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Seminar 3

Purchase and Sale Agreement Basics: Putting Together the Pieces of the PSA Puzzle

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by:

Karim Ali
Porter Wright Morris & Arthur LLP
41 South High Street
Suite 2800
Columbus, OH 43215
(614) 227-2023
kali@porterwright.com

Christine Eid
Vantage Law Group
125 SE Main Street
Suite 250
Minneapolis, MN 55414
(612) 353-1020
christine.eid@vantage.law

Justice Barber
Seyfarth Shaw LLP
1075 Peachtree St NE,
Suite 2500
Atlanta, GA 30309
(404) 881-5471
JBarber@seyfarth.com

Putting Together the Pieces of the PSA Puzzle

This seminar will highlight the key pieces to include when drafting a purchase and sale agreement. The presenters will concentrate on considerations for retail and mixed-use properties. The presenters will also offer tips to navigate the Purchase and Sale Agreement (the "PSA") negotiation process and ensure a smooth closing.

A. Hypothetical - Retail Development Purchase

B. The PSA Puzzle

1. Understanding the Real Estate Deal

2. Negotiating the Letter of Intent

3. Negotiating the PSA

(a) Defining the Property

(b) Navigating Due Diligence

(c) Navigating Existing Tenant Matters

(d) Representations and Warranties

(e) Pre-Closing Matters

(f) Default/Remedies

(g) Post-Closing Matters

Exhibit A - Sample Letter of Intent

Exhibit B - Sample PSA

Exhibit C - Sample Tenant Rent Roll

A. Putting Together the Pieces of the PSA Puzzle
Hypothetical - Retail Development Purchase

Your client, Victoria Venture, called to let you know that her broker, Dexter Dealman has found the perfect property for her next investment! You are excited to hear the details because she is one of your most savvy real estate investor clients. The sought-after property is an existing retail shopping plaza commonly known as Luxetacular Promenade on close to 5 acres of land in Opulence Heights, a city with approximately 200,000 residents and a median income of $125,000.00. The retail plaza has a total leasable area of 175,000 square feet, which is anchored by Whole Groceries, a high-end grocer leasing 32,000 square feet. Luxetacular Promenade contains a well-balanced mix of other upscale retail shops and amenities and is shadow-anchored by an 85,000 square foot BullsEye store. Seller's broker, Frankie Finaloffer provided a tour of the property to Dexter and Victoria and they are ready to move quickly!

The icing on the cake is that, while the retail plaza is already profitable and a great purchase in its current state, Victoria would have the opportunity to significantly increase the value by developing the adjacent unimproved lot also owned by the Seller, Mr. Pennywise.

As negotiations ensue, Victoria realizes she's not just buying property; she is buying an opportunity to transform the neighborhood. Her strategic plan is to construct a venue on the unimproved parcel named The Luxe Enclave that will house a dynamic and inclusive social space that offers games and activities, provides bar and limited kitchen service to the activity areas, and contains a full restaurant. If done correctly and quickly, Victoria can capitalize on the heightened market demand for more "third spot" developments (as distinguished from "first spot" residences and "second spot" work locations). Some of the existing leases are near the end of their terms and Victoria is considering what different tenants they can attract to elevate the caliber of Luxetacular Promenade and compliment the operation of The Luxe Enclave.

Victoria and Dexter will have to contend with the tenants at the property that have exclusive uses, minimum parking ratios, and prohibitions against changes to the existing parking lot included in their leases. Further complicating matters, is a reciprocal easement agreement (the "REA") recorded against Luxetacular Promenade, the adjacent unimproved lot, and the BullsEye store. The REA contains parking stipulations, prohibited uses, height restrictions, sound and odor regulations, and other provisions that will impact the future leasing of Luxetacular Promenade and the future development of the undeveloped lot.

During the Due Diligence Period, you'll be required to conduct a thorough legal examination and analysis of the intricate web of requirements spun by the lease agreements, zoning requirements, and the REA. BUT FIRST, your mission (we know you'll choose to accept it) is to negotiate a meticulously-crafted purchase and sale agreement against Seller's lawyer, Clausey McClauser, so that Seller will stop marketing the property for sale and Victoria and Dexter have time to strategize about how to obtain the municipal and tenant approvals for the new development. Join us for the Putting Together the Pieces of the PSA Puzzle seminar where we will equip you with the tools you need to complete your mission.

PSA Deal Terms:

Victoria's initial offer of $17,000,000 for Luxetacular Promenade and the adjacent 5 acres of land was accepted. Dexter has shared with Victoria that Seller plans to use the proceeds from sale to pay off their existing mortgage and apply the remaining proceeds towards the purchase of another shopping center in a different state. Seller has set a closing deadline of 180 days from execution of the PSA, and will only allow 90 days to complete due diligence, but Dexter was able to negotiate two due diligence extension periods of 30 days if Victoria pays an additional $50,000 deposit upon the exercise of each extension. Within five days of execution of the PSA, Victoria must deposit $250,000 with the escrow agent. Victoria will form an LLC to complete the purchase ("Luxetacular Promenade Co., LLC"). Mr. Pennywise owns the property through his company Pennywise Promenade, LLC.

B. The PSA Puzzle

The following material will highlight the key pieces to include when drafting a purchase and sale agreement in connection with a retail mixed-use development.

1. Understanding the Real Estate Deal

Before counsel starts the PSA drafting process, they must understand the terms of the deal, the bargaining power between the parties, external constraints, and the goals of your client. Typically the deal will include the following key terms:

- Property
- Purchase Price
- Due Diligence Period (Extension)
- Lender Requirements
- Closing Timeline
- Allocation of Closing Costs

Beyond the material terms, there are many other factors that counsel must know before first taking pin to paper on the initial draft of a PSA. In the case of Buyer/Purchaser—counsel must understand the intended purpose. Does the buyer intend to purchase and hold a mature real estate asset, or is the goal to develop or reposition the shopping center. If the goal is to redevelop the shopping center, counsel may want to give due attention to due diligence timelines in connection with any required entitlements and other governmental approvals. Understanding the bargaining power of the parties will inform counsel's approach toward a negotiation. A fire sale may be approached differently than the purchase of a highly valuable mixed-use development with high potential for growth due to favorable demographics or market forces.

2. Negotiating the Letter of Intent

A letter of intent is typically a non-binding agreement or understanding summarizing key terms that will serve as the basis for negotiating the terms of a PSA (See Exhibit A, attached hereto). The prime purpose of the letter of intent is to reach general agreement on certain key terms. Although most commercial terms of a letter of intent are not usually legally binding in most U.S. jurisdictions, they should be drafted with due care and attention. There are many advantages and disadvantages to using a letter of intent. The advantages and disadvantages may vary based upon the bargaining power of the parties, anticipated timelines, number of competing deals, and internal approval procedures. A letter of intent is often drafted by the Seller's broker, but there are no hard and fast rules regarding who should prepare the initial letter of intent. Although most letters of intent are generally meant to be non-binding, there are some circumstances where a letter of intent may be used to impose binding obligations on the parties to the letter of intent, typically in cases when a dispute arises regarding a negotiated PSA and a court may use the letter of intent to understand the intent of the parties regarding ambiguous or conflicting PSA terms.

A letter of intent can be written and/or interpreted one of three ways: (1) creating a binding and enforceable contract; (2) creating a duty to negotiate in good faith towards a definitive agreement; or (3) creating a non-binding term sheet. A court will look to the intent of the parties to determine which document, and its corresponding obligations, the parties intended to create. Often, the intent of the parties can be interpreted by the language contained in the letter of intent and/or by the actions of the parties in reliance on the letter of intent. When preparing a letter of intent, the preparer should use express, unambiguous language to demonstrate the intent of the parties to place the letter of intent into one of these three categories. Additionally, the parties should avoid acting in reliance on a letter of intent.[1]

Given the complexity of a mixed-use real estate development, most retail real estate developers err on the side of negotiating a letter of intent before proceeding to negotiate a PSA. Sometimes, counsel may not be involved in the negotiation of the letter of intent, but it is seen as a best practice to involve lead counsel responsible for the real estate transaction in the negotiation of the letter of intent. That said, in most cases the letter of intent is meant only to be a guide and should be non-binding and superseded by the terms of the negotiated PSA.

If the parties decide to negotiate a PSA, you will want to include the following key terms in a non-binding letter of intent:

- Purchase Price

[1] See Texaco, Inc. v. Pennzoil, Co., 729 S.W.2d 768, 785 (Tex. App. 1987).

- Due Diligence Deliverables
- Contingency (Due Diligence) Period
- Title Requirements
- Deposit
- Closing Requirements
- Confidentiality
- Exclusive Negotiations
- Offer Deadline
- Closing Contingencies
- Estoppel Requirements
- Payment of Expenses (transfer taxes, recording fees, title premiums, brokerage commissions, etc.)

3. Negotiating the PSA

Once you understand the deal and have a signed letter of intent, the next step is to start drafting the proposed PSA (See Exhibit B, attached hereto).

(a) Defining the Property

In a PSA, one of the preliminary matters that is addressed is describing exactly what property the seller is selling to the purchaser. The real property "dirt" is described, together with the improvements, appurtenant rights (such as easements, mineral rights, air rights, development rights, etc.), seller's interests in the leases and service contracts. Further, the PSA typically includes a general provision for personal property owned by Seller and used at the property as well as intangible property such as permits, licenses, and intellectual property.

Purchaser's counsel should be thoughtful about what additional types of property needs to be expressly included in the definitions of personal property and intangible property with an eye towards the unique needs of specific asset types.

- **Personal Property:** For example, the broad definition of Personal Property may need to be supplemented (not replaced) with a schedule of certain specific items. Some of those special considerations are below.
    - For Multifamily Properties: equipment located in the gym, and refrigerators, stoves or dishwashers inside the units on the property.
    - For Hotels: Linens, cutlery, televisions, coffee makers, etc.
    - For Offices: A statute or other art installations in front of the building or in the lobby and, potentially, artwork displayed around the building.

  When you have valuable personal property being acquired together with real property, the parties may wish to allocate the purchase price between real property and personal property. Keep in mind that decision will impact potential transfer taxes and/or sales taxes that may be due in that particular jurisdiction.

- **Intangible Property:** When you are describing intangible property, you may need to expressly describe certain intellectual property items such as a specific trademark or tradename or perhaps a specific web address that is used for the property. For example, a retail mall may have a well-known name and a website and social media accounts with directions, store directories, event announcements, etc. that a buyer will want to use and control after closing.

(b) Navigating Due Diligence

Due diligence is the process of inspection and investigation of matters related to the purchase of real estate. While due diligence typically occurs after execution of the PSA, its common to start the process prior to the execution of a PSA, especially if the parties want to expedite closing and enter into an early entry or indemnification letter holding the seller harmless for damages occurring on the property during the early access period. Commencing the due diligence process early allows the buyer of a retail development to learn basic information regarding the property and certain requirements regarding the development that may inform the how the buyer may elect to approach

the letter of intent and the PSA. If the buyer knows their development plan approval involves multiple planning meetings and other long lead-time requirements, they may elect to request a longer due diligence period. Similarly, if the buyer knows their future development is contingent upon acquiring adjacent land owned by various unrelated parties, they may condition closing upon the acquisition of the adjacent parcels of land. There are obvious limitations to conducting due diligence prior to the execution of an LOI or PSA. The seller has limited incentive to providing information to a potential buyer ahead of negotiating the preliminary deal terms in a hot market when an asset will likely attract multiple offers.

More typically most due diligence commences after the execution of a PSA during a defined period, commonly known as the "contingency period" or due "diligence period."

Contingency Period: Understanding Its Significance

The contingency (or due diligence) period in a real estate PSA refers to a specific timeframe during which a buyer has the opportunity to ensure that the property meets their expectations and requirements before proceeding to closing. The buyer is able to conduct investigations, assessments, and tests as well as review pertinent documents to identify any issues or risks associated with the property.

- The duration of the contingency period should be a strategic decision based on factors including:
    - Leverage of the parties (e.g., if the property is highly desirable or at a below-market price, the buyer may need to agree to a shorter contingency period).
    - Carrying costs of the seller.
    - Completeness of the initial seller documents provided to the buyer.
    - Time to obtain reports from third parties (e.g., survey, Phase I or additional environmental testing, zoning analyses).
    - Time required to review leases and obtaining estoppels.
    - Financing considerations.

Generally, the Buyer will be able to terminate the PSA prior to the expiration of the contingency period and receive a refund of its earnest money. Most buyers will seek the right to terminate the PSA for "any or no reason."

- **Separate Approvals Period:**
    - Depending on the buyer's intended development of the property, it is not uncommon for a buyer to require a separate approvals period following the contingency period for the buyer to secure necessary permits and approvals for its development.
- **Extension and Deposit Considerations:**
    - The contingency period may be subject to extension. When negotiating an extension of a contingency period, the parties should consider whether additional earnest money will need to be deposited when the buyer exercises the extension or whether the additional deposit or some of the existing earnest money will become nonrefundable. The PSA should specify under what circumstances the buyer may receive the earnest money back.

Typical due diligence may include the following items:

- **Financial Analysis:**
    - Buyers will conduct financial due diligence to assess the income, expenses, and financial performance of the property, including cash flow projections, rent rolls,

and operating expenses (budgets as well as historic statements of operating expenses).

- **Physical Inspection:**

  - Physical due diligence involves inspecting the property's physical condition (e.g., obtaining a property condition report), including the building structure, systems, and amenities, to identify any maintenance issues or structural defects as well as code compliance. Considerations should be given as to whether maintenance issues will fall upon the owner (as the landlord) or the tenant to perform.

- **Zoning:**

  - A buyer should analyze the zoning for the property to confirm that its proposed use is permitted under the applicable zoning code. Zoning is typically verified through a zoning letter (issued by a municipality) or a special zoning report (PZR report) (generated by a third party). In addition, a buyer will want to verify that the physical site complies with applicable laws and regulations (e.g., number of parking spaces, setbacks, building height, etc.).

- **Environmental Assessment:**

  - Environmental due diligence involves evaluating potential environmental risks and liabilities associated with the property, such as contamination, hazardous materials, and regulatory compliance. At a minimum, a buyer should perform a Phase I Environmental Site Assessment. Often the buyer will request a copy of the seller's existing environmental reports as part of their due diligence requests, but will often perform their own environmental reports, especially if the existing Phase I Environmental Site Assessment is dated or present circumstances on the property dictates an update.

- **Appraisal:**

  - An appraisal is often required where a buyer is financing the acquisition of the property. Typically an appraisal will be required by the buyer's lender, and may typically be requested after buyer and seller execute a PSA. The appraiser is often selected by the lender. That being said, when a retail development requires outside investors, the lead developer may obtain an appraisal in part to demonstrate or verify the current value of the asset to help attract potential investors.

- **Title Review, Objections, and Surveys:**

  - Every PSA should outline the seller's duty to transfer the real property to the buyer at closing. However, this obligation doesn't specify the quality of title the seller must provide. PSA may require either marketable or insurable title. As long as the buyer has the right to examine and object to title, the distinction may not matter significantly.

    Buyers typically review a title insurance commitment, ALTA/ACSM Land Title Survey, and UCC search. A buyer should review and analyze title evidence for title defects and for matters that might impact the existing operations at a property or the buyer's intended or desired development or use. Examples include:

    (a) Where a property is part of a larger center, there will likely be one or more reciprocal easement agreements (REAs) that govern the use, development, and access of a center. The foregoing may also be found in memoranda of lease.

    (b) Restrictive covenants may impact existing or intended uses of property. For example, a retail center may prohibit residential or office use.

(c) Restrictions on development, including parking fields, aesthetic of buildings.

(d) Shared utility and access easements.

(e) Requirements for cost-sharing.

The title objection period allows a buyer a period of time to examine title evidence. Sellers prefer title objections to be resolved within the buyer's due diligence/contingency period to streamline the transaction process. Buyers should ensure that there is adequate time to review all title evidence, which requires a keen understanding of the time it takes to obtain third-party reports. It is common for certain matters such as mechanics' liens, mortgages, etc. (i.e., a quantifiable lien against the property) to be satisfied by the seller at closing without the need for an express objection by the buyer.

After reviewing the title evidence, the buyer typically sends a title objection letter to the seller, outlining unacceptable title and survey issues or inquiries/requests for action regarding existing matters (i.e., estoppels from municipalities, estoppels from parties subject to an REA, terminations of old leases, etc.). If sent in a timely manner, the seller usually attempts to address these objections before closing to keep the deal on track. In some agreements, the seller has the option (but not the obligation) to cure objections. Some sellers prefer not to commit to curing objections, either because they believe the title is satisfactory or to avoid spending time and money on what they consider unreasonable requests. If the seller cannot or will not resolve objections within a specified timeframe, the buyer typically has the right to:

- Terminate the PSA and get a refund of the earnest money
- Waive the objections and proceed to closing, or
- Proceed to closing, but with an amount from the purchase price held in escrow to ensure the seller addresses the objections post-closing.

The PSA should expressly reserve the right to object to any matter first discovered in subsequent updates to the title commitment.

(c) <u>Navigating Existing Tenant Matters</u>

The tenant mix and revenue provided under existing leases is a key consideration in connection with the purchase of a retail real estate development. Among the matters that will typically be covered within the scope of buyer's due diligence is learning more about the tenants and the material terms of their existing leases, including the following:

- Lease Term (remaining term)
- Renewal Options
- Base Rent / Percentage Rent
- Rent Abatement Rights
- Go Dark Rights
- Exclusive Rights
- Landlord Use Restrictions
- Site Development Restrictions
- Security Deposits
- Operating Expense Reconciliation / Audit Rights
- Co-tenancy Rights
- Kickout / Termination Rights
- Outstanding work obligations

The PSA should require seller to provide copies of all lease, amendments, side letters, and other relevant documents related to each lease. In addition, sellers typically maintain a rent roll with a summary of key terms for each lease (See <u>Exhibit C</u> attached hereto). The PSA should require the seller to provide a current and accurate rent roll as a due diligence deliverable. The rent roll should be consistent with the terms of each lease.

The PSA should specifically require each lease, security deposit, insurance proceeds with respect to any lease to be assigned to buyer at closing. Depending upon timing of closing, the PSA should specifically address proration of rent received on the first of the month to

allow the seller to maintain all earned rent proceeds prior to closing. Similarly, buyer will want to receive its proportionate share of rental proceeds during the month of closing and earned as of the day of and after closing.

The PSA should require seller to provide signed estoppel certifications from each tenant verifying at least the following factual matters (i) the lease is in full effect; (ii) landlord is not in default of its obligations under the lease (or state any such defaults); (iii) landlord has completed all of its construction obligations (or state such outstanding obligations); and (iv) landlord owes (or does not owe) any outstanding tenant construction allowance or other lease related payment. An estoppel is one means of determining if there are any hidden liabilities or undisclosed traps that will impact the purchase or post-purchase operations of the development. While the buyer would like estoppel certificates from all tenants, it is not uncommon for a seller to seek to limit the obligation to provide estoppel certificates to tenants occupying a stated percentage of the development or only tenants of a specific size.

(d) Representations and Warranties

Representations and warranties are two of the most important issues addressed in a PSA to either the seller or the buyer. The buyer naturally wants to offer as few representation or warranties as possible. Ideally, from the seller's perspective, the shopping center should be accepted "AS IS" subject to buyer's own due diligence. Given, however, buyer is buying an ongoing revenue generating asset, most buyer's will not accept the purchase of a shopping center "AS IS" and will demand representations and warranties regarding the completeness of the lease documents, absence of lease defaults, and probably condition closing on the existence of no material adverse events or conditions that would impact the investment.

Buyers may also require a representation and warranty regarding environmental conditions, which can be heavily negotiated depending upon the existence known environmental conditions or hazards. Typically, sellers will seek to narrow the scope of an environmental representation or warranty with a knowledge qualifier or require the seller to have caused the claimed environmental damage to be deemed liable for violating the environmental representation. Sellers also seek to limit the survival period for representations and warranties to one year or less.

(**e**) **Pre-Closing Matters**

- **Casualty and Condemnation**

  A PSA will also contain provisions regarding what happens if the property suffers a casualty or condemnation event prior to the closing. The provisions will specify which events give rise to a right to terminate the PSA and whether the seller has an obligation to repair or restore the property after a casualty. It is typical that these provisions will set certain thresholds for what is a material casualty or condemnation taking. Below those thresholds, a buyer will be required to proceed to closing and above those thresholds there will be the option to terminate the contract instead of proceeding to closing. In the event of a non-material casualty or condemnation event where buyer is required to proceed to closing, be sure that buyer is receiving adequate payments or assignments of insurance proceeds and condemnation awards as well as receiving a credit for any insurance deductibles. Plus, purchasers should confirm seller has the property adequately insured and the PSA should contain a covenant that Seller maintain substantially similar coverage for the property through Closing.

  When an event occurs that gives rise to a termination option, the standard provision will often say that either seller or buyer can terminate the agreement. Instead, purchasers will want this election to solely rest with them since, at the time of the event, they may have already incurred significant expenses in connection with conducting diligence investigations, securing financing, pursuing development and permitting approvals, and obtaining legal representation in connection with those activities. It will be more difficult to have a seller accommodate Buyer having

this unilateral right if the PSA requires that the closing date be extended, and seller perform the repair, before buyer is obligated to complete the acquisition.

The materiality thresholds are typically correlated to the time or expense required to complete a repair or the value of the portion of the property taken in the condemnation (often expressed as a percentage of the purchase price). As counsel for a purchaser, you should add additional triggers that would provide your client the option to terminate the PSA. A few of the additional conditions that should give rise to buyer having the right to terminate the PSA are:

- **Access:** If access to the property or the common areas is eliminated or materially impaired by the casualty or condemnation event.

- **Zoning:** If after a condemnation, the property would no longer be in compliance with the applicable zoning ordinance (such as losing parking areas and no longer being able to maintain the minimum number of parking spaces required by the ordinance).

- **Tenant Rights:** If the casualty or condemnation event gives a tenant the right to terminate, or abate rent under, its lease agreement. Note that when sellers accept this additional trigger, they will often modify the language such that it is limited to certain specified major tenants (normally those identified by name in the tenant estoppel provision) and to provide that if the tenant waives the right to terminate or abate rent, such right can't be the basis for purchaser's termination.

- **Pre-Closing Preparation**

After the due diligence period expires, the parties should turn their attention to the items that need to be obtained to effectuate the closing. This is especially true for items that have to be requested from third parties which can be long lead time items (such as a lender payoff letters, municipal lien searches, tax clearance certificates, or assignments of Letters of Credit that seller is holding for tenant security deposits).

Assignment of PSA: Buyers typically execute the PSA with a parent company with assets and then assign their interests in the PSA to a special purpose entity prior to closing. Purchaser's counsel should be careful to give any required notice and evidence of the assignment to seller the specified number of days prior to closing if the PSA so states. Also, remember to negotiate for purchaser's right to assign the PSA without Seller's consent so long as it is to a newly-formed entity that is wholly-owned and controlled by purchaser.

Preparation and Execution of Closing Documents*: Parties should prepare the required closing documents such as the Deed; Bill of Sale; Assignment of Leases, Contracts, and Intangible Property; Settlement Statement; FIRPTA Certificate, Tenant Notice Letters, Certificates regarding Representations and Warranties; Owner's Affidavit; and State-Specific items such as transfer tax forms or Affidavits of Gain / Withholding. Check the PSA to see if documents have to be delivered a business day (or more) prior to the closing date.

*Be cognizant that it may take more time to coordinate execution with your signatories in this hybrid work environment (especially for documents that need to be signed in front of a notary and/or witnesses).

Closing Instructions: Remember that counsel should prepare a closing escrow letter, to be countersigned by the title company, which provides explicit instructions regarding the documents and funds that must be received and other conditions that have to be met prior to closing being authorized and the title company being permitted to release funds and record documents. If multiple documents are being recorded at closing, the letter should list the recording order for those documents.

- **Identify Mission Critical Deliverables or Conditions:** When negotiating the PSA, sellers and buyers should specify the mission critical conditions that must be satisfied in order for the party to be obligated to close the transaction. For sellers, this is typically a short list limited to purchaser's representations remaining true and the buyer having performed its obligations and covenants under the PSA, tendered the purchase price, and delivered the required closing documents and authority materials. Buyers will likewise require that the seller's representations remain true and that seller have performed its obligations and covenants under the PSA and delivered the required closing documents and authority materials. Additionally, buyers will often add conditions related to confirming they will have the right to operate, and collect revenue from, the property without unnecessary impairments. Some of these conditions are described below.

    - **Estoppel Certificates, Reprise:** As noted above, a PSA will contain a tenant estoppel provision unless you have a property without tenants or with only residential tenants (for a mixed-use property with retail and residential tenants, estoppels would only be requested from the commercial tenants). The universe of required estoppels is heavily negotiated. Buyer would prefer to have an estoppel from every tenant and seller will not want a few small tenants to jeopardize an entire transaction. The parties typically agree obtaining estoppels from tenants representing a particular percentage of the overall leased square footage of the property and, sometimes, a few significant named tenants (such as your anchor grocer).

    - Buyers will often attempt to have a condition that seller provide third-party estoppels to key title documents, such as a reciprocal easement agreement. While sellers will sometimes agree to request title estoppels, they generally won't agree that obtaining them are conditions to closing.

    - **Permits and Approvals:** For a development deal, buyers will often request that they not be obligated to close if they have not received their permits or approvals. Sellers will not want this to be a condition because the buyer drives that process and seller doesn't control the municipality. A different way to address this concern is to have an initial diligence period in the PSA and then a permitting period, during which buyer can terminate if the approvals are not received, but after the expiration of the permitting period, a lack of approvals would not give buyer a right to terminate and have its earnest money refunded.

    - **Title:** Sometimes, seller's obligation to deliver marketable title to the property to buyer will be included in the list of closing conditions.

    - **Material Adverse Change ("MAC"):** Occasionally, purchasers are able to negotiate for the right to terminate the PSA if a MAC has occurred with respect to the property, such as a major tenant terminating its lease, permanently ceasing operations, or filing for bankruptcy. A buyer buying, for example, a single-tenant industrial asset has a stronger argument for requesting this than a buyer of assets with a number of tenants contributing towards the property's cashflow.

    - **Financing:** Most PSAs will expressly state that buyer is obligated to bring the cash consideration to closing and that no financing contingency exists. While unusual, if the business deal is that buyer has a financing contingency, obtaining the loan should be included as a condition precedent. Note that any such condition will be heavily negotiated regarding what constitutes the satisfaction of this condition so that buyer cannot use this condition as grounds for being unreasonable in its negotiations with the lender or as a pretext to terminate the PSA when purchaser's true concern is a diligence matter or a change in market conditions.

(f) Default/Remedies

Practitioners should include a default provision in a PSA to deal with the myriad of issues that arise pre-closing, at closing, or post-closing. A default may occur as a result of a failure of a representation or warranty, failure of a party to perform, failure of a closing condition, or the failure of a post-closing condition.

As was taught in every 1st year real property law course, "real estate" is deemed a unique asset, and as such, the remedy of specific performance is typically an available to include in a PSA. Specific performance is essentially an equitable claim requested by a party to a real estate transaction to force the defaulting party to perform under the terms of the PSA (that is to say, to complete the purchase as demanded). Typically, the remedy of specific performance is not available to most sellers, but is more often granted to a willing buyer who is not in default of their performance obligations under the PSA. Specific performance, however, should not be a buyer's sole remedy and the PSA should include various options for buyers and sellers.

According to the Restatement on Contracts (2nd), specific performance can be available to a seller in the absence of certainty, liquidity and marketability:

- Certainty. Real estate values may be speculative (and damages may be difficult to prove);

- Liquidity. Real estate may be illiquid (not immediately convertible into cash and may thereby deprive the seller of the ability to make other investments);

- Marketability. Real estate may not be marketable when there is a dispute between the seller and the buyer (an aborted sale may put a cloud on title and make a resale more difficult).

Given the due diligence costs involved with purchasing or developing a real estate development, a well drafted PSA will also include other default remedies, including the following:

- **Termination:** A PSA typically includes a mutual right to terminate the PSA in favor of the non-defaulting party.

- **Liquidated Damages:** Either buyer or seller may obtain liquidated damages in addition to PSA termination. Typically Seller's liquidated damages includes the right to retain buyer's security deposit. The buyer may also want to negotiate a liquidated damages provision to reimburse itself for the cost of due diligence in the event specific performance may not be available or desirable. A seller might respond to a demand for liquidated damages with a cap on such damages and include the cap in the PSA.

- **Actual Damages:** To the extent damages are readily ascertainable, a party can seek actual damages arising from a default.

(g) Post-Closing Matters

The merger doctrine provides that any promises or terms outlined in a PSA (the executory contract) are considered to be merged into the final deed upon the completion of the sale. In other words, once the property is conveyed to the grantee through the deed, the terms and conditions agreed upon in the PSA are typically no longer enforceable as separate obligations.

Exceptions to the Merger Doctrine, which vary by state, may include:

- Collateral agreements, which are agreements that: (1) are not contained in or performed by the execution and delivery of the deed; (2) are not inconsistent with the deed; and (3) are independent from the conveyance of title. "Thus, where an executory agreement contains provisions collateral to and independent of the

provisions in the subsequent deed, those provisions would not merge and would remain in full force after delivery of the deed. Trapp v. Gordon, 7 N.E.2d 869 (Ill. 1937).

- Acts that are conditions subsequent to closing. Bruggeman v. Jerry's Enterprises, Inc., 591 N.W.2d 705 (Minn. 1999).

- Fraud

- Mistake

- Practice Tip: Include survival language in relevant sections of the PSA (i.e. representations and warranties, covenants, obligations and rights) that the parties wish to survive closing). Consider express language that unless provisions expressly survive the closing, all provisions shall be merged with the deed.

Exhibit A
Sample Letter of Intent

[Attached]

DYNAMIC DEALS REALTY
543 5th Street, Oppulence Heights, Opulence, 54321 – Dexter Dealman – (800) 867-5309

LETTER OF INTENT

Pennywise Promenade, LLC,
Attn: Mr. Pennywise
123 1st Street,
Opulence Heights, Opulence 54321

Re: Purchase of Real Property - Luxetacular Promenade

Dear Mr. Pennywise:

This Letter of Intent (this "Letter of Intent") sets forth some of the basic terms under which Victoria Venture ("Buyer") would be interested in acquiring the property set forth on Exhibit A attached hereto and incorporated herein by this reference (the "Property") from Mr. Pennywise ("Seller"). You will notice that this Letter of Intent sets forth specific details as to the proposed transaction. We have found that addressing business issues in a comprehensive manner at the outset expedites negotiation and finalization, and this Letter of Intent is intended as the first step in this process. Nevertheless, please be advised that this Letter of Intent is not contractually binding on the parties and is only an expression of the basic terms and conditions to be incorporated in a formal written agreement.

Property:
Luxetacular Promenade, as set forth on Exhibit A attached hereto and incorporated herein by this reference.

Buyer:
Luxetacular Promenade Co., LLC, a Delaware limited liability company.

Seller:
Pennywise Promenade, LLC, a Delaware limited liability company

Purchase Agreement:
Within thirty (30) days after execution of this Letter of Intent by Seller and Buyer, Buyer shall prepare and execute a Purchase and Sale Agreement (the "Purchase Agreement") for the Property setting forth the specific terms of the purchase and sale in accordance with this Letter of Intent, and thereafter the parties shall negotiate diligently and in good faith in an effort to reach agreement on the Purchase Agreement; provided, however, that neither party shall be obligated to enter into any such Purchase Agreement except in their respective sole discretion. Both parties require a formal Purchase Agreement to be executed in form and content satisfactory to each party and its counsel in their sole discretion. If a Purchase Agreement is not executed and delivered by both parties within thirty (30) days after execution of this Letter of Intent by both Buyer and Seller, this Letter of Intent shall automatically become null and void and of no further force and effect.

Escrow:
The Escrow Agent for this transaction shall be Opulence Heights Title Insurance Company (the "Title Company").

Earnest Money:
Within Five (5) days of execution of the Purchase Agreement, Buyer will deposit Two Hundred and Fifty Thousand and 00/100 Dollars ($250,000.00) in the form of immediately available funds to be held in escrow by Escrow Agent in accordance with the Purchase Agreement. At Closing, the Earnest Money will be applied to the Purchase Price.

Purchase Price:
Seventeen Million and 00/100 Dollars ($17,000,000.00) in immediately available funds.

Closing:
The Purchase Price of the Property shall be paid at Closing by Buyer pursuant to the Purchase Agreement, subject to adjustments and prorations set forth in the Purchase Agreement.

Due Diligence:
After execution of the Purchase Agreement, Buyer will have a period of ninety (90) days following Seller's delivery to Buyer of the information set forth on Exhibit B attached hereto and incorporated herein by this reference (the "Inspection Period") to review all matters pertaining to the Property, including, without limitation, the conditions of

title, survey, an environmental audit, and availability of financing. Seller will cooperate with Buyer and its representatives during this Inspection Period and permit such access to the Property and Seller's files and records relating thereto as Buyer reasonably requests. The Purchase Agreement shall terminate and the Earnest Money will be refunded to Buyer in the event Buyer gives written notice to Seller that the results of Buyer's examinations and investigations undertaken during the Inspection Period are unsatisfactory to Buyer in Buyer's sole discretion, provided that such written notice is received by Seller on or before the expiration of the Inspection Period. Provided however that Buyer shall have two (2) thirty (30) day options in which to extend the Inspection Period (each an "Inspection Extension Period"). In order to exercise an option for an Inspection Extension Period, Buyer shall provide written notice of the same alongside a Fifty Thousand and 00/100 Dollars ($50,000.00) deposit prior to the expiration of the applicable Inspection Period or Extension Period.

Title:
Good, marketable and indefeasible fee simple title to the Property shall be delivered by Seller to Buyer as of the date of Closing and the Property shall be free and clear of all liens and encumbrances, subject only to such exceptions as may be approved by Buyer. Within Ten (10) days after execution of the Purchase Agreement, Buyer shall obtain from Title Company a commitment for an owner's policy of title insurance (the "Title Commitment") issued by the Title Company, which Commitment shall contain the express commitment of the Title Company to issue an ALTA owner's title insurance policy to Buyer subject only to those exceptions approved by Buyer.

Survey:
Buyer shall have the right to obtain an ALTA survey of the Property (the "Survey") as part of the due diligence activities on the Property. Buyer shall have until the date which is ten (10) calendar days prior to the expiration of the Inspection Period to notify Seller in writing of any Title Objections. Seller shall, within three (3) business days after receipt of such Title Objection Notice, notify Buyer which objections, if any, that Seller has elected to cure or cause to be cured before Closing.

Closing Date:
The closing date of the transaction contemplated by this Letter of Intent (the "Closing Date") shall occur no later than 180 following the execution of the Purchase Agreement.

Prorations and Closing Adjustments:
The Purchase Price shall be adjusted on the Closing Date for prorations and adjustments as are customary in Opulence. Such prorations shall include, but not be limited to, deposits, rents and other revenues, operating expenses, and real and personal property taxes.

Closing Costs:
Seller shall be responsible for the following costs in connection with this Agreement: (i) all conveyance fees, transfer taxes and similar governmental transaction fees payable upon the conveyance of the Property to Buyer; (ii) the premium for the Title Policy; (iii) the cost of any endorsements to the Title Policy required to cure any Title Objections raised by Buyer; (iv) one- half of the closing or escrow fees charged by the Title Company; (v) the cost to record any releases or satisfactions of any liens; (vi) any commission due the brokers; and (vii) the costs of counsel and other professionals engaged by Seller. Buyer shall be responsible for the following costs in connection with this Agreement: (i) the cost to record the Deed and any other documents to be recorded (other than those described in clause (iv) above to be paid by Seller): (ii) the cost of any endorsements to the Title Policy required by Buyer not necessary to cure any Title Objections, if any; (iii) one-half of the closing or escrow fees charged by the Title Company; and (iv) the costs of counsel and other professionals engaged by Buyer, including without limitation those engaged in connection with the Inspections.

Warranties and Representation:
Buyer and Seller shall provide customary representations, warranties and covenants to each other regarding their respective entity status, authority to perform under the Purchase Agreement, conditions of the Property and maintenance of the Property between execution of the Purchase Agreement and Closing, and other matters, as may be agreed by Borrower and Seller.

Commissions:
Seller shall pay any and all commissions to any broker. Except for brokers recognized in the Purchase Agreement, Buyer and Seller shall indemnify, defend and hold harmless the other from and against the claims, demands, actions and judgments of any and all brokers, agents and other persons or entities alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with the Purchase Agreement.

Governing Law:

The provisions of this Letter of Intent shall be construed according to, and otherwise governed by, the laws of the State of Opulence, without regard to its conflicts of laws.

Counterparts:
This Letter of Intent may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and may be delivered via electronic means.

The above sets forth an expression of the basic terms under which Buyer is prepared to proceed. If Seller is agreeable to these basic terms, please so indicate by signing a copy of this Letter of Intent and returning same to me at 231 2nd Street, Opulence Heights, Opulence 54321, with a copy to my attorney Michael Smith, Esq. at Smith, Johnson & Williams, LLP, 432 4th Street, Opulence Heights, Opulence 54321.

Luxetacular Promenade Co., LLC,
a Delaware limited liability company

By: _____
Victoria Venture
Authorized Signatory
Date: [date]

ACCEPTED AND AGREED TO:

Pennywise Promenade, LLC, a Delaware limited liability company

By: _____
Mr. Pennywise
Authorized Signatory
Date: [date]

Exhibit B
Sample PSA

[Attached]

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Agreement**") is made this ____ day of _____, 2024 ("**Effective Date**") by and between Pennywise Promenade, LLC, a Delaware limited liability company ("**Seller**") and Luxetacular Promenade Co., LLC, a Delaware limited liability company ("**Purchaser**", and together with Seller, sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**.")

ARTICLE I
The Property

Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell, and Purchaser hereby agrees to purchase fee simple title in and to certain real property consisting of approximately +/- 5.00 acres and located in Opulence Heights, Opulence, commonly known as Luxetacular Promenade (the "**Land**"), together with (i) all fixtures thereto; (ii) all plans, specifications and studies pertaining to the Land in Seller's possession or control; (iii) all the coal, oil and gas and other mineral rights in and under the Land; (iv) all beneficial easements, water rights, licenses, leases, privileges and other property interests belonging or appurtenant to the Land (the "**Appurtenant Rights**", and together with the Land sometimes collectively referred to herein as the "**Real Property**"); (v) Seller's right, title and interest, if any, in and to any web sites and other media sites, tradename and trademarks, to the extent related exclusively to the Land or the improvements thereon, and to the extent assignable and without warranty: (collectively, the "**Intangible Property**") and (vi) all personal property located on the Real Property used in connection with the operation of the Real Property (the "**Personal Property**", and together with the Intangible Property and the Real Property, sometimes collectively referred to herein as the "**Property**").

ARTICLE II
Purchase Price and Deposit

2.1 Purchase Price. The purchase price to be paid by the Purchaser to Seller for the Property is Seventeen Million and 00/100 Dollars ($17,000,000.00) (the "**Purchase Price**"). The Purchase Price, subject to the credits and adjustments contained in this Agreement, shall be paid at Closing by Purchaser by wire transfer of immediately available funds.

2.2 Earnest Money. (a) Within five (5) days of the Effective Date, Purchaser shall deliver a deposit in the amount of Two Hundred and Fifty Thousand and 00/100 Dollars ($250,000.00) (the **"Deposit**") in immediately available funds to the Title Company (as defined herein) to be held in escrow and disbursed to Seller or Purchaser as provided in this Agreement.

(b) The Deposit shall be disbursed as follows: (i) if the transaction proceeds to Closing, the Deposit will be paid to Seller and credited against the Purchase Price; (ii) if Purchaser exercises its right to terminate this Agreement as expressly provided herein, or if Seller defaults upon its obligations hereunder, the Deposit will be returned to Purchaser; and (iii) if Purchaser defaults on its obligations under this Agreement, the Deposit will be delivered to Seller.

ARTICLE III
Inspections

3.1 Inspection Period; Inspection Rights and Obligations. Purchaser shall have a period of time commencing on the later of (i) Effective Date, and (ii) the date that Seller delivers all of the Seller Information to the Purchaser, and terminating at 5:00 pm (EST) on the date that is ninety (90) days therefrom (the "**Inspection Period**") to conduct examinations, tests, studies and inspections of the physical condition or legal status of the Property as may be necessary or desirable in Purchaser's discretion to evaluate the Property for Purchaser's intended use ("**Inspections**"). All Inspections conducted by Purchaser or at Purchaser's direction shall be at Purchaser's sole cost and expense and shall be conducted in such a manner so as not to unreasonably interfere with Seller's operations upon the Property. Purchaser shall notify Seller no less than twenty-four (24) hours prior to entering upon the Property to conduct any Inspections, and Seller shall reasonably cooperate to make the Property available to Purchaser, subject to the rights of tenants or other parties in possession. Purchaser shall not provide Seller with copies of any environmental studies or reports without first obtaining Seller's written (or email) consent thereto. Purchaser shall indemnify and hold Seller harmless from and against any and all liabilities, costs or expense, including without limitation damage to the Property or the death or injury of any persons resulting from Purchaser's exercise of the rights granted hereunder; provided, however, that Purchaser shall have no liability to Seller for any liability, cost or expense incurred by Seller, including without limitation the diminution in value of the Property, resulting from Purchaser's mere discovery (and required reporting, as applicable) of the environmental or other conditions of the Property. Neither Purchaser nor its agents or contractors shall disclose the results of their inspections to any third party unless required by law to do so. Purchaser may terminate this Agreement at any time prior to the expiration of the Inspection Period by providing written notice thereof to Seller, in which case (i) the Deposit shall be disbursed to Purchaser in accordance with Section 2.2 and (ii) this Agreement shall be deemed null, void and of no further effect, except as otherwise set forth in this Agreement. If Purchaser fails to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser shall be deemed to be satisfied with the Property and shall have waived any right to terminate the Agreement pursuant to this Section 3.1.

3.2 Seller Deliverables. Within five (5) business days of the Effective Date, Seller shall deliver to Purchaser or its designees, all of the following to the extent the same are within the possession or reasonable control of Seller: copies of all permits, governmental approvals necessary for the operation of the Property; copies of any plans for development of the Property; copies of all environmental audits or reports, soils reports and engineered foundation reports of the Property; surveys; comprehensive financial statements for the Property detailing all incomes and expenses related thereto; property condition reports; leases or other agreements relating to possession of the Property or services provided thereto; a list of all capital improvements to the Property currently under construction as of the Effective Date and scheduled to begin construction after the Effective Date; a list of all outstanding tenant allowances, and the outstanding balances thereof, for any tenant located on the Property; a list of all unpaid security deposits, and the balances thereof, paid by any tenant of the Property to Seller; and any and all other information in Seller's possession or control related to the possession, maintenance, control or operation of the Property, including but not limited to any and all items listed in the attached Exhibit D, to the extent such items are not addressed in this Section 3.2 ("**Seller Information**").

3.3 Approvals. During the Inspection Period, Purchaser may evaluate and/or, subject to Seller's written consent, apply for any governmental approvals necessary for Purchaser's intended use of the Property, as determined in Purchaser's sole discretion, including without limitation approvals for zoning and legal access approvals. Seller shall cooperate with Purchaser in good faith to assist Purchaser in obtaining such Approvals to which it has consented prior to the end of the Inspection Period. If Purchaser fails to obtain any desired Approvals prior to the end of the Inspection Period, Purchaser may terminate this Agreement by providing written notice thereof to Seller, in which case (i) the Deposit shall be disbursed to Purchaser in accordance with Section 2.2 and (ii) this Agreement shall be deemed null, void and of no further effect, except as otherwise set forth in this Agreement. If Purchaser fails to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser shall be deemed to be satisfied with the Property and shall have waived any right to terminate the Agreement pursuant to this Section 3.3.

3.4 Inspection Period Extension Option. Purchaser shall have two (2) options to elect to extend the Inspection Period for an additional thirty (30) days ("**Inspection Period Extension Option**") during which to continue its Inspections. To exercise an Inspection Period Extension Option, Purchaser shall provide written notice of its intent to exercise an Inspection Period Extension Option alongside an additional deposit of Fifty Thousand and 00/100 Dollars ($50,000.00) in immediately available funds to the Title Company to be held in escrow and disbursed to Seller or Purchaser as provided in this Agreement. If Purchaser fails to terminate this Agreement prior

to the expiration of the Inspection Period, Purchaser shall be deemed to be satisfied with the Property and shall have waived any right to terminate the Agreement pursuant to this Section 3.4.

ARTICLE IV
Title and Survey

4.1 Deed. Seller shall convey to Purchaser at Closing good, transferable and marketable title in fee simple to the Property by recordable limited warranty deed ("**Deed**"), subject only to: (1) exceptions, covenants, conditions, restrictions and other matters of record which are reviewed and approved by Purchaser pursuant to this Article IV; (2) general real estate taxes and assessments not yet due and payable; (3) all existing zoning laws and ordinances; and (4) any Title Objections waived or deemed waived by Purchaser in accordance with the terms and conditions of this Article IV (collectively, "**Permitted Exceptions**").

4.2 Evidence of Title. Within ten (10) business days after the Effective Date, Seller shall furnish to Purchaser at Seller's cost a title insurance commitment showing title to the Real Property vested in Seller bearing an effective date which is after the Effective Date of this Agreement ("**Title Commitment**") for an ALTA Owners 2006 Form title insurance policy ("**Title Policy**") through Opulence Heights Title Insurance Company, Attn: Timothy Title ("**Title Company**") committing the Title Company to insure in Purchaser marketable title to the Property. Seller shall also deliver or cause Title Company to deliver to Purchaser legible copies of all recorded documents referred to in the Title Commitment.

4.3 Survey. Purchaser may, at Purchaser's option, obtain a survey of the Property, certified to Purchaser, Seller and the Title Company and made in accordance with the most recent Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, which survey shall include a flood plain designation, the location of all easements affecting the Property, any encroachments onto or from the Property, the location of all buildings and improvements on the Property, if any, and containing a calculation of the acreage of the Property to the nearest one-thousandth (1/1000th) of an acre, excluding all right-of-ways, streets, alleys, roadways, and railroad tracks (the "**Survey**"). If Purchaser does obtain a Survey, the legal description shown on the Survey will be used to convey the Property to Purchaser at the Closing.

4.4 Title Objections. If the Title Commitment or the Survey disclose any defect in title or any other exception, covenant, condition, encroachment or restriction which is unacceptable to Purchaser in its sole discretion (collectively, "**Title Objections**"), Purchaser shall have until the date which is ten (10) calendar days prior to the expiration of the Inspection Period to notify Seller in writing of such Title Objections ("**Title Objection Notice**"); provided, however, that notwithstanding anything in this Agreement to the contrary, Purchaser need not object to any mortgages, deeds of trust or security instruments of a liquidated and ascertainable amount, all of which Seller covenants to satisfy at or prior to Closing. Seller shall, within three (3) business days after receipt of such Title Objection Notice, notify Purchaser which objections, if any, that Seller has elected to cure or cause to be cured before Closing ("**Seller Response"**). Failure of Seller to timely provide a Seller Response shall be deemed confirmation that Seller has elected not to cure such Title Objections. If Seller chooses not to cure any or all of the Title Objections set forth in the Title Objection Notice, Purchaser may either terminate this Agreement in the same manner as provided in Section 3.3 herein; or waive the uncured Title Objections and proceed to Closing, in which cause any uncured Title Objections shall become Permitted Exceptions to the Deed. If Seller elects to cure any or all of the Title Objections, Seller shall use best efforts to cause the same to be cured prior to Closing; provided, however that if Seller is unable to effectuate the cure to Purchaser's reasonable satisfaction prior to Closing, it shall not be a default on the part of Seller, but Purchaser shall then have the right to either terminate this Agreement in the same manner as provided in Section 3.3 herein (and receive a refund of the Deposit notwithstanding any other provision of this Agreement), or extend the date of Closing for such time as is necessary for Seller to complete the cure; provided, however, that in the case of the latter option Purchaser shall retain the right to terminate the Agreement up until the point at which Seller completes all curative work to Purchaser's reasonable satisfaction.

If, at any time prior to the recording of the Deed at Closing, Purchaser is made aware of any new condition of title (whether created during the pendency of this Agreement or resulting from omissions in the original Title Commitment or the original Survey) (collectively a "**New Encumbrance**"), Purchaser shall have a right to deliver a supplemental Title Objection Notice to Seller for such New Encumbrance(s), in which case Purchaser and Seller shall promptly address the same in the manner otherwise provided in this Section 4.4.

ARTICLE V
Special Terms and Conditions

5.1 Leases. Subject to those items disclosed in the Title Commitment, Purchaser represents and warrants that the Property is not encumbered by any leases, licenses or other instruments granting right of possession to any party other than Seller. During the term of this Agreement, Seller or its agents shall not enter into any such lease or other document granting a right of possession, or modify any such agreements, without Purchaser's prior written consent.

ARTICLE VI
Representations and Warranties

6.1 Seller Representations and Warranties. Seller represents and warrants to Purchaser that the following are true, complete and accurate as of the Effective Date and shall be true, complete and accurate as of the Closing:

6.1.1 Seller will have at the time of Closing good, marketable and insurable fee simple title to the Property and has not entered into any agreement to sell, lease, mortgage or otherwise dispose of its interest in the Property or any part thereof other than this Agreement and as otherwise disclosed to Purchaser in writing.

6.1.2 Seller has no knowledge of any action, proceeding or investigation pending or threatened against Seller relating to the Property or against the Property or any part thereof before any court or governmental department, commission, board, agency or instrumentality, and Seller does not have any knowledge of any basis for any such action, proceeding or investigation.

6.1.3 Seller has not received any written notice from any governmental or quasi-governmental authority of any violations of zoning, building, fire or health codes or any other statute, ordinance, rule or regulation applicable (or alleged to be applicable) to the Property, or any part thereof. To the best of Seller's knowledge, there are no pending or threatened, requests, applications or proceedings from any governmental or quasi-governmental authority to alter or restrict the zoning or other use restrictions applicable to the Property. Seller has not received notice that the Property contravenes or violates any restrictions of public record.

6.1.4 Seller has full power and authority to enter into and fully perform and comply with the terms of this Agreement. Neither the execution and delivery of this Agreement, nor its performance by Seller, will conflict with or result in the breach of any contract, agreement, law, rule or regulation to which Seller is a party or by which Seller is bound. The officials consummating this transaction on behalf of Seller are properly authorized to do so.

6.1.5 Seller is not a "foreign person" as such term is defined in Section 1445(f) of the Internal Revenue Code of 1954, as amended.

6.1.6 To the best of Seller's knowledge, the Property is serviced by public or private water, sewer, telephone, gas and electric facilities located in the public right of way adjacent to the Property and such utilities will be made available to the Property upon payment of normal and customary permit or tap fees.

6.1.7 Except as set forth in the Title Commitment, Seller has no knowledge of any assessments for public improvements which have been made against the Property and remain unpaid; Seller has no knowledge that any such assessments are proposed or contemplated; and to the extent Seller gains knowledge of any such assessments from and after the Effective Date, but prior to Closing, Seller will inform Purchaser of any such assessments or proposed assessments prior to the Closing.

6.1.8 Seller has no knowledge of any encumbrances on title to the Property other than those to be set forth in the Title Commitment, nor does Seller have any knowledge of off-record or undisclosed legal or equitable interests in the Property or rights of possession thereto owned or claimed by any other person or entity.

6.1.9 Seller is not aware of any unpaid-for improvements that have been made, or materials, machinery or fuel delivered to or labor performed on the Property by or on behalf of Seller, which might form the basis of a mechanic's lien against the Property, nor has Seller received a copy of an affidavit of mechanic's lien which may be filed against the Property.

6.1.10 Seller has not received any written notice of any proposed condemnation proceedings against all or any part of the Property.

6.1.11 Seller has not received any written notice from any governmental or quasi-governmental authority of any environmental matters or Hazardous Materials adversely affecting the Property in violation of any applicable Environmental Laws (defined below). For purposes of this representation and warranty, "Hazardous Materials" shall include, but shall not be limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec 1802 et seq., The Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., The Toxic Substance Control Act of 1976, as amended, 15 U.S.C. Sec. 2601 et seq., The Clean Water Act, 33 U.S.C. 466 et seq., as amended, and The Clean Air Act, 42 U.S.C. Sec. 7401 et seq., and in any applicable statute, ordinance rule or regulation of the State of Opulence or any local governmental entity having jurisdiction over the Property, and the regulations adopted and publications promulgated pursuant to any of the foregoing laws. Seller has also not received any written notice from any governmental or quasi-governmental authority, of any civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter pending or threatened against Seller in respect of the Property or the activities conducted thereon relating in any way to environmental matters, Hazardous Materials, or a violation of federal, state or local law related to pollution or protection of the environment ("**Environmental Laws**").

6.1.12 As to the Seller Information provided under Section 3.2 herein: (i) in the case of documents, reports or other materials prepared by Seller, is complete, true and accurate; (ii) in the case of documents, reports or other materials prepared for Seller by a third party, was relied upon by Seller in good faith in the ordinary course of Seller's business; and (iii) in any event do not, to Seller's actual knowledge, contain any material misstatements or inaccuracies.

6.1.13 Seller is duly organized, validly existing and qualified and empowered to conduct its business, and has full power and authority to enter into and fully perform and comply with the terms of this Agreement without the need for any internal or external approvals, and the person signing this Agreement on behalf of Seller is authorized to do so.

6.1.14 Except for the broker(s) identified in Section 10.1 herein, Seller has not engaged any broker or other representative that may be due a commission or other payment as a result of the conveyance of the Property to Purchaser as contemplated by this Agreement.

6.1.15 From the Effective Date until Closing, Seller (and its affiliates, and any of their managers, members officers, employees and agents) will not enter into any agreement, or conduct negotiations, directly or indirectly, with respect to the sale, transfer or encumbrance of their right, title and interest in the Property, or with respect to a sale of Seller, to any party other than Purchaser.

6.1.16 Seller shall continue to operate and manage the Property until Closing in the manner it has in the past and as would a prudent owner of property of comparable type, age, class and location.

6.2 Purchaser Representations and Warranties. Purchaser represents and warrants to Seller that the following are true, complete and accurate as of the Effective Date and shall be true, complete and accurate as of the Closing

6.2.1 Purchaser is duly organized, validly existing and qualified and empowered to conduct its business, and has full power and authority to enter into and fully perform and comply with the terms of this Agreement, and the person signing this Agreement on behalf of Purchaser is authorized to do so.

6.2.2 Except for the broker(s) identified in Section 10.1 herein, Purchaser has not engaged any broker or other representative that may be due a commission or other payment as a result of the conveyance of the Property to Purchaser as contemplated by this Agreement.

6.3 Scope. The foregoing representations, warranties and covenants shall be true as of the Effective Date and as of Closing and shall survive Closing for a period of one (1) year thereafter and shall not be merged into the Deed.

6.4 As-Is Purchase. Except for the representations and warranties contained in this Agreement and the limited warranties of title contained in the Deed, Seller has not made and does not make any representation or warranty as to the physical condition of the Property, the state of legal title to the Property or the suitability of the Property for Purchaser's intended use.

ARTICLE VII
Closing

7.1 Closing. Provided neither party exercises an express right to terminate this Agreement, the closing of the transaction contemplated by this Agreement shall occur in escrow with the Title Company after the earlier to occur of (i) the date that is One Hundred and Eighty (180) days following the Effective Date; or (ii) the date upon which Purchaser waives, in writing, its right to terminate the Agreement as provided in Article III herein (the "**Closing**"). On or before the date of Closing, the Parties shall deliver to the Title Company in escrow the Seller Deliverables and the Purchaser Deliverables, respectively.

7.2 Seller Deliverables.

7.2.1. the Deed, in recordable and transferable form and containing the legal description of the Property as set forth on the Survey, duly executed by Seller and acknowledged in the presence of a notary public, subject only to the Permitted Exceptions, sufficient to transfer and convey to Purchaser fee simple title to the Property as required by this Agreement;

7.2.2 a pro forma Title Policy purporting to insure in Purchaser fee simple title to the Property, subject only to the Permitted Exceptions and containing all endorsements requested by Purchaser, together with any and all affidavits, certificates or other documents required by the Title Company in order to cause it to issue the Title Policy in the form described herein;

7.2.3 a Certificate of Non-Foreign Status (Internal Revenue Code Section 1445 and the Regulations issued thereunder);

7.2.4 evidence of Seller's capacity and authority for closing this transaction satisfactory to Purchaser and the Title Company;

7.2.5 certificate of Seller acknowledging that all of the representations and warranties contained in Section 6.1 hereof are true and correct as of the date of Closing;

7.2.6 all other documents contemplated by this Agreement or otherwise reasonably necessary to perfect the conveyance, transfer and assignment of the Property to Purchaser;

7.2.7 a joint notice to be given to the Tenants by Seller and Purchaser stating that the Property has been sold to Purchaser and that, after the Closing, all Rents should be paid to or as directed by Purchaser (such notice to be delivered directly by Title Company to the Tenants) (the "**Tenant Notices**"); and

7.2.8 a statement of adjustments as well as all supporting documents thereto no later than fifteen (15) days prior to Closing. Seller will remain liable to collect and pay all sums due prior to the Closing Date and Purchaser will be liable to collect and pay all sums due on and as of the Closing Date. The parties will adjust all items as of the Closing Date, including rents accrued whether or not they have been collected.

7.3 Purchaser Deliverables.

7.3.1 the Purchase Price, as adjusted pursuant to this Agreement;

7.3.2 evidence of Purchaser's capacity and authority for closing this transaction satisfactory to Seller and the Title Company;

7.3.3 an executed counterpart to the Tenant Notices; and

7.3.4 all other documents contemplated by this Agreement or otherwise reasonably necessary to perfect the conveyance, transfer and assignment of the Property to Purchaser.

7.4 Credits and Prorations. All income and expenses of the Property shall be apportioned as of 12:01 a.m. on the date of Closing, as if Purchaser were vested with title to the Property during the entire day upon which Closing occurs. Seller shall cause a statement of such prorations to be completed and delivered to Purchaser no less than five (5) days prior to Closing, complete with evidence reasonably satisfactory to Purchaser. Such prorated items shall include without limitation the following:

7.4.1 all *ad valorem* taxes, assessments and special assessments of every kind and nature attributable to the Property ("**Taxes**") shall be accounted as follows: Prior to Closing, Seller shall pay all delinquent Taxes in full as well as any and all Taxes otherwise presently due and payable. Current taxes for the calendar year in which the Closing occurs shall be prorated through the date of Closing based upon the due date and considered paid in advance. At either Party's request, Purchaser and Seller agree to enter into a tax proration agreement at Closing to more specifically memorialize the above terms and conditions.

7.4.2 For those utilities which the applicable utility company does not directly bill tenants or other occupants of the Property, prior to the Closing date Seller shall notify each of the utility companies which provide services to the Property of the scheduled transfer of the Property on the Closing date, and make appropriate arrangements with the utility companies to bill Seller for services provided before the Closing date, and to Purchaser for services provided on and after the Closing date. To the extent any such invoices are not available or paid prior to Closing, Purchaser shall receive a credit against the Purchase Price in an amount reasonably estimated to account for the same.

7.5 Transaction Taxes and Closing Costs.

7.5.1 Seller shall be responsible for the following costs in connection with this Agreement: (i) all conveyance fees, transfer taxes and similar governmental transaction fees payable upon the conveyance of the Property to Purchaser; (ii) the premium for the Title Policy; (iii) the cost of any endorsements to the Title Policy required to cure any Title Objections raised by Purchaser; (iv) one- half of the closing or escrow fees charged by the Title Company; (v) the cost to record any releases or satisfactions of any liens; (vi) any commission due the brokers; and (vii) the costs of counsel and other professionals engaged by Seller.

7.5.2 Purchaser shall be responsible for the following costs in connection with this Agreement: (i) the cost to record the Deed and any other documents to be recorded (other than those described in Section 7.5.1(iv)): (ii) the cost of any endorsements to the Title Policy required by Purchaser not necessary to cure any Title Objections, if any; (iii) one-half of the closing or escrow fees charged by the Title Company; and (iv) the costs of counsel and other professionals engaged by Purchaser, including without limitation those engaged in connection with the Inspections.

7.6 Possession. Purchaser shall be entitled to full and complete possession of the Property, subject only to the Permitted Exceptions.

ARTICLE VIII
Casualty and Condemnation

8.1 Condemnation. If, prior to Closing, the Property or any part thereof shall be condemned by any legally constituted authority for any public use or purpose, or if Seller receives notification that a condemnation is being contemplated by any legally constituted authority, Seller shall give Purchaser prompt notice of same and Purchaser shall have the option either to terminate this Agreement or to consummate the transaction contemplated by this Agreement notwithstanding such condemnation. If Purchaser elects to consummate the transaction contemplated by this Agreement, Purchaser shall be entitled to receive the condemnation proceeds with no reduction in Purchase Price, and Seller shall, at Closing and thereafter, execute and deliver to Purchaser all required assignments of the condemnation proceeds and other similar items. If Purchaser elects to terminate this Agreement, Purchaser shall send a written notice of such termination to Title Company and Seller pursuant to the notice provisions of this Agreement within twenty (20) business days after receiving the written notice from Seller under this Section 8.1 and the Agreement will terminate as contemplated under Article III herein.

8.2 Casualty. If prior to Closing the Property is completely or partially damaged by fire or other casualty, then Seller shall promptly notify Purchaser thereof in writing. Purchaser shall have five (5) business days from the receipt of such notice to notify Seller that Purchaser will (i) subject to all of the other terms and conditions hereof, proceed with the Closing and be entitled to receive all insurance proceeds payable as a result thereof, or (ii) terminate this Agreement and receive a refund of the Deposit.

ARTICLE IX
Default

9.1 Default by Purchaser. Any material breach of the representations of Purchaser under Section 6.2 or any other failure to perform any obligation of Purchaser hereunder shall constitute an event of default. Purchaser and Seller each acknowledge that it would be difficult to ascertain the actual damages which would be suffered by

Seller if Purchaser defaults in consummating the purchase and sale contemplated by this Agreement. If Purchaser fails or refuses to perform any of its obligations hereunder, then Seller's sole remedy shall be to give Purchaser written notice of Purchaser default, with a copy thereof to Title Company, and Title Company shall pay the Deposit to Seller. Upon such payment of the Deposit as liquidated damages to Seller, as the actual amount of damages are impractical or extremely difficult to fix and liquidated damages in the amount of the Deposit are and will be reasonable, neither party to this Agreement shall have any further liability to the other and this Agreement shall terminate and the parties shall have no further obligations hereunder, except for those which expressly survive any such termination.

9.2 Default by Seller. Any material breach of the representations of Seller under Section 6.1 or any other failure to perform any obligation of Seller hereunder (including without limitation Seller's refusal or inability to convey the Property at Closing) shall constitute an event of default. Upon the occurrence of any such event of default, Purchaser shall be entitled to exercise any or all of the following remedies: (a) terminate this Agreement by giving written notice to Seller, with a copy thereof to Title Company, and Title Company shall pay the Deposit to Purchaser and the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination; (b) seek specific performance of Seller's obligations hereunder; or (c) avail itself of any other rights and remedies available to Purchaser at law or in equity.

9.3 Rights of Title Company. In the event of any dispute as to who is entitled to receive the Deposit and interest earned thereon, the Title Company shall have the right to retain the funds and disburse them in accordance with the final order of a court of competent jurisdiction, or to deposit the Deposit and interest thereon with the court, pending a final decision of the controversy. The parties hereto further agree that the Title Company shall not be liable for failure of the depository. The Deposit shall be reimbursed equally by the parties hereto for all expenses, if any. Notwithstanding anything herein to the contrary, if at any time Purchaser gives notice to Seller, with a copy to Title Company, terminating this Agreement pursuant to the terms hereof within the time period so specified, Title Company shall disburse the Deposit and interest earned thereon to Purchaser upon receipt of such notice from Purchaser.

ARTICLE X
Other Provisions

10.1 Brokers. Seller and Purchaser acknowledge that Frankie Finaloffer is the sole and exclusive agent of Seller, and in consideration of his services Seller hereby agrees to pay it a commission of 2.0% of the Purchase Price at the Closing. Seller and Purchaser further acknowledge that Dexter Dealman is the exclusive agent of Purchaser and in consideration of his services Seller hereby agrees to pay it a commission of 2.0% of the Purchase Price at the Closing.

10.2 Entire Agreement. This Agreement constitutes the entire agreement between Seller and Purchaser with respect to the Property and shall not be modified or amended except in a written document signed by Seller and Purchaser. Any prior agreement or understanding between Seller and Purchaser concerning the Property is hereby rendered null and void.

10.3 Notices. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and delivered personally, by overnight mail by a national courier service, by certified mail, or return-receipt requested, postage prepaid, addressed as follows:

If to Seller:

Pennywise Promenade, LLC,
Attn: Mr. Pennywise
123 1st Street,
Opulence Heights
Opulence 54321

With a copy to:

McClauser LLP
Attn: Clausey McClauser
321 3rd Street
Opulence Heights
Opulence 54321

If to Purchaser:

Luxetacular Promenade Co., LLC
Attn: Victoria Venture
231 2nd Street
Opulence Heights,
Opulence 54321

With a copy to:

Smith, Johnson & Williams, LLP
Attn: Michael Smith
432 4th Street
Opulence Heights,
Opulence 54322

If to Title Company:

Opulence Heights Title Insurance Company
Attn: Timothy Title
543 5th Street
Opulence Heights
Opulence 54322

All notices given in accordance with the terms hereof shall be deemed received (i) on the same day when delivered personally; (ii) one (1) business day after being deposited with a national overnight courier service; (iii) three (3) business days after posting for delivery by certified mail, or return-receipt requested, postage prepaid; or (iv) on the same day when delivered via the email addresses noted above, provided a hard copy of same is also deposited with a national overnight courier service to be delivered the following business day. Either party hereto may change the address for receiving notices, requests, demands or other communication by notice sent in accordance with the terms of this Section 10.3.

10.4 Business Day. For purposes of this Agreement, "business day" shall mean any day of the year, other than (i) a Saturday or a Sunday, and (ii) any day in which banks located in Opulence Heights, Opulence are required or authorized by law to remain closed. Any time period provided for herein which shall end on a non-business day shall extend to 5:00 P.M., Opulence Heights, Opulence time of the next business day.

10.5 Assignment. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. Purchaser may freely assign its rights under this Agreement without Seller's consent, provided, however, that Purchaser notifies Seller of same in writing at least three (3) business days before Closing. An assignment or transfer of this Agreement shall not relieve the Purchaser named herein of any of Purchaser's obligations under this Agreement (whether the same accrued prior to the date of such assignment or accrues on or after such date). The preceding sentence shall survive Closing.

10.6 Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, 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 OR COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Opulence.

10.8 Venue. The parties hereto hereby consent that venue of any action brought under this Agreement shall be in the State of Opulence.

10.9 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

10.10 Construction. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard or aid of canons requiring construction against the party drawing this Agreement.

10.11 Captions and Headings. The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.

10.12 No Waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit shall be deemed to be a waiver of any other provision of this Agreement.

10.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

10.14 Operation of the Property through Closing. From and after the Effective Date and until Closing, Seller shall keep the Property in the same condition and repair as it shall be at the time of inspection by Purchaser, reasonable wear and tear and damage caused by Purchaser's Inspections excepted. Seller shall from and after the Effective Date and until Closing, keep all insurance in at least such amounts, and with the same deductibles, as are maintained by Seller on the Effective Date in full force and effect and pay all premiums in connection therewith.

10.15 Confidentiality. Seller and Purchaser agree and acknowledge that the terms of this Agreement and the intended use of the Property are confidential and neither party shall disclose this Agreement or the material terms hereof to any other party except (i) their employees, agents, contractors, accountants, attorneys and other parties with a reasonable need to know, including without limitation potential lenders to and purchasers of the Property, who shall agree to keep such information confidential; or (ii) as required by law or as necessary to enforce the terms hereof. The obligations set forth in this Section 10.15 shall survive the Closing for a period of one (1) year.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

PURCHASER

LUXETACULAR PROMENADE CO., LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

SELLER

PENNYWISE PROMENADE, LLC
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTANCE BY TITLE COMPANY

We are in receipt of the Purchase and Sale Agreement dated _____, 2024 (the "**Agreement**") by and between Pennywise Promenade, LLC, a Delaware limited liability company ("**Seller**") and Luxetacular Promenade Co., LLC, a Delaware limited liability company ("**Purchaser**"). We have received the Deposit in the amount of Two Hundred and Fifty Thousand and 00/100 Dollars ($250,000.00) and agree to hold the Initial Deposit and any additional deposits in escrow in accordance with the Agreement.

TITLE COMPANY:

OPULENCE HEIGHTS TITLE INSURANCE COMPANY

By: _____

Name: _____

Date: _____

Exhibit C
Sample Rent Roll

Luxetacular Promenade
Rent Roll
10/1/2024

Tenant	Lease Status	RCD	Term	Options	SF	Rent Per SF	Monthly Rent	Past Due Monthly Rent	Security Deposit	Exclusive / Use Restrictions	Co-Tenancy Clause
BullsEye (All-In One Big Box Store)	Signed Lease	10/15/2017	10	Two(2) Five (5) Year	85,000	$ 30.00	212,500.00		$ -	No changes to parking without consent No other store can sell toys, clothing, perfume [consent letters on file for Bath & Body Working, Banana Empire, and Victoria's Unstated]	No obligation to open if 50% of small shops fail to open; can go Dark anytime after year 5.
Whole Groceries (Grocery Store)	Signed Lease	9/5/2017	10	Two(2) Five (5) Year	32,000	$ 40.00	106,666.67		$ -	No store under 5,000 sq. ft. can sell food; no other grocery store can be open in development or adjacent property. No changes to parking without consent.	No obligation to be open unless BullsEye is open and operating in the Shopping Center.
Yankee Trader Food Hall	Signed Lease	9/5/2017	10	Two(2) Five (5) Year	7,500	$ 45.00	28,125.00		$ 28,125.00		
Ma & Pa Fancy Jewelry Outlet Ltd (Jewelry store)	Signed Lease	8/28/2015	10	Two(2) Five (5) Year	2,500	$ 22.00	4,583.33		$ 4,583.33		
Big Bang Theory (Circuit Gym)	Signed Lease	8/7/2015	10	Two(2) Five (5) Year	7,500	$ 25.00	15,625.00		$ 15,625.00	No other gyms for dudes can open in shopping center.	
Bath & Body Working (National retailer - body products)	Signed Lease	8/7/2019	10	Three(3) Five (5) Year	5,000	$ 40.00	16,666.67			No other retailer under 10,000 square feet can sell bath products.	
One Line Coffee Shop	Signed Lease	8/15/2016	10	Two(2) Five (5) Year	1,000	$ 30.00	2,500.00		$ -		
Banana Empire (Luxury Apparel)	Signed Lease	9/20/2020	10	Two(2) Five (5) Year	6,500	$ 45.00	24,375.00		$ 24,375.00		
Charlie Cheese (Kid Entertainment Store)	Signed Lease	9/5/2019	10	Two(2) Ten (10) Year	10,000	$ 42.00	35,000.00		$ 35,000.00		
Paris Wine Bar	Signed Lease	TBD	10	Two(2) Three (3) Year	2,052	$ -	-		$ -		
Victoria's Unstated (International retailer - perfume/intimate apparel)	Signed Lease	8/15/2021	10	one (1) five (5) year	15,000	$ 40.00	6,840.00			No other retail store under 15,000 square feet can sell women's apparel [consent letter on file for Banana Empire]	Has the rght to pay 5% gross rent if One Line Coffee is not open.
Retail Development					**174,052**				**$107,708.33**		