

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of January, 2017, by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF J.P. MORGAN COMMERCIAL MORTGAGE SECURITIES TRUST 2011-C5, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2011-C5**, having an address at c/o Torchlight Loan Services, 475 5th Avenue, 10<sup>th</sup> Floor, New York, NY 10017 (“Seller”), and \_\_\_\_\_, a \_\_\_\_\_, with an address of \_\_\_\_\_ (“Buyer”).

WHEREAS, pursuant to that certain Mortgage, Assignment of Leases and Rents and Security Agreement from **APPLETREE MALL ASSOCIATES, LLC**, a Massachusetts limited liability company, having an address of c/o Renwood Companies, One Newberry Street, 2<sup>nd</sup> Floor, Peabody, Massachusetts 01960 (the “Mortgagor”), to JPMorgan Chase Bank, National Association (“Original Lender”), and currently held by **WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF J.P. MORGAN COMMERCIAL MORTGAGE SECURITIES TRUST 2011-C5, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2011-C5**, having an address at c/o Torchlight Loan Services, 475 5th Avenue, 10<sup>th</sup> Floor, New York, NY 10017, dated September 1, 2011, recorded in the Rockingham County Registry of Deeds (the “Registry”) at Book 5241, Page 968 (the “Mortgage”), as assigned by that certain Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement by Original Lender to Holder dated as of September 29, 2011, recorded in the Registry at Book 5267, Page 894 (“Assignment of Mortgage”), Mortgagor granted a mortgage on that certain parcel of real property with improvements thereon located at 4 Orchard View Drive, Londonderry, New Hampshire (the “Premises”);

WHEREAS, pursuant to the Mortgage, the Mortgagor also assigned to the mortgagee the leases and rents associated with the Premises and granted a security interest in personal property of the Mortgagor (the “Personal Property” and, together with the Premises, the “Property”);

WHEREAS, an Event of Default has occurred and is continuing under the Mortgage and Assignment, and as a result of such Event of Default, the Seller has held a public sale on January 27, 2017 (the “Public Sale”) of the Property;

WHEREAS, the transaction contemplated by this Agreement is subject to all of those terms set forth in the Notice of Foreclosure Sale of Real and Personal Property dated as of December 13, 2016 (the “Notice of Sale”), and published in the Union Leader on January 4, 2017, January 11, 2017, and January 18, 2017;

WHEREAS, the Buyer was the successful bidder at the Public Sale, and desires to purchase from the Seller the Property, all in accordance with the terms and conditions of this Agreement, and **ALL WITHOUT RECOURSE AND WITHOUT ANY REPRESENTATIONS AND WARRANTIES (WHETHER EXPRESSED OR IMPLIED) OF ANY KIND**; and

WHEREAS, subject to the terms and conditions contained in this Agreement, the Seller desires to so sell the Property to the Buyer.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase and Sale; Closing.

1.01 On or before the date which is thirty (30) days from the date of this Agreement, and pursuant to the terms of this Agreement, Seller shall sell and convey to Buyer, and Buyer shall purchase from Seller, all of its interest in the Property (the "Closing"), time being of the essence. The Closing shall be held at the offices of Nixon Peabody LLP, 900 Elm Street, Manchester, New Hampshire, or at another location chosen by the Seller and shall become effective as of said time and date.

1.02 Seller shall, at Closing, execute and deliver to Buyer a foreclosure deed conveying the Premises (the "Deed"), a secured party bill of sale conveying all other Property associated with the Premises (the "Bill of Sale"), all in conformity with New Hampshire law sufficient to vest in Buyer title in the Property. The Deed shall be made subject to all restrictions and easements of record. Buyer shall simultaneously deliver the Purchase Price contemplated by Article 2 hereof. The Property shall be conveyed subject to (i) prior liens, restrictions, senior encumbrances, tenancies, declarations, covenants, recorded or unrecorded leases, utility easements, rights of way whether recorded or unrecorded and/or visible on the face of the earth, encumbrances which maintain validity at the date of conveyance and any other conditions a title search would reveal; (ii) any unpaid taxes or assessments; (iii) any facts which an accurate survey or inspection of the Property might show; (iv) any bankruptcy proceedings; (v) all provisions of applicable zoning, subdivision and land use regulations; and (vi) any rights of parties in possession, if any.

1.03 The transaction contemplated hereby is subject to all terms and conditions set forth in the Notice of Sale and to any other terms and conditions announced at the Public Sale in accordance therewith. The terms and conditions of the Notice of Sale are incorporated herein by reference as though fully set out and made a part hereof.

2. Purchase Price.

2.01 The purchase price payable by Purchaser to Seller for the Property is \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Purchase Price").  
The Purchase Price shall be payable as follows:

- (a) Fifty Thousand Dollars (\$50,000.00) shall be paid upon execution of this Agreement as a non-refundable initial deposit (the "Initial Deposit");
- (b) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) shall be paid within ten (10) days of the date of this Agreement as a non-refundable additional deposit (the "Additional Deposit", and, together with the Initial Deposit, the "Deposit"); and

(c) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) shall be paid to the Seller at the Closing, by wire transfer, certified check or otherwise immediately available funds to the account designated by the Seller.

3. Possession.

Buyer shall have no right to possession of the Property at any time prior to the Closing. All risk of loss to the Property shall be borne by Buyer prior to the delivery of the Deed.

Subject to the terms and conditions set forth herein, Buyer shall be entitled to take possession of the Property as of the time and date of Closing.

4. Acceptance of Deed.

The acceptance of the Deed by the Buyer shall be deemed to be full performance and discharge of every agreement and obligation herein contained or expressed by Seller.

5. Physical Condition of the Premises; Warranties.

The Property is being sold subject to any easements, covenants, and restrictions of record. The Seller and its agents make no representations or warranties whatsoever, whether express or implied, relating to the Property and the conveyance thereof, including, without limitation, representations or warranties as to title, zoning, subdivision, structural or physical condition, hazardous waste, possession, boundaries, acreage, radon, lead paint, asbestos or formaldehyde, or other matters.

The Seller makes no warranties, either express or implied, as to the physical condition of the realty, improvements, and fixtures, or the availability of the utilities. All Property is sold "AS IS AND WHERE IS". Any warranty or representation other than those contained herein is without authority. Buyer further agrees to indemnify, defend, and hold Seller harmless from all claims or injuries, however arising from any potential defects hidden or otherwise in the Property and further agrees to hold harmless and indemnify Seller from any actions originating from third persons based on any claim or injury after Closing arising from said defects. Buyer acknowledges and represents that Buyer has duly inspected the Property, the title thereto, and the occupancy thereof.

To the extent that the Property includes fixtures or other personality, then all such items shall be conveyed "AS IS AND WHERE IS". **SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Seller also expressly disclaims all warranties regarding title to any such fixtures or other personality.

6. Seller's Remedies.

If the Buyer fails to pay the Purchase Price within the time set forth herein and/or fails to comply with any provisions of this Agreement, Seller may retain the Deposit as damages, in addition to any other remedy available to Seller at law or in equity. In addition, the Property

may be sold to the next highest bidder at the Public Sale willing to purchase the Property or readvertised for sale in the Seller's sole discretion.

7. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.

8. Merger of Understanding.

All negotiations, understandings, undertakings and the like with respect to the transaction covered by this Agreement have been merged within this Agreement, and there are no further or contrary understandings with respect thereto. This Agreement forms the complete and entire understanding between the parties.

9. Modification.

This Agreement may not be changed orally, but only by an agreement in writing signed by the parties hereto, executed and delivered with the same formalities as the original instrument.

10. Succession.

This Agreement shall be binding upon the parties hereto, their heirs, estates, assigns, transferees, and successors in interest.

11. Taxes.

All unpaid real estate and/or personal property taxes due to the Town of Londonderry, plus interest, fees and costs, and other assessments and charges, including, without limitation, water and sewer charges, attributable to the Property shall be the exclusive responsibility of, and shall be paid by, Buyer. Buyer shall also have exclusive responsibility for, and shall pay, any and all taxes imposed upon either Buyer or Seller upon the transfer or receipt of title to the real estate as provided by N.H. RSA Chapter 78-B.

12. Destruction of Property.

No loss, damage, condemnation or destruction of the Property shall relieve Buyer of its obligations hereunder.

13. Assignment.

The parties hereto agree that all of Buyer's rights and obligations hereunder are not assignable by Buyer prior to Closing.

14. Time is of the Essence.

The parties hereto agree that time is of the essence to this Agreement and the Closing.

15. Brokers.

Buyer agrees that there is no real estate broker involved in this sale through any contract with Buyer and that no one is due a commission in conjunction with the sale or purchase of the Property. Buyer agrees to indemnify, defend and hold Seller harmless from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under Buyer. The provisions of this paragraph shall survive the termination of this Agreement or the delivery of the Deed.

16. Representations of Buyer.

Buyer represents and warrants to Seller that Buyer has the financial capacity and resources to consummate the transaction contemplated hereby within the timeframe specified herein and on the terms and conditions set forth herein. Buyer's obligation to purchase the Property is NOT conditioned in whole or in part upon Buyer's ability to obtain financing for the Purchase Price or any portion thereof. This Agreement contains no contingencies and represents Buyer's absolute obligation to purchase the Property in accordance with the terms hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed by signing below, as of the day and year first above written.

**SELLER:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
AS TRUSTEE FOR THE REGISTERED HOLDERS  
OF J.P. MORGAN COMMERCIAL MORTGAGE  
SECURITIES TRUST 2011-C5, COMMERCIAL  
MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2011-C5**

By: Torchlight Loan Services, solely in its capacity as  
Special Servicer to the Trust

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF PREMISES

All of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the Town of Londonderry, County of Rockingham, State of New Hampshire with a street address of 4 Orchard View Drive, Londonderry, New Hampshire 03053, lying and being described as follows:

The premises located on the northwest side of Orchard View Drive in Londonderry, County of Rockingham, State of New Hampshire, being Lot 7-40-2 as shown on a plan entitled "Boundary Plan of Land and 'As Built' Improvements Known as Apple Tree Mall Londonderry, Rockingham County, New Hampshire" by Rose, Foreman and Associates, Inc.

Said premises are more particularly described as follows:

Beginning at a point at the easterly corner of said premises then S 32° 49' 25" W 242.01 ft. to a concrete bound, then S 32° 49' 25" W 771.84 ft. to a pin, then N 57° 10' 35" W 869.38 ft. to a pin, then N 36° 56' 20" E 679.64 ft. to a point, then N 37° 23' 25" E 376.89 ft. to a pin, then S 54° 44' 30" E 607.42 ft. to a point, then S 53° 19' 30" E 184.24 ft. to the point of beginning.

The property may also be described as follows:

A certain parcel of land with improvements situated in Londonderry, NH, Rockingham County, bounded and described as follows:

Beginning at a stone bound drill hole on the northwesterly sideline of Orchard View Drive, at the southerly corner of Locus, said point being N32° 49' 25" E at a distance of 622.37 feet from a concrete bound at a point of curvature of Winding Pond Road;

Thence running N57° 10' 35"W a distance of 869.38 feet to a ¾" rebar;

Thence turning and running N36° 56' 20"E a distance of 679.64 feet to a point;

Thence turning and running N37° 23' 25"E a distance of 376.89 feet to a point;

Thence turning and running S54° 44' 30"E a distance of 607.42 feet to a point;

Thence turning and running S53° 19' 30"E a distance of 184.14 feet to a point;

Thence turning and running S32° 49' 25"W, partially by land of the Town of Londonderry and partially along the northwesterly sideline of Orchard View Drive (771.84 feet), a total distance of 1,015.41 feet to the point of beginning;

Containing an area of 861,763 square feet or 19.783 acres and shown on a plan entitled "Asbuilt Site Plan, Appletree Mall, Londonderry, NH" By Benchmark Engineering, Inc. Scale: 1"=50', dated June 24, 1994.

Together with the following agreements:

- (a) The easements, water rights, fire protection, and restrictions described in that certain Warranty Deed from James A. Matarozzo and Howard Hirshberg to George C. Shaw Company dated September 15, 1976 and recorded in Deed Book 2266, Page 411;
- (b) The covenants in that certain Agreement between the George C. Shaw Company and James A. Matarozzo and Howard Hirshberg dated September 15, 1976 and recorded in Deed Book 2266, Page 1466; and
- (c) The covenants in that certain Pond Agreement among Century Village, Inc., James A. Matarozzo and Howard Hirshberg, and George C. Shaw Company dated June 29, 1979 and recorded in Deed Book 2345, Page 1907.