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Ira R. Abel, Esq.

Counsel for the Debtor

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

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In re:	:	Chapter 11
	:	
Sugarmans Plaza Limited Partnership	:	Case No. 16-42496-ess
	:	
Debtor.:	:	
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**DEBTOR’S MOTION FOR AN ORDER (A) APPROVING A MODIFICATION OF THE
MEANS OF PAYMENT FOR THE PRIVATE SALE OF SUBSTANTIALLY ALL OF
THE DEBTOR’S PROPERTY, (B) SHORTENING TIME 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 Order, entered June 14, 2017 (ECF Doc. No. 149, the “Sale Approval Order”), the Court authorized the Debtor to, among other things,

sell all of its right, title and interest in and to the Property to Steve Deutsch, or an entity to be formed by him (the “Purchaser”), for a purchase price of \$8,000,000.00 pursuant to section 363 of the Bankruptcy Code and in accordance with the Sale Agreement.

2. The Debtor and the Purchaser originally desired to close the Sale on June 26, 2017, and the Debtor’s special real estate counsel is in the process of preparing the

closing documents. However, it has recently become apparent that (a) the Purchaser is unable to fully fund the purchase price and (b) the closing date will have to be adjourned.

3. As an accommodation to the Purchaser, and to enable the transaction to close, the Debtor has proposed to accept a note (the "Note") issued by the Purchaser in the amount of \$1,500,000, payable six (6) months from the closing date, at a rate of four percent (4%) interest per annum. The Note will be secured by a second mortgage (the "Mortgage")¹ on the assets being sold. A copy of the Note and Mortgage, substantially in the form intended to be signed at closing, are annexed hereto as Exhibit 1. The Note and Mortgage are in draft form. They are not intended to be finalized until the closing.

4. Therefore, by this motion (the "Motion"), the Debtor requests an order (a) authorizing it to close the transaction as authorized under the Sale Approval Order but permitting the Debtor to accept as part of the purchase price the Note and Mortgage, (b) shortening the notice requirements for the hearing to consider the relief requested, and (c) granting related relief.

5. The change in the means of payment is not expected to affect (a) payment of entities entitled to be paid at closing, (b) payment of administrative or priority claims against the estate or (c) payment to non-priority unsecured creditors. The only entity affected by the change in purchase price is expected to be the Debtor's equity security holders, and they have accepted the change. A proposed order granting the requested relief is annexed hereto as Exhibit 2.

JURISDICTION AND STATUTORY BASES FOR REQUESTED RELIEF

6. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157

¹ The Purchaser will grant a first mortgage to fund the cash portion of the purchase price.

and 1334.

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

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

9. The statutory bases for this Motion are §§ 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").

BACKGROUND

10. 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.

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

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

13. 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").

14. 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.

15. 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.

16. 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.

17. 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).

CLAIMS AGAINST THE ESTATE

18. As stated in the Debtor’s application to approve the Sale (ECF Doc. No. 142), 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.

19. Also as set forth in the sale application, the total amount of claims to be paid from the sale proceeds (including secured, administrative (other than professional compensation and reimbursement of expenses or United States Trustee fees), priority and unsecured claims) is approximately \$4,604,000. Thus, given net sale proceeds of approximately \$5,000,000, there will likely be more than enough funds available to pay

all timely filed claims.

20. It is expected that after the sale closes, the Debtor will request a structured dismissal of its case authorizing, among other things, payment in full to all creditors and Court retention of jurisdiction to resolve any disputes.

REQUEST FOR ORDER SHORTENING TIME

21. Pursuant to Rule 9077-1(c) of the Local Bankruptcy Rules of the Eastern District of New York, the Debtor must request that the notice period to consider this Motion be shortened due to the time constraints of the Sale Agreement.

22. The Purchase Agreement provides that the Sale must close by June 30, 2017 “time being of the essence.” Sale Agreement at ¶ 22. The Debtor and Purchaser originally scheduled June 26, 2017 as the closing date. The closing cannot take place on that date because the change to the Sale Agreement requires notice and a hearing. Therefore, the Debtor must request a hearing to approve the sale as soon as possible so that the closing can be completed before the June 30, 2017 deadline.

23. The Debtor respectfully requests that the hearing to consider the requested relief be held on or before Wednesday, June 28, 2017.

NOTICE

24. Due to the time pressures set forth above, the Debtor will provide notice of the hearing by hand delivery, overnight courier service, fax or electronic mail of a copy of this Motion, all exhibits annexed thereto and all other papers upon which it is based upon (a) SEL, (b) the U.S. Trustee, (c) all entities that have filed a notice of appearance, and (d) all non-priority unsecured creditors. The Debtor respectfully submits that such notice is appropriate under the circumstances of this case and the time constraints imposed.

NO PRIOR REQUEST

25. No prior request for the relief requested herein has been made to this or any other Court except that, by letter, dated June 20, 2017 (ECF Doc. No. 152), the Debtor notified the Court of the need to modify the Sale Agreement.

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
June 21, 2017

Law Office of Ira R. Abel
Counsel for the Debtor

/s/

Ira R. Abel, Esq.

305 Broadway

14th Floor

New York, NY 10007

Phone: (212) 799-4672

iraabel@verizon.net

Index of Exhibits

Exhibit 1: Form of Note and Mortgage

Exhibit 2: Proposed Order

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

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In re:	:	Chapter 11
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Sugarmans Plaza Limited Partnership	:	Case No. 16-42496-ess
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Debtor..:	:	
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LOCAL RULE 9077-1 AFFIRMATION IN SUPPORT OF DEBTOR’S MOTION FOR AN ORDER (A) APPROVING A MODIFICATION OF THE MEANS OF PAYMENT FOR THE PRIVATE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S PROPERTY, (B) SHORTENING TIME AND (C) GRANTING RELATED RELIEF

Ira R. Abel, an attorney duly admitted to practice law before the Courts of the State of New York and before this Court, affirms under penalty of perjury as follows:

1. I am a member of the Law Office of Ira R. Abel, counsel to the above-captioned debtor and debtor-in-possession herein (the “Debtor”) and as such, I have personal knowledge of the statements contained herein.

2. I submit this affirmation pursuant to Rule 9077-1(c) of the Local Bankruptcy Rules of the Eastern District of New York in support of the Debtor’s motion (the “Motion”) seeking entry of, among other things, (a) an order authorizing the Debtor to modify the means by which it will be paid at the closing of the authorized sale and (b) entry of an order shortening the notice requirements to schedule a hearing to consider the Motion.

3. By this Affirmation, I respectfully request that this Court schedule a hearing to consider the Motion on shortened time. The Debtor has requested that the hearing be held on Wednesday, June 28, 2017 so that it can close the sale on or before June 30, 2017.

4. Normal motion practice in this District is governed by Bankruptcy Rules 9014 and 9006 and by Local Bankruptcy Rule 9006-1(b), which requires that motions be served “at least fourteen (14) days before the return date.” Bankruptcy Rule 2002(a)(2) requires twenty-one (21) days notice, plus three (3) additional days if the notice is sent by first class mail.

5. The Purchase Agreement provides that the Sale must close by June 30, 2017 “time being of the essence.” Sale Agreement at ¶ 22. The Debtor and Purchaser originally scheduled June 26, 2017 as the closing date. The closing cannot take place on that date because the change to the Sale Agreement requires notice and a hearing. Therefore, the Debtor must request a hearing to approve the sale as soon as possible so that the closing can be completed before the June 30, 2017 deadline.

6. No prior request for the relief requested herein has been made to this or any other Court except that, by letter, dated June 20, 2017 (ECF Doc. No. 152), the Debtor notified the Court of the need to modify the Sale Agreement.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order shortening time and granting the relief requested, together with such other further and different relief that this Court deems just and proper under the facts and circumstances herein.

Dated: New York, New York
June 21, 2017

By: _____
Ira R. Abel

PROMISSORY NOTE

\$1,500,000.00

June _____, 2017

_____, _____ County, Pennsylvania

FOR VALUE RECEIVED, on June ____, 2017, _____ [entity formed by the shareholders of _____], whose address is _____, (“Maker”), promises to pay to the order of **SUGARMAN’S PLAZA LIMITED PARTNERSHIP**, a Pennsylvania limited partnership (“Payee”), with a business address at 1616 Fifty-Fourth Street, Brooklyn, New York, 11204, the principal sum of **One Million Five Hundred Thousand and no/100 (\$1,500,000.00) Dollars** at four (4.00%) percent per annum.

Payment of Principal and Interest

1. Principal and interest shall be payable, in lawful money of the United States of America, at the office of Payee or such other place as the holder of this Note may designate in the following manner:

Interest computed at the rate of four (4.00%) percent per annum from the date hereof and continuing until December ____, 2017, when the then outstanding principal balance and interest due shall become payable in full.

Prepayment Right

2. The Maker shall have the privilege, without premium or penalty, at any time and from time-to-time, of prepaying this Note in whole or in part, provided that each prepayment shall be accompanied by accrued interest on the amount prepaid.

Late Charges

3. The Maker agrees that in the event any payment shall be overdue for a period in excess of fifteen (15) days, the Maker shall pay to the Payee a late charge of five (5%) percent of the amount of the delinquency to cover the additional expense incident to the delinquency. This shall not be construed to obligate the Payee to accept any overdue payment nor to limit the Payee’s rights and remedies for the Maker’s default as set forth in this Note.

Mortgage as Part of Security for Note

4. This Note is secured in part by a second mortgage (“Mortgage”) of even date with this Note, covering certain premises (“Mortgaged Property”) titled to the [entity formed by the shareholders of _____], known as Lackawanna County Tax Map Parcel Number 09401-010-01201 and located at 600 Scranton Carbondale Highway, Archbald Borough, Pennsylvania and more particularly described in such Mortgage. Any failure by [entity formed by the shareholders of _____] to comply with terms, covenants, or conditions of the Mortgage shall automatically constitute a default under this Note.

No Transfer of Mortgaged Property

5. If the [entity formed by the shareholders of] shall, without in each instance obtaining the prior written consent of the Payee, sell, transfer or convey (all referred to in this Note as "transfer") the Mortgaged Property or any interest therein other than leases of portions of the Mortgaged Property in the ordinary course of business, whether voluntarily or by operation of law, then, at the option of the Payee, the maturity of this Note shall be accelerated to the date of the transfer, and the obligations of the Maker under this Note shall immediately be due and payable.

Events of Default

6. If the Maker (a) fails to pay any sum when due under this Note and fail to cure such delinquency with five (5) days of written notice of default from Payee or (b) if [entity formed by the shareholders of] shall be in default under the terms of the Mortgage (after expiration of any applicable notice or grace period contained in the Mortgage), then the entire unpaid principal balance of this Note, together with interest accrued and all sums due and owed by the Maker under this Note, the terms of the Mortgage shall, at the written election of the Payee, become due and payable immediately with interest. The Maker shall also be liable for attorneys' fees of Payee for collection of the Note, and all costs, including cost of any title searches, incurred by the Payee in connection with proceedings on the Mortgage.

CONFESSION OF JUDGMENT

7. **THE [entity formed by the shareholders of] IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR ATTORNEYS OR THE PROTHONOTARY OR CLERK OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE, TO APPEAR FOR [entity formed by the shareholders of] IN ANY COURT IN AN APPROPRIATE ACTION BROUGHT AGAINST THE MAKER AT THE SUIT OF THE PAYEE ON THIS NOTE, AND TO CONFESS JUDGMENT, AGAINST [entity formed by the shareholders of] FOR ALL SUMS DUE BY THE MAKERS, TOGETHER WITH COSTS OF SUIT AND ATTORNEYS' FEES FOR COLLECTION. THIS NOTE OR A COPY OF THIS NOTE SHALL BE A SUFFICIENT WARRANT. THIS WARRANT OF ATTORNEY SHALL BE EFFECTIVE ONLY AFTER DEFAULT.**

The single exercise of the Warrant of Attorney under this Note shall not exhaust said power and Payee may confess judgment and issue executions as many times as legally needed.

Cumulative Remedies

8. The remedies of the Payee provided in this Note and in the Mortgage or otherwise available to the Payee at law or in equity and the warrants of attorney contained in this Note and in the Mortgage shall be cumulative and concurrent, and may be pursued singly, successively, and together at the sole discretion of the Payee, and may be exercised as often as occasions for exercise shall occur. The failure to exercise any right or remedy shall in no event be construed as a waiver or release of the right or remedy.

Waivers

9. [entity formed by the shareholders of] hereby releases the Payee and the attorney or attorneys from all errors, defects, and imperfections in entering judgment by confession, issuing any process, or instituting any proceedings relating to the Confession of Judgment. The said Maker and its representatives also waive all benefit that may accrue by virtue of any present or future laws exempting the Mortgaged Property, and any other property, real or personal, or any part of the proceeds arising from any sale of any property, from attachment, levy, or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time. The said Maker and its representatives further agree that the Property may be sold to satisfy any judgment entered on this Note or the Mortgage, in whole or in part, and in any order that may be desired by the Payee. Except as otherwise required by the terms of this Note, the Maker and its representatives waive presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest, and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, except to the extent that a notice of default and cure opportunity is expressly provided in this Note. Liability under this Note shall be unconditional and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by the Payee.

Parties and Successors

10. The words "Payee" and "Maker" in this Note shall be deemed and construed to include the heirs, personal representatives, successors, and assigns of the Payee and of the Maker.

Pennsylvania Law to Apply

11. This instrument shall be construed according to and governed by the laws of the Commonwealth of Pennsylvania.

Usury

12. Notwithstanding any provision contained in this Note, the Maker's liability for payment of interest shall not exceed the limits now imposed by the applicable usury law. If any provision of this Note requires interest payments in excess of the highest rate permitted by law, the provision shall be deemed to require only the highest payment permitted by law. Any amounts received by the Payee in excess of the maximum amount of interest permitted shall be applied by the Payee in reduction of the outstanding principal. If this Note has been paid in full, the amount of the excess shall be promptly returned by the Payee to the Maker.

Acknowledgement of Non-Personal Transaction

13. IT IS HEREBY ACKNOWLEDGED THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF THE UNDERSIGNED HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY THE UNDERSIGNED. THE DEBT REPRESENTED BY THIS NOTE ARISES FROM A BUSINESS AND NOT A PERSONAL TRANSACTION.

IN WITNESS WHEREOF, the Maker has duly executed this Note on the date set forth below.

Witness:

Print Name

By: _____

Print Name: _____

Title: _____

Prepared by and Return to:
James A. Diamond, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Parcel No.: 09401-010-01201

SECOND MORTGAGE

THIS MORTGAGE is made on June _____, 2017, between _____ **[entity formed by the shareholders of _____]** (“Mortgagor”), whose address is _____, and **SUGARMAN’S PLAZA LIMITED PARTNERSHIP**, a Pennsylvania limited partnership (“Mortgagee”), whose address is 1616 Fifty-Fourth Street, Brooklyn, New York, 11204.

Recitals

Mortgagor has executed and delivered to Mortgagee a Promissory Note (“Note”) bearing the same date as this Mortgage, in which Mortgagor promises to pay to Mortgagee the principal sum of **One Million Five Hundred Thousand and no/100 (\$1,500,000.00) Dollars**. The Note is incorporated herein by reference.

NOW, THEREFORE, in consideration of the indebtedness, and as security for payment to Mortgagee of the principal with interest, to the extent applicable, and all other sums provided for in the Note and in this Mortgage, according to their respective terms and conditions, and for performance of the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage, and in the Note, and in any renewals, extensions, amendments, and modifications of these documents, Mortgagor does hereby grant, convey, and mortgage to the Mortgagee all that certain real estate (“Real Estate”) located at **600 Scranton Carbondale Highway, Archbald Borough, Lackawanna County, Pennsylvania**, which is more particularly described in “Exhibit A” attached to and by reference made a part of this Mortgage,

TOGETHER WITH:

- (1) Any and all buildings and improvements erected or hereafter erected on the Real Estate;
- (2) Any and all fixtures, appliances, machinery, and equipment, and other articles of personal property at any time installed in, attached to, or situated in or on the Real Estate or the buildings and improvements to be erected on the Real Estate, or used or intended to be used in connection with the Real Estate, or in the operation of

the buildings and improvements, plant, business, or dwelling on the Real Estate, whether or not the personal property is or shall be affixed to the Real Estate;

- (3) All building materials, fixtures, building machinery, and building equipment delivered on site to the Real Estate during the course of, or in connection with, construction of the buildings and improvements;
- (4) Any and all tenements, hereditaments, and appurtenances belonging to the Real Estate or any part of the Real Estate hereby mortgaged or intended to be mortgaged, or in any way pertaining thereto;
- (5) All streets, alleys, passages, ways, water courses, and all easements and covenants now existing or hereafter created for the benefit of the Mortgagor or any subsequent owner or tenant of the Real Estate over ground adjoining the Real Estate and all rights to enforce their maintenance;
- (6) All other rights, liberties, and privileges, and the reversions and remainders, income, rents, issues, and profits arising from the real estate, and all the estate, right, title, interest, property, possession, claim, and demand, at law or in equity, of the Mortgagor in and to the real estate or any part of it; and
- (7) The proceeds (including, without limitation, insurance proceeds) and replacements of any of the foregoing.

All of the above-mentioned Real Estate, improvements, personal property, and other property and interests are sometimes collectively referred to in this Mortgage as the "Mortgaged Property."

ALSO TOGETHER WITH any and all awards made to the present and subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for taking or damaging by eminent domain the whole or any part of the Mortgaged Property or any easement in the property, including any awards for any changes of grade of streets. Such awards are hereby assigned to the Mortgagee, who is authorized to collect and receive the proceeds of any awards from the authorities and to give proper receipts and acquittances for those awards, and to apply them (after deduction of attorneys' fees and other costs of collecting the funds) toward the payment of the amount owing on account of this Mortgage and the accompanying Note, even though the amount owing may not then be due and payable. The Mortgagor agrees, on request, to make, execute, and deliver any and all assignments and other instruments sufficient for the purpose of assigning the awards to Mortgagee, free, clear, and discharged of any and all encumbrances. Mortgagor further agrees to give Mortgagee immediate notice of the actual or threatened commencement of any proceedings in the nature of eminent domain affecting all or any part of the Mortgaged Property, and will deliver to Mortgagee copies of any papers served on Mortgagor in connection with any such proceedings. No settlement for the damages sustained shall be made by Mortgagor without Mortgagee's prior written approval, which approval shall not be unreasonably withheld.

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be, to Mortgagee, to its own use.

This indenture shall be second in lien and effect to a first lien to _____ in the amount of \$2,000,000.00.

PROVIDED ALWAYS, and this instrument is on the express condition that, if Mortgagor pays to Mortgagee the principal sum of the Note, the interest, if applicable, and all other sums payable by Mortgagor to Mortgagee that are secured by this Mortgage, in accordance with the provisions of the Note and this Mortgage, at the times and in the manner specified, without deduction, fraud, or delay; and Mortgagor performs and complies with all the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage and in the Note, then this Mortgage and the estate hereby granted shall cease and become void.

MORTGAGOR COVENANTS with the Mortgagee that until the indebtedness secured by this Mortgage is fully repaid:

ARTICLE I – COVENANTS

Mortgagor covenants and agrees with Mortgagee as follows:

Warranty of Title

1.01 Mortgagor has good and marketable fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, charges, and all other conditions except those of record in the Dauphin County Recorder of Deeds Office as of the effective date of this Mortgage.

Payment and Performance

1.02 Mortgagor shall pay to Mortgagee, in accordance with the terms of the Note and this Mortgage, the principal and interest, if applicable, and other sums, and shall perform and comply with all the agreements, conditions, covenants, provisions, and stipulations of the Note and this Mortgage.

Maintenance of Mortgaged Property

1.03 Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property. Mortgagor shall not remove or demolish, or alter the structural character of, any building erected at any time on the Mortgaged Property, without the prior written consent of Mortgagee. Mortgagor shall not permit the Mortgaged Property to become vacant, deserted, or unguarded, and shall maintain the Mortgaged Property in good condition and repair, reasonable wear and tear excepted, making, when necessary, all repairs of every nature.

Insurance

1.04 Mortgagor, at its cost and expense, shall keep the Mortgaged Property continuously insured against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time reasonably require.

Taxes and Other Charges

1.05 Mortgagor shall pay when due and payable and before interest or penalties accrue, all taxes, assessments, water and sewer rents, and all other charges or claims that may be assessed, levied, or filed at any time against Mortgagor, the whole or any part of the Mortgaged Property, or against the interest of Mortgagee in the Mortgaged Property, or that, by any present or future law, may have priority over the indebtedness secured by this Mortgage either in lien or in distribution out of the proceeds of any judicial sale. Mortgagor shall, upon request of Mortgagee, promptly produce receipts for payments of these amounts. If the Mortgagor, in good faith and by appropriate legal action, contests the validity or amount of any item, and establishes on its books or by deposit of cash with Mortgagee, as Mortgagee may elect, a reserve for the payment in the amount Mortgagee requires, then Mortgagor shall not be required to pay the item or to produce the required receipts while the reserve is maintained and so long as the contest that operates to prevent collection is maintained and prosecuted with diligence, and has not been terminated or discontinued adversely to Mortgagor.

Declaration of No Set-Off

1.06 Within one week after requested to do so by Mortgagee, Mortgagor shall certify to Mortgagee or to any proposed assignee of this Mortgage, in a writing duly acknowledged, the amount of principal, interest, if applicable, and other charges then owing on the obligation secured by this Mortgage and whether there are any set-offs or defenses against it.

Defaults and Right to Remedy

1.07 In the event that Mortgagor fails to pay taxes, assessments, water and sewer charges, or other lienable claims (except in case of contest) or insurance premiums, or fails to make necessary repairs or permits waste, or otherwise fails to comply with its obligations under this Mortgage or under the Note or any other document executed in connection with this Mortgage, then Mortgagee, at its election and without notice to Mortgagor, shall have the right to make any payment or expenditure that Mortgagor should have made, or that Mortgagee deems advisable, to protect the security of this Mortgage or the Mortgaged Property. Any payment by the Mortgagee shall be without prejudice to any of Mortgagee's rights or remedies under this Mortgage, at law, or in equity. All sums, as well as costs, advanced by Mortgagee pursuant to this Paragraph shall be due immediately from Mortgagor to Mortgagee, shall be secured by this Mortgage, and shall bear interest at four (4%) percent per year from the effective date of the Note until the date of repayment.

ARTICLE II – DEFAULT AND REMEDIES

Events of Default

2.01 Any one or more of the following shall constitute an “Event of Default”:

- (a) Failure of Mortgagor to pay any installment of principal or interest, if applicable, or any other sum, on the date it is due under the Note or this Mortgage subject to any applicable grace period provided in the Note or in this Mortgage.
- (b) Mortgagor’s nonperformance of or noncompliance with any of the other agreements, conditions, covenants, provisions, or stipulations contained in the Note or in this Mortgage, or any other document executed in connection with this Mortgage within five (5) days after written notice from Mortgagee. If nonperformance or noncompliance other than a monetary default cannot reasonably be cured within the five-day period, it shall not be an Event of Default if Mortgagor commences to cure nonperformance or noncompliance within the five-day period and thereafter diligently pursues performance or compliance to completion. No such notice and grace period shall apply to any default referred to in clause (c) or (d) of this Section.
- (c) The entry of a decree or order for relief by a court having jurisdiction in the Mortgaged Property in respect of Mortgagor in an involuntary case under the federal bankruptcy laws, or any other applicable federal or state bankruptcy, insolvency, or other similar law. The appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official for any substantial part of Mortgagor’s property. The ordering of the winding-up or liquidation of Mortgagor’s affairs.
- (d) The commencement by Mortgagor of a voluntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law. The consent by Mortgagor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar official for any substantial part of Mortgagor’s property. The making by Mortgagor of any assignment for the benefit of creditors, or the failure of Mortgagor generally to pay its debts as they become due.

Whenever a state of facts exists that, on delivery of notice and/or expiration of any applicable cure period, constitutes an Event of Default under this Mortgage or an event of default under the Note, or any other document executed in connection with the debt secured by this Mortgage, notice to Mortgagor of such state of facts under any of such documents shall constitute notice under this Mortgage and all such documents, and the cure periods, if any, afforded to Mortgagor under this Mortgage and all such documents with respect to such state of facts shall run concurrently, not consecutively.

Remedies

2.02

- (a) On the happening of any Event of Default, the entire unpaid balance of principal, accrued interest at four (4%) percent per year from the effective date of the Note, disbursement, and all other sums secured by this Mortgage shall become immediately due and payable, at the written election of Mortgagee, without further notice or demand.

- (b) When the entire indebtedness becomes due and payable, either because of maturity or because of the occurrence of any Event of Default, or otherwise, then:
 - (1) Foreclosure: Mortgagee may institute an action of mortgage foreclosure, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security, as the law may allow, and may proceed to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate or rates stipulated in the Note, together with all other sums due by Mortgagor in accordance with the provisions of the Note and this Mortgage, and all sums that may have been advanced by Mortgagee for taxes, water or sewer rents, other lienable charges or claims, insurance, repairs, or maintenance, and all costs of suit. Mortgagor authorizes Mortgagee at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any tenants parties defendant to any foreclosure proceedings and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceedings instituted by Mortgagee to recover the indebtedness secured by this Mortgage or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. Nothing contained in this Mortgage shall prevent Mortgagor from asserting in any proceedings disputing the amount of the deficiency or the sufficiency of any bid at the foreclosure sale that any tenants adversely affect the value of the Mortgaged Property.

 - (2) Possession: Mortgagee may enter into possession of the Mortgaged Property, with or without legal action, and by force if necessary. In the alternative, Mortgagee shall be entitled to appointment of a receiver without regard to the solvency of Mortgagor or any other person liable for the debt secured by this Mortgage, and regardless of whether Mortgagee has an adequate remedy at law. Either Mortgagee or a receiver, as the case may be, may rent all or any part of the Mortgaged Property for any period and on any terms and conditions that Mortgagee or receiver may see fit, collect all rentals, and, after deducting all costs of collection and administration expense, apply the net rentals to the payment of taxes, water and sewer rents, other lienable charges and claims, insurance premiums, and all other carrying charges, and to the maintenance, repair,

or restoration of the Mortgaged Property, or in reduction of the principal or interest, or both, in such order and amounts as Mortgagee or the receiver may elect. For that purpose, Mortgagor hereby assigns to Mortgagee all rentals due and to become due under any existing or future lease or rights to use and occupation of the Mortgaged Property, as well as all rights and remedies provided in the lease or at law or in equity for the collection of the rentals. Any lease or leases entered into by Mortgagee or the receiver pursuant to this paragraph shall survive foreclosure of the Mortgage and repayment of the debt, except to the extent any applicable lease may provide otherwise.

- (c) FOR THE PURPOSE OF OBTAINING POSSESSION OF THE MORTGAGED PROPERTY IN THE EVENT OF ANY DEFAULT UNDER THIS MORTGAGE OR THE NOTE, MORTGAGOR HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE, AS ATTORNEY FOR MORTGAGOR AND ALL PERSONS CLAIMING UNDER OR THROUGH MORTGAGOR, TO SIGN AN AGREEMENT FOR ENTERING IN ANY COMPETENT COURT AN AMICABLE ACTION IN EJECTMENT FOR POSSESSION OF THE MORTGAGED PROPERTY AND TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MORTGAGOR, AND AGAINST ALL PERSONS CLAIMING UNDER OR THROUGH MORTGAGOR, IN FAVOR OF MORTGAGEE, FOR RECOVERY BY MORTGAGEE OF POSSESSION. THIS MORTGAGE, OR A COPY OF THIS MORTGAGE VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. AFTER CONFESSION OF JUDGMENT, A WRIT OF POSSESSION MAY IMMEDIATELY ISSUE FOR POSSESSION OF THE MORTGAGED PROPERTY, WITHOUT ANY PRIOR WRIT OR PROCEEDING AND WITHOUT ANY STAY OF EXECUTION. IF FOR ANY REASON AFTER THE ACTION HAS BEEN COMMENCED IT SHALL BE DISCONTINUED, OR POSSESSION OF THE MORTGAGED PROPERTY SHALL REMAIN IN OR BE RESTORED TO MORTGAGOR, MORTGAGEE SHALL HAVE THE RIGHT FOR THE SAME DEFAULT OR ANY SUBSEQUENT DEFAULT TO BRING ONE OR MORE FURTHER AMICABLE ACTIONS TO RECOVER POSSESSION OF THE MORTGAGED PROPERTY. MORTGAGEE MAY BRING AN AMICABLE ACTION IN EJECTMENT AND CONFESS JUDGMENT BEFORE OR AFTER THE INSTITUTION OF PROCEEDINGS TO FORECLOSE THIS MORTGAGE OR TO ENFORCE THE NOTE, OR AFTER ENTRY OF JUDGMENT THEREIN OR ON THE NOTE, OR AFTER A SHERIFF'S SALE OF THE MORTGAGED PROPERTY IN WHICH MORTGAGEE IS THE SUCCESSFUL BIDDER. THE AUTHORIZATION TO PURSUE PROCEEDINGS FOR OBTAINING POSSESSION AND FOR CONFESSION OF JUDGMENT IS AN ESSENTIAL PART OF THE REMEDIES FOR ENFORCEMENT OF THE MORTGAGE AND THE NOTE, AND SHALL SURVIVE ANY EXECUTION SALE TO MORTGAGEE.

- (d) Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Note and this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action to foreclose this Mortgage or any other action, for any default by Mortgagor existing at the time the earlier action was commenced.
- (e) Any real estate sold to satisfy the mortgage debt may be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect.
- (f) Neither the Mortgagor nor any other person obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved of the obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person to take action to foreclose on this Mortgage or otherwise enforce any provisions of the Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Mortgage or Note without first having obtained the consent of Mortgagor or other person. In the latter event the Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any extension or modification agreement, unless expressly released and discharged in writing by Mortgagee. No release of all or any part of the security shall in any way impair or affect the lien of this Mortgage or its priority over any subordinate lien.

Attorneys' Fees

2.03 If Mortgagee becomes a party to any suit or proceeding affecting the Mortgaged Property, the lien created by this Mortgage, or Mortgagee's interest in the Mortgaged Property (including any proceeding in the nature of eminent domain), or if Mortgagee engages counsel to collect any of the indebtedness or to enforce performance of the agreements, conditions, covenants, provisions, or stipulations of this Mortgage or the Note, Mortgagee's costs, expenses, and reasonable attorneys' fees, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at the rate provided in the Note. Until paid they shall be deemed to be part of the indebtedness evidenced by the Note and secured by this Mortgage.

ARTICLE III – ADDITIONAL PROVISIONS

Notices

3.01 Except as otherwise provided in this Mortgage, all notices permitted or required under this Mortgage or the Note shall be in writing, and shall be sent by registered or certified mail, postage prepaid, addressed to the addressee at the address set forth in this Mortgage or in the Note, or at such other address as the addressee may designate in writing from time to time.

Amendment

3.02 This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

Parties Bound

3.03 This Mortgage shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. For purposes of this Mortgage, the neuter shall include the masculine and the feminine and the singular shall include the plural and the plural the singular, as the context may require.

Interest Rate

3.04 Fixed interest at the rate of four (4%) percent per year shall be payable. Notwithstanding any provision contained in this Mortgage or in the Note, Mortgagor's liability for interest shall not exceed the limits now imposed by the applicable usury law. If any clause in the Note or this Mortgage requires interest payments in excess of the highest rate permitted by the applicable usury law, the clause in question shall be deemed to require payment at the highest interest rate allowed by the applicable usury law.

Captions

3.05 The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction, or effect.

Due-on-Sale

3.06 Without the prior written consent of Mortgagee, Mortgagor, as more fully set forth in the Note, will abstain from and will not cause or permit any sale, exchange, transfer, or conveyance (herein all called "transfer") of all or any part of the Mortgaged Property, or any interest in it, voluntarily or by operation of law.

Severability

3.07 Any provision of this Mortgage which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability but shall not invalidate or render unenforceable any other provision in this document and the remaining provisions shall stay in full force and effect.

IN WITNESS WHEREOF, this Mortgage has been duly executed as of the day and year first written above.

MORTGAGOR:

Witness:

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH/STATE OF _____ :
 : ss
COUNTY OF _____ :

On the ____ day of June, 2017, before me, the subscriber, a Notary Public in and for the Commonwealth and County aforesaid, personally appeared _____ who acknowledged himself to be _____ of _____, and as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said entity by himself as such officer.

WITNESS my hand and seal the day and year aforesaid.

My Commission Expires:

_____(SEAL)
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

PARCEL NO. 1:

ALL the surface or right of soil only of all that piece, parcel or tract of land situate, lying and being in the First Ward of the Borough of Archbald, County of Lackawanna and State of Pennsylvania, bounded and described as follows:

BEGINNING at the most Northerly corner of a parcel of land conveyed by Elk Hill Coal & Iron Co. to Carbondale Theatre Company by Deed dated August 19, 1949, and recorded in Lackawanna County Deed Book No. 488 at page 420, said corner being also in the Southeasterly right-of-way line of State Highway Route No. 6;

THENCE along said right-of-way line North 25 degrees 30 minutes East one thousand twenty one and six-tenths (1021.6) feet to a point in the Southwesterly line of the Mary Powell Tract;

THENCE along said Mary Powell Tract South 40 degrees 33 minutes East 1526.1 feet to the Northerly corner of land conveyed by Eli Kirk Price, et al, to Mrs. Margaret J. Callender by Deed dated July 1, 1909 and recorded in Lackawanna County Deed Book No. 237 at page 547;

THENCE along said Callender land South 49 degrees 27 minutes West 572.9 feet to a corner;

THENCE continuing along said Callender land South 40 degrees 33 minutes East 492.1 feet to the Northerly corner of a parcel of land conveyed by Eli Kirk Price, Jr., et. al. to Steve Washnak, et ux, by Deed dated October 4, 1909 and recorded in Lackawanna County Deed Book No. 250 at page 291;

THENCE along Steve Washnak parcel and crossing Jones Street South 49 degrees 27 minutes West 250.2 feet to a point in the Southwesterly line of said Jones Street;

THENCE along said Southwesterly line South 40 degrees 33 minutes East 15 feet to the North corner of a parcel of land containing 1.83 acres of land as laid out on the maps of the Penn Anthracite Collieries Company;

THENCE along said 1.83 acre parcel South 49 degrees 27 minutes West 216.2 feet to the Easterly corner of a parcel of land conveyed by Elk Hill Coal & Iron Company, et al, to Rt. Rev. T. C. O'Reilly, Bishop of Scranton, by Deed dated April 17, 1930 and recorded in Lackawanna County Deed Book No. 378 at page 386;

THENCE along said Bishop's land North 40 degrees 33 minutes West 177.7 feet to a point in the line of the aforesaid parcel of land conveyed by Elk Hill Coal & Iron Company to Carbondale Theatre Company;

THENCE along said Theatre Company land North 47 degrees 52 minutes East 99.4 feet to a corner thereof;

THENCE along said Theatre Company land North 40 degrees 18 minutes West, 1,438.2 feet more or less to the place of beginning.

PARCEL NO. 2:

ALL THAT CERTAIN parcel, piece or plot of land situate, lying and being in the Borough of Archbald, County of Lackawanna and State of Pennsylvania, more fully described and bounded as follows, to wit:

BEGINNING at a point on the division line of lands formerly of Penn Anthracite Collieries Co., Inc. (now of Sugarman) and lands formerly of Allied Ventures, Inc. (now H. Sugarman) and other lands of Allied Ventures, Inc., said point being South 40 degrees 30 minutes East a distance of 531.0 feet from the intersection of said line with the Easterly right-of-way line of Penna. State Highway Rt. #6 leading from Scranton to Carbondale;

THENCE along division line of lands of H. Sugarman and Allied Ventures, Inc. North 30 degrees 44 minutes East 95.0 feet; North 43 degrees 26 minutes East 168.3 feet; and North 66 degrees 39 minutes East 226.0 feet to a point common to lands of Metropolitan Life Insurance Co. and lands conveyed by Allied Ventures, Inc.;

THENCE along line of lands conveyed by Allied Ventures, Inc., to Maursan & Company South 19 degrees 8 minutes East 12.2 feet;

THENCE South 65 degrees 37 minutes East 264.0 feet to a point common to lands of Booth Products, Inc.;

THENCE South 49 degrees 30 minutes West 578.0 feet more or less, to the original line of lands of the Penn Anthracite Collieries Co., Inc. (now of H. Sugarman) and lands of the Northwest Coal Co. (now Allied Ventures, Inc.);

THENCE along said line North 40 degrees 30 minutes West 267.27 feet to the place or point of beginning.

PARCEL NO. 3:

ALL THAT CERTAIN parcel, piece or plot of land situate, lying and being in the Borough of Archbald, County of Lackawanna and State of Pennsylvania, more fully described as follows, to wit:

BEGINNING at an iron pin corner on the Southerly right-of-way line of Pennsylvania State Highway (U.S. Route #6) leading from Scranton to Carbondale, said point being the common corner of Allied Ventures, Inc. with lands of HEM Realty Corp. (formerly Penn Anthracite Collieries Co., Inc.);

THENCE along said right-of-way North 25 degrees 35 minutes East 200.0 feet to a point;

THENCE across other lands of Allied Ventures South 64 degrees 25 minutes East 695.0 feet to a

point near the bottom of the former N.Y. O & W R.R. Bank;
THENCE along the said railroad embankment South 66 degrees 39 minutes West 226.0 feet;
South 43 degrees 26 minutes West 168.3 feet; South 30 degrees 44 minutes West 95.0 feet to a
point common to lands of HEM Realty Corp.;

THENCE along HEM Realty Corp. lands North 40 degrees 30 minutes West 531.1 feet to the
place or point of beginning.

PARCEL NO. 4:

ALL THAT CERTAIN lot, piece or parcel of land situate in the Borough of Archbald, County of
Lackawanna, Commonwealth of Pennsylvania, as follows:

BEGINNING at a corner in the division line between lands formerly of Penn Anthracite
Collieries Company, Inc. (now HEM Realty Corp.) and lands formerly of Allied Ventures, Inc.
(now HEM Realty Corp.) said corner being located South 40 degrees 30 minutes East about 781
feet from the intersection of said division line with the Easterly right-of-way line of U.S. Traffic
Route #6;

THENCE along the division line between lands formerly of Allied Ventures, Inc. and lands of
Raymond Colliery North 49 degrees 30 minutes East 550 feet more or less to a corner;

THENCE through lands of Raymond Colliery Co. South 25 degrees 3 minutes West 604.2 feet to
a corner in the division line between lands formerly of Penn Anthracite Collieries Co. Inc. (now
HEM Realty Corp.) and lands of Raymond Colliery Co.;

THENCE along said last mentioned division line North 40 degrees 30 minutes West 250 feet to
the place of beginning.

PARCEL NO. 5:

ALL THAT CERTAIN piece or parcel of land situate in the First Ward, Borough of Archbald,
County of Lackawanna and State of Pennsylvania, bounded and described as follows:

BEGINNING at a point located on the Southeasterly right-of-way line of U.S. Highway Route
No. 6, said point being common to lands of HEM Realty Corporation and lands of Meco Realty
Company;

THENCE along the division line between lands of said HEM Realty Corporation and lands of
said Meco Realty Company South 40 degrees 18 minutes East five hundred fifty nine and eighty-
nine hundredths (559.89) feet to a point on the Northwesterly side, measured ten (10) feet at right
angles from the center line of a railroad track;

THENCE along the line of said railroad parallel to and ten (10) feet at right angles from the
center line of track, the following six courses and distances: (1) South twenty-five degrees
twenty-three minutes West 113.75 feet; and (2) on a curve to the left having a chord bearing of
South 18 degrees 44 minutes West and a distance of 304.87 feet; and (3) on a curve to the right
having a chord bearing of South 10 degrees 27 minutes West a distance of 148.88 feet; and (4)

thence still on a curve to the right having a chord bearing of South 24 degrees 48 minutes West a distance of 147.76 feet; and (5) South 30 degrees 23 minutes West a distance of 341.74 feet; and (6) on a curve to the right having a chord bearing of South 34 degrees 8 minutes West, a distance of 227.20 feet to an iron pin corner on the Northeasterly side of Beatty Street;

THENCE along the said side of Beatty Street North 40 degrees 18 minutes West 576.32 feet to a corner of a parcel reserved for a sign;

THENCE along said reservation the following two courses and distances: (1) North 49 degrees 42 minutes East, 53.64 feet; and (2) North 40 degrees 18 minutes West 51.11 feet to a corner on the Southeasterly side of State Highway Route No. 6;

THENCE on a 1 degree 30 minute curve to the left having a radius of 3869.83 feet along the Southeasterly right-of-way line of said Route No. 6, a distance of 437.07 feet having a chord bearing of North 29 degrees 35 minutes East and a chord distance of 494.2 feet as measured from the intersection of Beatty Street right-of-way line and the Southeasterly line of Route No. 6;

THENCE along the Southeasterly line of Route No. 6 parallel to the center line and 50 feet therefrom North 25 degrees 6 minutes East 760.70 feet to the place of beginning.

ALSO KNOWN AS

BEGINNING at point said point being an existing iron pin on the Easterly right-of-way line of State Route 6 Scranton Carbondale Highway, said point being the Southwest corner of lands now or formerly of PJK and JSF Realty as found in Deed Book 1533 page 725, and point being 50 feet at a right angle from Penndot Station 363+88.60;

THENCE along the lands now or formerly of PJK and JSF Realty and lands now or formerly of Mastriani Realty South 65 degrees 58 minutes 53 seconds East a distance of 695.00 feet to a point on the corner of lands now or formerly of New Eynon Associates, L.P. as found in Deed Book 1452, page 370;

THENCE along the lands now or formerly of New Eynon Associates, L.P. South 20 degrees 41 minutes 53 seconds East a distance of 12.20 feet to a point;

THENCE continuing along the lands now or formerly of New Eynon Associates, L.P. as found in Deed Book 1452 page 370 South 67 degrees 10 minutes 53 seconds East a distance of 234.77 feet to a corner of lands now or formerly of Carrier (incorrectly identified on prior deed of record as "Carried") Coal as found in Deed Book 1425 page 01;

THENCE along lands now or formerly of Carrier (incorrectly identified on prior deed of record as "Carried") Coal South 24 degrees 14 minutes 03 seconds West a distance of 567.62 feet to a point;

THENCE continuing along lands now or formerly of Carrier (incorrectly identified on prior deed of record as "Carried") Coal South 40 degrees 32 minutes 00 seconds East a distance of 552.23 feet to a corner of lands now or formerly of Margaret J. Callender as found in Deed Book 237,

page 547;

THENCE along lands now or formerly of Margaret J. Callender South 49 degrees 28 minutes 00 seconds West a distance of 569.95 feet to a point;

THENCE continuing along lands now or formerly of Margaret J. Callender South 40 degrees 32 minutes 00 seconds East a distance of 492.10 feet to a corner of lands now or formerly of John Cavanaugh as found in Deed Book 1480, page 508;

THENCE along lands now or formerly of John Cavanaugh and lands now or formerly of Frank Benitez as found in Deed Book 1480, page 222 and lands now or formerly of Italian Congregation of Saint Francis of Assisi as found in Deed Book 1484, page 703 South 49 degrees 28 minutes 00 seconds West a distance of 250.20 feet to a point;

THENCE along lands now or formerly of Italian Congregation of Saint Francis of Assisi South 40 degrees 32 minutes 00 seconds East a distance of 15 feet to a point;

THENCE continuing along lands now or formerly of Italian Congregation of Saint Francis of Assisi South 49 degrees 28 minutes 00 seconds West a distance of 196.20 feet to a point in line of other lands now or formerly of Italian Congregation of Saint Francis of Assisi Cemetery;

THENCE along lands now or formerly of Italian Congregation of Saint Francis of Assisi Cemetery North 40 degrees 52 minutes 43 seconds West a distance of 175.66 feet to a point in line of lands now or formerly John and Gertrude Drutherosky as found in Deed Book 801, page 451;

THENCE along lands now or formerly John and Gertrude Drutherosky North 45 degrees 29 minutes 49 seconds East a distance of 80.93 feet to an existing iron pin;

THENCE along lands now or formerly of John and Gertrude Drutherosky and across the now or formerly O.S. and C. C.C. Railroad North 42 degrees 16 minutes 10 seconds West a distance of 877.74 feet to a point;

THENCE along lands now or formerly O.S. and C. C.C. Railroad South 23 degrees 24 minutes 50 seconds West a distance of 113.75 feet to a point;

THENCE continuing along the Northerly right-of-way line along chord bearings and distances along lands now or formerly O.S. and C. C.C. Railroad South 16 degrees 45 minutes 50 seconds West a distance of 304.81 feet to a point;

THENCE along lands now or formerly O.S. and C. C.C. Railroad South 08 degrees 28 minutes 50 seconds West a distance of 148.87 feet to a point;

THENCE along lands now or formerly O.S. and C. C.C. Railroad South 22 degrees 49 minutes 50 seconds West a distance of 147.76 feet to a point;

THENCE along lands now or formerly O.S. and C. C.C. Railroad South 28 degrees 24 minutes 50 seconds West a distance of 2.79 feet to a point;

THENCE along lands now or formerly O.S. and C. C.C. Railroad South 28 degrees 24 minutes 49 seconds West a distance of 339.61 feet to a point;

THENCE along lands now or formerly O.S. and C. C.C. Railroad South 32 degrees 09 minutes 49 seconds West a distance of 226.55 feet to a point on the Easterly right-of-way line of Beatty Street or A.K.A. Betty Street;

THENCE along the Easterly right-of-way line of Beatty Street or A.K.A. Betty Street North 42 degrees 16 minutes 11 seconds West a distance 577.18 feet to a point;

THENCE along the Easterly right-of-way line of Beatty Street or A.K.A. Betty Street North 47 degrees 43 minutes 49 seconds East a distance 53.64 feet to a point;

THENCE along the Easterly right-of-way line of Beatty Street or A.K.A. Betty Street North 42 degrees 16 minutes 11 seconds West a distance 50,34 feet to a point on the aforementioned right-of-way of said Route 6;

THENCE along the right-of-way of State route 6 along a curve to the left having a radius of 3372.04 feet, with an arc length of 434.63 feet, a chord bearing of North 27 degrees 11 minutes 01 seconds East, with a chord length of 434.33 feet;

THENCE continuing along the right-of-way of State Route 6 North 23 degrees 29 minutes 28 seconds East a distance of 105.95 feet to a point;

THENCE along aforementioned Easterly right-of-way line of State Route 6 Scranton Carbondale Highway North 23 degrees 29 minutes 28 seconds East a distance of 1873.42 feet to a point ; to the point of beginning.

CONTAINING 2,528,878.94 square feet, 58.05 acres of land more or less.

ALSO being shown on a plan entitled "ALTA/ACSM land Title Survey, Penn Read, L.L.C. c/o Gabriel Jeidel, Archbald Borough, Lackawanna County, Commonwealth of Pennsylvania" prepared by G and Albert Consultants, P.C, of Pittston, PA, dated February 3, 1999, being drawing number 99025v100. Updated as of 1/24/00 (inadvertently stated 1/26/00 in prior deed of record).

BEING THE SAME premises which Sugarman Equities, L.L.C., a New Jersey Limited Liability Company, by Deed dated June 5, 2007 and recorded June 22, 2007 in the County of Lackawanna in Instrument No. 200716706 , conveyed unto Sugarman's Plaza Limited Partnership, a Pennsylvania limited partnership, in fee.

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305 Broadway
14th 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
	:	
Sugarmans Plaza Limited Partnership	:	Case No. 16-42496-ess
	:	
Debtor.:	:	
<hr/>		:X

**SUPPLEMENT TO DEBTOR’S MOTION FOR AN ORDER (A) APPROVING A
MODIFICATION OF THE MEANS OF PAYMENT FOR THE PRIVATE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR’S PROPERTY, (B) SHORTENING TIME
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 Order, entered June 14, 2017 (ECF Doc. No. 149, the “Sale Approval Order”), the Court authorized the Debtor to, among other things,

sell all of its right, title and interest in and to the Property to Steve Deutsch, or an entity to be formed by him (the “Purchaser”), for a purchase price of \$8,000,000.00 pursuant to section 363 of the Bankruptcy Code and in accordance with the Sale Agreement.

2. The Sale Approval Order contained the following decretal paragraph:

The stay required by Bankruptcy Rule 6004(h) is waived and the parties may close the sale at their earliest convenience.

Sale Approval Order at ¶ 12.

3. The Debtor and the Purchaser originally desired to close the Sale on June 26, 2017, and the Debtor's special real estate counsel is in the process of preparing the closing documents. However, it recently became apparent that (a) the Purchaser is unable to fully fund the purchase price and (b) the closing date will have to be adjourned.

4. As an accommodation to the Purchaser, and to enable the transaction to close, the Debtor proposed to accept a note (the "Note") issued by the Purchaser in the amount of \$1,500,000, payable six (6) months from the closing date, at a rate of four percent (4%) interest per annum. The Note will be secured by a second mortgage (the "Mortgage") on the assets being sold. See ECF Doc. Nos. 152, 152-1 and 152-2.

5. As a result of the change in the means of providing the Debtor with the purchase price, the Debtor is required to seek authority of the Court, which it did by expedited motion, dated June 21, 2017 (the "Motion"). The Motion was served on June 21, 2017.

6. As part of the closing process, the Purchaser has requested a title report so that it can obtain title insurance. Riverside Abstract, the title insurer ("Riverside") has asserted that due to Bankruptcy Rule 6004(h), a fourteen (14) day stay will prevent a prompt closing. See Exhibit 1.

7. Counsel for the Debtor became aware of Riverside's request after the Motion was served, and there was insufficient time to revise the Motion to include a request for the waiver requested by Riverside and yet serve the Motion timely.

8. Therefore, by this supplement (the "Supplement"), to accommodate Riverside's request, the Debtor now respectfully requests that, in addition to the relief

requested in the Motion, that the Court also (a) waive the fourteen (14) day stay or (b) issue an order that the stay has already been waived and that no stay applies to the sale.

REQUEST FOR RELIEF FROM TEN DAY STAY

9. 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.

10. The Debtor believes, and respectfully asserts, that this Court, through the Sale Approval Order, has already waived the stay and that no further order is required. Riverside disagrees and has requested that the stay be waived.

11. To accommodate Riverside's request, the Debtor requires additional relief from the stay pursuant to Bankruptcy Rule 6004(h).

NOTICE

12. Due to the shortened notice of the Motion, the Debtor will provide notice of this Supplement by electronic mail of a copy of this Supplement, all exhibits annexed thereto and all other papers upon which it is based upon (a) SEL, by its counsel, (b) the U.S. Trustee, and (c) all entities that have filed a notice of appearance. The Debtor respectfully submits that such notice is appropriate under the circumstances of this case and the time constraints imposed.

NO PRIOR REQUEST

13. No prior request for the relief requested herein has been made to this or any other Court except that, as set forth above, the Court has issued the Sale Approval Order, which waives the fourteen (14) day stay required by Bankruptcy Rule 6004(h).

WHEREFORE, the Debtor respectfully requests that the Bankruptcy Court enter an order as requested herein and grant and such other and further relief as may be just and proper.

Dated: New York, New York
June 22, 2017

Law Office of Ira R. Abel
Counsel for the Debtor

/s/

Ira R. Abel, Esq.

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14th Floor

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Index of Exhibits

Exhibit 1: Email, dated June 21, 2017.