 6.01 of this Agreement, which Notice of Objection shall be deemed null and void and ineffective if such Notice of Objection is not received by Escrowee within the time periods prescribed in this Section 7.05. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of a Notice of Objection, Escrowee shall promptly send a copy thereto to the party who sent the written demand.

(d) In the event Escrowee shall have received the Notice of Objection within the time periods prescribed in this Section 7.05, Escrowee shall continue to hold the Deposit until (i) Escrowee receives written notice from Seller and Purchaser directing the disbursement of the Deposit in accordance with such direction, or (ii) in the event of litigation between Seller and Purchaser, Escrowee shall deliver the Deposit to the clerk of the court in which said litigation is pending.

(e) It is agreed that duties of Escrowee are only as herein specifically provided, and subject to the provisions of this Article 7, are purely ministerial in nature, and that Escrowee shall incur no liability whatever except for willful misconduct or gross negligence or unauthorized release of the Deposit, as long as Escrowee has acted in good faith. Seller and Purchaser each release Escrowee from any act done or omitted to be done by Escrowee in good faith in the performance of its duties hereunder.

(f) Escrowee is acting as a stakeholder only with respect to the Deposit. Upon making delivery of the Deposit in the manner herein provided, Escrowee shall have no further liability hereunder.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date and year first above written.

PURCHASER:

CYZNER PROPERTIES-EDISON, INC.

By: [Signature]
Name: JAV CYZNER
Title: President

SELLER:

**SOMERSET THOR BUILDING
REALTY HOLDINGS, LLC**

By: [Signature]
Name: Valerie A. Hamilton
Title: Trustee

EXHIBIT A

Quitclaim Deed

EXHIBIT B

Approval Order

EXHIBIT C

Bills of Sale