

Law Office of Ira R. Abel  
305 Broadway  
14<sup>th</sup> Floor  
New York, NY 10007  
Phone: (212) 799-4672  
iraabel@verizon.net  
Ira R. Abel, Esq.

*Counsel for the Debtor*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

<hr/>		X
In re:	:	Chapter 11
	:	
<b>Sugarmans Plaza Limited Partnership</b>	:	Case No. 16-42496-ess
	:	
Debtor.:	:	
<hr/>		:X

**APPLICATION FOR AN ORDER TO SHOW CAUSE FOR ENTRY OF A FURTHER ORDER (A) APPROVING A PRIVATE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S PROPERTY, (B) MODIFYING THE NOTICE REQUIREMENTS FOR SUCH PRIVATE SALE AND (C) GRANTING RELATED RELIEF**

Sugarman’s Plaza Limited Partnership, the debtor and debtor-in-possession herein (the “Debtor”), by its attorney, the Law Office of Ira R. Abel, respectfully represents:

**SUMMARY OF REQUESTED RELIEF**

1. By this application (the “Application”), the Debtor requests an order (a) authorizing it to conduct a private sale of substantially all of the Debtor’s property<sup>1</sup> pursuant to §§ 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (b) shortening the notice requirements for such sale, and (c)

<sup>1</sup> The Debtor operates a business located at 600 Scranton Carbondale Highway, Archbald PA 18403. The premises consist of approximately 455,000 square feet of land (approximately 58.6 acres) containing a store, warehouse, office space and parking lot (the “Premises”). A flea market operates on the site pursuant to an oral month-to-month lease with the Debtor.

granting related relief, including (i) approval of a purchase and sale agreement, dated as of February 2017, as amended (the "Sale Agreement"), and (ii) waiving the requirement of Bankruptcy Rule 6004(h) that the order approving the sale be subject to a fourteen (14) day stay.

2. Since the Petition Date (defined below), the Debtor has attempted to reorganize its business under the Bankruptcy Code by all available means, including sale of its assets, obtaining new tenants for its vacant space, refinancing, or otherwise reaching an arrangement with Sugarman Equities, LLC ("SEL"). The most recent arrangement with SEL requires payment to SEL of the sum of three million, eight hundred fifty thousand dollars (\$3,850,000.00) on or before May 31, 2017 in exchange for (a) a satisfaction of SEL's lien(s), assignments and other evidence of the debt owed by the Debtor to SEL in recordable form or (b) an assignment of the Loan Documents to any purchaser of the Property and Collateral (a "Satisfaction Agreement"). See Stipulation and Order Granting Partial Relief from the Automatic Stay (ECF Doc. No. 91, the "Stipulation").<sup>2</sup>

3. The Debtor has reached an agreement with a proposed purchaser, Steve Deutsch, or an entity to be formed by him (the "Purchaser") of substantially all of the Debtor's assets for the sum of \$8,000,000, subject to adjustments as described below, and wishes to sell those assets to the Purchaser at a private sale.

4. By order, entered September 16, 2016, the Debtor was authorized to retain CPG Interactive as the Debtor's direct email marketer (ECF Doc. No. 63). By order, entered October 27, 2016, the Debtor was authorized to retain NAI Hanson as its exclusive real estate broker (ECF Doc. No. 80). Those marketing efforts resulted in a

---

<sup>2</sup> The Stipulation was "so ordered" on April 21, 2017 (ECF Doc. No. 133) and the terms were extended to June 30, 2017 on the record of a hearing held on May 30, 2017.

maximum sale offer of \$2,750,000.

5. During the case, two appraisals were conducted of the Premises, one by the Debtor and another by SEL. The Debtor's appraisal valued the Premises at \$7,650,000 and SEL's appraisal valued the Premises at \$2,200,000.

6. As a result of the efforts of those retained professionals and the values of the Premises obtained by the appraisers, the Debtor has tested the market and believes that the Purchaser's offer is the highest and best that can be obtained. A proposed order approving the Sale is annexed hereto as Exhibit A.

### **JURISDICTION AND STATUTORY BASES FOR REQUESTED RELIEF**

7. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334.

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

9. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

10. The statutory bases for this Application are 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and this Court's Administrative Order No. 557, entered March 29, 2010.

### **BACKGROUND**

11. On June 7, 2016 (the "Petition Date"), the Debtor filed its voluntary petition (the "Petition") for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of New York.

12. Pursuant to §§1107(a) and 1108 of the Code, the Debtor continues to operate its businesses as a debtor-in-possession.

13. No trustee has been appointed. No official committee of unsecured creditors has as yet been appointed.

14. On July 15, 2016, the Debtor filed its schedules of assets and liabilities and statement of financial affairs (ECF Doc. No. 30, the "Schedules"). The Schedules set forth, among other things, all of the Debtor's assets (the "Property").

15. The Debtor operates a business located at 600 Scranton Carbondale Highway, Archbald PA 18403. The premises consist of approximately 455,000 square feet of land (approximately 58.6 acres) containing a store, warehouse, office space and parking lot (the "Premises"). A flea market operates on the site pursuant to an oral month-to-month lease with the Debtor.

16. On June 22, 2016, the Debtor filed an application for the use of cash collateral in which Sugarman Equities, LLC ("SEL") holds an interest (ECF Doc. No. 14). That motion was resolved on an interim basis by interim order, filed June 28, 2016 (ECF Doc. No. 22). The Debtor and SEL have continued the use of cash collateral under that interim order since that time, most recently at a hearing held on May 30, 2017.

17. On August 11, 2016, Sugarman Equities, LLC filed a motion for relief from the automatic stay (ECF Doc. No. 39). That motion was resolved by the Stipulation as described above.

18. On September 2, 2016, the Debtor filed its plan of reorganization and related disclosure statement (ECF Doc. Nos. 57, the "Plan," and 58, the "Disclosure Statement," respectively). The Plan generally provides that the Debtor will seek a purchaser or investor in the Premises that will provide a sufficient amount to pay SEL the amount required under the Stipulation, \$3,850,000.

19. The Debtor has very few unsecured or priority creditors.

### **SALE OF THE PREMISES**

20. Under Bankruptcy Code § 363(f), a debtor may sell property free and clear of any interest in such property of an entity other than the estate only if, among other things: (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.

21. Since Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Premises "free and clear" of Liens and Interests. See *In re Dundee Equity Corp.*, 1992 WL 53743, at \*12 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *Accord In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986); *In re Wolverine Radio Co.*, 930 F.2d 1132, 1147 fn.24 (6th Cir. 1991).

22. In this case, the lien and interest holders will be adequately protected, because their liens and/or interests will attach to the net proceeds of the sale, subject to any claims and defenses the Debtor may possess with respect thereto. Notwithstanding the above, it is contemplated that SEL will be paid the amount required by the Stipulation at closing out of the proceeds of sale, as will all closing costs, taxes and other required sums.

23. The Debtor seeks to sell the Premises free and clear of all liens, claims, encumbrances, security interests and other charges, if any, which shall attach to the proceeds of the sale. It also seeks a finding that all requirements of Bankruptcy Code

Sections 363(b) and (f) for the sale of assets and 363(m) with regard to the good faith status of the successful purchaser have been satisfied, and there are sufficient circumstances in this case to justify the sale of the Premises sought in the Application.

24. Accordingly, the Sale should be approved under Bankruptcy Code § 363(f).

### **APPROVAL OF PRIVATE SALE**

25. **The sale is a private sale and is not subject to higher and better bids.** The Debtor respectfully submits that the contract price of \$8,000,000 exceeds the secured debt on the Premises by approximately \$4,150,000, and as such there is no need for higher and better offers. The only party affected at that point would be holders of equity securities, and the equity holders agree to the sale. A copy of the sale agreement, as amended (the "Sale Agreement") is annexed hereto as Exhibit B.

26. Usually, sales are conducted by auction, to assure that a debtor has obtained the "highest and best" price for the assets sold. However, the Debtor's real estate professionals, NAI Hanson and CPG Interactive (the "RE Professionals") undertook extensive marketing efforts to advertise the Premises for sale and have only reached offers of \$2,750,00 and \$2,000,000 since they were retained. Copies of the offers are annexed hereto as Exhibit C.

27. During the case, both the Debtor and SEL obtained and filed appraisals of the Property.<sup>3</sup> Although those appraisals were prepared in connection with SEL's motion for relief from the automatic stay, they are indicative of the value of the Property. In particular, SEL's appraisal valued the Premises at \$2,200,000 (ECF Doc. No. 39-12). That value is approximately 1/3 the value of the face value of the Sale Agreement. The

---

<sup>3</sup> The appraisals are quite voluminous, and copies will be provided upon written request.

Debtor's appraisal valued the Premises at \$7,600,000, slightly below the sale price (ECF Doc. No. 77-1).

28. The Debtor's managing member, Chaim Laufer, independently sought potential purchasers for the Property, and was successful in locating the Purchaser. As set forth in more detail below, the approximate net amount to be received by the Debtor is \$6,500,000, more than enough to satisfy SEL and all of the Debtor's unsecured creditors.

29. The Debtor respectfully submits that the Premises have already been subjected to robust marketing efforts and that an auction would be futile in obtaining a higher and better offer for the Property.

30. The Debtor's decision to sell the Premises through a private sale is within the reasonable exercise of its business judgment:

a. There is a substantial risk that the funds to be used for the purchase of the Premises will not be available after June 30, 2017, with a concomitant risk of deterioration of the value if the sale is not quickly consummated.

b. The Purchase Agreement constitutes the highest and best offer for the Premises consistent with the exigencies of the Debtor's case.

c. The Purchase Agreement and the Closing of the Sale present the best opportunity to realize the value of the Premises on a going concern basis.

d. The consummation of the Sale will preserve the jobs of the Debtor's employees.

e. After the Sale closes, the Debtor will have no further use for the Property, and the costs of upkeep of the Premises will not burden the Debtor's estate.

f. A speedy Sale will reduce the charges to the Debtor's estate arising from SEL's secured claim.

g. The Purchase Agreement was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith, and at arms' length bargaining positions.

h. Neither the Debtor nor the Purchaser engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under §363(n) of the Bankruptcy Code.

i. The consideration provided by the Purchaser for the Premises constitutes reasonably equivalent value and fair consideration for the Premises under the Bankruptcy Code.

j. A sale of the Property, other than one free and clear of liens, claims and encumbrances, would impact materially and adversely on the Debtor's estates, and would likely yield substantially less value for the Debtor's estates, and with less certainty than the proposed Sale.

k. The Purchaser is not an "insider" of the Debtor, as that term is defined under the Bankruptcy Code.

31. It is for these reasons that the Debtor is moving by order to show cause rather than by notice of motion and seeking a speedy private sale rather than one subject to higher and better bids.

32. In that regard, the Debtor is seeking a hearing on or before June 12, 2017



in order to facilitate closing of the sale before June 30, 2017.

33. The Debtor will not be seeking to take advantage of Section 1146(a) of the Code which is the transfer tax exemption for a sale pursuant to a plan.

### **THE PURCHASE AGREEMENT**<sup>4</sup>

34. As set forth above, a copy of the Sale Agreement is annexed hereto as Exhibit B.

35. Pursuant to § 363 of the Bankruptcy Code, the Debtor seeks to sell the Premises pursuant to the Purchase Agreement with the Purchaser or its designee.

36. The main terms of the Purchase Agreement are:

- a. The Debtor will sell the Premises and the Purchaser will purchase the Property;
- b. The sale price is \$8,000,000, comprised of (i) a down payment of \$150,000, (ii) a second down payment of \$200,000, with (iii) the balance to be paid at closing;
- c. The Debtor will retain an interest in the Premises as a tenant for four (4) years at an annual rental of \$375,000, payable in advance and non-refundable;<sup>5</sup>
- d. The sale will close not later than June 30, 2017;
- e. Time is of the essence;
- f. The Purchase Agreement contemplates that all executory contracts and unexpired leases will be assumed by the Debtor and assigned

---

<sup>4</sup> This summary of the Purchase Agreement is descriptive only and is qualified in its entirety by the provisions of the Purchase Agreement. The terms of the Purchase Agreement will control in the event of any inconsistency between the summary description set forth herein and the Purchase Agreement.

<sup>5</sup> Thus, the net proceeds expected to be available to satisfy all claims against the estate is approximately \$6,500,000.

to the Purchaser, and that all such executory contracts and unexpired leases shall be transferred free and clear of all adverse interests and claims pursuant to Sections 105, 363, 365 and any other applicable provisions of the Bankruptcy Code.

### **CLAIMS AGAINST THE ESTATE**

37. The Debtor has very few creditors. On the Schedules, the Debtor listed a total of \$6,487,971.24 in claims; the claims register maintained by the clerk of the Court lists approximately \$7,250,000 as of April 19, 2017. The Debtor has not reconciled the scheduled claims against the filed claims (there is a substantial likelihood of duplicate claims), but the largest claim in each group is that of SEL, who filed a claim in the amount of \$6,871,519.31. However, SEL has voluntarily reduced the amount of its claim to \$3,850,000.

38. Based upon a preliminary review, the total amount of claims to be paid from the sale proceeds (including secured, administrative (other than professional compensation and reimbursement of expenses), priority and unsecured claims) is approximately \$4,604,000. Thus, given net sale proceeds of approximately \$6,500,000, there will likely be more than enough funds available to pay all timely claims.

### **NEED TO PROCEED BY ORDER TO SHOW CAUSE**

39. Pursuant to Rule 9077-1(a) of the Local Bankruptcy Rules of the Eastern District of New York, the Debtor must proceed by Order to Show Cause, since the Debtor is seeking shortening of the notice time requirement. The Debtor has set forth the time constraints more fully above.

40. The Purchase Agreement provides that the Sale must close by June 30, 2017 "time being of the essence." Sale Agreement at ¶ 22. The next hearing in the

Debtor's case is scheduled for June 29, 2017. The Debtor must therefore close before the next hearing date to meet the time requirements of the Sale Agreement. If the hearing is held on June 29, 2017, there will be insufficient time to close. Therefore, the Debtor must request a hearing to approve the sale as soon as possible so that the closing can be promptly scheduled.

**MODIFICATION OF NOTICE REQUIREMENTS**

41. Bankruptcy Rule 2002(a)(2) states as follows:

Twenty-One-Day Notices to Parties in Interest. Except as [otherwise] provided, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

. . . . .  
(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice . . .

42. Due to the time pressures set forth above, the Debtor respectfully requests that it be permitted to provide ten (10) days notice of the hearing to approve the sale. The Debtor will provide notice of the sale by

- (a) service by hand delivery, overnight courier service, fax or electronic mail of a copy of this Application, the proposed order to show cause, all exhibits annexed thereto and all other papers upon which it is based upon (a) SEL, (b) the U.S. Trustee, (c) all other secured creditors, (d) all entities that have filed a notice of appearance, and (e) all other entities that may have an interest in the Property; and
- (b) service of a notice, substantially in the form annexed to the Application as Exhibit D, by first class mail on all of the Debtor's creditors and interested parties not included in subparagraph (a) hereof.

**REQUEST FOR RELIEF FROM TEN DAY STAY**

43. Bankruptcy Rule 6004(h) states as follows:

Stay of Order Authorizing Use, Sale, or Lease of Property. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.

44. For the same reasons that the Debtor requires a speedy sale, it also requires relief from the stay pursuant to Bankruptcy Rule 6004(h). Accordingly, the Debtor respectfully requests that it be authorized to consummate and close the Sale immediately after issuance of the order approving the Sale to the Purchaser.

**NO PRIOR REQUEST**

45. No prior request for the relief requested herein has been made to this or any other Court.

**WHEREFORE**, the Debtor respectfully requests that the Bankruptcy Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: New York, New York  
May 30, 2017

Law Office of Ira R. Abel  
*Counsel for the Debtor*

/s/  
Ira R. Abel, Esq.  
305 Broadway  
14<sup>th</sup> Floor  
New York, NY 10007  
Phone: (212) 799-4672  
[iraabel@verizon.net](mailto:iraabel@verizon.net)

## Index of Exhibits

- Exhibit A: Proposed order approving the Sale
- Exhibit B: Sale Agreement
- Exhibit C: Sale Offers
- Exhibit D: Notice to Creditors

**AGREEMENT OF SALE**

**THIS AGREEMENT OF SALE** ("Agreement") is made and entered into as of the \_\_\_\_\_ day of February, 2017, between **SUGARMAN'S PLAZA LIMITED PARTNERSHIP**, 161½ Fifty-Fourth Street, Brooklyn, NY 11204 ("Seller"), and **STEVE DEUTSCH or an entity to be formed by him** ("Purchaser").

**WITNESSETH:**

**IN CONSIDERATION** of the mutual covenants herein contained and intending to be legally bound hereby, Seller and Purchaser covenant and agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are incorporated herein and form a material part of this Agreement.

2. **Purchase and Sale.** Subject to the terms and conditions set forth herein, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, all of that certain real property located in 600 Scranton Carbondale Highway, Archbald Township, Lackawanna County, Pennsylvania, more particularly described on Exhibit "A" attached hereto ("Property").

3. **Purchase Price.** The Purchase Price shall be Eight Million (\$8,000,000.00) Dollars (the "Purchase Price"), payable at Closing, as hereafter described, in cash, wire transfer, bank or certified check, or title company escrow check.

4. **Deposits.**

(a) **Initial Deposit.** Simultaneously with mutual execution of this Agreement, Purchaser will deliver, or cause to be delivered, One Hundred Fifty Thousand (\$150,000.00) Dollars, to be held as provided hereunder and applied to the Purchase Price at the Closing ("Initial Deposit").

(b) **Second Deposit.** Within twenty four (24) hours after the expiration of the Inspection Period, unless Purchaser elects not to purchase the Property during the Due Diligence Period, Purchaser shall will deliver, or cause to be delivered, an additional Two Hundred Thousand (\$200,000.00) Dollars, to be held as provided hereunder and applied to the Purchase Price at the Closing ("Second Deposit"). The Initial Deposit and Second Deposit are hereinafter referred to collectively as the "Deposit."

(c) At the Closing, in accordance with the provisions of this Agreement, the Deposit shall be credited to Purchaser and applied to the Purchase Price. In the event that there is no Closing for any reason except for: (i) Purchaser's termination of this Agreement at or before the conclusion of the Inspection Period described in paragraph 5; (ii) Seller's breach of this Agreement; or (iii) Seller's inability to close pursuant to the terms of this Agreement; or as otherwise specifically set forth in this Agreement, the Deposit shall be retained by Seller as liquidated damages and not as a penalty. In the event that the Seller is unable or unwilling to close, the Escrow Agent shall return the Deposit to the Purchaser, without limiting any other remedies available to Purchaser.

5. **Inspection Period.**

(a) For purposes of this Agreement, the term "Inspection Period" shall mean that period of time commencing as of the date of execution hereof and ending on **March 10, 2017**. During the Inspection Period, Purchaser, at Purchaser's sole cost and expense, may investigate and inspect, to the extent necessary in Purchaser's sole judgment, (i) the Property in respect to title thereto, (ii) the presence on the Property of asbestos and any substance containing asbestos, the group of organic compounds known as polychlorinated biphenyl, flammable explosives, radioactive materials, chemicals known to cause

cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic wastes, materials or substances under any applicable environmental laws; and (iii) any other matters relative to the suitability of the Property for Purchaser's intended use, in Purchaser's sole discretion. Purchaser agrees not to disclose the result of such tests to anyone other than Seller without Seller's consent, except Purchaser may disclose such test results upon the request or direction of any governmental entity.

(b) In the event Purchaser is not satisfied with the Property in any respect, in Purchaser's sole discretion, Purchaser shall notify Seller to such effect in writing upon or before the expiration of the Inspection Period and, upon such notice, this Agreement will terminate without recourse to the parties.

(c) In the event Purchaser does not give such notice, Purchaser shall be treated as being satisfied as to all such matters as of the expiration of the Inspection Period.

(d) In the event that the Purchaser elects not to proceed with this Agreement at the end of the Inspection Period, the Purchaser agrees to restore the Property to its present condition including repairing or remediating any damage caused by any invasive tests.

(e) Purchaser agrees to apply for any necessary financing immediately following execution of this Agreement by both parties), and will provide weekly updates to Seller regarding the progress of such financing efforts.

(f) In the event that this Agreement terminates for any reason prior to the final closing and conveyance of title to Purchaser, Purchaser agrees to deliver to Seller, at no cost to Seller, copies of all materials obtained by Purchaser in connection with his evaluation and development of the Property, including but not limited to all surveys, subdivision plans, environmental reports, title searches, traffic studies, geological reports, wetlands delineations, etc.

6. **Access.** During the Inspection Period, Purchaser or its authorized agents or contractors (collectively, "Purchaser's Agents") shall have the right to go upon the Property, to conduct the investigation described in Paragraph 5 hereof. Purchaser shall defend, indemnify and save Seller harmless against any claim, loss, reasonable attorneys' fees and costs, liability or damages resulting from, or in any way related to, the entry of Purchaser or Purchaser's Agents, guests or invitees upon the Property in conjunction with the activities described in this Paragraph 6, and this obligation shall survive termination of this Agreement and all Closings hereunder. Seller shall not be required to incur any expenses with respect to this Paragraph 6. All such expenses shall be paid by Purchaser. Upon request by Seller, Purchaser will provide proof of liability insurance reasonably satisfactory to Seller.

7. **Title.** The Property shall be conveyed to Purchaser by Special Warranty Deed, conveying good and marketable title insurance at regular rates by any title insurance company selected by Purchaser, free and clear of all liens, and subject only to easements and restrictions of record.

8. **Seller's Representations and Warranties.** The covenants, warranties, and representations contained in this paragraph shall be effective immediately and shall continue to Closing. Seller represents, warrants and covenants to and with Purchaser, as follows:

(a) No litigation or private or governmental enforcement actions or orders of any kind are to the best of Seller's knowledge, pending or threatened, with respect to the condition of the Property.

(b) Seller is in possession of the Property and the Property will, at Closing, not be subject to any leases, except for those leases identified on Exhibit "B" hereto, copies of which have been made available to Purchaser.

(c) Seller has received no notices, oral or written, and nothing has come to Seller's attention that would reasonably cause Seller to believe, that any governmental body having jurisdiction over the Property intends to exercise the power of eminent domain or a similar power with respect to all or any part of the Property.

(d) Seller has received no notices, oral or written, and nothing has come to Seller's attention that would reasonably cause Seller to believe, that there are any planned or commenced public improvements which may result in special or benefit assessments or which may otherwise affect the Property.

(e) The individuals executing this Agreement on behalf of Seller have full authority to enter into this Agreement and to consummate the transactions described herein.

If, at any time prior to Closing, Seller is notified or otherwise becomes aware of any event or incident inconsistent with or contrary to the representation, warranties, and covenants contained herein, Seller shall promptly give notice thereof to Purchaser.

In the event material breach of any of the above-representations, warranties and covenants of Seller, Purchaser shall, in addition to all other remedies at law or in equity, have the right to terminate this Agreement, and the Deposit shall thereupon be returned to Purchaser.

SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY REGARDING THE PROPERTY. PURCHASER IS ENTERING INTO THIS AGREEMENT AND PROCEEDING TO CLOSING, BASED ON PURCHASER'S OWN INSPECTIONS OF THE PROPERTY AND DUE DILIGENCE. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, PURCHASER IS PURCHASING THE PROPERTY "AS IS" WITH ALL FAULTS.

9. - 11 . Intentionally Deleted.

12. **Risk of Loss.** Risk of loss of the Property or the unpurchased portion thereof shall remain upon the Seller until the time title is conveyed to Purchaser at Closing. Until delivery to Purchaser at Closing, Seller shall maintain and repair or cause to be maintained and repaired the Property or unpurchased portion thereof in as good condition as it is now, except for ordinary wear and tear. If there shall be a material change in the physical condition of the Property between the date hereof and the time of Closing that is not the fault of Purchaser, Seller shall so notify Purchaser in writing and Purchaser shall have the option to: (i) terminate this Agreement, whereupon both parties shall be relieved of any further liability hereunder except indemnity obligations that by the express terms thereof survive termination of this Agreement, and Purchaser shall obtain return of Purchaser's Deposit; or (ii) elect to proceed with this Agreement and pay the full consideration minus any deductible under Seller's insurance policy, in which event Seller shall assign to Purchaser any and all insurance proceeds to which Seller may be entitled as a result of the change in condition. To exercise this option, Purchaser shall give written notice to Seller no more than fifteen (15) days after such change in condition or prior to the time of Closing, whichever is earlier. If Purchaser fails to give such written notice, Purchaser shall be conclusively deemed to have chosen option (ii).

13. **Eminent Domain.** If the Property or any part thereof is taken by eminent domain prior to the Settlement, Purchaser shall have the option to: (i) terminate this Agreement, whereupon both parties shall be relieved of any further liability hereunder except indemnity obligations that by the express terms



thereof survive termination of this Agreement, and Purchaser shall obtain return of Purchaser's Deposit; or (ii) elect to proceed with this Agreement and pay the full consideration, in which event Seller shall assign to Purchaser all damages to which Seller may be entitled on account of such condemnation. To exercise this option, Purchaser shall give written notice to Seller no more than fifteen (15) days after such change in condition or prior to the time of Closing, whichever is earliest. If Purchaser fails to give such written notice, Purchaser shall be conclusively deemed to have chosen option (ii).

14. **Default By Purchaser.** In the event Purchaser violates or fails to perform any of the terms or conditions of this Agreement, Seller shall be entitled to retain the Deposit as liquidated damages, in which case the parties shall have no further liability to each other.

15. **Default by Seller.** In the event of a default under this Agreement by Seller, Purchaser shall be repaid the Deposit and Purchaser may, at Purchaser's Option, elect to (i) pursue an action for specific performance; (ii) pursue an action for loss of the bargain, or (iii) pursue such other remedies available at law or equity.

16. **Closing.**

(a) Closing will occur on or before **April 10, 2017** at the offices of Eckert, Seamans, Cherin & Mellott, LLC, 213 Market Street, 8<sup>th</sup> Floor, Harrisburg, Pennsylvania 17101, or at such other mutually agreeable location. At the Closing, Seller shall, at its expense, deliver the following to Purchaser:

(1) A special warranty deed (the "Deed"), duly executed and acknowledged and in recordable form, conveying to Purchaser title to the Initial Parcel or Additional Parcel free and clear of all liens and encumbrances except Permitted Liens; and

(2) Such other instruments and documents as Purchaser may reasonably request in order to further the purposes of this Agreement, duly executed and acknowledged and where appropriate, in recordable form.

(b) At the Closing, Purchaser shall, at its expense, deliver the following to Seller:

(1) The Purchase Price in accordance with the provisions of Paragraph 3 hereof; and

(2) Such other instruments and documents as Seller may reasonably request in order to further the purposes of this Agreement, duly executed and acknowledged and where appropriate, in recordable form.

17. **Transfer Tax.** Transfer taxes due on the sale of the Property hereunder shall be paid and borne equally by Purchaser and Seller at Closing.

18. **Attorneys' Fees; Recording Fees.** Except as otherwise provided herein, Seller and Purchaser shall be responsible for their own attorney's fees incurred in connection with this Agreement and the transaction contemplated herein. Purchaser shall be responsible for all recording costs and title insurance costs.

19. **Real Estate Taxes; Assessments.** Real estate taxes shall be prorated between Seller and Purchaser as of the Closing Date. Seller shall be responsible to pay and to discharge any assessment against the Property for municipal improvements which is issued before the date hereof. Purchaser shall be responsible to pay and to discharge any such assessment on and after the date hereof. If any errors or

omissions are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate corrections promptly after the discovery thereof.

20. **Utilities.** Charges for utilities (if any) shall be prorated as of the Closing Date between Seller and Purchaser.

21. **Indemnity.**

(a) Seller shall defend, indemnify and hold Purchaser harmless from all loss, expense (including reasonable counsel fees), damage and liability resulting from (i) claims of mechanics and materialmen based on work performed on or contracted for the Property by Seller prior to the date of the Settlement, (ii) claims of whatever nature (including, without limitation, claims for personal injury, wrongful death or property damage) against Purchaser or the Property based on causes of action arising prior to the date of the Settlement, and (iii) the inaccuracy of any representation or warranty, or the breach of any covenant or agreement, made by Seller in this Agreement or any of Seller's Documents.

(b) Purchaser shall defend, indemnify and hold Seller harmless from all loss, expense (including reasonable counsel fees), damage and liability resulting from (i) claims of mechanics and materialmen based on work performed on or contracted for the Property by Purchaser before or after the date of the Settlement, (ii) claims of whatever nature (including, without limitation, claims for personal injury wrongful death or property damage) against Seller or the Property based on causes of action arising after the date of the Settlement, and (iii) the inaccuracy of any representation or warranty, or the breach of any covenant or agreement, made by Purchaser in this Agreement.

Seller and Purchaser shall name each other as additional insureds on their respective liability insurance policies, as their interests may appear, during the executory period of this Agreement.

22. **Time of Essence.** Time is of the essence of this Agreement.

23. **Formal Tender Waived.** Formal tender of the Deed and the Purchase Price are hereby waived.

24. **Notices.** All notices, requests, demands, directions and other communications required or permitted under the provisions of this Agreement, or otherwise with respect hereto, shall be in writing and shall be: (i) mailed by first class registered or certified mail, return receipt requested, postage prepaid; or (ii) sent by next day business courier (such as Federal Express or the like); or (iii) personally delivered; or (iv) transmitted by fax, telegram or telex (with a hard copy to follow within twenty-four (24) hours by first class registered or certified mail, return receipt requested, postage prepaid, or by next day business courier [such as Federal Express or the like], or by personal delivery), as follows:

(a) Upon the Purchaser:

Steve Deutsch  
120 Jersey Avenue  
New Brunswick, New Jersey 08901

With a copy thereof to:

Martin E. Kofman, Esq.  
Lowenthal & Kofman, P.C.  
2001 Flatbush Avenue  
Brooklyn, New York 11234  
Phone (718) 758-2200  
Fax (718) 758-2201

Upon the Seller:

Chaim Laufer  
Sugarman's Plaza Limited Partnership  
1616 Fifty-Fourth Street  
Brooklyn, NY 11204

With a copy to:

James A. Diamond, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
Harrisburg, PA 17101  
Fax: 717-237-6071

or to such other address(es) or to the attention of such other person(s) and officer(s) as the addressee of any such notice shall have previously furnished to the sender in writing. Each notice or communication which shall be transmitted in the manner described above, or which shall be delivered to a telegraph company, shall be deemed sufficiently given, served, sent, or received for all purposes at such time as it is sent to the addressee (with return receipt, delivery receipt [or with respect to a telex the answer back, or a fax the activity report] being deemed conclusive evidence of such mailing, transmission or delivery), or at such time as delivery is refused by the addressee on presentation.

25. **Further Assurances.** From time to time each party shall execute and deliver to the other party such additional documents as the other party may reasonably require to effect the terms and conditions of this Agreement and to consummate the transaction contemplated herein, provided such request is not contrary to any provision of this Agreement.

26. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof. Any and all prior and contemporaneous discussions, negotiations, commitments, understandings, representations and warranties relating to the transaction contemplated herein or the Property are hereby superseded in all respects by this Agreement.

27. **Amendments; Waivers.** This Agreement cannot be amended, modified or supplemented orally, and no waiver of any right or remedy hereunder can be made orally, but in all cases only by a writing signed by the party to be bound thereby.

28. **Binding Effect.** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, heirs, successors and permitted assigns.

29. **Assignment.** Purchaser shall not have the right to assign its interest in this Agreement without the prior written consent of Seller.

30. **Headings.** The paragraph headings used in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

31. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for any counterpart other than one signed by the party against which enforcement is sought.

32. **Confidentiality.** The terms hereof shall be kept confidential by the parties.

33. **Severability.** The invalidity or unenforceability in any particular circumstance of any of the provisions of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

34. **No Joint Venture, Partnership, Agent, Etc.** This Agreement shall not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between Purchaser and Seller.

35. **No Waiver.** No consent or waiver, express or implied, by Seller or Purchaser to or of any breach of any representation, covenant or warranty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other representation, covenant or warranty.

36. **Expenses.** Except as expressly otherwise provided, the parties shall each pay their own costs and expenses in connection with the negotiation, execution and delivery of this Agreement and Seller's Documents.

37. **Execution.** The submission of this Agreement for examination does not constitute an offer by or to either party. This Agreement shall be effective and binding only after execution and delivery by the parties hereto.

38. **Applicable Law.** This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, including its statutes of limitations, but without regard to its conflict of laws provisions.

39. **Recording.** This Agreement shall not be recorded.

40. **Escrow Agent Provisions.** Escrow Agent shall be Seller's attorneys. The parties agree that in performing any of their duties under this Agreement, Escrow Agent shall not be liable to any party for any loss, cost or damage such party may incur or suffer as a result of any act or omission of Escrow Agent, including the negligence of Escrow Agent, while serving as escrow agent hereunder, except for any loss, costs or damage arising out of Escrow Agent's willful default or gross negligence. Accordingly, Escrow Agent shall not incur any liability with respect to, inter alia, (i) any action taken or omitted to be taken in good faith relating to its duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement. In the event of a dispute sufficient in the sole but reasonable discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under

the terms of this Agreement, together with such legal pleading as it deems appropriate, and thereupon be discharged.


41. This Contract may be executed in any number of counterparts and facsimile or electronic signatures shall be valid as original signatures.


**THE REMINDER OF THIS PAGE HAS BE LEFT BLANK INTENTIONALLY.  
SIGNATURES ON NEXT PAGE**

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

SUGARMAN'S PLAZA LIMITED  
PARTNERSHIP ("Seller")

  
MEIR LAUFER

  
By: CHAIM LAUFER

WITNESS/ATTEST:

STEVE DEUTSCH ("Purchaser")

  
STEVEN GREEN

  
By: STEVE DEUTSCH

**SECOND RIDER TO CONTRACT**

**SELLER: SUGARMAN'S PLAZA LIMITED PARTNERSHIP**

**PURCHASER: STEVE DEUTSCH**


**PREMISES: 600 SCRANTON CARBONDALE HIGHWAY, ARCHBALD, PENNSYLVANIA**

**CONTRACT DATED: FEBRUARY , 2017**

1. In the event that there are any inconsistencies between this rider and the pre-printed provisions of the within contract and the first rider to the contract, the provisions in this rider shall prevail. In all other respects, this rider shall be deemed to supplement the pre-printed provisions of the within contract.

2. Purchaser/future Landlord has the right to cancel the lease at any time upon thirty (30) days notice and shall not be required to refund any prepaid rent.

**SUGARMAN'S PLAZA LIMITED PARTNERSHIP**

By:   
CHAIM LACHON

  
STEVE DEUTSCH

**RIDER TO CONTRACT**

**SELLER: SUGARMAN'S PLAZA LIMITED PARTNERSHIP**

**PURCHASER: STEVE DEUTSCH**


**PREMISES: 600 SCRANTON CARBONDALE HIGHWAY, ARCHBALD, PENNSYLVANIA**


**CONTRACT DATED: FEBRUARY , 2017**

1. In the event that there are any inconsistencies between this rider and the pre-printed provisions of the within contract and the first rider to the contract, the provisions in this rider shall prevail. In all other respects, this rider shall be deemed to supplement the pre-printed provisions of the within contract.

2. The Seller agrees to lease back from the Purchaser the area as shown on the attached diagram or to be mutually agreed upon between the parties for a period of four (4) years after closing at an annual rental of \$375,000.00. The rent for the full four (4) year term is due at time of closing and shall be non-refundable for any reason.

**SUGARMAN'S PLAZA LIMITED PARTNERSHIP**

By:   
\_\_\_\_\_  
CHAIM LAVEM

  
\_\_\_\_\_  
STEVE DEUTSCH



**ECKERT  
SEAMANS**  
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

James A. Diamond  
717.237.6071  
jdiamond@eckertseamans.com

March 10, 2017

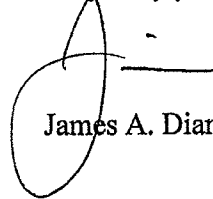
Martin E. Kofman, Esquire  
Lowenthal & Kofman, P.C.  
Flatbush Financial Center  
2001 Flatbush Avenue  
Brooklyn, New York 11234

**Re: Sugarman's Plaza Limited Partnership to Deutsch  
Premises: 600 Scranton Carbondale Highway  
Archbald, PA**

Dear Mr. Kofman:

This is to confirm that, as we discussed today, Seller is not in a position to agree to the requested thirty (30) extension on the due diligence, but we have agreed to an extension of ten (10) days. Kindly acknowledge this agreement by signing and faxing or emailing back to me a copy of the counter-signed letter. Thank you.

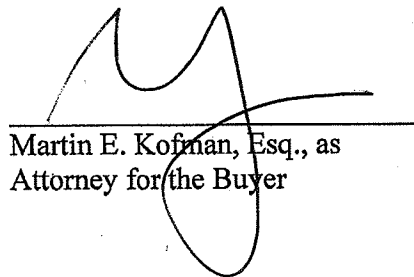
Very truly yours,



James A. Diamond

JAD/dmk

Agreed to and Accepted:

  
\_\_\_\_\_  
Martin E. Kofman, Esq., as  
Attorney for the Buyer

## SECOND AMENDMENT TO AGREEMENT OF SALE

THIS SECOND AMENDMENT TO AGREEMENT OF SALE ("Second Amendment"), effective the 30<sup>th</sup> day of March, 2017, between SUGARMAN'S PLAZA LIMITED PARTNERSHIP ("Seller") and STEVE DEUTSCH ("Purchaser") amends that certain Agreement of Sale between Seller and Purchaser dated on or about February 10, 2017 (the "Agreement of Sale").

### WITNESSETH

WHEREAS, Seller and Purchaser are parties to the said Agreement of Sale relating to that certain real property located at 600 Scranton Carbondale Highway, Archbald Township, Lackawanna County, Pennsylvania; and

WHEREAS, Seller and Purchaser have previously entered into an amendment to the Agreement of Sale dated March 10, 2010 (hereinafter referred to as the "First Amendment") which had extended the expiration date of the Inspection Period from March 10, 2017 to March 20, 2017; and

WHEREAS, the parties mutually desire to further amend the said Agreement of Sale as set forth herein.

NOW, THEREFORE, with the intent to be legally bound hereby, the parties agree as follows:

#### 1. SECOND DEPOSIT

Section 4(b) of the Agreement of Sale is hereby amended to extend the deadline for, and to change the amount of, the Second Deposit required under the Agreement of Sale. Section 4(b) is hereby amended to state in its entirety as follows:

"(b) Second Deposit. Within two (2) business days after the effective date of this Second Amendment, Purchaser shall deliver, or cause to be delivered, to Seller's escrow agent an additional One Hundred Thousand (\$100,000) Dollars, to be held as provided under the Agreement of Sale and applied to the Purchase Price at Closing ("Second Deposit"). The Initial Deposit and Second Deposit are hereinafter collectively referred to as the "Deposit."

Nothing in this Second Amendment shall be construed to extend the already expired Inspection Period which ended on March 20, 2017.

#### 2. DEADLINE FOR CLOSING

The first sentence of Section 16(a) of the Agreement of Sale is hereby amended to delete the original version of such sentence and replace it with the following sentence:

“Closing will occur on or before **May 29, 2017**, time being of the essence, at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8<sup>th</sup> Floor, Harrisburg, PA 17101, or at such other mutually agreeable location.”

**3. CORRECTION OR ESCROW OF ENVIRONMENTAL**

Although Purchaser shall not have a right to terminate the Agreement of Sale due to any environmental hazard condition, Purchaser is hereby granted the right, at Purchaser’s cost, until April 30, 2017 to obtain a Phase I environmental analysis or a Phase II if suggested by the environmental company of the Property to determine whether any hazardous material or environmental issues exist, and an estimate of the cost to correct or abate such conditions, and deliver to Seller by such date the Phase I report of Purchaser’s qualified expert with such cost estimates. In the event any hazardous material or environmental issues are identified in such Phase I or Phase II report, Seller shall either correct and abate such identified issues prior to Closing or, at Seller’s election, either adjust the purchase price downward by the reasonably estimated cost of abatement, or escrow with the Settlement Agent such reasonably estimated cost of abatement. In the event of an escrow, Purchaser shall have one (1) year from the date of Closing to undertake such abatement work and if the actual cost of such abatement is less than the amount escrowed, the excess shall be returned to Seller within thirty (30) days of the earlier of (a) the one year anniversary of the date of closing or (b) the date by which all necessary abatement work has been completed by Purchaser. Seller shall reimburse Purchaser for the cost of any Phase II.

Nothing in this Agreement, however, shall be construed to allow Purchaser to terminate the Agreement of Sale as the result of the identification of any hazardous material or environmental law violations in accordance with the Section.

**4. MISCELLANEOUS**

A. Except as modified herein, all other terms and conditions of the said Agreement of sale and the said First Amendment, are hereby ratified and confirmed.

B. This Second Amendment may be executed in one or more counterparts, each of which shall when executed be deemed an original but all of which taken together shall constitute one and the same document. Facsimile and PDF signatures shall be considered original signatures.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

03/30/2017 18:59 FAX 7188530020


Laufer


0004/0004

IN WITNESS WHEREOF, intend to be legally bound, the parties have executed this Second Amendment on the dates set forth below, but effective as of March 30, 2017.

WITNESS/ATTEST:


SUGARMAN'S PLAZA LIMITED PARTNERSHIP ("Seller")


  
JUDY LAUFER

  
By: CHAIM LAUFER  
Dated: 3/30/17

WITNESS/ATTEST:

STEVE DEUTSCH ("Purchaser")

  
Joel Laufer

  
By: STEVE DEUTSCH  
Dated: 3/31/17

KARF LTD

January 26, 2017

NAI James E. Hanson

Attn: Sig Schorr

Re: Eynon Plaza, Eynon Pa. (Former Sugermans) 600 Scranton Carbondale Hwy, Archbald Pa. 18403

Owner: Sugarman's Plaza Limited

Dear Mr. Schorr

Please present this offer to purchase the above referenced property. This letter expresses Purchasers interest in purchasing the property under the following terms and conditions:

Purchaser: KARF LTD and/or Assigns

Offer Price: \$2,000,000

Earnest Money: \$25,000 at contract signing to be held in escrow by title agency.

Due Diligence Period: Purchaser shall have Thirty Days (30) from date of fully executed contract to conduct physical, financial and environmental inspections. If inspections do not meet the expectations of the purchases, purchaser may cancel contract and shall be entitled to a full refund of his deposit money..

Mortgage Contingency: Waived

Closing Date: Thirty (30) days after expiration of due diligenc period.

Closing Costs: Closing costs shall be allocated as is typical in the location of the Property and shall include (But may not be limited to) transfer costs,owners premium,search &exam,out of pocket fees,deed recording and update and record fees. Purchaser and seller shall each pay there own attorneys fees..

Property Conditions: The seller will provide any Certificates of Occupancy, Certificates of Compliance or any other document as may be required locally,

Contract: Purchaser and seller shall each use their best efforts to enter into a binding contract within Fifteen (15) days of execution of this letter of intent. Failure to reach an agreement will allow either part to consider this agreement void and allow seller to accept other offers.

Broker Commission: Seller shall pay brokers commission. Buyer has no obligation to pay any broker fees.

Confidentiality: Purchaser and his agents and representatives hereby covenant with seller and seller covenants with purchaser that all information in this LOI and any sales agreement shall be held in strict confidence by both parties. Execluded are purchasers Attorney, Accountant or Lender.

Access to Property: If this Letter of Intent is accepted purchaser shall be granted access to property before signing a formal Sales Agreement.

Acceptance By Owner: This Letter of Intent shall be withdrawn if not signed by seller on January 30,2017.

It is understood and agreed that this is Letter of Intent setting forth the major business points of my purchase of the property. It is further understood that neither party intends to create any contractual rights or obligations as a result of entering into this Letter of Intent. This Letter of Intent is non binding on both parties. Only a fully executed Agreement of Sale is binding.

Sincerely

Purchaser:

KARFLTD

By: 

Dated: 1-26-17

Seller Agreed & Accepted

Sugermans Plaza Ltd

By:-----

Dated:-----



January 27, 2017

Barry Cohorsky  
James E. Hanson, Inc.  
10 Lanidex Plaza West  
Parsippany, NJ 07054

Re: 455,000 sq. ft.  
600 Scranton Carbondale Hwy.  
Archbald, PA

Dear Barry:

Following please see our offer to purchase the aforementioned property:

Purchase Price: \$2,750,000.00

Terms: All cash.

This offer is contingent upon the following:

1. The property shall be delivered with all requisite environmental clearances from state and federal entities having jurisdiction.
2. The property shall be delivered with clear and marketable title free of liens and encumbrances.
3. Purchaser shall have a ninety (90) day due diligence period.
4. Satisfactory review of engineering report(s) to be performed at Purchaser's expense.

Thank you for your consideration in this matter.

Sincerely,



Robert Kilgannon  
Senior Vice President