

LaMonica Herbst & Maniscalco, LLP
3305 Jerusalem Avenue
Wantagh, New York 11793
(516) 826-6500
Jordan Pilevsky, Esq.

Hearing Date: October 3, 2017 at 10:30 a.m.
Objections Due: September 26, 2017

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11
Case No. 11-77954 (AST)

EXETER HOLDING, LTD,

Debtor.

-----X

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 7
Case No. 16-71481 (AST)

VIRGINIA PRINCIPI a/k/a
VIRGINIA O'CONNOR
a/k/a VIRGINIA O'CONNOR PRINCIPI,

Alleged Debtor.

-----X

**NOTICE OF THE PLAN ADMINISTRATOR'S MOTION FOR ENTRY OF AN ORDER:
(A) AUTHORIZING AND APPROVING AN AGREEMENT OF SALE DATED AUGUST
25, 2017 FOR THE SALE OF 107 MONTAUK HIGHWAY, AMAGANSETT, NEW
YORK 11930, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES,
WITH SUCH LIENS, CLAIMS AND ENCUMBRANCES TO ATTACH TO THE
PROCEEDS OF SALE AND (B) CONFIRMING THE SALE TO THE PURCHASER**

PLEASE TAKE NOTICE, that on **October 3, 2017 at 10:30 a.m.**, or as soon thereafter as counsel may be heard, a hearing (the "**Hearing**") will be held before the Honorable Alan S. Trust, United States Bankruptcy Judge, at the United States Bankruptcy Court, Eastern District of New York, located at 290 Federal Plaza, Central Islip, New York 11722, upon the Motion (the "**Motion**") of Gary F. Herbst, Esq., in his capacity as the plan administrator (the "**Plan Administrator**") of the bankruptcy estate of Exeter Holding Ltd. ("**Exeter**") and in furtherance of a Stipulation and Order of Settlement dated August 16, 2016 entered in the bankruptcy estate

of Virginia Principi a/k/a Virginia O'Connor a/k/ Virginia O'Connor Principi (“**Principi**”), by his counsel, LaMonica Herbst & Maniscalco, LLP, seeking the entry of an Order, pursuant to 11 U.S.C. §§ 105(a), 363, 704 and 724 (the “**Bankruptcy Code**”) and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (a) authorizing and approving an agreement of sale dated August 25, 2017 (the “**Sale Agreement**”) by and between the (i) Plan Administrator and (ii) Andrew Berman and Mollie Cohen (collectively, the “**Purchaser**”) which provides for the sale (the “**Sale**”) of the real property located at, and known as, 107 Montauk Highway, Amagansett, New York 11903 (the “**Real Property**”), free and clear of all liens, claims and encumbrances (the “**Liens**”), with such Liens to attach to the proceeds of Sale in the order and priority as they existed on the date Exeter was filed into bankruptcy; (b) confirming the Sale of the Real Property to the Purchaser for the purchase price of \$1,700,000 (the “**Purchase Price**”); and (c) granting such other and further relief as this Court deems necessary.

PLEASE TAKE FURTHER NOTICE, that objections (“**Objections**”) to the relief requested in the Motion, if any, must be in writing, conform with the Bankruptcy Code and Rules, state with particularity the grounds therefor and be filed with the Court, with a courtesy copy to the Chambers of the Honorable Alan S. Trust, United States Bankruptcy Judge, and served upon, so as to be received by, LaMonica Herbst & Maniscalco, LLP, the attorneys for the Plan Administrator, Attn: Jordan Pilevsky, Esq., **no later than September 26, 2017**, as follows: (a) (i) through the Bankruptcy Court’s electronic filing system which may be accessed through the internet at the Bankruptcy Court’s website at www.nyeb.uscourts.gov; and (ii) in portable document format (PDF) using Adobe Exchange Software for conversion; or (b) if a party is unavailable to file electronically, such party shall submit the objection in PDF format on a

diskette in an envelope with the case name, case number, type and title of document, document number to which the objection refers and the file name on the outside of the envelope.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned from time to time without further notice other than announcement of such adjournment in open Court.

Dated: August 25, 2017
Wantagh, New York

LaMonica Herbst & Maniscalco, LLP
Attorneys for the Plan Administrator

By: *s/ Jordan Pilevsky*
Jordan Pilevsky, Esq.
A Partner of the Firm
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
(516) 826-6500

LaMonica Herbst & Maniscalco, LLP
3305 Jerusalem Avenue
Wantagh, New York 11793
(516) 826-6500
Jordan Pilevsky, Esq.

Hearing Date: October 3, 2017 at 10:30 a.m.
Objections Due: September 26, 2017

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11
Case No. 11-77954 (AST)

EXETER HOLDING, LTD,

Debtor.
-----X

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7
Case No. 16-71481 (AST)

VIRGINIA PRINCIPI a/k/a
VIRGINIA O'CONNOR
a/k/a VIRGINIA O'CONNOR PRINCIPI,

Alleged Debtor.
-----X

**THE PLAN ADMINISTRATOR'S MOTION FOR ENTRY OF AN ORDER: (A)
AUTHORIZING AND APPROVING AN AGREEMENT OF SALE DATED AUGUST 25,
2017 FOR THE SALE OF 107 MONTAUK HIGHWAY, AMAGANSETT, NEW YORK
11930, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, WITH
SUCH LIENS, CLAIMS AND ENCUMBRANCES TO ATTACH TO THE PROCEEDS
OF SALE AND (B) CONFIRMING THE SALE TO THE PURCHASER**

Gary F. Herbst, Esq., in his capacity as the plan administrator (the "**Plan Administrator**") of the bankruptcy estate of Exeter Holding Ltd. ("**Exeter**") and in furtherance of a Stipulation and Order of Settlement dated August 16, 2016 entered in the bankruptcy estate of Virginia Principi a/k/a Virginia O'Connor a/k/ Virginia O'Connor Principi ("**Principi**"), by his attorneys, LaMonica Herbst & Maniscalco, LLP, in support of his motion (the "**Motion**") seeking the entry of an Order pursuant to 11 U.S.C. §§ 105(a), 363, 704 and 724 (the "**Bankruptcy Code**") and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy

Procedure (the “**Bankruptcy Rules**”): (a) authorizing and approving an agreement of sale dated August 25, 2017 (the “**Sale Agreement**”) by and between the (i) Plan Administrator and (ii) Andrew Berman and Mollie Cohen (collectively, the “**Purchaser**”)¹ which provides for the sale (the “**Sale**”) of the real property located at, and known as, 107 Montauk Highway, Amagansett, New York 11903 (the “**Real Property**”), free and clear of all liens, claims and encumbrances (the “**Liens**”), with such Liens to attach to the proceeds of Sale in the order and priority as they existed on the date Exeter was filed into bankruptcy; (b) confirming the Sale of the Real Property to the Purchaser for the purchase price of \$1,700,000 (the “**Purchase Price**”); and (c) granting such other and further relief as this Court deems necessary, respectfully sets forth and represents as follows:

Jurisdiction and Statutory Predicates

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §1334. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein, include, *inter alia*, Sections 105(a), 363, 704 and 724 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014.

Background

A. Exeter’s Bankruptcy Case

3. On November 9, 2011, an involuntary petition for relief under Chapter 11 of the Bankruptcy Code was filed against Exeter in United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”).

¹ Although there are two purchasers of the Real Property, the Motion shall refer to them in the singular form in order to be consistent with the Sale Agreement.

4. On January 18, 2012, the Bankruptcy Court entered an Order for Relief under Chapter 11 of the Bankruptcy Code.

5. By Order dated July 8, 2013 (the “**Exeter Plan Confirmation Order**”), the Bankruptcy Court confirmed Exeter’s amended plan of liquidation (the “**Exeter Plan**”).

6. The Exeter Plan provided for the appointment of the Plan Administrator, which appointment was approved by the Bankruptcy Court in the Exeter Plan Confirmation Order. In accordance with the Section 6 of the Exeter Plan, the Plan Administrator succeeded to the powers as would have been applicable to Exeter’s officers, directors and shareholders. The Plan Administrator has the authority to take all actions that may be, or could have been, taken by Exeter’s officers, directors and shareholders.

7. Since his appointment, the Plan Administrator has actively liquidated Exeter’s mortgage and loan portfolio, participated in various litigations pending in the Bankruptcy Court, the District Court and courts of the State of New York which include the commencement of seventeen adversary proceedings. Indeed, the Plan Administrator has successfully resolved several litigations and liquidated several assets of Exeter for the benefit of Exeter’s estate and creditors.

B. The Real Property

8. By deed dated March 20, 2001, and recorded on May 8, 2001, Principi purchased the Real Property.

9. A review of the transactional history of encumbrances on the Real Property reflects a long history of numerous mortgages, assignments, subordinations, spreader agreements, partial releases and lienholder agreements. As a result of the mortgage transactions more specifically detailed below, Nationstar Mortgage, LLC (“**Nationstar**”) holds a first priority

mortgage secured lien against the Real Property and Exeter holds the second and third mortgages secured against the Real Property.

10. Exeter made a loan in the original principal amount of \$900,000 to Northfork Resources and Principi Properties LLC. This loan is secured by a mortgage dated September 8, 2005 and recorded on October 24, 2005 (the “**Exeter Mortgage**”). The Exeter Mortgage was signed by Richard J. Principi as president of Northfork Resources, Inc. and both Richard J. Principi and Virginia Principi on behalf of Principi Properties LLC. The Exeter Mortgage was originally secured against four (4) parcels of land in eastern Long Island which did not include the Real Property.

11. By mortgage dated April 4, 2006 and recorded on May 10, 2006, Reliable Mortgage Bankers Corp. extended a loan secured against the Real Property in the original principal amount of \$999,000. After several intervening assignments, this mortgage is presently held by Nationstar (the “**Nationstar Mortgage**”). The Nationstar Mortgage is the first position secured lien against the Real Property. On November 15, 2013, Nationstar commenced a foreclosure proceeding in Suffolk Supreme under Index 063910/2013. Upon information and belief, the amount of approximately \$1.35 million is owed on account of the Nationstar Mortgage.

12. Dominion Financial Corporation (“**Dominion**”) made a loan in the original principal amount of \$1,064,000 to Principi Properties LLC, Virginia Principi and Principi Family Properties. This loan is secured by a mortgage dated August 30, 2006, recorded on September 25, 2006, which is secured against several real properties including the Real Property. As a result, Dominion held the second secured lien (after Nationstar) against the Real Property.

13. By agreement dated November 2009 and recorded on December 9, 2009 made between Exeter, State Bank of Long Island, Northfork Resources, Inc., Principi Properties LLC and Virginia Principi, the Exeter Mortgage was spread to cover the Real Property (the “**Spreader Agreement**”).

14. By agreement dated November 2, 2009 and recorded on December 9, 2009 made between Dominion and Exeter, the parties agreed that notwithstanding their respective liens all proceeds from the Real Property above the Nationstar Mortgage would be subject to a certain sharing between Dominion and Exeter (the “**Lienholder’s Agreement**”). As a result of the Spreader Agreement and the Lienholder’s Agreement, the Exeter Mortgage was the third secured mortgage lien against the Real Property (after Nationstar and Dominion) and held sharing rights with Dominion in the second secured lien against the Real Property.

15. Prior to the Exeter bankruptcy filing, on May 25, 2011, Déjà Vu Act II, Inc. (“**Déjà Vu**”) obtained a judgment against Exeter in the amount of \$5,248,592.72. During the pendency of the Exeter bankruptcy, Déjà Vu and Exeter entered into a stipulation dated June 20, 2012 (the “**Déjà Vu Stipulation**”), which provided that the net recovery on the Exeter Mortgage from a sale of both the Real Property and another real property located 64600 Main Street, Southold New York (the “**Southold Property**”)² shall be disbursed with the first \$300,000 to Déjà Vu and any remaining amounts to Exeter. By Order dated June 26, 2012, the Bankruptcy Court approved the Déjà Vu Stipulation in the Exeter bankruptcy case.

² By deed dated August 30, 2006, and recorded on September 25, 2006, Principi Properties, LLC purchased the Southold Property. Virginia Principi’s husband, Richard Principi, Jr. is the managing member of Principi Properties, LLC. As a result of intervening mortgages, assignments and subordination agreements, North Fork Lending, LLC held first and second priority notes and mortgages secured against the Southold Property. Exeter held a third priority interest in the Southold Property.

16. In or around May 2012, Dominion assigned its interest in the Dominion Mortgage to North Fork Lending, LLC (“**NFL**”). NFL held a first and second lien against the Southold Property. Exeter held a third lien against the Southold Property. As a result, and in accordance with the Lienholder’s Agreement, NFL and Exeter held a *pari passu* second priority lien against the Real Property.

17. Pursuant to a stipulation dated in or around February 2014, NFL (the “**NFL Stipulation**”), the Plan Administrator, on behalf of Exeter, and Déjà Vu entered into an agreement by which Exeter released its lien against the Southold Property and NFL assigned its interest in the Real Property to Exeter. The NFL Stipulation was approved by Order of the Bankruptcy Court dated March 31, 2014.

18. Pursuant to a stipulation dated August 2, 2016, the Plan Administrator, on behalf of Exeter, and Déjà Vu modified the Déjà Vu Stipulation and agree, among other things, that from the gross recovery related to the Real Property, after payment to senior liens and payment of Exeter’s legal fees and expenses related to the Real Property, the sale proceeds shall be subject to a fifty-fifty split between the Exeter estate and Déjà Vu.

19. Based on Exeter’s books and records, the combined payoff for the Exeter’s resulting second and third mortgage liens secured against the Real Property is in excess of \$2.0 million.

C. The Principi Bankruptcy

20. On April 5, 2016, the Plan Administrator filed an involuntary Chapter 7 petition against Principi with an undersecured claim at the time in excess of \$1.0 million. On April 26, 2016, Principi filed an Answer contesting the involuntary petition.

21. By Order dated June 2, 2016 in the Principi bankruptcy case, the disputes between the Plan Administrator and Principi were referred to mediation (the “**Mediation**”).

22. On July 6, 2016, Mediation was conducted and a resolution was reached. The terms of the resolution were memorialized in a stipulation by and between (a) the Plan Administrator; (b) Déjà Vu; (c) Principi; (d) Richard J. Principi; (e) Yvonne Velazquez; (f) Emeterio Velazquez; (g) Camille Stewart; (h) Northfork Resources, Inc. (i) Principi Properties LLC; and (j) Principi Family Properties, LLC (the “**Stipulation**”).

23. The Stipulation provided for a consensual sale of the Real Property with a sharing of sale proceeds. Specifically, the Plan Administrator agreed to designate Principi’s choice of broker, Douglass Elliman Real Estate, East Hampton, New York (the “**First Broker**”) with an exclusive period to market and sell the Real Property through November 30, 2016. The First Broker listed the Real Property with an asking price of approximately \$2.1 million and conducted open houses over a 4-month period. However, the First Broker failed to solicit a single offer for the purchase of the Real Property. The Plan Administrator’s counsel would frequently follow up with the First Broker to inquire about any offers, even those potentially low in range. No offer was ever conveyed to the Plan Administrator.

24. As a result, and in accordance with the Stipulation, after the First Broker’s exclusivity period expired, the Plan Administrator began interviewing brokers and auctioneers to list the Real Property for sale. The Plan Administrator retained Maltz Auctions (the “**Second Broker**”). The Second Broker conducted a robust marketing program with open houses and a public auction sale held on May 24, 2017 (the “**Auction Sale**”). Although the Auction Sale was well attended with registered bidders, the highest bid for the Real Property was only approximately \$1.2 million. Given that Nationstar is owed in excess of the high bid from the

Auction Sale, the Plan Administrator was unable to confirm the sale to the successful bidder from the Auction Sale.

25. Thereafter, the Plan Administrator retained a third broker, Jordan Glass LLC (the “**Third Broker**”) to market and sell the Real Property.

D. The Sale Agreement

26. The Third Broker brought the Purchaser to view and inspect the Real Property and, after negotiations, the Plan Administrator accepted an offer of \$1,700,000 to purchase the Real Property. After one full year, and three brokers marketing the Real Property, the Plan Administrator believes that the Purchaser made the highest and best offer for the Real Property. The Sale Agreement sets forth the terms and conditions under which the Purchaser will acquire the Real Property and all parties are directed to review the Sale Agreement for its precise terms, a copy of which is annexed as **Exhibit “A”**.

27. In pertinent part, the Sale Agreement provides for a purchase price of \$1,700,000, all cash, without any financing contingency. The down payment of \$170,000 has already been received by the Plan Administrator and is being held in the Plan Administrator’s account pending the Bankruptcy Court’s approval of the Sale in this matter. The Purchaser is obligated to tender the balance of the Purchase Price at the closing on the Real Property. Further, the Purchaser will be obligated to pay transfer taxes (if applicable) the mansion tax and costs associated with the preparation and filing of any required recording documents. In addition to the Purchase Price, the Purchaser has also agreed to pay 1.0% (\$17,000) of the Third Broker’s 6.0% commission.

28. The Sale Agreement further states that the Real Property shall be sold “as is”, “where is” free and clear of all the Liens, with such Liens to attach to the proceeds of the Sale in

the same amount and priority as they existed as of the date Exeter was filed into bankruptcy in accordance with Section 363 of the Bankruptcy Code.

29. Moreover, the Sale Agreement provides for terms and procedures for closing on the Sale of the Real Property. The Purchaser shall close on the Sale on a date which is not later than thirty (30) calendar days from the date of entry of an Order of the Bankruptcy Court confirming the sale of the Real Property to the Purchaser (the “**Closing Date**”), time being of the essence.

30. Upon Bankruptcy Court approval, the Plan Administrator is ready, willing and able to move forward with the Sale and to close on the Real Property.

31. Based on the foregoing, the Plan Administrator submits that approval of the Sale Agreement is beneficial to the estates and that the relief herein should be granted.

E. Notice

32. Under Bankruptcy Rules 2002(a) and (c) and 6004, the Plan Administrator is required to notify creditors and certain other parties in interest of the Sale of the Real Property. The Plan Administrator submits that service of this Motion, including exhibits thereto, on all known creditors and the parties listed below, complies with Bankruptcy Rule 2002(c). The Plan Administrator intends to serve the Motion, with exhibits, by first class mail upon: (i) the Office of the United States Trustee; (ii) Nationstar and its counsel; (iii) Principi and her counsel; (iv) Déjà Vu and its counsel; (v) all parties to the Stipulation; (vi) the Purchaser and counsel; (vii) all requisite taxing authorities; (viii) all those known parties who may have an interest in the Real Property; (ix) all those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002 or any other party required to be served pursuant

to an order entered by this Bankruptcy Court; and (x) all known creditors of the Exeter and Principi estates.

Legal Authority for the Relief Requested

F. The Sale Should be Approved

33. The Plan Administrator submits that the Sale contemplated herein in accordance with the Sale Agreement will provide the estate with an opportunity to realize the greatest value from the Real Property.

34. Section 105(a) of the Bankruptcy Code provides, in relevant part: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a).

35. Section 704(a)(1) of the Bankruptcy Code provides that a trustee shall “collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest.” 11 U.S.C. § 704(a)(1).

36. Section 724(b) of the Bankruptcy Code provides, in pertinent part, that “[p]roperty in which the estate has an interest and that is subject to a lien that is not avoidable under this title . . . and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed – (1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien; (2) second, to any holder of a claim of a kind specified in section 507(a)(1)(C) . . . to the extent of the amount of such allowed tax claim that is secured by such tax lien; (3) third, to the holder of such tax lien, to any extent that such holder’s allowed tax claim that is secured by such tax lien exceeds any amount distributed under paragraph (2) of this subsection”

37. Further, Section 363(b) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, . . .” 11 U.S.C. § 363(b)(1).

38. The United States Court of Appeals for the Second Circuit, in applying Section 363 of the Bankruptcy Code, has required that approval of such sales be based upon the sound business judgment of the trustee. See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 466 (2d Cir. 2007) (quoting Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)); In re Chateaugay Corp., 973 F.2d 141, 145 (2d Cir. 1992); Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.), 430 B.R. 65, 83 (S.D.N.Y. 2010) (“The overriding consideration for approval of a Section 363 sale is whether a ‘good business reason’ has been articulated.” (citations omitted)). The terms of such sale are also generally within the sound discretion of the trustee. See In re Dial-A-Mattress Operating Corp., 2009 Bankr. LEXIS 1801, at *12 (Bankr. E.D.N.Y. June 24, 2009); In re Ionosphere Clubs, 100 B.R. 670 (Bankr. S.D.N.Y. 1989).

39. The Plan Administrator has substantial business justification for the proposed Sale of the Real Property. The Plan Administrator believes that the Sale in accordance with the terms of the Sale Agreement will enable the estate to provide for an expeditious sale of the Real Property that will benefit the Exeter estate and its creditors.

40. The instant Sale is permissible as Bankruptcy Rule 6004(f)(1) provides in relevant part that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Chapter 7 Trustees often exercise authority to sell debtors’ assets. In re Stein, 281 B.R. 845, 848 (Bankr. S.D.N.Y. 2002 (discussing the chapter 7 trustee’s right to sell the assets of the

debtor under the Bankruptcy Code); In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998) (explaining the chapter 7 trustee's authority to conduct the sale of the debtor's assets).

41. For these reasons, the Plan Administrator, in the exercise of his reasonable business judgment, recommends that the Bankruptcy Court authorize and approve the Sale Agreement and permit the Plan Administrator to proceed with a closing in accordance with the Sale Agreement.

G. The Real Property Should be Sold Free and Clear of Liens

42. In accordance with Section 363(f) of the Bankruptcy Code and the Sale Agreement, the Plan Administrator requests that he be authorized to sell the Real Property free and clear of the Liens with such Liens to attach to the proceeds of Sale.

43. Pursuant to Section 363(f) of the Bankruptcy Code, a trustee may sell property under the Bankruptcy Code free and clear of liens, claims, encumbrances and other interests, provided that: (a) applicable non-bankruptcy law permits the sale of the property free and clear of such interests; (b) the entity holding the lien, claim, encumbrance or interest consents to the sale; (c) the interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest. 11 U.S.C. § 363(f). See Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC), 423 F.3d 166, 169 n. 3 (2d Cir. 2005) (holding section 363 permits sales of assets free and clear of claims and interests, thus allowing purchasers to acquire assets without any accompanying liabilities); In re Dundee Equity Corp., No. 89-B-10233, 1992 WL 53743, at *3 (Bankr. S.D.N.Y. Mar. 6, 1992) (“Section 363(f) is in disjunctive, such that the sale of the interest concerned may occur if any one of the conditions of § 363(f) have been met”).

44. For the reasons already set forth above, the Plan Administrator, in the exercise of his reasonable business judgment, recommends that the Bankruptcy Court approve the Sale of the Real Property.

H. The Purchaser Should Be Entitled to Protections Under 11 U.S.C. § 363(m)

45. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

32. While the Bankruptcy Code does not define “good faith”, the United States Court of Appeals for the Second Circuit has held that:

[The] good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; . . . A purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”

Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997) (citations omitted).

33. The Plan Administrator submits that the Sale pursuant to the Sale Agreement will be conducted in an arm’s length transaction, in which the Plan Administrator and the Purchaser will have, at all times, acted in good faith under applicable legal standards. In furtherance of Section 363(m) of the Bankruptcy Code, the terms as set forth in the Sale Agreement are designed to ensure that maximum value is to be received by the Plan Administrator. As such, the Sale Agreement has been proposed by the Plan Administrator in good faith. Accordingly, the

Plan Administrator submits that the Purchaser is entitled to the protections of good faith purchasers under Section 363(m) of the Bankruptcy Code.

34. In accordance with the Plan Administrator's duties and the circumstances of this case, a prompt sale of the Real Property is demonstrably the best way to preserve and maximize the value of the Property for the benefit of creditors. Accordingly, a sound business reason exists for the sale of the Real Property.

I. Bankruptcy Rule 6004(h) Should Be Waived

35. Under Bankruptcy Rule 6004(h), an order authorizing the sale of property is "stayed until the expiration of 14 days after entry of the order" authorizing such sale. Fed. R. Bankr. P. 6004(h). The Plan Administrator requests that the Bankruptcy Court order that such stay shall not apply with respect to the sale of the Real Property.

36. A waiver of the stay requirement under Bankruptcy Rule 6004(h) will relieve the estate of any financial burdens associated with the sale of the Real Property and will reduce the expenditure of additional funds for the benefit of the estate and its creditors. Specifically, it will reduce costs associated with having to winterize the Real Property. As such, the Plan Administrator respectfully requests that any order approving the sale of the Real Property include a waiver of the stay under Bankruptcy Rule 6004(h).

Conclusion

37. Based upon the foregoing the Plan Administrator respectfully requests entry of an Order, pursuant to, 11 U.S.C. §§ 105(a), 363, 704 and 724 and Bankruptcy Rules 2002, 6004 and 9016: (a) authorizing and approving the Sale Agreement; (b) confirming the Sale to the Purchaser for the Purchase Price; and (iii) granting such other and further relief as this Court deems necessary.

38. No previous request for the relief sought herein has been made by the Plan Administrator to this or to any other Court.

WHEREFORE, the Plan Administrator respectfully requests entry of an Order, substantially in the form annexed hereto as **Exhibit “B”**, granting the relief requested in the Motion and for such other relief as this Court deems just and proper.

Dated: August 25, 2017
Wantagh, New York

LaMonica Herbst & Maniscalco, LLP
Attorneys for the Plan Administrator

By: **s/ Jordan Pilevsky**
Jordan Pilevsky, Esq.
A Partner of the Firm
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
(516) 826-6500

M:\Documents\Company\Cases\Exeter Holding, LTD\Real Property Portfolio\Amagant\Jordan Glass Deal\Sale Motion\NOM and Motion.doc

EXHIBIT A

AGREEMENT OF SALE

AGREEMENT made as of this 25 day of August 2017 between Gary F. Herbst, Esq., solely in his capacity as the plan administrator (the "**Plan Administrator**" or "**Seller**") of the bankruptcy estate of Exeter Holding, Ltd. ("**Exeter**") and as the Attorney-in-Fact for Virginia Principi a/k/a Virginia O'Connor a/k/a Virginia O'Connor Principi ("**Virginia Principi**") having an address at c/o LaMonica Herbst & Maniscalco, LLP, 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793, and Andrew Berman and Mollie Cohen (collectively, the "**Purchaser**"), having an address of 89 Marine Boulevard, Amagansett, New York 11930.

WHEREAS, on November 9, 2011, an involuntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") was filed against Exeter in United States Bankruptcy Court for the Eastern District of New York (the "**Court**"). On January 18, 2012, the Court entered an Order for Relief in the Exeter case pursuant to Chapter 11 of the Bankruptcy Code. Exeter's bankruptcy case is assigned case number 11-77954-AST and is presently pending before the Honorable Alan S. Trust, United States Bankruptcy Judge.

WHEREAS, pursuant to an Order dated July 8, 2013 (the "**Plan Order**") in the Exeter case, the Court confirmed Exeter's Amended Plan of Liquidation (the "**Plan**"). In accordance with the Plan and the Plan Order, Gary F. Herbst was appointed as the Plan Administrator of Exeter's estate. In accordance with Plan, the Plan Administrator has the authority to take all actions that may be, or could have been, taken by the Exeter's officers, directors and shareholders.

WHEREAS, on April 5, 2016, the Plan Administrator filed an involuntary Chapter 7 petition against Virginia Principi. Virginia Principi's bankruptcy case is assigned case number 16-71481 and is presently pending before the Honorable Alan S. Trust, United States Bankruptcy Judge.

WHEREAS, in accordance with (a) the Plan and the Plan Order in the Exeter bankruptcy case and (b) a Stipulation and Order of Settlement (the "**Stipulation**") in Virginia Principi's bankruptcy case, the Plan Administrator has been authorized to market and sell the real property located at, and known as, 107 Montauk Highway, Amagansett, New York 11930 (the "**Real Property**").

WHEREAS, Purchaser desires to purchase the Real Property and the Plan Administrator, in furtherance of the Plan, Plan Order and Stipulation, desires to sell the Real Property, in accordance with the terms, covenants and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, covenants and conditions as hereinafter set forth, the parties agree as follows:

1. Agreement to Sell and Purchase.

(a) Purchaser acknowledges and understands that the sale contemplated by this Agreement is being made in accordance with the provisions of 11 U.S.C. § 363, with the Real Property being sold free and clear of all liens, claims and encumbrances of whatever kind or nature (collectively, the "**Liens**"), with the Liens, if any, to attach to the proceeds of sale.

(b) Purchaser acknowledges and understands that the Plan Administrator, in his sole discretion, will seek approval of the Court in both the Exeter and Virginia Principi bankruptcy cases. The Plan Administrator may file an application to the Court for the entry of an order approving this Agreement, confirming the sale of the Real Property to the Purchaser and authorizing the Plan Administrator transfer title of the Real Property to the Purchaser (the "**Confirmation Order**").

(c) The Plan Administrator agrees to sell, convey and assign the Real Property to Purchaser and Purchaser agrees to purchase, accept and assume such title on a date which is not later than thirty (30) calendar days from the date of the entry of the Confirmation Order (the "**Closing Date**"). The Plan Administrator, in his sole discretion, may extend the Closing Date. The closing shall take place at LaMonica Herbst & Maniscalco, LLP, 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793. **Time is of the essence** for Purchaser to perform all of the obligations required on his part to be performed under this Agreement by the Closing Date.

(d) The Plan Administrator shall not be obligated to deliver a Certificate of Occupancy or Certificate of Completion for the Real Property and/or any and all changes or additions thereto that would require a Certificate of Occupancy or Certificate of Completion. The Purchaser expressly agrees to take title to the Real Property without a Certificate of Occupancy or Certificate of Completion.

(e) The sale of the Real Property includes all right, title and interest, if any, of Virginia Principi in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining the Real Property, to the center line thereof, and all right, title and interest in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to the Real Property by reason of change of the grade of any street subject to any rules, regulations or declarations. The Plan Administrator will execute and deliver to Purchaser, at the closing of title hereunder, or thereafter, on demand, all proper instruments reasonably necessary for the conveyance of such title that the Title Company (as hereinafter defined) will insure at standard rates, without additional premium and the assignment and collection of any such award.

(f) The transmittal by the Plan Administrator of this Agreement to the Purchaser shall be deemed a submission solely for Purchaser's consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall confer no rights nor impose any obligations on either party unless and until both the Plan Administrator and the Purchaser shall have executed the Agreement and duplicate originals thereof shall have been delivered to the respective parties.

2. Amount and Manner of Payment of Purchase Price.

(a) Purchaser agrees to pay the sum of \$1,700,000 (the "**Purchase Price**") to the Plan Administrator for the acquisition of the Real Property. Purchaser will pay the Purchase Price to the Plan Administrator as follows: (i) simultaneous with the signing of this Agreement, the sum of \$170,000 by bank check payable to "Gary F. Herbst, as Plan Administrator", to be held by the Plan Administrator (the "**Down Payment**") and (ii) on the Closing Date, the sum of \$1,530,000 (the "**Balance Payment**"), being the difference between the Purchase Price and the Down Payment, in the form of a bank check payable to "Gary F. Herbst, as Plan Administrator". Any checks accepted by the Plan Administrator will be deemed accepted subject to collection.

(b) If the Down Payment is paid by a check that fails due to collection, the Plan Administrator, at his option, may declare this Agreement null, void and of no force and effect, and may pursue his remedies against Purchaser upon said check under this Agreement or in any other manner permitted by law. The Plan Administrator remedies under those circumstances will be cumulative.

(c) If the Plan Administrator cannot deliver title to the Real Property in the manner required by this Agreement, and this Agreement has not previously been terminated in accordance with its terms, then Purchaser's exclusive remedy and the Plan Administrator sole liability will be to promptly refund the Down Payment (to the extent already received) to Purchaser and upon such refund, this Agreement will

wholly cease and terminate and neither party will have any further claim or liability against the other under this Agreement, except under those provisions that, by their express terms, survive termination. If Purchaser elects to reject the Plan Administrator's performance, as set out in the preceding sentence, it will do so as Purchaser's exclusive remedy. Alternatively, Purchaser may accept such title as the Plan Administrator is able to deliver without abatement of the Purchase Price.

(d) If the Plan Administrator is unable to perform his obligations under this Agreement, the Plan Administrator has the right to cancel this Agreement and the Plan Administrator will promptly refund the Down Payment to Purchaser. Upon such refund, this Agreement will wholly cease and terminate and neither party will have any further claim against the other under this Agreement except as to those provisions that, by their express terms, survive termination. Purchaser's exclusive remedy for the Plan Administrator's inability to obtain the Confirmation Order or to perform his obligation is to terminate this Agreement and to have the Down Payment returned.

3. Bankruptcy Court Approval. Purchaser acknowledges that the Plan Administrator, in his sole discretion, will submit an application to the Court seeking approval of this Agreement.

4. Conditions of Sale.

(a) Purchaser's obligations hereunder are not conditioned or contingent upon Purchaser obtaining a mortgage or financing from any source.

(b) Except to the extent that a representation is made specifically elsewhere in this Agreement, the Plan Administrator has not made and does not make any representations as to the physical condition, rents, leases, tenancies, security deposits, expenses, operations, value of the land or buildings thereon, condition of the Real Property or any other matter or thing affecting or related to the Real Property or this transaction, which might be pertinent to the purchase of the Real Property or the execution of this Agreement. Specifically, and not by way of limitation, the Plan Administrator has not made, and does not make, any representations as to (i) the current or future real estate tax liability, current or future homeowners association dues or assessments (if applicable), assessment or valuation of the Real Property; (ii) the potential qualification of the Real Property for any and all benefits conferred by federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Real Property, in its current or any future state, with applicable zoning ordinances and the ability to obtain a change in the zoning or a variance in respect to the Real Property, noncompliance, if any, with said zoning ordinances and the existence or non-existence of a Certificate of Occupancy or Certificates of Completion; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Real Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (v) the current or future use, condition, renovation, or expansion of the Property; (vi) the present and future condition and operating state of any and all machinery or equipment on the Real Property and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (vii) the ownership or state of title of any personal property on the Real Property; (viii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; and (ix) the compliance with environmental laws and the presence or absence of underground fuel storage tanks, any hazardous materials or asbestos anywhere on the Real Property. Purchaser hereby expressly acknowledges that no such representations have been made. The Plan Administrator is not liable or bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to the Real Property, made or furnished by any real estate broker, agent, employee, servant or other person representing or purporting to represent the Plan Administrator unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth

herein. All understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement. The delivery of the deed by Plan Administrator, and the acceptance of the deed by Purchaser, shall be deemed to be the full performance and discharge of every obligation of Plan Administrator to be performed pursuant to this Agreement prior to the Closing Date and the truth of every representation or warranty made by Plan Administrator in this Agreement or in any document, certificate, affidavit or other instrument delivered by Plan Administrator or his agents at or in connection with the Closing.

(c) Purchaser covenants and agrees to accept title to the Real Property in its "as is", "where is" condition, subject to use, wear and tear and deterioration through the Closing Date, and the Plan Administrator is not obligated to make any repairs, alterations, improvements or additions thereto whatsoever. The Real Property will be delivered vacant.

(d) The Plan Administrator will deliver such title as any reputable title company doing business in the State of New York will be willing to insure, in accordance with the then standard form of title policy, subject to the Permitted Encumbrances. If any title company employed by Purchaser is unwilling to insure the title that the Plan Administrator is required to deliver under this Agreement, the Plan Administrator will have the right, but not the obligation, to try to produce such a policy from a nationally reputable title company, either directly or through an abstract company, which expenses shall be borne by the Purchaser to be paid and adjusted at closing. The form of deed will be a Trustee's deed.

(e) The sale is being made in accordance with the provisions of 11 U.S.C. § 363 with the Real Property to be sold free and clear of the Liens, with such Liens to attach to the proceeds of the sale.

5. Disposition of Down Payment. The Down Payment will be held and disbursed as follows: (a) if the closing takes place, the Down Payment will be retained by the Plan Administrator; (b) if this Agreement is terminated in accordance with its terms, the Down Payment will be paid to, or upon the instructions of, the party entitled thereto in accordance with the provisions of this Agreement; or (c) if the closing does not take place by reason of the failure of a party to comply with such party's obligations hereunder, the Down Payment will be paid to the party entitled thereto in accordance with the provisions of this Agreement.

6. The Closing.

(a) The deed will be delivered on the Closing Date and upon receipt of the Balance Payment. The closing on the sale contemplated herein (the "**Closing**") will be held at the office of LaMonica Herbst & Maniscalco, LLP, 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793. **Time is of the essence** with respect to Purchaser's obligations to pay the Purchase Price, and to accept the deed of conveyance, on or before the Closing Date, or such later day to which the Closing Date may be adjourned by the Plan Administrator.

(b) Plan Administrator will have the right to adjourn the Closing Date one or more times in order to perform his obligations under this Agreement. Purchaser will not have the right to adjourn the Closing Date, with time being of the essence with respect to Purchaser's obligations to pay the Balance Payment and accept the Trustee's deed of conveyance on or before the Closing Date. Such right to adjourn will be exercised by notice of exercise given by Plan Administrator in accordance with the provisions of this Agreement governing the giving of notice, provided that notice of exercise may be given orally if exercise is made at the date, time and place then scheduled for Closing Date and confirmed by the transmission of written notice on such date in accordance with such provisions.

(c) On the Closing Date, Purchaser will prepare, deliver and/or pay (i) the Balance Payment; (ii) any and all applicable New York State, Suffolk County, Peconic Bay or other real property transfer taxes and stamp taxes; (iii) any applicable recording and tax documents, and fees associated in connection therewith; and (iv) such documents reasonably necessary to demonstrate that the transactions contemplated by this Agreement have been duly authorized by all necessary organizational action of Purchaser. The Purchaser acknowledges that he/she/they will be responsible to adjust and pay, at closing, for any real estate taxes, water, sewer, utility or other customary adjustments that have been paid to a date that is subsequent to the Closing Date.

(d) On the Closing Date, the Plan Administrator will deliver, or cause to be delivered, to the Purchaser the following items: (i) a duly executed and acknowledged trustee's deed; and (ii) the Confirmation Order, if necessary.

7. Adjustments and Prorations. At Closing, the parties hereto shall apportion and adjust for all real estate taxes and water charges due as of midnight of the date before the Closing Date. If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation.

8. Title Report: Title Obligations.

(a) Purchaser will promptly order an examination of title of the Real Property (the "Title Report") within five (5) days from receipt of a fully executed copy of this Agreement from a reputable title insurance company or abstract company doing business in the New York area. Purchaser shall furnish a copy of the Title Report to the Plan Administrator's counsel designated below within four (4) days of Purchaser's receipt of the Title Report. Within fourteen (14) days of receipt of the Title Report by Purchaser, Purchaser shall notify the Plan Administrator's counsel in writing of any title defects, clearance issues or impediments to closing that may need to be cured in advance of the Closing Date. The Plan Administrator acknowledges, and agrees, that receipt of the title report is sufficient notice of any such defects, issues or impediments.

(b) If there are any objections to title that the Plan Administrator is unable to remove at or prior to the scheduled or any adjourned Closing Date (other than the Permitted Encumbrances which the Plan Administrator has no obligation to remove and Purchaser agrees to take "subject to"), and which objections may, according to Plan Administrator's reasonable expectations, be removed within sixty (60) days after such date, the Plan Administrator, if he elects at his sole discretion to cure such objections, will be entitled to one or more adjournments of the Closing Date for the purpose of such removal for a period not exceeding the aggregate of sixty (60) days. However, any action taken by the Plan Administrator to remove such defect, lien and/or encumbrance will not be deemed an admission on the Plan Administrator part that such defect, lien, and/or encumbrance is one which would give Purchaser the right to cancel this Agreement and Purchaser shall accept such title to the Real Property as Plan Administrator can provide.

(c) The following are permitted encumbrances (the “**Permitted Encumbrances**”) and are not, and will not constitute, objections to title:

1. Covenants, restrictions, agreements, easements and rights of way of record, if any, provided the title insurance company used by Purchaser (the “**Title Company**”) at no additional premium or charge, will give affirmative insurance that such covenants, restrictions, agreements and easements and rights of way (a) are not currently violated; and (b) do not materially interfere with the current manner of use of the Real Property or the buildings and improvements thereon or any otherwise lawful uses;
2. State of facts that a now accurate survey or a physical inspection of the Real Property may show, provided the same do not render title uninsurable or unmarketable;
3. Rights and easements of record, if any, of any utility company to construct and/or maintain lines, pipes, wires, cables, poles, conduits and distribution boxes and equipment in, over, under, and/or upon the Property or any portion thereof;
4. Any and all laws, statutes, ordinances, codes, regulations or requirements, homeowner association rules, regulations and requirements, including, without limitation, building, zoning and other land use restrictions, ordinances, and regulations, affecting the Real Property adopted by the city, in which the Real Property lie or by any other governmental authority having jurisdiction thereof, and all amendments or additions thereto now, or which, at the time of Closing are in force and effect;
5. Real estate taxes, water rates, water frontage charges, sewer taxes, and charges based thereon, including, without limitation, those that are to become due and payable after the Closing Date for tax periods accruing after the Closing Date;
6. If less than 12”, possible encroachments of bay windows, hedges, stoops, gratings, steps, balconies, eaves, trim, cornices, copings, cellar doors, sidewalk elevator, railings and coping, or fences, if any, upon any street, highway, sidewalk or adjoining Real Property; variations between record line and fences, and hedges provided Purchaser’s title company will insure same without exception to title;
7. by presently existing structures or the existing use of the Real Property; and Covenants, restrictions, easements, agreements, consents and landmark designations of record, provided same are not violated; and
8. All notes or notices of violations of laws, regulations or municipal ordinances, orders or requirements, if any, affecting the Real Property issued by any governmental or municipal department, agency or bureau so long as the same do not require demolition of all or substantially all of the building.
9. **Purchaser’s Default/Damages.** If Purchaser fails or refuses to comply with and perform all of the terms, provisions, conditions, agreements, and obligations on Purchaser’s part to be observed, kept and performed pursuant to this Agreement for any reason other than (x) the absence of an event or state of facts which conditions Purchaser’s obligation to close hereunder or (y) the material breach of any representation or warranty made by the Plan Administrator, if any, herein, the parties agree actual

damages would be difficult to determine therefore the Down Payment shall be deemed non-refundable and the Plan Administrator will retain the Down Payment as liquidated damages.

10. Casualty Damages: Takings.

(a) If, before the Closing Date, a material portion of the Real Property is taken or any notice is given or action is commenced for the taking of a material portion of the Real Property by condemnation or eminent domain, this Agreement will be automatically canceled, the Down Payment will be returned to Purchaser in which event neither party will have any further liability or obligation to the other under this Agreement. A taking shall be deemed to be "material" if said taking materially and adversely affects access to the Real Property, or if in the reasonable estimation of an appraiser selected by Plan Administrator the taking would result in a claim for condemnation proceeds equal to or in excess of twenty-five percent (25%) of the Purchase Price. In the event of a non-material taking of any part of the Real Property, Purchaser shall accept the Real Property subject to the proceedings and pay to Plan Administrator the full Purchase Price, whereupon any award payable to Plan Administrator shall be paid to Purchaser and Plan Administrator shall deliver to Purchaser at the Closing all assignments and other documents reasonably requested by Purchaser to vest such award in Purchaser.

(b) If, before the Closing Date, the Real Property is materially damaged as the result of fire or other casualty, Purchaser will have the option to (a) accept title to the Real Property without any abatement of the Purchase Price, in which event all of the insurance proceeds will be assigned by the Plan Administrator to Purchaser at the Closing Date and any monies theretofore received by the Plan Administrator in connection with such fire or other casualty will be paid over to Purchaser, or (b) cancel this Agreement, by written notice to Plan Administrator within ten (10) days of such casualty, in which event the Plan Administrator will return the Down Payment to Purchaser and thereupon neither party will have any further liability or obligation to the other. If, before the Closing Date, less than a material part of the Real Property is damaged, Purchaser shall nevertheless close title to the Real Property pursuant to all the terms and conditions of this Agreement (without adjustment to the Purchase Price except as otherwise set forth herein), subject to the following: (i) at the Closing, Plan Administrator shall (1) pay over to Purchaser the amount of any insurance proceeds, to the extent collected by Plan Administrator in connection with such casualty, less the amount of the actual and reasonable unreimbursed expenses incurred by Plan Administrator in connection with collecting such proceeds and making any repairs to the Real Property occasioned by such casualty pursuant to any contract and (2) assign to Purchaser in form reasonably satisfactory to Purchaser all of Plan Administrator's right, title and interest in and to any insurance proceeds that are uncollected at the time of the Closing and that may be paid in respect of such casualty. For the purpose of this Section, the phrase "materially damaged" or a "material part" shall mean a portion of the Real Property such that the cost of repair or restoration thereof is estimated by a reputable contractor selected by Plan Administrator to be in excess of twenty-five percent (25%) of the Purchase Price.

11. Plan Administrator's Capacity. Purchaser acknowledges that the Plan Administrator has entered into this Agreement solely in his capacity as Plan Administrator for the Exeter bankruptcy estate and in furtherance of his authority under the Plan, the Plan Order and the Stipulation, and not in his individual capacity. This Agreement is "non-recourse" as to the Plan Administrator and his attorneys, professionals and agents. Purchaser agrees to look solely to the Down Payment for the satisfaction of Purchaser's remedies for the collection of a judgment (or judicial process) requiring the payment of money by the Plan Administrator in the event of any default or breach by the Plan Administrator with respect to any of the terms, covenants and conditions of this Agreement to be observed and/or performed by the Plan Administrator. Purchaser will have no recourse to any other property or assets of the Plan Administrator, which will be exempt from levy, execution or other enforcement procedure for the

satisfaction of Purchaser's remedies. The provisions of this section will survive the Closing or other termination of this Agreement.

12. Notices. Any notice or demand required by, or desired to be sent under, this Agreement must be in writing and must be sent, to the party at the address set forth in the preamble by mailing the same by express mail, or delivery by Federal Express or by other nationally recognized overnight courier using a written receipt or other valid written proof of delivery, or by hand delivery using a written receipt. Either party may designate by written notice, in writing, a new or other address to which notices or demands are thereafter to be sent. Copies of all notices will be sent as follows:

If to Seller:	Gary F. Herbst, Esq., as Plan Administrator LaMonica Herbst & Maniscalco, LLP 3305 Jerusalem Avenue, Suite 201 Wantagh, New York 11793
With a Copy to:	Jordan Pilevsky, Esq. LaMonica Herbst & Maniscalco, LLP 3305 Jerusalem Avenue, Suite 201 Wantagh, New York 11793
If to Purchaser:	Andrew Berman and Mollie Cohen 89 Marine Boulevard Amagansett, New York 11930
With a Copy to:	Kathryn Dalli, Esq. Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP 33 West Second Street P.O. Box 9398 Riverhead, New York 11901

13. Plan Administrator's Representations and Warranties.

(a) The Plan Administrator makes the following representations and warranties, which will not survive the Closing, to Purchaser in connection with the Real Property to the Plan Administrator's actual knowledge:

1. The Plan Administrator has the legal power, right and authority to enter into this Agreement and to consummate the transaction contemplated hereby in accordance with the Stipulation;
2. Except for Purchaser's rights hereunder, no person, firm or entity, has any rights to acquire the Real Property or any part thereof; and
3. The Plan Administrator is not a "foreign person" as defined by the Internal Revenue Code and regulations promulgated thereunder.

14. Purchaser's Representations and Warranties. Purchaser represents to the Plan Administrator that:

(a) Purchaser has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) As of the date hereof, all necessary actions have been taken by Purchaser in connection with the entering into this Agreement and the consummation of the transactions contemplated hereby; and

(c) This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms; and

(d) Purchaser is an individual of legal age and capacity and is entering this Agreement knowingly and voluntarily.

15. Limitation on the Plan Administrator's Liability.

(a) If the Plan Administrator is unable to convey title to the Real Property in accordance with the provisions of this Agreement for any reason, the Plan Administrator's sole obligation and liability hereunder will be to cause the Down Payment to be promptly refunded to Purchaser, and thereupon all rights and obligations hereunder, by either party against the other will cease and terminate, except to the extent that this Agreement provides for their survival after termination and this Agreement will be null and void and the lien, if any, of Purchaser against the Real Property will wholly cease. The Plan Administrator will not be required to bring any action or proceeding or otherwise to incur any expense to render the title to the Real Property insurable, subject to the Permitted Encumbrances. Purchaser, without reduction of, or credit or allowance against the Purchase Price and without any liability on the part of the Plan Administrator, may accept such title as the Plan Administrator is able to convey. If there is any conflict between the provisions of this subparagraph and any other provision of this Agreement, then the provisions of this subparagraph will govern and predominate.

(b) Purchaser waives any right he may have to bring an action against the Plan Administrator, its remedies being limited to cancellation. Purchaser expressly waives the right to file a *lis pendens*, or take any other action that would adversely affect the Plan Administrator's ability to convey title to the Real Property free and clear of any claim of Purchaser.

16. Certiorari Proceedings. The Plan Administrator may, but shall not be obligated to, commence or continue any proceeding for the reduction of the assessed valuation of the Real Property, and to try to settle the same in the Plan Administrator's discretion provided, however, that the net refund of taxes, if any, for any tax year for which Purchaser is entitled to share in the refund will be divided between the Plan Administrator and Purchaser in accordance with the proportion of said period covered by such refund in which the Real Property was owned by the Plan Administrator to the entire period covered, after deducting therefrom a pro rata share of all expenses, including counsel fees, necessarily incurred in obtaining such refund, the allocation of such expenses to be based upon the total refund obtained in the proceeding and in any other proceeding simultaneously involved in the trial or settlement. Purchaser will deliver to the Plan Administrator, upon demand, receipted tax bills and canceled checks used in payment of such taxes and will execute any and all consents or other documents, and do any act or thing necessary for the collection of such refund by the Plan Administrator. Any refunds due for periods before Purchaser's ownership will remain the property of the Plan Administrator. The provisions of this paragraph will survive the Closing.

17. Successors and Assigns. This Agreement will be binding upon, and will inure to the benefit of, the respective parties and their successors and permitted assigns. Purchaser's rights under this Agreement may not be assigned without the prior written consent of the Plan Administrator in each instance (which the Plan Administrator may grant or withhold in the Plan Administrator's sole and absolute discretion) and any assignment or attempted or purported assignment made without such consent

will be null and void and of no force or effect and will constitute a non-curable default by Purchaser entitling the Plan Administrator to terminate this Agreement and retain the Down Payment. Purchaser may, however, assign his rights under this Agreement in writing delivered to Plan Administrator at least three business days prior to the Closing Date, to any entity owned and controlled by Purchaser, upon appropriate proof of same delivered to the Plan Administrator. No such permitted assignment will relieve Purchaser of any of his obligations under this Agreement.

18. Prohibition Against Recordation. Purchaser may not record this Agreement and any recordation or attempted recordation by Purchaser hereof will be void and of no effect and will constitute a non-curable default by Purchaser under this Agreement entitling the Plan Administrator to terminate this Agreement and retain the Down Payment.

19. Transfer Taxes and Recording Forms. All New York State, Suffolk County, Peconic Bay, or other real property transfer taxes incurred by the transfer of the Real Property, if any, shall be paid at closing by the Purchaser. The Purchaser acknowledges that he will be responsible for the completion of all recording documents and forms, if required, and shall be responsible for all fees associated in connection therewith.

20. Broker. Purchaser represents that he has not dealt with any broker, salesperson or finder in connection with the transaction other than Jordan Glass LLC (the "**Seller's Broker**") and Hampton Realty Group Main Street LLC (the "**Purchaser's Broker**"). Purchaser agrees to indemnify the Plan Administrator from and against any and all liabilities, damages, claims, losses, costs and expenses (including reasonable attorney's fees) arising out of a breach of the representation made by Purchaser, if any, in this paragraph. The provisions of this paragraph will survive the Closing or other termination of this Agreement. After title to the Real Property has been transferred to Purchaser, and within 30-days thereafter, the Plan Administrator shall pay to Seller's Broker a 5.0% commission, inclusive of expenses, (i.e. \$85,000). The Purchaser shall pay to the Seller's Broker, at the closing, a 1.0% commissions, inclusive of expenses, (i.e. \$17,000), which funds shall be paid in addition to the purchase price. In no event shall the Plan Administrator owe or pay more than 5.0% to the Seller's Broker. Further, in no event shall the Plan Administrator be obligated to pay the Purchaser's Broker.

21. No Lien. No lien or encumbrance will arise against the Real Property in favor of Purchaser from this Agreement or any monies deposited hereunder.

22. Entire Agreement: Construction. This instrument constitutes the entire agreement between the parties and there are no other covenants, promises or agreement, written or oral, and no agent of either party has the authority to make representations or other agreements, verbal or written which modify or vary the terms or conditions of this Agreement. This Agreement supersedes and cancels any and all negotiations, arrangements, agreement and understandings, if any, between the parties hereto. This Agreement will be deemed to have been jointly drafted by the attorneys for both parties and will be construed neither for nor against the Plan Administrator or Purchaser. The singular will include the plural, and vice versa, and masculine, feminine and neuter pronouns will be fully interchangeable, where the context so requires. References to "hereof" or "hereunder" set forth in this Agreement will refer to this entire Agreement and not to the section or subsection in which they appear unless there is no reasonable construction to that effect.

23. Modification. This Agreement may not be changed or terminated orally. The provisions hereof will apply to and bind the heirs, executors, administrators, successors and permitted assigns of the respective parties.

24. Enforceability. If any provision of this Agreement is determined to be unenforceable or invalid, such invalidity or unenforceability will not affect the remaining provisions of this Agreement, as the provisions of this Agreement are intended to be and will be severable. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision will have the meaning that renders it valid, unless any such void or unenforceable part affects any significant rights or obligations of a party hereunder.

25. Severability. If any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless be binding upon the parties with the same force and effect as though the void or unenforceable part had been severed and deleted unless any such void or unenforceable part affects any significant rights or obligations of a party hereunder.

26. Gender. A reference in this Agreement to any gender includes any other one gender and the singular includes the plural, and vice versa, unless the context requires otherwise.

27. Waiver. Any failure by the Plan Administrator to insist upon strict performance by Purchaser of any of the provisions of this Agreement will not be deemed a waiver of any of the provisions of this Agreement, despite the number of violations or breaches that may occur, and the Plan Administrator, notwithstanding any such failure, will have the right thereafter to insist upon strict performance by Purchaser of any and all of the provisions of this Agreement to be performed by Purchaser.

28. Binding Effect. The Plan Administrator's delivery of this Agreement for inspection by Purchaser is not an offer and does not create any rights in favor of Purchaser or others or create any obligation upon the Plan Administrator. This Agreement will have no force or effect unless and until it has been fully executed, delivered, exchanged and approved by the Bankruptcy Court.

29. Construction. The provisions of this Agreement will be governed by, and construed and enforced according to, the laws of the State of New York applicable to agreements made and to be performed wholly therein and applicable federal law. The parties hereby consent to the exclusive jurisdiction of the United States Bankruptcy Court for the Eastern District of New York to resolve any and all disputes in and under this Agreement. This Agreement will be construed and interpreted without regard to any presumption or other rule requiring construction or interpretation against the party causing this Agreement to be drafted.

30. Waiver of Jury Trial. Except as prohibited by law, the parties waive trial by jury in any litigation arising out of, or connected with, or relating to, this Agreement or the relationship created hereby. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such matter as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived.

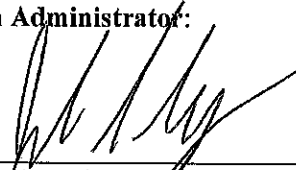
31. Survival. No provision of this Agreement will survive the closing, except those obligations expressly stated therein to survive or to be performed subsequent to the Closing Date.

32. Counterpart Execution. This Agreement will not be binding unless a fully executed counterpart has been delivered to each of the parties. This Agreement may be executed in multiple counterparts each of which when taken together shall constitute one original document.

33. Section Headings. The section headings used herein are for convenience of reference only and will not limit or define the provisions of this Agreement.

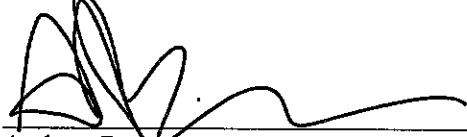
IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

Plan Administrator:



Jordan Pitrusky as counsel Gary F. Herbst, Esq.,
solely in his capacity as the Plan Administrator

Purchaser:



Andrew Berman



Mollie Cohen

M:\Documents\Company\Cases\Exeter Holding, LTD\Real Property Portfolio\Amagannett\Jordan Glass Deal\Contract\Sale Agreement FINAL.docx