

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

TREASURE ENTERPRISE LLC,  
PATRICIA ENRIGHT GRAY and LARRY  
ALLEN HOLLEY

No. 17-cv-10963  
Hon. Marianne O. Battani

Defendants,

and

KINGDOM ASSET MANAGEMENT LLC  
and CARLEEN RENEE HOLLEY,

Relief Defendants.

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**MOTION OF RECEIVER FOR AUTHORITY TO SELL REAL ESTATE  
LOCATED AT 2710 COURT STREET, FLINT, MICHIGAN**

Patrick O’Keefe and O’Keefe & Associates Consulting, LLC (the “Receiver”), through their undersigned counsel, Jaffe, Raitt, Heuer & Weiss, P.C. state as follows in support of the *Motion of Receiver for Authority to Sell Real Estate Located at 2710 Court Street, Flint, Michigan* (the “Motion”):

**Jurisdiction and Venue**

1. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act of 1933 [15 U.S.C. § 77a *et seq.*] (the “Securities Act”) and

Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. § 78a *et seq.*] (the “Exchange Act”).

2. Venue is proper in this Court pursuant to Section 27 of the Exchange Act.

### **Background**

3. On March 28, 2017, the United States Securities and Exchange Commission (the “SEC”) filed a *Complaint* [Docket No. 1] against Treasure Enterprises, LLC, Patricia E. Gray and Larry A. Holley (“Defendants”) and Kingdom Asset Management, LLC and Carleen Renee Holley (“Relief Defendants and together with Defendants, the “Receivership Defendants”) alleging, among other things, that the Receivership Defendants engaged in securities violations related to investments offered by them.

4. That same day, the SEC filed an *Ex Parte Emergency Motion for a Temporary Restraining Order, Appointment of a Receiver, and Other Emergency Ancillary Relief* [Docket. No. 3] seeking, among other things, the appointment of a receiver over the estates of the Receivership Defendants, the issuance of a temporary restraining order and preliminary injunction freezing the assets of the Receivership Defendants and an accounting of the assets of the Receivership Defendants.

5. On March 28, 2017 (the “Receivership Date”), the Court entered the *Sealed Order Appointing Receiver* [Docket No. 10] (the “Receivership Order”) which, among other things, appointed the Receiver to serve as receiver for the estates of the Receivership Defendants.

6. Pursuant to Paragraph 38 of the Receivership Order, the Receiver was authorized “without further Order of this Court, to transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business.”

7. Pursuant to Paragraph 39 of the Receivership Order, the Receiver was authorized

to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable action to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

8. Pursuant to Paragraph 40 of the Receivership Order “[u]pon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.”

9. Pursuant to 28 U.S.C. §2001(a), the Receiver is authorized to sell property of the Receivership Estates pursuant to one or more public sales:

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

10. Pursuant to 28 U.S.C. §2002, with respect to any public sale of real property, the Receiver is required to publish the terms of the proposed sale for at least four weeks:

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

### **Approval of the Sale**

11. In furtherance of the Receiver's above-noted duties and authority, the Receiver has undertaken to market for sale the various properties held by the Receivership Estates.

12. To assist the Receiver in the marketing of the various properties, the Receiver engaged Signature Associates as its real estate broker (the "Broker").

13. As a result of the above-noted efforts of the Receiver, and through the actions of the Broker, the Receiver has entered into a Real Estate Purchase Agreement (the “Purchase Agreement”), subject to this Court’s approval, with Sreekant Kembhavi, on behalf of a yet to be formed entity (the “Purchaser”) for the purchase of the property located at 2710 Court Street, Flint, Michigan (the “Property”) for a total purchase price of \$150,000.00, subject to usual and customary pro-rations and all ordinary and necessary closing costs (the “Purchase Price”). A copy of the Purchase Agreement is attached hereto as **Exhibit A**.

14. A Statement of the Receiver, detailing the specific steps undertaken by the Receiver in negotiating and securing the Purchase Agreement is attached hereto as **Exhibit B**.

15. The material terms of the Purchase Agreement are as follows:

a. Legal description:

PARCEL 1 – Lots 8, 9, 10, 11, 12, 24, 25, 26 of Glendale as recorded in plat Liber 15, Pages 16-18, and Lot 7 except beginning in the southeasterly corner of said lot; thence westerly along the southerly line of said lot, 12.0 feet; thence northeasterly to a point on the easterly line of said lot which is northerly 12.0 feet from said southeasterly corner; thence southerly along said easterly line, 12.0 feet to the point of beginning.

PARCEL 2 – Part of Lots 14 through 17 of Glendale, as recorded in plat Liber 16, Pages 16-18, described as follows: beginning at a point which is north 290°18’ east along the southeasterly line of Mansfield Avenue 9.0 feet north 89°53’ east 88.0 feet from the southwest corner of

Lot 14' thence north  $30^{\circ}11'$  95.15 feet; thence north  $49^{\circ}24'30''$  east 12.78 feet; thence north  $65^{\circ}02'30''$  east 10.95 feet; thence north  $82^{\circ}40'$  east 5.41 to the northeasterly line of Lot 17; thence south  $41^{\circ}34'30''$  east along said northeasterly line 37.65 feet to the centerline of the vacated alley; thence south  $47^{\circ}44'$  west along said centerline 64.83 feet; thence north  $41^{\circ}02'$  west 8.3 feet to the most southerly corner of Lot 16; thence south  $28^{\circ}30'$  west along the southeasterly line of Lot 15 a distance of 34.37 feet; thence south  $89^{\circ}53'$  west 27.51 feet to the point of beginning.

PARCEL 3 – Part of Lots 18 and 19 of Glendale, as recorded in plat Liber 15, pages 16-18, described as follows: beginning at appoint on the southwesterly line of Lot 18 which is south  $41^{\circ}34'$  east 82.0 feet from the most westerly corner of Lot 18; thence south  $41^{\circ}34''$  east along said southwesterly line 37.65 feet to the centerline of vacated alley, thence north  $47^{\circ}44'$  east along said centerline 38.91 feet; thence north  $31^{\circ}35'$  west 4.79 feet; thence south  $89^{\circ}22'$  west 41.47 feet; thence south  $82^{\circ}40'$  west 10.01 feet to the point of beginning.

Parcel Code: 40-14-332-027

- b. Liens of record: None.
- c. Brokerage commission due: 6% of the sale price  
(the "Commission").
- d. Due diligence period: 30 days from April 19, 2019
- e. Earnest money deposit amount: \$5,000.00
- f. Other material conditions: None
- g. Nature of the sale: "As is"
- h. Closing: Upon Court approval

16. Consistent with the requirements of 28 U.S.C. § 2002, notice of the proposed sale of the Property will be published on Publication began on May 10, 2019 and will continue on May 17, 2019, May 24, 2019, May 31, 2019 and June 7, 2019 (the “Notice of Publication”), as more specifically addressed in the Statement of the Receiver.

**Sale Free and Clear of Liens**

17. To the Receiver’s knowledge, the Property is owned free and clear of liens and encumbrances, other than taxes owing to the relevant municipality (the “Liens”). At the time of Closing, the Receiver intends to pay in full all outstanding Liens against the Property, including any taxes owing (subject to the Receiver’s ability to negotiate any reduction which may be available).

18. To the extent the Purchase Price to be received from the sale of the Property is less than the Liens on the Property, the Receiver is seeking authority from this Court to sell the Property free and clear of such Liens, and transfer the Liens to the proceeds of sale, with the Liens attaching to the Proceeds in the same amount and priority as such Liens attached to the Property. The disposition of the proceeds would then be subject to further order of this Court, upon the motion of the Receiver or any holder of one of the Liens.

19. In *Stock Building Supply LLC v. Crosswinds Communities Inc.*, 317 Mich. App. 189 (2016) the Michigan Court of Appeals held that a court may

authorize a receiver to sell receivership assets free and clear of liens and mortgages, and to discharge the same, without the express consent of the lienholder, so long as the liens attached to the proceeds of sale, in the same order and priority as the liens held against the receivership assets.

20. Therefore, to the extent any holder of a lien against the Property opposes the Receiver's sale of the same, this Court has the authority to order the sale of the Property free and clean of Liens, provided the Liens attached to the proceeds of the sale.

#### **Higher and Better Offers**

21. Pursuant to the Notice of Publication, those persons interested in placing a higher and better offer for the Property were advised to contact the real estate broker for the Property, Grant Bruce of Signature Associates, One Towne Square, Suite 1200, Southfield, Michigan 48076, Phone: 248-948-9000.

22. Also, pursuant to the Notice of Publication, the public was advised that "any higher or better offer must be received not later June 14, 2019 but the Receiver and/or the Court shall have the right to extend the June 14, 2019 deadline, in their discretion, without further publication of the extension. Any offer shall conform in all material respects to the terms set forth in the Real Estate Purchase Agreement executed by the Receiver and purchaser, a copy of which is available from Grant Bruce."



23. Anyone wishing to bid on the Property has been and will be advised of the above directives.

**Relief Requested**

24. Based on the foregoing, the Receiver requests that this Court: (a) authorize the Receiver to enter into the Purchase Agreement; (b) authorize, at the time of the Closing, payment of the Commission, usual and customary pro-rations and all ordinary and necessary closing costs; (c) permit the sale of the Property free and clear of all Liens, with all Liens to attach to the proceeds of the sale; (d) enter an order in the form attached hereto as **Exhibit C** granting this Motion; and (g) grant such other relief as this Court deems appropriate and just.

Respectfully submitted,

**JAFFE RAITT HEUER & WEISS, P.C.**

Dated: May 16, 2019

By: /s/ Jay L. Welford  
Jay L. Welford (P34471)  
Katherine A. Stefanou (P80830)  
27777 Franklin Rd., Ste. 2500  
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*Attorneys for the Receiver*

**UNITED STATES DISTRICT COURT  
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**BRIEF IN SUPPORT OF MOTION OF RECEIVER TO  
FOR AUTHORITY TO SELL REAL ESTATE LOCATED AT  
2710 COURT STREET, FLINT, MICHIGAN**

Patrick O’Keefe and O’Keefe & Associates Consulting LLC (the  
“Receiver”) relies on the facts and law set forth in the *Motion of Receiver to Sell  
Real Estate Located at 2710 Court Street, Flint, Michigan*.

Respectfully submitted,

**JAFFE RAITT HEUER & WEISS, P.C.**

Dated: May 16, 2019

By: /s/ Jay L. Welford  
Jay L. Welford (P34471)  
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*Attorneys for the Receiver*

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**CERTIFICATE OF SERVICE REGARDING AMENDED MOTION OF  
RECEIVER FOR AUTHORITY TO SELL REAL ESTATE LOCATED AT  
2710 COURT STREET, FLINT MICHIGAN**

I hereby certify that, on May 7, 2019, I caused a copy of the *Amended Motion of Receiver for Authority to Sell Real Estate Located at 2710 Court Street, Flint, Michigan* to be served upon all counsel of record in the above-captioned proceeding using the Court's CM/ECF filing system.

Respectfully submitted,

**JAFFE RAITT HEUER & WEISS, P.C.**

Dated: May 16, 2019

By: /s/ Jay L. Welford  
Jay L. Welford (P34471)  
Katherine A. Stefanou (P80830)  
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*Attorneys for the Receiver*

**INDEX OF EXHIBITS  
TO MOTION OF RECEIVER FOR AUTHORITY  
TO SELL REAL ESTATE LOCATED AT 2710  
COURT STREET, FLINT, MICHIGAN**

**EXHIBIT   DOCUMENT**

- |          |                                  |
|----------|----------------------------------|
| <b>A</b> | Purchase Agreement - Executed    |
| <b>B</b> | Statement of Receiver            |
| <b>C</b> | [proposed] Order Granting Motion |

# EXHIBIT A

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is entered into by and between Patrick O'Keefe and O'Keefe & Associates Consulting, LLC, as Receiver for Treasure Enterprise LLC ("Seller"), and Sreekant Kembhavi, on behalf of an entity to be formed ("Purchaser") as of the later of the dates this Agreement is executed by Seller and Purchaser as reflected on the signature page at the end of this Agreement ("Effective Date"). Seller and Purchaser are sometimes hereinafter referred to as "Parties".

### RECITALS:

On March 28, 2017, the United States District Court for the Eastern District of Michigan (the "Court") entered the *Sealed Order Appointing Receiver* ("Receivership Order") which, among other things, appointed Seller to serve as receiver for the estate of Treasure Enterprise LLC. Pursuant to the Receivership Order, the Receiver is authorized to sell, and take all necessary and reasonable actions to sell, the real property owned by Treasure.

Seller wishes to sell, and Purchaser wishes to Purchase certain real estate which is owned by Treasure Enterprise LLC ("Treasure"), commonly known as 2710 Court Street, Flint Michigan, together with the Land, Improvements, Personal Property, Tenant Leases, Property Contracts and Intangibles as defined below, all subject to and in accordance with the terms of this Agreement.

In consideration of the mutual covenants, agreements and promises set forth herein, the Parties hereby agree as follows:

#### 1. Agreement to Sell and Purchase. AGREEMENT TO PURCHASE AND SELL.

Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Property, as that term is hereinafter defined, in accordance with the terms and conditions that follow. The term "Property" shall mean and shall be comprised of the following elements:

(a) Land located in the City of Flint, County of Genesee, State of Michigan commonly known as 2710 Court Street as more particularly described on Exhibit A attached hereto (the "Land");

(b) All temporary and permanent buildings, structures and improvements which now exist, and which may subsequently come into existence prior to the Closing Date, as that term is hereinafter defined, on above or below the surface of the Land, including for purposes of illustration and not limitation, all vehicular parking areas and driveways, pedestrian walkways, and landscaped areas (the "Improvements").

(c) All of Seller's right, title and interest in and to any land lying in the bed of any street, alley, road or avenue, now open or proposed, in front of or otherwise adjoining the Land to the center line thereof;

(d) All easements, rights-of-way, estates, interests, and rights of use appurtenant to the Land, including by way of illustration and not limitation, privileges and rights-of-way over adjoining parcels of land that inure to the benefit of the Land or the owner thereof;

(e) All fixtures, furnishings, fittings, equipment, machinery, apparatus, inventory, supplies and other articles of tangible personal property located on the Land, or in the Improvements, and used or usable in connection with the occupation, operation or maintenance of the Land and Improvements (the "Personal Property").

(f) All of Seller's right, title and interest in and to all leases, subleases and other occupancy agreements ("Tenant Leases") which provide for the use or occupancy of space or facilities in, on, under, above or about the Property and which are in force as of the Closing Date, subject to Purchaser's right to approve all Tenant leases entered into after the Effective Date, as that term is hereinafter defined.



**2. Purchase Price.** The purchase price to be paid for the Property is the sum of One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) ("**Purchase Price**") payable in immediately available funds, as follows:

(a) Within two (2) business days after Purchaser's receipt of a fully-executed copy of this Agreement, Purchaser shall deliver the sum of Five Thousand and 00/100 (\$5,000.00) Dollars ("**Deposit**") to First American Title Company, 100 Bloomfield Hills Parkway, Suite 195, Bloomfield Hills, MI 48304 ("**Escrow Agent**"), by wire transfer of immediately available funds, to be held in escrow pursuant to the terms of a satisfactory escrow agreement. The Deposit shall be paid to Seller, applied to the Purchase Price, refunded to Purchaser, or otherwise disposed of pursuant to the terms of the escrow agreement between Seller, Purchaser and Escrow Agent.

(b) The balance of the Purchase Price, being One Hundred Forty-Five Thousand and No 100 Dollars (\$145,000.00) shall be paid to Seller with the Deposit by wire transfer of immediately available funds, subject to proration as provided herein, at Closing.

### **3. Title/Survey**

(a) Seller shall, as promptly as possible after the Effective Date and in all events within five days after the Effective Date, at its sole cost and expense, order a Title Commitment for an A.L.T.A Form B Owner's Policy of Title Insurance ("**Title Commitment**") issued by a title company selected by Seller which is reasonably satisfactory to Purchaser and which is either a nationally recognized title insurance company or an agency underwritten by a nationally recognized title company ("**Title Company**"). The Title Commitment shall be issued in the amount of the Purchase Price and shall bear a date later than the Effective Date. Seller shall cause the Title Company to deliver the Title Commitment, along with (to the extent available from the County Register of Deeds) legible copies of all instruments described in Schedule B of the Title Commitment.

(b) Purchaser shall, if it so elects, provided that it does elect to do so, no later than five (5) days after the Effective Date, at its sole cost and expense, order a survey ("**Survey**") of the Property, from a licensed surveyor or engineer ("**Surveyor**"). Seller and Purchaser each acknowledge that the Title Company will require the Survey from the Surveyor to complete the Title Commitment and the Surveyor will require the Title Commitment from the Title Company to complete the Survey. Seller and Purchaser shall each cause the Title Company and Surveyor, respectively, to exchange initial drafts of the Title Commitment and Survey as soon as possible so that each can be completed within thirty (30) days of the Effective Date ("**Title Delivery Date**").

(c) If the Title Commitment or the Survey (provided Purchaser has obtained the Survey on or before the Delivery Date) discloses exceptions which are not acceptable to Purchaser in its sole discretion, Purchaser shall notify Seller in writing of its objections to such objections ("**Title Defects**"). Purchaser shall have ten (10) days from the date of the latest of receipt of the Title Commitment and receipt of the Survey but not later than the Title Delivery Date, to notify Seller in writing of such Title Defects ("**Purchaser's Title Notice**"). Seller agrees to cause to be discharged on or prior to Closing, all title exceptions pertaining to liens shown on the Title Commitment of a definite or ascertainable amount ("**Removable Liens**"). Seller shall have no obligation to remove any other Title Defects. The Property shall be sold subject to, and Purchaser may not object to, the lien for taxes and charges not yet due and payable, all of which shall be Permitted Exceptions, as hereinafter defined.

(d) Seller shall, within five (5) Business Days after receipt of Purchaser's Title Notice, notify Purchaser in writing ("**Seller's Title Response Letter**") of Seller's election (which Seller may make in Seller's sole and absolute discretion) either: (a) to cause such Title Defects to be removed or to cause the Title Company to insure Purchaser against any loss arising from such title objection ("**Seller's Proposed Title Resolution**"); or (b) to elect not to cure all or any of the Title Defects. Seller's failure to notify Purchaser of its election timely shall be deemed to be Seller's election under (b) above to not cause the Title Defects to be cured or insured against. Purchaser shall have the right to disapprove, in Purchaser's sole and absolute discretion, of Seller's Proposed Title Resolution or to refuse to accept Seller's election not to cure each by delivering written notice of such disapproval to Seller within five (5) Business Days after Purchaser receives Seller's Proposed Title Resolution (or, if Seller fails to provide Seller's Proposed Title Resolution in a timely manner, within two (2) business days after the date that Seller's Proposed Title Resolution was to have been delivered as provided above). In the event Purchaser delivers such election, this Agreement shall terminate, and the Deposit shall be returned to Purchaser and neither party shall have any further rights or obligations hereunder except for the rights and obligations that are expressly intended to survive termination of this



Agreement. If Purchaser fails to deliver Purchaser's written disapproval of any of Seller's Proposed Title Resolution, then Purchaser shall be deemed to have approved Seller's Proposed Title Resolution or Seller's refusal to clear title, and all such matters in Purchaser's Title Notice and any other exception to title shall be deemed to be "Permitted Exceptions." With respect to any of Seller's Proposed Title Resolution as Purchaser may approve as provided above, Seller shall, prior to or at the Closing, effect Seller's Proposed Title Resolution. Without regard to any representation or warranty contained in this Agreement, Seller shall have no obligation with respect to any matter of title except as set forth in this Section 2.

(c) At the Closing, Seller shall provide Purchaser with a policy of title insurance issued pursuant to the Title Commitment, insuring the interest in the Property being acquired by Purchaser hereunder ("Title Policy") subject to the Permitted Exceptions. Seller shall execute and deliver such affidavits which the Title Company may reasonably request to eliminate the so-called "standard exceptions" from the Title Policy provided that Seller shall not be obligated to provide any affidavit which includes representations or warranties which are beyond Seller's knowledge, without any obligation of investigation, and further provided that such representations and warranties shall not include knowledge of matters arising prior to the date Seller was appointed as the authorized representative of Treasure. Furthermore, Seller shall not be responsible to eliminate any standard exceptions which cannot be eliminated without a survey. The Seller shall pay the cost of the Title Commitment and the premium for the policy to be issued pursuant to the terms of the Title Commitment ("Policy"). Purchaser shall pay costs of any endorsements and mortgage policy it might elect to obtain and the Survey.

#### 4. Inspection Period.

(a) Purchaser shall have thirty (30) calendar days, following the Effective Date (the "Inspection Period") to inspect all aspects of the Property and to satisfy itself as to all matters such as governmental ordinances, requirements, codes, approvals, licenses or restrictions applicable to the Property as well as all other matters affecting the condition of the Property including but not limited to the financial, environmental and physical condition of the Property ("Inspection"). Purchaser's rights to inspect the Property during the Inspection Period shall not extend or enlarge the time for reviewing and responding to title and survey matter which shall be governed by Section 2 herein.

(b) Purchaser, its agents and representatives shall be entitled, at Purchaser's sole cost and expense, upon prior notice to Seller, to enter upon the Property, to perform inspections and tests of the Property, and to make investigations about zoning, environmental and other legal requirements. Seller shall have the right to accompany Purchaser during visits to the Property. Purchaser's inspections and investigations may include such testing as is reasonably required to determine the physical, mechanical, electrical and environmental condition of the Property. Purchaser may not perform any invasive testing without Seller's consent. Before Purchaser interviews any tenant, or any employee, agent or contractor of any tenant, or Seller, it will give Seller reasonable prior notice and Seller may, at its election, attend such interview. Purchaser may not disclose any fact, condition or event discovered during the Inspection Period to any third party unless required to do so by law and then only after providing ten (10) days prior written notice to Seller. Purchaser shall keep the Property free and clear of any liens or claims resulting therefrom, and defend, indemnify and hold harmless Seller against and from any liability or expense actually incurred by Seller for loss or damage to property and/or injuries to or death of persons proximately caused by the actions of Purchaser. Purchaser shall restore any portion of the Property damaged by Purchaser to its condition immediately before such damage. Purchaser's right of entry is subject to the rights of any tenants under any lease. Purchaser shall not disturb the quiet enjoyment of any tenants.

(c) Notwithstanding anything contained herein to the contrary: (i) prior to entering upon the Property and at all times prior to the expiration of this Agreement, Purchaser or its applicable consultants shall maintain public liability insurance in an amount not less than two One Million Dollars (\$1,000,000) with Seller named as an additional insured, and (ii) Purchaser agrees to indemnify, defend and hold Seller harmless from all liability, claims, damages, and/or expenses (including, without limitation, reasonable attorneys' fees) incurred by Seller as a result of Purchaser's exercise of the inspection rights granted under this Section. Purchaser's obligations under this Section 3 shall survive the expiration or termination of this Agreement or the closing or sale of the Property to Purchaser. Purchaser shall provide to Seller copies of all written reports generated by third parties in connection with Purchaser's due diligence activities ("Reports").

(d) Access to the Property is granted to Purchaser at the sole risk of Purchaser and its authorized representatives. Purchaser WAIVES, RELEASES, AND DISCHARGES Seller,



each of their officers, directors, managers, shareholders, members, employees, agents or contractors (collectively "Released Parties") from any and all claims, suits or liabilities, including but not limited to, liability arising from the negligence or fault of Seller, for death, disability, personal injury, property damage, property theft, or actions of any kind which may hereafter occur that are in any way related to, or arising from, access to the Property.

**5. Property Information** Seller may, but without obligation to do so, provide Purchaser with (or make available for inspection and copying by Purchaser at Seller's office) any materials pertaining to Property in its possession and which can be located and produced at reasonable cost and expense (collectively, "Property Information"). This provision does not impose an obligation to take any steps to locate any Property Information and does not constitute a representation or warranty that any Property Information exists. Any Property Information and other materials relating to any inspections, investigation, interviews of employees or agents of Seller regarding the Property or other due diligence performed at the Property shall be confidential information and shall not be disclosed to any third party except Purchaser's attorneys, accountants, lenders, architects and engineers. Purchaser shall prevent its employees, agents, consultants and contractors from divulging such information to any unrelated third parties except as reasonably necessary to third parties engaged by Purchaser for the limited purpose of analyzing and investigating such information for the purpose of consummating the transaction contemplated by this Agreement. Any Property Information which may be provided is provided without representation or warranty by Seller and any reliance upon the Property Information shall be at Purchaser's sole risk. In the event Purchaser does not close on the purchase and sale for any reason, it shall return the Property Information to Seller. The obligations of Purchaser under this Section shall survive termination of this Agreement.

**6. Notice of Dissatisfaction** In the event that, after conducting the inspections and reviews of the Property, Purchaser, in Purchaser's sole discretion, is dissatisfied with the results, Purchaser shall so notify Seller in writing, which notice ("Notice of Dissatisfaction") must be given on or before the expiration of the Inspection Period. Upon providing the Notice of Dissatisfaction in a timely manner, this Agreement shall terminate and become null and void and the parties shall be relieved of any and all liability hereunder except for liability specifically provided to survive termination. The Deposit shall be refunded to Purchaser in full upon return by Purchaser of the Property Information and delivery of copies of all surveys, environmental reports or other studies of the Property together with written consent by Purchaser to the parties preparing such studies allowing the Seller to use such studies. If Purchaser does not provide the Notice of Dissatisfaction in a timely manner, then Purchaser shall have waived its right to terminate its obligation to purchase the Property, the Deposit shall be nonrefundable, and the Parties shall proceed to Closing in accordance with the terms hereof.

**7. "AS IS"/"WHERE IS"** THE PROPERTY SHALL BE DELIVERED BY SELLER TO PURCHASER IN ITS "AS IS," "WHERE IS" CONDITION AND WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY SELLER. SELLER HAS NOT MADE AND DOES NOT MAKE AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, ITS CONDITION (INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING QUALITY OF CONSTRUCTION, STATE OF REPAIR, WORKMANSHIP, MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS SQUARE FOOTAGE, ITS COMPLIANCE WITH HAZARDOUS SUBSTANCE LAWS OR OTHER LAWS, ITS ENVIRONMENTAL CONDITION OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT WARRANTED, AND DOES NOT HEREBY WARRANT, ANY MATTER REGARDING THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR OTHER SIMILAR DAMAGES) RESULTING OR ARISING FROM OR RELATING TO THE PROPERTY. PURCHASER ACKNOWLEDGES THAT (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND DOCUMENTS TO BE DELIVERED AT CLOSING) PURCHASER HAS INSPECTED OR WILL INSPECT THE PROPERTY AND ACCEPTS THE PROPERTY "AS IS," "WHERE IS" AND "WITH ALL FAULTS". THE TERMS OF THIS SECTION SHALL SURVIVE CLOSING INDEFINITELY.

WITHOUT LIMITING THE ABOVE, PURCHASER ACKNOWLEDGES THAT SELLER IS NOT IN ANY MANNER RESPONSIBLE TO PURCHASER FOR THE



PRESENCE OF ANY ENVIRONMENTALLY HAZARDOUS MATERIALS AT, ON, IN, UNDER OR RELATING TO THE PROPERTY, IF ANY (INCLUDING, BUT LIMITED TO ANY ISSUES RELATED TO THE PROVISION OF WATER OF A GIVEN QUALITY TO THE PROPERTY). PURCHASER HEREBY SPECIFICALLY RELEASES THE SELLER FROM ANY AND ALL CLAIMS RELATING TO THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE OF ANY HAZARDOUS MATERIALS ON THE PROPERTY. PURCHASER'S CLOSING HEREUNDER SHALL BE AN EXPRESS WAIVER OF PURCHASER'S AND HIS SUCCESSOR'S AND ASSIGNS RIGHTS TO SUE SELLER AND OF PURCHASER'S RIGHT TO CAUSE SELLER TO BE JOINED IN AN ACTION BROUGHT UNDER ANY FEDERAL, STATE OR LOCAL LAW, RULE, ACT OR REGULATION NOW EXISTING OR HEREAFTER ENACTED OR AMENDED WHICH PROHIBITS OR REGULATES THE USE, HANDLING, STORAGE, TRANSPORTATION OR DISPOSAL OF HAZARDOUS MATERIALS OR WHICH REQUIRES REMOVAL OR REMEDIAL ACTION INCLUDING BUT NOT LIMITED TO FEDERAL "CERCLA", "RCRA" AND "SARA" ACTS. THE TERMS OF THIS SECTION SHALL SURVIVE CLOSING INDEFINITELY.

#### **8. Representations, Warranties and Covenants of Seller.**

Seller represents, warrants and covenants to and for the benefit of Purchaser as of the Effective Date, and as of the Closing Date, the following, with the understanding that each of the following representations and warranties are material and have been relied on by Purchaser in connection herewith.

(a) Seller has not and will not from and after the Effective Date enter into any agreements which would be binding on Purchaser after its acquisition of the Property.

(b) The Receivership Order provides the Seller with the authority to enter into this Agreement and to perform its terms, subject to certain preconditions to sale (appraisal or publication), and approval of the Court. Pursuant to the sale preconditions, higher and better offers must be solicited by Seller in conjunction with the publication and sale process. Seller shall be permitted to accept higher or better offers, even if received after any competing offer bar date that may be advertised in any publication. Such competing offers may be received as late as the hearing date and time on approval of the sale of the Property, which the Receiver may consider, and which may result in an auction between Purchaser and any competing offeror inside or outside the courtroom or at an adjourned date and time, inside or outside of the courtroom. Seller shall seek Court approval of this Agreement, and the terms of this Agreement shall be subject to the terms of entry of a final, non-appealable order of the Court approving this Agreement and authorizing the Receiver to undertake the actions necessary thereunder.

(c) Seller has not granted any rights of first refusal, options or agreements to sell the Property other than this Agreement.

(d) Neither the execution, delivery, performance of or compliance with this Agreement and all other documents contemplated hereby, nor the conveyance of all of Seller's right, title and interest in and to the Property as herein contemplated will (i) violate or conflict the Receivership Order, (ii) result in any breach or violation of, or be in conflict with, or constitute a default under, any mortgage, indenture, contract, agreement, lease, instrument, judgment, decree, order, or award binding on Seller or to which Seller is a party, or affecting or binding on the Property with respect to which the Seller has notice (other than existing financing to be satisfied upon payment of the Purchase Price), or (iii) violate or conflict with any governmental statute, law, ordinance, rule, regulation, order, judgment or directive in any material respect.

(e) (i) Seller is not a Prohibited Person (as defined below); (ii) to Seller's knowledge, none of its investors, affiliates or brokers or other agents (if any), acting or benefiting in any capacity in connection with the transaction contemplated under this Agreement are Prohibited Persons; and (iii) none of the funds or other assets, if any, to be transferred hereunder are the property of, or beneficially owned, directly or indirectly, by a Prohibited Person, nor are such funds or other assets the proceeds of any specified unlawful activity as defined by 18 U.S.C. § 1936(c)(7). "**Prohibited Person**" means any of the following: (I) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) ("**Executive Order**"); (II) a person or entity owned or controlled by, or acting for or on behalf of any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (III) a person or entity that is listed as a "specially designated national" or "blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign

Assets Control ("OFAC") at its official website [www.treas.gov/office/enforcement/ofac](http://www.treas.gov/office/enforcement/ofac); (IV) a person or entity that is otherwise the target of any economic sanctions program currently administered by OFAC; or (V) a person or entity that is affiliated with any person or entity identified in sub clause (I), (II), (III) and or (IV).

(f) The provisions of this Section 8 and all representations and warranties contained therein shall be true as of the Closing Date, shall not survive the closing of the transactions contemplated herein and shall terminate on the Closing Date.

**9. Purchaser's Representations, Warranties and Covenants.** Purchaser represents, warrants and covenants to and for the benefit of Seller as of the Effective Date, and as of the Closing Date, with the understanding that each of the following covenants, representations and warranties are material and have been relied upon by the Seller in connection herewith:

(a) Purchaser is duly organized, validly existing and in good standing under the laws of the State of Michigan. Purchaser has and will have on the Closing Date the power and authority to purchase the Land from Seller and perform its obligations in accordance with the terms and conditions of this Agreement, and each person who executes this Agreement and all other instruments and documents in connection herewith, has or will have due power and authority to so act.

(b) Neither this Agreement nor anything to be done by Purchaser pursuant hereto, violates or will violate any contract, agreement or instrument to which Purchaser is a party or bound or which will affect its ability to perform its obligations under this Agreement.

(c) Neither the execution, delivery, performance of or compliance with this Agreement and all other documents contemplated hereby, nor the acquisition of the Property as herein contemplated will (i) violate or conflict with Purchaser's governing documents, (ii) result in any breach or violation of, or be in conflict with, or constitute a default under, any mortgage, indenture, contract, agreement, lease, instrument, judgment, decree, order, or award binding on Purchaser or to which Purchaser is a party, or affecting or binding on the Property, or (iii) violate or conflict with any governmental statute, law, ordinance, rule, regulation, order, judgment or directive.

(d) Purchaser has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Purchaser's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(e) (i) Purchaser is not a Prohibited Person (as defined in 6 I.L. above); (ii) to Purchaser's knowledge, none of its investors, affiliates or brokers or other agents (if any), acting or benefiting in any capacity in connection with the transaction contemplated under this Agreement are Prohibited Persons; and (iii) none of the funds or other assets, if any, to be transferred hereunder are the property of, or beneficially owned, directly or indirectly, by a Prohibited Person, nor are such funds or other assets the proceeds of any specified unlawful activity as defined by 18 U.S.C. § 1936(c)(7).

**10. Closing.** The parties shall schedule the Closing ("Closing") at a mutually agreed date and time but no later than 15 days after the expiration of the Inspection Period. The Closing of the sale shall take place at the offices of the Title Company, at offices of counsel to Seller, by mail or delivery of documents and at a date and time mutually agreed to by the parties.

**11. Conditions Precedent to Closing.** The Parties' obligation to consummate the transaction contemplated by this Agreement shall be subject to and conditioned upon the fulfillment of each and all the following conditions precedent:

(a) All the documents and instruments required to be delivered by the Seller to Purchaser or the Title Company, as the case may be, at the Closing pursuant to the terms and conditions hereof shall have been delivered.

(b) Each of the representations and warranties of the Seller and Purchaser contained herein shall be true in all material respects as of the Closing Date.

(c) The Seller and Purchaser shall each have complied with, fulfilled and



performed in all material respects each of the covenants, terms and conditions to be complied with, fulfilled or performed hereunder.

(d) Seller shall have obtained a final, non-appealable order from the Court authorizing the entry into this Agreement and consummation of the transactions provided for in this Agreement.

(e) If any condition precedent is not met or otherwise satisfied prior to the Closing Date, the party benefitted by such condition may deliver to the other a written notice of such failure and thereafter the party receiving notice shall use commercially reasonable efforts (which shall not require the expenditure of funds or initiation of litigation) to satisfy the condition precedent within five (5) business days of the receipt of the failure notice (the "**Condition Precedent Cure Period**"). If any condition precedent delineated in its failure notice is not met or satisfied within the Condition Precedent Cure Period the party benefitted by the unsatisfied condition may (i) waive any of the foregoing conditions and proceed to Closing on the Closing Date with no offset or deduction from the Purchase Price, or (ii) notify the other party of its election to terminate this Agreement and, if Purchaser is the party benefitted by the condition, receive a return of the Deposit, whereupon both parties shall be released from all duties and obligations under this Agreement, except as otherwise specifically provided in this Agreement. The Closing Date shall be extended to the extent necessary to allow for the Condition Precedent Cure Period provided in this Section.

## **12. Deliveries/Events at Closing.**

At Closing:

(a) Seller shall execute and deliver a Covenant Deed, subject to Permitted Exceptions. The terms of this sub-section do not obligate the Seller to cure any defects in title.

(b) Purchaser shall cause wired funds to be delivered to Seller's designated bank, in the amount required hereunder.

(c) Seller shall execute and deliver an executed Bill of Sale (without warranties) with respect to the Personal Property, if any.

(d) Seller and Purchaser both shall execute and deliver two counterparts of an Assignment and Assumption Agreement with respect to each of the Leases, Intangible Property, and Property Contracts. To the extent any Property Contract requires a specific written assignment and/or assumption agreement with respect to such Service Contract, a specific executed assignment and/or assumption agreement with respect to such Service Contract. The Assignment and Assumption Agreements shall provide that the assignor indemnifies the assignee from obligations arising prior to Closing and the assignee indemnifies the assignor from obligations arising on and after Closing.

(e) Seller shall execute and deliver an executed certificate of non-foreign status.

(f) Seller and Purchaser shall execute and deliver an executed combined Seller/Purchaser Closing Statement.

(g) Seller and Purchaser shall deliver such documents as each of the other's counsel may reasonably request evidencing the organization and good standing of each Party together with the authority of each Party and the authority of person executing any documents on behalf of any Party to enter into this Agreement, to execute and deliver the documents contemplated hereby and to consummate the transactions contemplated under this Agreement.

(h) Seller and Purchaser shall deliver to the other such other documents or instruments as shall reasonably be required by either party's counsel and/or the Title Company to consummate the transaction contemplated herein and/or to issue the policy of title insurance which, in the opinion of counsel for the party from whom delivery is requested, does not increase such party's liability or decrease such party's rights. Seller shall not be obligated to provide any affidavit which includes representations or warranties which are beyond Seller's knowledge, without any obligation of investigation, and further provided that such representations and warranties shall not include knowledge of matters arising prior to the date Seller was appointed as the authorized representative of Treasure.

**13. Possession.** The Seller shall deliver, and Purchaser shall accept possession of the Property at closing subject to interests under the Permitted Exceptions and the Tenant Leases.

#### 14. Taxes and Prorated Items.

(a) All normal and customary pro-ratable items, including by way of illustration and not limitation, real estate taxes and assessments, collected rents, operating expenses, personal property taxes and other operating expenses and fees, shall be prorated as of the Closing Date, the Seller being charged or credited, as appropriate, for all of the same attributable to the period up to the Closing Date (and credited for any amounts paid by the Seller attributable to the period on or after the Closing Date, if assumed by Purchaser), and Purchaser being responsible for, and credited or charged, as the case may be, for all of the same attributable to the period on and after the Closing Date. More specifically:

i. All real and personal property taxes and assessments which have become a lien on the Property shall be paid in full by the Seller at the Closing provided any taxes payable in installments shall not be required to be paid in full and only the installment coming due prior to the Closing shall be paid by Seller. All current real estate taxes and personal property taxes ("Current Taxes") levied against any portion of the Property (including special assessments) with respect to the tax year in which the Closing occurs shall be prorated and adjusted as of the Closing Date in accordance with the due date of the municipality or taxing unit in which the Property is located.

ii. The final readings and final billings for utilities will be made, if possible, as of the Closing Date, in which case the Seller shall pay all such bills as of the Closing Date and no proration shall be made at the Closing with respect to utility bills. Otherwise, a proration shall be made based upon the parties' reasonable good faith estimate and a readjustment made within thirty (30) days after the Closing, if necessary. The Seller shall be entitled to the return of any deposit(s) posted by it with any utility company, and the Seller shall notify each utility company serving the Property to terminate the Seller's account, effective as of the Closing Date.

iii. If applicable, charges under any ongoing Property Contracts that are assigned by the Seller to Purchaser pursuant to Purchaser's request, shall be adjusted NE "adjusted" 1 "Net" and prorated between the Seller and Purchaser as of the Closing Date.

iiii. All collected rent (whether fixed monthly rentals, additional rentals, percentage rent, escalation rentals, retroactive rentals, operating cost pass-throughs or other sums and charges payable by Tenants under the Tenant Leases) shall be prorated as of the Closing Date. Purchaser shall receive all collected rent and income attributable to dates from and after the Closing Date. The Seller shall receive all collected rent and income attributable to dates prior to the Closing Date. Notwithstanding the foregoing, no prorations shall be made in relation to either (i) non-delinquent rents which have not been collected as of the Closing Date, or (ii) delinquent rents existing, if any, as of the Closing Date (the foregoing (i) and (ii) referred to herein as the "Uncollected Rents"). In adjusting for Uncollected Rents, no adjustments shall be made in the Seller's favor for rents which have accrued and are unpaid as of the Closing. Purchaser agrees to bill Tenants for all Uncollected Rents in the ordinary course of business and to take reasonable actions to collect Uncollected Rents. To the extent that Purchaser subsequently collects any Uncollected Rents or revenues allocable to the period prior to the Closing Date, Purchaser shall remit the same to the Seller.

v. At Closing, Purchaser shall receive a credit against the Purchase Price in an amount equal to the received and unapplied balance of all cash (or cash equivalent) tenant deposits, including, but not limited to, security, damage or other refundable deposits required to be paid by any of the tenants to secure their respective obligations under the Tenant Leases, together, in all cases, with any interest payable to the tenants thereunder as may be required by their respective tenant lease or state law (the "Tenant Security Deposit Balance"). Any cash (or cash equivalent) held by the Seller which constitute the Tenant Security Deposit Balance shall be retained by the Seller in exchange for the foregoing credit against the Purchase Price and shall not be transferred by the Seller pursuant to this Agreement (or any of the documents delivered at Closing), but the obligation with respect to the Tenant Security Deposit Balance nonetheless shall be assumed by Purchaser.

**15. Closing Costs.** The Seller shall pay the property transfer tax, one half of the escrow charges charged by Escrow Agent, one half of the closing costs charged by the Escrow Agent at closing, the premium for the Owner's Policy of title insurance in the amount of the Purchase Price (excluding endorsements and mortgage policy of title insurance), and the costs of its



attorneys and other professionals. Purchaser shall pay one half of the escrow charges charged by Escrow Agent, one half of the closing costs charged by Escrow Agent, the fee for the Survey, or property reports, all recording costs at Closing and the costs of its attorneys and other professionals.

#### **16. Termination, Default and Remedies**

(a) Permitted Termination. If this Agreement is terminated by either party pursuant to a right expressly given it to do so hereunder (herein referred to as a "**Permitted Termination**"), the Title Company shall, following the return by Purchaser to Seller of all Property Information and delivery to Seller of any studies of the Property together with written consent from Purchaser to the parties preparing such studies allowing Seller to use such studies, return the Deposit to Purchaser and neither party shall have any further rights or obligations hereunder, except those that are specifically intended to survive termination hereunder.

(b) Seller's Default. If this transaction shall not be closed because of default of Seller, the Deposit shall be returned to Purchaser on demand. In no event shall Purchaser be entitled to other damages (including, without limitation, consequential or punitive damages) or have the right to seek or obtain specific performance of this Agreement and Purchaser specifically waives any and all right to file or record any lis pendens, lien or encumbrance against the Property. Purchaser agrees that it can be adequately and fairly compensated solely by receiving a return of the Deposit. Upon return of the Deposit, the Agreement shall be terminated and neither Party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination.

(c) Default by Purchaser. If Purchaser is in default under this Agreement, the Deposit shall be paid over to Seller as agreed as damages and not as a penalty. In addition to the right of Seller to the Deposit, Seller shall have the right, in Seller's sole and absolute discretion, to seek specific performance of Purchaser's obligations under this Agreement and/or such other damages as Seller may be entitled under applicable law. The Court shall have exclusive jurisdiction to grant any such relief to Seller. In addition to the foregoing, Purchaser shall remain obligated with respect to the indemnities and obligations of this Agreement which specifically survive termination. If subsequent to Closing Purchaser shall fail to comply with its obligations contained herein which survive Closing, Seller, in addition to any rights and remedies provided herein, shall be entitled to any and all remedies available at law or in equity, which likewise shall be subject to the exclusive jurisdiction of the Court.

**17. Condemnation**. If Seller receives written notice prior to Closing that all of the Property is or is proposed to be taken or condemned by any public authority between the Effective Date and the Closing Date, Seller shall give Purchaser written notice thereof within ten (10) days of receipt of same, and this Agreement shall terminate and be null and void and thereafter neither party shall have any liability or obligation to the other except that the Deposit shall be refunded or returned to Purchaser. If Seller receives written notice prior to Closing that less than all of the Property is or is proposed to be taken or condemned by any public authority between the date of execution of this Agreement and the Closing Date, Seller shall give Purchaser written notice thereof within ten (10) days of receipt of same, and Purchaser shall have the option:

(a) To terminate this Agreement by written notice to Seller, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Deposit shall be refunded or returned to Purchaser; or

(b) To take title to the remaining portion of the Property without abatement of Purchase Price, in which event the proceeds of any condemnation award collected by Seller prior to the Closing Date will be paid or credited to Purchaser at Closing, and Seller shall assign to Purchaser all of Seller's right, title and interest in and to such award resulting from such taking or condemnation.

**18. Casualty**. If the Property suffers damage prior to Closing, which is reasonably estimated by Seller to cost more than twenty-five percent (25%) of the Purchase Price to repair, as a result of any casualty prior to the Closing Date, Purchaser may elect, by written notice delivered to Seller prior to the scheduled Closing Date:

(a) To terminate this Agreement by written notice to Seller, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Deposit shall be refunded or returned to Purchaser; or



(b) To take title to the remaining portion of the Property without abatement of Purchase Price, in which event Purchaser shall receive all insurance proceeds resulting from such casualty and Seller shall pay to Purchaser the amount of any deductible.

In the event the damage is reasonably estimated to cost twenty-five percent (25%) or less, then subparagraph (b) above shall apply. All risks of loss are borne by Seller prior to Closing.

**19. Broker's Fee.** Purchaser and Seller agree that no real estate Broker participated in this transaction other than Signature Associates and Timberline Realty Advisor which shall be compensated by Seller pursuant to the terms of a separate brokerage Agreement. Except as provided in this Section 19, each Party represents and warrants to the other Party that neither they, nor anyone acting on their behalf, has incurred any liability to any broker or finder in connection with the transaction contemplated by this Agreement and each Party agrees to defend and indemnify the other party against claims of any such broker or anyone claiming by, through or under such Party. These representations, warranties and indemnities shall survive Closing and or termination of this Agreement for any reason.

**20. Governing Law; Venue.** The laws of the State of Michigan shall govern the validity, enforcement, and interpretation of this Agreement. The obligations of the parties are performable and venue for any legal action arising out of this Agreement shall lie exclusively in the Court having issued the Receivership Order. The right to bring a cause of action in any other court or jurisdiction is waived.

**21. Third Party Rights.** This Agreement shall be binding upon, and inure to, the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is made solely for the benefit of Seller and Purchaser, and their respective successors and permitted assigns, and no other person shall have any right, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

**22. Integration; Modification; Waiver.** This Agreement, together with the agreements and other documents referenced herein, constitute the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous contracts, agreements, and understandings of the parties, whether oral or written, relating to the Property. This Agreement cannot be modified or any of the terms hereof waived, except by an instrument in writing executed by the party against whom enforcement of the modification or waiver is sought. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be a waiver of such provision or in any way affect the validity of this Agreement or any part of this Agreement or the right of any party thereafter to enforce each and any such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach of this Agreement.

**23. Headings.** The captions and headings appearing in this Agreement are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

**24. Further Acts.** In addition to the acts recited in this Agreement to be performed by Seller and Purchaser, Seller and Purchaser agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

**25. Assignment.** This Agreement may not be assigned by Purchaser or Seller without the prior written consent of the other party, which shall not be unreasonably withheld. Provided, however, Purchaser may assign this Agreement to a newly formed and/or affiliated or commonly owned entity without consent of Seller. Notice of any proposed assignment shall promptly be given in writing to the Seller and/or Purchaser as appropriate.

**26. Notices.** Unless otherwise provided herein, when any notice is required to be sent to a party, it shall be sent via electronic mail, recognized national overnight delivery service, or personal delivery as follows:

If to Seller:

Patrick O'Keefe and O'Keefe &  
Associates Consulting, LLC,  
as Receiver for Treasure Enterprise LLC

2 Lone Pine  
Bloomfield Hills, Michigan 48304  
pokeete@okeefelle.com

With Copy to:

Jay Welford, Esq.  
Jaffe Raitt Heuer & Weiss, P.C.  
27777 Franklin Road, Suite 2500  
Southfield, Michigan 48034  
jwelford@jattellaw.com

If to Purchaser:

Sreekant Kembhavi  
6042 Amberlane  
Grand Blanc, MI 48439  
Sri420s@yahoo.com  
Phone: 360-440-2343

**27. Counterparts** This Agreement may be executed in multiple counterparts, in original or by fax or by delivery of a scanned counterpart in portable document format (PDF) by e-mail (which shall be deemed received if delivered in accordance with the Michigan Uniform Electronic Transactions Act, MCL §450.831 *et seq.*) and, when taken together, shall be considered an original. On such delivery, the parties intend that the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart had been delivered to the other party in person.

**28. Computation of Time Period** Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time (Detroit, Michigan) on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days; provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

**29. Severability** If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**30. WAIVER OF JURY TRIAL** TO THE EXTENT NOW OR HEREAFTER ALLOWED BY LAW, THE PARTIES HERBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THE AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HERewith OR RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) AND WHETHER ARISING OUT OF OR BEING STYLED IN TORT, CONTRACT OR OTHERWISE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

**31. Relationship of Parties** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) principal and agent; (ii) a partnership; or (iii) a joint venture between the parties hereto; it being understood and agreed that

Enterprise LLC

EXHIBIT A

[Legal Description Not Warranted]

2710 Court Street, Flint MI 48439  
Property Tax ID: 40-14-332-027  
3784487 v2

*Signature Page to Real Estate Purchase Agreement  
Between Sreekant Kembhavi, Purchaser and  
Patrick O'Keefe and O'Keefe & Associates Consulting, LLC, as Receiver for Treasure  
Enterprise LLC, Seller*

Executed as of the date first above written by an authorized representative of Seller and Purchaser.

2710 W Court St.  
Plint, Mi, 48504.

PURCHASER:

Sreekant Kembhavi

By: 

Sreekant Kembhavi

DATE: 4/12/19, 2019

SELLER:

Patrick O'Keefe and O'Keefe & Associates  
Consulting, LLC, as Receiver for Treasure  
Enterprise LLC

DATE: 4/19/19, 2019

By: 

Patrick O'Keefe and O'Keefe & Associates  
Consulting, LLC, as Receiver for Treasure  
Enterprise LLC

# EXHIBIT B



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

TREASURE ENTERPRISE LLC,  
PATRICIA ENRIGHT GRAY and LARRY  
ALLEN HOLLEY

No. 17-cv-10963  
Hon. Marianne O. Battani

Defendants,

and

KINGDOM ASSET MANAGEMENT LLC  
and CARLEEN RENEE HOLLEY,

Relief Defendants.

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**STATEMENT OF RECEIVER IN  
SUPPORT OF MOTION OF RECEIVER TO  
FOR AUTHORITY TO SELL REAL ESTATE LOCATED  
AT 2710 COURT STREET, FLINT MICHIGAN**

Patrick O’Keefe and O’Keefe & Associates Consulting, LLC (the “Receiver”) states as follows in support of the *Motion of Receiver for Authority to Sell Real Estate Located at 2710 Court Street, Flint, Michigan* (the “Motion”):

1. I and my firm, O’Keefe & Associates Consulting, LLC are the Receiver appointed by this Court over the assets of the Receivership Estates.<sup>1</sup> I have acted as receiver in numerous other receivership matters in the state and federal courts.

2. As Receiver, I have been in possession and control of the operating assets of the Receivership Estates, as more particularly set forth in the Receivership Order.

3. In furtherance of my duties as Receiver, I have undertaken to market for sale the various properties held by the Receivership Estates.

4. To assist in the marketing of the various properties, I engaged Signature Associates as the Receivership Estates’ real estate broker (the “Broker”).

5. As a result of my efforts and through the actions of the Broker, I have entered into a Purchase Agreement (the “Purchase Agreement”), subject to this Court’s approval, with Sreekant Kembhavi, on behalf of a yet to be formed entity (the “Purchaser”) for the purchase of the property located at 2710 Court Street, Flint, Michigan (the “Property”) for a total purchase price of \$150,000.00, subject to usual and customary pro-rations and all ordinary and necessary closing costs (the “Purchase Price”). A copy of the Purchase Agreement is attached **Exhibit A** to the Motion.

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<sup>1</sup> Terms not defined herein shall have the meaning ascribed to them in the Motion.

6. The material terms of the Purchase Agreement are as follows:

a. Legal description:

PARCEL 1 – Lots 8, 9, 10, 11, 12, 24, 25, 26 of Glendale as recorded in plat Liber 15, Pages 16-18, and Lot 7 except beginning in the southeasterly corner of said lot; thence westerly along the southerly line of said lot, 12.0 feet; thence northeasterly to a point on the easterly line of said lot which is northerly 12.0 feet from said southeasterly corner; thence southerly along said easterly line, 12.0 feet to the point of beginning.

PARCEL 2 – Part of Lots 14 through 17 of Glendale, as recorded in plat Liber 16, Pages 16-18, described as follows: beginning at a point which is north  $290^{\circ}18'$  east along the southeasterly line of Mansfield Avenue 9.0 feet north  $89^{\circ}53'$  east 88.0 feet from the southwest corner of Lot 14; thence north  $30^{\circ}11'$  95.15 feet; thence north  $49^{\circ}24'30''$  east 12.78 feet; thence north  $65^{\circ}02'30''$  east 10.95 feet; thence north  $82^{\circ}40'$  east 5.41 to the northeasterly line of Lot 17; thence south  $41^{\circ}34'30''$  east along said northeasterly line 37.65 feet to the centerline of the vacated alley; thence south  $47^{\circ}44'$  west along said centerline 64.83 feet; thence north  $41^{\circ}02'$  west 8.3 feet to the most southerly corner of Lot 16; thence south  $28^{\circ}30'$  west along the southeasterly line of Lot 15 a distance of 34.37 feet; thence south  $89^{\circ}53'$  west 27.51 feet to the point of beginning.

PARCEL 3 – Part of Lots 18 and 19 of Glendale, as recorded in plat Liber 15, pages 16-18, described as follows: beginning at appoint on the southwesterly line of Lot 18 which is south  $41^{\circ}34'$  east 82.0 feet from the most westerly corner of Lot 18; thence south  $41^{\circ}34''$  east along said southwesterly line 37.65 feet to the centerline of vacated alley, thence north  $47^{\circ}44'$  east along said



centerline 38.91 feet; thence north  $31^{\circ}35'$  west 4.79 feet; thence south  $89^{\circ}22'$  west 41.47 feet; thence south  $82^{\circ}40'$  west 10.01 feet to the point of beginning.

Parcel Code: 40-14-332-027

- b. Liens of record: None.
- c. Brokerage commission due: 6% of the sale price  
(the "Commission").
- d. Due diligence period: 30 days from April 19, 2019
- e. Earnest money deposit amount: \$5,000.00.
- f. Other material conditions: None.
- g. Nature of the sale: "As is".
- h. Closing: Upon the later of completion of publication and Court approval.

7. The Purchaser is completely unrelated to the Defendants and was brought to the property through the sales and marketing process of the Broker.

8. Consistent with the requirements of 28 U.S.C. § 2002, notice of the proposed sale of the Property will be published for four weeks prior to the sale in the Flint-Genesee County Legal News. Publication began on May 10, 2019 and will continue on May 17, 2019, May 24, 2019, May 31, 2019 and June 7, 2019.

9. To the best of my knowledge, neither the Receiver nor its professionals have any relationship with the purchaser or principals of the purchaser under the Purchase Agreement.

10. The negotiations under the Purchase Agreement have been “arms-length.”

11. As a result of the foregoing marketing efforts, I believe that the offer received for the Property, subject to the terms of the Purchase Agreement, represents the highest and best offer for the Property, and therefore should be approved by the Court.

Respectfully submitted,

Patrick O’Keefe and O’Keefe and  
Associates Consulting, LLC, as  
Receiver

Dated: May 16, 2019

By: /s/ Patrick O’Keefe

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

TREASURE ENTERPRISE LLC,  
PATRICIA ENRIGHT GRAY and LARRY  
ALLEN HOLLEY

No. 17-cv-10963  
Hon. Marianne O. Battani

Defendants,

and

KINGDOM ASSET MANAGEMENT LLC  
and CARLEEN RENEE HOLLEY,

Relief Defendants.

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**ORDER GRANTING MOTION OF RECEIVER FOR  
AUTHORITY TO SELL REAL ESTATE LOCATED  
AT 2710 COURT STREET, FLINT, MICHIGAN**

This matter having come before the Court upon the *Motion of Receiver for Authority to Sell Real Estate Located at 2710 Court Street, Flint, Michigan* (the “Motion”) filed by O’Keefe & Associates Consulting, LLC and Patrick O’Keefe (the “Receiver”); due and sufficient notice having been given; no objections to the relief requested in the Motion having been filed, or all such objections having been overruled; and the Court being fully advised in the premises:

**THE COURT HEREBY FINDS THAT:**

A. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act of 1933 [15 U.S.C. § 77a *et seq.*] and Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. § 78a *et seq.*] (the “Exchange Act”).

B. Venue is proper in this Court pursuant to Section 27 of the Exchange Act.

C. The Receiver is the duly appointed receiver pursuant to this Court’s *Sealed Order Appointing Receiver* [Docket No. 10] entered on March 28, 2017 (the “Receivership Order”).

D. Due, timely and appropriate notice of the Motion and an opportunity to object or be heard with respect to the Motion and the relief requested therein has been provided to all interested persons and entities.

E. The Court has reviewed the Motion and all other pleadings of record related to the Motion.

F. The Court also has considered the arguments of counsel at the hearing on approval of the Motion.

G. The Real Estate Purchase Agreement (the “Purchase Agreement”) is the result of an arm’s length negotiation, undertaken consistent with and within the scope of the Receiver’s duties under the Receivership Order.

G. Proper publication of the proposed sale of the property subject to the Purchase Agreement (the “Property”) has occurred, consistent with the requirements of 28 U.S.C. §2002, and sale of the Property is otherwise consistent with the requirements of 28 U.S.C. §2001.

**NOW, THEREFORE, IT IS ORDERED AND ADJUDGED THAT:**

1. The Motion is GRANTED in its entirety.
2. The Receiver is authorized to sell the Property commonly known as 2710 Court Street, Flint, Michigan and more fully described in the Purchase Agreement attached as **Exhibit A** to the Motion (the “Property”), free and clear of all liens, claims and encumbrances, pursuant and subject to the terms of the Purchase Agreement.
3. The Receiver is authorized to enter into the Purchase Agreement.
3. In connection with the closing under the Purchase Agreement, the Receiver is authorized to execute any and all documents reasonably required to consummate the sale of the Property, and to take all steps reasonable and necessary related thereto, including but not limited to the payment of subject to usual and customary pro-rations and all ordinary and necessary closing costs and commission to Signature Associates.

All liens against the Property shall be transferred to the proceeds of sale, and shall not be disbursed, pending further order of this Court (provided, however, that

unpaid taxes and water bills which constitute a lien against the Property, may be paid at the time of closing).

It is so ordered, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Marianne O. Battani  
UNITED STATES DISTRICT JUDGE