

STATE OF ALABAMA

COUNTIES OF:

  
20110224000063860 1/11 \$42.00  
Shelby Cnty Judge of Probate, AL  
02/24/2011 02:27:47 PM FILED/CERT

RETURN TO:  
FNTC  
6060 Poplar Avenue Ste LL37  
Memphis, TN 38119  
TG # 3420593 DVS

**CONTRACT TO PURCHASE REAL ESTATE**

**THIS CONTRACT TO PURCHASE REAL ESTATE** is made and entered into this 13th day of December, 2010, by and between

**BMW Properties, LLC**, an Alabama limited liability company ("BMWV"),  
with respect to the following properties:

183 Post Oak Road, Alexandria, Alabama ("Alexandria")  
346 Industry Drive, Auburn Alabama ("Auburn")  
9152 Hard Drive, Foley, Alabama ("Foley")

and

**PFK & Associates, LLC**, an Alabama limited liability company ("PFK"),  
with respect to the following property:

3100 Kauloosa Ave, Tuscaloosa, Alabama ("Tuscaloosa")

and

**BMW, Inc.**, an Alabama corporation ("BMWV"), with respect to the  
following property:

11298 Reichold Road, Gulfport, Mississippi ("Gulfport")

and

**BMW Investments, Inc.** ("BMWV") with respect to the following  
properties:

Alton Way/Interstate 459 - Trussville, AL ("Trussville")  
#1 15th Street West - Birmingham, AL ("Birmingham1")  
113 Skylab Drive - Huntsville, AL ("Huntsville")  
101 Cahaba Valley Parkway West - Pelham, AL ("Pelham")  
941 Plantation Way - Montgomery, AL ("Montgomery")  
1301 1st Ave South - Birmingham, AL ("Birmingham2")  
198 Commercial Pkwy - Santa Rosa Beach, FL ("Destin")

and

Peter Kern, being the 100% of all interests in BMWV, PFK, BMWV, and  
BMWV ("Owner")

hereinafter referred to as "Seller" and

MAJA REALTY, LLC, a New York limited liability company, or its assigns hereinafter referred to as "Buyer" and

**WITNESSES:**

  
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**Whereas,** Seller is the owner of a fee or leasehold estate in those parcels of real property municipally described above and located on the described attached Exhibit "A", (hereinafter collectively referred to as the "Properties") which is incorporated herein (references to said real property, whether collectively or separately include any improvements thereon and all easements, rights and privileges appurtenant thereto). and

**Whereas,** an affiliate of Buyer has entered into an Asset Purchase Agreement with Regions Bank under which such affiliate has arranged to purchase inventory and accounts receivable located on or generated in the businesses located on each of the Properties (or to be located on each of the Properties), and

**Whereas,** Seller desires to sell to Buyer and Buyer desires to purchase from Seller a 100% percent interest in and to the Property (the "Interest"); and

**Whereas,** Buyer wishes to conduct due diligence on the Properties over an extended period of time and the parties desire to set forth the terms of the sale and to further to place of public record the Buyer's contractual interest to purchase the Properties; and

**Whereas,** the parties hereto desire to set forth herein the terms and conditions of the sale.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Sale of Interests.** Seller does hereby covenant and agree to sell and convey to the Buyer or the assigns of Buyer an Interest in the Property (i.e. a 100% interest), or cause it to be conveyed, by good and sufficient general warranty deed to Buyer or to such person(s) or entity as Buyer may designate upon and subject to the terms and conditions set forth herein.

The purchase price shall be TEN DOLLARS (\$10.00) together with certain other considerations and advances, including the delivery of certain membership interests in MARJAM SUPPLY OF ALABAMA, LLC ( f/k/a BMW LLC), a Delaware limited liability company, to the Owner or his designee, the delivery of such interests being herein acknowledged. The purchase will be paid and delivered contemporaneously herewith, and this contract is therefore non-executory and not subject to avoidance under Section 365 of the Bankruptcy Code. The equitable conversion of legal title effected by this contract shall eliminate the Properties described herein from the bankruptcy estate of any selling party hereto. While the Buyer has the option to waive performance by the Seller or the Owner, by the performance of the Buyer or its affiliate on the date hereof, the obligations of the Seller have become absolute.

2. **Option to Purchase Membership Interest.** The Owner agrees and commits, upon the election of the Buyer or its assignee at or before closing hereunder, to convey in lieu of any Interest in any Property, 100% of the membership interest or capital voting stock of any entity which owns the affected interest.

3. **Closing.** Closing of the purchase of the Interest in the Properties shall occur at a mutually convenient time and location on or before the date which is no more than one year after the execution hereof, as the same may be extended by the election of the Buyer, but in any event on or before the second anniversary of the execution hereof, and in no event shall the Buyer be required to

close on any Property unless and until such time as the Buyer is satisfied with the results of its due diligence with respect to such Property. Interests in various Properties (or interests in the owning entities) may be conveyed at the same time or at different times, depending upon the status of the due diligence of the Buyer, and closing with respect to any Property or Interest therein shall not avoid or otherwise affect the application of this contract to the remaining Properties or entities.

On the date of closing of the sale of the Interest (or as applicable, the Interest in any Property), the closing shall occur as follows, subject to the satisfaction of all of the terms and conditions of this agreement:

- (a) Each party shall deliver to the other party appropriate evidence to establish the authority of such party to enter into and close the transaction contemplated hereby.
- (b) Seller shall convey to Buyer marketable fee simple title to the tenant in common Interest by general warranty deed, duly executed and in recordable form subject only to Permitted Exceptions, or alternatively, shall deliver evidence of transfer of the certificated or uncertificated interests in the owning entity with respect thereto.
- (c) Seller shall deliver common possession of the Property to Buyer at closing.
- (d) Seller shall deliver to Buyer a Seller's Affidavit on a title company approved form.
- (e) Seller shall deliver to Buyer an affidavit for purposes of Section 1445 of the Internal Revenue Code.
- (f) The parties shall execute an accounting of the transaction in the form of a Settlement Statement in a mutually agreeable form

4. **Representations and Warranties of Seller.** Seller represents and warrants to the best of Seller's knowledge and belief to Buyer as follows:

- (a) Seller is the owner in fee simple of the Properties and has full and absolute authority to sell the same as set forth therein, and no person or entity other than Buyer has any right or option to acquire the Properties;
- (b) Seller will not sell or otherwise further encumber the Properties during the term of this Agreement;
- (c) There is no actual (and to the best of Seller's knowledge), or threatened full or partial condemnation of any of the Properties;
- (d) Seller is not a party to any litigation or administrative proceeding affecting the Properties or any part thereof or affecting Seller's right to sell the Properties or any interest therein or the use thereof, and there is no pending or threatened litigation or administrative proceedings affecting the Properties or any part thereof or affecting Seller's right to sell the Properties or any interest therein or the use thereof. Seller shall give Buyer notice of the institution of any such proceedings, or of his knowledge of any such threatened proceedings within five (5) days of receipt of the institution or threat of such proceedings, and in any event prior to the closing;
- (e) Neither the property nor any portion thereof is or will at the time of closing be subject to a claim of adverse possession and no party other than Seller is (nor shall be at closing) in possession of the Properties, other than pursuant to a

written executed lease, the rights to rental payments thereunder to be likewise assigned to the extent of the purchased interest herein.

- (f) Seller warrants that the Properties are free of any environmental hazards such as those regulated by any federal or state agency, including any thereof which might result in a violation of CERCLA or RCRA, or any state environmental quality action. No violation of any aquatic resource alteration permit or other wetland regulation has occurred on any Properties, and all Properties are compliant with the Americans with Disabilities Act..

5. **Expenses and Prorations.** Upon the closing of the sale of each Property, no prorations shall be made of ad valorem taxes and special assessments on the Property imposed for the calendar year of closing. Seller shall be responsible for and satisfy all taxes and special assessments for all calendar years prior to the calendar year of closing.

6. **Right of Entry and Possession.** At any time following the execution of this Agreement and until the date of closing hereunder, Buyer and its duly authorized representatives shall have the right to enter upon the Property for the purposes of making engineering or architectural studies, surveys, test borings, soil bearing tests, environmental audits, and other inspections and investigations of the Property as Buyer may deem necessary. Buyer shall indemnify and hold Seller harmless from and against any and all claims, costs or expenses arising from or in connection with Buyer's or its representatives' activities upon the Property, their use thereof or entry thereon, which indemnity and hold harmless promise shall survive the expiration or termination of this agreement.

Commencing at such time as the inventories of the businesses conducted on the Properties have been purchased by the affiliate of the Buyer, the Seller grants to the Buyer and its affiliates the unrestricted right to take possession of the Properties by license and the Buyer and its affiliates shall be able to enter upon the Properties to move inventory and supplies, and equipment, to sell the same from the site, to bring additional inventory to the site in connection with any further business to be conducted thereon, to conduct liquidation activities and to otherwise continue operations from the Properties in any manner or to take any other action thereon, until such time as they may be relocated from the Properties to other sites, including sites in other United States locations as may be negotiated. Such right of possession shall continue for the full duration of this Contract, and shall be for no further consideration than as set forth herein for the sale and purchase.

7. **Default.** In the event that Seller defaults hereunder, except by reason of a default by Buyer or its affiliates, Buyer, at its election, shall have the right to either (a) accept such title as Seller is able to convey, without any claim on the part of Buyer for abatement for defects or objections; or (b) to rescind this Agreement. If the Buyer elects to accept the title, an action of specific performance shall lie for the enforcement of this agreement.

8. **Risk of Loss.** Until the date of closing hereunder, the risk of loss or damage to the Properties shall be borne by Seller. If before the date of closing all or any portion of the Properties shall be taken by eminent domain or be subject of condemnation proceedings, or fire or other casualty results in damage to such Properties, Seller shall promptly notify Buyer and Buyer may either terminate this Agreement, in which event this Agreement shall be of no further force and effect.

9. **Assignment.** Buyer shall have the absolute right to assign, transfer or convey its rights hereunder without the prior written consent of Seller.

10. **Entire Agreement.** This agreement constitutes the entire agreement between the parties hereto, and it is understood and agreed that all undertakings and agreements heretofore made between the parties concerning the subject matter hereof are merged herein.

11. **Recordability.** This Contract is executed in recordable form to place of record the Buyer's contractual interest to acquire the land, notice of which shall be effective upon recordation, as well as the Buyer's right of possession by license commencing upon the purchase of the inventory located on the Properties. This contract may be executed and recorded in counterpart. Buyer shall bear all costs of recording such instrument.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(signatures on next page)

(Signature page to Contract for Sale)

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by and through their duly authorized representatives, on the dates shown below their respective signatures.

**SELLERS:**

**BMW Properties, LLC**, an Alabama limited liability company ("BMW")

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

*[Handwritten signature of Peter Kern]*  
*Peter Kern*  
*Member*

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that PETER KERN whose name as MEMBER of BMW Properties, LLC an Alabama limited Liability Company, is signed to the foregoing contract and conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract and conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 13<sup>th</sup> day of DECEMBER, 2010.

*[Handwritten signature of Lornie Dwyne Dumas]*  
Notary Public  
My Commission Expires 7-14-2013



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(Signature page to Contract for Sale)

**PFK & Associates, LLC**, an Alabama limited liability company ("PFK"),

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

*[Handwritten Signature]*  
*PAYTON KERN*  
*MEMBER*

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that PETER KERN whose name as MEMBER of **PFK & Associates, LLC** an Alabama limited Liability Company, is signed to the foregoing contract and conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract and conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 13<sup>th</sup> day of December, 2010.

*Lonnie DeWayne Dumivent*  
Notary Public  
My Commission Expires 7-14-2013



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(Signature page to Contract for Sale)

BMW, Inc., an Alabama corporation ("BMW"),

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

*[Handwritten Signature]*  
*Peter Kern*  
*President*

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that PETER KERN whose name as PRESIDENT of BMW, Inc., an Alabama corporation, is signed to the foregoing contract and conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract and conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 13<sup>TH</sup> day of DECEMBER, 2010.

*[Handwritten Signature]*  
Notary Public

My Commission Expires 7-14-2013

(Signature page to Contract for Sale)

**BMW Investments, Inc.** ("BMWII") with respect  
to the following properties:

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

*[Signature]*  
PETER KEHN  
PRES

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that PETER KEHN whose name as PRESIDENT of **BMW Investments, Inc.**, an Alabama corporation, is signed to the foregoing contract and conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract and conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 13<sup>TH</sup> day of DECEMBER, 2010.

Lonnie DeWayne Dumas  
Notary Public  
My Commission Expires 7-14-2013

(Signature page to Contract for Sale)

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OWNERS

Peter Kern

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that PETER KERN and \_\_\_\_\_ whose names are signed to the foregoing contract and conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of the contract and conveyance, they, as, executed the same voluntarily for and as their free act and deed.

Given under my hand and official seal, this 13<sup>TH</sup> day of DECEMBER, 2010.

Lorrie DelWayne Duvall  
Notary Public  
My Commission Expires 7-14-2013

(Signature page to Contract for Sale)

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BUYER:

MAJA Realty, LLC, a New York limited liability company, or its assigns

By: [Signature]  
Name MITCHELL KAHN  
Title CFO

STATE OF NEW YORK )  
NASSAU COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that MITCHELL KAHN whose name as CFO of MAJA REALTY, LLC a New York Limited Liability Company, is signed to the foregoing contract and conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract and conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 13<sup>th</sup> day of December 2010.

[Signature]  
Notary Public  
My Commission Expires 1-3-2013

RITA MARINARO  
Notary Public, State of New York  
No. 01MA6121060  
Qualified in Nassau County  
Commission Expires January 3, 20 13

This document was prepared by:  
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